BILLET D'ÉTAT

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BILLET D'ÉTAT

TO
THE MEMBERS OF THE STATES
OF THE ISLAND OF GUERNSEY

I hereby give notice that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE,** on **WEDNESDAY,** the **25th September, 2013** at **9.30 a.m. or, if there remains any business deferred from the previous day, at the conclusion of that business,** to consider the items contained in this Billet d'État which have been submitted for debate.

R. J. COLLAS
Bailiff and Presiding Officer

The Royal Court House
Guernsey
16th August 2013

THE INCOME TAX (GUERNSEY) (APPROVAL OF AGREEMENTS WITH BOTSWANA, BRITISH VIRGIN ISLANDS, HONG KONG, LESOTHO, LITHUANIA AND LUXEMBOURG) ORDINANCE, 2013

The States are asked to decide:-

I.- Whether they are of the opinion to approve the draft Ordinance entitled "The Income Tax (Guernsey) (Approval of Agreements with Botswana, British Virgin Islands, Hong Kong, Lesotho, Lithuania and Luxembourg) Ordinance, 2013", and to direct that the same shall have effect as an Ordinance of the States.

POLICY COUNCIL

GREATER AUTONOMY IN THE LEGISLATIVE PROCESS AND INTERNATIONAL AFFAIRS

Executive summary

1. Guernsey has a long standing constitutional relationship with the Crown. This Report is not seeking to change that relationship. It is by virtue of this relationship that the UK Government subsequently plays a role in the:
   - processing of primary legislation before the granting of Royal Sanction;
   - extension of treaties ratified by the UK;
   - processing of treaties concluded under entrustment from the UK.

2. Guernsey has been increasing its international engagement activities including the creation of legal relations and increasing its competence in the making of primary legislation. This increased activity occasionally leads to tension between the UK and the Island. This has, in the past, created problems such as delays in the granting of Royal Sanction or the extension of treaties. On occasion these problems have been prolonged or have seemed to have frustrated the will of the States.

3. The Policy Council is of the view that it is desirable to explore where Guernsey, as a mature democracy with a developing international identity, should seek to gain greater autonomy and responsibility, particularly in the process of law making and treaty making. It is recommended that the States of Deliberation direct the Policy Council to establish a Panel to investigate the options in this regard and bring forward proposals to the States. The Panel will need to work closely with the other jurisdictions within the Bailiwick and the other Crown Dependencies. The Panel will need to review the implications on resources and administrative processes of any proposal for change. A proposed Terms of Reference for this panel is contained within the Report for the States to endorse.

Introduction

4. The current relationship with the Ministry of Justice ("MoJ") has led to improvements in the administration of the current constitutional relationship. This has helped clear the backlog of legislation that was due to be laid before Privy Council and reduced the delays in extending international conventions.

5. However, problems are caused when the UK's interests and the Island's interest are not congruent. When being represented internationally the International Identity Framework document ("IIF") describe how these differences are handled. The same does not apply in relation to the processing of legislation and extension of treaties. This was a point that was highlighted in the 2010 House of Commons Justice Committee report on Crown Dependencies. The UK Government's response to the Justice Committee recognised this situation

existed. The risk of tension in the representation of the Island's interests with the UK Government, where they might not be aligned with the UK's interests, may be alleviated by a realignment of the constitutional relationship to allow Guernsey to have greater autonomy in the legislative process and ability to conclude treaties. The impact of such a change will inevitably carry a different set of risks and consequences.

6. It is therefore recommended that the States of Deliberation ("the States") directs the Policy Council to undertake a review of Guernsey's options for gaining greater autonomy in the legislative process, including looking at the rôle of the Privy Council. The review should also examine Guernsey's capability in respect of negotiating and concluding international agreements. This Report proposes that the Policy Council should investigate how Guernsey could have autonomy in each area whilst retaining the constitutional relationship with the Crown. Any proposals for change should be laid before the States before negotiating any change with the UK (although it would clearly be appropriate to have had some previous some informal dialogue with the UK in discussing such proposals).

Constitutional relationship

7. Guernsey has a longstanding constitutional relationship with the Crown, as the modern day successor to the Duke of Normandy. The Crown, acting through the Privy Council, is ultimately responsible for ensuring Guernsey's good government.

8. The link to the Crown is held dear by islanders. On 19 July 2012, during a visit from the Prince of Wales and Duchess of Cornwall, a ceremony was held at Castle Cornet on Guernsey which included an affirmation of allegiance to the Crown.

9. By virtue of that relationship there are several matters retained by the Crown under the Royal Prerogative. These include powers relating to:

   a) foreign affairs, including the making of treaties;
   b) the defence of the Islands (including declaring war);
   c) the making of legislation, such as the granting of Royal Sanction through Order in Council;
   d) the judicial system (such as appointment of the Bailiff and other Crown Officers);
   e) granting of honours; and
   f) issuance of Royal Charters.

10. This means the Crown retains some important functions on behalf of the Islands, many of which inter-relate. These ancient prerogatives are now generally exercised on the advice of the UK Government or with oversight by UK Parliament, save for some certain personal prerogatives of the Crown. These prerogatives should only be exercised following consultation with the Island's

authorities. However, this is not always the case. Due to the unwritten nature of the British constitution it is sometimes not expressly clear when the UK Government acts under the Royal Prerogative and whether that action is being taken in respect of the UK alone or on behalf of the Island. It can also be unclear whether a UK Minister may be acting in a capacity as Privy Councillor or in respect of the Island.

11. Since 2007, the MoJ has been the UK Government Department responsible for managing the relationship with the Crown Dependencies. Prior to that the rôle was undertaken by the Home Office and then by the Department of Constitutional Affairs ("DCA"). The primary link between the MoJ and the DCA is that the Secretary of State of each department was the Lord Chancellor. The MoJ has a number of rôles in respect of the Crown Dependencies:
    - Holding the policy responsibility for the UK and Crown Dependencies' relationship;
    - Providing the main channel of communication between the Crown Dependencies and the UK Government on a full range of policy concerns and issues raised by both the Crown Dependences and the UK;
    - Ensuring that the development of UK policy takes the Crown Dependencies into account where appropriate;
    - Processing legislation from Guernsey, Jersey and the Isle of Man which is submitted for Royal Sanction or for agreement that the Lieutenant-Governor of the Isle of Man may exercise his delegated power to grant Royal Sanction;
    - Consulting with the Islands on extending international instruments and UK legislation giving effect to them where appropriate;
    - Recommending Crown appointments[1] in the Islands.

12. In recent years, Guernsey has been actively developing its international identity, and this was recognised when the IIF was signed, as debated and agreed by the States on 28 November 2008[2]. The report debated by the States recognised that:

    "*Recent practice provides clear evidence that any suggestion that the Crown, acting through Her Majesty's Government, is exclusively responsible for Guernsey's international relations, which is a view that would probably have prevailed a generation or more ago, is no longer accurate. Much more takes place internationally than previously and the distinction between what could legitimately be regarded as an international initiative and what is purely domestic has become increasingly blurred*."

13. The purpose of the IIF is to provide a set of principles by which the UK can support Guernsey in developing its own international identity, and enable the UK Government to deal with situations where the interests of the UK and the Island might not be aligned. The IIF provides the structure in which the UK has

[1] Including the Bailiff, HM Procureur, HM Comptroller
[2] Billet d'État No XV of 2008

been willing to involve the representation of the insular authorities more directly, both when reporting to international organisations and when Guernsey is concluding agreements. For example representative of Guernsey have formed part of the UK delegation when appearing before committees of the United Nations ("UN").

Justice Committee report and the Ministry of Justice response

14. In the 2008 to 2009 UK parliamentary session the Justice Committee of the House of Commons ('the JSC') conducted a short inquiry into the MoJ's performance in representing the interests of the Crown Dependencies within the Government's overall response in problems arising as a result of the world banking crisis of 2008[3]. That inquiry highlighted problems relating to the international representation of the Crown Dependencies' interests and broader constitutional issues about the relationship with the UK and the rôle of the MoJ in administering that relationship.

15. On 5 August 2009 the Justice Committee issued the terms of reference for an inquiry into the MoJ's administration of the relationship with the Crown Dependencies. The scope of the inquiry was:

i) How, in practice, the UK Government represents the Crown Dependencies internationally;
ii) The rôle of the Ministry of Justice in managing the United Kingdom's relationship with the Crown Dependencies including inter-departmental liaison and coordination; and,
iii) What, if any, changes are required, in terms of either policy or practice in order to improve the Ministry of Justice's management of the relationship between the United Kingdom and the Crown Dependencies?

The inquiry was not intended to review the constitutional relationship, which was outside the scope of the Committee's remit; rather it was designed to investigate the way in which the MoJ administered the relationship with the Crown Dependencies.

16. The Policy Council submitted evidence to this inquiry, which outlined how the relationship was managed from Guernsey's perspective. The submission highlighted that:
- the relationship between Guernsey and Her Majesty's Government was founded on mutual respect and support.
- the day-to-day relationship operated satisfactorily, noting the significance of the IIF in developing the relationship.
- a number of problem areas required redress and the submission made a number of suggestions for change. These included:

[3] House of Commons Justice Committee, *Crown Dependencies: evidence taken*, First Report of the Justice Committee Session 2008-09, HC 67

- improvements in the understanding of the importance of early consultation with the Crown Dependencies by UK Government Departments and their agencies;
- more proactive dialogue to foster constructive engagement; and
- broadening the areas where Her Majesty's Government could "entrust" the States to act internationally.
- problems which had occurred in the management of the existing relationship in recent years.
- the States have a rôle in ensuring that they have adequate resources to fulfil the growing demand for external engagement in order to reflect the priority it afforded to development in this area.[4]

17. A delegation from the Committee visited the Bailiwick of Guernsey in February 2010 in order to gather, first-hand, information from the Islands as to how the relationship worked and to add depth to their analysis.

18. On 30 March 2010, the Committee published its report[5] ('the JSC Report'). The Committee found that the relationship between the UK Government and the Crown Dependencies was "*mostly working well*", but raised questions over the rôle that the UK played with regard to legislation, international representation and good government in the Islands. The Committee welcomed the development of the Crown Dependencies' international profile and raised concerns at the duplication of effort by HM Government in processing the Islands' legislation. The report acknowledged that the Crown Dependencies had developed "*reputation, profile and credibility with international partners and over-arching sovereign bodies*"[6]. A summary of the key recommendations of the report is attached in Appendix 1. The report was welcomed by the Policy Council.

19. One of the main observations of the Justice Committee was in relation to the balance of interests of the democratic decisions of the Islands compared with that of the United Kingdom. It was acknowledged that it was inevitable that the UK Government would put forward the interests of the UK before that of the Islands but that the representation of the Islands' interests by the UK was "*not optional...it is the UK's Government's duty*"[7].

20. On 3 November 2010, the MoJ published its response to the JSC report[8]. In the intervening period the UK Government underwent a change following the 2010 general election. The response was prefaced with a Ministerial statement which provided a simple account of the UK view of the constitutional relationship

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[4] House of Commons Justice Committee, *Crown Dependencies: Eighth Report of Session 2009-10: Volumes II* HC 56-II Ev92

[5] House of Commons Justice Committee, *Crown Dependencies: Eighth Report of Session 2009-10* HC 56-I

[6] Such as the Organisation of Economic Cooperation and Development ("OECD") and European Union ("EU").

[7] *Ibid* para 89

[8] Ministry of Justice: *Government Response to the Justice Select Committee's report: Crown Dependencies*. November 2010, CM 7965

between the Crown Dependencies and the UK. The statement was not intended to change or challenge the existing constitutional relationship. A summary of the UK Government's response is attached in Appendix 2.

21. The UK Government response provided a framework to strengthen the mutual respect and co-operation between the Crown Dependencies and the UK. The MoJ and the Policy Council have been working to implement recommendations within the context of the existing constitutional relationship. However, some of the issues which were not accepted by the UK Government response to the JSC Report remain of potential concern. These issues and past experiences, discussed below, included:

    a) how the Island's interests are represented in practice when they differ from those of the UK and;
    b) the ability of the UK Government to frustrate the democratic will of the Island by delaying the extension of international conventions or the giving of Royal Sanction to legislation.

22. In March 2013, the Justice Committee announced an update review of the MoJ's management of the relationship with the Crown Dependencies, following the 2010 report. The Committee called for evidence on how the implementation of the recommendations made by the previous Committee in 2010 had affected the administration of the constitutional relationship between the Crown Dependencies and the UK Government in relation to:

    a. Scrutiny of insular legislation by the Ministry of Justice;
    b. Consultation of the Dependencies by Government Departments on UK legislation in which they have an interest;
    c. Issues relating to good government; and
    d. International representation of the Dependencies by the UK Government.

23. In May 2013, the Policy Council submitted evidence to this inquiry which outlined the progress made to date in the administration of the relationship and outlined the areas where further improvements of the administration of the relationship could be made.[9]

Legislative process

24. From an historical context the law of Guernsey is founded upon the customary law of Normandy. It has been much influenced by principles of both common law and civil law, meaning that the nature of the Island legal heritage is now mixed. The Island's right to make its own legislation is a long-standing principle which has been confirmed in successive Royal Charters.

25. There is a now a large body of legislation in place which has a diverse range of jurisprudential influences, in particular from England and Wales as well as Scotland. Guernsey must also comply with certain EU legislation by virtue of

[9] This evidence will be published by the House of Commons Justice Committee as part of that review.

Protocol 3 to the UK Act of Accession in 1972, in particular on matters relating to free movement of goods, or through voluntary adoption to allow for equivalence to EU or other international standards including the adoption of EU agreed sanction measures, the adoption of consumer safety controls and standards of anti-money laundering.

26. Primary legislation, which requires consent of Her Majesty in Council, is submitted to the Committee of the Privy Council for the Affairs of Jersey and Guernsey, which recommends the legislation be approved and ratified by Her Majesty. The current Committee was established by an Order in Council of 22 February 1952 following Her Majesty's succession to the throne. Formally, it is a committee of the whole Council, but with a quorum of three, its active members being the Lord President of the Council, the Lord Chancellor, and a minister in the MoJ who is also a Privy Council member. The Committee tend not to meet in person on Bailiwick affairs, conducting affairs on paper through the UK ministerial 'red box' system. When acting for the Crown Dependencies in this way these Ministers are acting in their rôle as Privy Councillors rather than under their UK Ministerial authority. The purpose of the referral of legislation to Privy Council Committee is not to comment on policy proposals but to ensure that legislation is compliant with the European Convention of Human Rights and other relevant international obligations.

27. The Island's institutions, laws and customs are cherished by islanders. However these institutions, laws and customs are not immune to constitutional reform and evolution; in particular the reforms made since 1948 have made substantial changes to the rôle of the Royal Court, the rôle of Bailiff in the States, the legislative processes and the administration of the Island.

28. For example, prior to 1948 the Royal Court and Chief Pleas of Guernsey retained some legislative powers. All significant legislative functions were transferred to the States by the Reform (Guernsey) Law, 1948. The States now delegates the majority of its policy formulation and executive functions to certain Departments and Committees of the States, who are responsible for advising the assembly on any proposal for legislation. The sponsoring Department or Committee will also play an active rôle in the drafting of legislation. The States retains overall executive and legislative authority.

29. The legislative competence of the States has evolved over time. In 1973, the States submitted evidence to the 'Kilbrandon' Royal Commission, which stated that there was a limitation in the legislative power of the States such as on matters relating to succession to the throne, nationality, citizenship, defence and extradition. However, the fact that Crown Dependencies are now able to legislate for extradition matters[10] provides evidence of a constitutional evolution. The fact that the Kilbrandon report is not a full reflection of the current day constitutional relationship has been recognised by the UK Government[11].

[10] For example the Extradition (Jersey) Law 2004

[11] Government response to the Justice Select Committee report: Crown Dependencies (Cm 7965, November 2010) p8

30. In recent years the processing of legislation has also evolved in administrative terms. When legislation is submitted for Royal Sanction, greater reliance is placed by the UK Government on the advice of Law Officers of the Crown in Guernsey when demonstrating compliance with international conventions, in particular the European Convention on Human Rights. That demonstrates that Guernsey has a greater rôle to play in demonstrating that it takes a responsible approach when exercising legislative autonomy. Arguably, the States will need to continue to demonstrate this governance and accountability on the international stage through increasing standards of public scrutiny of legislation. This will help show that when they are amending or creating or interfering with the rights of islanders it is being done in a democratic, proportionate and reasonable manner.

31. The MoJ is not resourced to the level of its predecessors in respect of staff dedicated to the working with the Crown Dependencies, both in terms of managing the relationship and legal advice. That means that delays in processing the legislation can arguably frustrate the will of the Island's democratically elected legislature. Following the JSC report there has been a redoubling of efforts to improve relations with the MoJ and to streamline administrative processes. This has led to the introduction of new processes which have eliminated the backlog and placed an increased reliance on the advice of the Island's Law Officers. The MoJ now prioritises its work to focus on the examination of matters engaging HM Government's constitutional responsibilities, such as human rights implications of Guernsey's Projets de Loi. Furthermore, proposals have been suggested to amend administrative process, including the possibility of delegating Royal Sanction for some legislation to the Lieutenant Governor, in a similar manner to the Isle of Man.

32. Whilst these initiatives have improved the operation of the current arrangements, the current constitutional relationship means that the UK Government retains the ability to interfere with the will of the Islands' government. This means there is a risk that interference may occur for solely political reasons or because of implications on UK policy.

33. In 2007, concerns raised by MoJ officials in relation the use of wide ranging provisions in primary legislation allowing the provision of general enabling legislation and amendment of primary legislation by Ordinance ("Henry VIII" clauses) created a backlog in legislation which was withheld by the MoJ from Royal Sanction. The concerns raised were that the extent of the clauses was excessive and that amendments through these clauses might result in a breach of the international obligations of the UK. Thirteen laws were held up until the matter was rectified in 2009 when the States, following agreement with the UK Government, resolved a range of measures including the repeal of previous resolutions of the Assembly and resubmission of revised legislation with these clauses modified[12]. In order to limit the need to amend legislation by submitting

[12] Billet d'État No VII of 2009

a Projet de Loi to the Privy Council an understanding about the circumstances when similar clauses can be used has been developed between the Law Officers and the UK Government.

34. The general principle of "Henry VIII" clauses being used in primary legislation is commonplace in the UK, and other Commonwealth jurisdiction. They have been used in Guernsey for in excess of 60 years (and general enabling clauses for over 100 years). It should be noted, however, that in the context of the UK the term "Henry VIII clause" refers to a clause in an Act of Parliament which allows the amendment of primary legislation by statutory instrument. In the UK a statutory instrument is delegated legislation, made by the executive, which has a lower level of parliamentary scrutiny than an Act of Parliament. That is not directly analogous with the case in Guernsey, where the power is exercised by Ordinances rather than by statutory instrument. In Guernsey, an Ordinance is subject to the same parliamentary process as a Projet de Loi.

35. Fewer delays have been experienced in respect of Guernsey legislation since the JSC report and the administrative relationship between the States and the MoJ has improved substantially. In the UK Government's response to the JSC Report it states that in practice the MoJ has had very few concerns about Island legislation in recent years. It also stated that it would consider it legitimate to withhold Royal Sanction if an Island law was fundamentally contrary to the UK's interests. Its response suggests that this threshold is high[13].

36. The JSC recognised that the limitation on resources in the Government will mean that UK officials will inevitably prioritise urgent UK policy and legislation over dealing with matters related to the Crown Dependencies[14]. It further suggested that the elimination of the repetition, by UK Government Lawyers, of the work undertaken by the Law Officers of the Crown to verify compliance with international obligations would help free up resources[15].

37. The current arrangement means that Guernsey is not safeguarded from the risk of the democratic will of the legislature being frustrated by the UK Government either by resource limitations or UK political considerations[16].

International representation

38. The UK Government, on behalf of the Crown, is responsible for defence and international representation of the Crown Dependencies. International representation is not limited to simply entering international agreements; it includes any international or external activity where there is formal engagement

[13] Government response to the Justice Select Committee report: Crown Dependencies (Cm 7965, November 2010) p11
[14] House of Commons Justice Committee, *Crown Dependencies: Eighth Report of Session 2009-10* HC 56-I para 57
[15] *Ibid* para 58,59
[16] *Ibid* para 66

with countries, states, international organisations[17] or supranational bodies[18]. For example, when a supranational organisation is undertaking a periodic review under a convention, officials from the States will work to advise the UK authorities to align key messages and take part in UK delegations where appropriate. The submissions from the Policy Council in this regard are directly included in the UK's submissions to international bodies.

39. Over the last three decades, the States have become increasingly proactive in engaging with other governments and supranational bodies. This increase in activity is aligned to the Island's economic development as an international finance centre. This increase in activity can be seen in successive strategic and policy planning documents from 1999[19] onwards. The late 1990s, this included the voluntary engagement with the EU Code of Conduct on business taxation and Organisation of Economic Cooperation and Development ("OECD") on harmful tax practices. The importance of the States' international engagement was acknowledged in the Home Office's "Review of Financial Regulation in the Crown Dependencies" ("the Edwards Report") published in 1998. The report concluded that Guernsey was in the "top division of finance centres" confirming Guernsey's reputation for co-operation with other jurisdictions in combating financial crime.

40. At that time the engagement was managed by the Advisory and Finance Committee, and then, following the 2004 change in machinery of government, the Policy Council. The Policy Council replicated a model used before 2004 and established a sub-committee with delegated responsibilities which it called the "External Relations Group" ("ERG"). The sub-committee is serviced by a small but dedicated team of officers within the Policy Council. The ERG now has a mandate which covers:

    a) Devising strategies to maintain, defend and enhance Guernsey's standing in the global community;
    b) External relations within the Bailiwick, with the other Crown Dependencies and the UK;
    c) International relations with other countries, international and supranational bodies;
    d) Managing Guernsey activity in relation to international conventions;
    e) Advising the Policy Council on constitutional matters; and
    f) Other Policy Council functions including the implementation and administration of international sanctions.

41. The ERG has become increasingly active in managing this diverse portfolio of work as Guernsey develops its international identity under the IIF. In particular, since the global financial crisis of 2008 and the subsequent slump in the global

[17] Such as the Organisation of Economic Cooperation and Development ("OECD") or the Council of Europe ("CoE")
[18] Such as the European Union ("EU")
[19] Billet d'État XIII 1999 and in successive Policy and Resource Plans

economy, there has been increased pressure on small international financial centres, resulting in immense pressure upon the Group's limited resources. The ERG implements engagement strategies which reflect the need to maintain Guernsey's global standing in order to retain its ability to trade and sustain a buoyant stable economy. It is clear that during this engagement some of Guernsey's interests are, on occasion, different from that of the UK and generally the IIF is used to assist the Island to assert its position in this regard.

