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PROJET DE LOI

ENTITLED

The Trusts (Guernsey) Law, 2007

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PROJET DE LOI

ENTITLED

The Trusts (Guernsey) Law, 2007

THE STATES, in pursuance of their Resolution of the 15th December, 2006^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

PART I

PRELIMINARY

Existence of a trust.

1. A trust exists if a person (a "**trustee**") holds or has vested in him, or is deemed to hold or have vested in him, property which does not form or which has ceased to form part of his own estate –

- (a) for the benefit of another person (a "**beneficiary**"), whether or not yet ascertained or in existence, and / or
- (b) for any purpose, other than a purpose for the benefit only of the trustee.

Validity of trusts.

2. Subject to the provisions of this Law, a trust is valid and enforceable

^a Article VIII of Billet d'État No. XXI of 2006.

in Guernsey.

Proper law of trust.

3. (1) Subject to sections 51 and 57, the proper law of a trust is –

- (a) the law chosen by the settlor to be the proper law, the choice being expressed or implied in the terms of the trust, or
- (b) if no law is so chosen, the law with which the trust has its closest connection at the time of its creation, and in determining the law with which a trust has its closest connection regard shall be had in particular to -
 - (i) the place of administration of the trust designated by the settlor,
 - (ii) the situs of the assets of a trust,
 - (iii) the place of residence or business of the trustee,
 - (iv) the objects of the trust and the places where they are to be fulfilled.

(2) A trust the proper law of which is the law of Guernsey is referred to in this Law as a "**Guernsey trust**".

(3) For the purposes of subsection (1)(a), where the proper law of a trust is expressed (in whatever terms) to be the law of the Bailiwick of Guernsey,

without further particularity, the proper law of the trust shall be deemed to be the law of Guernsey.

Jurisdiction of court.

4. (1) The Royal Court sitting as an Ordinary Court ("**the Royal Court**") has jurisdiction in respect of –

- (a) a Guernsey trust, and
- (b) any other trust –
 - (i) a trustee of which is resident in Guernsey,
 - (ii) any property of which is situated or administered in Guernsey, or
 - (iii) the terms of which provide that the Royal Court is to have jurisdiction.

(2) For the purposes of subsection (1)(b)(iii), where the terms of a trust provide, in whatever terms and without further particularity, that the courts of the Bailiwick, or the courts of Guernsey, are to have jurisdiction, the terms of the trust shall be deemed to provide that the Royal Court is to have jurisdiction,

PART II

PROVISIONS APPLICABLE ONLY TO GUERNSEY TRUSTS

Application of Part II.

5. This Part of this Law applies only to Guernsey trusts.

Creation, validity and duration of Guernsey trusts

Creation of a trust.

6. (1) Subject to subsections (2), (3) and (4), a trust may be created-
- (a) by oral declaration,
 - (b) by an instrument in writing,
 - (c) by conduct, or
 - (d) in any other manner whatsoever.
- (2) A unit trust may be created only by an instrument in writing.
- (3) A trust of real property situated in Guernsey may be created only by an instrument in writing.
- (4) Nothing in subsection (3) -
- (a) applies in relation to a trust of real property created before the commencement of this Law, or
 - (b) affects the creation or operation of resulting, implied or constructive trusts.
- (5) No technical expressions are needed for the creation of a trust.

Property which may be held on trust.

7. (1) Any property may be held on trust.

(2) A trustee may accept property to be held on trust from any person.

Beneficiaries of a trust.

8. (1) A beneficiary shall be -

(a) identifiable by name, or

(b) ascertainable by reference to -

(i) a class, or

(ii) a relationship to another person, whether or not living at the time of the creation of the trust or at the time by reference to which, under the terms of the trust, members of a class are to be determined.

(2) The terms of a trust may provide for the addition or removal of a person as beneficiary or for the exclusion from benefit of a beneficiary either revocably or irrevocably.

(3) The terms of a trust may impose an obligation on a beneficiary as a condition of benefit.

(4) A settlor or trustee of a trust may also be a beneficiary thereof.

Disclaimer of beneficial interest.

9. (1) Subject to the terms of the trust, a beneficiary may disclaim his interest or any part of it, whether or not he has received any benefit from it.

(2) A disclaimer shall be in writing and, subject to the terms of the trust -

(a) may be temporary, and

(b) may, if the disclaimer so provides, be revoked in the manner and circumstances specified thereby.

(3) A disclaimer is not effective until received by a trustee.

Nature of beneficial interest.

10. The interest of a beneficiary is personal property and, subject to the terms of the trust, may be dealt with or charged accordingly.

Validity and enforceability of trust.

11. (1) Subject to subsections (2) and (3), a trust is valid and enforceable in accordance with its terms.

(2) A trust is invalid and unenforceable to the extent that -

(a) it purports to do anything contrary to law of Guernsey,

(b) it confers or imposes any right or function the exercise or discharge of which would be contrary to the law of Guernsey,

(c) it has no beneficiary identifiable or ascertainable under

section 8(1), unless -

- (i) it is for a charitable purpose, and / or
- (ii) it is for a non-charitable purpose in relation to which it is valid and enforceable by virtue of section 12(1), or

(d) the Royal Court declares that -

- (i) it was established by duress, fraud, mistake, undue influence or misrepresentation or in breach of fiduciary duty,
- (ii) it is immoral or contrary to public policy,
- (iii) its terms are so uncertain that its performance is rendered impossible, or
- (iv) the settlor was, at the time of its creation, incapable of creating such a trust.

(3) Where some of the terms of a trust are invalid but others are

not -

- (a) if the terms cannot be separated, the trust is invalid,
- (b) if the terms can be separated, the Royal Court may declare that the trust is valid as to the terms which are valid.

(4) Where a trust is partially invalid, the Royal Court may declare what property is and what property is not to be held subject to the trust.

(5) Property as to which a trust is invalid shall, subject to any order of the Royal Court, be held by the trustees on trust for the settlor absolutely or, if he is dead, for his personal representative.

(6) An application to the Royal Court under this section may be made by any person mentioned in section 69(2).

Trusts for non-charitable purposes; and enforcers.

12. (1) A trust for or including non-charitable purposes created by an instrument in writing and the terms of which provide for -

- (a) the appointment of an enforcer in relation to the trust's non-charitable purposes, and
- (b) the appointment of a new enforcer at any time when there is none,

is valid and enforceable in relation to its non-charitable purposes.

(2) It is the fiduciary duty of an enforcer to enforce the trust in relation to its non-charitable purposes.

(3) The appointment of a person as enforcer of a trust has no effect if the person is also a trustee of the trust.

(4) An enforcer may resign his office by delivering a written

notice of resignation to the trustees.

(5) Subject to subsection (6), a resignation takes effect -

- (a) on delivery of the notice, or
- (b) on such later date or on the happening of such later event as may be specified therein.

(6) A resignation given to facilitate a breach of trust or a breach of the enforcer's fiduciary duty has no effect.

(7) An enforcer ceases to be the enforcer of a trust immediately on -

- (a) his removal from office by the Royal Court,
- (b) his resignation becoming effective,
- (c) the coming into effect of a provision in the terms of the trust under or by which he is removed from office or otherwise ceases to hold office, or
- (d) his appointment as a trustee of the trust.

(8) A trustee of a trust which includes non-charitable purposes which is valid and enforceable by virtue of subsection (1) shall, at any time when there is no enforcer in relation to those purposes, take such steps as may be necessary to secure the appointment of an enforcer.

(9) Where the trustee of a trust which includes non-charitable purposes which is valid and enforceable by virtue of subsection (1) has reason to believe that the enforcer in relation to those purposes -

- (a) is unwilling or is refusing to act,
- (b) is bankrupt or otherwise unfit to act, or
- (c) is incapable of acting,

the trustee shall apply to the Royal Court for the removal of the enforcer and the appointment of a replacement.

(10) For the avoidance of doubt, the settlor or a corporation can be appointed as an enforcer.

(11) The terms of a trust for non-charitable purposes may provide for the addition, variation or removal of a non-charitable purpose of the trust or for the exclusion of a non-charitable purpose from the objects of the trust.

Duty of enforcer not to profit from his office.

13. (1) An enforcer shall not -

- (a) derive, directly or indirectly, any profit from his appointment,
- (b) cause or permit any other person to so derive any such profit, or
- (c) on his own account enter into any transaction with the

trustees, or relating to the trust property, which may result in any such profit,

except -

- (i) with the approval of the Royal Court,
- (ii) as permitted by the provisions of this Law, or
- (iii) as expressly provided by the terms of the trust.

(2) An enforcer is entitled to be paid, and shall be reimbursed, by the trustees from the trust property for all expenses and liabilities properly incurred in connection with the trust.

Application of Guernsey law to questions of validity.

14. (1) Subject to the terms of the trust, all questions arising in relation to a Guernsey trust or any disposition of property to or upon such a trust, including (without limitation) questions as to -

- (a) the capacity of the settlor,
- (b) the validity, interpretation or effect of the trust or disposition or any variation or termination thereof,
- (c) the administration of the trust, whether it is conducted in Guernsey or elsewhere, including (without limitation) questions as to the functions, appointment and removal of trustees and enforcers,

- (d) the existence and extent of any functions in respect of the trust, including (without limitation) powers of variation, revocation and appointment, and the validity of the exercise of any such function,
- (e) the distribution of the trust property,

are to be determined according to the law of Guernsey without reference to the law of any other jurisdiction.

For these purposes "**the law of Guernsey**" does not include the Guernsey rules of private international law, except those set out in this section.

(2) Subsection (1) -

- (a) does not validate any disposition of property which is neither owned by the settlor nor the subject of a power of disposition vested in the settlor,
- (b) does not affect the recognition of the law of any other jurisdiction in determining whether the settlor is the owner of any property or the holder of any such power,
- (c) is subject to any express provision to the contrary in the terms of the trust or disposition,
- (d) does not, in determining the capacity of a corporation, affect the recognition of the law of its place of incorporation,

- (e) does not affect the recognition of the law of any other jurisdiction prescribing the formalities for the disposition of property,
- (f) subject to subsection 3, does not validate any trust or disposition of real property situate in a jurisdiction other than Guernsey which is invalid under the law of that jurisdiction, and
- (g) subject to subsection 3, does not validate any testamentary disposition which is invalid under the law of the testator's domicile at the time of his death.

(3) No Guernsey trust, and no disposition of property to or upon such a trust, is void, voidable, liable to be set aside, invalid or subject to any implied condition, nor is the capacity of any settlor, trustee, enforcer, trust official or beneficiary to be questioned, nor is any settlor, trustee, enforcer, trust official, beneficiary or third party to be subjected to any obligation or liability or deprived of any right, claim or interest, by reason that -

- (a) the laws of any other jurisdiction prohibit or do not recognise the concept of a trust, or
- (b) the trust or disposition -
 - (i) avoids or defeats or potentially avoids or defeats rights, claims, interests, obligations or liabilities conferred or imposed by the law of any other jurisdiction on any person -

(A) by reason of a personal relationship to a settlor or any beneficiary, or

(B) by way of foreign heirship rights, or

(ii) contravenes or potentially contravenes any rule of law, judgment, order or action of any other jurisdiction intended to recognise, protect, enforce or give effect to any such rights, claims, interests, obligations or liabilities.

(4) Notwithstanding any legislation or other rule of law for the time being in force in relation to the recognition or enforcement of judgments, no judgment or order of a court of a jurisdiction outside Guernsey shall be recognised or enforced or give rise to any right, obligation or liability or raise any estoppel if and to the extent that -

(a) it is inconsistent with this Law, or

(b) the Royal Court, for the purposes of protecting the interests of the beneficiaries or in the interests of the proper administration of the trust, so orders.

(5) This section applies -

(a) whenever the trust or disposition arose or was made,

(b) notwithstanding any other provision of this Law.

(6) In relation to a Guernsey trust of personal property or any disposition of such property to or upon such a trust, the law of Guernsey relating to légitime and the rights of a surviving spouse apply only where the settlor is domiciled there at the time of his death.

Reservation or grant of certain powers does not invalidate trust.

15. (1) A trust is not invalidated by the reservation or grant by the settlor (whether to the settlor or to any other person) of all or any of the following powers or interests -

- (a) a power to revoke, vary or amend the terms of the trust or any trusts or functions arising thereunder, in whole or in part,
- (b) a power to advance, appoint, pay or apply the income or capital of the trust property or to give directions for the making of any such advancement, appointment, payment or application,
- (c) a power to act as, or give directions as to the appointment or removal of, a director or other officer of any corporation wholly or partly owned as trust property,
- (d) a power to give directions to the trustee in connection with the purchase, retention, sale, management, lending or charging of the trust property or the exercise of any function arising in respect of such property,

- (e) a power to appoint or remove any trustee, enforcer, trust official or beneficiary,
- (f) a power to appoint or remove any investment manager or investment adviser or any other professional person acting in relation to the affairs of the trust or holding any trust property,
- (g) a power to change the proper law of the trust or the forum for the administration of the trust,
- (h) a power to restrict the exercise of any function of a trustee by requiring that it may only be exercised with the consent of the settlor or any other person identified in the terms of the trust,
- (i) a beneficial interest in the trust property.

(2) The reservation, grant or exercise of a power or interest referred to in subsection (1) does not -

- (a) constitute the holder of the power or interest a trustee,
- (b) subject to the terms of the trust, impose any fiduciary duty on the holder, or
- (c) of itself render any trustee liable in respect of any loss to the trust property.

(3) A trustee who acts in compliance with the valid exercise of any power referred to in subsection (1) does not, by reason only of such compliance, act in breach of trust.

Duration of trust, etc.

16. (1) Subject to the terms of the trust and subsection (2) -

- (a) there is no limit on the period for which a trust may continue to be valid and enforceable, and
- (b) for the avoidance of doubt, no rule against perpetuities or remoteness of vesting or any analogous rule applies to a trust or to any advancement, appointment, payment or application of property from a trust.

(2) A trust created before the commencement of this Law shall terminate on the expiration of 100 years from the date of its creation, unless -

- (a) it is a trust for charitable purpose, or
- (b) it is terminated sooner.

(3) Except where the terms of a trust expressly provide to the contrary, no advancement, appointment, payment or application of income or capital from the trust to another trust is invalidated solely by reason of that other trust continuing to be valid and enforceable beyond the date on which the first trust must terminate.

Appointment, retirement and discharge of trustees

Number of trustees.

17. (1) The number of trustees of a trust shall not be less than two, unless -

- (a) only one trustee was originally appointed,
- (b) a corporate trustee resident in Guernsey is acting,
- (c) the Public Trustee is acting, or
- (d) the terms of the trust provide otherwise.

(2) A trust shall not fail on the ground that there is no trustee or less than the number required by subsection (1).

Appointment of new or additional trustees.

18. (1) Where -

- (a) the terms of a trust contain no provision for the appointment of a new or additional trustee,
- (b) any such provision has lapsed or failed, or
- (c) the person with power to make any such appointment is not capable of exercising the power,

a new or additional trustee may be appointed by -

- (i) the existing trustee,

- (ii) the last remaining trustee,
- (iii) the personal representative or liquidator of the last remaining trustee, or
- (iv) the Royal Court.

(2) Subject to the terms of the trust, a trustee appointed under this section has the same functions, and may act in all respects, as if he had been originally appointed a trustee.

(3) A trustee with power to appoint a new or additional trustee who fails to exercise the power may be removed from office by the Royal Court.

(4) On the appointment of a new or additional trustee, anything necessary to vest the trust property in him jointly with his co-trustees (if any) shall be done.

No renunciation after acceptance.

19. (1) A person appointed as trustee need not accept the appointment, but he shall be deemed to have done so if he knowingly intermeddles with the trust or its affairs.

(2) A person appointed as trustee may, before acceptance (actual or deemed) -

- (a) disclaim the appointment by notice in writing to the settlor or to the other trustees, or
- (b) if the settlor is dead or cannot be found, and there are

no other trustees, apply to the Royal Court for relief from the appointment, whereupon the Royal Court may make such order as it thinks fit,

but if the person appointed does not act under paragraph (a) or (b) within a reasonable period of time of becoming aware of the appointment, he shall be deemed to have accepted it.

Resignation or removal of trustees.

20. (1) A trustee other than a sole trustee may resign his office by delivering a written notice of resignation to his co-trustees.

(2) Subject to subsection (3) and to the terms of the trust, a resignation takes effect -

- (a) on delivery of the notice, or
- (b) on such later date or on the happening of such later event as may be specified therein.

(3) A resignation -

- (a) given to facilitate a breach of trust, or
- (b) which would result in there being no trustee or less than the number required by section 17(1),

has no effect.

(4) A trustee ceases to be a trustee immediately on -

- (a) his removal from office by the Royal Court,
- (b) his resignation taking effect, or
- (c) the coming into effect of, or the exercise of a power under, a provision in the terms of the trust under or by which he is removed from or otherwise ceases to hold his office.

(5) A person who ceases to be a trustee under this section shall do everything necessary to vest the trust property in the new or continuing trustees.

