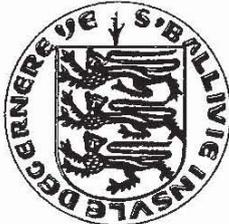


Island of  Guernsey

Ordinance of the States

**XXIX
2005**

Made 30th November, 2005
Coming into operation 1st January, 2006

**The Intellectual Property
(Office of Registrar)
(Bailiwick of Guernsey)
Ordinance, 2005**

**The Intellectual Property (Office of Registrar)
(Bailiwick of Guernsey) Ordinance, 2005**

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SCHEDULE: Office of the Registrar.

**The Intellectual Property (Office of Registrar)
(Bailiwick of Guernsey) Ordinance, 2005**

THE STATES, in pursuance of their Resolution of the 27th November, 2002^a, and in exercise of the powers conferred on them by sections 1 and 3 of the Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004^b and all other powers enabling them in that behalf, hereby order:-

PART I
OFFICE OF THE REGISTRAR

Establishment of Office of Registrar.

1. (1) The States of Guernsey Commerce and Employment Department ("**the Department**") shall establish an office to be known as the Office of the Registrar of Intellectual Property ("**the Office of the Registrar**").

(2) The holder of that office shall be known as the Registrar of Intellectual Property ("**the Registrar**").

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

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

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

^a Article XIX of Billet d'État No. XXIII of 2002.

^b Order in Council No. XIV of 2004.

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- (b) is subject to such terms and conditions as the Department may from time to time think fit, and
- (c) may be varied or terminated at any time by the Department, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment.

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

(6) For the purposes of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^c -

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

(7) The provisions of the Schedule have effect with respect to the Office of the Registrar.

PART II
FUNCTIONS OF THE REGISTRAR

Functions of Registrar.

2. The functions of the Registrar are -

^c Order in Council No. XXI of 1991.

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- (a) to advise the Department generally in relation to the registration, administration, protection and enforcement of intellectual property rights and the law, practice and procedures relating thereto,
- (b) to administer the Office of the Registrar,
- (c) to determine after consultation with the Department -
 - (i) the fees payable (whether generally or in any particular case) in respect of the exercise of his functions,
 - (ii) the interest payable in the event of default in the due payment of fees, and
 - (iii) the persons by whom such fees and interest are to be payable, and
- (d) to exercise, subject to the terms and conditions of his appointment, such other functions as may be assigned or transferred to him by or under this Ordinance, the relevant Ordinances and any other enactment.

Ancillary powers of Registrar.

3. (1) The Registrar, having regard to the provisions of section 2, has power to do anything that appears to him to be necessary or expedient for the purpose of exercising his functions including, without limitation, power -

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- (a) to request the production of and otherwise obtain such documents, accounts and information from such persons and within such periods and at such times and intervals as he thinks fit,
- (b) subject to any provision to the contrary in this Ordinance, any relevant Ordinance or any other enactment, to publish information, reports and other documents,
- (c) to appoint any person or body to advise him in relation to the exercise of any of his functions.

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

- (a) acquire, lease, use, dispose of, exchange or otherwise deal with any movable or immovable property and any interest in it, and
- (b) enter into any contract, including any contract of purchase, sale, insurance, hire or bailment, or make any arrangement with any person.

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

Reports.

4. (1) The Registrar shall, whenever directed by the Department, submit to the Department a report on the exercise of his functions in such form and in respect of such period as the Department may specify.

- (2) The Department -
 - (a) shall submit the Registrar's report made under subsection (1) to the States, and
 - (b) may at the same time or at any other time submit their own report to the States on the exercise by the Registrar of his functions.

Financial and accounting provisions.

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

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

- (3) The Registrar shall -
 - (a) keep proper accounts and proper records in relation to those accounts, and
 - (b) submit to the Department, whenever the Department may direct but not less than once in any 12 month period, a statement of account giving a true and fair view of the state of affairs of the Office of the Registrar.
- (4) Without prejudice to the preceding provisions of this section,

the Registrar shall, whenever directed by the Department, submit to the Department, in respect of such period as the Department may specify, audited accounts of the Office of the Registrar together with the auditors' report thereon prepared by auditors appointed by the Registrar with the approval of the Department.

Power to apply for directions.

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

(2) For the purposes of an application under this section, the Royal Court -

- (a) is constituted by the Bailiff sitting unaccompanied by the Jurats,
- (b) may appoint one or more assessors to assist it in the determination of any matter before it, and
- (c) has, in relation to functions conferred on it by this section, jurisdiction throughout the Bailiwick.

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

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

PART III
OFFENCES

False or misleading information.

7. (1) A person who -
- (a) in making any statement or providing any information or document to the Registrar, or to any officer, servant or agent of the Registrar, when acting in the exercise of his functions, or
 - (b) otherwise than as mentioned in paragraph (a) but in circumstances in which the person making the statement or providing the information or document knows or could reasonably be expected to know that the statement, information or document would or might be used by the Registrar for the purpose of exercising his functions -
 - (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material

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

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particular,

- (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence.

