

# BILLET D'ÉTAT No. XI, 2008

30<sup>th</sup> July, 2008

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# PROJET DE LOI

ENTITLED

## **The Financial Services Commission (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2008**

**THE STATES**, in pursuance of their Resolution of the 30<sup>th</sup> day of July, 2008<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.

### **Amendment of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987.**

1. The Financial Services Commission (Bailiwick of Guernsey) Law, 1987<sup>b</sup>, as amended, is further amended as follows.

2. For section 2(2)(e) substitute the following paragraphs -

"(e) to take such steps as the Commission considers necessary or expedient for -

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<sup>a</sup> Article \* of Billet d'État X of 2008.

<sup>b</sup> Ordres en Conseil Vol. XXX, pg. 243; amended by No. XX of 1991; No. XIII of 1994; No. II of 1997; No. II of 1998; No's. XVII and XXI of 2002; No's. III and XXII of 2003; the Financial Services Commission (Enforcement Powers) (Bailiwick of Guernsey) Law, 2008; the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2008; the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII); and the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Ordinance, 2005 (No. XXXIV).

- (i) maintaining confidence in the Bailiwick's financial services sector, and
  - (ii) the safety, soundness and integrity of that part of the Bailiwick's financial services sector for which it has supervisory responsibility, and
- (f) all such other functions as the States may by Resolution assign to the Commission."

3. Immediately after section 7(2), insert the following subsection -

"(2A) Any guidance or direction given under this section -

- (a) may be given only in the public interest, and not to influence particular cases,
- (b) must not prejudice the operational independence of the Commission by prescribing the specific manner in which the Commission should carry out its supervisory functions, and
- (c) must be published : provided that the guidance or direction may come into effect as soon as it is given."

**Citation.**

4. This Law may be cited as the Financial Services Commission (Bailiwick of Guernsey) (Amendment) (No.2) Law, 2008.

# PROJET DE LOI

ENTITLED

## **The Road Traffic (Compulsory Third-Party Insurance) (Amendment) (Guernsey) Law, 2008**

**THE STATES**, in pursuance of their Resolution of the 27<sup>th</sup> day of September 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 Islands of Guernsey, Herm and Jethou.

### Amendment of the 1936 Law.

1. (1) The Road Traffic (Compulsory Third-Party Insurance) (Guernsey) Law, 1936, as amended<sup>b</sup>, is further amended as follows.

(2) In section 1(1), immediately after the definition of "assurance company" insert the following definition –

"**Magistrate**" means a Judge of the Magistrate's Court or a Deputy Judge of the Magistrate's Court. "

(3) Immediately after section 3 ("Requirements in respect of

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<sup>a</sup> Article XIII on Billet D'État XX of 2007

<sup>b</sup> Ordres en Conseil Vol. X, p. 388; Vol XV, p. 43; Vol. XVIII, pp. 35 and 257; Vol. XX, p. 247; Vol. XXIII, p. 227; Vol. XXIV, p. 250; Vol XXVII, p. 76; Vol. XXVIII, p. 303; Vol XXIX, p. 214; Vol XXX, p. 243; No. 1 of 1991; No. XX1 of 2002.

Policies") insert the following section –

**"Insurance discs to be delivered to insured persons and display of insurance discs.**

**3A.** (1) In addition to the certificate of insurance referred to in section 3(6), there shall be issued and delivered by the authorised insurer to the person by whom the policy of insurance is effected –

- (a) except where that person is a fleet registered keeper or the holder of a motor cycle rider policy, an insurance disc in respect of each motor vehicle the use of which is covered by the policy,
- (b) where that person is a fleet registered keeper, that number of insurance discs which corresponds with the number of motor vehicles the use of which at any one time is covered by the policy,
- (c) where that person is the holder of a motor cycle rider policy, an insurance disc,

and each insurance disc so issued shall refer to the policy of insurance and the period of cover provided under the policy.