(6) Subsections (1) and (2) are subject to the terms of the trust.

Position of continuing trustees on reduction in number of trustees.

21. Subject to the terms of the trust, where the number of trustees falls below the number required by section 17(1) –

- (a) the necessary number of additional trustees shall be appointed, and
- (b) until the required number is reached, the existing trustee shall act only to preserve the trust property.

Duties of trustees

General fiduciary duties.

22. (1) A trustee shall, in the exercise of his functions, observe the utmost good faith and act en bon père de famille.

(2) A trustee shall execute and administer the trust and shall exercise his functions under it -

- (a) in accordance with the provisions of this Law, and
- (b) subject to those provisions -
 - (i) in accordance with the terms of the trust, and
 - (ii) only in the interests of the beneficiaries or the advancement of the charitable or non-charitable purpose, as the case may be.

Duty to get in and preserve trust property.

23. A trustee shall, subject to the terms of the trust and to the provisions of this Law -

- (a) ensure that the trust property is held by or vested in him or is otherwise under his control, and
- (b) preserve and enhance, so far as is reasonable, the value of the trust property.

Duty of trustee not to profit from trusteeship.

24. A trustee shall not -

- (a) derive, directly or indirectly, any profit from his trusteeship,

- (b) cause or permit any other person to so derive any such profit, or
- (c) on his own account enter into any transaction with his co-trustees, or relating to the trust property, which may result in any such profit,

except -

- (i) with the approval of the Royal Court,
- (ii) as permitted by the provisions of this Law, or
- (iii) as expressly provided by the terms of the trust.

Duty to keep accounts.

25. A trustee shall keep accurate accounts and records of his trusteeship.

Duty to give information.

26. (1) A trustee shall, at all reasonable times, at the written request of -

- (a) any enforcer, or
- (b) subject to the terms of the trust -
 - (i) any beneficiary (including any charity named in the trust),

(ii) the settlor, or

(iii) any trust official,

provide full and accurate information as to the state and amount of the trust property.

(2) Where the terms of the trust prohibit or restrict the provision of any information described in subsection (1), a trustee, beneficiary, trust official or settlor may apply to the Royal Court for an order authorising or requiring the provision of the information.

(3) The person applying to the Royal Court for an order under subsection (2) must show that the provision of the information is necessary or expedient -

(a) for the proper disposal of any matter before the court,

(b) for the protection of the interests of any beneficiary,
or

(c) for the proper administration or enforcement of the trust.

(4) In its application to a trust arising from a document or disposition executed or taking effect before the 18th April, 1989^b, subsection (1) only operates for the benefit of a beneficiary whose interest in the trust property

^b The 18th April, 1989 was the date of commencement of the Trusts (Guernsey) Law, 1989.

became vested before that date, but this subsection does not prejudice any rights that the beneficiary may have under the terms of the trust.

Duty to keep trust property separate.

27. A trustee shall keep trust property separate from his own property and separately identifiable from any other property of which he is trustee.

Duty of co-trustees to act together.

28. (1) All the trustees of a trust shall, subject to the terms of the trust, join in the execution of the trust.

(2) Subject to subsection (3), no function conferred on trustees shall be exercised unless all the trustees agree on its exercise.

(3) The terms of a trust may empower the trustees to act by a majority.

(4) A trustee who dissents from a decision of the majority may require his dissent to be recorded in writing.

(5) Notwithstanding the provisions of subsections (1) to (4), but subject to the provisions of subsection (6), in the case of a trust in respect of which the Public Trustee has been appointed to act as trustee under the Public Trustee (Bailiwick of Guernsey) Law, 2002 -

(a) the Public Trustee shall act alone in the execution of the trust,

(b) functions conferred on the trustees shall be exercised by the Public Trustee without the agreement of any

other trustee, and

- (c) the functions of any trustee other than the Public Trustee shall cease,

for so long as the appointment of the Public Trustee continues.

(6) Any provision of paragraphs (a) to (c) of subsection (5) may be disapplied in any particular case by -

- (a) the Public Trustee in writing,
- (b) the court appointing the Public Trustee, at the time of the appointment, or
- (c) the Royal Court, at any other time.

Impartiality of trustees.

29. (1) Where a trust has -

- (a) more than one beneficiary or charitable or non-charitable purpose, or
- (b) a beneficiary and a charitable or non-charitable purpose,

the trustees, subject to the terms of the trust and to subsection (2), shall be impartial and shall not execute the trust for the advantage of one at the expense of another.

(2) Subsection (1) does not prejudice the exercise of a discretion

conferred on a trustee by the terms of the trust.

General powers of trustees

Powers of trustees in relation to property.

30. Subject to the provisions of this Law and to the terms of the trust, a trustee has, in relation to the trust property, all the powers of a beneficial owner.

Power to sue and compromise.

31. (1) A trustee may sue and be sued as trustee.

(2) A trustee may without the sanction of the Royal Court compromise or settle any action or claim brought by or against the trustee or in any way relating to the trust or the trust property.

Consultation by trustees.

32. (1) A trustee may, at the expense of the trust property, consult professional persons in relation to the affairs of the trust.

(2) The terms of the trust may require a trustee to consult or obtain the consent of another person before exercising any function.

(3) A person shall not, by virtue of being so consulted or giving or refusing such consent -

(a) be deemed to be a trustee, or

(b) if the terms of the trust so provide, be under any fiduciary duty to the beneficiaries or the settlor.

Delegation by trustees.

33. (1) A trustee shall not delegate his functions unless permitted to do so -

- (a) by the provisions of this Law or by the terms of the trust, or
- (b) in the case of the Public Trustee, by the provisions of the Public Trustee (Bailiwick of Guernsey) Law, 2002.

(2) Except where the terms of the trust specifically provide to the contrary, a trustee may -

- (a) delegate the management of trust property to, and appoint, investment managers whom the trustee reasonably considers to be competent and qualified to manage the investment of the trust property,
- (b) appoint professional persons to act in relation to the affairs of the trust or to hold any trust property, and
- (c) authorise any such manager or person to retain any commission or other payment usually payable for services of the description rendered.

(3) A trustee who, without any breach on his part of section 22(1), makes or permits the continuation of a delegation or appointment under subsection (2), is not liable for any loss to the trust arising from the delegation or appointment.

Powers of attorney.

34. (1) Unless the terms of the trust provide to the contrary, a trustee may, by power of attorney, delegate for a period not exceeding 3 years the performance of any trust or function vested in him (alone or jointly) as trustee.

(2) A trustee who delegates a trust or function by power of attorney under this section is referred to in this section as the "**donor**", and the person to whom the trust or function is delegated is referred to as the "**donee**".

(3) The persons who may be donees include corporate trustees but not (unless a corporate trustee) the only other co-trustee of the donor.

(4) A power of attorney under this section shall be in writing and shall -

- (a) if the donor is an individual, be signed by him, or by his direction and in his presence, in the presence of a witness, who shall also sign, or
- (b) if the donor is a corporate trustee, be executed by the donor in accordance with its articles of association or its other documents of constitution.

(5) Within seven days of giving a power of attorney under this section, the donor shall give written notice thereof to -

- (a) every other person who, under the terms of the trust, has power (alone or jointly) to appoint a new trustee, and

(b) every co-trustee.

(6) The notice under subsection (5) shall state -

(a) the date of commencement and duration of the power of attorney,

(b) the name and address of the donee,

(c) the reason for giving the power of attorney, and

(d) the trust or function delegate.

(7) Failure to comply with subsection (5) or (6) does not of itself, in favour of a person dealing with the donee, invalidate anything done by the donee.

(8) The donor is bound by and liable for all acts and defaults of the donee done or purportedly done under the power of attorney as if they were his own acts and defaults.

(9) For the purpose of performing the trust or function delegated, the donee may exercise any function conferred on the donor as trustee by law or by the terms of the trust, with the exception of the power to give powers of attorney under this section.

(10) The period referred to in subsection (1) does not apply to a power of attorney given as part of any arrangement -

(a) for the subordination of debts, or

- (b) to confer security over the trust property,

and "security" includes any mortgage, charge, hypothèque, lien or other security, including a security interest within the meaning of the Security Interests (Guernsey) Law, 1993^c.

Remuneration and expenses of trustees.

- 35.** (1) Unless authorised by -

- (a) the terms of the trust,
- (b) the consent in writing of every beneficiary, or
- (c) an order of the Royal Court,

a trustee is not entitled to remuneration for his services.

(2) A trustee may pay from the trust property, and may reimburse himself from the trust property for, all expenses and liabilities properly incurred in connection with the trust.

(3) For the avoidance of doubt, and subject to the terms of the trust, the cost of purchasing and maintaining professional indemnity insurance is, for the purposes of subsection (2), an expense properly incurred in connection with the trust, but not to the extent that the insurance is against the trustee's liability for a breach of trust arising from his own fraud, wilful misconduct or gross negligence.

^c Order in Council No. III of 1993.

(4) Notwithstanding the provisions of subsection (1), but without prejudice to the provisions of subsection (2), the Public Trustee may, in the case of a trust in respect of which he has been appointed to act as trustee under the Public Trustee (Bailiwick of Guernsey) Law, 2002, pay from the trust property, and reimburse himself from the trust property for, all fees payable to the Public Trustee pursuant to the provisions of the said Law in connection with the trust, unless -

- (a) the court appointing the Public Trustee directs otherwise at the time of the appointment, or
- (b) the Royal Court directs otherwise at any other time.

Power to appropriate.

36. Subject to the terms of the trust, a trustee may, without the consent of any beneficiary, appropriate trust property in or towards satisfaction of the interest of a beneficiary in such manner and in accordance with such valuation as he thinks fit.

Corporate trustee may act by resolution.

37. A corporate trustee may -

- (a) act in connection with a trust by a resolution of the corporate trustee or of its board of directors or other governing body, or
- (b) by such a resolution appoint an officer or employee, or a committee of officers or employees or both, to act on its behalf in connection with the trust.

Non-disclosure of deliberations or letters of wishes.

38. (1) A trustee is not, subject to the terms of the trust and to any order of the Royal Court, obliged to disclose -

- (a) documents which reveal -
 - (i) his deliberations as to how he should exercise his functions as trustee,
 - (ii) the reasons for any decision made in the exercise of those functions,
 - (iii) any material upon which such a decision was or might have been based,
- (b) any letter of wishes.

(2) A "**letter of wishes**" is a letter or other document intimating how the settlor or beneficiary wishes the trustees to exercise any of their functions.

(3) The person applying to the Royal Court for an order under this section for the disclosure of any document must show that the disclosure is necessary or expedient -

- (a) for the proper disposal of any matter before the court,
- (b) for the protection of the interests of any beneficiary,
or
- (c) for the proper administration or enforcement of the trust.

Liability for breach of trust

Liability for breach of trust.

39. (1) Subject to the provisions of this Law and to the terms of the trust, a trustee who commits or concurs in a breach of trust is liable for -

- (a) any loss or depreciation in value of the trust property resulting from the breach, and
- (b) any profit which would have accrued to the trust had there been no breach.

(2) A trustee may not set off a profit accruing from one breach of trust against a loss or depreciation in value resulting from another.

(3) A trustee is not liable for a breach of trust committed by another person prior to his appointment.

(4) A trustee is not liable for a breach of trust committed by a co-trustee unless -

- (a) he becomes or ought to have become aware of the breach or of the intention of his co-trustee to commit the breach, and
- (b) he actively conceals the breach or intention, or fails within a reasonable time to take proper steps to protect or restore the trust property or to prevent the breach.

(5) Where trustees are liable for a breach of trust, they are liable jointly and severally.

(6) A trustee who becomes aware of a breach of trust to which subsection (3) applies shall take all reasonable steps to have the breach remedied.

(7) The terms of a trust may not -

- (a) relieve a trustee of liability for a breach of trust arising from his own fraud, wilful misconduct or gross negligence, or
- (b) grant him any indemnity against the trust property in respect of any such liability.

(8) For the avoidance of doubt, and without prejudice to any other provision of this Law -

- (a) subsection (7) applies to a trust whenever created, and
- (b) a term of a trust is invalid to the extent that it purports to -
 - (i) relieve a trustee of liability for a breach of trust arising from his own fraud, wilful misconduct or gross negligence, or
 - (ii) grant him any indemnity against the trust property in respect of any such liability.

Beneficiary may relieve or indemnify trustee.

- 40.** (1) A beneficiary may -
- (a) relieve a trustee of liability to him for any breach of trust,
 - (b) indemnify a trustee against liability for any breach of trust.
- (2) Subsection (1) does not apply if the beneficiary -
- (a) is a minor or a person under legal disability,
 - (b) does not have a full knowledge of all material facts, or
 - (c) is improperly induced by the trustee to act under subsection (1).

Trustees of more than one trust.

41. (1) A trustee is not, in the absence of fraud, affected by notice of any instrument, matter, fact or other thing in relation to a trust if he obtained notice of it by reason of his acting or having acted for the purposes of another trust.

(2) A trustee of a trust shall disclose to his co-trustees any interest which he has as trustee of another trust if any transaction in relation to the first mentioned trust is to be entered into with the trustees of the other trust.

Dealings by trustees with third parties.

42. (1) Subject to subsection (3), where, in a transaction or matter affecting a trust, a trustee informs a third party that he is acting as trustee or the

third party is otherwise aware of the fact, the trustee does not incur any personal liability and a claim by the third party in respect of the transaction or matter extends only to the trust property.

(2) If the trustee fails to inform the third party that he is acting as trustee and the third party is otherwise unaware of the fact -

- (a) he incurs personal liability to the third party in respect of the transaction or matter, and
- (b) he has a right of indemnity against the trust property in respect of his personal liability, unless he acted in breach of trust.

(3) Nothing in this section prejudices a trustee's liability for breach of trust or any claim for breach of warranty of authority.

(4) This section applies to a transaction notwithstanding the *lex causae* of the transaction, unless the terms of the transaction expressly provide to the contrary.

Position of outgoing trustees.

43. (1) When a trustee resigns or is removed -

- (a) he shall, subject to paragraph (b), duly surrender all trust property held by or vested in him or otherwise under his control, and
- (b) he may require that he be provided with reasonable security for liabilities (existing, future, contingent or

otherwise) before surrendering the trust property.

(2) Where the security to be given for the purposes of subsection (1)(b) is to be given by way of indemnity against the trust property, the indemnity shall not, except with leave of the Royal Court or with the consent of all beneficiaries, be greater than that to which the trustee would have been entitled had he remained a trustee.

(3) A trustee who complies with subsection (1)(a) is relieved of liability to any beneficiary, trustee or other person interested under the trust for any act or omission in relation to the trust property or to his functions as a trustee.

However, a trustee is not by reason only of such compliance relieved of any liability –

- (a) arising from a breach of trust to which he (or, in the case of a corporate trustee, any of its officers or employees) was a party or was privy,
- (b) in respect of an action to recover from him (or, in the case of a corporate trustee, any of its officers or employees) trust property or the proceeds thereof in his possession.

(4) An indemnity given in writing by a trustee or beneficiary and expressed to be in favour of a trustee who has previously resigned or been removed from office (a "previous trustee") is, subject to its terms, enforceable by the previous trustee against the indemnifying party notwithstanding that the previous trustee is not a party to or signatory of the indemnity.

Trustees' lien.

44. (1) For the purpose of securing a trustee's right to pay from the trust property, and to be reimbursed from the trust property for, all expenses and liabilities properly incurred in connection with the trust, a trustee is entitled to a non-possessory lien over the trust property in respect of all such expenses and liabilities (existing, future, contingent or otherwise).

(2) The lien -

- (a) continues after the trustee ceases to be a trustee and has duly surrendered all trust property in accordance with section 43, and
- (b) is without prejudice to any indemnity or other security to which the trustee is entitled.

(3) The lien attaches to any trust property, except to the extent that -

- (a) the lien is expressly waived or released, or
- (b) the property -
 - (i) is no longer identifiable,
 - (ii) is in the hands of a bona fide purchaser for value or a person (other than the trustees) who derived title through such a purchaser, or
 - (iii) comprises real property.

(4) Subject to subsection (3), in this section "trust property" includes property that has ceased to be held on trust by reason of distribution from the trust (including a distribution on termination of the trust) or otherwise and property into which trust property has been converted.

(5) The lien granted under subsection (1) is the right of the trustee, where he is not exonerated or reimbursed from the trust property, to follow, recover and appropriate the trust property for the purpose of realisation, payment and reimbursement.

Protective trusts, class interests and certain powers

Protective trusts.

45. The terms of a trust may make the interest of a beneficiary -

- (a) liable to termination,
- (b) subject to a restriction on alienation or dealing, or
- (c) subject to diminution or termination in the event of the beneficiary becoming bankrupt or any of his property becoming liable to arrest, saisie, or similar process of law.

Class interests.

