

# **BILLET D'ÉTAT No. XX, 2007**

**26<sup>th</sup> September 2007**

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# PROJET DE LOI

ENTITLED

## **The Income Tax (Zero 10) (Guernsey) Law, 2007**

**THE STATES**, in pursuance of their Resolutions of the 28<sup>th</sup> September, 2005<sup>a</sup>, the 30<sup>th</sup> June, 2006<sup>b</sup>, the 30<sup>th</sup> May, 2007<sup>c</sup> and the 25<sup>th</sup> July, 2007<sup>d</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the islands of Guernsey and Herm.

### **Amendment of 1975 Law.**

1. This Law amends the Income Tax (Guernsey) Law, 1975, as amended<sup>e</sup> ("**the Law of 1975**") and other related legislation.

2. For section 2 of the Law of 1975, substitute –

### **"General provisions as to income and the computation thereof.**

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<sup>a</sup> Article XII of Billet d'État No. XIV of 2005.

<sup>b</sup> Billet d'État No. XI of 2006.

<sup>c</sup> Article XI of Billet d'État No. XIV of 2007.

<sup>d</sup> Article VIII of Billet d'État No. XIX of 2007.

<sup>e</sup> Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118, 200, 333 and 565; Vol. XXVIII, pp. 184, 278, 353 and 409; Vol. XXIX, p. 214; Vol. XXXI, pp. 406 and 473; Vol. XXXII, p. 307; No. IV of 1991; No. VI of 1992; No's. IV and VIII of 1993; No. XXV of 1994; No's. III and VII of 1995; No. V of 1996; No's. IV and XXII of 1997; No's. II and VI of 1999; No. IV of 2000; No's. VI and XVII of 2001; No. VII of 2002; No's. IV, XVIII and XXVI of 2003; No's. XII and XVI of 2004; No's. V, VI and XVII of 2005; and No's. II and VII of 2006; also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII).

2. (1) An individual's income in respect of which tax is chargeable shall be income of one or other of the following classes namely -

- (a) income from businesses,
- (b) income from offices and employments,
- (c) income from the ownership of lands and buildings, and
- (d) income from other sources.

(2) A company's income in respect of which tax is chargeable shall be income of one or other of the following classes namely -

- (a) income from banking business (as defined in the Fourth Schedule, which may be amended by regulations made by the Department),
- (b) income from activities regulated by the Office of the Director General of Utility Regulation,
- (c) income from the ownership of lands and buildings, and
- (d) income from businesses (other than businesses referred to in any other paragraph of this subsection), offices and employments, and other sources.

(3) The income for any year of charge in respect of which tax is chargeable (in this Law referred to as "assessable income") shall in the case of each particular class be computed in such manner and by reference to such year of computation or other period as is mentioned in this Law."

3. For section 5(2) of the Law of 1975, substitute –

"(2) For any year of charge the rates of income tax shall be as set out in the Fifth Schedule, which may be amended by Resolution of the States in respect of that year."

4. After section 6(2) of the Law of 1975<sup>f</sup> insert the following subsections –

"(3) Where prior to 1 January 2008 a company's income falls within Class 2(2)(a) or Class 2(2)(d) in whole or in part, that company shall be deemed to have ceased trading at midnight on 31 December 2007 and immediately recommenced on 1 January 2008 for the purposes of this Law.

(3A) If under section 5(2) the States by Resolution alter the rates of tax chargeable then the accounting period and the year of computation of every business shall end on the day before the day on which the alteration of the rates takes effect and subsection (4) shall apply in calculating the profits for the year of computation."

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<sup>f</sup> Subsection (3) of section 6 was repealed by No. V of 2005.

5. In section 6(4) of the Law of 1975<sup>g</sup> after the words "makes a determination under subsection (2)(b)," insert "or where subsection (3) or (3A) applies,".

6. After section 7 of the Law of 1975 insert the following section -

**"Calculation of income from banking business."**

7A. Without prejudice to the provisions of section 7, income from banking business shall be calculated net of the proportion of the bank's overhead costs laid out or expended wholly and exclusively for the purposes of earning that income."

7. In section 8(1) of the Law of 1975 replace the words "of Class (2) under the provisions of section two of this Law" with "from offices and employments".

8. In section 10(4)(b) of the Law of 1975 replace the words "class (4) under the provisions" with "Class (1)(c) or Class (2)(c)".

9. In section 12(1) of the Law of 1975 -

(a) in paragraph (a) replace the words "five per centum" with "2½ %",

(b) for paragraph (b) substitute-

"(b) where the annual rental value is that of a dwelling house let furnished, the said deduction

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<sup>g</sup> Those words were inserted by No. V of 2005.

shall be 15% of the annual rental value,"

(c) for paragraph (c) substitute –

"(c) where the annual rental value is that of a glasshouse or other building, other than a dwelling house let furnished, the said deduction shall be 10% of the annual rental value."

10. In section 27(1) of the Law of 1975<sup>h</sup> replace the words "class (2) in pursuance of the provisions" with "Class (1)(b)".

11. After section 39A of the Law of 1975<sup>i</sup> insert the following section –

**"Limit on amount of tax payable by a resident individual."**

39B. (1) For any year of charge the limit on the amount of income tax payable by a resident individual on qualifying income shall be as set out in the Sixth Schedule, which may be amended by Resolution of the States.

(2) For the purposes of this section the qualifying income shall be calculated net of all applicable allowances, reliefs and deductions, in order to determine whether or not the limit will apply.

(3) If the individual is resident in Guernsey for only part of a year of charge the limit may be pro rated by reference to the amount of time spent in Guernsey in the year of charge."

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<sup>h</sup> Section 27(1) was substituted by Vol. XXVII, p. 333.

<sup>i</sup> Section 39A was inserted by No. XVII of 2001.

12. Section 40(q) of the Law of 1975 is repealed.

13. In section 48(4) of the Law of 1975 for the words "the penalty for late payment prescribed in section one hundred and ninety-nine of this Law, and for the purposes of computing the penalty" substitute "a surcharge or additional surcharge under section 199, for the purposes of calculating which".

14. Section 50 of the Law of 1975 is repealed.

15. In section 54(1) of the Law of 1975 after "penalty" wherever appearing (but not in the proviso) insert "or surcharge or additional surcharge".

16. In section 57 of the Law of 1975 -

(a) in subsection (1), all the text after "share, right or title thereto" is repealed, and

(b) subsections (2)<sup>j</sup>, (3) and (4) are repealed.

17. In section 60 of the Law of 1975 -

(a) for subsection (1) substitute the following subsections -

"(1) Where a company resident in Guernsey distributes any of its undistributed income, the company shall send to the person to whom the distribution was made a statement in writing showing -

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<sup>j</sup> Subsection (2) was substituted by No. V of 2005.

- (a) the gross amount which, after deduction of the income tax appropriate thereto, corresponds to the net amount paid or deemed to have been paid,
- (b) the rate and the amount of income tax appropriate to such gross amount, and
- (c) the net amount actually paid or deemed to have been paid.

(1A) Every warrant, cheque or other order drawn or made, or purporting to be drawn or made, in payment of any such distribution shall have annexed to it or be accompanied by the statement required by subsection (1).

(1B) In this section a "distribution" by a company of undistributed income includes a dividend and a deemed distribution of undistributed income under Chapter VIIIA of Part IV, and related expressions shall be construed accordingly."

- (b) in subsection (2) replace the words "a penalty not exceeding ten pounds" with "a penalty not exceeding level two on the uniform scale", and
- (c) delete the proviso to subsection (2).



18. In section 61 of the Law of 1975<sup>k</sup> after "penalty" insert "and any surcharge and additional surcharge".

19. In section 65(4) of the Law of 1975<sup>l</sup> in the definition of "settlement" after the words "shall be construed accordingly" insert "and includes any person who has provided or caused to be provided funds or other property for a settlement or for any entity owned or controlled directly or indirectly by the trustees of the settlement".

20. After section 65 of the Law of 1975 insert the following section -

**"Duty of settlor to declare settlement to Administrator."**

65A. (1) A person who is or who has at any time been the settlor of a settlement, in each case within the meaning of section 65(4), which is or which has been in existence at any time during a year of charge in which the settlor is or was resident in Guernsey, shall notify the Administrator of that fact by the 31<sup>st</sup> March in the following year of charge.

(2) A notification under subsection (1) shall be in such form, shall contain such information and particulars and shall be accompanied by such documents (verified in such manner) as may be required by the Administrator.

(3) If there is a failure to comply with this section -

(a) the provisions of section 75 ("additional assessments") shall apply in relation to the

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<sup>k</sup> Section 61 was amended by No. V of 2005.