(2) Except as provided in subsection (5), at all times when a motor vehicle is being used or kept on a road, there shall be displayed on the vehicle in the prescribed manner an insurance disc which shall –

- (a) be in the prescribed form,

(b) bear the prescribed particulars which shall refer to a policy of third-party risks for the time being in force covering the use of the vehicle, and

(c) unless the person by whom the insurance policy is effected is a fleet registered keeper or the holder of a motor cycle rider policy, bear the registration mark of the vehicle.

(3) In respect of insurance discs, different forms, different particulars and different manners of display may be prescribed by regulations in relation to different cases or circumstances.

(4) In this section –

**"fleet registered keeper"** means a person by whom a single policy of insurance in respect of third-party risks is effected in relation to the use of not fewer than a prescribed number of motor vehicles which are –

(a) owned by the person, and

(b) operated for trade or business purposes;

**"motor cycle rider policy"** means a policy of insurance in respect of third party risks in relation to the use of motor cycles or mopeds under which the cover relates to the policy holder and not to a particular motor cycle or moped;

**"motor cycle"** means any two-wheeled vehicle, with or without a side-car, with a maximum design speed of over 50

kilometres per hour, or if powered by an internal combustion engine, with a cubic capacity exceeding 50 cubic centimetres; and

**"moped"** means any two-wheeled or three-wheeled vehicle which is powered by –

- (a) an internal combustion engine having a cylinder capacity not exceeding 50 cubic centimetres, or
- (b) an electrical engine having a maximum continuous rated power not exceeding 4 kilowatts.

(5) Nothing in this section shall operate to require the display of an insurance disc on a motor vehicle –

- (a) to which the provisions of section 2(3) apply,
- (b) which is being used under trade plates in accordance with article 3(2) of the Ordinance of the Royal Court of 1932 relating to Licences de Commerçant of 1932, as amended<sup>c</sup>, or
- (c) which is prescribed as a vehicle on which an insurance disc is not required to be displayed."

(4) Substitute for section 8 (Duty to surrender certificate on cancellation of policy) the following section –

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<sup>c</sup> Recueil d'Ordonnances, Tome VIII, p. 229; amended by Ordinances of 1933 and 1937 (Tome VIII, p. 233), and Ordinance No. XII of 2007.

**"Duty to surrender certificate and disc.**

8. (1) Where a policy of insurance has been effected and an insurance disc bearing the registration mark of the motor vehicle has been delivered under section 3A(1) by the insurer to the person by whom the policy was effected, and that vehicle is subsequently transferred by that person to another, that person shall, within seven days from the taking effect of the transfer, surrender the insurance disc to the insurer, and if the person fails to do so or, where the disc has been lost or destroyed, if he fails to comply with the provisions of subsection (3), the person shall be guilty of an offence.

(2) Where a policy of insurance has been effected and the policy is cancelled by mutual consent or by virtue of any provision in the policy, the person by whom the policy was effected shall, within seven days from the taking effect of the cancellation, surrender to the insurer the certificate of insurance and insurance disc delivered (under section 3(6) and 3A(1) respectively) by the insurer to the person in respect of that policy, and if the person fails to do so or, where the certificate or disc has been lost or destroyed, if he fails to comply with the provisions of subsection (3), the person shall be guilty of an offence.

(3) Where a person is under an obligation under subsection (1) or (2) to surrender a certificate of insurance or insurance disc, and by reason of its loss or destruction is unable to do so, he shall make a declaration before a Jurat of the Royal Court, the Magistrate or a Notary Public, and within a period of seven days from the taking effect of the transfer or cancellation (as the case may be) he shall deliver the declaration to the insurer."

(5) In section 13(3), for "section 15(2)" substitute "section 14(2)", and immediately after section 13, insert the following sections –



**"Requirements as to display of insurance disc.**

**13A.** (1) A person who uses or keeps on a road a motor vehicle on which an insurance disc required to be displayed under section 3A(2) is not so displayed shall be guilty of an offence.

