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PROJET DE LOI

ENTITLED

The Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009

THE STATES, in pursuance of their Resolution of the 28th January, 2009^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the islands of Guernsey and Herm.

Amendment of 1975 Law.

1. The Income Tax (Guernsey) Law, 1975, as amended^b ("**the Law of 1975**") is further amended as follows.

^a Article XII of Billet d'État No. II of 2009.

^b 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; No's. II and VII of 2006; No. XXI of 2007; the Income Tax (Zero 10) (Guernsey) Law, 2007; the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007; the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008; (with effect from the 1st January, 2009) section 6 of the Income Tax (Guernsey) (Amendment) Law, 2008; and (with effect from the 28th January, 2009) by the Income Tax (Miscellaneous Provisions) (Guernsey) (Amendment) Law, 2009; also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII).

2. In section 39B of the Law of 1975^c -

- (a) in subsection (2) for "applicable allowances, reliefs and deductions" substitute "allowances, reliefs and deductions which may under this Law be set off against that income",
- (b) after subsection (3) insert the following subsections -

"(4) For the purposes of Part XV, the amount of income tax payable or chargeable in respect of any income against which tax payable in respect of that income in another territory is to be credited shall be calculated as if the limit on the amount of income tax payable imposed by subsection (1) and the Sixth Schedule were not applicable.

(5) In this section "**qualifying income**" means income of the classes or descriptions for the time being specified in the Sixth Schedule."

3. For section 47G(d) of the Law of 1975^d substitute the following -

"(d) any other businesses (other than businesses referred to in any other paragraph of this section) carried on, offices and employments held or exercised, and other sources, in Guernsey."

^c Section 39B was inserted by the Income Tax (Zero 10) (Guernsey) Law, 2007.

^d Section 47G was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

4. In section 47J(c) of the Law of 1975^e before the word "individual" insert "company or".

5. After section 48(6) of the Law of 1975 insert the following subsection -

"(7) Notwithstanding the provisions of this section, and for the avoidance of doubt, an agent is not chargeable with tax, and tax is not deductible by an agent, in respect of disregarded individual income within the meaning of section 47D or disregarded company income within the meaning of section 47I."

6. After section 62AB of the Law of 1975^f insert the following section -

"Exempt bodies: distributions to resident beneficial members."

62AC. (1) Notwithstanding any other provision of this Law, where a person ("person X") is resident in Guernsey and is a beneficial member of an exempt Guernsey company ("company Y"), then, so far as concerns the distributions of -

- (a) company Y, and
- (b) any other company in respect of shares in that company held by company Y,

^e Section 47J was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

^f Section 62AB was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

person X is taxable, and the provisions of section 81B apply to him, only in respect of distributions actually made by company Y.

(2) In this section -

"**distributions**" of a company include deemed distributions within the meaning of Chapter VIII A,

"**exempt Guernsey company**" means a company incorporated in Guernsey which has been granted an exemption from tax under an Ordinance made under section 40A, and

"**shares**" includes any interest in a company entitling the holder of the shares to participate in distributions of the company."

7. In section 62A(2) of the Law of 1975^g -

- (a) for "In this Chapter" substitute "In this Law",
- (b) after "which is assessable to income tax" insert "or, in the case of a non-resident company, which would be assessable to income tax were the company resident in Guernsey", and
- (c) for "but excludes income which has been taxed at the company higher rate or any numerically equivalent or higher rate imposed by any other jurisdiction" substitute the

^g Section 62A was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

following -

"but excludes income which has been taxed -

- (i) in Guernsey at the company higher rate, or
- (ii) in the case of income arising from a source outside Guernsey, at any numerically equivalent or higher rate imposed by any other jurisdiction".

8. For section 62A(7) of the Law of 1975^h substitute the following -

"(7) For the purposes of calculating the amount of a deemed distribution, and for the avoidance of doubt, amounts at any time comprising undistributed income -

- (a) shall be deemed to remain undistributed income in the company's hands for the purposes of this Law unless and until distributed or deemed to be distributed, and
- (b) shall accordingly be included in the amount of a deemed distribution in any of the cases or circumstances, and at the times, set out in section 62B(1).

This subsection applies notwithstanding -

^h Section 62A was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

- (i) any rule of law relating to the circumstances in which a company may lawfully make a distribution, and
- (ii) the provisions of section 62B(2)."

9. After section 62B(2) of the Law of 1975ⁱ insert the following subsections -

"(3) Where subsection (1)(a), (b) or (c) applies, the person described in subsection (4) shall, as soon as is reasonably practicable after the date of the transaction, death or (as the case may be) change of residence, give written notice to the company of the occurrence of that event and provide the company with all such information and documents relating to it as the company may reasonably require for the purpose of enabling it to calculate the amount of the deemed distribution.

(4) The person is -

- (a) in the case of subsection (1)(a), the beneficial member of the company whose shares in the company were the subject of the disposal, repurchase and/or redemption,
- (b) in the case of subsection (1)(b), the personal representatives of the beneficial member of the

ⁱ Section 62B was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

company who has died, and

- (c) in the case of subsection (1)(c), the beneficial member of the company who has ceased to be resident in Guernsey.

(5) If the person described in subsection (4) fails without reasonable excuse to give notice, or to provide any information or documents, in accordance with subsection (3), he is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale."

10. In section 62C(1)(a) and (b) of the Law of 1975^j for "of this Chapter" substitute "of this Law".

11. After section 62D(4) of the Law of 1975^k insert the following subsection -

"(5) If there is no individual who has or who can reasonably be identified as having a beneficial interest or any part of a beneficial interest in a share or any part of a share in a company then, notwithstanding subsection (1) and (2), the beneficial member of the company in relation to that share or part of a share shall be deemed to be the person who holds the legal title to it."

^j Section 62C was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

^k Section 62D was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

12. In section 66B(1) of the Law of 1975^l for "before the reporting date" substitute "within 15 days of the reporting date".

13. After section 67(4) of the Law of 1975^m insert the following subsection -

"(5) For the avoidance of doubt, and without limitation, the powers conferred on the Director of Income Tax by this section do not apply in relation to non-resident individuals or non-resident companies to the extent that, but for any transaction or series of transactions with an effect described in subsection (1), their liability to income tax would be limited pursuant to the provisions of Chapter IV of Part IV of this Law."

14. In section 68A of the Law of 1975ⁿ after paragraph (a) insert the following paragraph -

"(aa) to pay any tax in accordance with section 66C, or".

15. In section 73(2)(a) of the Law of 1975^o for "section 81A" substitute "sections 66C, 81A and 81B".

16. In section 81(1) of the Law of 1975 for "section eighty-one A of this

^l Section 66B was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

^m Section 67(4) was inserted by the Income Tax (Zero 10) (Guernsey) Law, 2007.

ⁿ Section 68A was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

^o Section 73(2) was inserted by No. IV of 2000.

Law"^P substitute "sections 66C, 81A and 81B".

17. In section 81B(7) of the Law of 1975^Q for "subsection (5)" substitute "subsection (6)".

18. After section 81B(16) of the Law of 1975^R insert the following subsections -

"(17) If a company makes a distribution within the meaning of section 62AA, the distribution shall be deemed to have been made from the company's undistributed income and only from the company's capital to the extent that the company's undistributed income is insufficient to cover the amount of the distribution; and the provisions of this section shall, subject to the provisions of section 62A(5), apply accordingly.

(18) The provisions of this section are subject to the provisions of section 62AC(1)."

19. In section 83 of the Law of 1975^S -

(a) after "including any tax" insert "payable under the provisions of section 66C or", and

^P Those words were inserted by Vol. XXVII, p. 118.

^Q Section 81B(7) was inserted by the Income Tax (Zero 10) (Guernsey) Law, 2007.

^R Section 81B(16) was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

^S Section 83 was amended by Vol. XXVII, p. 118.

(b) for "eighty-one A of this Law" substitute "81A or 81B".

20. In section 139A(1) of the Law of 1975^t for paragraph (b) substitute -

"(b) in relation to any preceding year of charge after 2007 that company has undistributed income of Class 2(2)(d),".

21. In sections 170(2)(b) and 174(1), (2) and (4) of the Law of 1975 for the word "authorised" substitute "required".

22. After section 178 of the Law of 1975 insert the following section -

"Effect on double taxation relief of limit on individual income tax."