<sup>l</sup> Section 65(4) was substituted by Vol. XXVII, p. 84.

person in default in all respects as those provisions apply in relation to a person by or on behalf of whom any form of fraud has been committed in connection with or in relation to tax for the year 1950 or any subsequent year of charge, and

- (b) the provisions of section 189 ("penalty for failure to give notice of liability") shall apply in relation to the person in default in all respects as those provisions apply in relation to a person who fails to give the Administrator notice of his liability to be charged with tax (and the other provisions of Part XVIII of this Law shall apply accordingly)."

21. For section 67 of the Law of 1975 substitute the following -

**"General provision against legal avoidance.**

67. (1) Where the effect of a transaction or series of transactions is the avoidance, reduction or deferral of the liability of any person ("**the person concerned**") to tax under this Law, the Administrator may, in his discretion, make such adjustments as respects the liability of the person concerned to tax as may in his opinion be appropriate to counteract the avoidance, reduction or deferral of liability which would otherwise be effected by or as a result of that transaction or series of transactions.

(2) For the purposes of this section, a transaction includes any arrangement, agreement, operation, scheme or event, or any action, omission, decision or concurrence, whether or not -

- (a) enforceable by legal proceedings,
- (b) involving or dependent on any action by, or any omission, decision or concurrence of, the person concerned or any other person, or more than one person,
- (c) brought to a conclusion, or
- (d) involving or dependent on any other transaction.

(3) For the purposes of this section, and for the avoidance of doubt, it is immaterial -

- (a) when or where the transaction or series of transactions (or any of the series of transactions) occurs,
- (b) whether or not the transaction or series of transactions (or any of the series of transactions) -
  - (i) occurs in a year of charge in which an avoidance, reduction or deferral of liability is effected by or as a result of it,

- (ii) was undertaken by or on behalf of, or in conjunction with, the person concerned, or
  - (iii) was undertaken by or on behalf of, or in conjunction with, more than one person, or
- (c) whether or not the avoidance, reduction or deferral of liability -
- (i) was an intended effect of the transaction or series of transactions, or any of the series of transactions, or
  - (ii) was the only or principal effect.

(4) In this section the expression "avoidance, reduction or deferral" of liability to tax under this Law includes (without limitation) an increase or enhancement in the entitlement of the person concerned to a repayment of tax under this Law."

22. After section 73(3) of the Law of 1975<sup>m</sup> insert the following subsections –

"(4) Where a company's income is comprised solely of income from other sources within section 2(2)(d), the Administrator may, in his discretion, decide not to make an assessment on that company in

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<sup>m</sup> Section 73(3) was inserted by No. IV of 2000.

accordance with subsection (1).

(5) If the Administrator decides not to make an assessment in accordance with subsection (4) -

- (a) the company may request such an assessment when it sends the Administrator its return of income in accordance with section 68, and
- (b) his decision does not affect the status of the company's income as assessable income."

23. For the proviso to section 75 of the Law of 1975 substitute the following -

"Provided that -

- (a) where any form of fraud has been committed by or on behalf of any person in connection with or in relation to tax for the year 1950 or any subsequent year of charge, an assessment or additional assessment on that person to tax for that year may, for the purpose of making good to the States any loss of tax attributable to the fraud, be made at any time,
- (b) where there has been any negligence by or on behalf of any person in connection with or in relation to tax for the year of charge 2001 and any subsequent year of charge, an assessment

or additional assessment on that person to tax for that year may, for the purpose of making good to the States any loss of tax attributable to the negligence, be made at any time not later than 20 years after the end of that year of charge,

notwithstanding that, apart from this section, the time limited by law for the making of the assessment or additional assessment has expired."

24. In section 81A of the Law of 1975<sup>n</sup> –

(a) the title of the section is replaced by the following -

"Collection of tax on certain emoluments and pensions by instalments.",

(b) in subsection (1) for "under the provisions of class (2) of section two of this Law and upon any income chargeable under any other class of the said section two" substitute "arising from offices and employments and any other income chargeable under this Law",

(c) in subsection (2)(c) for "of a class mentioned in section two of this Law other than class (2) thereof" substitute "other than income arising from offices and employments", and

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<sup>n</sup> Section 81A was inserted by Vol. XXVII, p. 118.

- (d) in subsection (3) after "penalty" wherever appearing insert "and any surcharge and additional surcharge".

25. After section 81A of the Law of 1975<sup>0</sup> insert the following section -

**"Collection of tax on distributions and deemed distributions by instalments."**

**81B.** (1) The provisions of this section have effect for the purpose of requiring tax to be deducted when a company distributes any of its undistributed income, subject to and in accordance with regulations made by the Department under this section, notwithstanding -

- (a) that when the distribution is made no assessment has been made in respect of the income to which that distribution relates,
- (b) that the income is in whole or in part income which may be chargeable to tax for some year of charge other than the year of charge during which the distribution is made,
- (c) the provisions of section 43(1) which prescribe the circumstances in which the income of a married woman living with her husband shall be treated as the income of the husband.

(2) Where any distribution of a company's undistributed income is made, tax shall be deducted and withheld therefrom by the person

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<sup>0</sup> Section 81A was inserted by Vol. XXVII, p. 118.

making the distribution in accordance with the provisions of this section.

(3) Tax shall be deducted at -

(a) the individual standard rate (where the person to whom the distribution or deemed distribution is made is an individual), or

(b) the company higher rate (where the person to whom the distribution or deemed distribution is made is a company).

(4) Any tax deducted in accordance with the provisions of subsection (2) shall be applied towards the payment of any tax charged or chargeable upon the person who has borne the deduction for the year of charge in which the distribution is made and for any year of charge prior to that year of charge and any penalty and surcharge and additional surcharge payable by him and where any tax so deducted is greater than such tax payable by that person and any penalty and surcharge and additional surcharge payable by him, the appropriate repayment shall be made by the Administrator.

(5) For the avoidance of doubt if any income from which tax has been deducted has not been included in any assessment of tax made under section 73(2)(a) then the tax deducted from such income shall not, under subsection (4), be applied towards the payment of tax due from that assessment.

(6) The Department may from time to time make regulations for the purposes of carrying out the provisions of this section.



(7) Any regulations made under subsection (5) do not have effect unless and until approved by a resolution of the States.

(8) Any tax deducted by a company from a distribution in accordance with this section shall be payable by the company in such manner and at such times as may be prescribed by or under regulations made under subsection (6).

(9) Where a company fails to deduct from a distribution of undistributed income the tax which it is required to deduct under this section, the amount of the tax shall be payable by the company as if it had been so deducted, and where the amount of any such tax is paid by the company -

- (a) that amount shall be deemed to be tax deducted in accordance with subsection (2),
- (b) that amount shall be recoverable by the company from the person to whom the distribution was made as a civil debt due to the company, and
- (c) that amount is not recoverable by the Administrator from the person to whom the distribution was made.

(10) Where a company fails to pay to the Administrator any tax deducted by it from a distribution in the manner and at the times prescribed by or under this section, the amount is (without prejudice to any

other remedy or penalty under this Law) recoverable by the Administrator from the person to whom the distribution was made.

(11) Every agreement for the making without deduction of tax of any distribution to which this section relates is void.

(12) Where any distribution is made, the company shall make a quarterly return to the Administrator detailing -

- (a) the name of the person to whom the distribution is made,
- (b) the date and amount of the distribution, and
- (c) the date and amount of tax paid.

(13) The quarterly return required under subsection (12) must be filed with the Administrator within 15 days of the relevant reporting date, together with payment for any income tax due under this section and Chapter VIIIA of Part IV.

(14) If the Administrator believes that a company has not complied with the requirements of subsection (13), the Administrator may make an assessment of the tax due or an additional assessment under section 75.

(15) In this section a "distribution" by a company of undistributed income includes a dividend and a deemed distribution of undistributed income under Chapter VIIIA of Part IV, and related expressions shall be construed accordingly."

26. After section 81B of the Law of 1975 (as inserted by section 25 of this Law) insert the following section –

**"Income from service companies.**

**81C.** If an individual ("the worker") personally performs, or is under an obligation personally to perform, services for a business carried on by another person ("the client") and –

- (a) the services are provided not under a contract directly between the client and the worker but under arrangements involving a third person,
- (b) if the services were provided under a contract directly between the client and the worker, the worker would be regarded for the purposes of this Law as an employee of the client,
- (c) there is a corporate or partnership relationship between the worker and the third person, and
- (d) there is no corporate or partnership relationship between the client and the third person, unless the worker or any person connected to him -
  - (i) has, where the client is a company, directly or indirectly control of more than 5 per cent of the issued share capital of the client or any company connected with it, or

- (ii) is, where the client is a partnership, a partner therein,

then the monies paid to, and all expenses of, the third person shall be deemed to be the Class 2(1)(b) income of, and the expenses of, the worker for tax purposes, and section 81A shall apply accordingly as if the worker were the employee of the third person."