Foreign policy

42. Guernsey has its own independent identity, which it will continue to assert in accordance with the States' Strategic Plan. Whilst the Island is not unilaterally responsible for managing its international relations, Guernsey wishes to develop its responsibility for its own international relations where possible. However when developing this responsibility, the States must acknowledge that formulating foreign policy is a matter for the UK Government, acting through the Foreign and Commonwealth Office. That is not something that Guernsey currently has the capacity or expertise to undertake in any meaningful way independently of the UK.

43. If the States were to make any public statements purporting to set out Guernsey's position in relation to another country, it could be regarded as undermining the UK's rôle in representing Guernsey internationally and create a false impression that Guernsey independently sets its own foreign policy.

44. Guernsey does voluntarily adopt agreed foreign policy by the UK, for example in the adopting of EU sanctions. In this case Guernsey has an obligation to adopt UN agreed sanctions by virtue of the UN Charter and the extension of the United Nations Act 1946 to the Island. However, except to the extent that Protocol 3 is engaged, the same does not apply to EU agreed sanctions, such as those currently against the régime in Syria. The Policy Council implements EU agreed sanctions as a matter of practice and works closely with the relevant UK and EU institutions in administering these sanctions. This ensures that Guernsey is in line with UK foreign policy and this helps ensure the Island can maintain a strong international reputation. Whilst this is not the express development of foreign policy, it is evidence of the Island's international awareness and shows that it is developing ways proactively to manage its international reputation and assist the UK to enforce its own foreign policy.

International negotiation

45. The States, through the Policy Council and the Departments, are becoming increasing responsible for their own international engagement. For example the Commerce and Employment Department in respect of economic development matters, the Education Department in term of higher education and the Home Department on criminal justice. The Policy Council, through the ERG provides guidance and advice in relation to those discussions where appropriate.

46. The Policy Council and the States' Departments can be said to perform a soft diplomacy rôle in developing their relationships with other jurisdictions. The Policy Council has been developing its skills in managing these relationships pursuant to its mandate. However, the Policy Council remains mindful that it can only act in respect of matters where it has the authority of the States and that the UK retains the rôle of managing the Island's full diplomatic relations with sovereign states and international organisations. The UK has been involving the Crown Dependencies on their diplomatic relations by asking the Islands to represent themselves or form part of a UK delegations in international fora such as before the Council of Europe, the OECD, EU bodies, the UN and in the Commonwealth. This includes inviting Guernsey representatives to meetings such as those of Commonwealth Finance Ministers and at periodic reviews of international conventions.

47. International activity can lead to the creation of legal relations. One of the main recommendations in the JSC Report was the need for the UK to find a mechanism by which it represents the interest of the Crown Dependencies internationally to ensure the Islands' interests are represented effectively under the principles recognised in the IIF. The MoJ in its response rejected this recommendation stating that it did not "*think that it would be appropriate for the Crown Dependencies' position to be separately represented in international negotiations. It would be unrealistic to expect a UK official to put the interest of a Crown Dependency above that of the UK and in extreme circumstances this may hamper the ability of the UK to operate effectively on the international stage*". It is understood that the interests of the UK will always be the first priority of the UK Government. It remains a concern that in such circumstances Guernsey is left in a position where it has an international identity but does not have an independent voice by which it can be represented.

<u>Making of treaties and conventions</u>

48. Entering into treaties and international conventions is a matter of Royal Prerogative exercised by the UK Government on behalf of the Crown. Prior to 1950 the Crown Dependencies were considered to form part of the metropolitan territory of the UK for the purposes of international conventions, unless a contrary intention appeared from the text of the convention.

49. Following the two World Wars there was a greater drive for more international treaties with the development of the League of Nations, the UN, the Council of Europe and other supranational bodies. In the context of a growing body of international conventions and treaties following the Second World War, the UK changed how it worked with the Islands, following a declaration made by the then Secretary of State for the Foreign and Commonwealth Office ("FCO") made on 15 October 1950 ('the Bevin Declaration'). This stated that "*it will be open to the Insular Authorities to accede to an agreement if after examination of its provisions at their leisure they should at any time desire to do so*".

50. The Vienna Convention on the Law of Treaties ("Vienna Convention"), which was opened for signature on 23 May 1969. This treaty codified the foundations in international law that an international agreement is concluded between states in written form and governed by international law and that every state possesses the capacity to conclude treaties.

51. Around 1966, the Bevin Declaration was considered contrary to the principles of the Vienna Convention and the protocol established in 1950 was reversed. Whilst it is not clear exactly when, the situation was reversed back again shortly afterwards. It was not until 1993 that the Home Office fully clarified the situation. This is the position which still stands today and has been summarised by the Ministry of Justice in its background briefing note on Crown Dependencies[20]:

Article 29 of the Vienna Convention on the Law of Treaties provides that "unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory". The long-standing practice of the UK when it ratifies, accedes to, or accepts a treaty, convention or agreement is to do so on behalf of the United Kingdom of Great Britain and Northern Ireland and any of the Crown Dependencies or Overseas Territories that wish the treaty to apply to them.

This means that, when the UK is planning to ratify a particular convention or treaty, it should consult the Crown Dependencies about whether they wish to have it extended to them. It is not always possible to include Crown Dependencies or Overseas Territories in the instrument of ratification (for example, where they do not yet have the necessary implementing measures in place), but it is usually possible for the scope of ratification to be extended to include them at a later date. This practice has been agreed by other Member States and is regarded by the UN Secretary General as establishing a different intention for the purposes of Article 29 of the Vienna Convention on the Law of Treaties. Treaties and international agreements made before 1951 applied to Jersey, Guernsey and the Isle of Man by convention without any specific reference to the Islands.

If a convention or treaty is extended to the Crown Dependencies, the UK retains responsibility at international law for all of their international obligations.

Treaties and conventions should not be negotiated so as to contain provisions referring directly to the Crown Dependencies without consultation in good time in advance with the Islands in question.

52. In 1987, the States resolved that responsibility for requesting extension of international conventions should be delegated to what is now the Policy Council, save those which relate to questions of human rights or fundamental freedoms,

[20] http://www.justice.gov.uk/downloads/about/moj/our-responsibilities/Background_Briefing_on_the_Crown_Dependencies2.pdf

or matters which are likely to be considered controversial. The Policy Council has further delegated this function to the ERG. The Policy Council is required to report the conventions extended to the Island as an appendix to a Billet d'État. When a Convention is extended, confirmation of its application to the Island is registered in the Royal Court to ensure it is on the official record.

53. The Policy Council does not have the resources to manage a dedicated central treaty office, meaning that treaties and treaty queries are managed on an ad-hoc basis. Information is held by the FCO, the Policy Council (including the States' Archives), the Law Officers and the treaty bodies or supranational organisations. Every new query with regard to an international convention often takes a significant amount of research time to establish the status of that treaty in respect of the Bailiwick. The Policy Council has sought to build its relationship with the FCO treaty office, along with other UK Government Departments, to assist how it responds to queries, requests extension or manages treaty reporting obligations. The current level of capacity to manage treaties will need to be dealt with as the Island becomes increasingly active internationally.

54. It is to be expected that a growing international personality means that Guernsey is becoming increasingly active in proactively requesting that treaties be extended to the Island. It is more common for the UK to refer a convention to Guernsey and which is then extended at a suitable juncture, when the Island has ensured that any necessary legislative measures are in place. In such an instance it is inherently in the UK Government's interest to respond quickly. This is either because of the UK's interest in its wider international reputation or, on a more practical level, because the relevant UK government official is already engaged on the subject and is to able deal with the matter quickly. Conversely, where the Crown Dependencies have initiated the request there is generally less willingness for the relevant UK Department to following this matter up. This means that there can be long delays between the request and the extension of the convention. In some instances work has been commissioned to review Guernsey's legislation to verify to the UK Government that the Island meets the provisions of a convention.

55. For example, in respect of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions a third party review was undertaken to verify compliance for the UK Department of Business, Innovation & Skills. The decision by the States for this convention to be extended was first made in 1999, a confirmation of compliance was given to the UK in 2005 and repeat request for extension was made in 2006. The convention was extended in November 2009 following the evaluation of the standard of compliance of Guernsey's domestic legislation by a commercial firm of legal consultants.

56. A lack of willingness has been seen in the field of intellectual property conventions such as: the Berne Convention for the Protection of Literary and Artistic Works, 1886 ("Berne Convention"); and the Paris Convention for the Protection of Industrial Property, 1883 ("Paris Convention"). In this instance

Guernsey's copyright legislative measures differed from the UK and there was a request from the UK Intellectual Property Office to amend that legislation to facilitate the UK to meet its own obligations. This change would align the collection of royalties for non-profit organisations with the UK system. The following summary outlines the delay in progress on this matter:

a) In 2005, Guernsey established a new copyright régime with the Copyright (Bailiwick of Guernsey) Ordinance, 2005 and the Performers' Rights (Bailiwick of Guernsey) Ordinance, 2005. At that time the régime was aligned to the UK régime.
b) In September 2010, the ERG requested extension of the Berne Convention and Paris Convention to Guernsey.
c) In January 2011, the UK amended its Copyright, Designs and Patents Act 1988, by Regulation, in order to provide a more "*proper balance between right holders and users in accordance with international and EC law*".
d) In 2011, the UK Intellectual Property Office advised that the States would need to take into consideration the change in the UK régime in order ensure compliance with the required standards and therefore allow the treaties to be extended.

The fact the extension of the Berne Convention was being withheld until the copyright ordinance was amended was made more frustrating because the extension of the Paris Convention was also being withheld. The Paris Convention is a treaty that does not relate to copyright; it relates to industrial intellectual property such as trademarks and design rights. The UK Intellectual Property Office has since modified its request and the Paris Convention is now being dealt with separately to the extension of the Berne Convention.

57. Similar issues exist in relation to extension of treaties as legislation, the limitation on resources in the Government will mean that UK official will inevitably prioritise urgent UK policy and legislation over dealing with matters related to the Crown Dependencies.

58. In February 2013, in order to help prevent delays in processing treaty extension requests from the Crown Dependencies, the MoJ published a "Fact Sheet on the UK's relationship with the Crown Dependencies" and a series of associated "How to Notes".[21] These notes included guidance on how to extend international instruments to the Crown Dependencies and deal with requests from the Crown Dependencies to extend the UK's ratification of international instruments. The purpose of these notes is to provide easy-to-follow guidance for UK policy officials to improve the standards of working with Crown Dependencies. It is envisaged that this will better enable the UK to fulfil its constitutional obligations in respect of the Islands and the relationship between MoJ and Guernsey officials is currently working very well.

[21] https://www.gov.uk/government/publications/crown-dependencies-jersey-guernsey-and-the-isle-of-man

59. Although the current arrangements mean that treaty management in being administered more effectively, the current constitutional position means that officials from the UK Government are still able to potentially frustrate the democratic will of the States in respect of extending treaties, as demonstrated with the Paris Convention.

Making of agreements under entrustment

60. Guernsey is increasingly negotiating and concluding international agreements in areas within its domestic competence. This is done under a concept called 'entrustment' given to the Islands by the MoJ. Entrustment confers the ability and empowers the States to negotiate and conclude certain agreements in areas of the Island's domestic competency. The use of entrustment is conditional on providing evidence that the other party is content to conclude the agreement directly with the States of Guernsey and the proposed text is sent to the MoJ for approval in good time before signature.

61. The States have concluded and signed over 40 Tax Information Exchange Agreements ("TIEAs"), 11 Double Taxation Agreements ("DTAs") and agreements for the exchange of information on the EU Directive on Tax on Savings Income under entrustment. The States continues to enter into TIEAs, DTAs and have been entrusted to conclude an asset sharing agreement for seized assets with the United States.

62. Entrustment provides a mechanism by which Guernsey can enter into an agreement with a sovereign state directly, whilst not changing the Island's constitutional relationships. The UK is committed to widening the use of entrustments to other areas. At present their use has only been exercised for use in bilateral agreements; it has not yet been established whether the entrustment principle could be developed for exercise with multilateral conventions. The process of entrustment places much greater responsibility upon the Island's authorities. International Agreements, such as TIEAs with sovereign states made under entrustment need to be registered with the UN by the UK, as any another international agreement, pursuant to the Charter of the UN.

63. The process of entering into agreement through entrustment can also be problematic. Whilst the use of entrustment does not require direct ratification, it still requires the Crown Dependencies to obtain express approval from the UK Government before any agreement can be concluded. This means that the UK Government can seek to curtail the ability of the government of Guernsey to enter into an agreement. This situation occurred when the Crown Dependencies sought to conclude an intergovernmental agreement with the US in relation to the Foreign Accounting Tax Compliance Act ("FATCA"). The UK was only willing to consent to the entrustment for an agreement with the US if a similar automatic exchange agreement was entered into with the UK. In the economic interests of the Island, a suitable agreement has been negotiated by the Policy Council and will be considered by the States. Questions have also been raised on the ability to terminate agreements under entrustment.

64. Prior to entrustment, conventions were sometimes concluded between the UK and another state which only applied to the Crown Dependencies, such as the New Zealand-UK Social Security Agreement of 1994, which only applies to the Channel Islands. However, these instances are exceptional.

65. The Crown Dependencies have had a number of bilateral investment treaties/investment promotion and protection agreements ("BITs") extended to them by the UK. Following entry into force of the Lisbon Treaty in 2009, the EU gained a legal personality to enter into treaties and has competence over trade and investment treaties. This means that EU Member States, including the UK, are no longer competent to enter into new trade and investment treaties and existing BITs are being brought into question. The network of BITs is being replaced by a series of 'Free Trade Agreements' negotiated by the EU with third countries. The Crown Dependencies have now been put in a position where consideration needs to be given on how to maintain their own BITs and importantly, how to negotiate new BITs should they wish to do so. The Crown Dependencies are currently working together in order to develop a mechanism with both the UK Government and the Commission. One solution might be for the Islands to negotiate their own network of BITs, which may be possible through entrustment.

66. This example highlights issues which might develop in respect of the growing competence of the EU and how treaties could be concluded by the EU on behalf of the UK which might impact the Crown Dependencies. It is not yet clear whether the process of entrustment would be a suitable solution in these situations. If it is not suitable it will be necessary to seek an alternative mechanism of concluding treaties.

The link between domestic and international matters

67. The distinction between what could legitimately be regarded as an international initiative and what is purely domestic has become increasingly blurred. International conventions and agreements are now commonly concluded in areas where Guernsey can properly assert that the subject-matter falls within its domestic legislative competence. Consequently, engagement in international relations can no longer be the sole province of the UK Government and concurrent, or even transferred, competence to negotiate directly has evolved, as demonstrated by entrustment. It is increasingly important that the Island continues to develop its competence in managing its international obligations.

Constitutional evolution in the UK

68. The importance of Guernsey's preparedness for constitutional reform is also reflected by other external developments. The UK is evolving constitutionally at a rapid rate. A substantial number of significant reforms have taken place since 1998, such as devolution, the gradual reform of Prerogative powers, formation of the Supreme Court, the change in the rôle of the Lord Chancellor and

introduction of the Human Rights Act 1998. Each further reform has the potential to impact upon the constitutional relationship between Guernsey and the UK. For example, the referendum in Scotland being held in 2014 may result in significant changes to the way the UK Government administers its relationship with Scotland. It is likely that in the event of the referendum being lost there will still be some recalibration of the Scottish Government's relationship with Whitehall and the Union through greater devolution. This will potentially lead to changes in Wales' and Northern Ireland's constitutional relationships within the Union. Considering it is likely that Scotland's international identity will continue to evolve it will in turn have an impact on their relationship with the EU. In addition, the UK's Review of the Balance of EU Competences may pave the way for a change in the UK's overall relationship with the EU, particularly if a referendum takes place in 2017. This would have a direct impact on the Crown Dependencies. These developments will bring opportunities and risks, and Guernsey needs to be prepared to deal with both.

Constitutional Advisory Panel

69. The matter of reviewing the constitutional relationships of Guernsey has been considered by the previous Policy Council. In September 2007 the ERG established the Constitutional Advisory Panel ("CAP") under the Chairmanship of the then HM Procureur. The Panel's mandate included provision to review all aspects of the constitutional relationships between Guernsey and the United Kingdom, including the range of possible relationships from full independence to integration with the United Kingdom.

70. CAP submitted its first interim report to the ERG, which was subsequently published in October 2009 by the Policy Council. The panel concluded that Guernsey's present constitutional position was as a "dependency of the Crown" that has an increasing rôle on the international stage. It recognised the risk for Guernsey in establishing itself as a separate state outweighed the benefits that might be gained from assuming functions currently performed on its behalf by the UK. These functions include the Island's international representation. The interim report looked at the constitutional rôle of the Crown and the relationship with the UK. However, CAP did not make recommendations how the Island might enhance its ability to enact legislation and conclude international agreements outside of establishing statehood.

71. CAP made the following recommendations in its report:
    a. *consider as soon as practicable engaging at an appropriate level with the Jersey authorities for the purpose of discussing areas of mutual interest resulting from each Island's review of constitutional issues;*
    b. *discuss with the Ministry of Justice how the resources it devotes to serving Guernsey as one of the Crown Dependencies might be enhanced, perhaps through secondment of a Guernsey official or some form of funding of, or towards, a UK civil servant;*

c. continue to take steps at political and official levels to impress on the UK the importance of fulfilling the obligations associated with the current relationship and deploy appropriate resources to the essential task of educating UK Government Departments and Guernsey's international associates about Guernsey's status and rôle;

d. consider as a matter of urgency the desirability of Guernsey establishing an appropriate presence in London and/or Brussels, whether independently or in association with one or both of the other Crown Dependencies;

e. consider requests to the UK for the inclusion of personnel from Guernsey in appropriate delegations attending international organisations;

f. and publish a media release setting out the provisional view that no further active consideration be given to pursuing statehood as a means of changing the relationship with the UK.

72. In respect of these recommendations substantial progress has been made. A close working relationship has been fostered with Jersey and recommendations from both the CAP report and Jersey's Constitutional Review Group are being worked upon in a collaborative manner. Following the Justice Select Committee review into how the MoJ administers the relationship with Crown Dependencies, the Islands have been working together to ensure that the MoJ focuses its limited resources on areas where it can add value. The Islands have also redoubled efforts to engage directly with UK Government Departments and ensure that they are more widely informed about the Islands' constitutional relationship with the UK and how best to work with the insular authorities. The Policy Council co-established a Channel Islands Brussels Office in April 2011 with the States of Jersey. The Policy Council has not yet found merit in the need to establish an office in London. Delegates from Guernsey have increasingly been asked to take part in UK delegations during international conventions' periodic reviews and the UK has taken a more proactive approach to working with the authorities when compiling reports for submission to international Organisations where the Crown Dependencies have an interest.

73. The CAP report also states that "*Guernsey's present constitutional position as a Crown Dependency with an increasing rôle on the international stage is more beneficial than its position as a micro-state is likely to be. That does not mean that the current position is accepted as perfect – it is not – but that CAP members do not believe it would be a good use of resources to undertake further detailed work on contemplating and actively preparing for statehood at this time*."

74. The CAP report also concluded that "*although CAP has not finalised its views on the most appropriate constitutional relationship for Guernsey with the UK, and will continue to fulfil its mandate by hearing from other people it will invite to share their thoughts with CAP and conducting its own researches into the full range of options... [M]embers have struggled to identify real benefits in switching from being a Crown Dependency to becoming an independent State, especially when balanced against the apparent and potential disadvantages. Provided that steps continue to be taken to provide the clearest explanations*

possible about Guernsey's status to actual and prospective international partners, and there is resistance should there be any unwarranted action by, or through, the UK against Guernsey, CAP considers that it is satisfactory for Guernsey to maintain its status as not being independent from the UK. Whether there are appropriate modifications to the current relationship as a Crown Dependency that can sensibly be sought will be part of CAP's ongoing work." The CAP was disestablished in January 2010. The ERG remains responsible for monitoring and reporting to the Policy Council on the constitutional relationship with the UK.

Public support for change

75. Advocate Roger Perrot, currently a States Deputy and non-voting Member of the ERG, organised a debate on the Island's constitution at St James on 22 October 2009. The motion of the debate was: *"This meeting calls upon the States of Deliberation to initiate negotiations with the Government of the United Kingdom to give Guernsey autonomy in international affairs and in its legislative process*". Advocate Perrot spoke for the motion and Hugh Bygott-Webb spoke against the motion. The event filled the hall in St James Concert Hall and the audience, by a show of hands, overwhelmingly voted for exploring change in the relationship with the UK. Whilst this event lacked the profiling of information that an Island-wide survey might provide or the certainty of a referendum it showed that there was sufficient interest among those Islanders who attended to explore options for change. Advocate Perrot subsequently corresponded on the subject with the Policy Council and attended a meeting of the ERG. The ERG subsequently agreed in principle to recommend that the Policy Council place the matter before the States. This report has its genesis in that original undertaking of Policy Council but the work had to be set to one side as a consequence of other demands being placed upon ERG resources, not least at the outset the workload resulting from the decision to bring legal proceedings against the UK Government as a consequence of the dis-application of Low Value Consignment Relief in respect of the Channel Islands. Constitutional issues, such as of the rôle of the Privy Council, were raised by a number of candidates in the 2012 General Election and at some hustings meetings.

76. If constitutional change is sought, the States will need to consider how they should consult with the islanders on such a change, given the complexity of some of the matters that maybe involved. If the proposed degree of change was substantial the question of whether a referendum would be desirable may arise. As a separate work stream Policy Council is currently developing proposals which would allow referendums.

A question of statehood

77. This report is suggesting that the States needs to look at realigning the constitutional relationship with the UK. <u>It is not a call for independence</u>. The public support that has been made in particular following Advocate Perrot's meeting in 2009 and the 2012 election has been around constitutional change but

not around establishing statehood or independence for Guernsey. No one has sought to question the relationship with the Crown. The two main themes which have been discussed relate expressly to the Privy Council involvement with Guernsey primary legislation and reliance on the UK Government to negotiate Guernsey's own treaties.

78. To establish a mechanism to make primary legislation or treaties without reliance on a UK bodyand without establishing statehood will be one of the primary challenges that will need consideration. However, there are models in other jurisdictions which could be explored, as well as seeking the establishment of a new model that works within the context of the constitutional relationship with the Crown. There may be further ideas emerging from the work being undertaken in the run-up to the referendum in Scotland in 2014 which could be considered.

Next Steps – Establishing a Constitutional Panel

79. This report makes clear that there has been much progress and development of the Island's identity and how the constitutional relationship is administered. However, some of the problems raised in the JSC Report in relation to how the UK balance the interests of itself and the Crown Dependencies are considered likely to remain unless there is a realignment of the constitutional relationship to allow greater autonomy in legislative process and ability to conclude treaties, or unless the Panel consider that other options could usefully be pursued.