178A. The provisions of this Part are subject to the provisions of section 39B(4).".

23. In section 193B of the Law of 1975^u -

(a) before "81B" wherever appearing insert "66C or", and

(b) in subsection (2) after "member" insert ", participator or other person".

24. In section 200 of the Law of 1975^v -

^t Section 139A was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

^u Section 193B was inserted by the Income Tax (Zero 10) (Guernsey) Law, 2007.

- (a) in subsections (1), (4) and (5), after "section 193A" insert "or section 193B",
- (b) in subsection (6) after "193A(1) or 193A(2)" insert "or 193B(1) or 193B(2)".

25. After section 201A(1) of the Law of 1975^w insert the following subsection -

"(1A) A person who fails to pay tax to the Director of Income Tax in accordance with the provisions of section 66C or any regulations thereunder is guilty of an offence and liable on conviction to -

- (a) imprisonment for a term not exceeding 12 months, or
- (b) a fine not exceeding level 5 on the uniform scale, or
- (c) both."

26. In section 203 of the Law of 1975^x for "eighty-one A thereof" substitute "66C, 81A or 81B".

27. In section 209(1) of the Law of 1975 -

^v Section 200 was amended by Vol. XXXIV, p. 201 and No. VII of 2006.

^w Section 201A was inserted by Vol. XXXII, p. 307.

^x Section 203 was amended by Vol. XXVII, p. 200.

- (a) after the definition of "appropriate rate"^y insert the following definition -

"banking business" has the meaning assigned by the Fourth Schedule, ",

- (b) after the definition of "limited partnership"^z insert the following definition -

"loan creditor", in relation to a company, means a creditor -

- (a) in respect of any redeemable loan capital issued by the company, or

- (b) in respect of any debt incurred by the company -

(i) for any money borrowed or capital assets acquired by the company,

(ii) for any right to receive income created in favour of the company, or

(iii) for consideration the value of which to the company was (at the time when the debt was incurred) substantially less than the amount of

^y That definition was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

^z That definition was inserted by No. V of 1996.

the debt (including any premium thereon),

but does not include -

(A) any person in respect of any loan capital issued or debt incurred by the company for the supply by him of goods or services in the ordinary course of his business unless the period of credit given exceeds 6 months or is longer than that normally given to his customers, or

(B) any person authorised by the Guernsey Financial Services Commission, or by any person or body exercising, in a place outside the Bailiwick, functions corresponding to the functions of the Commission, to carry on a business which includes the lending of money in respect of any loan capital issued or debt incurred by the company for money advanced by that person to the company at his normal commercial rate, ",

(c) in the definition of "qualifying loan"^{aa}, for "section 66A(8)"

^{aa} That definition was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

substitute "section 66A(1)",

- (d) after the definition of "trust relationship"^{bb} insert the following definition -

"undistributed income" has the meaning assigned by section 62A(2),".

Citation.

28. This Law may be cited as the Income Tax (Zero 10, etc) (Guernsey) (Amendment) Law, 2009.

Commencement.

29. This Law shall have effect, by virtue of the States' resolution of the 29th April, 2009^{cc}, under and subject to the provisions of the Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992^{dd}, on and from the 29th April, 2009, as if it were a Law sanctioned by Her Majesty in Council and registered on the records of the Island of Guernsey.

^{bb} That definition was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007.

^{cc} Article ** of Billet d'État No. ** of 2009.

^{dd} Order in Council No. XI of 1992.

PROJET DE LOI

ENTITLED

The Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009

THE STATES, in pursuance of their Resolution of the 26th November, 2008^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

Amendment of Law of 2008.

1. The Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008, as amended^b, is further amended as follows.

2. In section 1(1) for "The Administrator of Income Tax (**the Administrator**)" substitute "The Registrar of Non Profit Organisations, the office of whom is established by section 1A,".

3. In section 1(1), (2) and (5) for "the Schedule" substitute "Schedule 1".

^a Article I of Billet d'État No. XV of 2008.

^b No. XXVI of 2008; registered by the Royal Court on the 28th October, 2008; amended by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) Ordinance, 2008 (in force 3rd November, 2008) and by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) (No. 2) Ordinance, 2008 (in force 26th November, 2008).

4. After section 1 insert the following sections -

"Office of Registrar of Non Profit Organisations."

1A. (1) The States Treasury and Resources Department ("**the Department**") shall establish an office to be called the Office of the Registrar of Non Profit Organisations ("**the Office of the Registrar**").

(2) The holder of that office shall be called the Registrar of Non Profit Organisations ("**the Registrar**").

(3) The Registrar shall be appointed by the Department.

(4) An appointment of the Registrar under this section -

(a) may be periodic or for a fixed term,

(b) is subject to such terms and conditions as the Department may from time to time think fit, and

(c) may be varied or terminated at any time by the Department, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment.

(5) The Registrar shall, subject to the terms and conditions of his appointment, exercise the functions assigned or transferred to him by or under this Law and any other enactment.

(6) For the purposes of the Public Functions (Transfer and

Performance) (Bailiwick of Guernsey) Law, 1991^c -

- (a) the Office of the Registrar is a public office,
and
- (b) the Registrar is an office holder.

(7) The provisions of Schedule 2 have effect in respect of the Office of the Registrar.

Functions of Registrar.

1B. The functions of the Registrar are -

- (a) to maintain the Register in accordance with Schedule 1,
- (b) to advise the Department generally in relation to the administration and enforcement of this Law and the practice and procedures relating thereto,
- (c) to administer the Office of the Registrar,
- (d) to determine -
 - (i) the fees payable (whether generally or in any particular case) under paragraphs 1 and 11 of Schedule 1,

^c Order in Council No. XXI of 1991.

- (ii) the interest payable in the event of default in the due payment of fees, and
 - (iii) the classes or descriptions of person by whom such fees and interest are to be payable, and
- (e) to exercise, subject to the terms and conditions of his appointment, such other functions as may be assigned or transferred to him -
- (i) by or under this Law and any other enactment, or
 - (ii) by Resolution of the States.

Ancillary powers of Registrar.

1C. (1) The Registrar, having regard to the provisions of section 1B, has power to do anything that appears to him to be necessary or expedient for the purposes of or in connection with the exercise of his functions including, without limitation, power -

- (a) to require the production of and otherwise obtain such documents, accounts and information from such persons and within such periods and at such times and intervals as he thinks fit,
- (b) to prepare and, subject to any provision to the

contrary in this Law or any other enactment, to publish information, reports, codes of practice, guidance, recommendations and other documents,

(c) to appoint any person or body to advise him in relation to the exercise of any of his functions, and

(d) to apply to the Court for directions under section 1F.

(2) For the purposes of exercising his functions the Registrar may, having regard to the provisions of section 1B -

(a) acquire, lease, use, dispose of, exchange or otherwise deal with any movable or immovable property and any interest in it, and

(b) enter into any contract, including any contract of purchase, sale, insurance, hire or bailment, or make any arrangement with any person.

(3) The Registrar may sue and be sued as Registrar.

Reports.

1D. (1) The Registrar shall, whenever directed by the Department, and without prejudice to his powers to prepare and publish reports of his own motion, submit to the Department a report on the exercise of his functions in such form and in respect of such matters and such periods as the Department may specify.

(2) The Department -

(a) may submit the Registrar's report made under subsection (1) to the States, and

(b) may at the same time or at any other time submit their own report to the States on the exercise by the Registrar of his functions.

Financial and accounting provisions.

1E. (1) All fees and similar sums received by the Registrar in the exercise of his functions shall be paid by him to the Department for the general revenue account of the States.

(2) Subsection (1) does not apply if and to the extent that, in accordance with financial procedures agreed between the Department and the Registrar, the Department directs otherwise.

(3) The Registrar shall -

(a) keep proper accounts and proper records in relation to those accounts, and

(b) submit to the Department, whenever the Department may direct but not less than once in any 12 month period, a statement of account giving a true and fair view of the state of affairs of the Office of the Registrar.

(4) Without prejudice to the preceding provisions of this section, the Registrar shall, whenever directed by the Department, submit to the Department, in respect of such period as the Department may specify, audited accounts of the Office of the Registrar together with the auditors' report thereon prepared by auditors appointed by the Registrar with the approval of the Department.

Power to apply for directions.