27. In section 82(1) and (2) of the Law of 1975 after "penalty" wherever appearing insert "or surcharge or additional surcharge".

28. After section 90(2) of the Law of 1975 insert the following subsection -

"(3) For the purposes of this section the expression "machinery and plant" does not include furnishings."

29. In section 133 of the Law of 1975 after the words "more of those businesses, that person may require" insert ", subject to section 133A,".

30. After section 133 of the Law of 1975 insert the following section -

**"Set off of losses between classes.**

**133A.** Losses from one class may only be set off against the assessable income from another class where those losses and the income are taxed at the same rate, as set out in the Fifth Schedule."

31. In section 135 of the Law of 1975 insert the following subsection -

"(5) This section is subject to section 133A."

32. Paragraphs (ii) and (iii) of section 142A(2)(b)<sup>P</sup> are repealed.

33. In section 153(1)(d) of the Law of 1975 for the words "the penalty prescribed for late payment in section one hundred and ninety-nine of this Law and for the purposes of computing the penalty" substitute "a surcharge or additional surcharge under section 199, for the purposes of calculating which".

34. In section 157A(5A)(c) of the Law of 1975<sup>Q</sup> for the words "the penalty prescribed for late payment in section 198 of this Law, and for the purpose of computing the penalty" substitute "a surcharge or additional surcharge under section 199, for the purposes of calculating which".

35. In section 157A(9)(a)(ii) of the Law of 1975<sup>R</sup> replace the words "class (1)" with "Class(1)(a)".

36. In section 158 of the Law of 1975, in the definition of "full-time working director/employee of a trading company"<sup>S</sup>, replace the words "carrying on business of which the income is chargeable under Class 1 of section 2 of this Law" with "deriving income from business".

37. After section 159 of the Law of 1975 insert the following Part -

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<sup>P</sup> Section 142A was inserted by No. IV of 1997.

<sup>Q</sup> Section 157A(5A)(c) was inserted by No. XXII of 1997.

<sup>R</sup> Section 157A(9)(a)(ii) was inserted by Vol. XXVIII, p. 278.

<sup>S</sup> The definition of "full-time working director/employee of a trading company" was inserted by No. XXII of 1997.

## "PART XIII

## EMPLOYEE BENEFIT TRUSTS &amp; SIMILAR ARRANGEMENTS

**Employee benefit trusts, etc, and deferred benefits.**

**159A.** (1) Where a scheme is established, whether or not as a settlement within the meaning of section 65(4), in connection with the carrying on of a business, and -

(a) the purpose or one or the purposes of the scheme is the provision of benefits for persons who are or who at any time have been or are to be -

(i) employed, or

(ii) the holders of offices,

in connection with the business,

(b) the person carrying on the business ("**the employer**"), or any person on his behalf, is a contributor to the scheme, and

(c) contributions (whether of money or other assets) made to the scheme by or on behalf of the employer are, pending their payment out of the scheme, held by or vested in persons other than persons for whose benefit they are (wholly or in part) to be paid,

then, for the purposes of this Law, but subject to the provisions of subsection (3), no contribution made to the scheme by or on behalf of the employer may be deducted from the income of the employer (or of any other person who made the contribution on behalf of the employer) for the purpose of calculating his liability to tax under this Law unless and until, and except to the extent that -

- (A) the contribution, or money or other assets representing the contribution, has been paid out of the scheme to persons described in paragraph (a), and
- (B) the contribution, or money or other assets representing the contribution, so paid out comprises income which is chargeable to tax in those persons' hands.

(2) For the purposes of this section a contribution of monies or other assets is considered to be made to a scheme by or on behalf of an employer if the monies or other assets are set aside, reserved or otherwise earmarked for the scheme by him or on his behalf.

(3) This section does not apply in respect of -

- (a) a scheme which is an approved scheme within the meaning of Part XIII of this Law,
- (b) any amount paid into the scheme by or on behalf of the employer which, under any other

provision of this Law, is chargeable to tax in the hands of a person described in subsection (1)(a) for the year of charge in which the payment into the scheme is made,

- (c) where the employer is a body corporate with a share capital, a scheme the sole purpose of which is to confer, on persons described in subsection (1)(a), options to acquire shares in the employer, or
- (d) any contribution made by or on behalf of the employer before the date of commencement of the Income Tax (Zero 10) (Guernsey) Law, 2007."

**38.** In section 166(4) of the Law of 1975 for the words "the penalty prescribed for late payment in section one hundred and ninety-nine of this Law, and for the purposes of computing the penalty" substitute "a surcharge or additional surcharge under section 199, for the purposes of calculating which".

**39.** In section 179(1) of the Law of 1975 replace the words "class (4) under the provisions" with "Class (1)(d)".

**40.** Section 187A of the Law of 1975<sup>t</sup> is repealed.

**41.** Part XVIIIA of the Law of 1975<sup>u</sup> ("International Bodies" - sections

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<sup>t</sup> Section 187A was inserted by No. XIV of 1989.



188A to 188G) is repealed.

**42.** For the heading to Part XVIII of the Law of 1975 ("Penalties") substitute "Penalties, surcharges and supplements".

**43.** After section 189(b) of the Law of 1975<sup>v</sup> insert the following words–

"The amount of tax referred to in paragraphs (a) and (b) shall be (for the purposes of determining the amount of the penalty) calculated at the highest rate of tax set out in the Fifth Schedule, notwithstanding the rate of tax for the class or classes in which the person's income falls."

**44.** In section 191 of the Law of 1975 after the words "the return actually made was correct and complete:" insert the following words –

"The amount of tax referred to in this section shall be (for the purposes of determining the amount of the penalty) calculated at the highest rate of tax set out in the Fifth Schedule, notwithstanding the rate of tax for the class or classes in which the person's income falls."

**45.** In section 192 of the Law of 1975 after the words "in respect of any of the allowances to individuals." insert the following words –

"The amount of tax referred to in this section shall be (for the purposes of determining the amount of the penalty) calculated at the highest rate of tax set out in the Fifth Schedule, notwithstanding the rate of tax for the class or classes in which the person's income falls."

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<sup>u</sup> Part XVIII A was inserted by No. VII of 1995.

<sup>v</sup> Section 189(b) was inserted by No. VI of 1992.

46. After section 193A of the Law of 1975<sup>w</sup> insert the following section

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**"Penalties for contravention of section 81B and regulations made thereunder."**

**193B.** (1) A company which fails to submit to the Administrator any form, schedule or list which it is required to submit by any provision of section 81B or of any regulations made thereunder within the time prescribed by that provision is liable to a penalty not exceeding £300 and in addition to a further penalty not exceeding £50 for every day after the date of the imposition of the original penalty during which the failure continues.

(2) A company which fails to comply with any provision of section 81B or of any regulations made thereunder requiring it to keep any record or provide any document to a member at or within a time prescribed by that provision is liable to a penalty not exceeding £300 and in addition to a further penalty not exceeding £50 for every day after the date of the imposition of the original penalty during which the failure continues."

47. In section 195(1) of the Law of 1975 after the words "no reduction being made in respect of any of the allowances to individuals." insert the following words -

"The amount of tax referred to in this paragraph shall be (for the purposes of determining the amount of the penalty) calculated at the highest rate of tax set out in the Fifth Schedule, notwithstanding the rate of tax for the class or

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<sup>w</sup> Section 193A was inserted by Vol. XXVII, p. 118.

classes in which the person's income falls."

**48.** In section 199(3) and 199(7) of the Law of 1975<sup>x</sup> delete the words "Treasury and Resources".

**49.** After section 199(12) of the Law of 1975<sup>y</sup> insert the following subsection -

"(13) For the avoidance of doubt a surcharge or additional surcharge -

(a) is not a penalty for the purposes of this Law,  
and

(b) is payable in addition to any penalty under this Law."

**50.** In section 199A(3) of the Law of 1975<sup>z</sup> delete the words "Treasury and Resources".

**51.** For section 201 of the Law of 1975 substitute the following -

**"Discretion to prosecute in cases involving fraud, etc.**

**201.** (1) Notwithstanding any provision of this Law, a person who contravenes subsection (4) or (5) is guilty of an offence and may be prosecuted.

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<sup>x</sup> Section 199 was substituted by No. VII of 2006.

<sup>y</sup> Section 199 was substituted by No. VII of 2006.

<sup>z</sup> Section 199A was inserted by No. VII of 2006.

(2) A prosecution for an offence under subsection (1) is instead of any proceedings that might be taken by the Administrator against the person concerned under section 200 in relation to that contravention.