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

Confidentiality.

8. (1) Subject to the provisions of subsection (3), a person who -

- (a) under or for the purposes of this Ordinance or any relevant Ordinance receives any document or information relating to the business or other affairs of any person, or
- (b) obtains any such document or information directly or indirectly from a person who has so received it,

shall not disclose the document or information without the consent of the person to whom it relates and (if different) the person from whom it was so obtained.

(2) A person who discloses any document or information in contravention of this section is guilty of an offence and liable -

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

(3) Subsection (1) does not preclude -

- (a) the disclosure of information -
 - (i) which at the time of disclosure is or has already been made available to the public from

other sources, or

- (ii) which is in the form of a summary or collection so framed as not to enable information relating to any particular person to be ascertained from it,
- (b) the disclosure of information for the purpose of enabling or assisting the Registrar to discharge his functions,
- (c) where, in order to enable or assist him to discharge his functions, the Registrar considers it necessary to seek advice from a qualified person on any matter of law or accountancy or any other matter requiring the exercise of professional skill, the disclosure by the Registrar to that person of such information as appears to the Registrar to be necessary to ensure that that person is properly informed as to the matters on which his advice is sought,
- (d) the disclosure of information for the purpose of assisting, in the public interest, any authority appearing to the Registrar to exercise, in a place outside the Bailiwick, functions corresponding to his,
- (e) the disclosure of information in compliance with, or for the purposes of enabling or assisting a person to comply with, any requirement imposed by or under this Ordinance, any relevant Ordinance or any other

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enactment,

(f) a disclosure of information which is authorised by or under this Ordinance, any relevant Ordinance or any other enactment,

(g) the disclosure of information -

(i) for the purposes of the investigation, prevention or detection of crime, or

(ii) with a view to the instigation of or otherwise for the purposes of any criminal proceedings,

whether under this Ordinance or otherwise,

(h) the disclosure of information in connection with any other proceedings arising out of this Ordinance or any relevant Ordinance,

(i) the disclosure of information with a view to the instigation of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by any person,

(j) the disclosure of information in connection with the discharge of any international obligation to which the Bailiwick may from time to time be subject, or

(k) the disclosure of information to comply with an order

of a court.

Criminal liabilities of directors, etc.

9. (1) Where an offence under this Ordinance is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

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

Defence of due diligence.

10. In any proceedings for an offence under this Ordinance it is a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself and by any person under his control.

PART VI
MISCELLANEOUS

Exclusion of liability.

11. No liability is incurred by -

- (a) the States or any department thereof,
- (b) the Registrar,

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- (c) any person to whom the Registrar has, under paragraph 3 of the Schedule, delegated any function,
- (d) any person appointed as Deputy Registrar under paragraph 4 of the Schedule, or
- (e) any officer, servant or member of the States or any officer or servant of the Registrar,

in respect of anything done or omitted to be done after the commencement of this Ordinance in the discharge or purported discharge of their functions under this Ordinance or any relevant Ordinance, unless the thing was done or omitted to be done in bad faith.

Interpretation.

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

"**Bailiff**" means the Bailiff, Deputy Bailiff, Lieutenant-Bailiff and Juge Délégué,

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

"**body corporate**" means a body of persons incorporated with or without limited liability in any part of the world,

"**contravention**" includes failure to comply, and related expressions shall be construed accordingly,

"**department**" of the States means any department, council or committee of the States, however called,

"the Department" : see section 1(1),

"documents" means information recorded in any form (including, without limitation, in electronic form) and, in relation to information recorded otherwise in legible form, references to its production, howsoever expressed, include references to the production of a copy of the information in legible form,

"functions" includes duties and powers,

"non-business day" means a Saturday, a Sunday, Christmas Day and Good Friday, and any day appointed as a public holiday by Ordinance of the States (or, in Alderney or Sark, by Ordinance of the States of Alderney or Chief Pleas of Sark) under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^e,

"Office of the Registrar" : see section 1(1),

"Registrar" : see section 1(2),

"relevant Ordinance" means an Ordinance made under the Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004^f,

^e Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; No. XIV of 1994.

^f Order in Council No. XIV of 2004.

"**Royal Court**" means the Royal Court sitting as an Ordinary Court, constituted in accordance with section 6(2),

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

"**States**" means the States of Guernsey,

and other words or expressions which are defined in the Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004 have the same meanings as in that Law.

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

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

Service of documents.

13. (1) Any document to be given or served under or for the purposes of this Ordinance or any relevant Ordinance may be given or served -

- (a) on an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode,

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

- (b) on a body corporate with a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, that office,
- (c) on a body corporate without a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in the Bailiwick or, if there is no such place, its registered or principal office or last known registered or principal office elsewhere,
- (d) on an unincorporated body, by being given to or served on any partner, member, manager or officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in the Bailiwick or, if there is no such place, its principal or last known principal place of business elsewhere,
- (e) on an external company within the meaning of the Companies (Alderney) Law (External Companies) Ordinance, 1998^h, by leaving the document at the registered address for service specified in the Register of External Companies,
- (f) on the Registrar, by being left at, or sent by post or

^h Ordinance of the States of Alderney No. IX of 1998.

transmitted to, the principal offices of the Registrar in Guernsey,

and in this section -

- (i) the expression "**by post**" means by registered post, recorded delivery service or ordinary letter post, and
- (ii) the expression "**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication: in which event the document shall be regarded as served when it is received.