1F. (1) The Registrar may, if he believes that it would assist him in the proper and lawful exercise of his functions, apply to the Court for directions, or for a determination of any question of fact, law or procedure, in such manner as may be prescribed by order of the Royal Court, and on such an application the Court may make such order as it thinks fit.

(2) In this section "**the Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of an application under this section the Court may appoint one or more assessors to assist it in the determination of any matter before it.

(3) An appeal from an order of the Court under this section lies, with leave of the Court or the Court of Appeal, to the Court of Appeal on a question of law.

(4) Section 21 of the Court of Appeal (Guernsey) Law, 1961^d ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

Power to amend sections concerning Office of Registrar, etc.

1G. The States may by Ordinance amend sections 1A to 1F where it appears to them to be necessary or expedient to do so for any of the purposes set out in section 11(1)(a)."

5. In section 2(c) for "the Administrator" substitute "the Registrar".
6. In section 4(1)(b) for "the Administrator" substitute "the Registrar".
7. In section 11(1)(a)^e for "the Schedule" substitute "Schedule 1 or 2".
8. In section 12(1) -
 - (a) the definition of "Administrator" is repealed,
 - (b) insert the following definitions at the appropriate places -

""**Bailiff**" means the Bailiff, Deputy Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué,

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

^e Section 11(1)(a) was substituted by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) Ordinance, 2008 (in force 3rd November, 2008).

"**employee**" includes a person employed under a contract of service or apprenticeship (whether written or oral, express or implied) and a person engaged under a contract for services or on a consultancy or secondment basis,

"**Office of the Registrar**" has the meaning assigned to it in section 1A(1),

"**Registrar**" has the meaning assigned to it in section 1A(2),".

9. The Schedule is numbered as Schedule 1.

10. (1) In the paragraphs of Schedule 1 (as so numbered) specified in subsection (2) for "Administrator" and "Administrator's", wherever appearing, substitute respectively "Registrar" and "Registrar's".

(2) The paragraphs are 1(1), 1(2), 1(3), 1(4)(b), 2(1), 2(2)(b), 3, 4, 5(1), 5(2), 6, 7(1), 7(2), 8(1)(b), 8(1)(c), 9(1), 9(2)(a), 9(2)(b), 10(1) [including items (a) and (b) thereof], 10(2), 11, 12(1) [including the heading], 12(3), 12(4)(a), 12(5), 13(2)(b), 13(2)(c) and 13(2)(d).

11. In paragraph 13 of Schedule 1 (as so numbered) -

(a) in the heading the words "by Administrator" are repealed,
and

(b) after subparagraph (2)(h) insert the following -

"(i) the disclosure of information which is authorised or

required by or under this Law or any other enactment."

12. After Schedule 1 (as so numbered) insert the following Schedule -

"SCHEDULE 2
OFFICE OF THE REGISTRAR

Section 1A(7)

Salary or fees of Registrar.

1. The Registrar shall be paid such salary, fees, emoluments and other allowances as the Department may determine.

Appointment of staff.

2. (1) The Registrar may -
- (a) subject to the approval of the Department, appoint such officers and employees, and
 - (b) appoint and instruct such other persons,

on such terms and conditions (whether as to remuneration, expenses, pensions or otherwise) as he thinks necessary for the exercise of his functions.

(2) The Registrar may, subject to the approval of the Department, establish and maintain such schemes or make such other arrangements as he thinks fit for the payment of pensions and other benefits in respect of his officers and employees.

Delegation of functions.

3. (1) The Registrar may, by an instrument in writing, either

generally or otherwise as specified in the instrument, arrange for any of his functions to be exercised in his name by any person named or described in the instrument, other than this power of delegation.

(2) A function exercised by a delegate pursuant to an arrangement made under this paragraph is for all purposes exercised by the Registrar; and every decision taken or other thing done by a delegate pursuant to such an arrangement has the same effect as if taken or done by the Registrar.

(3) An arrangement made under this paragraph for the exercise of a function by a delegate -

- (a) may be varied or terminated at any time by the Registrar, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement,
- (b) does not prevent the exercise of the function by the Registrar while the arrangement subsists.

(4) The provisions of this paragraph, and of paragraph 4, are without prejudice to the provisions of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^f.

Appointment of Deputy Registrar.

4. (1) Without prejudice to the Registrar's powers under paragraph 3, the Department may, subject to such terms and conditions as it may from time to time think fit, appoint any person as Deputy Registrar with authority to exercise the

^f Order in Council No. XXI of 1991.

Registrar's functions during any period in which the Registrar is unavailable or unable to act or during any vacancy in that office.

(2) A function exercised by a Deputy Registrar pursuant to an appointment under this paragraph is for all purposes exercised by the Registrar; and every decision taken or other thing done by a Deputy Registrar pursuant to such an appointment has the same effect as if taken or done by the Registrar.

(3) An appointment under this paragraph of a Deputy Registrar -

(a) may be varied or terminated at any time by the Department, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment,

(b) does not prevent the exercise of the function by the Registrar while the appointment subsists.

Disclosure of interests.

5. (1) The Registrar shall, if he has any direct or indirect personal interest in the outcome of any matter of which he is seised under this Law or any other enactment, disclose the nature of his interest to the Department.

(2) For the purposes of this paragraph, a general notice given by the Registrar to the effect that he is a shareholder in, or a director of, a body corporate, and is to be regarded as interested in any matter concerning that body corporate, is a sufficient disclosure in relation to any such matter.

Proof of documents.

6. (1) In any legal proceedings the provisions of subparagraph (2)

apply in relation to any document purporting to be -

- (a) issued by or on behalf of the Registrar, or
 - (b) signed by the Registrar, by any of his officers or employees or by any person to whom, pursuant to paragraph 3, he has delegated authority to sign documents of that description.
- (2) The document -
- (a) may be received in evidence,
 - (b) unless the contrary is proved, is deemed -
 - (i) to be the document which it purports to be, and
 - (ii) to have been issued by or on behalf of the Registrar or, as the case may be, to have been signed by the person by whom it purports to have been signed, without proof of his identity, signature or official capacity, and
 - (c) is evidence of the matters stated therein."

Savings for functions performed by Administrator of Income Tax.

13. (1) Anything done before the date of commencement of this Law or in the process of being done on that date by or in relation to the Administrator of Income Tax under or by virtue of the Charities and Non Profit Organisations

(Registration) (Guernsey) Law, 2008, as amended^g, shall have effect as if done or (as the case may be) may be continued by or in relation to the Registrar of Non Profit Organisations.

(2) In subsection (1) "**the Administrator of Income Tax**" includes the Assistant Administrator and any other person or body to whom the Administrator, before the date of commencement of this Law, by instrument in writing delegated his functions under the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008, as amended.

Citation.

14. This Law may be cited as the Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009.

Commencement.

15. This Law shall come into force on the date appointed by Ordinance of the States.

^g No. XXVI of 2008; registered by the Royal Court on the 28th October, 2008; amended by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) Ordinance, 2008 (in force 3rd November, 2008) and by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) (No. 2) Ordinance, 2008 (in force 26th November, 2008).

PROJET DE LOI

ENTITLED

The Charities and Non Profit Organisations (Enabling Provisions) (Guernsey and Alderney) Law, 2009

THE STATES, in pursuance of their Resolution of the 27th September, 2007^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Alderney, Herm and Jethou.

Power to enact Ordinances in relation to non profit organisations and non profit organisational activities.

1. The States may by Ordinance make such provision as they think fit in relation to non profit organisations, their activities, and their directors, employees, officers and trustees, and in relation to non profit organisational activities.

Specific matters for which Ordinances may make provision.