(3) A person prosecuted for an offence under subsection (1) is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding -

(i) twice the maximum penalty which the Administrator could have imposed had the case been dealt with by him, or

(ii) in a case where the Administrator could not have dealt with the matter by way of penalty, twice level 5 on the uniform scale,

or to both such imprisonment and fine,

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

(i) not exceeding four times the maximum penalty which the Administrator could have imposed had the case been dealt with by him, or

- (ii) in a case where the Administrator could not have dealt with the matter by way of penalty, of four times level 5 on the uniform scale,

or to both such imprisonment and fine.

(4) A person shall not -

- (a) in any return, form, schedule, notification or other document which he, or any person on whose behalf he is acting, is required or authorised to provide by or under this Law or any Ordinance or regulation under it,

(b) for the purpose of obtaining -

- (i) any relief or exemption from, or any repayment of, or any reduction in liability to, tax, penalties, surcharges or additional surcharges under this Law, or

- (ii) any supplement or additional supplement under section 199A,

either on his own behalf or on that of any other person,

- (c) in purported compliance with any requirement imposed by or under, or otherwise for the purposes of, this Law or any Ordinance or regulation under it,
- (d) in proceedings before the Department or the Guernsey Tax Tribunal, or
- (e) otherwise than as mentioned in paragraphs (a) to (d) but in circumstances in which he intends, or could reasonably be expected to know, that the statement, information or document made, produced or furnished by him would or might be used by the Administrator, the Department or the Guernsey Tax Tribunal for the purpose of exercising their respective functions,

do any of the following -

- (i) make a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) dishonestly or otherwise, recklessly make a statement which is false, deceptive or misleading in a material particular,
- (iii) produce or furnish or cause or permit to

be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

(iv) dishonestly or otherwise, recklessly produce or furnish or recklessly cause or permit to be produced or furnished any information or document which is false, deceptive or misleading in a material particular, or

(v) fraudulently do, or omit to do, any other act whatsoever.

(5) A person shall not, without reasonable excuse -

(a) fail to give notice to the Administrator that he is chargeable to tax within such time, in such form and manner, and containing such information and particulars, as may be required by or under the provisions of this Law or any Ordinance or regulation under it, or

(b) fail to provide a return of income or any other return, form, schedule, notification or other document which he is required to provide by or under those provisions within such time, in such form and manner, and containing such

information and particulars, as may be required by or under those provisions.

(6) In this section "**statement**" includes a written or oral statement or representation."

**52.** In section 202(1) of the Law of 1975 replace the words "class (4)" with "Class (1)(d) or Class (2)(d)".

**53.** In section 203A(1)(b) of the Law of 1975<sup>aa</sup>, after "provision as to the creation and punishment of offences" insert "and provision amending any enactment".

**54.** Section 204 of the Law of 1975 is repealed.

**55.** After section 208B of the Law of 1975<sup>bb</sup> insert the following section-

**"Power to amend Law by Ordinance.**

**208C.** (1) The States may by Ordinance -

- (a) amend this Law, and
- (b) make such other provision as they think fit for the purposes of carrying this Law into effect.

(2) The provisions of subsection (1) are without prejudice to any other provision of this Law conferring power to enact Ordinances or

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<sup>aa</sup> Section 203A was inserted by No. XVII of 2005.

<sup>bb</sup> Section 208B was inserted by No. VII of 2006.



regulations (and vice versa).

(3) An Ordinance under this section may, for the avoidance of doubt, and without limitation -

- (a) create new liabilities (including, without limitation, liabilities to new classes or descriptions of tax or enhanced liabilities to existing classes or descriptions of tax), obligations, penalties and offences,
- (b) repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law, and
- (c) empower the Department and any other body (including, without limitation, any court in Guernsey or Alderney) to make or issue orders, rules, regulations, codes or guidance as to matters in respect of which an Ordinance can be made under this Law."

**56.** In section 209 of the Law of 1975 -

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

**"calendar quarter"** means a period of 3 consecutive calendar months expiring on any of the reporting dates,

**"class"** means one of the classes of income set out in section

2,

"**income from banking business**" has the meaning assigned to it in the Fourth Schedule,

"**reporting dates**" shall be 31 March, 30 June, 30 September and 31 December of any calendar year,

- (b) in the definition of "Department"<sup>cc</sup> for "the Department constituted under the provisions of section two hundred and four of this Law" substitute "the Treasury and Resources Department".

57. After the Third Schedule to the Law of 1975<sup>dd</sup> insert the following Schedules -

#### **"FOURTH SCHEDULE**

Section 2(2)(a)

#### **BANKING BUSINESS**

1. For the purposes of this Law "**banking business**" shall mean business carried on by a bank that is a licensed institution under the Banking Supervision (Bailiwick of Guernsey) Law, 1994.

2. "**Income from banking business**" shall be any income -

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<sup>cc</sup> The word "Department" was substituted for the word "Authority" by Ordinance XXXIII of 2003.

<sup>dd</sup> The Third Schedule was added by No. XXVI of 1990.

- (1) arising from the reinvestment or utilisation of customer deposits including any ancillary or administrative income arising therefrom (including fees and commissions), or
- (2) which is funded by the amount of capital needed to satisfy the bank's minimum regulatory requirements under the Banking Supervision (Bailiwick of Guernsey) Law, 1994,

including interest on income, gains and losses (including exchange gains and losses), payments and receipts from transactions in related derivatives together with any associated fee income.

For the avoidance of doubt, income arising from capital surplus to the bank's regulatory requirements is not income from banking business.

For the purpose of this paragraph "**customer deposits**" shall include current, call, omnibus, notice, and fixed deposit accounts, certificates of deposit, bonds, structured products and other similar investment products.

3. This Schedule may be amended by regulations of the Department.

## **FIFTH SCHEDULE**

Section 5(2)

### **INCOME TAX RATES**

| <b>Classes of individuals' income</b> |  | <b>Rate description</b>    | <b>Rate</b> |
|---------------------------------------|--|----------------------------|-------------|
| 2(1)(a)                               | Income from businesses   | ) individual standard rate | 20%         |
| 2(1)(b)                               | Income from offices and employments  |                            | 20%         |
| 2(1)(c)                               | Income from the ownership of lands and buildings   |                            | 20%         |
| 2(1)(d)                               | Income from other sources.   |                            | 20%         |
| <b>Classes of companies' income</b>   |  |                            |             |
| 2(2)(a)                               | Income from banking business   | company intermediate rate  | 10%         |
| 2(2)(b)                               | Income from trading activities regulated by the Office of the Director General of Utility Regulation | ) company higher rate      | 20%         |
| 2(2)(c)                               | Income from the ownership of lands and buildings   |                            | 20%         |
| 2(2)(d)                               | Income from businesses, offices and employments, and other sources                                   | company standard rate      | 0%          |

## SIXTH SCHEDULE

Section 39B

### LIMIT ON TAX PAYABLE BY AN INDIVIDUAL

An individual resident in Guernsey shall pay a maximum of £250,000 in tax in a year of charge, in respect of income from the following sources –

#### **Qualifying income**

- (1) Any income derived from non-Guernsey sources, including:
  - (a) income from businesses,
  - (b) income from offices and employments,
  - (c) income from the ownership of lands and buildings, and

- (d) income from other sources.
- (2) Income derived from a body which falls within category A, B or C of the Income Tax (Exempt Bodies) (Guernsey) Ordinance, 1989.
- (3) Any interest arising in Guernsey upon money deposited with a licensed institution or other person exempted from the requirement to be licensed under the provisions of the Banking Supervision (Bailiwick of Guernsey) Law, 1994.

Income tax on income from any other sources shall not be subject to this limit."

**Amendments to the Income Tax (Exempt Bodies) (Guernsey) Ordinance, 1989**

**58.** In the Income Tax (Exempt Bodies) (Guernsey) Ordinance, 1989, as amended<sup>ee</sup> -

- (a) in section 1(1)(c)(i) for "a category A, B, C or E body" substitute "a category A, B or C body",
- (b) sections 1(1)(c)(ii) and 1(2) are repealed,
- (c) in paragraph (i) of the proviso to section 2(1) for "a category A, B, C or D body" substitute "a category A, B or C body",
- (d) paragraph (ii) of the proviso to section 2(1) is repealed,
- (e) section 2(2)(d) is repealed,

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<sup>ee</sup> Recueil d'Ordonnances Tome XXV, p. 106; Tome XXVI, p. 41; No. I of 1995; No. VI of 1996; (No. I of 1995 never came into force and was repealed by No. VI of 1996); No. XXXIX of 1997; and No. XXXVII of 2006.