(2) If a person notifies the Registrar of an address for service within the Bailiwick for the purposes of this Ordinance or any relevant Ordinance, any document to be given to or served on him may be given or served by being left at, or sent by post or transmitted to, that address.

(3) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served by being published in La Gazette Officielle (or, where service is required to be effected in Alderney, in the Alderney Official Gazette) on two occasions falling in successive weeks, and a document served under this subsection is sufficient if addressed to the person for whom it is intended.

(4) Subsections (1) to (3) are without prejudice to any other

lawful method of service.

(5) Notwithstanding the provisions of subsections (1) to (4) and any other enactment or rule of law in relation to the service of documents, no document to be given to or served on the Registrar under or for the purposes of this Ordinance or any relevant Ordinance shall be deemed to have been given or served until it is received.

(6) If a person upon whom a document is to be served under this Ordinance or any relevant Ordinance is a minor or person under legal disability, the document shall be served on his guardian; and if there is no guardian, the party wishing to effect service may apply to the Royal Court (or the Court of Alderney or the Court of the Seneschal of Sark, if appropriate) for the appointment of a person to act as guardian for the purposes of this Ordinance or (as the case may be) the relevant Ordinance.

(7) A document sent by post is, unless the contrary is shown, deemed for the purposes of this Ordinance and any relevant Ordinance to have been received -

- (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,
- (b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any non-business day.

(8) Service of a document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(9) In this section "**document**" does not include a summons.

(10) The provisions of this section are subject to any contrary provision in any relevant Ordinance.

General provisions as to subordinate legislation.

14. (1) An order under this Ordinance -

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

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

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

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

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

(i) the full provision to which the power extends,

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or any lesser provision (whether by way of exception or otherwise),

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

Citation.

15. This Ordinance may be cited as the Intellectual Property (Office of Registrar) (Bailiwick of Guernsey) Ordinance, 2005.

Commencement.

16. This Ordinance shall come into force on the 1st January, 2006.

Extent.

17. This Ordinance has effect throughout the Bailiwick.

SCHEDULE
OFFICE OF THE REGISTRAR

Section 1(7)

Salary or fees of Registrar.

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

Appointment of staff.

2. (1) The Registrar may -

(a) subject to the approval of the Department, appoint such officers and servants, and

(b) appoint and instruct such other persons,

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

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

Delegation of functions.

3. (1) The Registrar may, by an instrument in writing, either generally or otherwise as specified in the instrument, arrange for any of his functions to be exercised in his name by any person named or described in the instrument, other than this power of delegation.

(2) A function exercised by a delegate pursuant to an arrangement

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

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

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

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

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

Appointment of Deputy Registrar.

4. (1) Without prejudice to the generality of paragraph 3, the Department may, subject to such terms and conditions as it thinks fit, appoint any person as Deputy Registrar with authority to exercise the Registrar's functions during any period during which the Registrar is unavailable.

(2) A function exercised by a Deputy Registrar pursuant to an appointment under this paragraph is for all purposes exercised by the Registrar; and

ⁱ Order in Council No. XXI of 1991.

every decision taken or other thing done by a Deputy Registrar pursuant to such an appointment has the same effect as if taken or done by the Registrar.

- (3) An appointment under this paragraph of a Deputy Registrar -
 - (a) may be varied or terminated at any time by the Department, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment,
 - (b) does not prevent the exercise of the function by the Registrar while the appointment subsists.

Disclosure of interests.

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

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

Official seal.

6. (1) The Registrar shall have an official seal for the authentication of documents required for the purpose of exercising his functions.

(2) Any document -

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- (a) sealed with the official seal of the Registrar, and
- (b) signed by the Registrar or by any person to whom, pursuant to paragraph 3, he has delegated authority to affix his official seal,

is deemed to be duly executed by or on behalf of the Registrar and is effective in law to bind him.

Proof of documents.

7. (1) In any legal proceedings the provisions of subparagraph (2) apply in relation to any document purporting to be -

- (a) issued by or on behalf of the Registrar, or
- (b) signed by the Registrar, by any of his officers or servants or by any person to whom, pursuant to paragraph 3, he has delegated authority to sign documents of that description.

(2) The document -

- (a) may be received in evidence,
- (b) unless the contrary is proved, is deemed -
 - (i) to be the document which it purports to be, and
 - (ii) to have been issued by or on behalf of the Registrar or, as the case may be, to have been

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signed by the person by whom it purports to
have been signed, without proof of his identity,
signature or official capacity, and

(c) is evidence of the matters stated therein.