2. An Ordinance under section 1 may, without limitation, make provision in relation to the following matters -

- (a) the prohibition, restriction or regulation of matters set out in section 1,
- (b) exceptions, exemptions and derogations from any such prohibition, restriction or regulation including, without

^a Article VIII of Billet d'État No. XX of 2007.

limitation, exceptions, exemptions and derogations -

- (i) in the public interest,
 - (ii) as a matter of public policy, or
 - (iii) on social, community, economic, ethical and other grounds,
- (c) the establishment of an office of Registrar of Non Profit Organisations ("**the Registrar**"), whether as an office of a department of the States or as a separate legal entity, with responsibility for the administration and enforcement of this Law and any Ordinance under it, and with such rights, liabilities, functions and capacity as may be specified by Ordinance,
- (d) the appointment, term of office and termination of office of the Registrar,
- (e) the vesting of any right, liability, power and property in the Registrar,
- (f) the investigation by the Registrar of matters set out in section 1 and the making and publication by him of reports on those matters, whether at the direction of the Policy Council or the States,
- (g) the Registrar's powers of entry, inspection, search and inquiry for the purposes of -

- (i) the administration and enforcement of any Ordinance under this Law,
 - (ii) carrying out investigations and making reports, and
 - (iii) generally for the carrying out of his functions,
- (h) the production, seizure, retention, use and disclosure of documents and information,
 - (i) the obtaining and exchanging of information,
 - (j) the service of documents,
 - (k) the establishment by the Registrar of his office, the appointment of his staff and the delegation of his functions,
 - (l) the issue by the Registrar of codes of practice, guidance and recommendations, and their status in law,
 - (m) the imposition by the Registrar of directions, orders, penalties, fines, interim measures and other sanctions,
 - (n) the appointment by the Registrar of any person or body to advise him in relation to the exercise of his functions,

- (o) the production and publication by the Registrar of reports and accounts and the auditing of accounts,
- (p) the making of grants and loans to the Registrar,
- (q) the establishment by the Registrar of a fund and the status of that fund for income tax purposes,
- (r) the objectives to be promoted and the other matters to be taken into account by the Registrar, the Policy Council and the States in carrying out their respective functions under this Law and any Ordinance under it,
- (s) the giving to the Registrar of directions and recommendations by the Policy Council, the States or any other body,
- (t) co-operation and the provision of mutual assistance by the Registrar, in relation to matters set out in section 1, with or to authorities -
 - (i) carrying out functions corresponding to his own, or
 - (ii) which are of any prescribed class or description,
- (u) privilege and duties of confidentiality and exceptions, exemptions and derogations therefrom,

- (v) the implementation of -
 - (i) any international instrument relating to matters set out in section 1 or any aspect thereof,
 - (ii) any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under any such international instrument,

subject to such exceptions, adaptations and modifications as may be specified in the Ordinance,
- (w) the administration and enforcement of any Ordinance under this Law including, without limitation, provision as to -
 - (i) appeals in relation to decisions in respect of such administration and enforcement,
 - (ii) modes of civil enforcement (including, without limitation, proceedings for injunctions),
 - (iii) subject to section 3(7), modes of criminal enforcement,
 - (iv) remedies in respect of contraventions of any prohibition, restriction or regulation imposed by an Ordinance under this Law, and

(v) the establishment of a tribunal and a panel of persons from whom the members of the tribunal are to be drawn,

and otherwise as to the administration of justice in relation to matters set out in section 1,

(x) the jurisdiction and powers of the courts, and the constitution and procedure of those courts, in relation to matters set out in section 1,

(y) provision as to evidence including, without limitation, rules as to the admission of evidence and evidential presumptions,

(z) the authorisation of, and conferring of functions on, any person, body or office including, without limitation, the Registrar, the Policy Council and the States (and their respective officers) for the purposes of the administration and enforcement of any Ordinance under this Law,

(aa) the granting (conditionally or otherwise), refusal, variation, revocation and suspension of licences or other descriptions of authorisation or approval for the doing of anything restricted, regulated or controlled by an Ordinance under this Law,

(bb) the making of applications for such licences,

authorisations or approvals,

- (cc) the levying of fees,
- (dd) the recovery of costs associated with the administration and enforcement of any Ordinance under this Law, and
- (ee) the exclusion of liability of any specified person or body in respect of anything done or omitted to be done in the discharge or purported discharge of any of their functions under the Ordinance unless the thing is done or omitted to be done in bad faith.

General provisions as to subordinate legislation.

- 3. (1) Any Ordinance under this Law -
 - (a) may be amended or repealed by a subsequent Ordinance hereunder,
 - (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, and
 - (c) may, without limitation, contain provision -
 - (i) subject to subsection (7), as to the creation of new liabilities, obligations, remedies, sanctions and penalties,

- (ii) making consequential amendments to this Law and any other enactment, and
- (iii) authorising the Policy Council, any other department of the States or any other body (including, without limitation, any court) to make or issue regulations, rules, orders, codes or guidance, whether as to any matter in relation to which the Ordinance can make provision or otherwise.

(2) Any power conferred by this Law to make any Ordinance 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) An Ordinance under this Law may, for the avoidance of doubt-

- (a) subject to subsection (7), create offences, and
- (b) repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law.

(4) Without prejudice to the generality of the foregoing provisions of this Law, an Ordinance under this Law -

- (a) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force,
- (b) may make provision for the purpose of dealing with matters arising out of or related to matters set out in section 1, and
- (c) without prejudice to the generality of the foregoing, may make any such provision of any such extent as might be made by Projet de Loi, but may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

(5) An Ordinance under this Law does not have effect in

Alderney unless approved by the States of Alderney.

(6) For the purposes of subsection (5), an Ordinance shall be deemed to have been approved by the States of Alderney at the expiration of a period of four months immediately following the day of its approval by the States of Deliberation unless, within that period, the States of Alderney resolve to disapprove its application to Alderney.

(7) An Ordinance under this Law may not -

- (a) provide for offences to be triable only on indictment,
- (b) authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008, or
- (c) authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

Interpretation.

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

"**charity**" means any organisation established for charitable purposes only,

"**department of the States**" means any department, council or committee (howsoever called or titled) of the States,

"enactment" means any Law, Ordinance or subordinate legislation,

"implementation", in relation to -

- (a) any international instrument, and
- (b) any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under any such international instrument,

includes the enforcement or enactment thereof, and the securing of the administration, execution, recognition, exercise or enjoyment thereof, in or under domestic law,

"international instrument" means -

- (a) any convention, treaty, protocol or other international instrument, or any provision thereof, and
- (b) any Community provision within the meaning of section 3(1) of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^b,

whether or not binding on Guernsey,

^b Order in Council No. III of 1994.

"non profit organisation" means any organisation established solely or principally either for the non-financial benefit of its members or for the benefit of society or any class or part of society and, without limitation, includes any organisation established solely or principally for social, fraternal, educational, cultural or religious purposes, or for the carrying out of any other types of good works, and includes a charity,

"non profit organisational activities" means any activities of a non profit organisation whether or not such activities are connected to its objects or purpose,

"organisation" includes a body of persons (corporate or unincorporate), a trust, any other legal entity and any equivalent or similar structure or arrangement,

"Policy Council" means the States Policy Council,

"Registrar" has the meaning assigned by section 2(c),

"States" means the States of Guernsey, and

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

(2) The States may by Ordinance amend subsection (1) so as to amend the meaning of any expression defined therein or to define any other expression.

(3) The Interpretation (Guernsey) Law, 1948^c applies to the interpretation of this Law.

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

Citation.

5. This Law may be cited as the Charities and Non Profit Organisations (Enabling Provisions) (Guernsey and Alderney) Law, 2009.

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

The Companies (Panel on Takeovers and Mergers) Ordinance, 2009

THE STATES, in pursuance of their Resolutions of the 29th March, 2007^a and the 1st November, 2007^b, and in exercise of the powers conferred on them by sections 533 and 538 of the Companies (Guernsey) Law, 2008^c and sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^d and all other powers enabling them in that behalf, hereby order:-

Amendment of the Law.

1. After section 340 of the Companies (Guernsey) Law, 2008 insert the following Part -

"PART XVIII
TAKEOVERS AND MERGERS PANEL

Appointment of the Panel.

340A. (1) The Department may, by regulation, appoint a body to have the functions conferred by or under this Part.

(2) The body appointed under subsection (1) shall be known as the Panel on Takeovers and Mergers ("**the Panel**").

^a Article XIV of Billet d'État No. XI of 2007.

^b Articles XII and XIII of Billet d'État No. XXII of 2007.

^c Order in Council No. VIII of 2008; amended by Ordinance No. XXV of 2008.

^d No. III of 1994.

(3) The Panel may do anything that it considers necessary or expedient for the purposes of, or in connection with, its functions.

(4) Subject to section 340B(4) and (5), the Panel may make arrangements for any of its functions to be exercised by -

- (a) a committee or subcommittee of the Panel, or
- (b) an officer or member of staff of the Panel or a person acting as such.