46. Where a trust is in favour of a class of persons then, subject to the terms of the trust -

- (a) the class closes when it is no longer possible for any

other person to become a member of the class,

- (b) a woman over the age of 60 years shall be deemed to be no longer capable of bearing a child, and
- (c) where the interest of the class relates to income, and no member of the class exists, the income shall be accumulated and, subject to section 16(2), retained until a member of the class exists or the class closes.

Power of variation.

47. (1) The terms of a trust may be varied in any manner provided by those terms.

(2) This section is in addition to sections 57 to 61.

Power of accumulation and advancement.

48. (1) The terms of a trust may direct or authorise the accumulation for any period of all or part of the income of the trust.

For the avoidance of doubt, no rule limiting the period of accumulations or any analogous rule applies to a trust or to any advancement, appointment, payment or application of assets from a trust.

(2) Subject to subsection (3), income which is not distributed shall be accumulated.

(3) Subject to the terms of the trust and to any prior interest or charge affecting the trust property, the trustees may -

- (a) where a beneficiary is a minor (whether or not his interest is vested), apply the income attributable to his interest, or any part of that income, to or for his maintenance, education or other benefit,
 - (b) advance or apply for the benefit of a beneficiary part of the trust property prior to the happening of the event on which he is to become absolutely entitled thereto.
- (4) Subject to the terms of the trust -
- (a) any trust property advanced or applied under this section shall be brought into account in determining the beneficiary's share in the trust property, and
 - (b) no part of the trust property so advanced or applied shall exceed the beneficiary's vested, presumptive or contingent share in the trust property.
- (5) The receipt of a guardian of a beneficiary who is a minor or a person under legal disability is a sufficient discharge to the trustees for a payment made to the beneficiary or for his benefit.

Power of appointment.

49. The terms of a trust may confer on the settlor, trustees or any other person power to appoint or assign all or any of the trust property or any interest in it to, or for the benefit of, any person (whether or not a beneficiary of the trust immediately prior to the appointment or assignment).

Power of revocation.

50. (1) A trust and any power or exercise of a power under a trust may be expressed to be capable of -

- (a) revocation, in whole or in part, or
- (b) variation.

(2) No revocation or variation prejudices anything lawfully done by a trustee in relation to the trust before he receives notice of the revocation or variation.

(3) Subject to the terms of the trust, if the trust is revoked in whole or in part, the trustees shall hold the trust property or that part of the trust property which is the subject of the revocation, as the case may be, in trust for the settlor absolutely or, if he is dead, for his personal representative.

Change of proper law.

51. (1) The terms of a trust may provide for the proper law of the trust to be changed from the law of Guernsey to the law of any other jurisdiction.

(2) Subsection (1) is without prejudice to the powers of the Royal Court under section 57.

(3) A change in the proper law of a trust does not affect the legality or validity of, or render any person liable in respect of, anything done before the change.

Failure, lapse and termination of trusts

Failure or lapse of interest.

52. Subject to the terms of the trust and to any order of the Royal Court, where -

- (a) an interest lapses,
- (b) a trust terminates,
- (c) there is no beneficiary and no person who can become a beneficiary in accordance with the terms of the trust, or
- (d) property is vested in a person otherwise than for his sole benefit, but the trusts on which he is to hold the property are not declared or communicated to him,

the interest or property concerned shall be held by the trustees on trust for the settlor absolutely or, if he is dead, for his personal representative.

Termination of trusts.

53. (1) On the termination of a trust the trust property shall, subject to subsection (2), be distributed by the trustees within a reasonable time in accordance with the terms of the trust to the persons entitled thereto.

(2) The trustees may however require that they be provided with reasonable security for liabilities (existing, future, contingent or otherwise) before so distributing the trust property.

(3) Without prejudice to the powers of the Royal Court under subsection (4), and notwithstanding the terms of the trust, where all the

beneficiaries are in existence and have been ascertained, and none is a minor or a person under legal disability, they may require the trustees to terminate the trust and distribute the trust property among them.

(4) The Royal Court, on the application of any person mentioned in section 69(2), may –

- (a) direct the trustees to distribute, or not to distribute, the trust property, or
- (b) make such other order in respect of the termination of the trust and the distribution of the trust property as it thinks fit.

Powers of the court

Appointment of resident trustees.

54. (1) Where there is no trustee resident in Guernsey, a beneficiary may apply to the Royal Court for the appointment of a person, resident in Guernsey and nominated in the application, as an additional trustee.

(2) The Royal Court -

- (a) if satisfied that notice of the application has been served on the existing trustees,
- (b) having heard any representations of the existing trustees, of the settlor or his personal representatives, of the other beneficiaries, and of any other person described in section 32(2), and

- (c) having ascertained that the person nominated is willing to act,

may appoint that person as an additional trustee.

Power to relieve trustees from personal liability.

55. The Royal Court may relieve a trustee wholly or partly of liability for a breach of trust, whether committed before or after the commencement of this Law, where it appears to the court that the trustee -

- (a) has acted honestly and reasonably, and
- (b) ought fairly to be excused -
 - (i) for the breach of trust,
 - (ii) for omitting to obtain the directions of the court in the matter in which the breach arose.

Power to make beneficiaries indemnify.

56. Where a trustee commits a breach of trust at the instigation or request or with the concurrence of a beneficiary, the Royal Court, whether or not the beneficiary is a minor or a person under legal disability, may impound all or part of his interest by way of indemnity to the trustee or a person claiming through him.

Variation, etc of trusts

Variation of trusts on behalf of minors, etc.

57. (1) The Royal Court, on the application of any person mentioned

in section 69(2), on behalf of -

- (a) a minor or a person under legal disability having, directly or indirectly, an interest, vested or contingent, under a trust,
- (b) any person unborn,
- (c) any person, ascertained or not, who may become entitled, directly or indirectly, to an interest under a trust, as being (at a future date or on the happening of a future event) a person of any specified description or a member of any specified class,
- (d) any person, in respect of an interest that may accrue to him by virtue of the exercise of a discretionary power on the failure or determination of an existing interest, or
- (e) with leave of the Royal Court, any other person,

may, subject to subsection (2), approve any arrangement which varies or revokes the terms of a trust or enlarges or modifies the powers of management or administration of any trustees, whether or not there is another person with a beneficial interest who is capable of assenting to the arrangement.

(2) The Royal Court shall not approve an arrangement on behalf of a person mentioned in subsection (1)(a), (b) or (c) unless the arrangement appears to be for his benefit.

Approval of particular transactions.

58. Where in the management or administration of a trust a transaction is, in the opinion of the Royal Court, expedient, but cannot be effected because the necessary power is not vested in the trustees by the terms of the trust or by law, the Royal Court, on the application of any person mentioned in section 69(2) -

- (a) may confer on the trustees, generally or in any particular circumstances, the necessary power, on such terms and conditions as the court thinks fit, and
- (b) may direct the manner in which, and the property from which, any monies authorised to be expended, and the costs of any transaction, are to be paid or borne.

Charitable and non-charitable trusts - "cy-près".

59. Where trust property is held for a charitable or non-charitable purpose and -

- (a) the purpose has been, as far as may be, fulfilled,
- (b) the purpose cannot be carried out, or not according to the directions given and to the spirit of the gift,
- (c) the purpose provides a use for part only of the property,
- (d) the property, and other property applicable for a similar purpose, can be more effectively used in conjunction, and to that end can suitably, regard being

had to the spirit of the gift, be applied to a common purpose,

- (e) the purpose was laid down by reference to -
 - (i) an area which was then, but has since ceased to be, a unit for some other purpose, or
 - (ii) a class of persons or to an area which has for any reason since ceased to be -
 - (A) suitable, , or
 - (B) practicable in administering the gift,
- regard being had to the spirit of the gift,
- (f) the purpose has been adequately provided for by other means,
 - (g) in the case of a charitable purpose, the purpose has ceased to be charitable (by being useless or harmful to the community or otherwise), or
 - (h) the purpose has ceased in any other way to provide a suitable and effective method of using the property, regard being had to the spirit of the gift,

the property, or the remainder of the property, as the case may be, shall be held for such other charitable or non-charitable purpose as the Royal Court, on the

application of -

- (i) Her Majesty's Procureur,
- (ii) the trustees, or
- (iii) in the case of a non-charitable purpose, the enforcer,

may declare to be consistent with the original intention of the settlor.

General power to vary.

60. (1) Where trust property is held for a charitable or non-charitable purpose, the Royal Court, on the application of Her Majesty's Procureur or the trustees, may approve any arrangement which varies or revokes the purposes or the terms of the trust or enlarges or modifies the powers of management or administration of the trustees, if it is satisfied that the arrangement -

- (a) is now suitable or expedient, and
- (b) is consistent with the original intention of the settlor and the spirit of the gift.

(2) The Royal Court may dispense with the consideration set out in subsection (1)(b) if satisfied that the original intention of the settlor cannot be ascertained.

(3) The Royal Court shall not approve an arrangement under subsection (1) unless satisfied that any person with a material interest in the trust has had an opportunity of being heard.

Trusts created by Order in Council.

61. Sections 57 to 60 do not apply to trusts created by an Order in Council of Her Majesty.

Judgment against trustee to be binding on beneficiaries.

62. (1) Any order, judgment or finding of law or fact of the Royal Court in an action against a trustee founded on breach of trust is binding on all beneficiaries of the trust, whether or not yet ascertained or in existence, and whether or not minors or persons under legal disability.

(2) Subsection (1) applies in respect of a beneficiary only if -

- (a) he was represented in the proceedings (whether personally, or by his guardian, or as the member of a class, or otherwise), or
- (b) if not so represented, he had notice of the proceedings and a reasonable opportunity of being heard.

"Notice" in paragraph (b) means 14 days' notice or such other period as the Court may direct.

(3) This section is without prejudice to the powers of the Royal Court in respect of representative proceedings and class actions.

Settlement of action against trustee by alternative dispute resolution to be binding on beneficiaries.

63. (1) Where -

- (a) the terms of a trust direct or authorise, or the Court so orders, that any claim against a trustee founded on breach of trust may be referred to alternative dispute resolution ("**ADR**"),
- (b) such a claim arises and, in accordance with the terms of the trust or the Court's order, is referred to ADR, and
- (c) the ADR results in a settlement of the claim which is recorded in a document signed by or on behalf of all parties,

the settlement is binding on all beneficiaries of the trust, whether or not yet ascertained or in existence, and whether or not minors or persons under legal disability.

- (2) Subsection (1) applies in respect of a beneficiary only if -
 - (a) he was represented in the ADR proceedings (whether personally, or by his guardian, or as the member of a class, or otherwise), or
 - (b) if not so represented, he had notice of the ADR proceedings and a reasonable opportunity of being heard,

and only if, in the case of a beneficiary who is not yet ascertained or in existence, or who is a minor or person under legal disability, the person conducting the ADR

proceedings certifies that he was independently represented by a person appointed for the purpose by a court of law.

"**Notice**" in paragraph (b) means 14 days' notice or such other period as the person conducting the ADR proceedings may direct.

(3) A person who represents a beneficiary in the ADR proceedings for the purposes of subsection (2)(a) is under a duty of care to the beneficiary.

(4) For the avoidance of doubt, the ADR proceedings need not be conducted in Guernsey or in accordance with the procedural law of Guernsey.

(5) In this section -

"**ADR**" includes conciliation, mediation, early neutral evaluation, adjudication, expert determination and arbitration, and

"**proceedings**" includes oral and written proceedings.

PART III

PROVISIONS APPLICABLE ONLY TO FOREIGN TRUSTS

Application of Part III.

64. This Part of this Law applies only to a foreign trust.

Enforceability of foreign trusts.

65. (1) Subject to subsection (2), a foreign trust is governed by, and shall be interpreted in accordance with, its proper law.

(2) A foreign trust is unenforceable in Guernsey to the extent that-

- (a) it purports to do anything contrary to the law of Guernsey,
- (b) it confers or imposes any right or function the exercise or discharge of which would be contrary to the law of Guernsey, or
- (c) the Royal Court declares that it is immoral or contrary to public policy.

PART IV

PROVISIONS OF GENERAL APPLICATION

Application of Part IV.

66. This Part of this Law applies to a Guernsey trust and, where the context admits, to a foreign trust.

Rules of Royal Court.

67. (1) The Royal Court sitting as a Full Court may by order make rules dealing with all procedural and incidental matters arising under this Law, and generally for carrying this Law into effect.

(2) Rules under subsection (1) may, without limitation, regulate and prescribe -

- (a) the procedure, including the method of pleading, and the practice to be followed in proceedings,

- (b) the means by which matters may be proved, and
- (c) the manner and the way in which evidence may be adduced.

Applications for directions.

68. A trustee may apply to the Royal Court for directions as to how he should or might act in any of the affairs of the trust, and the court may make such order as it thinks fit.

General powers of court.

69. (1) On the application of any person mentioned in subsection (2), the Royal Court may -

- (a) make an order in respect of -
 - (i) the execution, administration or enforcement of a trust,
 - (ii) a trustee, including an order as to the exercise by a trustee of his functions, the removal of a trustee (if, for example, he refuses or is unfit to act, or he is incapable of acting or is bankrupt, or his property becomes liable to arrest, saisie, or similar process of law), the appointment, remuneration or conduct of a trustee, the keeping and submission of accounts, and the making of payments, whether into court or otherwise,

- (iii) a beneficiary, or any person connected with a trust,
 - (iv) any trust property, including an order as to the vesting, preservation, application, distribution, surrender or recovery thereof,
 - (v) an enforcer, in relation to any non-charitable purpose of a trust, including an order as to the exercise by an enforcer of his functions, the removal of an enforcer (if, for example, he refuses or is unfit to act, or he is incapable of acting or is bankrupt, or his property becomes liable to arrest, saisie, or similar process of law), and the appointment, remuneration or conduct of an enforcer,
- (b) make a declaration as to the validity or enforceability of a trust,
 - (c) rescind or vary an order or declaration under this Law or make a new or further order or declaration.
- (2) An application under subsection (1) may be made by -
- (a) Her Majesty's Procureur,
 - (b) a trustee,

- (c) a settlor,
- (d) a beneficiary,
- (e) a person described in section 32(2),
- (f) in relation to a non-charitable purpose, the enforcer,
- (g) with leave of the Royal Court, any other person.

(3) Where the Royal Court appoints or removes a trustee under this section -

- (a) it may impose such requirements and conditions as it thinks fit, including requirements and conditions as to the vesting of trust property,
- (b) subject to the court's order, a trustee appointed by the court has the same functions, and may act in all respects, as if he had been originally appointed a trustee.

Powers of court in event of default.

70. If a person does not comply with an order of the Royal Court under this Law requiring him to do anything, the Royal Court may, on such terms and conditions as it thinks fit, order that the thing be done by another person, nominated for the purpose by the court, at the expense of the person in default (or otherwise as the court directs), and a thing so done has effect in all respects as if done by the person in default.

Payment of costs.

71. The Royal Court may order the costs and expenses of and incidental to an application to the court under this Law to be paid from the trust property or in such manner and by such persons as the court thinks fit.

Nature of trustee's interest.

72. (1) Subject to subsection (2) -

- (a) the interest of a trustee in the trust property is limited to that which is necessary for the proper performance of the trust, and
- (b) the trust property does not form part of the trustee's estate.

(2) Where a trustee of a trust is also a beneficiary thereof, subsection (1) does not apply to his interest as a beneficiary.

Following trust property.

73. With prejudice to the personal liability of a trustee, trust property which has been charged or dealt with in breach of trust, or the property into which it has been converted, may be followed and recovered unless -

- (a) it is no longer identifiable, or
- (b) it is in the hands of -
 - (i) a bona fide purchaser for value without notice of the breach of trust, or

- (ii) a person (other than the trustee) who derived title through such a purchaser.

Bankruptcy of trustees.

74. Where a trustee becomes bankrupt, or upon his property becoming liable to arrest, saisie or similar process of law, his creditors have no recourse against the trust property except to the extent that the trustee himself has a claim against it or a beneficial interest in it.

Protection for persons dealing with trustees.

75. (1) A bona fide purchaser for value without notice of a breach of trust -

- (a) may deal with a trustee in relation to trust property as if the trustee were the beneficial owner thereof, and
- (b) is not affected by the trusts on which the property is held.

(2) A person paying or advancing money to a trustee is not concerned to see -

- (a) that the money is wanted,
- (b) that no more than is wanted is raised, or
- (c) that the transaction or the application of the money is proper.

Limitation and prescription.

76. (1) No period of limitation or prescription applies to an action brought against a trustee -

- (a) in respect of any fraud to which the trustee was a party or was privy, or
- (b) to recover from the trustee trust property or the proceeds thereof -
 - (i) held by or vested in him or otherwise in his possession or under his control, or
 - (ii) previously received by him and converted to his use.

(2) Subject to subsections (1) and (3), the period within which an action founded on breach of trust may be brought against a trustee is -

- (a) three years from the date on which the claimant first has knowledge of the breach, or
- (b) where the claimant was at the time of the breach of trust a minor or a person under legal disability -
 - (i) three years from the date on which his guardian first has knowledge of the breach, or
 - (ii) three years from the date on which the claimant ceased to be a minor or a person under legal disability,

whichever first occurs.