(2) The owner of a motor vehicle –

(a) which is used or kept on a road; and

(b) on which an insurance disc required to be displayed under section 3A(2) is not so displayed,

shall be guilty of an offence, provided that the owner shall not be convicted of an offence under this subsection if he proves that at the relevant times the vehicle was being used or kept without his consent by another person.

**Power to make Ordinances providing for the seizure and retention of uninsured vehicles.**

**13B.** (1) The States may by Ordinance make such provision as they think fit regarding the seizure by officers of police, removal, retention, and release or disposal of vehicles driven in contravention of section 2(1).

(2) Where an Ordinance made under subsection (1) provides for the seizure of vehicles, it must provide for such seizure only where –

(a) an officer of police who has reasonable grounds for believing that a vehicle is or was being driven in contravention of section 2(1) has requested a person to produce evidence that it

is not or was not being so driven, and the person has failed to produce such evidence, and

- (b) the officer of police has warned the person in paragraph (a) that he will seize the vehicle if the person does not provide him immediately with evidence that the vehicle is or was not being driven in contravention of that section, unless the circumstances make it impracticable for the officer of police to issue that warning.

(3) An Ordinance made under subsection (1) may provide that if an officer of police is unable to seize a vehicle immediately because the person driving the vehicle has driven off, he may seize it at any time within the following 24 hours, and may enter any premises (other than a private dwelling house) on which he has reasonable grounds for believing the vehicle to be, in exercise of that power.

(4) An Ordinance made under subsection (1) may, in particular, also make provision –

- (a) for an officer of police to use reasonable force, if necessary, in the exercise of any power conferred on him under it,
- (b) for the giving of notice of the seizure of a motor vehicle under an Ordinance made under subsection (1) to a person who is the registered keeper, the owner or the driver of that vehicle,
- (c) for the procedure by which a person who claims to be the registered keeper or the owner

of a motor vehicle seized under an Ordinance made under subsection (1) may seek to have it released,

- (d) for requiring payment by the registered keeper, owner or driver of the vehicle of fees, charges or costs in relation to the removal and retention of such a motor vehicle and to any application for its release,
- (e) as to the circumstances in which a motor vehicle seized under an Ordinance made under subsection (1) may be disposed of, and
- (f) as to rights of appeal."

(6) In section 14 (Regulations for the purposes of this Law), for "." at the end of paragraph (e) substitute ";", and immediately after insert a new paragraph –

- "(f) as to the form and manufacture of insurance discs, the particulars to be contained on insurance discs, the issue, delivery, replacement and surrender of insurance discs, the manner of display of insurance discs, and motor vehicles on which an insurance disc is not required to be displayed."

(7) In section 15 -

- (a) for the marginal note "Forgery of licences and certificates" substitute "Forgery of licences, certificates and insurance discs",
- (b) in paragraph (a) of subsection (1), immediately after "certificate of insurance" insert "or insurance disc",
- (c) in paragraph (b) of subsection (1), immediately after "a certificate" insert "or disc",
- (d) in subsections (2) and (3), immediately after "certificate of insurance" in each subsection insert "or an insurance disc", and
- (e) in subsection (4) –
  - (i) immediately after "certificate of insurance" insert "or insurance disc",
  - (ii) for "Section 15(2) of the Criminal Justice (Bailiwick of Guernsey) Law, 1990" substitute "section 14(2) of the Administration of Justice (Bailiwick of Guernsey) Law, 1991", and
  - (iii) delete "Police Court".

**Citation and commencement.**

2. This Law may be cited as the Road Traffic (Compulsory Third-Party Insurance) (Amendment) (Guernsey) Law, 2008 and shall come into force on the first day of April, 2009.

# PROJET DE LOI

ENTITLED

## **The Guernsey Bar (Bailiwick of Guernsey) (Amendment) Law, 2008**

**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.

### **Amendment of Law of 2007.**

1. In section 41 of the Law of 2007 in paragraph (b) of the definition of "Proceeds of Crime Regulations", for "such a regulation" substitute "that Law".