Rules of the Panel.

340B. (1) The Panel must make rules giving effect to Articles 3.1, 4.2, 5, 6.1 to 6.3, 7 to 9 and 13 of the Takeovers Directive.

(2) Rules made by the Panel may also make other provision –

- (a) for or in connection with the regulation of -
 - (i) takeover bids,
 - (ii) merger transactions,
 - (iii) transactions not falling within subparagraph (i) or (ii) that have or may have, directly or indirectly, an effect on the ownership or control of companies,
- (b) for or in connection with the regulation of things done in consequence of, or otherwise in relation to, any

such bid or transaction,

- (c) about cases where -
 - (i) any such bid or transaction is, or has been, contemplated or apprehended, or
 - (ii) an announcement is made denying that any such bid or transaction is intended.

(3) The provision that may be made under subsection (2) includes, in particular, provision for a matter that is, or is similar to, a matter provided for by the City Code as it had effect immediately before the 8th November, 2006 (the date when the Companies Act 2006 was passed).

(4) In relation to rules made by virtue of section 340P (fees and charges), functions under this section may be exercised either by the Panel itself or by a committee of the Panel (but not otherwise).

(5) In relation to rules of any other description, the Panel must exercise its functions under this section by a committee of the Panel.

Further provisions about rules.

340C. (1) Rules may -

- (a) make different provision for different purposes,
- (b) make provision subject to exceptions or exemptions,
- (c) contain incidental, supplemental, consequential or

transitional provision, and

- (d) authorise the Panel to dispense with or modify the application of rules in particular cases and by reference to any circumstances.

(2) Rules made by virtue of subsection (1)(d) must require the Panel to give reasons for acting as mentioned in that subsection.

- (3) Rules must be made by an instrument in writing.

(4) Immediately after an instrument containing rules is made, the text must be made available to the public, with or without payment, in whatever way the Panel thinks appropriate.

(5) A person is not to be taken to have contravened a rule if he shows that at the time of the alleged contravention the text of the rule had not been made available as required by subsection (4).

(6) The production of a printed copy of an instrument purporting to be made by the Panel on which is endorsed a certificate signed by an officer of the Panel authorised by it for that purpose and stating -

- (a) that the instrument was made by the Panel,
- (b) that the copy is a true copy of the instrument, and
- (c) that on a specified date the text of the instrument was made available to the public as required by subsection (4),

is evidence of the facts stated in the certificate.

(7) A certificate purporting to be signed as mentioned in subsection (6) is to be treated as having been properly signed unless the contrary is shown.

(8) A person who wishes in any legal proceedings to rely on an instrument by which rules are made may require the Panel to endorse a copy of the instrument with a certificate of the kind mentioned in subsection (6).

Rulings.

340D. (1) The Panel may give rulings on the interpretation, application or effect of rules.

(2) To the extent and in the circumstances specified in rules, and subject to any review or appeal, a ruling has binding effect.

Directions.

340E. Rules may contain provision conferring power on the Panel to give any direction that appears to the Panel to be necessary in order -

- (a) to restrain a person from acting (or continuing to act) in breach of rules,
- (b) to restrain a person from doing (or continuing to do) a particular thing, pending determination of whether that or any other conduct of his is or would be a breach of rules,

- (c) otherwise to secure compliance with rules.

Power to require documents and information.

340F. (1) The Panel may by notice in writing require a person -

- (a) to produce any documents that are specified or described in the notice, and
- (b) to provide, in the form and manner specified in the notice, such information as may be specified or described in the notice.

(2) A requirement under subsection (1) must be complied with -

- (a) at a place specified in the notice, and
- (b) before the end of such reasonable period as may be so specified.

(3) This section applies only to documents and information reasonably required in connection with the exercise by the Panel of its functions under this Law.

(4) The Panel may require -

- (a) any document produced to be authenticated, or
- (b) any information provided (whether in a document or otherwise) to be verified,

in such manner as it may reasonably require.

(5) The Panel may authorise a person to exercise any of its powers under this section.

(6) A person exercising a power by virtue of subsection (5) must, if required to do so, produce evidence of his authority to exercise the power.

(7) The production of a document in pursuance of this section does not affect any lien that a person has on the document.

(8) The Panel may take copies of or extracts from a document produced in pursuance of this section.

(9) A reference in this section to the production of a document includes a reference to the production of -

- (a) a hard copy of information recorded otherwise than in hard copy form, or
- (b) information in a form from which a hard copy can be readily obtained.

(10) A person is not required by this section to disclose documents or information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Restriction on disclosure.

340G. (1) This section applies to information (in whatever form) -

- (a) relating to the private affairs of an individual, or
- (b) relating to any particular business,

that is provided to the Panel in connection with the exercise of its functions under this Law.

(2) No such information may, during the lifetime of the individual or so long as the business continues to be carried on, be disclosed without the consent of that individual or (as the case may be) the person for the time being carrying on that business.

(3) Subsection (2) does not apply to any disclosure of information that -

- (a) is made for the purpose of facilitating the carrying out by the Panel of any of its functions under this Law,
- (b) is made to a person specified in Part 1 of Schedule 6,
- (c) is of a description specified in Part 2 of Schedule 6, or
- (d) is made in accordance with Part 3 of Schedule 6.

(4) The Department may by regulations amend Schedule 6.

(5) Regulations under subsection (4) may not -

- (a) amend Part 1 of Schedule 6 by specifying a person unless the person exercises functions of a public nature

(whether or not he exercises any other function),

- (b) amend Part 2 of Schedule 6 by adding or modifying a description of disclosure unless the purpose for which the disclosure is permitted is likely to facilitate the exercise of a function of a public nature, or
 - (c) amend Part 3 of Schedule 6 so as to have the effect of permitting disclosures to be made to a body other than one that exercises functions of a public nature in a district, territory or place outside Guernsey.
- (6) Subsection (2) does not apply to -
- (a) the disclosure by an authority within subsection (7) of information disclosed to it by the Panel in reliance on subsection (3),
 - (b) the disclosure of such information by anyone who has obtained it directly or indirectly from an authority within subsection (7).
- (7) The authorities within this subsection are -
- (a) the Commission,
 - (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive,
 - (c) any other person or body that exercises functions of a

public nature under legislation in a district, territory or place outside Guernsey that are similar to the Panel's functions or those of the Commission.

(8) This section does not prohibit the disclosure of information if the information is or has been available to the public from any other source.

(9) Nothing in this section authorises the making of a disclosure in contravention of the Data Protection (Bailiwick of Guernsey) Law, 2001^e.

Offence of disclosure in contravention of section 340G.

340H. (1) A person who discloses information in contravention of section 340G is guilty of an offence, unless -

- (a) he did not know, and had no reason to suspect, that the information had been provided as mentioned in section 340G(1), or
- (b) he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

(2) A person guilty of an offence under this section is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the uniform scale, or to both,
- (b) on conviction on indictment, to imprisonment for a

^e Order in Council No. V of 2002.

term not exceeding 2 years, or to a fine, or to both.

Panel's duty of co-operation.

340I. (1) The Panel must take such steps as it considers appropriate to co-operate with -

- (a) the Commission,
- (b) an authority designated as a supervisory authority for the purposes of Article 4.1 of the Takeovers Directive,
- (c) any other person or body that exercises functions of a public nature, under legislation in any district, territory or place outside Guernsey, that appear to the Panel to be similar to its own functions or those of the Commission.

(2) Co-operation may include the sharing of information that the Panel is not prevented from disclosing.

Commission's duty to take appropriate steps to assist Panel.

340J. (1) The Commission must take such steps as it considers appropriate to co-operate with the Panel for the purpose of enabling or assisting the Panel to exercise its functions under this Law.

(2) For that purpose, the Commission may exercise its functions as if the Panel were a relevant supervisory authority.

(3) Nothing in any enactment or rule of custom or law precludes the disclosure of information to which subsection (4) applies where the disclosure

is made -

- (a) by the Commission to the Panel for the purpose of enabling or assisting the Panel to exercise its functions under this Law, or
 - (b) by the Panel in the cases and circumstances authorised by section 340G(3), (6) and (8).
- (4) This subsection applies to information (in whatever form) -
- (a) relating to the private affairs of an individual, or
 - (b) relating to any particular business,

that is -

- (i) provided to the Commission under or for the purposes of any enactment, or
- (ii) received by the Commission directly or indirectly from a person who has received it under or for the purposes of any enactment.