(3) Subject to subsection (1), no action founded on breach of trust may be brought against a trustee after the expiration of 18 years immediately following the date of the breach.

Constructive trusts.

77. (1) A person who derives a profit from a breach of trust, or who obtains property in breach of trust, shall be deemed to be a trustee of the profit or property unless he derives or obtains it in good faith without notice of the breach of trust.

(2) A person who becomes a trustee by virtue of subsection (1) shall deliver up the profit or property to the person properly entitled to it.

(3) This section does not exclude any other circumstances in which a constructive trust may arise.

PART V SUPPLEMENTAL

Application of Law.

78. Subject to section 83, and except where provision to the contrary is made, this Law applies to trusts created before or after the commencement of this Law.

Constitution of Royal Court.

79. For the purposes of this Law the Royal Court may be properly constituted by the Bailiff sitting unaccompanied by the Jurats.

Interpretation.

80. (1) In this Law, unless the context otherwise requires –

"bankrupt", in relation to –

- (a) an individual, includes an individual –
 - (i) whose affairs have been declared in a state of "désastre" by his arresting creditors at a meeting held before a Commissioner of the Royal Court, the Court of Alderney or the Court of the Seneschal,
 - (ii) against whom an interim vesting order has been made in respect of any real property in the Bailiwick,
 - (iii) in respect of whom a declaration of insolvency has been made under the Loi ayant rapport aux Débiteurs et à la Renonciation, 1929^d,
- (b) a corporation, includes a corporation –
 - (i) in respect of which a liquidator (provisional or otherwise) has been appointed or which (otherwise than for the sole purpose of solvent amalgamation, solvent reconstruction or

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

solvent winding-up) has passed a special resolution requiring it to be wound up voluntarily, or

(ii) which is otherwise insolvent,

and "**bankruptcy**" shall be construed accordingly,

"**beneficiary**" means a person entitled to benefit under a trust or in whose favour a power to distribute trust property may be exercised,

"**breach of trust**" means a breach of any duty imposed on a trustee by this Law or by the terms of the trust,

"**corporate trustee**" means a trustee which is a corporation,

"**corporation**" means a body corporate wherever incorporated,

"**disposition**" includes any means by which property or any interest therein is created, transferred, dealt with, extinguished or charged, and related expressions shall be construed accordingly,

"**enforcer**" : see section 12,

"**foreign heirship right**" means any right, claim or interest arising under the law of a jurisdiction other than Guernsey in, against or to the property of any person arising, accruing or existing in consequence of, or in anticipation of, that person's death, other than a right, claim or interest created by will or expressed in any other voluntary disposition by that person or resulting from an express limitation in the disposition of the

property to that person,

"foreign trust" means a trust the proper law of which is not the law of Guernsey,

"formalities", in relation to a disposition of property, means the documentary and other actions required generally by the law of the jurisdiction in question for any such disposition of any such property, without regard to -

- (a) the fact that the particular disposition is made in trust,
- (b) the terms of the trust,
- (c) the circumstances of the parties to the disposition, or
- (d) any other particular circumstances,

but includes any special formalities required by reason of the party effecting the disposition being a minor, a person under legal disability or a corporation,

"functions" includes rights, powers, discretions, obligations, liabilities and duties,

"guardian", in relation to a minor, includes a parent,

"Guernsey trust" means a trust the proper law of which is the law of Guernsey,

"**he**", "**him**" and "**his**", in relation to a corporation, include "**it**" and "**its**",

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

"**insurance**" includes assurance,

"**instrument in writing**" means any executed document including, for the avoidance of doubt, a will or codicil,

"**interest**", in relation to a beneficiary, means his interest under a trust,

"**letter of wishes**" : see section 38(2),

"**marriage**" includes any formal arrangement howsoever described between two people, regardless of gender, pursuant to which the law of any jurisdiction confers or imposes rights, claims, interests, obligations, liabilities or duties analogous to those of husband or wife,

"**minor**" means, subject to the terms of the trust, a person who has not attained the age of 18 years,

"**personal relationship**" includes every form of relationship by blood, adoption, marriage or cohabitation regardless of whether the law of any jurisdiction recognises the validity, legitimacy or existence of the relationship, and includes a former personal relationship which has in law or in fact terminated.

A personal relationship also exists between two persons if a personal relationship exists between each of them and a third person,

"personal representative" means the executor or administrator of the estate of a deceased person,

"profit" includes gain or advantage,

"property" -

- (a) means real and personal property of any description, wherever situated, and any share, right or interest therein, and includes tangible or intangible property and any debt or thing in action,
- (b) in relation to rights and interests, includes rights and interests whether vested, contingent, defeasible or future,

"provisions of this Law" includes the provisions of any Ordinance hereunder,

"Public Trustee" means the Public Trustee appointed under section 1 of the Public Trustee (Bailiwick of Guernsey) Law, 2002^e,

"purpose" means any purpose whatsoever, whether or not involving the conferral of any benefit on any person, and includes, without limitation, the holding or ownership of property and the exercise of functions,

^e No. III of 2003.

"Royal Court" means the Royal Court sitting as an Ordinary Court, constituted in accordance with section 78,

"settlor" means a person who directly or indirectly provides trust property or makes a testamentary disposition on trust or to a trust,

"States" means the States of Guernsey,

"terms of a trust" means the written or oral terms of a trust and any other terms applicable under its proper law,

"third party" means a person other than a settlor, trustee, enforcer, trust official or beneficiary,

"trust" includes -

- (a) the trust property, and
- (b) the functions, interests and relationships under a trust,

"trustee" has the meaning given by section 1, and includes a corporate trustee and the Public Trustee when acting as trustee pursuant to the provisions of the Public Trustee (Bailiwick of Guernsey) Law, 2002,

"trust official" means a person having a function or holding an office in respect of the trust other than a settlor, trustee, enforcer or beneficiary,

"trust property" means property held on trust,

"unit trust" means a trust established for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them as beneficiaries under the trust in any profits or incoming arising from the acquisition, holding, management or disposal of property.

(2) For the purposes of this Law, a corporation is resident in the place in which it has its registered office.

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

Power to amend Law by Ordinance.

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

(2) An Ordinance under this section may, for the avoidance of doubt, repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law.

General provisions as to subordinate legislation.

82. (1) An Ordinance or rule under this Law -

- (a) may be amended or repealed by a subsequent Ordinance or rule, as the case may be, hereunder, and
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient including, in the

case of an Ordinance, provision amending any enactment.

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

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

Repeals and transitional provisions.

83. (1) The following enactments are repealed -

- (a) the Trusts (Guernsey) Law, 1989^f,
- (b) the Trusts (Amendment) (Guernsey) Law, 1990^g, and
- (c) section 25(1) of the Public Trustee (Bailiwick of Guernsey) Law, 2003^h.

(2) Anything done before the date of commencement of this Law or in the process of being done on that date under the Trusts (Guernsey) Law, 1989 which could be done under this Law shall have effect as if done or, as the case may be, may be continued under this Law.

(3) For the avoidance of doubt, a director or former director of a corporate trustee shall not, after the date of commencement of this Law, be under any duty, obligation or liability as guarantor by virtue of section 70 of the Trusts (Guernsey) Law, 1989 except by virtue of any proceedings instituted prior to that date against the trustee in respect of a breach of trust committed by the trustee.

(4) Any reference, however expressed, in -

- (a) any enactment, statutory instrument or rule of court,
or
- (b) any trust instrument, will, settlement or other
instrument of whatever nature,

^f Ordres en Conseil Vol. XXXI, p. 217.

^g Ordres en Conseil Vol. XXXII, p. 385.

^h Order in Council No. III of 2003.

to the Trusts (Guernsey) Law, 1989 or any provision of that Law shall, unless the contrary intention appears, be construed after the date of commencement of this Law as a reference to this Law or, as the case may be, to the corresponding provision of this Law.

Savings.

84. (1) Nothing in this Law -

- (a) affects the functions under any provision of law of Her Majesty's Sheriff or of any guardian or attorney,
- (b) subject to section 14, validates an otherwise invalid disposition of property to a trust,
- (c) affects the validity of anything done in relation to a trust before the commencement of this Law,
- (d) affects the validity of a trust arising from a document or disposition executed or taking effect before the commencement of this Law,
- (e) derogates from any right of a minor to repudiate a transaction on attaining full age,
- (f) disapplies or derogates from any rule of law or custom relating to the formalities required for the disposition of real property in Guernsey.

(2) Nothing in this Law derogates from the powers of the Royal Court which exist independently of this Law -

- (a) to set aside, vary or reduce any transfer or other disposition of property, testamentary or otherwise,
 - (b) in respect of trusts, trustees or trust property,
 - (c) to make an order relating to matrimonial proceedings,
 - (d) to make an order relating to the avoidance of fraud on creditors.
- (3) Nothing in this Law derogates from the provisions of –
- (a) article 29 of the Law entitled "Loi sur les Successions, 1840"ⁱ,
 - (b) the Law entitled "Loi supplémentaire à la Loi des Successions, 1890"^j,
 - (c) section 12 of the Married Women's Property Law, 1928^k.
- (4) Nothing in this Law affects a personal representative acting as such.
- (5) No transfer or disposition of property to a trust is invalidated

ⁱ Ordres en Conseil Vol. I, p. 51, Vol. II p. 59

^j Ordres en Conseil Vol. II, p. 323.

^k Ordres en Conseil Vol. VIII, p. 213.

by application of the principle of "donner et retenir ne vaut".

Citation.

85. This Law may be cited as the Trusts (Guernsey) Law, 2007.

Commencement.

86. This Law shall come into operation on the 28th day after the date of its registration on the records of the Island of Guernsey.

PROJET DE LOI

ENTITLED

The Criminal Justice (Aiding and Abetting etc.) (Bailiwick of Guernsey) Law, 2007

THE STATES, in pursuance of their Resolutions of the 30th September, 1998^a and the 27th April 2006^b, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Criminal liability, trial and sentencing of secondary party to offence.

1. A person ("the secondary party to an offence") who aids, abets, counsels or procures the commission by another person ("the principal offender") of any offence, whether at common law or by virtue of an enactment, is guilty of the same offence and may be proceeded against and punished accordingly.

Abolition of common law offence.

2. (1) The common law offence of aiding, abetting, counselling or procuring the commission of an offence is abolished.

(2) The abolition by subsection (1) of the common law offence of aiding, abetting, counselling or procuring the commission of an offence does not affect -

^a Article XVI of Billet d'État No. XXI of 1998.

^b Article XI of Billet d'État No. VIII of 2006.

- (a) any liability incurred under the common law,
- (b) any penalty, forfeiture or punishment incurred in respect of any offence committed against the common law,
- (c) any investigation or legal proceeding in respect of any such liability, penalty, forfeiture or punishment,

and any such investigation or legal proceeding may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the common law offence had not been abolished.

Supplementary provisions.

3. (1) Except as regards offences committed before the date of commencement of this Law, references in any enactment to the common law offence of aiding, abetting, counselling or procuring the commission of an offence shall be construed as references to the offence under section 1.

(2) This Law is without prejudice to any other enactment which creates an offence of aiding, abetting, counselling or procuring the commission of an offence.

Interpretation.

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

"common law" includes the customary law,

"enactment" includes a Law, an Ordinance, an Act of Parliament, an Order in Council and any subordinate legislation,

"the principal offender" has the meaning given in section 1(1), and

"the secondary party to an offence" has the meaning given in section 1(1).

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

(3) Any reference in this Law to an enactment is a reference thereto as from time to time amended, replaced, re-enacted, extended or applied.

Power to amend Law by Ordinance.

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

(2) An Ordinance under this Law -

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

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

(3) Any power conferred by this Law to make an Ordinance may be exercised -

(a) in relation to all cases to which the power extends, or

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

in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised -

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

(iii) any such provision either unconditionally or subject to any prescribed conditions.

Citation and commencement.

6. (1) This Law may be cited as the Criminal Justice (Aiding and Abetting etc.) (Bailiwick of Guernsey) Law, 2007.

(2) This Law shall come into force on such day as the States may by Ordinance appoint.

The Transfer of Funds (Guernsey) Ordinance, 2007

ARRANGEMENT OF SECTIONS

PART I

INFORMATION TO ACCOMPANY TRANSFERS OF FUNDS

1. Application.
2. Information accompanying transfers of funds and record keeping.
3. Transfers of funds within the British Islands.
4. Batch file transfers from the British Islands to outside the British Islands.
5. Detection of missing information on the payer.
6. Transfers of funds with missing or incomplete information on the payer.
7. Risk-based assessment and record keeping.
8. Keeping information on the payer with the transfer.
9. Technical limitations.
10. Cooperation obligations.

PART II

ENFORCEMENT

11. Monitoring and enforcement-information seeking powers.
12. Offences.
13. Criminal proceedings against unincorporated bodies.
14. Criminal liability of directors, etc.

PART III

GENERAL

15. Power for Commission to make rules, instructions and guidance.
16. Regulations, orders, rules, instructions and guidance.
17. Interpretation.
18. Extent.
19. Citation.
20. Commencement.

SCHEDULE: Transfers of funds to which Ordinance does not apply.

The Transfer of Funds (Guernsey) Ordinance, 2007

THE STATES, in pursuance of their Resolution of the 28th day of September 2005^a, and in exercise of the powers conferred upon them by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^b and of all other powers enabling them in that behalf, hereby order:-

PART I

INFORMATION TO ACCOMPANY TRANSFERS OF FUNDS

Application.

1. (1) Subject to subsection (2), this Ordinance applies in relation to transfers of funds in any currency which are sent or received by a payment service provider established in Guernsey.

(2) This Ordinance shall not apply to the transfers of funds set out in the Schedule.

Information accompanying transfers of funds and record keeping.

2. (1) Subject to sections 3, 4 and 9 a payment service provider must ensure that transfers of funds are accompanied by complete information on the payer as set out in subsection (2).

(2) Complete information on the payer shall consist of the name,

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

^b Order in Council No. III of 1994.

address and account number of the payer except that -

- (a) the address of the payer may be substituted with his date and place of birth (where relevant), his customer identification number or national identity number, and
- (b) where the payer does not have an account number, the payment service provider of the payer shall substitute it with a unique identifier, which allows the transaction in question to be traced back to that payer.

(3) Subject to the following provisions of this section, the payment service provider of the payer must, before transferring any funds, verify the complete information on the payer and such verification must be on the basis of documents, data or other information obtained from a reliable and independent source.

(4) In the case of transfers of funds from an account, the payment service provider of the payer may deem verification to have taken place if -

- (a) it has complied with any relevant requirements in regulations for the time being in force under section 49 of the Proceeds of Crime Law^c relating to the verification of the identity of the payer in connection

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

with the opening of that account and the keeping of information obtained by that verification, or

- (b) the payer is an existing customer and it is appropriate to do so taking into account the risk of money laundering or terrorist financing occurring.

(5) Where a transfer of funds is not made from an account, the payment service provider of the payer must verify the information on the payer only where –

- (a) the amount transferred exceeds 1000 Euros, or
- (b) the transaction is carried out in two or more operations-
 - (i) that appear to the payment service provider of the payer to be linked, and
 - (ii) which together exceed 1000 Euros.

(6) The payment service provider of the payer shall keep records of the complete information on the payer for five years from the date of the transfer of funds in question.

Transfers of funds within the British Islands.

3. (1) Subject to subsection (2), where both the payment service provider of the payer and the payment service provider of the payee are situated in the British Islands, a transfer of funds need only be accompanied by -

- (a) the account number of the payer, or
- (b) where there is no such account number, a unique identifier which allows the transaction in question to be traced back to the payer.

(2) The payment service provider of the payer shall, upon request from the payment service provider of the payee, make available to the payment service provider of the payee complete information on the payer within 3 working days excluding the day on which the request was received.

Batch file transfers from the British Islands to outside the British Islands.

4. Where there is a batch file transfer from a single payer where any payment service provider of the payee is situated outside the British Islands, section 2(1) shall not apply to the individual transfer of funds which is bundled together for transmission, provided that -

- (a) the batch file contains the complete information on the payer in question, and
- (b) the individual transfer carries the account number of the payer or a unique identifier.

Detection of missing information on the payer.

5. A payment service provider of a payee must -

- (a) in the messaging or payment and settlement system used to effect a transfer of funds, detect whether the fields relating to information on the payer have been completed using the characters or inputs admissible

within the conventions of that messaging or payment and settlement system,

(b) have effective procedures in place to detect whether the following information on the payer is missing -

(i) for transfers of funds where the payment service provider of the payer is situated in the British Islands, the information required under section 3, and

(ii) subject to subparagraph (iii), for transfers of funds where the payment service provider of the payer is situated outside the British Islands-

(A) complete information on the payer, or

(B) where relevant, the information required under section 9, and

(iii) for batch file transfers where the payment service provider of the payer is situated outside the British Islands, the complete information on the payer but only in the batch file and not in the individual transfers bundled therein.