80. In considering the issues outlined in this report the States are recommended to establish a Constitutional Panel (rather than a Constitutional Advisory Panel), which would be given a mandate to review Guernsey's various relationships with the organs of government of the United Kingdom, but giving immediate attention to the issues relating to Royal Sanction and the ability for Guernsey potentially to negotiate its own treaties.

81. A proposed Terms of Reference for this Panel included with this report is contained below:

Proposed Constitutional Panel Terms of Reference:

The Constitutional Panel will be formed by the Policy Council at the direction of the States of Deliberation. The Panel will be chaired by the Chief Minister and contain a number of States Members and non-States Members and shall have at least five Members in total.

The Terms of Reference for the Panel will be:

1. To review Guernsey's various relationships with the organs of government of the United Kingdom. Initially, but not exclusively, the following will be considered:
    a. The method of granting Royal Sanction of primary legislation;

b. The method of extension of Acts of UK Parliament to the Island;
c. The extension of the United Kingdom's ratification of treaties;
d. The Island's own treaty making ability.

2. To make recommendations in respect of other relationships with the organs of government of the United Kingdom as identified by the Panel.

3. To liaise directly with the States of Alderney, the Chief Pleas of Sark, the States of Jersey and the Government of the Isle of Man as part of this review.

4. To bring forward to the States of Deliberation, through the Policy Council, such proposals as they think fit for the purpose of seeking greater autonomy in legislative affairs and international representation.

5. To review the constitutional and administrative impact and the resource implications of proposed changes in legislative process or international representation.

6. To take into consideration how any proposals might impact the current machinery of government or any proposals from the States Review Committee.

7. To review any other relationship that is identified by the Panel and make recommendations to the Policy Council.

82. It is proposed that the Policy Council be directed to form the Constitutional Panel and select its membership. The Panel would be chaired *ex-officio* by the Chief Minister and contain a mixture of States Members (including a Law Officer) and non-States members, from the Island's community, or with connection with it, and with relevant constitutional knowledge or experience. It is recommended the Panel be made of at least five members. The Panel will report back to the Policy Council through the ERG. Administrative support for the Panel will be provided by existing staff.

Bailiwick, Channel Islands and Crown Dependency Perspectives

83. Any changes to the legislative process or ability for treaty making will affect the other Islands within the Bailiwick. It will be of crucial importance that the review engages with the relevant authorities in Alderney and Sark so that any proposals respect the existing inter-island relationships.

84. Any such review would be of little merit if it considered merely the interests of the Bailiwick alone. The Panel will need to consult with Jersey to the maximum extent possible and to discuss this matter with the Isle of Man. It will be imperative that any review engages with those authorities to discuss where the Islands could work in concert.

Resources

85. The States are recommended to undertake the review within existing resources and budget constraints and taking into account other priorities. However, it should be acknowledged that there are very limited staff resources and those resources are already fully committed. The non-States panel members of the panel will not be paid. Any external advice commissioned to advise the panel will need to be funded by existing budgets allocated for external affairs advisory services. If progress is hampered by resource constraints it will be necessary to return to the Treasury and Resources Department and, if required, the States for further consideration and with proposal for resourcing the review.

86. Any proposal for constitutional change might have significant implication on staff resources in Guernsey, due to the potential transfer of obligation from the UK to the Island. The costs and benefit of this allocation of resources will need to form part of the considerations of the proposed Constitutional Panel.

Consultation with Law Officers of the Crown

87. The Law Officers have provided comments and advised the ERG during the drafting of this report.

Principles of good governance

88. The proposals in this report are intended to ensure that any change in the constitution will meet the six principles of good governance: in particular in terms of focusing on the organisation's purpose and developing the capacity and capability of the governing body to be effective.

Recommendations

89. The States of Deliberation are asked to agree that a panel be established by the Policy Council, with following mandate:

- To review Guernsey's various relationships with the organs of government of the United Kingdom. Initially, but not exclusively, the following will be considered-
  - The method of granting Royal Sanction of primary legislation,
  - The method of extension of Acts of UK Parliament to the Island,
  - The extension of the United Kingdom's ratification of treaties,
  - The Island's own treaty making ability;
- To make recommendations in respect of other relationships with the organs of government of the United Kingdom as identified by the Panel;
- To liaise directly with the States of Alderney, the Chief Pleas of Sark, the States of Jersey and the Government of the Isle of Man as part of this review;
- To bring forward to the States of Deliberation, through the Policy Council, such proposals as they think fit for the purpose of seeking

greater autonomy in legislative affairs and international representation;

- To review the constitutional and administrative impact and the resource implications of proposed changes in legislative process or international representation;
- To take into consideration how any proposals might impact the current machinery of government or any proposals from the States Review Committee;
- To review any other relationship that is identified by the Panel and make recommendations to the Policy Council.

P.A. Harwood
Chief Minister

1st July 2013

Deputy J P Le Tocq
Deputy Chief Minister

Deputy G A St Pier	Deputy A H Langlois	Deputy R W Sillars
Deputy R Domaille	Deputy K A Stewart	Deputy P A Luxon
Deputy D B Jones	Deputy M H Dorey	Deputy M G O'Hara

APPENDIX 1

Summary of key points made in the 2010 House of Commons Justice Committee report on Crown Dependencies (HC-56i):

Relationship between the Ministry of Justice and Crown Dependencies:

- The MoJ should limit any responses to parliamentary questions by the Justice Secretary to those matters which fall within his constitutional responsibilities and not on domestic matters which are the responsibility of the insular authorities. Para 15
- There should be a reappraisal of the constitutional duties of the MoJ. The MoJ should prioritise those duties and restrain itself from engaging in areas of work which are outwith its constitutional remit. Para 17
- The MoJ should produce a simple account of the constitutional position of the Crown Dependencies, highlight their independence from the UK, each other and that their interests need to be considered routinely by all UK Government Departments. It suggested secondments between the UK and the Crown Dependencies of officials to increase mutual understanding. Para 27
- That there was a lack of consultation and discussion of possible options which were failings of the UK Government's approach to its responsibilities. Para 35

Good Government:

- The Crown Dependencies are democratic, self-governing communities with free media and open debate. The powers of self-determination of the Crown Dependencies are, in its view, only to be set aside in the most serious circumstances. Para 41
- The restrictive formulation of the power of the UK Government to intervene in insular affairs on the grounds of good government is accepted by both the UK and the Crown Dependency governments, namely, that it should be used only in the event of a fundamental breakdown in public order or of the rule of law, endemic corruption in the government or judiciary or other extreme circumstance. The Committee saw no reason of a constitutional basis for changing that formulation. Para 41
- That very small jurisdictions such as Sark are at greater risk of being influenced by economic, legal or political power. Any threat to their democratic government which should be allowed to operate fairly and robustly is one that warrants a watching brief from the MoJ. Para 49

Legislation and Treaties:

- The Islands are adequately advised by their own Law Officers and parliamentary counsel and MoJ resources should not engage in legislative oversight that does not restrict itself to the constitutional grounds for scrutiny. Para 63
- The MoJ should rely on the judgment of the insular Law Officers on insular legislation rather than subjecting that legislation to multiple levels of intense scrutiny, prior to Royal Sanction, for laws of domestic application. Para 65
- Where legislation is more complex further scrutiny, by the MoJ and other Whitehall departments, is warranted. However this must be done expeditiously, so as not to frustrate the will of the democratically elected parliaments of the Islands. Para 66
- The MoJ and government of the Crown Dependencies should agree a revised set of protocols for the scrutiny of legislation by the UK, to streamline and provide structure to this process and clarify the UK's responsibilities. Para 67
- That guidelines be produced for consultation with the Crown Dependencies on UK legislation, EU measures and international treaties affecting them. Para 73

International Relations:

- That the Committee supported moves by the Crown Dependencies to establish representative offices in Brussels. Para 78
- The representation of the interests of the Crown Dependencies on the international stage was not optional, according to whether or not the interest of the Islands are congruent with those of the UK; it is the UK's duty. In cases of conflict, the MoJ must endeavour to find a mechanism for representation which will faithfully present and serve the interests of both parties. Para 89
- That the MoJ consider alternative models for the representation of the interests of the Crown Dependencies internationally, to enable the Islands to develop their international identities. Para 92
- That the increased use of Letters of Entrustment should be encouraged to allow the Crown Dependencies to enter into binding agreements themselves without the need for direct ratification by the UK. Para 93

APPENDIX 2

Summary of key points made by the Ministry of Justice in response to the 2010 House of Commons Justice Committee report on Crown Dependencies (Cm 7625).

Relationships between the Ministry of Justice and Crown Dependencies:

- The MoJ agreed "*with the Committee's recommendation that the Ministry of Justice should prioritise its core constitutional duties and should disengage from areas of work which do not directly engage this primary rôle*".
- That "*the relationships with the Crown Dependencies are the responsibility of all Government Departments*".
- The MoJ recognised, citing the Policy Council's submission to the Committee, that the Crown Dependencies wished to build up sufficient experience of external engagement.
- The response also stated that *"[i]n the past the Crown Dependencies had much less experience of external and international engagement and the government department charged with their representation took on these duties where resource permitted*" and that the circumstances have changed meaning that the UK should focus on its core constitutional duties.
- The MoJ, in recognising the constitutional position of the Crown Dependencies is a complex one, that "*the last full examination of [the constitutional position of the Crown Dependencies] in Kilbrandon only provides a partial guide in the context of modern day relationships*".
- That in the overcoming of areas of difficulty, citing the withdrawal of the Reciprocal Health Agreement as an example, it was hoped hat the "*increased opportunity for the Crown Dependencies to build relationships across Whitehall will raise the capacity of both Government Departments and the Crown Dependencies to engage effectively on issues*."

Good Government

- The MoJ stated that it "*respect[s] the right of the Crown Dependencies to self-determination and agree that it would take a serious circumstance indeed for the UK government to contemplate overriding these powers*".

Legislation and Treaties

- The response noted concerns raised by the Committee in respect of the way in which the UK could influence domestic legislation and stated "*the Ministry of Justice does not generally check for congruence wth UK policy*". However, the MoJ stated it may do so in cased where "*divergence may risk breaches of the European Convention on Human Rights (ECHR) or breaches of EU or international Law*" and that it may be appropriate to intervene in policy matters, or refuse to recommend a Law for Royal Sanction, where there may be a direct potential for a direct or adverse impact in UK interests.
- The response accepts that in practice the UK Government has had very few concerns about insular legislation in recent years and that where they might arise

the MoJ will attempt to resolve this with the Crown Dependencies concerned within the spirit of the constitutional relationship.

- The MoJ acknowledged that there was often a duplication of effort when scrutinising legislation from the Crown Dependencies and suggested that the Islands' Law Officers be asked to provide a detailed account of their analysis of a law on how it might touch on international and constitutional issues. The UK scrutiny of how a Guernsey law might affect the UK's international obligations in respect of the Island should be limited to situations where there is risk of "*significant challenge under ECHR, EU Law or other international obligations*".
- In respect of consultation on UK legislation that may impact the Islands, the Department pledged to encourage all UK Departments to improve their standards of consultation and whilst there will inevitably be tight deadlines, more direct and increasingly autonomous relationships between the Crown Dependencies and the UK Government would help in this regard.
- The Department also reviewed and provided, in consultation with the Crown Dependencies, new guidance to "*set out with clarity the means by which the UK's responsibilities for insular legislation may be discharged; the constitutional grounds on which insular legislation may be challenged; the responsibilities of ministers and official at each stage of the scrutiny process; and appropriate time limits for processing legislation prior to Royal Assent*".

<u>International Relations</u>

- In its response the MoJ emphasised that the Crown Dependencies were not sovereign states and could not represent themselves internationally. The Department stated that it found it "*difficult to envisage how equal billing could be given to the interests of a Crown Dependency if they were incongruent to those of the UK*" which could in "*extreme circumstances hamper the ability of the UK to operate on the international stage*."
- The Department suggests that in order to mitigate these problems two things could happen. First, the UK Government should engage with the Crown Dependencies at an early stage as the UK line is being developed, in a similar way to how the devolved administrations are engaged. Second, it also suggested the increased use of entrustments whereby the UK entrust the Island to conclude agreements on matters of its domestic competence, provided that the UK reserved the right as sovereign body to ratify those agreements.
- The response recognised that the Crown Dependencies have demonstrated that they have been "*able to build important bilateral and multi-lateral international relationships and develop reputation, profile and credibility with international partners and overarching sovereign bodies*". This recognised that the Islands had recently demonstrated this ability following the activities of the Crown Dependencies in respect if tax agreements with the OECD, EU and G20 countries. In respect of the Islands' "*rising international profile and the need to match prevailing international standards*" there was "*no reason why this process could not continue to evolve to reflect [the Islands'] needs and achievements*". Accordingly the MoJ has invited the insular authorities to come forward with suggestions of how the use of entrustments could be expanded.

(NB In respect of the one-off resource implications for the Constitutional Panel to carry out its mandate, the Treasury and Resources Department notes that these will be met by reprioritisation of existing Policy Council staffing and budgets. However, as set out in paragraph 86, should constitutional change be implemented, any resulting long term ongoing resource requirements will need to be subject to consideration as part of the States Strategic Plan process, or whichever process for the reprioritisation of funding is in place at that time.)

The States are asked to decide:-

II.- Whether, after consideration of the Report dated 1st July, 2013, of the Policy Council, they are of the opinion:-

1. To agree that a panel be established by the Policy Council, with the following mandate:
   - to review Guernsey's various relationships with the organs of government of the United Kingdom. Initially, but not exclusively, the following will be considered-
     - The method of granting Royal Sanction of primary legislation,
     - The method of extension of Acts of UK Parliament to the Island,
     - The extension of the United Kingdom's ratification of treaties,
     - The Island's own treaty making ability;
   - to make recommendations in respect of other relationships with the organs of government of the United Kingdom as identified by the Panel;
   - to liaise directly with the States of Alderney, the Chief Pleas of Sark, the States of Jersey and the Government of the Isle of Man as part of this review;
   - to bring forward to the States of Deliberation, through the Policy Council, such proposals as they think fit for the purpose of seeking greater autonomy in legislative affairs and international representation;
   - to review the constitutional and administrative impact and the resource implications of proposed changes in legislative process or international representation;
   - to take into consideration how any proposals might impact the current machinery of government or any proposals from the States Review Committee;
   - to review any other relationship that is identified by the Panel and make recommendations to the Policy Council.

POLICY COUNCIL

ARMED FORCES LEGISLATION

1. Executive Summary

1.1. This Report sets out proposals to implement legislation in respect of the UK Armed Forces Act 2006, which came into force on 31 October 2009, together with any necessary related provisions.

1.2. The Royal Navy, the Army and the Royal Air Force have always operated within separate statutory frameworks of discipline (including criminal offences) which apply at all times wherever in the world members of each Service are serving.

1.3. The main purpose of the UK Act 2006 was to replace the three separate systems of Service law with a single system governing all members of the armed forces. Most of the UK Act 2006 is based on existing provisions, but updated, and modified to achieve harmonisation between the Services.

1.4. The proposed implementation of the provisions of the Armed Forces Act 2006 will ensure that appropriate modern provisions relating to Service law and Service personnel are in place in the Bailiwick of Guernsey, while recognising and protecting our Bailiwick's rights and liberties.

2. Proposals from Her Majesty's Procureur

2.1. Her Majesty's Procureur has written to the Policy Council in the following terms:

2.2. Introduction

2.2.1. The Royal Navy, the Army and the Royal Air Force have always operated within separate statutory frameworks of discipline (including criminal offences) which apply at all times wherever in the world members of each Service are serving. The respective bases for these systems were, until the coming into force of the Armed Forces Act 2006 on 31 October 2009, the Naval Discipline Act 1957, the Army Act 1955 and the Air Force Act 1955. Collectively they are known as the Service Discipline Acts ("the SDAs").

2.2.2. Most unusually for United Kingdom primary legislation, the SDAs used to apply directly, and with no modifications, to the Channel Islands. This may have been appropriate in the 1950's but looked increasingly anachronistic as time went on, and the legislative position changed in the 1990s. Section 24 of the Armed Forces Act 1991 made provision enabling each Act to apply to the Channel Islands subject to "such modifications as Her Majesty may, by Order in Council,

specify", and Orders in Council made in 1996 pursuant to this power modified each SDA (as already in force in the Bailiwick) better to ensure local compatibility.

2.2.3. It is by dint of those Acts applying directly that the jurisdiction of courts-martial is legally recognized in the Bailiwick. For the same reason, certain Service offences exist here, such as that of assisting deserters.

2.3. The Armed Forces Act 2006

2.3.1. The Armed Forces Act 2006 ("the 2006 Act") repealed the SDAs on coming into force, and represents a complete overhaul of Service law and discipline. In the words of the Explanatory Note accompanying it -

2.3.2. "The main purpose of the Act... is to replace the three separate systems of Service law with a single, harmonised system governing all members of the armed forces. The key elements of the discipline systems will remain, in particular a jurisdiction for Commanding Officer to deal with less serious offences, with more serious offences being required to be tried by court-martial. Accordingly it should not be assumed that the provisions of the Act are new. Most of it is based on existing provisions, but updated, and modified to achieve harmonisation between the Services.

2.3.3. In brief, the Act creates offences and provides for the investigation of alleged offences, the arrest, holding in custody and charging of individuals accused of committing an offence, and for them to be dealt with summarily by their CO or tried by court-martial. Instead of (as at present) courts-martial being set up to deal with particular cases, the Act provides for a standing court-martial, called the Court Martial. Rather like the Crown Court, the court may sit in more than one place at the same time, and different judge advocates and Service personnel will make up the court for different trials.

2.3.4. More serious cases must be notified to the Service police and passed direct to the independent Director of Service Prosecutions ("DSP") for a decision on whether to prosecute. In other cases the CO will consider whether to deal with the matter summarily (if it is within his jurisdiction) or to refer the case to the DSP with a view to proceeding to a trial by the Court Martial. In all cases which it is intended should be tried by the Court Martial, it will be the DSP who takes the decision to prosecute and determines the charge or charges. Those facing charges with which the CO intends to deal summarily have a right to elect trial by the Court Martial, or, if they agree to be dealt with summarily and the charge is found proved, to appeal to the Summary Appeal Court. A person convicted by the Court Martial will be able to appeal to the Court Martial Appeal Court.

2.3.5. The Act provides for certain offices and organisations which are currently single-Service to be replaced by a tri-Service equivalent. The aim is to enhance efficiency and to support consistency in the application of the Act."

2.4. Implementation of the 2006 Act and related provisions in the Bailiwick

2.4.1. Now that the SDAs have been repealed in the United Kingdom, the provisions of the 2006 Act need to be implemented in the Bailiwick, to ensure that appropriate modern provisions relating to Service law and Service personnel are in place here, while recognising and protecting our Bailiwick's rights and liberties. In the absence of any legislative provision, for example, the Court Martial will have no authority under Bailiwick law to detain and sentence Service personnel for Service offences. And it is not merely the jurisdiction of the Court Martial that requires to be legally underpinned: there are related issues that need to be addressed, such as the requirement to establish when a Bailiwick civilian court can or cannot try a person for an offence in respect of which he or she is being, or may already have been, tried by the Court Martial.

2.4.2. This is not a purely academic matter of no practical concern: while there is no permanent Service presence on the Islands, the Bailiwick is regularly visited, both officially and in a private capacity, by members of the forces. As such, while it is highly unlikely that the Court Martial would ever sit here, and while years might go by without recourse to the relevant provisions, it is clearly appropriate that the legislative position is brought up to date.

2.4.3. The 2006 Act has a standard modern "permissive extent" clause in respect of the Channel Islands ("Her Majesty may by Order in Council provide for all or any of the provisions of this Act to extend to any of the Channel Islands with such modifications as may be specified in the Order.") However, in the course of discussions in the run-up to the passing of the 2006 Act, representatives of the Law Officers of both Guernsey and Jersey agreed with the United Kingdom authorities that matters pertaining directly to the criminal law and the courts and civilian authorities of the Island should be the subject of insular legislation (in our case, a Projet de Loi), while those provisions of (what was then) the Bill which required legislative force in the Bailiwick, but did not pertain to the domestic authorities and local criminal law directly, could be extended by Order in Council. It was felt that this better reflected the modern constitutional relationship between the Channel Islands and the United Kingdom than direct application of the United Kingdom legislation.

2.4.4. To ensure that the legislative regime created is as effective as possible, the Projet de Loi may also need to make related provision in relation to other armed forces legislation such as the Reserve Forces Acts 1980 and 1996, certain regulations made under the 2006 Act, and relevant amendments made to the 2006 Act by the updating Armed Forces Act 2011. Work is ongoing with legal colleagues in Jersey to ensure that our Bailiwicks address these issues in as consistent a way as possible.

2.4.5. In my view the preparation of a Bailiwick-wide Projet de Loi on this basis is both necessary and desirable for the reasons set out above, and I should be

grateful if you could arrange for this proposal to be placed before the States at the earliest opportunity.

3. Resources, Law Officers and Governance

3.1. There are no additional resource requirements arising from the proposals contained in this Report.

3.2. The Law Officers have advised on the implementation of this legislation.

3.3. The proposals conform to the six core principles of good governance defined particularly by clearly defined functions and roles and managing risk.

4. Consultation

4.1. The States of Alderney and Chief Pleas of Sark are content with the legislation proposed in this Report.

4.2. His Excellency, the Lieutenant Governor in his role as Commander in Chief has advised he is content with the legislative proposals in this Report.

5. Recommendation

5.1. The Policy Council endorse the recommendations of Her Majesty's Procureur and recommend the States to:

a) approve proposals to implement on a Bailiwick-wide basis in local legislation provisions corresponding to those in the Armed Forces Act 2006 pertaining directly to the criminal law, the courts and the civilian authorities of the Bailiwick, and to make any necessary related provision relating to other United Kingdom armed forces legislation;

b) approve proposals to seek the extension of such other provisions of the Armed Forces Act 2006 as require legislative force in the Bailiwick by way of Order in Council; and

c) direct the preparation of such legislation as may be necessary to give effect to the foregoing.

P A Harwood
Chief Minister

15th July 2013

J P Le Tocq
Deputy Chief Minister

G A St Pier	K A Stewart	M G O'Hara
R Domaille	M H Dorey	D B Jones
A H Langlois	R W Sillars	P A Luxon

(NB As there are no resource implications identified in the Report, the Treasury and Resources Department has no comments to make)

The States are asked to decide:-

III.- Whether, after consideration of the Report dated 15th July, 2013, of the Policy Council, they are of the opinion:-

1. To approve proposals to implement on a Bailiwick-wide basis in local legislation provisions corresponding to those in the Armed Forces Act 2006 pertaining directly to the criminal law, the courts and the civilian authorities of the Bailiwick, and to make any necessary related provision relating to other United Kingdom armed forces legislation.

2. To approve proposals to seek the extension of such other provisions of the Armed Forces Act 2006 as require legislative force in the Bailiwick by way of Order in Council.