Hearings and appeals.

340K. (1) Rules must provide for a decision of the Panel to be subject to review by a committee of the Panel (the "**Hearings Committee**") at the instance of such persons affected by the decision as are specified in the rules.

- (2) Rules may also confer other functions on the Hearings

Committee.

(3) Rules must provide for there to be a right of appeal against a decision of the Hearings Committee to an independent tribunal (the "**Takeover Appeal Board**") in such circumstances and subject to such conditions as are specified in the rules.

(4) Rules may contain -

- (a) provision as to matters of procedure in relation to proceedings before the Hearings Committee (including provision imposing time limits),
- (b) provision about evidence in such proceedings,
- (c) provision as to the powers of the Hearings Committee dealing with a matter referred to it,
- (d) provision about enforcement of decisions of the Hearings Committee and the Takeover Appeal Board.

(5) Rules must contain provision -

- (a) requiring the Panel, when acting in relation to any proceedings before the Hearings Committee or the Takeover Appeal Board, to do so by an officer or member of staff of the Panel (or a person acting as such),
- (b) preventing a person who is or has been a member of

the committee mentioned in section 340B(5) from being a member of the Hearings Committee or the Takeover Appeal Board,

- (c) preventing a person who is a member of the committee mentioned in section 340B(5), of the Hearings Committee or of the Takeover Appeal Board from acting as mentioned in paragraph (a).

Sanctions.

340L. (1) Rules may contain provision conferring power on the Panel to impose sanctions on a person who has -

- (a) acted in breach of rules, or
- (b) failed to comply with a direction given under section 340E.

(2) Subsection (3) applies where rules made by virtue of subsection (1) confer power on the Panel to impose a sanction of a kind not provided for by the City Code as it had effect immediately before the 8th November, 2006 (the date when the Companies Act 2006 was passed).

(3) The Panel must prepare a statement (a "**policy statement**") of its policy in respect of -

- (a) the imposition of the sanction in question, and
- (b) where the sanction is in the nature of a financial penalty, the amount of the penalty that may be

imposed.

An element of the policy must be that, in making a decision about any such matter, the Panel has regard to the factors mentioned in subsection (4).

- (4) The factors are -
- (a) the seriousness of the breach or failure in question in relation to the nature of the rule or direction contravened,
 - (b) the extent to which the breach or failure was deliberate or reckless,
 - (c) whether the person on whom the sanction is to be imposed is an individual.

(5) The Panel may at any time revise a policy statement.

(6) The Panel must prepare a draft of any proposed policy statement (or revised policy statement) and consult such persons about the draft as the Panel considers appropriate.

(7) The Panel must publish, in whatever way it considers appropriate, any policy statement (or revised policy statement) that it prepares.

(8) In exercising, or deciding whether to exercise, its power to impose a sanction within subsection (2) in the case of any particular breach or failure, the Panel must have regard to any relevant policy statement published and in force at the time when the breach or failure occurred.

Compensation.

340M. (1) Rules may confer power on the Panel to order a person to pay such compensation as it thinks just and reasonable if he is in breach of a rule the effect of which is to require the payment of money.

(2) Rules made under this section may include provision for the payment of interest (including compound interest).

Enforcement by the Court.

340N. (1) If, on the application of the Panel, the Court is satisfied -

- (a) that there is a reasonable likelihood that a person will contravene a rule-based requirement, or
- (b) that a person has contravened a rule-based requirement or a disclosure requirement,

the Court may make any order it thinks fit to secure compliance with the requirement.

(2) Except as provided by subsection (1), no person has a right to seek an injunction to prevent a person from contravening (or continuing to contravene) a rule-based requirement or a disclosure requirement.

(3) In this section "**the Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of an application under this section the Court may appoint one or more assessors to assist it in the determination of any matter before it.

No action for breach of statutory duty etc.

340O. (1) Contravention of a rule-based requirement or a disclosure requirement does not give rise to any right of action for breach of statutory duty.

(2) Contravention of a rule-based requirement does not make any transaction void or unenforceable or (subject to any provision made by rules) affect the validity of any other thing.

Fees and charges.

340P. (1) Rules may provide for fees or charges to be payable to the Panel for the purpose of meeting any part of its expenses under this Law.

(2) A reference in this section or section 340Q to expenses of the Panel is to any expenses that have been or are to be incurred by the Panel in, or in connection with, the exercise of its functions under this Law, including in particular -

- (a) payments in respect of the expenses of the Takeover Appeal Board,
- (b) the cost of repaying the principal of, and paying any interest on, any money borrowed by the Panel,
- (c) the cost of maintaining adequate reserves.

Levy.

340Q. (1) For the purpose of meeting any part of the expenses of the Panel under this Law, the Department may by regulation provide for a levy to be payable to the Panel -

- (a) by specified persons or bodies, or persons or bodies of a specified description, or
- (b) on transactions, of a specified description, in securities on specified markets.

(2) The power to specify or to specify descriptions of persons or bodies must be exercised in such a way that the levy is payable only by persons or bodies that appear to the Department -

- (a) to be capable of being directly affected by the exercise of any of the functions of the Panel under this Law, or
- (b) otherwise to have a substantial interest in the exercise of any of those functions.

(3) Regulations under this section may in particular -

- (a) specify the rate of the levy and the period in respect of which it is payable at that rate, and
- (b) make provision as to the times when, and the manner in which, payments are to be made in respect of the levy.

(4) In determining the rate of the levy payable in respect of a particular period, the Department -

- (a) must take into account any other income received or expected by the Panel under this Law in respect of that

period, and

- (b) may take into account estimated as well as actual expenses of the Panel under this Law in respect of that period.

(5) The Panel must -

- (a) keep proper accounts in respect of any amounts of levy received under this section, and
- (b) prepare, in relation to each period in respect of which any such amounts are received, a statement of account relating to those amounts in such form and manner as is specified in the Regulations.

The accounts must be audited and the statement certified by auditors who are appointed or approved by the Department and who must be -

- (i) qualified for appointment as auditors under section 260, or
- (ii) where the the body appointed to be the Panel under section 340A(1) is a body established under the law of a district, territory or place outside Guernsey, qualified in that district, territory or place to audit the accounts and certify the statement.

Recovery of fees, charges or levy.

340R. An amount payable by any person or body by virtue of section 340P or 340Q is a civil debt due from that person or body to the Panel and is recoverable accordingly.

Panel as party to proceedings.

340S. The Panel, whether or not it is an unincorporated body, may -

- (a) bring proceedings under this Law in its own name,
- (b) bring or defend any other proceedings in its own name.

Exemption from liability in damages.

340T. (1) Neither the Panel nor any person within subsection (2) is liable in damages for anything done or omitted to be done in or in connection with the exercise or purported exercise of the Panel's functions under this Law.

- (2) A person is within this subsection if -
 - (a) he is (or is acting as) a member, officer or member of staff of the Panel, or
 - (b) he is a person authorised under section 340F(5).
- (3) Subsection (1) does not apply -
 - (a) if the act or omission is shown to have been in bad faith, or

- (b) so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000^f (acts of public authorities which are incompatible with Convention rights).

Privilege against self-incrimination.

340U. (1) A statement made by a person in response to -

- (a) a requirement under section 340F(1), or
- (b) an order made by the Court under section 340N to secure compliance with such a requirement,

may not be used against him in criminal proceedings in which he is charged with an offence to which this subsection applies.

(2) Subsection (1) applies to any offence other than an offence under section 539 or an offence of perjury.

Other legislation relating to takeovers and mergers.

340V. Nothing in this Part affects the operation of any provision of any Ordinance made under the Competition and Fair Trading (Guernsey) Law, 2008.

Annual reports.

340W. (1) The Panel must, after the end of each of its financial years, publish a report.

^f Order in Council No. XIV of 2000.

- (2) The report must -
- (a) set out how the Panel's functions were exercised in the preceding year,
 - (b) include the Panel's accounts for that year, and
 - (c) mention any matters the Panel considers to be of relevance to the exercise of its functions.