Transfers of funds with missing or incomplete information on the payer.

6. (1) If a payment service provider of a payee becomes aware, when receiving transfers of funds, that information on the payer required under this Ordinance, is missing or incomplete then, it must, subject to subsections (2) and

(3)-

- (a) reject the transfer,
- (b) request from the payment service provider of the payer the complete information on the payer, or
- (c) take such other steps as the Commission may by order direct.

(2) Notwithstanding the requirement in subsection (1), the payment service provider of the payee must comply with any relevant requirements of any other enactment relating to money laundering or terrorist financing.

(3) The payment service provider of the payee, in deciding whether or not to reject the transfer or request complete information, must take into account any relevant guidance issued by the Commission.

(4) Where a payment service provider of a payer regularly fails to supply information on the payer required under this Ordinance, the payment service provider of the payee must –

- (a) notify the Commission and a police officer of that fact, and
- (b) take steps to attempt to ensure that such information is supplied and such steps may initially include the issuing of written warnings and written deadlines regarding the supply of the required information.

(5) If, following the taking of steps under subsection (4), a payment service provider of a payer still regularly fails to supply the required information on the payer, the payment service provider of the payee must –

- (a) reject any future transfers of funds from that payment service provider, or
- (b) decide whether or not to restrict or terminate its business relationship with that payment service provider.

Risk-based assessment and record keeping.

7. (1) Where information on the payer accompanying a transfer of funds is missing or incomplete, the payment service provider of the payee must take this into account in assessing whether the transfer of funds, or any related transaction, is suspicious, and whether, accordingly, a disclosure is required to be made by it or a nominated officer –

- (a) under Part I of the Disclosure Law^d, and
- (b) under Part III of the Terrorism Law^e.

(2) The payment service provider of the payee shall keep records of any information received by it on the payer for five years from the date of the transfer of funds in question.

^d Approved by resolution of the States on 30th May 2007.

^e Order in Council No. XVI of 2002 as amended by Order in Council No. XIII of 2006.

Keeping information on the payer with the transfer.

8. Subject to section 9, any intermediary payment service provider must ensure that any information received by it on the payer that accompanies a transfer of funds is kept with that transfer.

Technical limitations.

9. (1) This section applies where the payment service provider of a payer is situated outside the British Islands and the intermediary payment service provider is situated within the British Islands.

(2) An intermediary payment service provider may use a payment system with technical limitations to send a transfer of funds to a payment service provider of a payee except that where it is aware that information on the payer which is required under this Ordinance is missing or incomplete it must comply with subsection (3).

(3) Where an intermediary payment service provider becomes aware, when receiving a transfer of funds, that information on the payer required under this Ordinance is missing or incomplete, it may only use a payment system with technical limitations if –

- (a) it notifies the payment service provider of the payee that the information is missing or incomplete through–
 - (i) a payment or messaging system, or
 - (ii) another procedure, and
- (b) the system or procedure is agreed between the

intermediary payment service provider and the payment service provider of the payee.

(4) Where an intermediary payment service provider uses a system with technical limitations, it shall, upon request from the payment service provider of the payee, make available to the payment service provider of the payee, all information on the payer which it has received, within 3 working days excluding the day on which the request was received.

(5) Where an intermediary payment service provider uses a system with technical limitations it must keep records of any information on the payer received by it for five years from the date of the transfer in question.

(6) In this section "technical limitations" means technical limitations which prevent information on the payer accompanying transfers of funds.

Cooperation obligations.

10. (1) Payment service providers shall comply fully and without delay with -

- (a) any requirement or warrant to provide information or documents pursuant to section 25, 26, 28 or 29 of the Banking Law, 1994^f as applied by section 11,
- (b) any requirement to provide information or documents,

^f No. XIII of 1994 as amended by No. XVII and XXI of 2002 and No. XVI of 2003.

however expressed, under -

- (i) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000^g,
- (ii) the Proceeds of Crime Law,
- (iii) the Terrorism Law,
- (iv) the Disclosure Law,
- (v) regulations, for the time being in force, under section 49 of the Proceeds of Crime Law,
- (vi) the Terrorism (United Nations Measures) (Channel Islands) Order 2001^h, or
- (vii) the Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002ⁱ,

where such information or documents comprise information on the payer which

^g Order in Council No. VII of 2000 as amended by Order in Council No. II of 2005.

^h S.I. 2001/3363 (registered on 11th October 2001) as amended by U.K. S.I. 2002/258 and the British Overseas Territories Act, s.2(3) an Act of Parliament.

ⁱ S.I. 2002/258 (registered on 18th February 2002) as amended by the British Overseas Territories Act 2002, s.2(3) an Act of Parliament.

accompanies any transfer of funds or corresponding records.

(2) Subject to any other enactment, any information or documents to which subsection (1) applies may only be used for the purposes of preventing, investigating, or detecting money laundering or terrorist financing.

PART II ENFORCEMENT

Monitoring and enforcement-information seeking powers.

11. (1) The provisions of sections 25 (power to obtain information and documents) and 26 (right of entry to obtain information and documents) of the Banking Law shall apply –

- (a) to payment service providers who send or receive transfers of funds to which this Ordinance applies as they apply to licensed institutions within the meaning of that Law,
- (b) in relation to such information as the Commission may reasonably require for the purpose of effectively monitoring or ensuring compliance with the requirements of this Ordinance as they apply in relation to such information as the Commission may reasonably require for the performance of its functions under that Law, and
- (c) as if section 25(11) of that Law also allowed the powers referred to in that section to be exercised if the Commission considers that it is desirable to do so in

the interests of effectively monitoring or ensuring compliance with the requirements of this Ordinance,

except that section 25(10) (information required for determining whether person is a fit and proper person) of that Law shall not apply.

(2) Sections 28 (investigation of suspected offences) and 29 (power of entry in cases of suspected offences) of the Banking Law shall apply in relation to an offence under this Ordinance as they apply in relation to an offence under section 1 or 21 of that Law.

(3) Section 44 (cases where disclosure is permitted) of the Banking Law shall apply as if it also permitted the disclosure of information in compliance with, or for the purposes of enabling or assisting a person to comply with, any requirement of this Ordinance.

(4) References in any enactment to section 25, 26, 28 or 29 of the Banking Law shall be construed as including references to those sections as applied by this section.

Offences.

12. (1) Any payment service provider who, without reasonable excuse, fails to comply with any of the requirements of sections 2 to 11 of this Ordinance shall be guilty of an offence and on -

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

a term not exceeding five years, a fine, or both.

Criminal proceedings against unincorporated bodies.

13. (1) Where an offence under this Ordinance is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of that body and not in the name of any of its members.

(2) A fine imposed on an unincorporated body on its conviction for an offence under this Ordinance shall be paid from the funds of that body.

(3) Where an offence under this Ordinance is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) any director thereof or any other officer thereof who is bound to fulfil any duty whereof the offence is a breach,
- (b) any partner thereof (in the case of a partnership), or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

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

Criminal liability of directors, etc.

14. (1) Where an offence under this Ordinance is committed by a company and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, chief executive,

controller, manager, secretary or other similar officer of the company or any person purporting to act in any such capacity, he as well as the company is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a company are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

PART III GENERAL

Power for Commission to make rules, instructions and guidance.

15. (1) The Commission may make rules, instructions and guidance for the purposes of this Ordinance.

(2) Any court shall take the rules, instructions and guidance into account in determining whether or not any person has complied with this Ordinance.

Regulations, orders, rules, instructions and guidance.

16. (1) Any provision of this Ordinance may be amended by Regulations made by the States of Guernsey Home Department.

(2) Any Regulations, order, rules, instructions or guidance under this Ordinance -

- (a) may be amended or repealed by subsequent Regulations, order, rules, instructions or guidance, as the case may be,

- (b) may contain consequential, incidental, supplemental and transitional provisions, and
- (c) in the case of Regulations or an order, shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under the Regulations or order or to the making of new Regulations or a new order.

(3) Any power conferred by this Ordinance to make Regulations, an order, rules, instructions or guidance may be exercised -

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

- (iii) any such provision either unconditionally or subject to any conditions specified in the Regulations, order, rules, instructions or guidance.

Interpretation.

17. (1) In this Ordinance, unless the context otherwise requires -

"Banking Law" means the Banking Supervision (Bailiwick of Guernsey) Law, 1994,

"batch file transfer" means several individual transfers of funds which are bundled together for transmission,

"British Islands" means the United Kingdom, the Channel Islands and the Isle of Man,

"Commission" means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^j,

"complete information" shall be construed in accordance with section 2(2),

^j Ordres en Conseil Vol. XXX, p. 243; Orders in Council No. XX of 1991; No. XIII of 1994; No. II of 1997; No. II of 1998 and Nos. XVII and XXI of 2002; No. XXII of 2003 and Ordinance No. XXXIV of 2005.

"Department of the States" includes any council or committee (however called) thereof,

"Disclosure Law" means the Disclosure (Bailiwick of Guernsey) Law, 2007,

"document" includes information recorded in any form (including, without limitation, in electronic form),

"EC Regulation" means Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of the 15th November 2006 on information on the payer accompanying transfers of funds^k,

"electronic money" means monetary value as represented by a claim on the issuer which is –

- (a) stored on an electronic device,
- (b) issued on receipt of funds of an amount not less in value than the monetary value issued, and
- (c) accepted as means of payment by persons other than the issuer,

"enactment" includes a Law, an Ordinance or any subordinate legislation and any provision or portion of a Law, an Ordinance or any

^k Official Journal No. L345 of 8.12.2006, p 1.

subordinate legislation,

"Guernsey" includes Herm and Jethou,

"intermediary payment service provider" means a payment service provider, neither of the payer nor of the payee, that participates in the execution of transfers of funds,

"money laundering" is doing any act which –

- (a) constitutes an offence under section 38, 39 or 40 of the Proceeds of Crime Law,
- (b) constitutes an offence under section 57, 58 or 59 of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,
- (c) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a) or (b),
- (d) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a) or (b), or
- (e) would, in the case of an act done otherwise than in Guernsey, constitute an offence specified in paragraph (a), (b), (c) or (d) if done in Guernsey,

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

"nominated officer" means a person nominated by a payment service provider to receive disclosures under Part I of the Disclosure Law and Part III of the Terrorism Law,

"notify" means notify in writing,

"payee" means a person who is the intended final recipient of transferred funds,

"payer" means -

- (a) a person who holds an account and allows a transfer of funds from that account, or
- (b) where there is no account, a person who places an order for a transfer of funds,

"payment service provider" means a person whose business includes the provision of transfer of funds services,

"police officer" means -

- (a) a member of the salaried police force of the Island of Guernsey and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey, and
- (b) an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of

Guernsey) Law, 1972¹,

"Proceeds of Crime Law" means the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

"States" means the States of Guernsey,

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

"Terrorism Law" means the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,

"terrorist financing" means doing any act which -

- (a) constitutes an offence under section 8, 9, 10 or 11 of the Terrorism Law and, for the purposes of this definition, in those sections the "purposes of terrorism" shall, include, to the extent that they do not already do so -
 - (i) any attempt, conspiracy or incitement to carry out terrorism within the meaning of section 1

¹ Ordres en Conseil Vol. XXIII, p. 573 as amended by Vol. XXIV, p. 87 and Orders in Council No. XIII of 1991 and No. X of 2004 and Ordinance No. XXXII of 2005.

of the Terrorism Law, or

- (ii) aiding, abetting, counselling or procuring the carrying out of such terrorism,
- (b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),
- (c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or
- (d) would, in the case of an act done otherwise than in Guernsey, constitute an offence specified in paragraph (a), (b) or (c) if done in Guernsey,

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

"transfer of funds" means any transaction carried out on behalf of a payer through a payment service provider by electronic means, with a view to making funds available to a payee at a payment service provider, irrespective of whether the payer and the payee are the same person,

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

Law, 1987^m,

"unique identifier" means a combination of letters, numbers or symbols, determined by the payment service provider, in accordance with the protocols of the payment and settlement or messaging system used to effect the transfer of funds,

and any other terms which are used in this Ordinance and which are also used in the EC Regulation shall have the same meaning as in the EC Regulation.

(2) For the purposes of this Ordinance references to Euros shall be converted to pounds sterling or any other relevant currency at the relevant rate of conversion from time to time published in the "C" Series of the Official Journal of the European Communities.

(3) In this Ordinance, words importing the neutral gender include the feminine and masculine gender and vice versa.

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

Extent.

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

^m Orders en Conseil Vol XXXI, p.278; the scale of fines was substituted by Ordinance No. XXIX of 2006.

Citation.

19. This Ordinance may be cited as the Transfer of Funds (Guernsey) Ordinance, 2007.

Commencement.

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

SCHEDULE

TRANSFERS OF FUNDS TO WHICH ORDINANCE DOES NOT APPLY

1. A transfer of funds carried out using a credit or debit card provided that -

- (a) the payee has an agreement with the payment service provider permitting payment for the provision of goods and services, and
- (b) a unique identifier, which allows the transaction to be traced back to the payer, accompanies such transfer.

2. A transfer of funds carried out using electronic money where the transfer does not exceed 1,000 Euros and if the device on which the electronic money is stored -

- (a) cannot be recharged, the maximum amount stored in the device is 150 Euros, or
- (b) can be recharged, a limit of 2,500 Euros is imposed on the total amount transacted in a calendar year unless an amount of 1,000 Euros or more is redeemed in that same calendar year by the bearer of the device.

3. Without prejudice to paragraph 2, a transfer of funds carried out by means of a mobile telephone or any other digital or information technology device, provided that the transfer -

- (a) is pre-paid, and
- (b) does not exceed 150 Euros.

4. A transfer of funds carried out by means of a mobile telephone or any other digital or information technology device provided that –

- (a) the transfer is post-paid,
- (b) the payee has an agreement with the payment service provider permitting payment for the provision of goods and services,
- (c) a unique identifier, allowing the transaction to be traced back to the payer, accompanies the transfer, and
- (d) the payment service provider is subject to the obligations set out in -
 - (i) Part I of the Disclosure Law,
 - (ii) Part III of the Terrorism Law in relation to disclosure, and
 - (iii) regulations for the time being in force under section 49 of the Proceeds of Crime Law,

or to similar obligations under the law of any part of

the British Islands.

5. A transfer of funds –

- (a) where the payer withdraws cash from his own account,
- (b) where there is authorisation for a debit transfer between two persons which permits payments between them through accounts, provided that a unique identifier accompanies the transfer of funds, which enables the transaction to be traced back to the payer,
- (c) where truncated cheques are used,
- (d) within the British Islands, to any public authorities, including any Department of the States or Parochial officers, in respect of any taxes, rates, fines or any other levies whatsoever, or
- (e) where both the payer and the payee are payment service providers acting on their own behalf.

**The Terrorism and Crime
(Enforcement of External Orders) (Bailiwick of Guernsey)
Ordinance, 2007**

ARRANGEMENT OF SECTIONS

1. Designation of countries and territories.
2. Proof of orders and judgment of court of a designated country.
3. Evidence in relation to proceedings and orders in a designated country.
4. Representation of government of a designated country.
5. Registration of external forfeiture orders.
6. Registration of external restraint orders.
7. Implementation of registered external forfeiture orders.
8. Statutory provisions applicable where external restraint order is registered.
9. Cancellation or variation of registration of external orders.
10. Appeal in respect of external orders.
11. Enforcement of registered external orders.
12. Interpretation.
13. Citation.
14. Commencement.

**The Terrorism and Crime
(Enforcement of External Orders) (Bailiwick of Guernsey)
Ordinance, 2007**

THE STATES LEGISLATION SELECT COMMITTEE, in pursuance of the Resolutions of the States of the 1st day of November, 2001^a and the 24th day of April, 2002^b, and in exercise of the powers conferred upon the States by sections 18(8) and 82 of and paragraph 10 of Schedule 2 to the Terrorism and Crime (Bailiwick of Guernsey) Law 2002^c, and all other powers enabling the States in that behalf, and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948^d, hereby orders:-

Designation of countries and territories.

1. Each of the countries and territories specified in column 1 of the table in the Schedule is hereby designated for the purposes of paragraph 10 of Schedule 2 to the 2002 Law.

Proof of orders and judgment of court of a designated country.

2. (1) For the purposes of this Ordinance -

^a Article XXI of Billet d'État No. XXI of 2001.

^b Article II of Billet d'État No. VI of 2002.

^c Order in Council No. XVI of 2002, as amended by Order in Council No. XIII of 2006.

^d Ordres en Conseil Vol. XIII, p. 288; there are amendments not material to this Ordinance.

- (a) any order made or judgment given by a court of a designated country purporting to bear the seal of that court, or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person, and
- (b) a document, duly authenticated, which purports to be a copy of any order made or judgment given by a court of a designated country shall be deemed without further proof to be a true copy.

(2) A document purporting to be a copy of any order made or judgment given by a court of a designated country is duly authenticated for the purposes of subsection (1)(b) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in question or by, or on behalf of, the appropriate authority of the designated country.