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

TREASURY & RESOURCES DEPARTMENT

DOUBLE TAXATION ARRANGEMENTS WITH THE GOVERNMENT OF THE HONG KONG ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GRAND DUCHY OF LUXEMBOURG

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

13th May 2013

Dear Sir

1. Executive Summary

This Report proposes that the States declare, by Resolution, that Double Taxation Arrangements ("DTAs") entered into with the Government of the Hong Kong Administrative Region of the People's Republic of China ("Hong Kong") (on 28 March 2013 (by Guernsey) and 22 April 2013 (by Hong Kong)) and the Grand Duchy of Luxembourg ("Luxembourg") (on 10 May 2013) should have effect, with the consequence that the Arrangements shall also have effect in relation to income tax, notwithstanding anything contained in the Income Tax (Guernsey) Law, 1975, as amended ("the Income Tax Law").

2. Report

2.1. The principal purpose of a DTA is for two governments to agree procedures for the prevention of double taxation – that is, taxation under the laws of both territories in respect of the same income.

2.2. Prior to 2008, Guernsey had only two DTAs – one with the United Kingdom (which came into force in 1952) and one with Jersey (which came into force in 1955). Since 2008, several DTAs, albeit restricted in nature, have been signed with other countries, such as Australia, Ireland and New Zealand. More recently, further comprehensive DTAs have been signed – the first with Malta, in March 2012, and during 2013 with Jersey (a revision of the 1955 agreement), the Isle of Man, Qatar and Singapore.

2.3. When Guernsey negotiates with a country in relation to Agreements for the exchange of tax information, part of the process is to discuss, with the country concerned, ways of preventing certain types of double taxation and related issues.

2.4. At the commencement of discussions with Hong Kong and Luxembourg, the preference was expressed for a full DTA rather than a Tax Information Exchange Agreement ("TIEA"), albeit one that contained an exchange of information Article to the equivalent standard of Article 26 of the OECD's Model Tax Convention on Income and on Capital. A DTA that contains such an article is recognised as meeting international standards on exchange of information for tax purposes and is thus equivalent to a TIEA.

2.5. The two most commonly used templates for DTAs are the OECD Model Tax Convention on Income and on Capital, and the United Nations Model Double Taxation Convention Between Developed and Developing Countries.

2.6. The Council of the OECD recommends OECD Member Countries, when concluding or revising bilateral conventions, to conform to the OECD Model (as interpreted by the comprehensive commentaries attached to the Model) whilst having regard to the (significant number of) reservations which OECD Members have lodged in respect of the Model (such reservations reflecting OECD Member Countries' specific preferences, taking into account their domestic tax provisions, their stance on addressing the issue of double taxation, in particular situations, etc).

The influence of the OECD Model Tax Convention has extended far beyond OECD Member Countries. As a consequence, a number of non-OECD jurisdictions have set out their position in relation to particular parts of the OECD Model (so that, in effect, the OECD Model reflects the reservations and observations of both OECD Members and some other jurisdictions which wish for their positions on the Model to be, officially, recorded).

2.7. The United Nations Model Double Taxation Convention, whilst similar to the OECD Model, in many respects, addresses issues of particular interest when a developed country negotiates an agreement with a developing country, where the desirability of promoting inflows of foreign investment increased international trade and the transfer of technology, have to be balanced against the protection of taxpayers against double taxation and the protection of the tax bases of the bilateral treaty partners.

2.8. Broadly, the OECD Model Convention, which was, essentially, formulated for treaties between developed economies, tends towards the general concept of taxation according to the place of residence of a taxpayer, whereas the UN Model gives more weight to the principle of taxation on the basis of source of the income concerned.

2.9. It would be expected, therefore, that if Guernsey was to commence discussions in relation to a DTA with an OECD Member State, that State's Model DTA would bear significant similarities to the OECD Model Tax Convention (albeit reflecting its reservations and observations on the OECD Model). By contrast, if Guernsey was to commence negotiations with a non-OECD Member, and depending on that particular jurisdiction's preference that country's Model may follow:

- the OECD Model Convention,
- the UN Model Convention,
- a mixture of the OECD and UN Model Conventions, or
- possibly some other Model. (For example, there is a COMESA Double Taxation Model, agreed early in 2012, by the Common Market for Eastern and Southern Africa. There are a number of other such regional Models in existence.)

2.10. On 28 March 2013 Guernsey signed an Agreement with Hong Kong, which Hong Kong countersigned on 22 April 2013, entitled "Agreement between the States of Guernsey and the Government of the Hong Kong Administrative Region of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income". On 10 May 2013, an Agreement was signed with Luxembourg, entitled "Agreement between the Government of Guernsey and the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital".

A copy of each Agreement is appended to this Report.

2.11. Particular points of note, in relation to the Agreements, are:

(i) In July 2010, Article 7 ("Business Profits") of the OECD Model Tax Convention was updated. At the time of the negotiations with Hong Kong, that jurisdiction expressed a wish to follow the pre-July 2010 text (albeit that Guernsey's preference is now to negotiate on the basis of the July 2010 revised OECD Model text). It is not considered that there is any significant fiscal implication arising from this, however.

The Agreement with Luxembourg follows the July 2010 revised text.

(ii) Article 10 ("Dividends"), in the Hong Kong Agreement, prescribes that the general principle is that dividends are taxed in the place of residence of the recipient. This is in accord with Guernsey's domestic tax regime under which dividends paid to a non-resident of Guernsey do not suffer deduction of Guernsey tax.

The Agreement with Luxembourg provides that Luxembourg may retain the right to tax dividends paid to a non-resident, but if it does so the maximum rate of tax that would be charged is 5% if the dividend is paid to a company holding at least 10% of the paying company's shares, and 15% in any other case.

(iii) Article 11 ("Interest"), in both Agreements, prescribes that the general principle is that interest is taxed in the place of residence of the recipient. This accords with Guernsey's domestic tax regime under which interest paid to a non-resident of Guernsey, does not suffer Guernsey tax.

(iv) Article 12 ("Royalties"), in the Hong Kong Agreement, provides that Royalties may be taxed in Hong Kong when paid to a non-resident, but only up to a maximum rate of 4%.

In the Agreement with Luxembourg, royalties are taxed in the place of residence of the recipient. This accords with Guernsey's domestic tax regime the general principle of which is that royalties paid to a non-resident of Guernsey, do not suffer Guernsey tax.

(v) Article 17 ("Pensions") of both Agreements, prescribe that the territory of residence of the person receiving a pension has the right to tax except:

- in the case of the Agreement with Hong Kong, the territory in which the pension arises has the sole right to tax if it arises from a social security or "tax approved" pension scheme; and

- in the case of the Agreement with Luxembourg, if the contributions on which the pension is based have been taxed, or have been allowed as a deduction, in the territory in which the pension arises, the pension may be taxed only in that territory.

It is not considered that the effects of the pensions Article in these Agreements will have a material effect on Guernsey's revenues.

The remainder of the Agreements broadly follow the OECD Model.

2.12. Section 172(1) of the Income Tax Law provides:

"If the States by Resolution declare that arrangements specified in the Resolution have been made with the government of any other territory with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to income tax notwithstanding anything in any enactment."

3. Principles of Good Governance

In preparing this Report, the Department has been mindful of the States Resolution to adopt the six core principles of good governance defined by the UK Independent Commission on Good Governance in Public Services (Billet IV of 2011).

4. Resource Implications

4.1. Whilst the Agreements with Hong Kong and Luxembourg set out measures for the avoidance of double taxation, as those obligations extend to both parties to each

Agreement, it is not anticipated that the Agreements will give rise to any overall significant loss of, or increase to, the revenues of the States.

4.2. Whilst the provisions of the Agreements, relating to the prevention of fiscal evasion, do place obligations on the Parties to obtain and exchange information, the resource implications for Guernsey in complying with those obligations is not expected to be significant and can be managed within the existing resources available to the Director of Income Tax.

5. Recommendation

The Treasury & Resources Department recommends that the States should ratify the Agreements made with Hong Kong and Luxembourg, as appended to this Report, so that they have effect in accordance with section 172(1) of the Income Tax Law.

Yours faithfully

G A St Pier
Minister

J Kuttelwascher (Deputy Minister)
G Collins
R Perrot
A Spruce

AGREEMENT
BETWEEN
GUERNSEY
AND
THE GRAND DUCHY OF LUXEMBOURG
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The States of Guernsey and the Government of the Grand Duchy of Luxembourg

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, have agreed as follows:

Article 1
PERSONS COVERED

This Agreement shall apply to persons who are residents of one or both of the Contracting Parties.

Article 2
TAXES COVERED

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting Party or of its local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Agreement shall apply are in particular:

a) in Guernsey: the income tax;
(hereinafter referred to as "Guernsey tax");

b) in Luxembourg:
(i) the income tax on individuals (l'impôt sur le revenu des personnes physiques);
(ii) the corporation tax (l'impôt sur le revenu des collectivités);
(iii) the capital tax (l'impôt sur la fortune); and
(iv) the communal trade tax (l'impôt commercial communal);
(hereinafter referred to as "Luxembourg tax").

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their taxation laws.

Article 3
GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:

a) the term “Guernsey” means the States of Guernsey and, when used in a geographical sense, means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law; save that any reference to the law of Guernsey is to the law of the island of Guernsey as it applies there and in the islands of Alderney and Herm;

b) the term "Luxembourg" means the Grand Duchy of Luxembourg and, when used in a geographical sense, means the territory of the Grand Duchy of Luxembourg;

c) the term "business" includes the performance of professional services and of other activities of an independent character;

d) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

e) the term "competent authority" means:
(i) in Guernsey, the Director of Income Tax or his delegate;
(ii) in Luxembourg, the Minister of Finance or his authorised representative;

f) the terms "a Contracting Party" and "the other Contracting Party" mean Guernsey or Luxembourg as the context requires;

g) the term "enterprise" applies to the carrying on of any business;

h) the terms "enterprise of a Contracting Party" and "enterprise of the other Contracting Party" mean respectively an enterprise carried on by a resident of a Contracting Party and an enterprise carried on by a resident of the other Contracting Party;

i) the term "international traffic" means any transport by a ship, aircraft or road vehicle operated by an enterprise that has its place of effective management in a Contracting Party, except when the ship, aircraft or road vehicle is operated solely between places in the other Contracting Party;

j) the term "national" means:

(i) in relation to Guernsey, any individual who has a place of abode in Guernsey and possesses British citizenship and any legal person, partnership or association deriving its status as such under the laws of Guernsey;

(ii) in relation to Luxembourg:

a) any individual possessing the nationality of Luxembourg; and

b) any legal person, partnership or association deriving its status as such from the laws in force in Luxembourg;

k) the term "person" includes an individual, a company and any other body of persons.

2. As regards the application of the Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 4

RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting Party" means any person who, under the laws of that Party, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that Party and any local authority thereof. This term, however, does not include any person who is liable to tax in that Party in respect only of income from sources in that Party or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting Parties, then his status shall be determined as follows:

a) he shall be deemed to be a resident only of the Party in which he has a permanent home available to him; if he has a permanent home available to him in both Parties, he shall be deemed to be a resident only of the Party with which his personal and economic relations are closer (centre of vital interests);

b) if the Party in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Party, he shall be deemed to be a resident only of the Party in which he has an habitual abode;

c) if he has an habitual abode in both Parties or in neither of them, he shall be deemed to be a resident only of the Party of which he is a national;

d) if he is a national of both Parties or of neither of them, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting Parties, then it shall be deemed to be a resident only of the Party in which its place of effective management is situated.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop, and

f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation or a dredging project constitutes a permanent establishment only if it lasts more than 12 months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting Party an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Party in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting Party merely because it carries on business in that Party through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting Party controls or is controlled by a company which is a resident of the other Contracting Party, or which carries on business in that other Party (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting Party from immovable property (including income from agriculture or forestry) situated in the other Contracting Party may be taxed in that other Party.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting Party in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

Article 7

BUSINESS PROFITS

1. Profits of an enterprise of a Contracting Party shall be taxable only in that Party unless the enterprise carries on business in the other Contracting Party through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other Party.

2. For the purposes of this Article and Article 22, the profits that are attributable in each Contracting Party to the permanent establishment referred to in paragraph 1 are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.

3. Where, in accordance with paragraph 2, a Contracting Party adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting Parties and taxes accordingly profits of the enterprise that have been charged to tax in the other Party, the other Party shall, to the extent necessary to eliminate double taxation on these profits, make an appropriate adjustment to the amount of the tax charged on those profits. In determining such adjustment, the competent authorities of the Contracting Parties shall if necessary consult each other.

4. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

SHIPPING, INLAND WATERWAYS TRANSPORT AND AIR TRANSPORT

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting Party in which the place of effective management of the enterprise is situated.

2. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting Party in which the place of effective management of the enterprise is situated.

3. For the purposes of this Article, profits derived from the operation in international traffic of ships and aircraft include profits:

a) derived from the rental of ships and aircraft if such ships or aircraft are operated in international traffic; and

b) derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods and merchandise,

where such rental profits or profits from such use, maintenance or rental, as the case may be, are incidental to the profits described in paragraph 1.

4. If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting Party in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting Party of which the operator of the ship or boat is a resident.

5. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

ASSOCIATED ENTERPRISES

1. Where:

a) an enterprise of a Contracting Party participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting Party, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting Party and an enterprise of the other Contracting Party,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting Party includes in the profits of an enterprise of that Party - and taxes accordingly - profits on which an enterprise of the other Contracting Party has been charged to tax in that other Party and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Party if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Party shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting Parties shall if necessary consult each other.

Article 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting Party to a resident of the other Contracting Party may be taxed in that other Party.

2. However, such dividends may also be taxed in the Contracting Party of which the company paying the dividends is a resident and according to the laws of that Party, but if the beneficial owner of the dividends is a resident of the other Contracting Party, the tax so charged shall not exceed:

a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;

b) 15 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Party of which the company making the distribution is a resident, and in the case of Luxembourg, the investor's share of the profit in a commercial, industrial, mining or craft undertaking, paid proportionally to the profits and by virtue of his capital outlay, as well as interest and payments on bonds, where, over and above the fixed rate of interest, a right of assignment is granted for supplementary interest varying according to the unretained earnings.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting Party, carries on business in the other Contracting Party of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting Party derives profits or income from the other Contracting Party, that other Party may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Party or insofar as the holding in respect of which the dividends are paid is

effectively connected with a permanent establishment situated in that other Party, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Party.

Article 11

INTEREST

1. Interest arising in a Contracting Party and beneficially owned by a resident of the other Contracting Party shall be taxable only in that other Party.

2. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. However, the term "interest" shall not include income referred to in Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the interest arises, through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

Article 12

ROYALTIES

1. Royalties arising in a Contracting Party and beneficially owned by a resident of the other Contracting Party shall be taxable only in that other Party.

2. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the royalties arise, through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

Article 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting Party from the alienation of immovable property referred to in Article 6 and situated in the other Contracting Party may be taxed in that other Party.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other Party.

3. Gains from the alienation of ships or aircraft operated in international traffic, boats engaged in inland waterways transport or movable property pertaining to the operation of such ships, aircraft or boats, shall be taxable only in the Contracting Party in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting Party of which the alienator is a resident.

Article 14
INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting Party in respect of an employment shall be taxable only in that Party unless the employment is exercised in the other Contracting Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Party.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting Party in respect of an employment exercised in the other Contracting Party shall be taxable only in the first-mentioned Party if:

a) the recipient is present in the other Party for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the calendar year concerned, and
b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Party, and
c) the remuneration is not borne by a permanent establishment which the employer has in the other Party.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship, aircraft or road vehicle operated in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting Party in which the place of effective management of the enterprise is situated.

Article 15
DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting Party in his capacity as a member of the board of directors of a company which is a resident of the other Contracting Party may be taxed in that other Party.

Article 16
ARTISTES AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting Party as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting Party, may be taxed in that other Party.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting Party in which the activities of the entertainer or sportsperson are exercised.

Article 17
PENSIONS

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration (including lump-sum payments) paid to a resident of a Contracting Party in consideration of past employment shall be taxable only in that Party.

2. Notwithstanding the provisions of paragraph 1, pensions and other payments made under the social security legislation of a Contracting Party shall be taxable only in that Party.

3. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration (including lump-sum payments) arising in a Contracting Party and paid to a resident of the other Contracting Party shall be taxable only in the first-mentioned Party, provided that such payments derive from contributions paid to or from provisions made under a pension scheme by the recipient or on his behalf and that these contributions, provisions or the pensions or other similar remuneration have been subjected to tax in the first-mentioned Party under the ordinary rules of its tax laws or have been deducted from the taxable base in the first-mentioned Party under the ordinary rules of its tax laws.

Article 18

GOVERNMENT SERVICE

1. a) Salaries, wages and other similar remuneration paid by a Contracting Party or a local authority thereof to an individual in respect of services rendered to that Party or authority shall be taxable only in that Party.

   b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that Party and the individual is a resident of that Party who:

      (i) is a national of that Party; or

      (ii) did not become a resident of that Party solely for the purpose of rendering the services.

2. a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration (including lump sum payments) paid by, or out of funds created by, a Contracting Party or a local authority thereof to an individual in respect of services rendered to that Party or authority shall be taxable only in that Party.

   b) However, such pensions and other similar remuneration (including lump sum payments) shall be taxable only in the other Contracting Party if the individual is a resident of, and a national of, that Party.

3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting Party or a local authority thereof.

Article 19

STUDENTS

Payments which a student or business apprentice who is or was immediately before visiting a Contracting Party a resident of the other Contracting Party and who is present in the first-mentioned Party solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that Party, provided that such payments arise from sources outside that Party.

Article 20

OTHER INCOME

1. Items of income of a resident of a Contracting Party, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Party.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting Party, carries on business in the other Contracting Party through a permanent establishment situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

Article 21

CAPITAL

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting Party and situated in the other Contracting Party, may be taxed in that other Party.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party may be taxed in that other Party.

3. Capital represented by ships and aircraft operated in international traffic and by boats engaged in inland waterways transport, and by movable property pertaining to the operation of such ships, aircraft and boats, shall be taxable only in the Contracting Party in which the place of effective management of the enterprise is situated.

4. All other elements of capital of a resident of a Contracting Party shall be taxable only in that Party.

Article 22

ELIMINATION OF DOUBLE TAXATION

1. Subject to the provisions of the laws of Guernsey regarding the allowance as a credit against Guernsey tax of tax payable in a territory outside Guernsey (which shall not affect the general principle hereof):

a) subject to the provisions of sub-paragraph c), where a resident of Guernsey derives income which, in accordance with the provisions of this Agreement, may be taxed in Luxembourg, Guernsey shall allow as a deduction from the tax payable in respect of that income, an amount equal to the income tax paid in Luxembourg;

b) such deduction shall not, however, exceed that part of the income tax, as computed before deduction is given, which is attributable to the income which may be taxed in Luxembourg;

c) where a resident of Guernsey derives income which, in accordance with the provisions of the Agreement shall be taxable only in Luxembourg, Guernsey may include this income in calculating the amount of tax on the remaining income of such resident.

2. Subject to the provisions of Luxembourg law regarding the elimination of double taxation which shall not affect the general principle hereof, double taxation shall be eliminated as follows:

a) where a resident of Luxembourg derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in Guernsey, Luxembourg shall, subject to the provisions of sub-paragraphs b), c) and d), exempt such income or capital from tax, but may, in order to calculate the amount of tax on the remaining income or capital of the resident, apply the same rates of tax as if the income or capital had not been exempted;

b) where a resident of Luxembourg derives income which, in accordance with the provisions of Articles 7, 10, 13(2) and 16 may be taxed in Guernsey, Luxembourg shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Guernsey, but only, with respect to Articles 7 and 13(2), if the business profits and the capital gains are not derived from activities in agriculture, industry, infrastructure and tourism in Guernsey. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from Guernsey;

c) where a company which is a resident of Luxembourg derives dividends from Guernsey sources, Luxembourg shall exempt such dividends from tax, provided that the company which is a resident of Luxembourg holds directly at least 10 per cent of the capital of the company paying the dividends since the beginning of the accounting year and if this company is subject to Guernsey tax corresponding to the Luxembourg corporation tax. The above-mentioned shares in the Guernsey company are, under the same conditions, exempt from the Luxembourg capital tax. This exemption under this sub-paragraph shall also apply notwithstanding that the Guernsey company is exempted from tax or taxed at a reduced rate in Guernsey and if these dividends are

derived out of profits from activities in agriculture, industry, infrastructure or tourism in Guernsey;

d) the provisions of sub-paragraph a) shall not apply to income derived or capital owned by a resident of Luxembourg where Guernsey applies the provisions of this Agreement to exempt such income or capital from tax or applies the provisions of paragraph 2 of Article 10 to such income.

Article 23
NON-DISCRIMINATION

1. Nationals of a Contracting Party shall not be subjected in the other Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other Party in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting Parties.

2. The taxation on a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party shall not be less favourably levied in that other Party than the taxation levied on enterprises of that other Party carrying on the same activities. This provision shall not be construed as obliging a Contracting Party to grant to residents of the other Contracting Party any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 4 of Article 11, or paragraph 4 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Party. Similarly, any debts of an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned Party.

4. Enterprises of a Contracting Party, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting Party, shall not be subjected in the first-mentioned Party to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Party are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 24

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Parties, present his case to the competent authority of the Contracting Party of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting Party of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting Parties.

3. The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting Parties may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. Where,

a) under paragraph 1, a person has presented a case to the competent authority of a Contracting Party on the basis that the actions of one or both of the Contracting Parties have resulted for that person in taxation not in accordance with the provisions of this Agreement, and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting Party,

any unresolved issues arising from the case shall be submitted to arbitration if both competent authorities and the taxpayer agree and the taxpayer agrees in writing to be bound by the decision of the arbitration board. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either Party. The decision of the arbitration board in a particular case shall be binding on both Parties with respect to that case and shall be implemented notwithstanding any time limits in the domestic laws of these Parties. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this paragraph.

Article 25

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting Parties, or of their local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting Party the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting Party;
b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting Party;
c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting Party in accordance with this Article, the other Contracting Party shall use its information gathering measures to obtain the requested information, even though that other Party may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting Party to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting Party to decline to supply information upon request solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 26

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 27

ENTRY INTO FORCE

1. Each Contracting Party shall notify the other in writing, through appropriate channels, that the procedures required by its law for the entry into force of this Agreement have been satisfied. The Agreement shall enter into force on the date of receipt of the last notification.

2. The Agreement shall have effect:
a) in respect of taxes withheld at source, to income derived on or after 1 January of the calendar year next following the year in which the Agreement enters into force;

b) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1 January of the calendar year next following the year in which the Agreement enters into force.