### **Interpretation.**

2. (1) In this Law "**the Law of 2007**" means the Guernsey Bar (Bailiwick of Guernsey) Law, 2007.

(2) The Interpretation (Guernsey) Law, 1948<sup>b</sup> applies to the interpretation of this Law throughout the Bailiwick.

### **Citation.**

3. This Law may be cited as the Guernsey Bar (Bailiwick of Guernsey) (Amendment) Law, 2008.

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

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

**Commencement.**

4. This Law shall come into force on the day appointed by Ordinance of the States; and different dates may be appointed for different provisions and for different purposes.

## **The Gambling (Gaming and Lotteries) (Amendment) Ordinance, 2008**

**THE STATES**, in pursuance of their Resolution of the 1<sup>st</sup> November 2007<sup>a</sup> and in exercise of the powers conferred on them by section 2 of the Gambling (Guernsey) Law, 1971<sup>b</sup>, hereby order:-

### **Amendments to the 1991 Ordinance.**

1. The Gambling (Gaming and Lotteries) Ordinance, 1991, as amended<sup>c</sup>, is further amended as follows -

- (a) the proviso to section 6(1) is repealed,
- (b) in section 6(3)(c) the words "of a lottery in Class III or Class IV" are repealed,
- (c) section 7(1)(b)(ii) is repealed,
- (d) section 8 is repealed,
- (e) for section 9(1) substitute -

"9. (1) The fee payable upon an application for a permit is £50.", and

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<sup>a</sup> Article X of Billet d'État No. XXII of 2007.

<sup>b</sup> Ordres en Conseil Vol XXIII, p.109.

<sup>c</sup> Recueil d'Ordonnances Tomes XXV, p. 348 and XXVIII, p. 240.

(f) in section 18(1), the definition of "Class" is repealed.

**Extent.**

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

**Citation.**

3. This Ordinance may be cited as the Gambling (Gaming and Lotteries) (Amendment) Ordinance, 2008.

**Commencement.**

4. This Ordinance shall come into force on the 30<sup>th</sup> July 2008.



## **The Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 2008**

**THE STATES**, in pursuance of their Resolution of the 28<sup>th</sup> May, 2008<sup>a</sup> and in exercise of the powers conferred upon them by sections 52 and 66 of the Housing (Control of Occupation) (Guernsey) Law, 1994<sup>b</sup>, hereby order:-

### **Addition of dwellings to Part A of Housing Register.**

1. The Authority may inscribe in Part A of the Housing Register the dwellings known as Apartments 1 and 4, Vue D'Epec, Vega Apartments, Les Banques, Saint Peter Port.

### **Applications to be made within 6 months.**

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

### **Licences to lapse if applications not made within 6 months.**

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

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<sup>a</sup> Article XXI of Billet d'État No. VII of 2008.

<sup>b</sup> Order in Council No. IV of 1994; amended by No. VI of 1998 and No. III of 2002.

**Interpretation.**

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

**Citation.**

5. This Ordinance may be cited as the Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 2008.

**Commencement.**

6. This Ordinance shall come into force on the 30<sup>th</sup> July, 2008.

# PROJET DE LOI

ENTITLED

## **The Banking Supervision (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2008**

**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.

### **Amendment of Banking Supervision (Bailiwick of Guernsey) Law, 1994.**

1. The Banking Supervision (Bailiwick of Guernsey) Law, 1994, as amended<sup>b</sup>, is amended as follows.

2. For section 25(13)<sup>c</sup> substitute -

"(13) A statement made by a person in response to a requirement imposed by or under any provision of this section may not be used in evidence against him in any criminal proceedings except -

(a) in proceedings for an offence under subsection

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<sup>a</sup> Articles IV and V of Billet d'État No. XIX of 2007.

<sup>b</sup> Order in Council No. XIII of 1994; amended by Nos. XVII and XXI of 2002; No. XVI of 2003; Ordinance No. XXXIII of 2003; Guernsey S.I. No. 1 of 2008 and by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008.

<sup>c</sup> Section 25(13) was substituted by section 4 of the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008.