Evidence in relation to proceedings and orders in a designated country.

3. (1) A certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating -

- (a) that proceedings have been instituted and have not been concluded, or that proceedings are to be instituted, there,
- (b) that an external order is in force and is not subject to appeal,

- (c) that property recoverable in the designated country under an external order remains unrecovered there,
- (d) that any person has been notified of any proceedings in accordance with the law of the designated country, or
- (e) that an order (however described) made by a court of a designated country is an external order, or that an order, if made by a court of a designated country, would be an external order,

shall be admissible as evidence of the facts so stated.

(2) A statement contained in a document, duly authenticated, which purports to have been received in evidence, or to be a copy of a document so received, or to set out or summarise evidence given in proceedings in a court of a designated country, shall be admissible as evidence of any fact stated therein.

(3) A document is duly authenticated for the purposes of subsection (2) if it purports to be certified by any person in his capacity as judge, magistrate or officer of the court of a designated country, or by or on behalf of the appropriate authority of the designated country, to have been received in evidence or to be a copy of a document so received, or, as the case may be, to be the original document containing or summarising the evidence or a true copy of that document.

Representation of government of a designated country.

4. A request for assistance sent to Her Majesty's Procureur by the appropriate authority of a designated country shall, unless the contrary is shown, be deemed to constitute the authority of the government of that country for Her Majesty's Procureur to act on its behalf in proceedings pursuant to this Ordinance.

Registration of external forfeiture orders.

5. (1) On an application made by or on behalf of the government of a designated country, the Royal Court may register an external forfeiture order made there if -

- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal,
- (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings in which the relevant order was made, that he received notice of the proceedings in sufficient time to enable him to defend them, and
- (c) it is of the opinion that enforcing the order in the Bailiwick would not be contrary to the interests of justice.

(2) In subsection (1) above, "**appeal**" includes -

- (a) any proceedings by way of discharging or setting aside a judgment, and
- (b) an application for a new trial or a stay of execution.

Registration of external restraint orders.

6. (1) On an application made by or on behalf of the government of a designated country, the Royal Court may, subject to subsection (2) register an external restraint order made there if -

- (a) it is satisfied that at the time of registration the order is in force, and
 - (b) it is of the opinion that enforcing the order in the Bailiwick would not be contrary to the interests of justice.
- (2) An external restraint order may only be registered –
 - (a) where –
 - (i) proceedings have been instituted against a person in a designated country,
 - (ii) the proceedings have not been concluded, and
 - (iii) either an external forfeiture order has been made in the proceedings, or it appears to the Royal Court that there are reasonable grounds for thinking that such an order may be made in those proceedings, or
 - (b) where –
 - (i) a criminal investigation has been started in a designated country, and
 - (ii) there are reasonable grounds for thinking that an external forfeiture order may be made in

proceedings for the offence.

(3) Where an application is made for the registration of an external restraint order under subsection (1), that application may be made ex parte.

(4) Upon registration of an external restraint order under this section, the Royal Court shall by order provide that notice shall be given to persons affected by that order.

Implementation of registered external forfeiture orders.

7. (1) If an external forfeiture order is registered in the Royal Court under section 6(1), the Royal Court shall have, in relation to that order, the same powers as a court has under paragraph 1(1) of Schedule 2 to the 2002 Law (implementation of forfeiture orders) in relation to a forfeiture order made by it (and paragraphs 1(4), (5) and 2 of that Schedule apply accordingly).

(2) After making any payment required by virtue of paragraph 1(1)(d) or 2 of Schedule 2 to the 2002 Law, the balance of any sums received by Her Majesty's Sheriff by virtue of an order made under subsection (1) shall, subject to subsection (3), be credited to the General Revenues of the States of Guernsey.

(3) The balance of any sums received by virtue of an order under subsection (1) shall not be so credited if that balance is to be paid elsewhere (for example, into any seized asset fund) pursuant to a direction of the Treasury and Resources Department.

Statutory provisions applicable where external restraint order is registered.

8. Paragraphs 5 and 6 of Schedule 2 to the 2002 Law shall apply to an external restraint order registered in the Royal Court under section 6(1) as they apply to a restraint order.

Cancellation or variation of registration of external orders.

9. (1) On an application by or on behalf of any person affected by the registration of an external order, the Royal Court may cancel or vary the registration of –

- (a) an external forfeiture order if it is satisfied that –
 - (i) effect has been given to it in respect of all or part of the property to which the order applies at the time of application, or
 - (ii) it would be in the interests of justice to do so, and
- (b) an external restraint order if it is satisfied that –
 - (i) it has been discharged or varied by the court by which it was made, or
 - (ii) it would be in the interests of justice to do so.

(2) Where the Royal Court cancels or varies the registration of an external order under subsection (1), it may do so subject to such terms and conditions as the Court thinks fit.

(3) Any application under subsection (1) –

- (a) may be made in chambers, and

- (b) may not be made until notice of that application has been given to the appropriate representative of the designated country which applied for the registration of the external order.

Appeal in respect of external orders.

10. (1) Any party to proceedings for the registration of an external order who is aggrieved by a decision in respect of the registration may appeal on a point of law to the Court of Appeal, but if the external order was registered on an ex parte application, a party may only appeal after the inter partes hearing has taken place.

(2) For the avoidance of doubt an appeal under this section is an appeal in a civil matter for the purposes of Part II of the Court of Appeal (Guernsey) Law, 1961^e and the provisions of that Law and any rules under it apply accordingly.

Enforcement of registered external orders.

11. (1) Without prejudice to the foregoing provisions, if an external order is registered in the Royal Court under sections 5 or 6 -

- (a) the Royal Court shall have, in relation to its enforcement, the same power,
- (b) proceedings for or with respect to its enforcement may be taken, and
- (c) proceedings for or with respect to any contravention of

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

such an order (whether before or after such registration) may be taken,

as if that order had originally been made by the Royal Court.

- (2) The Royal Court may, additionally, for the purpose of -
 - (a) assisting the achievement in the Bailiwick of the purposes of an external order, or
 - (b) assisting Her Majesty's Sheriff or any receiver or other person directed by any such order to sell or otherwise dispose of property,

make such orders or do otherwise as seems to it appropriate.

Interpretation.

- 12.** (1) In this Ordinance, unless the context requires otherwise -

"the 2002 Law" means the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002^f,

"appropriate authority of a designated country" means -

- (a) the authority of a designated country specified opposite that country in column 2 of the table in the Schedule, or

^f Order in Council No. XVI of 2002.

- (b) where no authority is so specified, the authority appearing to the Royal Court to be the appropriate authority for the purpose of this Ordinance,

"appropriate representative" means –

- (a) where a request for assistance has been sent to Her Majesty's Procureur pursuant to section 4, Her Majesty's Procureur, or
- (b) in any other case, the person appearing to the Royal Court to be the person with the authority to act on behalf of the government of a designated country in proceedings pursuant to this Ordinance,

"Bailiff" includes the Deputy Bailiff and a Lieutenant-Bailiff,

"Bailiwick" means the Bailiwick of Guernsey,

"court of a designated country" includes a court of any state or territory of a designated country,

"designated country" means a country or territory designated under section 1,

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

"external order" means an order –

- (a) which is made in a country or territory designated by this Ordinance, and
- (b) which makes relevant provision,

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

"Her Majesty's Sheriff" means, in relation to –

- (a) Alderney, the Greffier, and
- (b) Sark, the Prévôt,

"relevant provision" means –

- (a) provision for the forfeiture of terrorist property ("**an external forfeiture order**"), or
- (b) provision prohibiting dealing with property which is subject to an external forfeiture order or in respect of which such an order could be made in proceedings which have been or are to be instituted in the designated country or territory ("**an external restraint order**"),

"the Royal Court" has the meaning given in paragraph 11 of Schedule 2 to the 2002 Law, and

"subordinate legislation" means any regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw, code or other instrument

made under any enactment and having legislative effect.

(2) For the purposes of this Ordinance -

(a) proceedings are "**instituted**" in a designated country when -

(i) under the law of the designated country concerned, one of the steps specified in relation to that country in column 3 of the table in the Schedule has been taken there in respect of the commission of an alleged offence, or

(ii) an application has been made to a court of a designated country for an external order,

and where the application of this paragraph would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times,

(b) proceedings are "**concluded**" in a designated country -

(i) when an external forfeiture order has been made in those proceedings and effect has been given to it in respect of all the money or other property to which it applies, or

(ii) when (disregarding any power of a court in a designated country to grant leave to appeal out

of time) there is no further possibility of an external forfeiture order being made in the proceedings, and

- (c) an external order is "**subject to appeal**" until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

(3) The provisions of the Interpretation (Guernsey) Law 1948^g shall apply to the interpretation of this Ordinance throughout the Bailiwick of Guernsey.

(4) Any reference in this Ordinance to an enactment is a reference thereto or from time to time amended, replaced, re-enacted, extended or applied.

Citation.

13. This Ordinance may be cited as the Terrorism and Crime (Enforcement of External Orders) (Bailiwick of Guernsey) Ordinance, 2007.

Commencement.

14. This Ordinance shall come into force on the 24th May 2007.

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

SCHEDULE

Sections 1 & 12

DESIGNATED COUNTRIES AND TERRITORIES

(1)	(2)	(3)
DESIGNATED COUNTRY	APPROPRIATE AUTHORITY	POINT AT WHICH PROCEEDINGS ARE INSTITUTED
Austria		
Belgium		
Canada	The Minister of Justice or officials designated by that Minister	(a) when a person is charged with an offence, or (b) when any investigation or inquiry into the commission of any offence is directed by a court of law.
Denmark		
Finland		
France		
Germany		When a person is notified that he is accused of an offence and will be brought before a court.
Greece		
India	The Ministry of Home Affairs	(a) when information relating to commission of any crime is received by any law enforcement agency empowered to investigate such crime under the law for the

		<p>time being in force and laid before a court of law,</p> <p>(b) when any allegation is made orally or in writing to a court of law that a person has committed an offence.</p> <p>(c) when a person is charged with an offence, or</p> <p>(d) when any investigation or inquiry into the commission of any offence is directed by a court of law.</p>
Ireland	The Department of Justice, Equality and Law Reform	
Italy	The Ministry of Justice	<p>(a) when a person is notified, in accordance with article 369 of the Italian Code of Criminal Procedure, that a prosecution against him is in progress, or</p> <p>(b) when a proposal for the application of a preventive measure (<i>misura di prevenzione</i>) is laid before a court.</p>
Japan		
Luxembourg		
The Netherlands	Afdeling Internationale Rechtshulp	(a) when a pre-trial financial investigation has been

		<p>initiated,</p> <p>(b) when a provisional measure has been ordered by an investigating magistrate,</p> <p>(c) when a public prosecutor has requested a pre-trial criminal investigation by an investigating magistrate to be instituted, or</p> <p>(d) when a public prosecutor has laid an indictment.</p>
Portugal	The Ministry of Justice	
Spain	El Ministerio de Justicia, Madrid	When by virtue of a judicial resolution it is decided to proceed against a person for an offence.
Sweden	The Ministry of Foreign Affairs	When a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly is obliged under the Code of Judicial Procedure to notify the person of the suspicion.
United States of America	The Attorney General of the United States of America	When an indictment, information or complaint has been filed against a person in respect of an offence.

**The Criminal Justice (International Co-operation)
(Enforcement of Overseas Forfeiture Orders)
(Bailiwick of Guernsey) Ordinance, 2007**

ARRANGEMENT OF SECTIONS

PART I
REQUESTS FOR RESTRAINT OF PROPERTY

1. Action on receipt of request for restraint of property.
2. Conditions for Royal Court to give effect to request.
3. Restraint orders.
4. Application, discharge and variation of restraint order.
5. Appeal to Court of Appeal about restraint orders.
6. Seizure in pursuance of restraint order.
7. Hearsay evidence in restraint proceedings.
8. Supplementary (restraint orders).
9. Appointment of management receivers.
10. Powers of management receivers.
11. Restrictions relating to restraint orders.

PART II
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**The Criminal Justice (International Co-operation)
(Enforcement of Overseas Forfeiture Orders)
(Bailiwick of Guernsey) Ordinance, 2007**

THE STATES LEGISLATION SELECT COMMITTEE, in pursuance of the Resolution of the States of the 26th July 2000^a, and in exercise of the powers conferred on the States by section 8 of the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001^b and all other powers enabling the States in that behalf, and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948^c, hereby orders:-

PART I
REQUESTS FOR RESTRAINT OF PROPERTY

Action on receipt of request for restraint of property.

1. (1) Where Her Majesty's Procureur receives a request for the restraint of property made -

- (a) by or on behalf of an overseas authority in a designated country, and
- (b) for the purpose of facilitating the enforcement of any external forfeiture order which has yet to be made,

^a Article III of Billet d'État No. XVIII of 2000.

^b Order in Council No. VII of 2001.

^c Ordres en Conseil Vol. XIII, p. 288; there are amendments not material to this Ordinance.

he may ask the overseas authority which made the request for such further information as may be necessary to determine whether the request is likely to satisfy the conditions in section 2.

(2) A request under subsection (1) may include a request for statements which may be used as evidence.

Conditions for Royal Court to give effect to request.

2. (1) On an application by Her Majesty's Procureur, the Royal Court may exercise the powers conferred by section 3 if the following conditions are satisfied.

(2) The conditions are that -

- (a) relevant property in the Bailiwick is identified in the request,
- (b) a criminal investigation or proceedings for an offence have been started in the country from which the request was made, and
- (c) it appears to the court that there are reasonable grounds for believing that as a result of that investigation or those proceedings an external forfeiture order may be made against the person named in the request.

(3) If these conditions are satisfied by virtue of a criminal investigation having been started, references in this Ordinance to the defendant are to the alleged offender.

Restraint orders.

3. (1) If the conditions set out in section 2 are satisfied, the Royal Court may make an order ("**a restraint order**") prohibiting any specified person from dealing with relevant property which is identified in the request and specified in the order.

(2) A restraint order may be made subject to exceptions, and an exception may in particular -

- (a) make provision for reasonable living expenses and reasonable legal expenses in connection with the proceedings seeking the enforcement of the foreign order,
- (b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation,
- (c) be made subject to conditions.

(3) Subsection (4) applies if -

- (a) a court makes a restraint order, and
- (b) the applicant for the order applies to the court to proceed under subsection (4) (whether as part of the application for the restraint order or at any time afterwards).

(4) The Royal Court may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.

(5) A restraint order does not affect property for the time being subject to a charge under any of the following provisions –

- (a) section 9 or 10 of the Drug Trafficking Offences Law,
- (b) section 27 or 28 of the Proceeds of Crime Law, or
- (c) section 27 or 28 of the Drug Trafficking Law.

(6) Dealing with property includes removing it from the Bailiwick.

Application, discharge and variation of restraint orders.

4. (1) A restraint order -

- (a) may be made only on an application by Her Majesty's Procureur,
- (b) may be made on an ex parte application to the Royal Court in chambers,
- (c) if made on an ex parte application, shall include a direction that an inter partes hearing shall take place on a specified date at a specified time, and
- (d) may make provision that notice of the order shall be given to persons affected by it.

(2) An application to discharge or vary a restraint order or an order under section 3(4) may be made to the Royal Court by -

- (a) Her Majesty's Procureur, and

- (b) any person affected by the order.
- (3) Subsections (5) to (7) apply to an application under subsection (2).
- (4) The court -
 - (a) may discharge the order, and
 - (b) may vary the order.
- (5) If the conditions in section 2 were satisfied by virtue of the fact that proceedings were started, the court must discharge the order if -
 - (a) at the conclusion of the proceedings, no external forfeiture order has been made, or
 - (b) within a reasonable time an external forfeiture order has not been registered under this Ordinance.
- (6) If the conditions in section 2 were satisfied by virtue of the fact that an investigation was started, the court must discharge the order if within a reasonable time proceedings for the offence are not started.
- (7) Any application under subsection (2) -
 - (a) may be made in chambers, and

- (b) if not made by Her Majesty's Procureur, may not be made until notice of that application has been given to Her Majesty's Procureur.

Appeal to Court of Appeal about restraint orders.

5. (1) If on an application for a restraint order the Royal Court decides not to make one, Her Majesty's Procureur may appeal on a point of law to the Court of Appeal against the decision.

(2) If an application is made under section 4(2) in relation to a restraint order or an order under section 3(4), the following persons may appeal on a point of law to the Court of Appeal in respect of the Royal Court's decision on the application -

- (a) Her Majesty's Procureur,
- (b) any person affected by the order.

(3) On an appeal under subsection (1) or (2) the Court of Appeal may -

- (a) confirm the decision, or
- (b) make such order as it believes is appropriate.

(4) For the avoidance of doubt, there is no appeal to the Court of Appeal in respect of a restraint order before the inter partes hearing.

Seizure in pursuance of restraint order.

6. (1) If a restraint order is in force a police officer may seize any property which is specified in it to prevent its removal from the Bailiwick.