Article 28

TERMINATION

1. This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement, through appropriate channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of a period of five years from the date of its entry into force.

2. The Agreement shall cease to have effect:

a) in respect of taxes withheld at source, to income derived on or after 1 January of the calendar year next following the year in which the notice is given;

b) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1 January of the calendar year next following the year in which the notice is given.

In witness whereof the undersigned, duly authorised thereto, have signed this Agreement.

Done in duplicate at this day of 201 , in the English language.

For the States of Guernsey

For the Government of the Grand Duchy of Luxembourg

PROTOCOL

At the moment of the signing of the Agreement between Guernsey and the Grand Duchy of Luxembourg for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, both Contracting Parties have agreed upon the following provisions, which shall form an integral part of the Agreement:

I. With reference to Article 4:

1. A collective investment vehicle which is established in a Contracting Party and that is treated as a body corporate for tax purposes in that Contracting Party shall be considered as a resident of the Contracting Party in which it is established and as the beneficial owner of the income it receives.
2. A collective investment vehicle which is established in a Contracting Party and that is not treated as a body corporate for tax purposes in that Contracting Party shall be considered as an individual who is resident of the Contracting Party in which it is established and as the beneficial owner of the income it receives.

II. With reference to Article 25:

Any request for information under the Agreement shall be formulated with the greatest detail possible and, in particular, the competent authority of the requesting Party shall provide the following information to the competent authority of the requested Party:

a) the identity of the person under examination or investigation;
b) the period for which the information is sought;
c) the nature of the information sought and the form in which the requesting Party wishes to receive it;
d) the reason for believing that the information requested is foreseeably relevant to the carrying out of the provisions of the Agreement or to the administration or enforcement of the domestic laws concerning taxes imposed on behalf of the requesting Party;
e) the tax purpose for which the information is sought;
f) grounds for believing that the information requested is held in the requested Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Party;
g) to the extent known the name and address of any person believed to be in possession of or able to obtain the requested information;
h) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

In witness whereof the undersigned, duly authorised thereto, have signed this Protocol.

Done in duplicate at this

day of 201 , in the English language.

For the States of Guernsey

For the Government of the Grand Duchy of Luxembourg

AGREEMENT BETWEEN THE GOVERNMENT OF GUERNSEY AND THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of Guernsey and the Government of the Hong Kong Special Administrative Region of the People's Republic of China,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

Article 1

Persons Covered

This Agreement shall apply to persons who are residents of one or both of the Contracting Parties.

Article 2

Taxes Covered

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting Party, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Agreement shall apply are:

   (a) in the case of Guernsey, income tax;

   (b) in the case of the Hong Kong Special Administrative Region,

      (i) profits tax;

      (ii) salaries tax; and

      (iii) property tax;

      whether or not charged under personal assessment.

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes, as well as any other taxes falling within paragraphs 1 and 2 of this Article which a Contracting Party may impose in future. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their taxation laws.

5. The existing taxes, together with the taxes imposed after the signature of the Agreement, are hereinafter referred to as "Guernsey tax" or "Hong Kong Special Administrative Region tax", as the context requires.

Article 3

General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:

(a) (i) the term "Guernsey" means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law, save that any reference to the law of Guernsey is to the law of the island of Guernsey as it applies there and in the islands of Alderney and Herm;

(ii) the term "Hong Kong Special Administrative Region" means any territory where the tax laws of the Hong Kong Special Administrative Region of the People's Republic of China apply;

(b) the term "business" includes the performance of professional services and of other activities of an independent character;

(c) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

(d) the term "competent authority" means:

(i) in the case of Guernsey, the Director of Income Tax or his authorised representative;

(ii) in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorised representative;

(e) the term "enterprise" applies to the carrying on of any business;

(f) the terms “enterprise of a Contracting Party” and “enterprise of the other Contracting Party” mean respectively an enterprise carried on by a resident of a Contracting Party and an enterprise carried on by a resident of the other Contracting Party;

(g) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting Party, except when the ship or aircraft is operated solely between places in the other Contracting Party;

(h) the term “person” includes an individual, a company, a partnership and any other body of persons;

(i) the term “tax” means Guernsey tax or Hong Kong Special Administrative Region tax, as the context requires.

2. In the Agreement, the terms “Guernsey tax” and “Hong Kong Special Administrative Region tax” do not include any penalty or interest (including, in the case of the Hong Kong Special Administrative Region, any sum added to Hong Kong Special Administrative Region tax by reason of default and recovered therewith and “additional tax” under section 82A of the Inland Revenue Ordinance) imposed under the laws of either Contracting Party relating to the taxes to which the Agreement applies by virtue of Article 2.

3. As regards the application of the Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 4

Resident

1. For the purposes of this Agreement, the term “resident of a Contracting Party” means:

(a) in the case of Guernsey, any person who, under the laws of Guernsey, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in Guernsey in respect only of income from sources in Guernsey;

(b) in the case of the Hong Kong Special Administrative Region,

(i) any individual who ordinarily resides in the Hong Kong Special Administrative Region;

(ii) any individual who stays in the Hong Kong Special Administrative Region for more than 180 days during a year of assessment or for more than 300 days in two consecutive years of assessment one of which is the relevant year of assessment;

(iii) a company incorporated in the Hong Kong Special Administrative Region or, if incorporated outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;

(iv) any other person constituted under the laws of the Hong Kong Special Administrative Region or, if constituted outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;

(c) in the case of either Contracting Party, the Government of that Party.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting Parties, then his status shall be determined as follows:

(a) he shall be deemed to be a resident only of the Party in which he has a permanent home available to him; if he has a permanent home available to him in both Parties, he shall be deemed to be a resident only of the Party with which his personal and economic relations are closer (centre of vital interests);

(b) if the Party in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either

Party, he shall be deemed to be a resident only of the Party in which he has an habitual abode;

(c) if he has an habitual abode in both Parties or in neither of them, he shall be deemed to be a resident only of the Party in which he has the right of abode;

(d) if he has the right of abode in both Parties or in neither of them, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting Parties, then it shall be deemed to be a resident only of the Party in which its place of effective management is situated.

Article 5

Permanent Establishment

1. For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term “permanent establishment” includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop; and

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term “permanent establishment” also encompasses:

(a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;

(b) the furnishing of services, including consultancy services, by an enterprise directly or through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting Party for a period or periods aggregating more than 183 days within any twelve-month period.

4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting Party an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Party in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting Party merely because it carries on business in that Party through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting Party controls or is controlled by a company which is a resident of the other Contracting Party, or which carries on business in that other Party (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

Income from Immovable Property

1. Income derived by a resident of a Contracting Party from immovable property (including income from agriculture or forestry) situated in the other Contracting Party may be taxed in that other Party.

2. The term “immovable property” shall have the meaning which it has under the law of the Contracting Party in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, quarries, sources and

other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

Article 7

Business Profits

1. The profits of an enterprise of a Contracting Party shall be taxable only in that Party unless the enterprise carries on business in the other Contracting Party through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Party, but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting Party carries on business in the other Contracting Party through a permanent establishment situated therein, there shall in each Contracting Party be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Party in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting Party to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, or on the basis of such

other method as may be prescribed by the laws of that Party, nothing in paragraph 2 shall preclude that Contracting Party from determining the profits to be taxed by such apportionment or other method; the method adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of the Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping and Air Transport

1. Profits of an enterprise of a Contracting Party from the operation of ships or aircraft in international traffic shall be taxable only in that Party.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated Enterprises

1. Where:

   (a) an enterprise of a Contracting Party participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting Party; or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting Party and an enterprise of the other Contracting Party,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting Party includes in the profits of an enterprise of that Party – and taxes accordingly – profits on which an enterprise of the other Contracting Party has been charged to tax in that other Party and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Party if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Party shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and for this purpose the competent authorities of the Contracting Parties shall if necessary consult each other.

Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting Party to a resident of the other Contracting Party and beneficially owned by that resident of the other Party shall be taxable only in that other Party.

2. Paragraph 1 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Party of which the company making the distribution is a resident.

4. The provisions of paragraph 1 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting Party, carries on business in the other Contracting Party of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting Party derives profits or income from the other Contracting Party, that other Party may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Party or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other Party, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Party.

Article 11

Interest

1. Interest arising in a Contracting Party and beneficially owned by a resident of the other Contracting Party shall be taxable only in that other Party.

2. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest

is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

4. Interest shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the interest, whether he is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Party in which the permanent establishment is situated.

5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest exceeds, for whatever reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

Article 12

Royalties

1. Royalties arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in that other Party.

2. However, such royalties may also be taxed in the Contracting Party in which they arise and according to the laws of that Party, but if the beneficial owner of the royalties is a resident of the other Contracting Party, the tax so charged shall not exceed four per cent of the gross amount of the royalties. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this limitation.

3. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or

model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the royalties, whether he is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Party in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties exceeds, for whatever reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

Article 13

Capital Gains

1. Gains derived by a resident of a Contracting Party from the alienation of immovable property referred to in Article 6 and situated in the other Contracting Party may be taxed in that other Party.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting

Party has in the other Contracting Party, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other Party.

3. Gains derived by an enterprise of a Contracting Party from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that Party.

4. Gains derived by a resident of a Contracting Party from the alienation of shares of a company deriving more than 50 per cent of its asset value directly or indirectly from immovable property situated in the other Contracting Party may be taxed in that other Party. However, this paragraph does not apply to gains derived from the alienation of shares:

   (a) quoted on a recognised stock exchange; or

   (b) alienated or exchanged in the framework of a reorganisation of a company, a merger, a scission or a similar operation; or

   (c) in a company deriving more than 50 per cent of its asset value from immovable property in which it carries on its business.

5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting Party of which the alienator is a resident.

Article 14

Income from Employment

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting Party in respect of an employment shall be taxable only in that Party unless the employment is exercised in the other Contracting Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Party.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting Party in respect of an employment exercised in the other Contracting Party shall be taxable only in the first-mentioned Party if:

   (a) the recipient is present in the other Party for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the taxable period concerned; and

   (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Party; and

   (c) the remuneration is not borne by a permanent establishment which the employer has in the other Party; and

   (d) the remuneration is taxable in the first-mentioned Party according to the laws in force in that Party.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting Party may be taxed in that Party.

Article 15

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting Party in his capacity as a member of the board of directors of a company which is a resident of the other Contracting Party may be taxed in that other Party.

Article 16

Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting Party as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his

personal activities as such exercised in the other Contracting Party, may be taxed in that other Party.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting Party in which the activities of the entertainer or sportsman are exercised.

Article 17

Pensions

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration (including a lump sum payment) paid to a resident of a Contracting Party in consideration of past employment or self-employment shall be taxable only in that Party.

2. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration (including a lump sum payment) made under a pension or retirement scheme which is:

   (a) a public scheme which is part of the social security system of a Contracting Party; or

   (b) a scheme in which individuals may participate to secure retirement benefits and which is recognised for tax purposes in a Contracting Party,

   shall be taxable only in that Contracting Party.

Article 18

Government Service

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by the Government of a Contracting Party to an individual in respect of services rendered to that Party shall be taxable only in that Party.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that Party and the individual is a resident of that Party who:

(i) has the right of abode in that Party; or

(ii) did not become a resident of that Party solely for the purpose of rendering the services.

2. (a) Any pension (including a lump sum payment) paid by, or paid out of funds created or contributed by, the Government of a Contracting Party to an individual in respect of services rendered to that Party shall be taxable only in that Party.

(b) However, if the individual who rendered the services is a resident of the other Contracting Party and the case falls within subparagraph (b) of paragraph 1 of this Article, any corresponding pension (whether a payment in lump sum or by instalments) shall be taxable only in that other Contracting Party.

3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages, pensions (including a lump sum payment), and other similar remuneration in respect of services rendered in connection with a business carried on by the Government of a Contracting Party.

Article 19

Students

Payments which a student who is or was immediately before visiting a Contracting Party a resident of the other Contracting Party and who is present in the first-mentioned Party solely for the purpose of his education receives for the purpose of his maintenance or education shall not be taxed in that Party, provided that such payments arise from sources outside that Party.

Article 20

Other Income

1. Items of income of a resident of a Contracting Party, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Party.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting Party, carries on business in the other Contracting Party through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

3. Alimony or other maintenance payment paid by a resident of a Contracting Party to a resident of the other Contracting Party shall, to the extent it is not allowable as a deduction to the payer in the first-mentioned Party, be taxable only in that Party.

4. Where, by reason of a special relationship between the resident referred to in paragraph 1 and some other person, or between both of them and some third person, the amount of the income referred to in that paragraph exceeds, for whatever reasons, the amount (if any) which would have been agreed upon between them in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the income shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of the Agreement.

Article 21

Methods for Elimination of Double Taxation

1. In the case of Guernsey, subject to the provisions of the laws of Guernsey regarding the allowance as a credit against Guernsey tax of tax payable in a territory outside Guernsey (which shall not affect the general principle hereof):

(a) subject to the provisions of subparagraph (c), where a resident of Guernsey derives income which, in accordance with the provisions of this Agreement, may be taxed in the Hong Kong Special Administrative Region, Guernsey shall allow as a deduction from the tax payable in respect of that income, an amount equal to the tax paid in the Hong Kong Special Administrative Region;

(b) such deduction shall not, however, exceed that part of the income tax, as computed before deduction is given, which is attributable to the income which may be taxed in the Hong Kong Special Administrative Region;

(c) where a resident of Guernsey derives income which, in accordance with the provisions of the Agreement shall be taxable only in the Hong Kong Special Administrative Region, Guernsey may include this income in calculating the amount of tax on the remaining income of such resident.

2. In the case of the Hong Kong Special Administrative Region, subject to the provisions of the laws of the Hong Kong Special Administrative Region relating to the allowance of a credit against Hong Kong Special Administrative Region tax of tax paid in a jurisdiction outside the Hong Kong Special Administrative Region (which shall not affect the general principle of this Article), Guernsey tax paid under the laws of Guernsey and in accordance with the Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of the Hong Kong Special Administrative Region from sources in Guernsey, shall be allowed as a credit against Hong Kong Special Administrative Region tax payable in respect of that income, provided that the credit so allowed does not exceed the amount of Hong Kong Special Administrative Region tax computed in respect of that income in accordance with the tax laws of the Hong Kong Special Administrative Region.

Article 22

Non-Discrimination

1. Persons who have the right of abode in a Contracting Party or are incorporated or otherwise constituted therein shall not be subjected in the other Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which

persons who have the right of abode or are incorporated or otherwise constituted in that other Party in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting Parties.

2. The taxation on a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party shall not be less favourably levied in that other Party than the taxation levied on enterprises of that other Party carrying on the same activities. This provision shall not be construed as obliging a Contracting Party to grant to residents of the other Contracting Party any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph l of Article 9, paragraph 5 of Article 11, paragraph 6 of Article 12, or paragraph 4 of Article 20 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Party.

4. Enterprises of a Contracting Party, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting Party, shall not be subjected in the first-mentioned Party to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Party are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 23

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with the

provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Parties, present his case to the competent authority of the Contracting Party of which he is a resident or, if his case comes under paragraph 1 of Article 22, to that of the Contracting Party in which he has the right of abode or is incorporated or otherwise constituted. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting Parties.

3. The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting Parties may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. Where,

(a) under paragraph 1, a person has presented a case to the competent authority of a Contracting Party on the basis that the actions of one or both of the Contracting Parties have resulted for that person in taxation not in accordance with the provisions of the Agreement, and

(b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting Party,

any unresolved issues arising from the case shall be submitted to arbitration if both competent authorities and the taxpayer agree and the taxpayer agrees in writing to be bound by the decision of the arbitration board. These unresolved

issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either Party. The decision of the arbitration board in a particular case shall be binding on both Parties with respect to that case. The procedure shall be established in an exchange of notes between the Parties.

Article 24

Exchange of Information

1. The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws of the Contracting Parties concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Information shall not be disclosed to any third jurisdiction for any purpose.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting Party the obligation:

   (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting Party;

   (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting Party;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

4. If information is requested by a Contracting Party in accordance with this Article, the other Contracting Party shall use its information gathering measures to obtain the requested information, even though that other Party may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting Party to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting Party to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 25

Members of Government Missions

Nothing in this Agreement shall affect the fiscal privileges of members of government missions, including consular posts, under the general rules of international law or under the provisions of special agreements.

Article 26

Miscellaneous Rules

Nothing in this Agreement shall prejudice the right of each Contracting Party to apply its domestic laws and measures concerning tax avoidance, whether or not described as such.

Article 27

Entry into Force

1. Each of the Contracting Parties shall notify the other in writing of the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications.

2. The provisions of the Agreement shall thereupon have effect:

   (a) in Guernsey:

   in respect of Guernsey tax, for any year of charge beginning on or after 1 January in the calendar year next following that in which the Agreement enters into force;

   (b) in the Hong Kong Special Administrative Region:

   in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after 1 April in the calendar year next following that in which the Agreement enters into force.

Article 28

Termination

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement by giving written notice of termination at least six months before the end of any calendar year beginning after the expiration of a period of five years from the date of its entry into force. In such event, the Agreement shall cease to have effect:

   (a) in Guernsey:

   in respect of Guernsey tax, for any year of charge beginning on or after 1 January in the calendar year next following that in which the notice is given;

   (b) in the Hong Kong Special Administrative Region:

in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after 1 April in the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Agreement.

DONE in duplicate in Guernsey and Hong Kong on the day of 2013 and the day of 2013, respectively, in the English language.

For the Government of Guernsey

For the Government of the Hong Kong Special Administrative Region of the People's Republic of China

PROTOCOL

At the time of signing the Agreement between the Government of Guernsey and the Government of the Hong Kong Special Administrative Region of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income ("the Agreement"), the Governments of the Contracting Parties have agreed upon the following provisions which shall form an integral part of the Agreement.

1. For the purposes of the Agreement, an item of income, profit or gain derived through a person that is fiscally transparent under the laws of either Contracting Party, shall be considered to be derived by a resident of a Contracting Party to the extent that the item is treated for the purposes of the taxation laws of such Contracting Party as the income, profit or gain of that resident. It is understood that this paragraph shall not affect the taxation by a Contracting Party of its residents.

2. With respect to subparagraph (a) of paragraph 4 of Article 13, it is understood that the term "recognised stock exchange" means:

   (a) the Channel Islands Stock Exchange and any Guernsey stock exchange recognised under the laws of Guernsey;

   (b) the Stock Exchange of Hong Kong Limited and any Hong Kong Special Administrative Region stock exchange recognised under the laws of the Hong Kong Special Administrative Region;

   (c) any other stock exchange agreed upon by the competent authorities.

3. With respect to Article 24, it is understood that:

   (a) the Article does not oblige the Contracting Parties to exchange information on an automatic or a spontaneous basis;

   (b) a Contracting Party may only request information relating to taxable periods for which the provisions of the Agreement have effect for that Party;

(c) in the case of Guernsey, the competent authority may disclose information, insofar as, and to the extent that, it may be necessary:

(i) to those officials of the Treasury and Resources Department who are involved in the conduct of official internal audit of the Guernsey Income Tax Office and have for that purpose taken an oath under section 206(1)(d) of the Income Tax (Guernsey) Law, 1975, as amended, and

(ii) for the purposes of a hearing, connected with a taxation matter, under the Administrative Decisions (Review) (Guernsey) Law, 1986, as amended.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed this Protocol.

DONE in duplicate in Guernsey and Hong Kong on the day of 2013 and the day of 2013, respectively, in the English language.

For the Government of Guernsey

For the Government of the Hong Kong Special Administrative Region of the People's Republic of China

(NB The Policy Council has no comments on the proposals.)

The States are asked to decide:-

IV.- Whether, after consideration of the Report dated 13th May, 2013, of the Treasury and Resources Department, they are of the opinion to ratify the Agreements made with the Government of the Hong Kong Administrative Region of the People's Republic of China and the Grand Duchy of Luxembourg, as appended to that Report, so that they have effect in accordance with section 172(1) of the Income Tax (Guernsey) Law, 1975.

TREASURY AND RESOURCES DEPARTMENT

TAX ON REAL PROPERTY APPEALS PANEL – ADDITIONAL MEMBERS

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

28th June 2013

Dear Sir

1. Executive Summary

The purpose of this States Report is to ask the States to:

- Reconfirm the appointment of Mr Eric Legg as a member of the Tax on Real Property Appeals Panel ("the Panel");
- Appoint additional members to the Panel; and
- Note the resignations of Mr Michael Vaudin and Mrs Sheelagh Evans from the Panel.

2. Background

2.1 The Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007 ("the Ordinance") provides for a comprehensive appeals process as part of the Tax on Real Property system of property measurement. Part II of the Ordinance explains the requirements for establishing a Tax on Real Property Appeals Panel and, at its meeting in June 2008, the States approved the appointment of eight members to the Panel.

2.2 The current members of the Panel are:

Mr Stuart Le Maitre (Chairman)
Mrs Caroline Latham FRICS (Deputy Chairman)
Advocate Mark Dunster
Mrs Sheelagh Evans MRICS
Mr Martin Johnson
Mr Eric Legg
Mr John Weir FRICS
Mr Michael Vaudin

Upon receipt of an appeal, the Chairman will appoint a Tribunal, consisting of three members of the Panel, to consider and determine the appeal.

2.3 The Ordinance precludes certain individuals from being appointed as members of the Panel. These are: Members of the States of Deliberation and the States of Election; Members of the States of Alderney; any Constable or Douzenier; any procureur or overseer of the poor or member of a parochial outdoor assistance board; and, any Member of the Judiciary of the Islands.

2.4 Since their appointment, Advocate Dunster and Mr. Legg have become ineligible to serve as active members of the Panel. Advocate Dunster was elected as a Douzenier shortly after his appointment to the Panel and Mr. Legg was appointed as a member of the former Juvenile Panel at the Royal Court. Therefore, the Panel has recently only consisted of six active members.

2.5 In January 2013, the Treasury and Resources Department agreed to a request from the Panel for additional members. Given the limited number of active members, the Panel was concerned that it may find it difficult to hear all appeals in a timely manner and that there would be increasing difficulty in managing those appeals where Panel members were conflicted from taking part.

2.6 In April, 2013, both Mr. Vaudin and Mrs. Evans tendered their resignations from the Panel for personal reasons. Mrs Evans has agreed that her resignation should be effective from 30 October, 2013, whilst additional Panel members are recruited. The Department wishes to record its appreciation to both Mr Vaudin and Mrs Evans for their work with the Panel.

3. Reconfirmation of Appointment

3.1 Prior to the recruitment process, Mr. Legg confirmed that, following the dissolution of the former Juvenile Panel, he is now eligible to serve as an active member of the Panel and remains willing to do so.