(3) Notwithstanding the provisions of subsections (1) and (2), a report of the Panel published in accordance with the law of a district, territory or place outside Guernsey where the Panel exercises functions corresponding to those conferred on it by or under this Part dealing with the matters set out in subsection (2) is sufficient to comply with the requirements of this section.

Place of establishment of Panel, etc and exercise of functions.

340X. For the avoidance of doubt -

- (a) the body appointed to be the Panel under section 340A(1) may be a body established under, or recognised by, the law of a district, territory or place outside Guernsey,
- (b) the Takeover Appeal Board may be a tribunal established under, or recognised by, the law of a district, territory or place outside Guernsey, and
- (c) the Panel, the Hearings Committee and the Takeover Appeal Board may exercise any of their respective

functions under this Law in any district, territory or place outside Guernsey.

Interpretation of Part XVIII A.

340Y. In this Part -

"**City Code**" means the City Code on Takeovers and Mergers issued by the Panel on Takeovers and Mergers of the United Kingdom,

"**Companies Act 2006**" means the Companies Act 2006 (c. 46) of the United Kingdom,

"**company**" means a company or an overseas company,

"**disclosure requirement**" means a requirement imposed under section 340F,

"**Financial Services Authority**" means the Authority of that name within the meaning of the Financial Services and Markets Act,

"**Financial Services and Markets Act**" means the Financial Services and Markets Act 2000 (c. 8) of the United Kingdom,

"**Hearings Committee**" means the committee of the Panel established under section 340K(1),

"**Panel**" means the Panel on Takeovers and Mergers appointed under section 340A(1),

"**regulatory Law**" has the meaning given by section 24 of the

Financial Services Commission (Bailiwick of Guernsey) Law, 1987^g,

"relevant supervisory authority" means an authority exercising in a district, territory or place outside Guernsey -

- (a) functions corresponding to those of the Commission under -
 - (i) the regulatory Laws or any of them, or
 - (ii) the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, or
- (b) such other functions as the Commission may by regulations made under the regulatory Laws or any of them prescribe,

"rule-based requirement" means a requirement imposed by or under rules,

"rules" mean rules of the Panel made under section 340B,

"Takeover Appeal Board" has the meaning given by section 340K,

"takeover bid" includes a takeover bid within the meaning of the Takeovers Directive,

^g Orders en Conseil Vol. XXX, p. 243; the definition was inserted by Order in Council No. XX of 2003.

"**Takeovers Directive**" means Directive 2004/25/EC of the 21st April 2004 on takeover bids (O.J. No. L142 30.04.2004) as from time to time amended, re-enacted (with or without modification), extended or applied. "

2. After Schedule 5 to the Companies (Guernsey) Law, 2008 insert the following Schedule -

"SCHEDULE 6
SPECIFIED PERSONS, DESCRIPTIONS OF DISCLOSURE ETC FOR THE
PURPOSES OF SECTION 340G

PART I
SPECIFIED PERSONS

1. The Department.
2. The Treasury and Resources Department.
3. The Commission.
4. The Director of Income Tax.
5. The Chief Officer of Customs and Excise.
6. Her Majesty's Procureur.
7. A police officer.
8. A person or body specified in Part 1 of Schedule 2 to the Companies Act 2006.

9. The Registrar.

PART 2

SPECIFIED DESCRIPTIONS OF DISCLOSURE

10. A disclosure for the purpose of enabling or assisting a person appointed under -

- (a) section 27E or 41I of the Protection of Investors (Bailiwick of Guernsey) Law, 1987,
- (b) section 27 of the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
- (c) section 10 of the Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996,
- (d) section 24 of the Regulation of Fiduciaries, Administration Businesses and Company Directors (Bailiwick of Guernsey) Law, 2000,
- (e) section 69 of the Insurance Business (Bailiwick of Guernsey) Law, 2002,
- (f) section 46 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,
- (g) section 19 of the Registration of Non-Regulated Financial Services Business (Bailiwick of Guernsey) Law, 2008,

to exercise his functions.

11. A disclosure for the purpose of enabling or assisting -

- (a) the European Central Bank, or
- (b) the central bank of any district, territory or place outside Guernsey,

to exercise its functions.

12. A disclosure for the purpose of enabling or assisting any supervisory body or professional oversight body to exercise its functions under Part XVIA of this Law (Regulation of Auditors).

13. A disclosure for the purpose of enabling or assisting an overseas regulatory authority to exercise its regulatory functions.

In this paragraph -

"overseas regulatory authority" means an authority which in a district, territory or place outside Guernsey exercises -

- (a) any function corresponding to a function of the Department, the Registrar or the Commission under this Law,
- (b) any function corresponding to a function of the Commission under a regulatory Law or the Financial Services Commission (Guernsey) Law, 1987,

- (c) any function in connection with the investigation of, or the enforcement of rules (whether or not having the force of law) relating to, conduct of the kind prohibited by the Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996,
- (d) any function prescribed for the purposes of this paragraph by regulations of the Department, being a function which, in its opinion, relates to companies or financial services, and

"**regulatory function**" means any function described in subparagraphs (a) to (d) of the definition of "overseas regulatory authority".

14. A disclosure with a view to the institution of, or otherwise for the purposes of, criminal proceedings.

15. A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings on an application under Part XXV of this Law (Disqualification Orders).

16. A disclosure with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance of an Advocate of the Royal Court, foreign lawyer, auditor, accountant, valuer or actuary of his professional duties.

In this paragraph "**foreign lawyer**" means a person who -

- (a) is not an Advocate of the Royal Court, but

- (b) is a member, and entitled to practise as a member, of a legal profession regulated within a district, territory or place outside Guernsey.

17. A disclosure with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance of a public servant of his duties.

In this paragraph "**public servant**" means -

- (a) an officer or employee of the Crown,
- (b) a member, officer or employee of the States,
- (c) a member, officer or employee of the Commission,
- (d) any person or body exercising public functions and declared by regulations of the Department to be a public servant for the purposes of this paragraph.

18. A disclosure for the purpose of the provision of a summary or collection of information framed in such a way so as not to enable the identity of any person to whom the information relates to be ascertained.

19. A disclosure of any description specified in Part 2 of Schedule 2 to the Companies Act 2006.

PART 3
OVERSEAS REGULATORY BODIES

20. A disclosure is made in accordance with this Part of this Schedule if -

- (a) it is made to a person or body within paragraph 21, and
- (b) it is made for the purpose of enabling or assisting that person or body to exercise the functions mentioned in that paragraph.

21. The persons or bodies within this paragraph are those exercising functions of a public nature, under legislation in any district, territory or place outside Guernsey, that appear to the Panel to be similar to its own functions or those of the Commission or of the Financial Services Authority.

22. In determining whether to disclose information to a person or body in accordance with this Part of this Schedule, the Panel must have regard to the following considerations -

- (a) whether the use that the person or body is likely to make of the information is sufficiently important to justify making the disclosure, and
- (b) whether the person or body has adequate arrangements to prevent the information from being used or further disclosed otherwise than for the purposes of carrying out the functions mentioned in paragraph 21 or any other purposes substantially similar to those for which information disclosed to the Panel could be used or further disclosed."

Citation.

3. This Ordinance may be cited as the Companies (Panel on Takeovers and Mergers) Ordinance, 2009.

Commencement.

4. This Ordinance shall come into force on the 1st July, 2009.

The Boats and Vessels (Registration, Speed Limits and Abatement of Noise) (Amendment) Ordinance, 2009

THE STATES, in pursuance of their resolution of the 26th day of April, 2007^a, hereby order:-

Amendment of 1970 Ordinance.

1. For the marginal note relating to section 18 of the Boats and Vessels (Registration, Speed Limits and Abatement of Noise) Ordinance, 1970, as amended^b, substitute "Interpretation and power to amend by order.", and after section 18(2) insert the following subsection -

"(3) The Board may amend the provisions of the Schedules to this Ordinance, by order."

Citation.

2. This Ordinance may be cited as the Boats and Vessels (Registration, Speed Limits and Abatement of Noise) (Amendment) Ordinance, 2009.

^a Billet d'État No. XIII of 2007.