- (f) in section 3(1) for "a category A, B, C or E body" substitute "a category A, B or C body",
- (g) section 3(2) is repealed,
- (h) section 3A is repealed,
- (i) for section 5(1) substitute -  
  
"(1) The annual fee is £600.",
- (j) in section 6(b) the words "(other than information required under condition 2 of Category D in Schedule 2 to be disclosed to the Financial Services Commission)" are repealed,
- (k) in section 7(3)(a) for "a category A, B, C, D or E body" substitute "a category A, B or C body",
- (l) in schedule 1 the entries relating to categories D and E are repealed,
- (m) in schedule 2 the entries relating to categories D and E are repealed,
- (n) schedule 3 is repealed, and
- (o) in schedule 4, paragraphs 3 and 4 are repealed.

**Citation.**

**59.** This Law may be cited as the Income Tax (Zero 10) (Guernsey) Law, 2007.

**Commencement.**

**60.** This Law shall have effect, by virtue of the States' resolution of the 26<sup>th</sup> September, 2007<sup>ff</sup>, under and subject to the provisions of the Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992<sup>gg</sup>, on and from the 1<sup>st</sup> January, 2008, as if it were a Law sanctioned by Her Majesty in Council and registered on the records of the Island of Guernsey.

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<sup>ff</sup> Article \*\* of Billet d'État No. \*\* of 2007.

<sup>gg</sup> Order in Council No. XI of 1992.

# PROJET DE LOI

ENTITLED

## **The Guernsey Bar and Overseas Lawyers (Bailiwick of Guernsey) Law, 2007**

ARRANGEMENT OF SECTIONS

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Schedule: Powers

# PROJET DE LOI

ENTITLED

## **The Guernsey Bar and Overseas Lawyers (Bailiwick of Guernsey) Law, 2007**

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

### PART I

#### INCORPORATION OF THE GUERNSEY BAR

##### **Incorporation of the Guernsey Bar.**

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

(2) The Bar –

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

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

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

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<sup>a</sup> Article VII of Billet d'Etat XIX of 2007.

**Objects.**

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

- (i) do all such things as are reasonably incidental or conducive to the attainment of those objects.

**Power to make regulations.**

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

**Rules as to the conduct and management of affairs.**

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

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

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

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

to any subcommittee appointed by it under the Rules,

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

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

(b) sanctioned by the Royal Court.

**Officers.**

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

(a) the Bâtonnier,

(b) the Deputy Bâtonnier,

(c) the Secretary, and

(d) the Treasurer,

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

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

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

**Members of the Council.**

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

**Membership of the Bar.**

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

shall be a member of the Bar.

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

**Liability of Members.**

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

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

**Property to vest in the Bar.**

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



**Annual General Meetings.**

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

**Accounts and Audits.**

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

**Registered office.**

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

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

**Application of assets and income.**

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

**The Register of Advocates.**

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

(2) The Register -

(a) need not be kept in documentary form, and

- (b) for each Advocate registered, shall contain -
  - (i) his name,
  - (ii) the address of -
    - (A) any firm, or
    - (B) any institution,from which he practises,
  - (iii) all professional legal qualifications that he holds,
  - (iv) the date of all qualifications in (iii),
  - (v) the details of any professional conduct complaint proved against him in any jurisdiction,
  - (vi) the disposal of any complaint in (v),
  - (vii) any convictions or cautions for any offence committed in any jurisdiction and which was punishable by a term of imprisonment exceeding 2 years,
  - (viii) any sentence consequent upon any conviction in (vii),  
and
  - (ix) the date of his admission to the Guernsey Bar.

- (3) An Advocate shall -

- (a) provide to Her Majesty's Greffier at his request any information which must be contained in the Register, and
- (b) give notice of any change of any information contained in the register to Her Majesty's Greffier within 14 days of that change.

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

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

(5) An application for deregistration under subsection (4)(a) shall be made in such form and manner as the Royal Court may by order determine.

(6) Upon -

- (a) receipt of an application under subsection (4)(a), or
- (b) the Royal Court disbarring an Advocate,

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

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

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

- (b) recklessly provides, causes or permits to be provided any information or document which is false, misleading or deceptive in a material particular, or
- (c) knowingly or recklessly fails to make full disclosure of the information required of him,
- (d) knowingly or recklessly fails to give notice of any material change of any information contained in the Register within 14 days of that change,

shall be guilty of an offence.

- (8) A person guilty of an offence under subsection (7) is liable –
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

**Offences.**

- 15. (1) A person who falsely or recklessly –
  - (a) claims to be, or
  - (b) uses any name, title or other description which tends to –
    - (i) imply, or

- (ii) mislead the public,

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

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

- (a) who is not -

- (i) an Advocate,

- (ii) a consultant to an Advocate or firm of Advocates, or

- (iii) employed or otherwise supervised by an Advocate, and

- (b) who -

- (i) gives advice to another person on the law of the Bailiwick or one of the jurisdictions in the Bailiwick,  
or

- (ii) draws up a contract for another person,

is guilty of an offence.

(3) It shall be a defence for a person to prove that when he gave advice or drew up a contract (as the case may be), he represented to the other person that he did not fall within the list of persons in subsection (2)(a).

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

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

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

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

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

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

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

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

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

(4) The President shall -

- (a) make his decision to give or withhold his approval in writing,  
and
- (b) send it to the relevant Advocate and to the Registrar.

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

- (a) to give his approval, or
- (b) to give his approval –
  - (i) without specifying any conditions, or
  - (ii) with the conditions in the terms specified.

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

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

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

- (9) When disposing of an appeal, the Royal Court –
  - (a) shall give a reasoned decision in writing,

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

PART II  
DISCIPLINE OF ADVOCATES

**The Chambre de Discipline.**

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

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

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

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

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

**The Chambre Panels.**



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

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

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

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

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

- (ii) of at least 15 years' standing, and
- (iii) not -
  - (A) an elected officer of the Bar, or
  - (B) a member of the Bar Council, and
- (c) **"senior lawyer"** if he is -
  - (i) in any jurisdiction in the British Islands, a -
    - (A) practitioner, or
    - (B) member of the judiciary,

of at least 15 years' standing, and
  - (ii) not an Advocate.
- (3) A member of a panel shall -
  - (a) be appointed as a member of that panel for a term not exceeding 5 years, but may continue to hear any complaint in respect of which he had been selected as a member of the Chambre before the expiry of that term, and
  - (b) not be eligible for reappointment within a period of 5 years of the expiry of his previous term of appointment.

- (4) A member of a panel may -
- (a) resign by notice in writing delivered to the Appointments Committee, and
  - (b) only be removed from that panel -
    - (i) on ceasing to be eligible to be a member of that panel,
    - (ii) if he is -
      - (A) an Advocate or senior lawyer who is a practitioner, on being suspended from practice or disbarred, or
      - (B) a senior lawyer who is a member of the judiciary, on being suspended or removed from office,
    - (iii) on becoming bankrupt, and
    - (iv) on grounds of -
      - (A) misconduct, or
      - (B) incapacity,
- proved to the satisfaction of the Royal Court.

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

**The President of the Chambre.**

19. (1) The President of the Chambre ("**the President**") shall -
- (a) be selected by the Appointments Committee from the panel of lay persons, and
  - (b) hold office for a period not exceeding 5 years.
- (2) The President shall have the responsibility for -
- (a) considering with the Bâtonnier whether a complaint should be referred to the Registrar,
  - (b) selecting the members of the Chambre to hear a complaint,
  - (c) giving directions for the management of any complaint before the Chambre, and
  - (d) giving approval to an Advocate to permit him to employ, retain or remunerate a person who has been suspended from practice as an Advocate or disbarred.
- (3) The President may -
- (a) resign by notice in writing delivered to the Bâtonnier, and
  - (b) only be removed from office before the expiry of his term -
    - (i) on ceasing to be eligible to be a member of the panel of lay persons,

(ii) on becoming bankrupt, and

(iii) on grounds of -

(A) misconduct, or

(B) incapacity,

proved to the satisfaction of the Royal Court.

(4) For the avoidance of doubt, the President may also be appointed a member and as the President of the Overseas Lawyers' Tribunal.

**The Registrar of the Chambre.**

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

(2) The Registrar shall be responsible for -

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

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

(c) the provision of advice and assistance to -

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

(ii) the Chambre.

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

(4) The Registrar may –

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

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

(i) on becoming bankrupt, and

(ii) on grounds of –

(A) misconduct, or

(B) incapacity,

proved to the satisfaction of the Royal Court.

(6) For the avoidance of doubt, the Registrar may also be appointed as the Registrar of the Overseas Lawyers' Tribunal.

**Action upon receipt of a complaint.**

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

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

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

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

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

- (a) the respondent to comment in writing on the complaint, and
- (a) the complainant to respond in writing to any comment made by the respondent.