3.2 The Law Officers have advised the Department that Advocate Dunster can remain on the Panel, but that he cannot be appointed to a Tribunal whilst he continues to serve as a Douzenier.

4. Appointment of Additional Members

4.1 Following an open recruitment process, the Treasury and Resources Department received 18 applications for the appointment of additional Panel members. After careful consideration, the following were considered to be suitably qualified to be put forward to the States for consideration as additional members of the Panel:

Sir de Vic Carey
Mr Harry Gold
Mr Boyd Kelly

Mrs Shelagh Mason
Advocate Julia White

A brief summary of these individuals' curriculum vitae is appended to this Report.

5. Other Considerations

5.1 The proposals set out in this States Report will not have any impact on the resources of the States. The Department considers that it has complied with the six principles of good governance in the preparation of this States Report.

6. Recommendations

6.1 The Treasury and Resources Department therefore recommends the States:

(a) To reconfirm the appointment of Mr. Legg as a member of the Panel;

(b) To appoint the following individuals as members of the Panel:

(i) Sir de Vic Carey;
(ii) Mr Harry Gold;
(iii) Mr Boyd Kelly;
(iv) Mrs Shelagh Mason;
(v) Advocate Julia White.

(c) To note the resignation of Mr Vaudin from the Panel with immediate effect and the resignation of Mrs. Evans with effect from 30 October 2013.

Yours faithfully

G A St Pier
Minister

J Kuttelwascher (Deputy Minister)
R Perrot
A Spruce
H Adam

APPENDIX

TAX ON REAL PROPERTY APPEALS PANEL

CANDIDATE PROFILES

Sir de Vic Carey

Former People's Deputy and Bailiff of Guernsey between 1999 and 2005. Other positions previously held include Law Officer of the Crown, Judge of the Court of Appeal Jersey, Judge of the Court of Appeal Guernsey and Lieutenant Bailiff. Retired from all judicial work in 2012. Currently Deputy Chair of the Children's Convenor and Tribunal Board.

Mr Harry Gold

Retired English solicitor and open market resident since 1988. Specialised in domestic and commercial conveyancing and planning matters. Experience of matters before the Leasehold Valuation Tribunal and Lands Tribunal in England and in drafting Pleadings and Orders in relation to Arbitrations and Court proceedings. Also worked in a voluntary capacity for the Poor Man Law Centres in the UK providing advice on Civil and Criminal matters.

Mr Boyd Kelly

Alderney resident, retired to Alderney in the late 1990's following a career with the West Midlands Police, retiring with the rank of Inspector. Positions held since moving to the Bailiwick have included: Gaming Inspector, Alderney Gambling Commission; Analyst with the Fiduciary and Enforcement Department, Guernsey Financial Services Commission; Sales Negotiator, Mitchell and Partners Estate Agents; Member of the States of Alderney; and, Alderney Representative of the States of Guernsey. Mr Kelly is now retired from all positions.

Mrs Shelagh Mason

Qualified English Solicitor**.** Currently a Partner at Spicer & Partners Guernsey LLP specialising in commercial property matters. Shelagh has extensive tribunal experience including as a lay Member of the Tax Tribunal. Other positions held include a Member of the Law Society, Association of Women Solicitors, a member and past Chairman of the Guernsey Branch of the Institute of Directors, a Member of the Guernsey International Legal Association and Guernsey Chamber of Commerce.

Advocate Julia White

Qualified English Barrister and Guernsey Advocate. Currently holds the position of Advocate in Litigation and Property Departments at Carey Olsen practising particularly in local civil and land law matters and public law (planning, housing and human rights). Extensive experience of Tribunal work, currently holding the positions of lay member, Planning Appeals Panel, and Vice-President, Tax Appeals Tribunal.

(NB The Policy Council has no comment on the proposals)

The States are asked to decide:-

V.- Whether, after consideration of the Report dated 28th June, 2013, of the Treasury and Resources Department, they are of the opinion:-

1. To reconfirm the appointment of Mr. Legg as a member of the Tax on Real Property Appeals Panel.

2. To appoint Sir de Vic Carey as an additional member of the Tax on Real Property Appeals Panel.

3. To appoint Mr. Harry Gold as an additional member of the Tax on Real Property Appeals Panel.

4. To appoint Mr. Boyd Kelly as an additional member of the Tax on Real Property Appeals Panel.

5. To appoint Mrs. Shelagh Mason as an additional member of the Tax on Real Property Appeals Panel.

6. To appoint Advocate Julia White as an additional member of the Tax on Real Property Appeals Panel.

7. To note the resignation of Mr. Vaudin from the Panel with immediate effect and the resignation of Mrs. Evans with effect from 30th October 2013.

COMMERCE AND EMPLOYMENT DEPARTMENT

THE ELECTRICITY (GUERNSEY) LAW 2001 – SPECIAL AGREEMENTS

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

18th June 2013

Dear Sir

1. Executive Summary

1.1 Under the provisions of The Electricity (Guernsey) Law, 2001, there is a general duty placed on Guernsey Electricity to supply electricity. It is only exonerated from this requirement where it is prevented from doing so by circumstances beyond its control, because of safety considerations, or when it is not reasonable in all the circumstances for it to be required to do so.

1.2 Electricity can be provided under the provisions of Sections 10 to 15 of the Law (see paragraph 5.3), or alternatively by way of a "special agreement" under Section 16. The vast majority of consumers are supplied according to the Sections 10 to 15 general provisions and Section 16 special agreements are unlikely to be appropriate for such consumers. However, it is likely that in the foreseeable future an application or applications will be received for a supply by a large consumer or consumers and Guernsey Electricity (GEL) considers that special agreements negotiated under Section 16 of the Law are likely to be appropriate for consumers requesting a very substantial supply. However, while such agreements will define the conditions of supply, in the law as currently drafted there is no guidance given as to the criteria that are expected to be taken into account on whether and when it is reasonable or not to provide a supply under the general provisions of Sections 10 to 15 or, as an alternative, under a Section 16 special agreement. There is also no indication in the law as to how the research and development costs that are likely to be necessary for the supply of large consumers are to be considered. Sections 10 to 16 of the Electricity (Guernsey) Law, 2001, are appended for information.

1.3 The lack of such guidance places Guernsey Electricity in a potentially difficult position in the negotiation of special agreements, as for example might arise in the event of an application being received by a potentially large consumer for the development of, for example, a data centre, or indeed of any other development of significant size and scope. In addition, the lack of criteria

specified in the legislation might well cause difficulties in the resolution of any dispute that might arise.

1.4 Therefore, in order to provide clarity and additional guidance on those occasions when negotiation of Section 16 special agreements is appropriate, the proposals contained in this Report recommend that the Electricity Law be amended by Ordinance in order to provide specific criteria which must be taken into account by GEL when determining when it is "not reasonable in all the circumstances" for it to be required to give a supply of electricity under Sections 10 to 15, and to provide for the recovery of research and development costs.

2. Introduction

2.1 Part of the Island's essential infrastructure underpinning its future economic development is its energy supply, of which the supply of electricity plays an important role. The Island's current industries already make significant demands on the Island's electricity supply, albeit that the demand arises mainly from a comparatively large number of sites diffused throughout the business sector. The appropriate arrangements for meeting the specific demands from one single large user, or indeed several such users have not to date constituted an issue that has had to be given consideration.

2.2 However, there are current potential economic developments, in particular in what might be described as the "digital economy", that mean that it is inevitable that requests from one or several users for a very significant electricity supply will be received in the near future. In particular, these are likely to arise through the plans that are already under way for the establishment in the Island for one or several data centres.

2.3 It is essential that if and when such a request is received GEL has the appropriate powers under the Law to ensure that successful Section 16 special agreements can be negotiated and enforced. It is equally important that, if a dispute should arise, the criteria used to establish that a special agreement should be set up are available in order to promote the successful resolution of any such dispute.

3. The Digital Economy – Future Economic Opportunities

3.1 The increasing ability to store and use information in digital format is a major technical development that presents opportunities for the future growth of the Island's economy, and this has been recognised by the Commerce and Employment Department in its work to define and implement an effective Information and Communications Technology Strategy for the Island. In particular:

- The availability and use of data and the associated technology will in future see further evolution in business structures and practices and

constitute an important resource for maintaining the future competitiveness of the Island's economy. Over time data centres, buildings housing a number of servers hosting and processing large amounts of data, will provide a new way of doing business which the Island should continue to embrace if it is to remain competitive in international markets.

- The data itself represents an important resource that can derive income through its use for a wide variety of purposes. As such data centres are also a potential draw in attracting physical businesses to the Island as well as an increase in demand for professional and secondary services from other business services sectors.

- Over a period of time data centres and similar facilities are likely to become a "hub" for the digital economy, attracting the skills, knowledge, finance and employment that are essential if future economic development opportunities are to be exploited successfully for the Island's benefit.

- The provision of effective and efficient data storage is already vital to the interests of the Island's financial services sector and further improvements to the efficiency of its provision are clearly of importance to that sector.

3.2 The Commerce and Employment Department has given detailed consideration to the potential advantages of further data centres to the Island's future economic prosperity and is of the view that such centres and associated business streams are of high importance to the future development of the Island's economy. It is therefore supportive of facilitating wherever possible the economic opportunities presented by the current developments in digital technology and of taking the appropriate steps to ensure that these developments can be successfully achieved. A case in point is the potential development of a data park at the Saltpans, for which planning permission has now been granted. In principle, the park will comprise a number of different buildings that will be used primarily as data centres.

3.3 It should be noted that although data centres may be important in bringing new business to the Island, they are also important in providing opportunities for businesses that currently store data on their own premises to outsource this function to a centralised data centre. This should enable the service to be provided more efficiently, including in terms of energy use.

3.4 However, as data centres are comparatively large users of electricity, the result of these developments is likely to be requests to GEL for an electricity supply for one or more large consumers. The purpose of this Report is to provide the legislative framework in respect of the electricity supply to ensure that the

development of data centres and other comparatively large scale developments that require a significant supply of electricity can successfully proceed.

4. Implications for the electricity supply

4.1 Electricity can be provided under the provisions of Sections 10 to 15 of the Electricity (Guernsey) Law, 2001, or alternatively by way of a "special agreement" under Section 16. The vast majority of consumers are supplied according to the Sections 10 to 15 general provisions, and Section 16 special agreements are unlikely to be appropriate for such consumers. Sections 10 to 16 of the Electricity (Guernsey) Law, 2001, are appended for information.

4.2 However, Guernsey Electricity (GEL) considers that special agreements negotiated under Section 16 of the Law are likely to be appropriate for consumers requesting a very substantial supply and therefore the principal purpose of this Report is to amend the Electricity Law to ensure that the appropriate provisions are in place to enable GEL to conclude effective and successful special agreements under Section 16 to meet requests to supply from large consumers. Such requests could originate to support the activities of a wide range of different businesses, although in the foreseeable future it is likely that demand will arise principally from data centres.

4.3 The actual future demand for energy will of course depend on the extent to which the projects currently envisaged go ahead, and on the efficiency of their energy use. In this regard there is substantial progress currently being achieved in improving the energy efficiency of data centres and this progress is likely to continue into the future.

4.4 It is understood that the increase in demand, although potentially significant, will, due to a phased programme of development, be gradual rather than as a "big bang", and there is no reason to believe that, subject to the appropriate investment (the financing of which will be agreed as part of the special agreement) the projected increase in demand cannot be met in practical terms. Ultimately the potential increase in demand will need to be integrated into the projections of overall future electricity consumption in the Island, as part of the development of the Island's Energy Resource Plan which was approved by the States in January 2012.

4.5 In meeting any projected increase in electricity demand careful consideration will need to be given as to how this can be funded in such a way that it is not detrimental to the interests of the average consumer. While it would be easy to make the assumption that the energy costs for such a consumer might increase, in reality the increased demand, provided that it is provided efficiently, should result in significant advantages, for example in the following ways:

- Through economies of scale, reducing the actual cost per unit that has to be paid for electricity by the individual consumer compared to what otherwise would have been the case.

- Encouraging the transition to alternative sources of supply, for example by providing additional commercial justification for further cable links for the importation of electricity or for the development of renewable energy resources. Additional cable links may also have an important function in enabling the export of renewable energy from the Island should such a surplus be available at some time in the future.

4.6 However, it is important that whatever the ultimate source of the energy required by data centres or other facilities, in any commercial arrangements agreed by Guernsey Electricity for its provision sufficient consideration is given, not just to the interests of the operators of the data centres themselves and the advantages that such centres bring to the Island's broader economy, but also to the interests of other electricity consumers to ensure that their needs can be fully met. In particular, it is imperative that acceptable levels of security of supply can be maintained.

5. Legal Background

5.1 Under the provisions of the Electricity (Guernsey) Law, 2001, Guernsey Electricity is the licensee for the provision of electricity in the Island. Following a States' Resolution from September 2011, Guernsey Electricity holds exclusive licences for the conveyance and supply, but not for the generation, of electricity in the Island until 31st January 2022, unless future developments should warrant any change.

5.2 The Law provides a strong framework for the regulation of the provision of electricity in Guernsey. Sections 10 to 15 set out the duty of a public electricity supply licensee (i.e. GEL) to supply on request and related powers to recover charges and expenditure. In broad summary, the key provisions of the sections have the following impact on GEL:

- In general terms, GEL has a statutory obligation to provide an electricity supply and, where necessary, provide electric lines or electrical plant (or both) as and when required to do so by the owner of premises.

- GEL has powers to decide whether, in response to a request for a supply, the prices charged will be determined by a tariff, or be subject to a special agreement.

- GEL can also specify any payment that the applicant will be required to make in order to defray the reasonable expenses of providing the line and plant to meet the applicant's requirements.

- GEL is not obliged to provide a supply if it is prevented from doing so by circumstances not reasonably within its control, if to do so would compromise safety, or if it is not reasonable in all the circumstances for it to be required to do so.

- In addition to powers to recover expenditure to defray expenses, GEL also has specific powers under the law to require reasonable security for the payment of all money that may become due to it in respect of the supply of electricity and the provision of any line or plant.

- GEL can also require that the electricity supply is maintained for least a minimum period and is subject to minimum consumption requirements. The company can make its supply conditional on an owner accepting terms that would restrict GEL's liability in respect of economic, consequential or other indirect loss however arising.

5.3 In practical terms, GEL may agree to supply electricity to a consumer under one of two legal regimes:

- As a regular "tariff" customer (sections 10 to 15 of the Law), which of course meets the needs of the vast majority of electricity consumers in the Island.

- Subject to the terms of a "special agreement", which GEL may enter into and can be drawn up under the provisions of section 16 of the Law.

5.4 **However, the rights and liabilities described in sections 10 to 15 do not apply to section 16 agreements. It is therefore essential that there is an appropriate legal framework to ensure that the appropriate rights and liabilities can be incorporated within any section 16 agreement.**

5.5 It is understood GEL takes the view that, given the estimated level of demand for electricity resulting from the projected development of potential data centres, in most cases it will be appropriate that the electricity supply should be by way of special agreements negotiated between operators and GEL under the provisions of section 16 of the Law.

5.6 Under the current specific provisions of section 10 of the Law, upon being required to do so by the owner or occupier of any premises GEL must give a supply of electricity to those premises. The circumstances in which GEL is exempted from the obligation to give a supply of electricity upon demand are limited and are specified in Section 11 (2) as follows:

- It is prevented from doing so by circumstances beyond its control.

- To do so would raise public safety issues under Section 19 of the Law, and GEL has taken all reasonable steps to prevent these issues occurring.

- It is not reasonable in all the circumstances for GEL to be required to provide a supply.

5.7 Of these three conditions, the first two deal solely with practical issues and only the third has any substantive importance in the context of the duty to supply electricity to very large consumers. Under the Law as it currently stands there is no specific guidance concerning the considerations that ought to be taken into account for the purpose of establishing whether or not it is reasonable for GEL (as a public electricity supply licensee) to be required to provide a supply of electricity in the event that it is required to do so by a consumer by virtue of a notice given under Section 10. The establishment of such within the Law would make it easier to determine when a Section 16 special agreement should be used as an alternative.

5.8 In GEL's view, the absence in the Law of any specific considerations to be taken into account when determining the issue of reasonableness, places it in a difficult position. It believes that some statutory guidance is highly desirable in order to facilitate the making of a measured and objective decision.

5.9 **The Commerce and Employment Department has considered the issues in some detail, in conjunction with the Treasury and Resources Department as Guernsey Electricity's shareholder. It has concluded that it would be helpful for some non-exclusive considerations to be included in the Law. In particular, it believes that the inclusion of such considerations would assist the decision making process by causing attention to be focused on key impartial issues relevant to the overall concept of "reasonableness".**

5.10 The recommended statutory considerations, with an illustration of the various areas covered, are as follows:

Effect on existing infrastructure and customer base

Would the development of the Island's infrastructure to support an applicant's requirements be detrimental to the operation and maintenance of the current infrastructure in relation to existing customers?

Technical Feasibility

Would the technical and operational challenges involved in creating the infrastructure to support the applicant's requirements be too significant or challenging for Guernsey Electricity?

Availability of existing Electricity Supply

Are sufficient supplies of electricity available to support the applicant's requirements using either existing or new infrastructure?

Investment and Expenditure

Would the required level of investment and expenditure required to provide the infrastructure be at a cost which Guernsey Electricity would be unable to meet (acknowledging that the Law does allow Guernsey Electricity to recover any reasonably incurred expenses from the applicant)?

Security

Can the applicant provide the necessary evidence of adequate security for the payment of all money which may become due to it in relation to the supply of electricity and the provision of infrastructure?

Economic Viability

Could it be established that long-term demand for electricity from the applicant would not be sufficient to justify creating any new electricity infrastructure that may need to be provided?

Environmental Impact

Would the construction and operation of the required infrastructure have an acceptable impact upon the Island's environment?

Energy Efficiency

Would the method of meeting the request for supply be as a minimum in line with the current standards and requirements for energy efficiency?

Any other considerations appearing relevant in the circumstances

E.g. under the Land Planning and Development (Guernsey) Law, 2005, or subsequent amendments, would planning permission be issued for the construction and operation of the required infrastructure?

5.11 **The Commerce and Employment Department concords with the view that it would be of advantage to amend the Law by Ordinance in order to provide some specific considerations that may be taken into account when a public electricity supply licensee (i.e. GEL) is considering its obligation to supply. The considerations would in broad terms be those indicated in paragraph 5.10.**

5.12 The investigation of a notice to require the supply of electricity under Section 10 of the Law or the negotiation of a successful "special agreement" under Section 16 can require the consideration of several different options and a significant quantity of technical research that can be costly. Section 13 (1) of the Electricity

Law already makes provision for GEL to require any expenses reasonably incurred in providing electrical line and plant to be defrayed by the person requiring the supply, to such extent as is reasonable in all the circumstances. However, no specific reference is made in the section to research and investigation costs and **for the avoidance of doubt the Commerce and Employment recommends that the wording of the legislation is amended to make it clear that research and investigation costs are considered to be expenses that can be defrayed under the provisions of Sections 13(1) and 16 of the Law. For the avoidance of doubt, this may include costs that are incurred in respect of projects that do not ultimately proceed.**

6. Conclusion

6.1 Section 16 of the Electricity (Guernsey) Law, 2012, makes provision for Guernsey Electricity (GEL) to negotiate special agreements and GEL is of the view that such agreements provide an appropriate method for the supply of electricity to large consumers, for example data centres. However, there is currently no guidance in the Law as to the criteria that should be taken into account in determining when such special agreements should be employed or how research and development costs are to be considered.

6.2 The circumstances in which it is reasonable for a public electricity supply licensee to be placed under a duty to supply such centres (and any other comparatively large scale consumers) should be clear and facilitate independent and impartial judgement if possible.

6.3 It is considered therefore that it would be in the public interest to create specific statutory considerations that Guernsey Electricity as a public electricity supply licensee may take into account when considering whether or not it is reasonable to commit to supplying very large users.

7. Resources

7.1 The recommendations of this Report have no implications for the resources of the States in terms of either staff or finance.

8. Corporate Governance

8.1 In seeking to clarify the current legal provisions the Commerce and Employment Department is of the view that the recommendations of this Report meet the requirements of the core principles of good governance set out on page 247 of Billet d'Etat IV of 2011, and in particular principle 1, "focussing on the organisation's purpose and on outcomes for citizens and service users".

8.2 The proposals are also in accordance with the Energy Resource Plan which was approved by the States in January 2012.

9. Recommendation

9.1 The Commerce and Employment Department recommends the States to:

1. Approve the proposals to amend the Electricity (Guernsey) Law 2001 in order that the considerations set out in paragraph 5.10 of this Report shall be taken into account when determining the reasonableness or otherwise of requiring a supply of electricity to be provided by a public electricity supply licensee and to enable the considerations to be amended in future by regulations of the Department.

2. Approve the recommendation in paragraph 5.12 that the Electricity Law is amended to make it clear that research and investigation costs are expenses that can be defrayed under the provisions of Section 13 (1) of the Law.

3. Direct the preparation of such legislation as may be necessary to implement the proposals.

Yours faithfully

K A Stewart
Minister

A H Brouard
Deputy Minister

D de G de Lisle
L B Queripel
H J R Soulsby
States Members

APPENDIX 1
EXTRACT FROM Electricity (Guernsey) Law 2001

PART II

GENERATION, CONVEYANCE AND SUPPLY OF ELECTRICITY

Duty to supply on request

10. (1) Subject to the following provisions of this Part and any regulations made under those provisions, a public electricity supply licensee shall, upon being required to do so by the owner or occupier of any premises-

(a) give a supply of electricity to those premises; and

(b) so far as may be necessary for that purpose, provide electric lines or electrical plant or both.

(2) Where any person requires a supply of electricity in pursuance of subsection (1), he shall give to the relevant public electricity supply licensee a notice specifying-

(a) the premises in respect of which the supply is required;

(b) the day on which the supply is required to commence;

(c) the maximum power which may be required at any time; and

(d) the minimum period for which the supply is required to be given.

(3) Where a public electricity supply licensee receives from any person a notice under subsection (2) requiring it to give a supply of electricity to any premises and-

(a) it has not previously given a supply of electricity to those premises; or

(b) the giving of the supply requires the provision of electric lines or electrical plant or both; or

(c) other circumstances exist which make it necessary or expedient for it to do so,

it shall, as soon as practicable after receiving that notice, give to that person a notice under subsection (4).

(4) A notice from a public electricity supply licensee under this subsection shall-

(a) state the extent to which the proposals specified in the other person's notice under subsection (2) are acceptable to the public electricity supply licensee and specify any counter proposals made by the public electricity supply licensee;

(b) state whether the prices to be charged by the public electricity supply licensee will be determined by a tariff under section 12, or a special agreement under section 16, and specify the tariff or the proposed terms of the agreement;

(c) specify any payment which that person will be required to make under section 13(1), or under directions made under section 13(2);

(d) specify any other terms which that person will be required to accept under section 10; and

(e) state the effect of section 17.