(12), or

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

(13A) A statement may not be used by virtue of subsection (13)(b) against a person unless -

- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

by or on behalf of that person in the proceedings arising out of the prosecution."

3. For section 26A(6)<sup>d</sup> substitute -

"(6) A statement made by a person in response to a requirement imposed under a warrant granted under section 26 may not be used in evidence against him in any criminal proceedings except -

- (a) in proceedings for an offence under subsection (5), or
- (b) in proceedings for some other offence where in

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<sup>d</sup> Section 26A(6) was inserted by section 5 of the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008.

giving evidence he makes a statement inconsistent with it.

(7) A statement may not be used by virtue of subsection (6)(b) against a person unless -

(a) evidence relating to it is adduced, or

(b) a question relating to it is asked,

by or on behalf of that person in the proceedings arising out of the prosecution.".

4. For section 27(9)<sup>e</sup> substitute -

"(9) A statement made by a person in response to a requirement imposed by or under any provision of this section may not be used in evidence against him in any criminal proceedings except -

(a) in proceedings for an offence under subsection (8), or

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

(9A) A statement may not be used by virtue of subsection

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<sup>e</sup> Section 27(9) was substituted by section 6(b) of the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008.

(9)(b) against a person unless -

- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

by or on behalf of that person in the proceedings arising out of the prosecution."

5. For section 28(4)<sup>f</sup> substitute -

"(4) A statement made by a person in response to a requirement imposed by or under any provision of this section may not be used in evidence against him in any criminal proceedings except -

- (a) in proceedings for an offence under subsection (3), or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it.

(4A) A statement may not be used by virtue of subsection (4)(b) against a person unless -

- (a) evidence relating to it is adduced, or

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<sup>f</sup> Section 28(4) was substituted by section 7(b) of the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008.

(b) a question relating to it is asked,

by or on behalf of that person in the proceedings arising out of the prosecution."

6. For section 29(6)<sup>g</sup> substitute -

"(6) A statement made by a person in response to a requirement imposed by or under any provision of this section may not be used in evidence against him in any criminal proceedings except -

(a) in proceedings for an offence under subsection (5), or

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

(7) A statement may not be used by virtue of subsection (6)(b) against a person unless -

(a) evidence relating to it is adduced, or

(b) a question relating to it is asked,

by or on behalf of that person in the proceedings arising out of the

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<sup>g</sup> Section 29(6) was substituted by section 8(b) of the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008.

prosecution."

**Amendment of Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008.**

7. Sections 4, 6(b), 7(b) and 8(b) of the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008 are repealed.

**Interpretation.**

8. The Interpretation (Guernsey) Law, 1948<sup>h</sup> applies to the interpretation of this Law throughout the Bailiwick.

**Citation.**

9. This Law may be cited as the Banking Supervision (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2008.

**Commencement.**

10. This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions of this Law or for different purposes.

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



# PROJET DE LOI

ENTITLED

## **The Housing (Control of Occupation) (Guernsey) (Amendment) Law, 2008**

**THE STATES**, in pursuance of their Resolution of the 27<sup>th</sup> day of September 2007<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

### **Amendment of Law of 1994.**

1. The Housing (Control of Occupation) (Guernsey) Law, 1994<sup>b</sup>, is further amended in accordance with the provisions of this Law.

2. Immediately after section 2 (Applications for housing licences) insert the following section –

#### **"Power to make regulations providing for the payment of fees.**

2A. The Authority may make regulations providing that a fee shall be payable on an application made under section 2(1)."

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<sup>a</sup> Article XII of Billet d'État XX of 2007

<sup>b</sup> Order in Council No. IV of 1994; amended by No. VI of 1998; No. III of 2002; and No. VIII of 2007; also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003).

3. Immediately after section 14 (Application for declaration of lawful residence) insert the following section –

**"Power to make regulations providing for the payment of fees.**

14A. The Authority may make regulations providing that a fee shall be payable on an application made under section 11(1) or 14(1)."