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

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

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

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

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

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

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

as he thinks fit in all the circumstances.

**Investigation and initial disclosure.**

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

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

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



- (d) request any legal advice,

as he considers may bear upon the facts of the complaint.

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

- (a) require the respondent -

- (i) to produce or deliver, or

- (ii) to cause to be produced or delivered,

to him any relevant documents in the custody or control of the respondent or his firm or institution, and

- (b) retain possession of those documents until his investigation and any disciplinary proceedings that arise from the investigation are completed.

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

- (a) legal professional privilege, or

- (b) any rule against self-incrimination.

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

- (a) to investigate the complaint, or

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

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

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

- (7) For the purposes of subsection (6), a statement of facts shall include –
  - (a) the name of the complainant,

- (b) the specific allegations in reasonable particularity, and
- (c) a summary of the evidence in support of the complaint.

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

**Selection of members to constitute the Chambre.**

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

**Directions.**

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

**Proceedings of the Chambre.**

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

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

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

- (a) no report shall be published which -
  - (i) reveals his name, address or school, or

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

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

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

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

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

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

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

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

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

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

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

**Powers of Chambre to take evidence.**

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

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

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

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

**Decision of and disposals available to the Chambre.**

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

- (a) by dismissing it, or
- (b) if it is satisfied the complaint is proved and that it constitutes professional misconduct by the respondent, by disposing of it -
  - (i) by privately reprimanding him,
  - (ii) by publicly rebuking him,
  - (iii) by fining him in a sum not exceeding level 3 on the uniform scale,

- (iv) by ordering that he completes such training of such nature and duration as the Chambre shall direct and to provide satisfactory proof of compliance with this order to the Chambre,
- (v) by suspending him from practice as an Advocate for a period not exceeding 3 months, or
- (vi) by referring the complaint to the Royal Court for consideration of –
  - (A) fining him in a sum exceeding level 3 on the uniform scale,
  - (B) suspending him for a period of 3 months or more, or
  - (C) disbarring him.

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

- (3) The Chambre shall send a copy of its reasoned decision to –
- (a) the complainant,
  - (b) the Registrar,
  - (c) the respondent, and

(d) Her Majesty's Procureur.

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

**Appeals against decisions of the Chambre.**

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

(a) the Registrar, and

(b) the respondent.

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

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

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

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

(a) shall give a reasoned decision in writing,



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

**Reference by the Chambre to the Royal Court.**

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

- (2) The Royal Court shall afford an opportunity to –
  - (a) the Registrar or an Advocate instructed by him to present the facts as found by the Chambre, and
  - (b) the respondent to be heard.
- (3) The Royal Court may deal with the complaint -
  - (a) by privately reprimanding the respondent,
  - (b) by publicly rebuking him,
  - (c) by fining him,
  - (d) by ordering him to complete such training of such nature and duration as the Royal Court shall direct and to provide satisfactory proof of compliance with that order to the Royal Court,

- (e) by suspending him from practice as an Advocate, or subjecting his practice as an Advocate to conditions, for a specified period, or
- (f) by disbarring him.

(4) The Royal Court may make any order as to the costs of the proceedings before the Court as it thinks fit.

### **Appeal to the Court of Appeal.**

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

- (a) the Registrar, and
- (b) the respondent.

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

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

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

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<sup>b</sup> Ordres en Conseil Vol. XVIII, p. 315.

- (a) confirm or reverse the decision of the Royal Court, and
- (b) substitute any disposal listed in section 28 or 29 (as the case may be) for the disposal made by the Royal Court.

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

**Performance of functions by the Deputy Bâtonnier.**

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

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

**PART III  
OVERSEAS LAWYERS**

**Interpretation.**

**32.** For the purposes of this Law -

- (a) an "**Overseas Lawyer**" means a person who -
  - (i) is a member of a legal profession regulated within a jurisdiction outside the Bailiwick, and

- (ii) provides or holds himself out as providing legal services from within the Bailiwick to any client, whether in the Bailiwick or elsewhere,

but does not include a person who is an Advocate, a member of the judiciary of the Bailiwick, or acting as an arbitrator or umpire (whether appointed by virtue of an arbitration agreement, by a court or by any other means),

(b) **"legal services"** includes -

- (i) services which it would be reasonable to expect a person to provide when that person is exercising, or contemplating exercising,

- (A) a right of audience, or

- (B) a right to conduct litigation,

in relation to any proceedings, or contemplated proceedings,

- (ii) the preparation of transfers, conveyances, contracts and other documents in connection with, and other services ancillary to, the disposition or acquisition of estates or other interests in land or other real property,
- (iii) the preparation of transfers, contracts and other documents in connection with, and other services ancillary to, the disposition or acquisition of any interest in personal property,

- (iv) the drawing or preparation of any papers on which to found or oppose a grant of probate, in respect of the administration of the estate of a deceased person, or any related services, and
  - (v) the provision of advice, however communicated, on the law or procedure of any jurisdiction, and
- (c) "**proceedings**" means proceedings in any court.

**The Register of Overseas Lawyers.**

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

- (2) The Overseas Register -
- (a) need not be kept in documentary form, and
  - (b) for each Overseas Lawyer registered, shall contain -
    - (i) his name,
    - (ii) any address in the Bailiwick from where he provides or holds himself out as providing legal services,
    - (iii) any telephone and fax numbers for the address in (ii),
    - (iv) all professional legal qualifications that he holds,
    - (v) the date of all qualifications in (iv),

- (vi) the jurisdiction in which the Overseas Lawyer is a member of a regulated legal profession,
- (vii) the date of his admission as such a member,
- (viii) the date of his entitlement to practice as such (if different),
- (ix) any convictions or cautions for any offence committed in any jurisdiction and which was punishable by a term of imprisonment exceeding 2 years,
- (x) any sentence consequent upon any conviction in (ix),
- (xi) the details of any professional conduct complaint proved against him in any jurisdiction,
- (xii) the disposal of any complaint in (xi), and
- (xiii) any other proceedings in respect of him concerning money laundering or terrorist financing.

(3) An Overseas Lawyer shall give notice of any change of any information contained in the Overseas Register to Her Majesty's Greffier within 14 days of that change.

**Registration of Overseas Lawyers.**

**34.** (1) An Overseas Lawyer who provides or holds himself out as providing legal services from within the Bailiwick shall apply to Her Majesty's Greffier to be registered in the Overseas Register.

(2) An application for registration shall be made in such form and manner as the Royal Court may by order determine and shall be accompanied by -

- (a) evidence that the applicant satisfies the requirements of section 32(a),
- (b) the information required to be contained in the Overseas Register, and
- (c) the appropriate fee.

(3) On an application under subsection (1), Her Majesty's Greffier shall register the applicant in the Overseas Register if satisfied that he is an Overseas Lawyer within section 32(a).

**Deregistration of Overseas Lawyers.**

**35.** (1) An Overseas Lawyer may be deregistered from the Overseas Register

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

(2) An application for deregistration under subsection (1)(a) shall be made in such form and manner as the Royal Court may require.

(3) Where the Overseas Lawyers' Tribunal makes an order recommending that the Overseas Lawyer be deregistered, it shall immediately send a copy of that order to the Royal Court.

- (4) Upon –
- (a) receipt of an application under subsection (1)(a), or
  - (b) the Royal Court making an order to deregister an Overseas Lawyer,

Her Majesty's Greffier shall deregister the Overseas Lawyer.

- (5) Upon –
- (a) receipt of an order recommending the deregistration of an Overseas Lawyer, or
  - (b) receipt by the Court or Her Majesty's Greffier of information that the Overseas Lawyer no longer satisfies the requirements of section 32(a),

the Royal Court shall, prior to making a decision as to whether the Overseas Lawyer should be deregistered, give him an opportunity to be heard as to why he should not be deregistered.

(6) When the Overseas Lawyer has been given an opportunity to be heard under subsection (5), the Royal Court may –

- (a) make an order requiring the Overseas Lawyer to produce further information in such form and in such period as it sees fit,
- (b) order that he be deregistered, or



(c) make no order.

(7) Upon the expiry of any period in which the Royal Court has required the production of further information under subsection (6)(a), it may -

(a) order that the Overseas Lawyer be deregistered, or

(b) make no order.

**Annual registration fee.**

36. (1) The Overseas Lawyer shall send to Her Majesty's Greffier each year on or before a date specified by order of the Royal Court the appropriate fee for his annual registration on the Overseas Register.

(2) If an Overseas Lawyer does not send the appropriate fee to Her Majesty's Greffier by the date specified, Her Majesty's Greffier shall deregister the Overseas Lawyer from the Overseas Register.

**Fees.**

37. The Royal Court may by order prescribe the appropriate fee for -

(a) an application for registration under section 34, and

(b) annual registration under section 36.