(5) In this section and in sections 11 to 17-

(a) any reference to giving a supply of electricity includes a reference to continuing to give such a supply;

(b) any reference to requiring a supply of electricity includes a reference to requiring such a supply to continue to be given; and

(c) any reference to the provision of an electric line or an item of electrical plant is a reference to the provision of such a line or item either by the installation of a new one or by the modification of an existing one.

Exceptions from duty to supply

11. (1) A public electricity supply licensee shall not be required to give a supply of electricity to any premises pursuant to section 10(1) if-

(a) such a supply is being given to the premises by a special supply licensee; and

(b) that supply is given (wholly or partly) through the electric lines and electrical plant of the holder of a conveyance licence.

(2) A public electricity supply licensee shall not be required to give a supply of electricity to any premises pursuant to section 10(1) if and to the extent that-

(a) it is prevented from doing so by circumstances not within its control;

(b) circumstances exist by reason of which it doing so would or might involve it being in breach of regulations under section 19, and it has taken all such steps as it was reasonable to take both to prevent the circumstances from occurring and to prevent them from having that effect; or

(c) it is not reasonable in all the circumstances for it to be required to do so.

(3) Subsection (2)(c) shall not apply in relation to a supply of electricity which is being given to any premises unless the public electricity supply licensee gives to the occupier, or to the owner if the premises are not occupied, not less than seven working days notice of its intention to discontinue the supply in pursuance of that subsection.

Power to recover charges

12. (1) Subject to the following provisions of this section and section 23, the prices to be charged by a public electricity supply licensee for the supply of electricity by it pursuant to section 10(1) shall be in accordance with such tariffs (which, subject to any condition included in its licence, may relate to the supply of electricity in different areas, cases, premises and circumstances) as may be fixed by him from time to time and approved by the Director General before they are levied.

(2) A tariff fixed by a public electricity supply licensee under subsection (1) may include-

(a) a standing charge in addition to the charge for the actual electricity supplied;

(b) a charge in respect of the availability of a supply of electricity; and

(c) a rent or other charge in respect of any electricity meter or electrical plant provided by the public electricity supply licensee;

and such a charge as is mentioned in paragraph (b) may vary according to the extent to which the supply is taken up.

(3) In fixing tariffs under subsection (1), a public electricity supply licensee shall not show undue preference to any person or class of persons, and shall not exercise any undue discrimination against any person or class of persons.

(4) Any question relating to whether any act done or course of conduct pursued by a public electricity supply licensee amounts to such undue preference or such undue discrimination shall be determined by the Director General but nothing done in any manner by a public electricity supply licensee shall be regarded as undue preference or undue discrimination if and to the extent that the

public electricity supply licensee is required or permitted to do the thing in that manner by or under any provisions of its licence.

Power to recover expenditure

13. (1) Where any electric line or electrical plant is provided by a public electricity supply licensee pursuant to section 10, the public electricity supply licensee may require any expenses reasonably incurred in providing the line or plant to be defrayed by the person requiring the supply of electricity to such extent as is reasonable in all the circumstances.

(2) The Director General may direct a person requiring a supply of electricity pursuant to section 10 from a public electricity supply licensee to pay to the public electricity supply licensee, in respect of any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply, such amount as may be reasonable in all the circumstances if-

(a) the supply is required within the prescribed period after the provision of the line or plant; and

(b) a person for the purpose of supplying whom the line or plant was provided ("**the initial contributor**") has made a payment to the public electricity supply licensee in respect of those expenses.

(3) Directions under subsection (2) may require a public electricity supply licensee who, pursuant to this section or the directions, has recovered any amount in respect of expenses reasonably incurred in providing any electric line or electrical plant:-

(a) to exercise its rights under the directions in respect of those expenses; and

(b) to apply any payments received by it in the exercise of those rights in making such payments as may be appropriate towards reimbursing the initial contributor and any persons previously required to make payments under the directions.

(4) Any reference in this section to any expenses reasonably incurred in providing an electric line or electrical plant includes a reference to the capitalised value of any expenses likely to be so incurred in maintaining it, in so far as they will not be recoverable by the public electricity supply licensee as part of the charges made by it for the supply.

Power to require security

14. (1) Subject to the following provisions of this section, a public electricity supply licensee may require any person who requires a supply of electricity in pursuance of section 10(1) to give it reasonable security for the payment to it of all money which may become due to it-

(a) in respect of the supply; or

(b) where any electric line or electrical plant falls to be provided in pursuance of that subsection, in respect of the provision of the line or plant,

and if that person fails to give such security, the public electricity supply licensee may, if it thinks fit, refuse to give the supply, or refuse to provide the line or plant, for so long as the failure continues.

(2) Where any person has not given such security as is mentioned in subsection (1), or the security given by any person has become invalid or insufficient-

(a) the public electricity supply licensee may by notice require that person, within seven days after the service of the notice, to give it reasonable security for the payment of all money which may become due to it in respect of the supply; and

(b) if that person fails to give such security, the public electricity supply licensee may, if it thinks fit, discontinue the supply for so long as the failure continues,

and any notice under subsection (2)(a) shall state the effect of section 17.

(3) Where any money is deposited with a public electricity supply licensee by way of security in pursuance of this section, the public electricity supply licensee shall pay interest, at such rate as may from time to time be fixed by the public electricity supply licensee with the approval of the Director General, on every sum of money so deposited, for every three months (or such lesser period as the public electricity supply licensee may determine) during which it remains in the hands of the public electricity supply licensee.

(4) Payments of money made to a public electricity supply licensee by a customer by way of standing order with that customer's bank, shall not constitute monies deposited by way of security for the purposes of this section.

Additional terms of supply

15. (1) A public electricity supply licensee may require any person who requires a supply of electricity in pursuance of section 10(1) to accept in respect of the supply-

(a) any terms requiring that person to continue to receive and pay for the supply of electricity for a minimum period of time and subject to minimum consumption requirements;

(b) any restrictions which must be imposed for the purpose of enabling the public electricity supply licensee to comply with regulations under section 19; and

(c) any terms restricting any liability of the public electricity supply licensee for economic, consequential or other indirect loss however arising which it is considered reasonable by the Director General in all the circumstances for that person to be required to accept.

(2) A public electricity supply licensee shall –

(a) publish the terms and conditions upon which it supplies electricity; and

(b) notify its customers of those terms and conditions,

in such manner as the Director General may direct.

Special agreements with respect to supply

16. (1) Notwithstanding anything in sections 10 to 15, a person who requires a supply of electricity in pursuance of section 10(1)-

(a) may enter into a special agreement with a public electricity supply licensee for the supply on such terms as may be specified in the agreement; and

(b) shall enter into such an agreement in any case where it is reasonable in all the circumstances for such an agreement to be entered into.

(2) The rights and liabilities of the parties to an agreement as provided for in subsection (1) shall be those arising under the agreement and not those provided for by sections 10 to 15; but nothing in this subsection shall prejudice the giving of a notice under section 10(2) specifying as the day on which the supply is required to commence the day on which such an agreement ceases to be effective.

(3) In this Part, **"tariff customer"** means a person who requires a supply of electricity in pursuance of section 10(1) and is supplied by a public electricity supply licensee otherwise than on the terms specified in such an agreement as is mentioned in subsection (1).

(NB The Treasury and Resources Department notes that there will be no resource implications associated with these proposals. In its capacity as shareholder for Guernsey Electricity Ltd, it has been closely consulted by the Commerce and Employment Department on the matter and supports the recommendations.)

(NB The Policy Council supports the Report.)

The States are asked to decide:-

VI. Whether, after consideration of the Report dated 18th June, 2013, of the Commerce and Employment Department, they are of the opinion:-

1. To approve the proposals to amend the Electricity (Guernsey) Law, 2001 in order that the considerations set out in paragraph 5.10 of that Report shall be taken into account when determining the reasonableness or otherwise of requiring a supply of electricity to be provided by a public electricity supply licensee and to enable the considerations to be amended in future by regulations of the Commerce and Employment Department.

2. To approve the recommendation in paragraph 5.12 that the Electricity Law be amended to make it clear that research and investigation costs are expenses that can be defrayed under the provisions of Section 13 (1) of the Law.

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

COMMERCE AND EMPLOYMENT DEPARTMENT

THE COMPETITION (GUERNSEY) ORDINANCE 2012 - AMENDMENT

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

18th June 2013

Dear Sir

1. Executive Summary

1.1 Competition legislation (and in particular the Competition (Guernsey) Ordinance, 2012) has now been in place for Guernsey for approximately one year and during that time the Guernsey Competition and Regulatory Authority (operating as the Channel Islands Regulatory and Competition Authorities (CICRA), which comprises the Guernsey Competition and Regulatory Authority and the Jersey Competition Regulatory Authority) has been putting in place the necessary procedures to ensure its effective implementation.

1.2 The principal features of competition law involve the control of:

1. Anti-competitive arrangements between businesses.

2. Abuse by businesses of a dominant market position.

3. Control, subject to thresholds, over mergers and acquisitions to ensure that they do not detract unnecessarily from competition in the local economy.

1.3 While investigations into these issues and their administration are likely to be an important focus of the GCRA's work, it is common for competition agencies also to carry out more general investigations into issues affecting the economy, known generally as "market studies" which investigate sectors where it is felt that there is a justification for such a study, usually on account of the strategic importance of the sector to the economy or community.

1.4 The Commerce and Employment Department is of the view that market studies are an important component of the GCRA's work, but it is essential that such studies, if they are to be reliable and authoritative, are based on firm evidence as to how the market functions in any specific sector and this can only be achieved by the legislation providing sufficient investigatory powers to request and obtain

the necessary information where the information cannot be obtained on a voluntary basis.

1.5 As currently drafted, the Competition (Guernsey) Ordinance 2012 does provide the necessary investigatory powers in circumstances where the GCRA has reasonable grounds to believe that the Ordinance (or any direction or condition under it) is being contravened, or that there is an intention to enter into a merger or acquisition without the necessary GCRA approval, but such powers do not extend to the production of market studies as such. A minor amendment to the Ordinance is therefore being recommended in order to address this situation.

2. Background

2.1 The role of competition legislation in an economy is to protect consumers and other competing businesses from abusive business behaviour and to set business standards in order to ensure that the "free market" is able to operate effectively and efficiently for the benefit of the economy and the wider community. This principle applies to Guernsey as it does to other jurisdictions. In order to achieve these objectives, the main focus of legislation is to make certain types of business behaviour unlawful. Such behaviour can be described under the principal headings of "anti-competitive arrangements" (for example price fixing, market sharing or bid-rigging) and abuse of a dominant market position (for example through excessive or predatory pricing). That legislation has now been in place in Guernsey since the 1st August 2012.

2.2 A second string of competition legislation is to make subject to official approval by competition authorities proposals for mergers and acquisitions between businesses in circumstances where such a merger or acquisition may be considered to result in a damaging effect on competition in the economy, for example by creating a business that would potentially be in a dominant market position. The legislation related to the control (subject to thresholds) of mergers and acquisitions has also been in place since the 1st August 2012.

2.3 However, there is a third category of work which is not generally related in itself to the legislative requirements of competition law, but which is also important in promoting efficiency in the economy and this category can best be described as "market studies". Such studies can play an important role in the work of competition authorities and are generally carried out into sectors of the economy that are considered to be of strategic or other significant importance. Provisional markets that were identified for review by CICRA (comprising both the Jersey Competition Regulatory Authority and the Guernsey Competition and Regulatory Authority) in its 2013 work programme include, but are not limited to, grocery retailing, tobacco in Jersey, domestic supply of gas, and road fuel/heating oil in Guernsey.

2.4 The Commerce and Employment Department is of the view that the completion of market studies is an important component of the work of the GCRA, both to review the efficiency of the market in important and strategic sectors of the

Island's economy, and to provide information that can be taken into account by the States in formulating future policies and strategy.

3. Investigatory Powers – Contraventions of Law

3.1 A general principle of competition law is that in order for the competition authority to take action under the provisions of the law it has to have some justification for doing so. Under the provisions of the Guernsey legislation, the GCRA has to have "reasonable grounds" for suspecting that the provisions of the Ordinance, or of any direction or condition made by the GCRA, are being infringed, or that there is an intention to enter into a merger or acquisition without the necessary GCRA approval, before it is entitled to commence a formal investigation. Such grounds can commonly arise from complaints to the GCRA from the general public or from businesses operating in the market concerned.

3.2 Once an investigation has been commenced, the Ordinance confers on the GCRA certain powers, as described in Part V of the Competition (Guernsey) Ordinance 2012, and in particular in Sections 22 and 23 to enable it to carry out the investigation. Section 22 provides that in circumstances where the GCRA has reasonable grounds for suspecting that an undertaking has contravened the law, or any direction or condition that the GCRA itself has imposed, or that there is an intention to enter into a merger or acquisition without the necessary GCRA approval, it may conduct an investigation into the suspected contravention or intended contravention, and exercise the powers provided in the Ordinance, including powers, as specified in Section 23, that give the GCRA the authority to obtain information and documents.

3.3 Section 23 also provides significant detail of how those powers can be exercised and the penalties for non-compliance with the GCRA's notice. In this regard, if any person without reasonable excuse does not provide the information or the documents required, or obstructs any person exercising powers under that section, then he is guilty of an offence under the provisions of the Ordinance (although protections exist in other sections of Part V of the Ordinance in respect of matters such as legal professional privilege).

3.4 It should be noted that Articles 26 and 27 of the Competition (Jersey) Law 2005 make similar provisions, albeit that the phrase used is "reasonable cause" rather than "reasonable grounds".

4. Investigatory Powers – Market Studies

4.1 The above investigatory powers are clearly essential to the GCRA's work, but there is a particular difficulty in respect of market studies in that the principal objective of market studies is not to identify, and where appropriate sanction, breaches of the law, but to provide information as to the operation of the market in sectors that are considered to be of strategic or other significant importance to the Island's economy and community.

4.2 Such studies are therefore generally carried out into sectors of the economy where it cannot reasonably be established, especially at the point of commissioning, that there are "reasonable grounds" for considering that there may be, or have been, infringements of the law.

4.3 **The essential point in respect of the completion of market studies is that without "reasonable grounds" that the law is being infringed, the GCRA cannot invoke the investigatory powers provided in the legislation, and in particular the powers to request and obtain the information which is essential in ensuring that any market studies carried out are both comprehensive and based on objective evidence.** Given the importance of market studies it might be expected, and is certainly to be hoped, that businesses would co-operate fully in any market study, but this cannot be guaranteed, and there is a further complication in that if only a proportion of the businesses in a sector agree to provide information then the results of the study may well be skewed. In many or even most cases, it would be expected that the GCRA would not resort to using formal powers in order to collect evidence for a market study. However, the experience of the JCRA in completing market studies since 2005 suggests that the very fact of having the ability to require production of evidence reduces the need for those powers to be exercised.

4.4 **The matter has been referred to the Law Officers who have confirmed that the investigatory powers available in the current legislation cannot, except where there are reasonable grounds for suspecting a contravention or intended contravention as mentioned above, be invoked in respect of the completion of market studies.**

4.5 The Commerce and Employment Department confirms its view that market studies form an essential part of the GCRA's work and are of substantial importance to the Island's economy. **It is also of the view that it is essential that the GCRA has the appropriate investigatory powers to undertake market studies and ensure that they are both comprehensive and based on objective evidence. The Department is therefore proposing an amendment to the Competition Ordinance to ensure that this is the case.**

5. The Competition (Jersey) Law, 2005

5.1 In drafting the Guernsey competition law, the intention was that it should closely mirror the legislation in place in Jersey and indeed internationally competition legislation tends in any case to follow an agreed pattern. Having virtually the same legislation in both Islands is also of significant advantage to CICRA in carrying out its work.

5.2 **However, in the invocation of investigatory powers there is one major difference, in that the Jersey legislation does include a specific additional provision that enables the JCRA to invoke such powers when carrying out market studies in Jersey, while there is no such provision within the Guernsey law.**

5.3 In Jersey this particular issue is dealt with by including a provision in the Competition (Jersey) Law, 2005 (Article 26 (2)), to the effect that:

"The Authority may also conduct an investigation if it has reasonable cause to do so in order to comply with a request made by the Minister under Article 6(4) of the Competition Regulatory Authority (Jersey) Law 2001 for a report, advice, assistance or information".

5.4 It will be noted that this provision gives powers to Jersey's Minister – the Guernsey equivalent would be the Commerce and Employment Department – to request market studies and other advice, assistance and information from the JCRA – albeit that there is a potential safeguard in that there has to be reasonable cause (in Guernsey "reasonable grounds") for investigatory powers to be invoked in order for the study to proceed.

5.5 **The central point is that a similar provision in the Guernsey Ordinance would enable a request by the Commerce and Employment Department to act as a "trigger" for the GCRA to undertake a market study, and thus to invoke the investigatory powers that are already available under the legislation. This would, in particular, enable the GCRA to request and obtain information from businesses and any other interested parties in the economic sector that is the subject of the study, thereby providing evidence to be taken into account when drafting the market study's conclusions and recommendations. Refusal to provide such information without reasonable excuse and the provision of false information would constitute an offence.**

5.6 The Commerce and Employment Department recommends that the Competition (Guernsey) Ordinance 2012 is amended by the inclusion of a legal provision along the lines of the provision in the equivalent Jersey legislation.

6. Conclusion

6.1 The Commerce and Employment Department is of the view that the carrying out of market studies is an important function of the GCRA (and more broadly CICRA) and that such studies can play an important role in promoting the efficiency of the Island's economy and in protecting consumers' interests. It is unfortunate therefore that the current lack of a provision in the Competition (Guernsey) Ordinance, 2012 that would enable the GCRA to invoke its investigatory powers to request and obtain information within the context of a market study makes the completion of such studies for markets in Guernsey problematic.

6.2 The situation can however be easily rectified by the inclusion in the Competition (Guernsey) Ordinance, 2012 of a provision similar to that currently contained in Article 26 (2) of the Competition (Jersey) Law, 2005, to the effect that the GCRA may conduct an investigation if it has reasonable grounds to do in order to comply with a request by the Commerce and Employment Department for a report (which would include a market study), advice, assistance, or information

in relation to any matter concerning competition or monopolies or to which the Authority's functions relate. Such a provision, together with any other necessary consequential or ancillary drafting modifications, would enable the necessary investigatory powers to be invoked.

7. Resources

7.1 The recommendations of this Report have no implications for the resources of the States in terms of either staff or finance.

8. Corporate Governance

8.1 In seeking to augment the current competition law legal provisions the Commerce and Employment Department is of the view that the recommendations of this Report meet the requirements of the core principles of good governance set out on page 247 of Billet d'Etat IV of 2011, and in particular principle 1, "focussing on the organisation's purpose and on outcomes for citizens and service users".

9. Recommendations

9.1 The Commerce and Employment Department recommends the States to:

1. Agree that the Competition (Guernsey) Ordinance, 2012, should be amended to enable the Guernsey Competition and Regulatory Authority to invoke investigatory powers to request and obtain information to comply with a request by the Commerce and Employment Department for a report, advice, assistance, or information.

2. Direct the preparation of such legislation as may be necessary to implement the proposal.

Yours faithfully

K A Stewart
Minister

A H Brouard D de G De Lisle L B Queripel H J R Soulsby
Deputy Minister

(NB As there are no resource implications identified in the Report, the Treasury and Resources Department has no comments to make.)

(NB The Policy Council supports the Report.)

The States are asked to decide:-

VII.- Whether, after consideration of the Report dated 18th June, 2013, of the Commerce and Employment Department, they are of the opinion:-

1. To agree to amend the Competition (Guernsey) Ordinance, 2012 to enable the Guernsey Competition and Regulatory Authority to invoke investigatory powers to request and obtain information to comply with a request by the Commerce and Employment Department for a report, advice, assistance, or information.

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

HOME DEPARTMENT

GUERNSEY POLICE CENTRAL IT SYSTEM REPLACEMENT – REQUEST FOR A CAPITAL VOTE

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

1st July 2013

Dear Sir

1. Executive Summary

1.1 This Report seeks the States of Deliberation's approval for a capital vote of £1.5 million from the Capital Reserve to fund the replacement of "LinkWorks", the central ICT system used by Guernsey Police.

1.2 The LinkWorks system has been fundamental in supporting Police activities. In 2009 it was identified that it had reached end of life and it was no longer practical or economical to continue supporting LinkWorks in the long term, further it was recognised that current support and maintenance arrangements left public safety and the administration of justice at risk. While technical infrastructure issues were mitigated to address immediate concerns, a replacement IT solution was considered a priority; primarily to ensure continuity in service provision and secondly, to provide a platform for future development.

1.3 Replacement of the central IT system not only provides the Police with an opportunity to maximise resilience and provide an improved quality of service but also to provide efficiencies across law enforcement and other criminal justice operations. The proposed new system will benefit other Public Safety Services through the sharing of information, including the provision of a platform for a Joint Emergency Services Control Room (JESiCR).

1.4 In 2009 a Capital Prioritisation proposal was submitted requesting funding of £1.2 million from the States Capital Reserve for the replacement of the Police IT system. The proposal was supported by the States and thus forms part of the current Capital Programme. This project seeks to deliver a new IT system which will enable the Police Force and its partner agencies to secure efficiencies, value for money and improved quality of service. The original request for funding was based on the best estimates available at the time, the

increase in the cost can largely be attributed to compound inflation; the scope of the proposals remains unchanged.

2. Background

2.1 During the early 1990's Guernsey Police selected LinkWorks to deliver call handling, case management, document and workflow systems. Over two decades the system has undergone significant development to accommodate the changing and increasing demands placed on the Police. LinkWorks currently underpins a wide range of operational and non-operational functions including:

- Case file management and court preparation process
- Custody management
- Nominal/vehicle/firearm/liquor licensing indexes
- Fixed penalty/Vehicle Defect Rectification Scheme
- Intelligence and property management
- Daily incident recording system
- Basic command and control/call handling
- Non-operational documentation
- Intranet/Extranet/briefings/projects

2.2 LinkWorks has proved to be a flexible system, keeping pace with legislative and procedural changes, incurring minimal revenue costs and has been intrinsic in supporting Police activities. However, it has been recognised that it is no longer viable to continue developing and supporting LinkWorks.

2.3 In 2009 a Capital Prioritisation proposal was submitted and the States of Deliberation gave support for the replacement of the Guernsey Police Forces' IT system to form part of the capital programme. This followed the 2008 States Report, "The Future of Law Enforcement" (Billet D'Etat 24th September 2008 XII), which established clear objectives for how Law Enforcement should be shaped and operate in the future. Alongside the Government Business Plan (Billet D'Etat 2007 XVIII), it placed a requirement on Law Enforcement to take firm action against crime; the causes and effects of crime and to become smarter and more efficient in respect of its operational activities.