(2) Property seized under subsection (1) must be dealt with in accordance with the directions of the court which made the order.

Hearsay evidence in restraint proceedings.

7. (1) Evidence must not be excluded in restraint proceedings on the ground that it is hearsay (of whatever degree).

(2) Restraint proceedings are proceedings -

- (a) for a restraint order,
- (b) for the discharge or variation of a restraint order,
- (c) on an appeal under section 5.

(3) Hearsay is a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated.

(4) Nothing in this section affects the admissibility of evidence which is admissible apart from this section.

Supplementary (restraint orders).

8. If a restraint order is made in connection with real property a copy of the order may be registered -

- (a) if the real property in respect of which it is made is in Guernsey, in the Livre des Hypothèques, Actes de Cour et Obligations at the Greffe in Guernsey,

- (b) if that real property is in Alderney, by noting it against the entry relating to the land concerned in the Alderney Land Register as if an application had been made under section 18(1) of the Alderney Land and Property, etc. Law, 1949^d and concurred in by the registered owner of the land as mentioned in section 18(2) of that Law, or
- (c) if that real property is in Sark, at the Greffe in Sark as if it were a judgment debt ordered to be registered against the real property concerned by an Act of the Court of the Seneschal.

Appointment of management receivers.

9. (1) Subsection (2) applies if -

- (a) the Royal Court makes a restraint order, and
- (b) Her Majesty's Procureur applies to the court to proceed under subsection (2) (whether as part of the application for the restraint order or at any time afterwards).

(2) The Royal Court may appoint a receiver in respect of any property which is specified in the restraint order.

Powers of management receivers.

10. (1) If the Royal Court appoints a receiver under section 9 it may act under this section on the application of Her Majesty's Procureur.

^d

Ordres en Conseil Vol. XVI, p. 202; Vol. XXVIII, p. 576; Vol. XXIX, p. 156; and No. VII of 1994.

(2) The Royal Court may by order confer on the receiver the following powers in relation to any property which is specified in the restraint order -

- (a) power to take possession of the property,
- (b) power to manage or otherwise deal with the property,
- (c) power to start, carry on or defend any legal proceedings in respect of the property, and
- (d) power to realise so much of the property as is necessary to meet the receiver's remuneration and expenses.

(3) The Royal Court may by order confer on the receiver power to enter any premises in the Bailiwick and to do any of the following -

- (a) search for or inspect anything authorised by the court,
- (b) make or obtain a copy, photograph or other record of anything so authorised, and
- (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court.

(4) The Royal Court may by order authorise the receiver to do any of the following for the purpose of the exercise of his functions -

- (a) hold property,
- (b) enter into contracts,

- (c) sue and be sued,
- (d) employ agents,
- (e) execute powers of attorney, deeds or other instruments,
and
- (f) take any other steps the court thinks appropriate.

(5) The Royal Court may order any person who has possession of property which is specified in the restraint order to give possession of it to the receiver.

(6) The Royal Court -

- (a) may order a person holding an interest in property which is specified in the restraint order to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift,
- (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(7) Paragraphs (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions -

- (a) section 9 or 10 of the Drug Trafficking Offences Law,
- (b) section 27 or 28 of the Proceeds of Crime Law, or

(c) section 27 or 28 of the Drug Trafficking Law.

(8) The Royal Court must not -

(a) confer the power mentioned in subsection (2)(b) or (d) in respect of property, or

(b) exercise the power conferred on it by subsection (6) in respect of property,

unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

(9) The Royal Court may order that a power conferred under this section is subject to such conditions and exceptions as it specifies.

(10) Managing or otherwise dealing with property includes -

(a) selling the property or any part of it or interest in it,

(b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property, or

(c) incurring capital expenditure in respect of the property.

Restrictions relating to restraint orders.

11. (1) Where the Royal Court makes a restraint order, no execution (including, without limitation, execution pursuant to the *tacite hypothèque* of a landlord) may be levied against any property which is specified in the order

except with the leave of the Royal Court and subject to any terms the Court may impose.

(2) If a court in which proceedings are pending in respect of any property is satisfied that a restraint order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) Before exercising any power conferred by subsection (2), the court must give an opportunity to be heard to -

- (a) Her Majesty's Procureur, and
- (b) any receiver appointed in respect of the property under section 9 or 17.

PART II

EXTERNAL FORFEITURE ORDERS

Authentication by the overseas court.

12. (1) Subsection (2) applies where an overseas court has authenticated its involvement in -

- (a) any judgment,
- (b) any order, or
- (c) any other document concerned with such a judgment or order or proceedings relating to it.

(2) Where this subsection applies, any statement in the judgment, order or document is admissible in evidence in proceedings under this Part.

Applications to give effect to external forfeiture orders.

13. (1) An application may be made by Her Majesty's Procureur to the Royal Court to give effect to an external forfeiture order.

(2) No application to give effect to such an order may be made otherwise than under subsection (1).

(3) An application under subsection (1) -

(a) shall include a request to appoint Her Majesty's Procureur as the enforcement authority for the order, and

(b) may be made on an ex parte application to the Royal Court in chambers.

Conditions for Royal Court to give effect to external forfeiture orders.

14. (1) The Royal Court must decide to give effect to an external forfeiture order if it is satisfied that all of the following conditions are met.

(2) The first condition is that the external forfeiture order was made consequent on the conviction of the person named in the order and no appeal is outstanding in respect of that conviction.

(3) The second condition is that the external forfeiture order is in force and no appeal is outstanding in respect of it.

(4) The third condition is that giving effect to the external forfeiture order would not be contrary to the interests of justice.

(5) The fourth condition is that the property whose confiscation is specified in the external forfeiture order must not be subject to a charge under any of the following provisions -

(a) section 9 or 10 of the Drug Trafficking Offences Law,

(b) section 27 or 28 of the Proceeds of Crime Law, or

(b) section 27 or 28 of the Drug Trafficking Law.

(6) In subsection (3) "**appeal**" includes -

(a) any proceedings by way of discharging or setting aside the order, and

(b) an application for a new trial or stay of execution.

Registration of external forfeiture orders.

15. (1) Where the Royal Court decides to give effect to an external forfeiture order, it must -

(a) order that the order be registered in the records of the Court,

(b) direct that an inter partes hearing shall take place on a specified date at a specified time,

- (c) provide for notice of the registration to be given to any person affected by it, and
- (d) appoint Her Majesty's Procureur as the enforcement authority for the order.

(2) Only an external forfeiture order registered by the Royal Court may be implemented under this Ordinance.

(3) The Royal Court may cancel the registration of the external forfeiture order, or vary the property to which it applies, on an application by Her Majesty's Procureur or any person affected by it if, or to the extent that, the court is of the opinion that any of the conditions in section 14 is not satisfied.

(4) The Royal Court must cancel the registration of the external forfeiture order, on an application by Her Majesty's Procureur or any person affected by it, if it appears to the court that the order has been satisfied -

- (a) in the case of an order for the recovery of specified property, by the surrender of the property, or
- (b) by any other means.

(5) Where the registration of an external forfeiture order is cancelled or varied under subsection (3) or (4), the Royal Court must provide for notice of this to be given to Her Majesty's Procureur and any person affected by it.

Appeal to Court of Appeal about external forfeiture orders.

16. (1) If on an application for the Royal Court to give effect to an external forfeiture order by registering it, the court decides not to do so, Her

Majesty's Procureur may appeal on a point of law to the Court of Appeal against the decision.

(2) If an application is made under section 15(3) or (4) in relation to the registration of an external forfeiture order, the following persons may appeal on a point of law to the Court of Appeal in respect of the Royal Court's decision on the application -

- (a) Her Majesty's Procureur, and
- (b) any person affected by the registration.

(3) On an appeal under subsection (1) or (2) the Court of Appeal may -

- (a) confirm or set aside the decision to register, or
- (b) direct the Royal Court to register the external forfeiture order (or so much of it as relates to property other than to which section 14(5) applies).

(4) For the avoidance of doubt, there is no appeal to the Court of Appeal in respect of an external forfeiture order before the inter partes hearing.

Appointment of enforcement receivers.

17. (1) This section applies if -

- (a) an external forfeiture order is registered, and
- (b) it is not satisfied.

(2) On the application of Her Majesty's Procureur, the Royal Court may appoint a receiver in respect of the property in respect of which the external forfeiture order specifies the recovery.

Powers of enforcement receivers in respect of external forfeiture orders for the recovery of specified property.

18. (1) If the Royal Court appoints a receiver under section 17, it may act under this section on the application of Her Majesty's Procureur where the external forfeiture order is for the recovery of property specified in the order ("**the specified property**").

(2) The Royal Court may by order confer on the receiver the following powers in relation to the specified property -

- (a) power to take possession of the property,
- (b) power to manage or otherwise deal with the property,
- (c) power to realise the property, in such manner as the Court may specify, and
- (d) power to start, carry on or defend any legal proceedings in respect of the property.

(3) The Royal Court may by order confer on the receiver power to enter any premises in the Bailiwick and to do any of the following -

- (a) search for or inspect anything authorised by the court,
- (b) make or obtain a copy, photograph or other record of anything so authorised, and

- (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court.

(4) The Royal Court may by order authorise the receiver to do any of the following for the purposes of the exercise of his functions -

- (a) hold property,
- (b) enter into contracts,
- (c) sue and be sued,
- (d) employ agents,
- (e) execute powers of attorney, deeds or other instruments, and
- (f) take any other steps the court thinks appropriate.

(5) The Royal Court may order any person who has possession of the specified property to give possession of it to the receiver.

(6) The Royal Court -

- (a) may order a person holding an interest in the specified property to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift, and

- (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(7) The Royal Court must not -

- (a) confer the power mentioned in subsection (2)(b) or (c) in respect of property, or
- (b) exercise the power conferred on it by subsection (6) in respect of property,

unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

(8) The Royal Court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.

(9) Managing or otherwise dealing with property includes -

- (a) selling the property or any part of it or interest in it,
- (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property, and
- (c) incurring capital expenditure in respect of the property.

Satisfaction of external forfeiture order.

19. A registered external forfeiture order is satisfied when the property specified in it has been forfeited and disposed of in accordance with that order.

Restrictions relating to enforcement receivers.

20. (1) Where the Royal Court makes an order under section 17 appointing a receiver in respect of any specified property, no execution (including, without limitation, execution pursuant to the *tacite hypothèque* of a landlord) may be levied against any property which is specified in the order except with the leave of the Royal Court and subject to any terms the Court may impose.

(2) If the Royal Court in which proceedings are pending in respect of any property is satisfied that an order under section 17 appointing a receiver in respect of the property has been applied for or made, the Court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) Before exercising any power conferred by subsection (2), the Royal Court must give an opportunity to be heard to -

- (a) Her Majesty's Procureur, and
- (b) the receiver (if the order under section 17 has been made).

PART III

RECEIVERS AND PROCEDURE

Protection of receiver appointed under sections 9 and 17.

21. (1) If a receiver appointed under section 9 or 17 -

- (a) takes action in relation to property which is not the specified property,
- (b) would be entitled to take the action if it were the specified property, and

- (c) believes on reasonable grounds that he is entitled to take the action,

he is not liable to any person in respect of any loss or damage resulting from the action, except so far as the loss or damage is caused by his negligence.

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall be paid -

- (a) where a restraint order has been made under section 3, by the overseas authority who made the request, or
- (b) where an external forfeiture order has been registered under section 15, the overseas authority for the country or territory in which the overseas court who made that order has jurisdiction.

Further applications by receivers.

22. (1) This section applies to a receiver appointed under section 9 or 17.

(2) The receiver may apply to the Royal Court for an order giving directions as to the exercise of his powers.

(3) The following persons may apply to the Royal Court -

- (a) any person affected by action taken by the receiver, and
- (b) any person who may be affected by action the receiver proposes to take.

(4) On an application under this section the Royal Court may make such order as it believes is appropriate.

Discharge and variation of receiver orders.

23. (1) The following persons may apply to the Royal Court to vary or discharge an order made under section 9, 10, 17 or 18 -

- (a) the receiver,
- (b) Her Majesty's Procureur, and
- (c) any person affected by the order.

(2) On an application under this section the Royal Court -

- (a) may discharge the order, or
- (b) may vary the order.

(3) But in the case of an order under section 9 or 10 -

- (a) if the conditions in section 2 were satisfied by virtue of the fact that proceedings had started, the court must discharge the order if at the conclusion of the proceedings no external forfeiture order has been made, or if within a reasonable time an external forfeiture order has not been registered under Part II of this Ordinance, and

- (b) if the conditions were satisfied by virtue of the fact that an investigation had started, the court must discharge the order if within a reasonable time proceedings for the offence are not started.

Management receivers: discharge.

24. (1) This section applies if -

- (a) a receiver stands appointed under section 9 in respect of property which is identified in the restraint order (the management receiver), and
- (b) the Royal Court appoints a receiver under section 17.

(2) The Royal Court must order the management receiver to transfer to the other receiver all property held by the management receiver by virtue of the powers conferred on him by section 10.

(3) Subsection (2) does not apply to property which the management receiver holds by virtue of the exercise by him of his power under section 10(2)(d).

(4) If the management receiver complies with an order under subsection (2), he is discharged -

- (a) from his appointment under section 9, and
- (b) from any obligation to act under this Ordinance arising from his appointment.

(5) If this section applies the court may make such a consequential or incidental order as it believes is appropriate.

Appeal to Court of Appeal about receivers.

25. (1) If on an application for an order under any of sections 9, 10, 17 or 18 the Royal Court decides not to make one, the person who applied for the order may appeal on a point of law to the Court of Appeal against the decision.

(2) If the Royal Court makes an order under any of sections 9, 10, 17 or 18, the following persons may appeal on a point of law to the Court of Appeal in respect of the court's decision -

- (a) the person who applied for the order, and
- (b) any person affected by the order.

(3) If on an application for an order under section 22 the Royal Court decides not to make one, the person who applied for the order may appeal on a point of law to the Court of Appeal against the decision.

(4) If the Royal Court makes an order under section 22 the following persons may appeal on a point of law to the Court of Appeal in respect of the court's decision -

- (a) the person who applied for the order,
- (b) any person affected by the order, and
- (c) the receiver.

(5) The following persons may appeal on a point of law to the Court of Appeal against a decision of the Royal Court on an application under section 23 -

- (a) the person who applied for the order in respect of which the application was made,
 - (b) any person affected by the Royal Court's decision, and
 - (c) the receiver.
- (6) On an appeal under this section the Court of Appeal may -
- (a) confirm the decision, or
 - (b) make such order as it believes is appropriate.

Powers of court and receiver.

26. (1) This section applies to -

- (a) the powers conferred on a court by this Ordinance, and
 - (b) the powers of a receiver appointed under section 9 or 17.
- (2) The powers -
- (a) must be exercised with a view to the value for the time being of specified property being made available (by the property's realisation) for satisfying an external

forfeiture order that has been or may be made against the defendant,

- (b) must be exercised, in a case where an external forfeiture order has not been made, with a view to securing that there is no diminution in the value of the property identified in the request,
 - (c) must be exercised without taking account of any obligation of a defendant or a recipient of a tainted gift if the obligation conflicts with the object of satisfying any external forfeiture order against the defendant that has been or may be registered under section 16, and
 - (d) may be exercised in respect of a debt owed by the Crown.
- (3) Subsection (2) has effect subject to the following rules -
- (a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest held by him,
 - (b) in the case of specified property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than the value for the time being of the gift, and

- (c) in a case where an external forfeiture order has not been made against the defendant, property must not be sold if the court so orders under subsection (4).

(4) If on an application by the defendant or the recipient of a tainted gift, the court decides that property cannot be replaced it may order that it must not be sold.

- (5) An order under subsection (4) may be revoked or varied.

Procedure on appeal to Court of Appeal under this Ordinance.

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

- (2) Any person who desires to appeal under -
 - (i) section 5 or 16 shall within 28 days, and
 - (ii) section 25 shall within 7 days,

of the making of the order which is sought to be appealed give to the Registrar a notice of application for leave to appeal.

- (3) Subject to any rules of court, the Civil Division of the Court of Appeal is the Division -

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

- (a) to which an appeal to that Court under this Ordinance is to lie, and
- (b) which is to exercise that Court's jurisdiction under this Ordinance.

(4) Subject to any rules of court, the costs of and incidental to all proceedings on an appeal to the Civil Division of the Court of Appeal under section 5, 16 or 25 are in the discretion of the court.

(5) The Court shall have full power to determine by whom and to what extent the costs are to be paid.

(6) In any proceedings mentioned in subsection (4), the Court may

-

- (a) disallow, or
- (b) (as the case may be) order the legal or other representative concerned to meet,

the whole of any wasted costs or such part of them as may be determined in accordance with rules of court.

(7) In subsection (6) "**wasted costs**" means any costs incurred by a party-

- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or

- (b) which, in the light of any such act or omission occurring after they were incurred, the Court considers it unreasonable to expect that party to pay.