**Offences.**

38. (1) An Overseas Lawyer who -

(a) provides or holds himself out as providing legal services to any other person, and

- (b) is not registered on the Overseas Register,

is guilty of an offence.

- (2) An Overseas Lawyer who, pursuant to the requirements of section 34

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- (a) provides, causes or permits to be provided any information or document which he knows or believes to be false, misleading or deceptive in a material particular,
- (b) recklessly provides, causes or permits to be provided any information or document which is false, misleading or deceptive in a material particular, or
- (c) knowingly or recklessly fails to make full disclosure of the information required of him,
- (d) knowingly or recklessly fails to give notice of any material change of any information contained in the Overseas Register within 14 days of that change,

shall be guilty of an offence.

- (3) A person guilty of an offence under subsection (1) or (2) is liable -
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
  - (b) on conviction on indictment, to imprisonment for a term not

exceeding 2 years, or to a fine, or to both.

(4) In addition to any other sentence imposed in respect of an offence under subsection (2), if the Overseas Lawyer has been registered –

(a) the Magistrate's Court may recommend, and

(b) the Royal Court may order,

that the Overseas Lawyer be deregistered.

#### PART IV

#### DISCIPLINE OF OVERSEAS LAWYERS

##### **The Overseas Lawyers' Tribunal.**

39. (1) The Overseas Lawyers' Tribunal ("**the Tribunal**") shall hear any complaint made by a supervisory agency concerning an Overseas Lawyer in respect of a breach of the Proceeds of Crime Regulations.

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

(a) a lay person,

(b) a practising lawyer, and

(c) a senior lawyer.

(3) The proceedings of the Tribunal shall be inquisitorial in their nature.

##### **The Tribunal Panels.**

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

- (a) the Bailiff, and
- (b) the Senior Jurat,

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

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

- (a) "**lay person**" if he is not and has not ever been a member of a legal profession in any jurisdiction,
- (b) "**practising lawyer**" if he -
  - (i) is a practitioner, and
  - (ii) is of at least 15 years' standing, and
- (c) "**senior lawyer**" if he is a -
  - (i) practitioner, or
  - (ii) member of the judiciary,

of at least 15 years' standing in any jurisdiction in the British Islands, and

(3) A member of a panel shall -

- (a) be a member of that panel for a term not exceeding 5 years, but may continue to hear any complaint in respect of which he had been selected as a member of the Tribunal before the expiry of that term, and
  - (b) not be eligible for reappointment within a period of 5 years of the expiry of his previous term of appointment.
- (4) A member of a panel may only be removed from that panel -
- (a) on resigning, by notice in writing delivered to the Appointments Committee,
  - (b) on ceasing to be eligible to be a member of that panel,
  - (c) if he is in practice, on being suspended from practice,
  - (d) on becoming bankrupt, and
  - (e) on grounds of -
    - (i) misconduct, or
    - (ii) incapacity,

proved to the satisfaction of the Royal Court.

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

**The President of the Tribunal.**

41. (1) The President of the Tribunal ("**the Tribunal President**") shall -
- (b) be selected by the Appointments Committee from the panel of lay persons, and
  - (b) hold office for a period not exceeding 5 years.
- (2) The Tribunal President shall have responsibility for -
- (a) selecting the members of the Tribunal to hear a complaint, and
  - (b) giving directions for the management of any complaint before the Tribunal.
- (3) The Tribunal President may -
- (a) resign by notice in writing delivered to the Appointments Committee, and
  - (b) only be removed from office before the expiry of his term -
    - (i) on ceasing to be eligible to be a member of the panel of lay persons,
    - (ii) on becoming bankrupt, and
    - (iii) on grounds of -
      - (A) misconduct, or
      - (B) incapacity,

proved to the satisfaction of the Royal Court.

(4) For the avoidance of doubt, the Tribunal President may also be appointed (if eligible) as a member and as the President of the Chambre.

**The Registrar of the Tribunal.**

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

(2) The Tribunal Registrar shall be responsible for -

- (a) the collection and presentation of evidence in respect of a complaint made against an Overseas Lawyer,
- (b) the organisation of hearings of the Tribunal, and
- (c) the provision of advice and assistance to -
  - (i) the Tribunal President, and
  - (ii) the Tribunal.

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

(4) The Tribunal Registrar may -

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

- (b) only be removed from office before the expiry of his term -
    - (i) on becoming bankrupt, and
    - (ii) on grounds of -
      - (A) misconduct, or
      - (B) incapacity,
- proved to the satisfaction of the Royal Court.

(5) For the avoidance of doubt, the Tribunal Registrar may also be appointed as the Registrar of the Chambre.

**Investigation and initial disclosure.**

**43.** (1) Upon receipt of a complaint against an overseas lawyer, the Tribunal Registrar shall make such investigations in respect of that complaint as he thinks fit.

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

- (a) take statements from any witness as to fact (including the complainant, the respondent and any third party),
- (b) gather any document or other evidence,
- (c) instruct any expert witness, and
- (d) request any legal advice,



as he considers may bear upon the facts of the complaint.

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

(a) require overseas lawyer -

(i) to produce or deliver, or

(ii) to cause to be produced or delivered,

to him any relevant documents in the custody or control of the respondent or his firm or institution, and

(b) retain possession of those documents until his investigation and any disciplinary proceedings that arise from the investigation are completed.

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

(a) legal professional privilege, or

(b) any rule against self-incrimination.

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

(a) to investigate the complaint, or

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

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

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

- (7) For the purposes of subsection (6), a statement of facts shall include –
- (a) the name of the complainant,

- (b) the specific allegations in reasonable particularity, and
- (c) a summary of the evidence in support of the complaint.

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

**Selection of members to constitute the Tribunal.**

**44.** (1) The members of the Tribunal constituted to hear a complaint shall be selected from each of the Panels in accordance with section 39(2) by the Tribunal President.

(2) As the practising lawyer, the Tribunal President shall select a member who is entitled to practise in –

- (a) the same jurisdiction outside the Bailiwick, or
- (b) the most nearly analogous jurisdiction outside the Bailiwick,

as the Overseas Lawyer.

(3) As the senior lawyer, the Tribunal President shall select a member who is not entitled to practise in the same jurisdiction outside the Bailiwick as the overseas Lawyer

**Directions.**

**45.** Upon receipt of a complaint, the Tribunal President shall give such directions as he sees fit to ensure that a complaint is considered fairly and expeditiously.

**Proceedings of the Tribunal.**

**46.** (1) Subject to subsection (2), the Tribunal shall hear any complaint in private.

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

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

(4) Any question shall be determined by a simple majority of the members of the Tribunal.

(5) The standard of proof when determining if the complaint is proved is the civil standard of proof (that is, the balance of probabilities).

(6) The Tribunal shall be master of its own procedure but in any event shall afford an opportunity to -

(a) the Tribunal Registrar -

(i) to be heard,

(ii) to call evidence, and

(iii) to cross-examine any witness, and

(b) the Overseas Lawyer -

(i) to be heard,

- (ii) to give and call evidence on his own behalf, and
- (iii) to cross-examine any witness.

**Powers of Tribunal to take evidence.**

47. (1) Without prejudice to any power of the President to make any direction under section 45, the Tribunal may, by notice in writing, signed by its chairman, require a person -

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

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

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

**Decision of and disposals available to the Tribunal.**

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

- (a) by dismissing it, or
- (b) if it is satisfied the complaint is proved and that it constitutes a

breach of the Proceeds of Crime Regulations –

- (i) by publicly rebuking the Overseas Lawyer,
- (ii) by fining him in a sum not exceeding level 3 on the uniform scale,
- (iii) by ordering the Overseas Lawyer to comply with such conditions in respect of his practice within such period as the Tribunal sees fit and to provide satisfactory proof of compliance with this order to the Tribunal, or
- (iv) by recommending to the Royal Court that the Overseas Lawyer is deregistered.

(2) The Tribunal may, in addition to the disposals listed in subsection (1), order that the Overseas Lawyer pay the reasonable costs or a proportion of the reasonable costs of the proceedings.

(3) The Tribunal shall send a copy of its reasoned decision to -

- (a) the complainant,
- (b) the Tribunal Registrar,
- (c) the Overseas Lawyer, and
- (d) Her Majesty's Procurer.

(4) Where an Overseas Lawyer is ordered to comply with conditions under subsection (1)(b)(iii), the Tribunal shall -

- (a) make such arrangement as it thinks fit to ensure his compliance with any such condition, and
- (b) in case of default, treat any default as if it were a breach of the Proceeds of Crime Regulations.