2.4 This will be supported by a new ICT system, minimising duplication of data and effort, improving co-operative working and efficiency and potentially creating a first step towards an integrated system across various criminal justice partners, thereby providing greater efficiencies for the States of Guernsey.

2.5 The 2009 Capital Prioritisation proposal for the replacement of the core Police IT system identified that up until that point the Law Enforcement organisations (Police and Guernsey Border Agency) had largely operated independently and sourced and operated their own IT systems. The proposal further acknowledged that the Home Department's ICT strategy was to aim for one core system to deliver law enforcement functionality, ensuring that duplication of data systems

were avoided, recognising that this would provide greater efficiencies, more accurate data and a more comprehensive intelligence database.

2.6 At that time THEMIS was being developed to replace the Customs Intelligence System, manual processes undertaken by the Financial Intelligence Service and a system to record and manage exhibits retained by Customs. It was considered that as the new THEMIS System was being developed on technology that conformed to the current States of Guernsey ICT Technical standards it made sense that the migration path for LinkWorks would be to build upon the THEMIS System, delivering a single platform from which all Law Enforcement practices could operate.

2.7 In preparing the proposal for Capital Prioritisation the Department undertook a high level analysis of the LinkWorks System in order to gauge whether functionality could be migrated onto the THEMIS System and to assess whether any specific design criteria would need to be included in the THEMIS design. The conclusion was that in principle, the process would be feasible and estimated costs for the project were identified as £1.2 million capital expenditure.

2.8 In 2011 a more in-depth assessment of the potential costs to replace the LinkWorks functionally was undertaken. It was identified that THEMIS was no longer the most cost effective or appropriate option to replace LinkWorks and meet Policing needs.

2.9 During 2012 a Project Management Board was formed to further consider the advancement of the LinkWorks information system replacement. A feasibility study was conducted to consider current options to replace LinkWorks against the project's strategic objectives, including a gap analysis against the THEMIS technology and a review of that development's "Lessons learned".

2.10 This identified that the original proposal to develop on the THEMIS platform would no longer meet the strategic objectives and that the optimal solution in terms of efficiency, cost and risk avoidance was a combination of commercial off-the-shelf systems that could be configured to local requirements, had a proven integration with each other and benefit from formal support arrangements. It was further considered that this option would also provide opportunities for on-going development in line with UK practice and potential efficiencies based on enhanced inter-operability. This could include efficiencies in terms of the dissemination of intelligence to UK partner Forces and support during critical incidents due to operating on the same IT standards and systems.

3. Proposal

3.1 A combination of commercial off-the-shelf systems, with bespoke integration (where necessary) was considered as presenting the least risk in terms of implementation, project management and maximise the opportunity for

increased efficiencies both within the Police and for other Emergency Services and organisations that work within the Criminal Justice System.

3.2 Due to the specialist nature of the requirements it was considered beneficial to identify and evaluate systems used by UK Police Forces. It was established during this process that as Guernsey Police is a relatively small organisation an open tender would result in few suppliers taking an interest thereby limiting the opportunities to attain the most cost effective solution for the Bailiwick. It was further identified that there was no single system that would encompass all the functionality currently provided by LinkWorks and that the optimal solution would be a suite of solutions, preferably proven industry standards, which provided compatible systems including:

- Case and Custody Records Management System for operational activities;
- Command and Control System for call handling and resource management;
- Document Management System for all non-operational activities.

3.3 In reaching the preferred option the following test was applied:

- The solution must achieve value for money and secure efficiencies;
- The solution must provide resilience and development opportunities; and
- The solution must enhance the quality of service delivery.

3.4 As a result of this process, the following specialist suppliers were shortlisted:

- Case and Custody Records Management System
  - SAS Memex
  - Niche RMS
  - Athena

- Command and Control
  - Steria Storm
  - Fortek Vision
  - Intergraph

3.5 <u>Case and Custody Records Management System</u>

Following the feasibility study, Niche RMS was identified as being the only suitable Case and Custody Record Management System with the ability to deliver all the essential operational requirements, as well as providing the additional functionality of Custody Management that will be adopted by the Guernsey Border Agency. Niche RMS supplied by Niche Technology Ltd is used by 16 UK Police Forces including neighbouring Hampshire, Dorset, Wiltshire and Sussex. The proposal includes all aspects of providing and implementing the system as well as configuration, training and some standard integration. It will form the basis for subsequent integration with other Criminal

Justice System technologies and costs are not linked to licence numbers, consequently additional users from the Guernsey Border Agency, Law Officers and other Criminal Justice partners could be developed in the future without additional expense.

3.6 The Corporate Procurement Director and the Director Corporate ICT States of Guernsey approved a tender waiver for the proposal to secure the services of Niche Technology as Niche RMS was identified as the only off-the-shelf system that fully met current and anticipated future needs for the Police Force.

3.7 Command and Control

Niche RMS does not provide functionality for the recording of emergency situations and the subsequent computer aided dispatch of resources. For this functionality and for the recording of the decision making process in any critical incident a Command and Control system is required.

3.8 A Command and Control system will allow control room operators to quickly record details of reported incidents and using integration between telephony, radio and mapping to quickly dispatch the appropriate resources to the scene whilst also maintaining records of decisions made and actions taken for review at a later date.

3.9 Three Command and Control systems were identified as being capable of providing the necessary functionality and integration features with existing systems. These systems are also capable of providing the Command and Control requirement for the future Joint Emergency Services Control Room (JESiCR), and consequently, in order to achieve best value for the States of Guernsey an open tendering process was undertaken. Following the tender process, out of the two bids received, Capita Fortek Vision was identified as the preferred system via the evaluation process. Both bids provided similar functionality, however Capita was the more cost effective option and provided better resilience and flexibility in terms of minimising downtime for system maintenance and upgrades, which is a significant issue for such a critical system.

3.10 Document Management System (DMS)

The third element of the LinkWorks replacement project is a DMS to manage the non-operational requirements of the Force, which are currently handled within the LinkWorks system. The current States of Guernsey corporate DMS standard is Microsoft Sharepoint, while it is acknowledged that there is currently a review of this System, the States wide standard DMS is considered to be the most appropriate option.

4. Resources

4.1 In 2009 a Capital Prioritisation proposal was submitted the replacement of the Police IT system at an estimated cost of £1.2million with ongoing additional revenue costs of £60,000 per annum. The capital vote request is higher at £1.5

million, the Gateway process acknowledged that this was not attributable to any change in the scope of the project but had predominantly resulted from compound inflation and the inclusion of a 15% contingency as recommended by the Director of Corporate ICT.

4.2 The Capital costs of £1.5 million contain those elements contained within the 2009 proposal and covered in detail in section 3 of this Report, in summary:

	Capital
Document Management System	£ 107,000
Case and Custody System	£ 590,000
Command and Control	£ 495,000
Project Management	£ 112,400
Contingency 15%	£ 195,600
Total (including contingency)	£1,500,000

4.3 The additional ongoing revenue costs for maintenance, support and limited development of £180,000 per annum will be met by reprioritisation of the existing Home Department revenue budget. The increase in revenue costs is primarily due to the need to integrate 3 separate systems, to replace the functionality currently provided by Linkworks, all of which require separate maintenance and support provisions.

5. Consultation

5.1 The other Bailiwick Emergency Services, namely Guernsey Fire & Rescue Service, St John Ambulance & Rescue Service and Guernsey Coastguard have been consulted and are supportive of the proposals set out in this Report.

6. Principles of Good Governance

6.1 The proposals made in this States Report are in accordance with the Principles of Good Governance as outlined in Billet D'Etat IV 2011, particularly Principle 1 "focusing on the organisation's purpose and on outcomes for citizens and service users."

7. Conclusion

7.1 Replacement of the Police IT system LinkWorks has been identified as being essential and funding of £1.2 million was approved from the States Capital Reserve for in 2009. The project has since been subject to stages 1, 2 and 3 of the Gateway Review process.

7.2 The Home Department consider that an integrated suite of commercial off-the-shelf products which have a proven operational history, structured support and on-going development presents the most cost effective option for the replacement of LinkWorks.

7.3 It has the added benefit of providing the opportunity for future efficiencies via inter-operability across other Emergency Services, Criminal Justice Agencies and UK Police Forces.

8. Recommendation

8.1 The Home Department recommends the States to approve a capital vote of £1.5 million to fund the replacement of the Guernsey Police Central IT System to be charged to the Capital Reserve.

Yours faithfully

Deputy J P Le Tocq
Minister

Deputy F W Quin (Deputy Minister)
Deputy M K Le Clerc
Deputy M M Lowe
Deputy A M Wilkie

Mr A L Ozanne, non-States Member

(NB The Treasury and Resources Department supports the replacement of the Guernsey Police Central IT system, subject to the project achieving a green gateway review prior to the States debate.)

(NB The Policy Council supports the Report.)

The States are asked to decide:-

VIII.- Whether, after consideration of the Report dated 1st July, 2013, of the Home Department, they are of the opinion to approve a capital vote of £1.5 million to fund the replacement of the Guernsey Police Central IT System to be charged to the Capital Reserve.

HEALTH AND SOCIAL SERVICES DEPARTMENT

AMENDMENTS TO THE TRANSFRONTIER SHIPMENT OF WASTE ORDINANCE, 2002

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

3rd July 2013

Dear Sir

EXECUTIVE SUMMARY

1. This report recommends amendments to the Transfrontier Shipment of Waste Ordinance, 2002 which controls the shipment of waste in and out of Guernsey and which implements international agreements relating to transboundary movements of waste which apply, or have been extended, to Guernsey.

2. In Guernsey it is not always possible to deal effectively with all of the types of waste generated on the island. In some cases, export is the only economically and environmentally viable option.

3. Robust legislative provisions are necessary to meet EU and international standards, allowing the shipment of waste to jurisdictions where it can be dealt with in an effective and environmentally sound manner.

4. A recent legislative review has highlighted the need for the following amendments to the Ordinance:

    - Transfer of functions currently conferred on the Health and Social Services Department to the Environment Department for policy functions and to the Director of Environmental Health and Pollution Regulation (the Director) for regulatory, operational and administrative functions in line with other legislation relating to the regulation of waste operations;

    - Update the Ordinance to implement the current EU waste shipments regulation which has replaced that cited in the Ordinance i.e. Regulation (EC) No. 1013/2006 which replaces Council Regulation (EEC) No. 259/93 and to replace an outdated reference to the former Strategic and Corporate Plan;

    - Amendment to Article 3(1) of the Schedule to allow exports of waste for disposal to Jersey which are currently prohibited.

BACKGROUND

5. The 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their disposal (the "Basel Convention") provides a framework for a global system of environmental controls on the shipment of waste with the overarching objective of protecting human health and the environment in particular against the adverse effects of hazardous wastes.

6. The Organisation for Economic Co-operation and Development Decision on transboundary movements of waste destined for recovery operations ("the OECD Decision") applies to movements of waste between OECD countries. The Decision sets out differing levels of control for different categories of waste and facilitates transboundary movements of recoverable wastes between OECD countries where carried out in an environmentally sound and economically efficient manner. The Transfrontier Shipment of Waste Ordinance, 2002 ("the Ordinance") implemented the 1993 EU Waste Regulation. This satisfied the United Kingdom that Guernsey had met the requirements of the Basel Convention and the OECD Decision; the ratification of the Basel Convention was extended to the Bailiwick of Guernsey on 27 November 2002. This has enabled the islands to ship hazardous waste, such as batteries, and non-hazardous waste, such as plastics, for disposal or recovery.

7. In 1993 the European Union adopted Council Regulation (EEC) No. 259/93[1] (replaced by Regulation (EC) No. 1013/2006) to implement the provisions of the Basel Convention and of the OECD Decision. It aimed to strengthen, simplify and specify the procedures for waste shipments. It set out the requirements to be met in order to ship waste within, into or out of the European Community (EC). It also restricted the jurisdictions to or from which Member States could ship waste.

8. The Health and Social Services Department (then the Board of Health) was appointed as the 'competent authority' for the administration of the Ordinance. Since then, relevant parts of the Environmental Pollution (Guernsey) Law, 2004 and the Environmental Pollution (Waste Control and Disposal) Ordinance, 2010 have come into force, which have introduced a new regime regulating waste operations, with relevant waste policy matters being within the remit of the Environment Department and the regulatory, operational and administrative functions being delivered by the Director. The key policy function is the preparation of a management plan for the importation and exportation of waste from Guernsey. The transfer of functions conferred on HSSD under the Ordinance to the Environment Department and the Director is consistent with this approach.

REVISED WASTE STRATEGY

9. As part of the revised waste strategy (Billet d'État IV 2012) the States of Guernsey have directed the Public Services Department to pursue the option of the export of residual waste[2], potentially to Jersey, the UK or another EU country

[1] Council Directive 84/631/EEC was the first attempt to harmonise the control procedures for the shipments of hazardous waste in the European Community.

[2] Residual waste refers to the material that remains after the process of waste treatment has taken place. It can also be applied in a more domestic sense, referring to the household rubbish not able to be recycled, re-used or composted.

and report back to the Policy Council.

10. Following initial work on the legislative implications the following issues have been highlighted:

Prohibition under the Ordinance of export of waste for disposal to Jersey

11. In international, EU and domestic legislation on the shipment of waste there is a clear distinction between the shipment of waste for disposal or recovery to the country of destination.

12. Under the EU and Guernsey legislation disposal operations include landfill and incineration (without energy recovery). Recovery operations include incineration (waste from energy plants) and aerobic digestion. For a more definitive list of the operations included under each category see the EU Waste Framework Directive (2008/98/EC).

13. Given the States commitment to the Waste Hierarchy (Billet d'État IV 2012) and the lighter controls under international and EU waste shipment legislation on waste sent for recovery, it would always be preferable to ship waste for recovery; however, it is important to have legal provision to allow the shipment of waste for disposal to all potential jurisdictions in case of changing circumstances and any changes to international categorisation of what amounts to shipments for disposal or recovery; this will reduce the risk of Guernsey being unable to export its waste.

14. Article 3(1) of the Schedule to the Ordinance states that all exports of waste for disposal *'shall be prohibited, except those to EFTA [European Free Trade Association] countries or MSEU [Member States of the EU] which are also parties to the Basel Convention'*. Shipments for disposal to Jersey were originally prohibited under the Ordinance as the UK's ratification of the Basel Convention had not been extended to Jersey but it was extended in 2007 so it would now be consistent with the Basel Convention to allow exports for disposal to Jersey. Jersey is not an EFTA country or a member of the EU and therefore the Ordinance prohibits exports for disposal at present. In order to provide the option of export for disposal to Jersey, should this be needed in the future, it would be necessary to amend Article 3(1).

    If it was discovered at a later date that Jersey was the only viable option for any exports for disposal, then there could be delays, if the amendment was not already approved or drafted, until waste could be exported to Jersey as the legislative amendment highlighted above would then need to be approved, drafted and go through the relevant procedural stages.

Council Regulation (EEC) No. 259/93 replaced by Regulation (EC) No. 1013/2006

15. The Ordinance currently allows Guernsey to export waste to European Union countries which are parties to the Basel Convention and OECD Decision in specified circumstances. However, since the Ordinance requires amendment it is recommended that it would be prudent to take the opportunity to ensure the Ordinance is fit for purpose and reflects current EU legislation and international agreements.

16. Council Regulation (EEC) No. 259/93 was repealed and replaced in 2007 by Regulation (EC) No. 1013/2006. The 2006 EU regulation simplified existing control procedures, incorporated recent changes in international law and strengthened enforcement and cooperation between Member States in the case of illegal shipments.

17. The Ordinance provides for the 1993 regulation, which is implemented with modifications as set out in the Schedule, to be referred to as repealed or re-enacted by subsequent EU legislation as necessary.

18. The Law Officers have advised that as the current EU Regulation has been amended in a number of regards, there is a potential risk of confusion when applying the provisions in the Ordinance as it sets out the text of the previous EU Regulation.

19. Therefore, it would be beneficial to update the Ordinance to reflect the repeal of the 1993 Regulation and to refer specifically to the current 2006 Regulation to reduce the risk of confusion and to ensure the Ordinance clearly reflects the current EU Regulation.

20. The Public Services Department has asked the Health and Social Services Department Board ("the Board") to consider bringing before the States these proposals to amend the Transfrontier Shipment of Waste Ordinance, 2002.

UPDATE TO ORDINANCE

21. The current Ordinance requires the management plan under the Ordinance for the import and export of waste to reflect the principles set out in the Strategic and Corporate Plan; as this has now been replaced, it is proposed to update this reference to refer to the Environmental Policy Plan part of the States Strategic Plan.

ALDERNEY AND SARK

22. The Basel Convention was extended to the Bailiwick of Guernsey, as detailed in paragraph 8 above, with Sark and Alderney adopting separate Ordinances, in virtually the same terms as the 2002 Ordinance, to implement the requirements of the Convention. All the current Ordinances for the islands designate the Health and Social Services Department as the "competent authority" for the purposes of the Ordinance. To ensure uniform implementation of the Basel Convention and the OECD Decision throughout the Bailiwick, the Alderney and Sark governments have been consulted and have indicated that they are content for their Ordinances to be amended in the same way as recommended in this report.

RESOURCE DEMAND

23. Advice received from the Law Officers estimated that two weeks would be required for legislative drafting.

24. It is not considered that these amendments would increase demand on staff /

resources at the Office of Environmental Health and Pollution Regulation as the same staff will carry out the necessary work as at present although they will in the future report to the Director rather than the HSSD Board.

CONSULTATION AND CORPORATE GOVERNANCE

25. The Law Officers have been consulted and their comments have been incorporated in this report.

26. The Public Services Department has been consulted insofar as this report refers to the Waste Strategy and is content with the proposals. The Environment Department has been consulted in relation to the transfer of policy functions to it and is content with the proposals.

27. The Department believes that it has complied fully with the six principles of corporate governance in the preparation of this States Report.

RECOMMENDATIONS

28. The Health and Social Services Department therefore recommends the States to:

i) approve the transfer of functions currently conferred on the Health and Social Services Department under the Transfrontier Shipment of Waste Ordinance, 2002 to the Environment Department for policy matters and to the Director of Environmental Health and Pollution Regulation for regulatory, operational and administrative functions;

ii) approve the removal of the current prohibition, in the Transfrontier Shipment of Waste Ordinance, 2002, on the export of waste for disposal to Jersey and replace the reference in that Ordinance to the Strategic and Corporate Plan with a reference to the Environmental Policy Plan part of the States Strategic Plan;

iii) to take such action as is necessary to clearly implement the current 2006 EU Waste Shipment Regulation as amended or replaced from time to time; and

iv) direct the Law Officers to prepare the necessary legislation to give effect to the above proposals including any necessary consequential amendments to any enactment.

Yours faithfully

M H Dorey
Minister

M J Storey	E G Bebb	B L Brehaut	S A James
Deputy Minister	Member	Member	Member

(NB As there are no resource implications identified in the Report, the Treasury and Resources Department has no comments to make)

(NB The Policy Council supports the Report.)

The States are asked to decide:-

IX.- Whether, after consideration of the Report dated 3rd July, 2013, of the Health and Social Services Department, they are of the opinion:-

1. To approve the transfer of functions currently conferred on the Health and Social Services Department under the Transfrontier Shipment of Waste Ordinance, 2002 to the Environment Department for policy matters and to the Director of Environmental Health and Pollution Regulation for regulatory, operational and administrative functions.

2. To approve the removal of the current prohibition, in the Transfrontier Shipment of Waste Ordinance, 2002, on the export of waste for disposal to Jersey and replace the reference in that Ordinance to the Strategic and Corporate Plan with a reference to the Environmental Policy Plan part of the States Strategic Plan.

3. To take such action as is necessary to clearly implement the current 2006 EU Waste Shipment Regulation as amended or replaced from time to time.

4. To direct the Law Officers to prepare the necessary legislation to give effect to the above decisions including any necessary consequential amendments to any enactment.

ORDINANCE LAID BEFORE THE STATES

THE LIBYA (RESTRICTIVE MEASURES) (GUERNSEY) (AMENDMENT) ORDINANCE, 2013

In pursuance to the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, The Libya (Restrictive Measures) (Guernsey) (Amendment) Ordinance, 2013, made by the Legislation Select Committee on the 17th June, 2013, is laid before the States.

STATUTORY INSTRUMENTS LAID BEFORE THE STATES

THE MERCHANT SHIPPING (CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS) (BAILIWICK OF GUERNSEY) ORDINANCE, 2012 (COMMENCEMENT) ORDER, 2013

In pursuance of section 289(1)(c) of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002, the Merchant Shipping (Convention on Limitation of Liability for Maritime Claims) (Bailiwick of Guernsey) Ordinance, 2012 (Commencement) Order, 2013, made by the Public Services Department on 27th June, 2013, is laid before the States.

EXPLANATORY NOTE

This Order brought into force the Merchant Shipping (Convention on Limitation of Liability for Maritime Claims) (Bailiwick of Guernsey) Ordinance, 2012 on 1st July, 2013.

THE HEALTH AND SAFETY (FEES) ORDER, 2013

In pursuance of Section 3(1)(c) of the Health and Safety (Fees) (Guernsey) Law, 1993, the Health and Safety (Fees) Order, 2013, made by the Commerce and Employment Department on 4th June 2013, is laid before the States.

EXPLANATORY NOTE

This Order specifies, for the purposes of the Health and Safety (Fees) (Guernsey) Law, 1993, the fees to be payable to the Commerce and Employment Department under and for the purposes of the Explosives (Guernsey) Law, 1905, the Law entitled “Loi relative aux Huiles ou Essences Minérales ou autre substances de la même nature, 1924”, the Health, Safety and Welfare of Employees Law, 1950 and the Health and Safety at Work etc. (Guernsey) Law, 1979 (including Ordinances and other subordinate legislation thereunder). The Order came into force on the 4th June, 2013.

THE BOVINE SEMEN (IMPORTATION) ORDER, 2013

In pursuance of section 2A(2) of the Bovine Semen and Artificial Insemination Ordinance, 1957, as amended, the Bovine Semen (Importation) Order, 2013, made by the Commerce and Employment Department on 16th July, 2013, is laid before the States.

EXPLANATORY NOTE

This Order specifies the bovine breeds from which the Department can import, or cause the importation of, semen for the artificial insemination of cattle on the Island.

THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL BENEFIT) (AMENDMENT) (No.3) REGULATIONS, 2013

In pursuance of Section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, The Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment) (No.3) Regulations, 2013 made by the Social Security Department on 23rd July, 2013, are laid before the States.

EXPLANATORY NOTE

These Regulations add to the limited list of drugs and medicines available as pharmaceutical benefit which may be ordered to be supplied by medical prescriptions issued by medical practitioners. These Regulations came into operation on 23rd July, 2013.