(8) **"Legal or other representative"**, in relation to a party to proceedings, means any person exercising a right of audience or right to conduct litigation on his behalf.

PART IV INTERPRETATION AND GENERAL

General interpretation.

28. (1) In this Ordinance, unless the context requires otherwise -

"Bailiff" includes the Deputy Bailiff and a Lieutenant-Bailiff,

"Bailiwick" means the Bailiwick of Guernsey,

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

"designated country" means a country or territory designated under section 30,

"the Drug Trafficking Law" means the Drug Trafficking (Bailiwick of Guernsey) Law, 2000^g,

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

^g Order in Council VII of 2000.

"the Drug Trafficking Offences Law" means the Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988^h,

"enactment" includes a Law, an Ordinance or any subordinate legislation and any provision or portion of a Law, an Ordinance or any subordinate legislation,

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

"overseas authority" means an authority which has responsibility in a country or territory outside the Bailiwick for making a request to an authority in another country or territory (including the Bailiwick) to prohibit dealing with relevant property,

"overseas court" means a court of a country or territory outside the Bailiwick,

"police officer" means -

- (a) in relation to Guernsey, Herm and Jethou -
 - (i) a member of the salaried police force of the Island of Guernsey, and
 - (ii) within the limits of his jurisdiction, a member of the special constabulary of the Island of

Guernsey,

- (b) in relation to Alderney -
 - (i) a member of any police force which may be established by the States of Alderney, and
 - (ii) within the limits of his jurisdiction, a special constable appointed under section 47 of the Government of Alderney Law, 2004ⁱ,
- (c) in relation to Sark, the Constable and the Vingtenier of Sark, and
- (d) an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^j,

"the Proceeds of Crime Law" means the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 2000^k,

"the Royal Court" means the Royal Court of Guernsey sitting as an Ordinary Court and may be constituted by the Bailiff sitting alone, and

"subordinate legislation" means any regulation, rule, order,

ⁱ
^j
^k

Order in Council No. III of 2005.

Ordres en Conseil Vol. XXIII, p. 573; and No. XIII of 1991.

Order in Council No. VIII of 1999.

notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect.

(2) The Interpretation (Guernsey) Law, 1948¹ applies to the interpretation of this Ordinance throughout the Bailiwick.

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

External forfeiture orders.

29. (1) An order made -

- (a) by a court in a designated country,
- (b) for the forfeiture and destruction, or the forfeiture and other disposal, of anything in respect of which a relevant offence has been committed or which was used or intended for use in connection with the commission of such an offence,

is referred to in this Ordinance as an "**external forfeiture order**".

(2) In subsection (1)

- (a) a "**relevant offence**" means any offence that corresponds to or is similar to an indictable offence under the law of the Bailiwick other than a drug

¹

Ordres en Conseil Vol. XIII, p. 355.

trafficking offence as defined by section 1(3) of the Drug Trafficking Law,

- (b) the reference to an order includes any order, decree, direction or judgment, or any part thereof, however described.

Designated countries.

30. The countries or territories set out in the Schedule to this Ordinance are hereby designated for the purposes of section 8 of the Criminal Justice (International Co-operation) Law 2001.

Property.

31. (1) In this Ordinance, unless the context requires otherwise -

- (a) a reference to "**property**" is a reference to all property wherever situated and includes -
 - (i) money,
 - (ii) all forms of property, real or personal, heritable or moveable, and
 - (iii) things in action and other intangible or incorporeal property,
- (b) property is held by a person if he holds an interest in it,
- (c) property is obtained by a person if he obtains an interest in it,

- (d) property is transferred by one person to another if the first one transfers or grants an interest in it to the second,
- (e) references to property held by a person beneficially in property include references to an interest which would be held by him beneficially if the property were not so vested, and
- (f) references to an interest, in relation to land in the Bailiwick, are to any legal interest or power.

(2) References to an interest, in relation to property other than land, include references to a right (including a right to possession).

(3) Property is "**relevant property**" if there are reasonable grounds to believe that it may be needed to satisfy an external forfeiture order which has been made or which may be made.

Tainted gifts.

32. (1) In this Ordinance, a gift is tainted if it was made by the defendant at any time after -

- (a) the date on which the offence to which the external forfeiture order or request relates was committed, or
- (b) if his criminal conduct consists of two or more such offences and they were committed on different dates, the date of the earliest.

(2) For the purposes of subsection (1), an offence which is a continuing offence is committed on the first occasion when it is committed.

(3) A gift may be a tainted gift whether it was made before or after the coming into force of this Ordinance.

Gifts and their recipients.

33. (1) In this Ordinance, a defendant is to be treated as making a gift if he transfers property to another person for a consideration whose value is significantly less than the value of the property at the time of the transfer.

(2) If subsection (1) applies, the property given is to be treated as such share in the property transferred as is represented by the fraction -

- (a) whose numerator is the difference between the two values mentioned in subsection (1), and
- (b) whose denominator is the value of the property at the time of the transfer.

(3) In this Ordinance references to a recipient of a tainted gift are to a person to whom the defendant has made the gift.

Value: the basic rule.

34. (1) Subject to section 35, this section applies where it is necessary under this Ordinance to decide the value at any time of property then held by a person.

(2) Its value is the market value of the property at that time.

(3) But if at that time another person holds an interest in the property its value, in relation to the person mentioned in subsection (1), is the market value of his interest at that time, ignoring any charging order under a provision listed in subsection (4).

(4) Those provisions are -

- (a) section 9 or 10 of the Drug Trafficking Offences Law,
- (b) section 27 or 28 of the Proceeds of Crime Law, and
- (c) section 27 or 28 of the Drug Trafficking Law.

Value of tainted gifts.

35. (1) The value at any time (the material time) of a tainted gift is the greater of the following -

- (a) the value (at time of the gift) of the property given, adjusted to take account of later changes in the value of money, or
- (b) the value (at the material time) of the property found under subsection (2).

(2) The property found under this subsection is as follows -

- (a) if the recipient holds the property given, the property found under this subsection is that property,

- (b) if the recipient holds no part of the property given, the property found under this subsection is any property which directly or indirectly represents it in his hands,
- (c) if the recipient holds part of the property given, the property found under this subsection is that part and any property which directly or indirectly represents the other part in his hands.

(3) The references in subsection (1)(a) and (b) to the value are to the value found in accordance with section 34.

Meaning of "defendant".

36. In this Ordinance "**defendant**" -

- (a) in relation to a restraint order means -
 - (i) in a case in which the conditions in section 2 are satisfied by virtue of the fact that a criminal investigation has been started, the alleged offender, and
 - (ii) in a case in which the conditions in section 2 are satisfied by virtue of the fact that proceedings for an offence have been started, the person against whom those proceedings have been started (whether or not he has been convicted), and
- (b) in relation to an external forfeiture order, the person convicted of criminal conduct.

Citation.

37. This Ordinance may be cited as the Criminal Justice (International Co-operation) (Enforcement of Overseas Forfeiture Orders) (Bailiwick of Guernsey) Ordinance, 2007.

Commencement.

38. This Ordinance shall come into force on the 24th May 2007.

SCHEDULE
DESIGNATED COUNTRIES

Afghanistan
Albania
Algeria
Andorra
Angola
Antigua and Barbuda
Argentina
Armenia
Australia
Austria
Azerbaijan
Bahamas
Bahrain
Bangladesh
Barbados
Belarus
Belgium
Belize
Benin
Bhutan
Bolivia
Bosnia and Herzegovina
Botswana
Brazil
Brunei Darussalem
Bulgaria
Burkina Faso
Burundi
Cambodia
Cameroon
Canada
Cape Verde
Central African Republic
Chad
Chile
China
Colombia
Comoros

Congo
Cook Islands
Costa Rica
Côte D'Ivoire
Croatia
Cuba
Cyprus
Czech Republic
Denmark
Djibouti
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
England and Wales
Eritrea
Equatorial Guinea
Estonia
Ethiopia
Fiji
Finland
France
Gabon
Gambia
Georgia
Germany
Ghana
Greece
Grenada
Guatemala
Guinea
Guinea-Bissau
Guyana
Haiti
Honduras
Hungary
Iceland
India
Indonesia
Iran (Islamic Republic of)
Iraq
Ireland
Isle of Man
Israel
Italy

Jamaica
Japan
Jersey
Jordan
Kazakhstan
Kenya
Kuwait
Kyrgyzstan
Lao People's Democratic Republic
Latvia
Lebanon
Lesotho
Liberia
Libyan Arab Jamahiriya
Liechtenstein
Lithuania
Luxemburg
Madagascar
Malawi
Malaysia
Maldives
Mali
Malta
Mauritania
Mauritius
Mexico
Micronesia (Federal States of)
Moldova
Monaco
Mongolia
Morocco
Mozambique
Myanmar
Namibia
Nauru
Nepal
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Northern Ireland
Norway
Oman
Pakistan
Panama

Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Republic of Korea
Romania
Russian Federation
Rwanda
Saint Kitts & Nevis
Saint Lucia
Saint Vincent and the Grenadines
San Marino
San Tome & Principe
Saudi Arabia
Scotland
Senegal
Serbia and Montenegro
Seychelles
Sierra Leone
Singapore
Slovakia
Slovenia
South Africa
Spain
Sri Lanka
Sudan
Suriname
Swaziland
Sweden
Switzerland
Syrian Arab Republic
Tajikistan
Thailand
The former Yugoslav Republic of Macedonia
Togo
Tonga
Trinidad and Tobago
Tunisia
Turkey
Turkmenistan
Uganda
Ukraine
United Arab Emirates
United Republic of Tanzania

United States of America
Uruguay
Uzbekistan
Venezuela
Vietnam
Yemen
Zambia
Zimbabwe

The North Korea (Restrictive Measures) (Guernsey) Ordinance, 2007

THE STATES LEGISLATION SELECT COMMITTEE, in exercise of the powers conferred on the States by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^a and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948^b, and all other powers enabling the States in that behalf, hereby orders:

Application of EC Regulation.

1. Council Regulation (EC) No. 329/2007 of the 27th March, 2007 concerning restrictive measures against the Democratic People's Republic of Korea^c in view of the situation in North Korea ("**the EC Regulation**") is applicable in Guernsey in all respects as if Guernsey, subject to the modifications in section 7, were a Member State.

Prohibition of certain transactions etc.

2. (1) Any person who, except under the authority of a licence granted by the Policy Council under this Ordinance, directly or indirectly infringes any of the following prohibitions in the EC Regulation -

- (a) Article 2(1)(a), prohibiting the sale, supply, transfer or export, directly or indirectly, of the goods and technology, including software, listed in Annex 1 to the EC Regulation, whether or not originating in the Community, to any natural or legal person, entity or body in, or for use in North Korea,

^a Order in Council No. III of 1994.

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

^c OJ L 88, 29.03.2007, p.1.

- (b) Article 2(1)(b), prohibiting the participation, knowingly and intentionally in activities the object or effect of which is to circumvent the prohibition in Article 2(1)(a),
- (c) Article 2(3), prohibiting the purchase, import or transport of goods and technology listed in Annex 1 to the EC Regulation, from North Korea, whether the item concerned originates or not in North Korea,
- (d) Article 3(1)(a), prohibiting the provision, directly or indirectly, of technical assistance related to the goods and technology listed in the EU Common List of Military Equipment^d or in Annex I to the EC Regulation, and to the provision, manufacture, maintenance and use of any goods so listed, to any person, entity or body in, or for use in North Korea,
- (e) Article 3(1)(b), prohibiting the provision, directly or indirectly, of financing or financial assistance related to goods and technology listed in the EU Common List of Military Equipment or Annex I to the EC Regulation, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of such items or for any provision of related technical assistance to any natural or legal person, entity or body in, or for use in, North Korea,
- (f) Article 3(1)(c), prohibiting the participation,

^d The current version of the list is set out in O.J. L88, 29.03.2007, p.58

knowingly and intentionally, in activities, the object or effect of which is to circumvent the prohibitions of Article 3(1)(a) or (b),

- (g) Article 4(a), prohibiting the sale, supply, transfer or export, directly or indirectly, of luxury goods as listed in Annex III to the EC Regulation to North Korea,
- (h) Article 4(b), prohibiting the participation, knowingly and intentionally, in activities the object of which is to circumvent the prohibition in Article 4(a),

is guilty of an offence.

(2) Any person who infringes, or causes or permits any infringement of Article 6(2) or 6(3), or 10(1) of the EC Regulation is guilty of an offence.

Licences.

3. (1) Authorisation for the transactions or other activities set out in section 2, as provided for in Article 5 of the EC Regulation, shall in Guernsey be by way of a licence in writing granted by the Policy Council, in accordance with the provisions of Article 5(3) of that EC Regulation.

(2) If, for the purpose of obtaining a licence, any person -

- (a) makes any statement or furnishes any document or information which to his knowledge is false in a material particular, or
- (b) recklessly makes any statement or furnishes a document or information which is false in a material

particular,

he is guilty of an offence; and any licence granted in connection with the application for which the false statement was made or the false document or information furnished is void as from the time it was granted.

(3) Any person who, having acted under the authority of a licence granted under this section, fails to comply with any of the requirements or conditions to which the licence is subject is guilty of an offence, unless -

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

Furnishing of false information etc.

4. A person who in purported compliance with Article 10 of the EC Regulation intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, is guilty of an offence.

Penalties and proceedings.

5. (1) A person guilty of an offence under section 2, 3, 4 or paragraph 2(b) or 2(c) of the Schedule,

is liable -

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

not exceeding three months or to a fine not exceeding level 5 on the uniform scale or to both.

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

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

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

Certain provisions of customs and excise Law applicable.

6. (1) Section 55 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^e applies to the detention of a person for an offence under section 2 or 3 as it applies to the detention of a person for an offence under the customs Laws or excise Laws.

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

^e Ordres en Conseil Vol. XXIII, p. 573; Vol. XXIV, p. 87; Vol. XXXI, p. 278; No. XIII of 1991; No. X of 2004 and Ordinance No. XXXII of 2005.

Laws.

Information.

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

Modification of Regulation.

8. The EC Regulation in its application to Guernsey shall be modified as follows -

- (a) in Article 5(1), for the words "the competent authorities of a Member State as indicated in the websites listed in Annex II" substitute "the Policy Council", and for "The Member States that received the request" substitute "The Policy Council",
- (b) in Article 5(2), for the words "The Member State concerned" substitute "The Policy Council",
- (c) in Article 5(3), for the words "The competent authorities of the Member States as indicated in the websites listed in Annex II" substitute "The Policy Council",
- (d) in Article 7(1) -
 - (i) for the words "the competent authorities of the Member States, as indicated in the websites listed in Annex II" substitute "the Policy Council", and
 - (ii) for the words "the Member State concerned" substitute "the Policy Council",

- (e) in Article 7(2) -
 - (i) for the words "the competent authorities of the Member States, as indicated in the websites listed in Annex II" substitute "the Policy Council", and
 - (ii) for the words "the Member State" substitute "the Policy Council",
- (f) in Article 7(3), for the words "The Member States concerned" substitute "The Policy Council",
- (g) in Article 8, for the words "the competent authorities of the Member States, as indicated in the websites listed in Annex II" substitute "the Policy Council",
- (h) in Article 8(d), for the words "the Member State concerned" substitute "Guernsey",
- (i) in Article 8(e), for the words "by the Member State" substitute "by the Policy Council",
- (j) in Articles 2(1)(a) and 9(1) for the words "the Community" substitute "Guernsey",
- (k) in Article 10(1)(a), for the words "the competent authorities of the Member States, as indicated in the websites listed in Annex II where they are resident or located" substitute "the Policy Council" and for "the relevant Member States" substitute "the Policy Council",
- (l) in Article 10(1)(b), after the words "cooperate with" insert

“the Policy Council and”, and

- (m) in Article 10(2), for the words "the Member States concerned" substitute "the Policy Council".

Interpretation.

- 9. (1) In this Ordinance, unless the context otherwise requires -

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

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

"customs Laws" and **"excise Laws"** mean those provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law 1972 and any other enactment for the time being in force relating to customs or, as the case may be, excise,

"EU Common List of Military Equipment" means the EU Common List of Military Equipment as amended from time to time^f.

"EC Regulation" has the meaning given by section 1,

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

"Schedule" means the schedule to this Ordinance, and

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

^f The current version of the list is set out in O.J. L88, 29.03.2007, p.58

1989^g, as amended,

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

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

(3) References in this Ordinance to the EC Regulation are references to the EC Regulation as amended from time to time in accordance with the procedure set out in Article 13 of the EC Regulation.

Citation and commencement.

10. (1) This Ordinance may be cited as the North Korea (Restrictive Measures) (Guernsey) Ordinance, 2007.

(2) This Ordinance shall come into force on 12th June, 2007.

^g Ordres en Conseil Vol. XXXI, p. 278.

SCHEDULE

Section 7

INFORMATION

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

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

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

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

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

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

2. A person who -

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

is guilty of an offence.

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

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

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

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

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