**Appeals against decisions of the Tribunal.**

**49.** (1) The following persons shall have a right of appeal from a decision of the Tribunal to the Royal Court -

- (a) the Tribunal Registrar, and
- (b) the Overseas Lawyer.

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

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

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

- (5) When disposing of an appeal, the Royal Court -
  - (a) shall give a reasoned decision in writing,

- (b) shall have the powers of the Tribunal under section 48 and the power to order the deregistration of the Overseas Lawyer from the Overseas Register, and
- (c) may make an order of costs in respect of the appeal proceedings as it sees fit.

**Appeal to the Court of Appeal.**

**50.** (1) Subject to subsection (3), the following persons shall have a right of appeal on a point of law to the Court of Appeal against a decision of the Royal Court under section 49 -

- (a) the Tribunal Registrar, and
- (b) the Overseas Lawyer.

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

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

- (4) On an appeal under this section, the Court of Appeal may -
  - (a) confirm or reverse the decision of the Royal Court, and

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<sup>c</sup> Ordres en Conseil Vol. XVIII, p. 315.



- (b) substitute any disposal listed in section 48 or section 49 for the disposal made by the Royal Court.

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

**Other proceedings.**

**51.** Proceedings under this Part are without prejudice to -

- (a) any civil or criminal proceedings in respect of the Overseas Lawyer, whether in the Bailiwick or elsewhere, and
- (b) any disciplinary proceedings taken in respect of the Overseas Lawyer by the body charged with the regulation of the legal profession of the jurisdiction of which he is a member.

**Disclosure of information upon conclusion of proceedings.**

**52.** Upon the conclusion of any proceedings under this Part, the Tribunal, the Royal Court or the Court of Appeal (as the case may be) shall disclose, to the body charged with the regulation of the legal profession of the jurisdiction of which the Overseas Lawyer is a member any information received by it in the proceedings and which appear to it to be relevant to the functions of that body.

**PART V**

**DISCLOSURE OF INFORMATION BY AND TO THE SUPERVISORY AGENCY**

**Disclosure of information by the supervisory agency.**

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

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

- (a) any criminal investigation or investigation in contemplation of disciplinary proceedings which is being or may be carried out, whether in the Bailiwick or elsewhere,
- (b) any criminal or disciplinary proceedings which have been or may be initiated, whether in the Bailiwick or elsewhere,
- (c) the initiation or bringing to an end of any such investigation or proceedings, or
- (d) facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end.

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

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

- (a) Her Majesty's Procureur,
- (b) a police officer,
- (c) the Court of Appeal,

- (d) the Royal Court (however constituted),
- (e) the Bâtonnier for the time being in relation to his functions under this Law,
- (f) the President of the Chambre,
- (g) the Registrar,
- (h) the Chambre,
- (i) the Tribunal Registrar, or
- (j) the Tribunal,

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

(5) Information obtained by means of a disclosure authorised by subsection (2) and (3) shall not be further disclosed by a police officer, the Registrar, the Chambre, the Tribunal Registrar or the Tribunal except -

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

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

(7) Nothing in this section authorises a disclosure, in contravention of

any provisions of the Data Protection (Bailiwick of Guernsey) Law, 2001<sup>d</sup>, of personal data which are not exempt from those provisions.

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

**Disclosure of information to the agency by relevant person.**

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

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

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

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

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

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

(a) Her Majesty's Procureur,

(b) the Court of Appeal,

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<sup>d</sup> Order in Council No. V of 2002.

- (c) the Royal Court (however constituted),
- (d) the Bâtonnier for the time being in relation to his functions under this Law,
- (e) the President of the Chambre,
- (f) the Registrar,
- (g) the Chambre,
- (h) the Tribunal Registrar,
- (i) the Tribunal,
- (j) a member of the salaried police force of the Island of Guernsey who holds the rank of inspector or above, or
- (k) a customs officer of the grade of senior investigation officer or above.

## PART VI

### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

#### **The Royal Court and Her Majesty's Procureur.**

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

- (a) the Royal Court, and

(b) Her Majesty's Procureur,

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

**Protection of persons acting in good faith.**

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

**Offences.**

57. (1) A person who -

- (a) in proceedings before the Chambre or the Tribunal, or in making any statement or providing any information or document to the Registrar or Tribunal Registrar when acting in the exercise or purported exercise of their functions under this Law -
  - (i) makes a statement which he knows or believes to be false, misleading or deceptive in a material particular,
  - (ii) recklessly makes a statement which is false, misleading or deceptive in a material particular, or
  - (iii) produces, or causes or permits to be produced, any information or document which he knows or believes to be false, misleading or deceptive in a material particular,
- (b) on being duly summoned as a witness before the Chambre or the Tribunal, fails without reasonable excuse (proof of which

shall lie on him) to attend,

- (c) on attending before the Chambre or the Tribunal as a witness, fails, when legally required to do so -
  - (i) to take the oath or affirmation,
  - (ii) to produce any document in his possession, custody or power, or
  - (iii) to answer any question put to him,
- (d) does any other thing before the Chambre or the Tribunal which, if done before the Royal Court, would constitute a contempt of court, or
- (e) without reasonable excuse (proof of which shall lie on him) obstructs or hinders the Registrar or the Tribunal Registrar in the exercise or purported exercise of their functions under this Law,

is guilty of an offence.

- (2) A person guilty of an offence by virtue of subsection (1) is liable -
  - (a) on summary conviction to imprisonment for a term not exceeding 3 months, to a fine not exceeding level 5 on the uniform scale, or to both, or
  - (b) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

**Proceedings to be confidential.**

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

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

**Power to make rules.**

59. The Royal Court may by order make rules under this Law in respect of -

- (a) the Chambre, and
- (b) the Tribunal.

**General provisions as to subordinate legislation.**

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

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

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

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in



relation to any specified cases or classes of cases,

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

**Interpretation.**

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

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

"**Bailiwick**" means the Bailiwick of Guernsey,

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

- (a) whose affairs have been declared in a state of "désastre" by his arresting creditors at a meeting held before a Commissioner of the Royal Court, the Court of Alderney or the Court of the Seneschal,

- (b) against whom an interim vesting order has been made in respect of any real property in the Bailiwick,
- (c) in respect of whom a declaration of insolvency has been made under the Loi ayant rapport aux Débiteurs et à la Renonciation, 1929<sup>e</sup>,

**"Bâtonnier"** has the meaning given in section 5,

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

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

**"the Court of Appeal"** means the court established by the Court of Appeal (Guernsey) Law, 1961<sup>f</sup>,

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

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

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

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

**"the Juvenile Court Panel"** means the panel established by section 5 of the Juvenile Court (Guernsey) Law, 1989<sup>g</sup>,

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<sup>e</sup> Ordres en Conseil Vol. VIII, p. 310.

<sup>f</sup> Ordres en Conseil Vol. XVIII, p. 315.

"**this Law**" includes the Rules,

"**Overseas Register**" has the meaning given in section 33,

"**President**" has the meaning given in section 19,

"**practitioner**" means a person who -

- (a) is entitled to practise, and
- (b) practises,

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

"**Proceeds of Crime Regulations**" means -

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

"**Register**" has the meaning given in section 14,

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<sup>g</sup> Ordres en Conseil Vol. XXX, p. 326.

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

"**Registrar**" has the meaning given in section 20,

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

"**relevant person**" has the meaning given in section 53,

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

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

"**Secretary**" has the meaning given in section 5,

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

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

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

"**Treasurer**" has the meaning given in section 5,

"**the Tribunal**" has the meaning given in section 39,

**"Tribunal President"** has the meaning given in section 41,

**"Tribunal Registrar"** has the meaning given in section 42,

**"uniform scale"** means the uniform scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>i</sup>, and

**"years' standing"** means years -

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

whichever is the longer.

(2) The Interpretation (Guernsey) Law, 1948<sup>j</sup> -

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

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<sup>i</sup> Ordres en Conseil Vol. XXXI, p. 278.

<sup>j</sup> Ordres en Conseil Vol. XIII, p.355.

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

**Repeals.**

**62.** The following provisions are hereby repealed –

- (a) Sections 5, 6 and 7 of the Ordonnance relative au Barreau et au Corps des Ecrivains<sup>k</sup>, and
- (b) the Bar Ordinance, 1976<sup>l</sup>.

**Citation.**

**63.** This Law may be cited as the Guernsey Bar and Overseas Lawyers (Bailiwick of Guernsey) Law, 2007.

**Commencement.**

**64.** (1) This Law shall come into force on the day appointed by Order of the Royal Court.

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

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

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<sup>k</sup> Recueil d'Ordonnances Tome VI, pg. 104.

<sup>l</sup> Recueil d'Ordonnances Tome XX, pg. 269.

Court consider appropriate.

## SCHEDULE

## Powers

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