^b Recueil d'Ordonnances Tome XVI, p. 346; Tome XIX, p. 220; Tome XXI, p. 16; Tome XXIV, p. 418; Tome XXVI, p. 308; Tome XXX, p. 86; and Ordinance No. IX of 2008

ORDINANCE TO BE LAID BEFORE THE STATES

**The Road Traffic (Compulsory Third Party Insurance)
(Amendment) (Guernsey) Ordinance, 2009**

THE STATES LEGISLATION SELECT COMMITTEE, in exercise of the powers conferred on the States by sections 3A and 14 of the Road Traffic (Compulsory Third Party Insurance) (Guernsey) Law, 1936 as amended^a, and all other powers enabling them in that behalf, and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948 as amended^b, hereby orders:-

Amendment of the 1972 Ordinance.

1. (1) The Road Traffic (Compulsory Third-Party Insurance) (Guernsey) Ordinance, 1972^c is further amended as follows.

(2) Immediately after section 1, insert a new section –

"Issue of insurance discs.

1A. A company shall also issue to every holder of a policy an

^a Ordres en Conseil Vol. X, p. 388; Vol. XII, p. 380; Vol XV, p. 43; Vol. XVIII, pp. 35 and 257; Vol. XX, p. 246; Vol. XXIII, p. 227; Vol. XXIV, p. 250; Vol XXVII, p. 76 and 415; Vol. XXVIII, p. 303; Vol XXIX, p. 214; Vol XXX, p. 243; Vol. XXXI, p. 423; No. 1 of 1991; No. XXI of 2002.; No. II of 2009.

^b Ordres en Conseil Vol. XIII, p. 288; Vol. XIV, p. 407; Vol. XV, p. 279; Vol. XVI, p. 178; Vol. XVIII, p. 275; Vol. XIX, pp. 84 and 140; Vol. XXII, p. 122; Vol. XXIII, p. 476; Vol. XXV, p. 326; Vol. XXVI, p. 255; Vol. XXIX, p. 56; Vol. XXX, p. 16; Vol. XXXI, pp. 164 and 278; Vol. XXXII, p. 41; No. V of 1993; No. II of 1996; No's. III and X of 1998; No. XIII of 2003; No. III of 2004; No's. II and XX of 2007; No. XIII of 2008; the Royal Court (Reform) (Guernsey) Law, 2008 (No. XXII of 2008); Ordinance No. XXXIII of 2003; and the House Committee (Transfer of Functions) Ordinance, 2008.

^c Recueil d'Ordonnances Tome XVIII, p. 130; as amended by Tome XIX, p. 318; Tome XXI, p.188; Tome XXII, p. 104; and Tome XXVI, p. 90.

insurance disc in Form E, or, if it is a temporary insurance disc, Form F."

(3) In section 2, for the marginal note substitute "Time of issue of certificate and disc.", and after "certificate of insurance" insert "and insurance disc".

(4) In section 5 –

(a) in subsection (1), immediately after "any certificates" insert ", or discs", and

(b) in subsection (1)(a), for "or certificate" substitute ", certificate or disc".

(5) In section 7 –

(a) for the marginal note, substitute "Return of certificates and discs to issuing company.",

(b) in subsections (1) and (2), each time "certificates" appears, substitute "certificates and discs", and

(c) in subsection (3), immediately after "certificate" insert "or disc".

(6) Immediately after section 8, insert a new section –

"Issue of duplicate insurance discs.

8A. Where any company by whom an insurance disc has been issued is satisfied that the disc has been lost, stolen, damaged or destroyed,

it shall issue to the person to whom that disc was issued a duplicate insurance disc."

(7) After section 10, insert –

"Display of insurance discs.

10A. An insurance disc required to be displayed on a motor vehicle in accordance with section 3A of the Law shall –

- (a) either –
 - (i) where the vehicle is fitted with a front windscreen, be secured to the inner surface of the windscreen on the near side of the vehicle, or
 - (ii) where the vehicle is not fitted with a front windscreen, be contained in a holder with a transparent cover on the near side of the vehicle;
- (b) be so displayed that the printed face of the disc is conspicuous and unobscured, and is visible and readily accessible for inspection from outside the vehicle; and
- (c) be so located that it does not obstruct the view of the road and traffic ahead of the vehicle of a person driving the vehicle or, where this not possible, does so to the least extent practicable.

Fleet registered keepers.

10B. For the purposes of section 3A of the Law, the number of motor vehicles owned by a fleet registered keeper and operated for trade or business purposes shall not be fewer than 5."

(8) For section 15(2), substitute –

"(2) Any reference in this Ordinance to a certificate or disc in Form A, B, C, D, E or F shall be construed as a reference to a certificate or disc in the form so headed and set out in Part 1 of the Schedule to this Ordinance, which has been duly made and completed subject to and in accordance with the relevant provisions set out in Part 2 of the Schedule."

(9) In Part 1 of the Schedule –

(a) for "Forms of Certificates" substitute "Forms of Certificates and Discs"; and

(b) after Form D insert the following forms –

"FORM E

Insurance Disc

Road Traffic (Compulsory Third Party Insurance)

(Guernsey and Alderney) Law, 1936 – **Insurance Disc**

Policy No:

Commencement Date:

Expiry Date:

Reg. Mark/ Fleet Reg. Keeper:

Authorised Insurer:

FORM F

Temporary Insurance Disc

Road Traffic (Compulsory Third Party Insurance)

(Guernsey and Alderney) Law, 1936 – **TEMPORARY**

Insurance Disc

Policy/cover Note No:

Commencement Time:

Commencement Date:

Expiry Time:

Expiry Date:

Reg. Mark/Fleet Reg. Keeper:

Authorised Insurer:

Issuer: "

(10) At the end of Part 2 of the Schedule, after paragraph 7 insert –

"Provisions relating to the forms and completion of discs

(1) Every insurance disc issued under section 3A of the

Law shall –

- (a) be printed in black on paper of a colour approved, and which may be varied from time to time, by the States Home Department, and
- (b) bear a security number individual to itself printed on it by its manufacturer.

(2) The colour of the paper on which an insurance disc is printed and the ink used in printing it shall be resistant against fading in direct sunlight.

(3) Subject to paragraphs (4) to (6) below, an insurance disc shall be in Form E of Part 1 of this Schedule to this Ordinance, and before issuing it the authorised insurer shall complete it by inserting the following particulars –

- (a) the number of the policy to which it relates,
- (b) the dates of commencement and expiry of the period of cover under the policy specified in the certificate of insurance,
- (c) either –
 - (i) the registration mark of the motor vehicle on which it is to be displayed, being a motor vehicle the use of which is covered by the policy, or
 - (ii) where the policy is effected by a fleet

registered keeper, or it is a motor cycle rider policy, the name of the policy holder,

- (d) the name of the authorised insurer issuing the policy, and
- (e) in print not less than ½ inch in height, the month and year in which the period of cover under the policy expires, the month being represented by the first three letters of the name of the month in block capitals and the year by the last two digits of the year in Arabic numerals.

(4) A duplicate insurance disc issued under section 8A of this Ordinance shall be in Form E of Part 1 of this Schedule and completed as required by paragraph (3) above, save that instead of inserting the date of the commencement of the period of cover, the authorised insurer or his agent shall insert the word "DUPLICATE".

(5) Where a temporary covering note has been issued, the authorised insurer or his agent may issue a temporary insurance disc to the person by whom the policy of insurance has been, or is to be, effected, pending the issue to that person of an insurance disc complying with the requirements of paragraph (3) above.

(6) A temporary insurance disc shall be in Form F of Part 1 of this Schedule, and before issuing it the authorised insurer or his or her agent shall complete it by inserting the following particulars –

- (a) the number of the insurance policy or covering note to which it relates,
- (b) the dates and times of commencement and expiry of the period of cover under the policy specified in the certificate of insurance or, where the temporary insurance disc is issued in respect of a covering note, the period of cover specified in the note,
- (c) either –
 - (i) the registration mark of the motor vehicle on which it is to be displayed, being a motor vehicle the use of which is covered by the policy or covering note, or
 - (ii) where the policy is, or is to be, effected by a fleet registered keeper or is, or is to be, a motor cycle rider policy, the name of the policy holder, and
- (d) where the temporary insurance disc is issued by the authorised insurer, his name, or where it is issued by the agent of the authorised insurer, the names of the authorised insurer and the agent."

Citation and commencement.

2. This Ordinance may be cited as The Road Traffic (Compulsory Third Party Insurance) (Amendment) (Guernsey) Ordinance, 2009, and shall come into force on the 1st April 2009.