4. Immediately after section 46 (Declarations of registration) insert the following section –

**"Power to make regulations providing for the payment of charges.**

46A. The Authority may make regulations providing that a fee shall be payable on an application made under section 46(1)."

5. Immediately after section 66 (General provisions as to Ordinances) insert the following section –

**"General provisions as to regulations.**

66A. (1) Regulations under this Law -

(a) may be amended or repealed by subsequent regulations hereunder;

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

(2) Any power conferred upon the Authority by this Law to make regulations may be exercised -

(a) in relation to all cases to which the power

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

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

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

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

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

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

**Citation and commencement.**

6. This Law may be cited as the Housing (Control of Occupation) (Guernsey) (Amendment) Law, 2008 and shall come into force on the first day of

January, 2009 or, if later, the date on which it is registered on the Records of the Island of Guernsey.

## **The Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2008**

**THE STATES LEGISLATION SELECT COMMITTEE**, in pursuance of the Resolutions of the States of the 29<sup>th</sup> March, 2007<sup>a</sup> and the 1<sup>st</sup> November, 2007<sup>b</sup>, and in exercise of the powers conferred on the States by sections 533, 538 and 545 of the Companies (Guernsey) Law, 2008<sup>c</sup> and all other powers enabling them in that behalf, and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948<sup>d</sup>, hereby orders:-

### **Commencement of Law.**

1. The Companies (Guernsey) Law, 2008 ("**the Law**") is amended as follows.

2. In section 17(2)(a) of the Law after the words "the memorandum of incorporation" insert "or a copy thereof (which need not contain the signature of the founder member)".

3. After section 20(2) of the Law insert the following subsections -

"(3) Subject to the provisions of this Law, the memorandum and articles of a company are, from the time of incorporation, binding on the company and its members in all respects as if the memorandum and articles -

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

<sup>b</sup> Articles XII and XIII of Billet d'État No. XXII of 2007.

<sup>c</sup> Approved by the States of Deliberation on the 30<sup>th</sup> January, 2008.

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

- (a) were comprised in an agreement duly executed by the company and each member, and
- (b) contained covenants on the part of the company and each member to observe all provisions thereof.

(4) Money payable to a company by a member under the memorandum and articles are a civil debt due from him to the company."

4. Section 89(a) of the Law is repealed.

5. In section 162(4) of the Law after "does not" insert "subject to the provisions of section 163".

6. For sections 163 and 164 of the Law substitute -

**"Avoidance of transactions.**

**163.** (1) A transaction entered into by a company in which a director is interested is voidable by the company at any time within 3 months after the date the transaction is disclosed to the board of directors unless -

- (a) the director's interest was -
  - (i) disclosed to the board in accordance with section 162 prior to the company entering into the transaction, or

- (ii) not required to be disclosed by virtue of section 162(2),
  - (b) the transaction is ratified in accordance with section 160, or
  - (c) the company received fair value for the transaction.
- (2) For the purposes of subsection (1)(c) -
- (a) a determination as to whether a company receives fair value for a transaction shall be made on the basis of the information known to the company and the interested director at the time that the transaction was entered into,
  - (b) if a transaction is entered into by the company in the ordinary course of its business and on usual terms and conditions, the company is presumed to receive fair value under the transaction,
  - (c) a person seeking to uphold a transaction and who knew or ought to have known of the director's interest at the time the transaction is entered into has the burden of establishing fair value, and

- (d) in any other case, the company has the burden of establishing that it did not receive fair value.

(3) The fact that a transaction is not avoidable pursuant to this section is without prejudice to any remedy the company may have against the director.

**Effect on third parties.**

**164.** The avoidance of a transaction under section 163 does not affect the right, title or interest of a person in property which he has acquired -

- (a) in good faith,
- (b) for valuable consideration, and
- (c) without knowledge of the director's failure to disclose his interest."

**Citation.**

**7.** This Ordinance may be cited as the Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2008.

**Commencement.**

**8.** This Ordinance shall come into force on the 1<sup>st</sup> July, 2008.