

ORDINANCE OF THE STATES OF DELIBERATION

ENTITLED

The States Trading Companies (Bailiwick of Guernsey) Ordinance, 2001 *

[CONSOLIDATED TEXT]

NOTE

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* No. XXIII of 2001 (Recueil d'Ordonnances Tome XXVIII, p. 441); as amended by the States Trading Companies (Bailiwick of Guernsey) (Amendment) Ordinance, 2002 (No. XV of 2002, Recueil d'Ordonnances Tome XXIX, p. 166); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the States Trading Companies (Bailiwick of Guernsey) (Amendment) Ordinance, 2014 (No. XII of 2014); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the Arbitration (Guernsey) Law, 2016 (No. X of 2016).

ORDINANCE OF THE STATES OF DELIBERATION

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The States Trading Companies (Bailiwick of Guernsey) Ordinance, 2001

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SCHEDULE 1 States Trading Companies.

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(Made on the 26th September, 2001.)

The States Trading Companies (Bailiwick of Guernsey) Ordinance, 2001

THE STATES, in exercise of the powers conferred on them by sections 1, 2, 3, 4 and 6 of the States Trading Companies (Bailiwick of Guernsey) Law, 2001^a, hereby order: –

PART I

DESIGNATION OF STATES TRADING COMPANIES

Companies designated in Schedule 1 to be States trading companies.

1. Any company –
 - (a) which is designated in Schedule 1 and in relation to which the requirements of section 2(2) are for the time being met, or
 - (b) which satisfies such other criteria as the States may by resolution direct for the purposes of this section,

shall be a States trading company for the purposes of the States Trading Companies (Bailiwick of Guernsey) Law, 2001.

^a Order in Council No. XII of 2001.

PART II
GOVERNANCE OF STATES TRADING COMPANIES

Shares in States trading companies.

2. (1) The issued shares in a States trading company are held in trust for the States of Guernsey ("**the States**").

(2) One half of the issued shares in a States trading company shall be held by the [President] for the time being of the States [States' Trading Supervisory Board] ("**the [Board]**") and the other half thereof shall be held by the [Vice-President] for the time being of the [Board].

(3) The persons for the time being holding the issued shares in a States trading company shall exercise their functions as shareholders and members of the company in accordance with the directions of the [Board].

(4) No transfer or other disposition of the shares in a States trading company, and no alteration of the share capital of a States trading company, shall be valid unless expressly authorised by resolution of the States.

NOTE

In section 2, the words, first, "President" and "Vice-President" and, second, "Board" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 2, Schedule 1, paragraph 15(b), Schedule 2, Part 9 and section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016.¹

Appointment of directors of States trading companies.

3. (1) Subject to subsections (2) and (4), the non-executive directors of a States trading company shall be appointed by the States on the nomination of the [Board].

(2) A person may be appointed by the [Board] to fill a casual vacancy in the office of non-executive director of a States trading company.

(3) An appointment described in subsection (2) shall lapse unless confirmed by the States at their next or next subsequent meeting after the date of the appointment.

(4) A non-executive director of a States trading company who is obliged to retire from office by virtue of the rotation of membership provisions of the company's articles of association may be re-appointed by the [Board].

(5) An appointment described in subsection (4) shall not require the confirmation of the States.

(6) The [Board] shall, after consultation with the directors of a States trading company, appoint one of the company's non-executive directors to be chairman of the company's board of directors.

(7) The first executive directors of a States trading company shall be appointed by the [Board] after consultation with the company's non-executive directors.

(8) Any appointment to the office of executive director of a States trading company (including any appointment to fill a casual vacancy in that office), other than an appointment described in subsection (7), shall be made by the company's board of directors.

(9) The appointment of any director of a States trading company may be terminated at any time by ordinary resolution passed in general meeting of the company.

(10) No member of the States of Deliberation within the meaning of the Reform (Guernsey) Law, 1948^b, or of the States of Alderney or the Chief Pleas of Sark, may be a director of a States trading company.

NOTE

In section 3, the word "Board" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016.

Remuneration of directors of States trading companies.

4. (1) The remuneration of the non-executive directors of a States trading company shall be determined by the [Board].

(2) The remuneration of the executive directors of a States trading company shall be determined by a remuneration committee consisting of non-executive directors of the company.

NOTE

In section 4, the word in square brackets was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016.

Personal interests of directors of States trading companies.

5. (1) Without prejudice to any other duty incumbent on him, a director of a States trading company shall not have any significant personal direct or indirect interest in any trading partner of the company.

^b Ordres en Conseil Vol. XIII, p. 288; No. V of 1993; No. X of 1998.

(2) The appointment of any director of a States trading company who contravenes subsection (1) shall be terminated forthwith by ordinary resolution passed in general meeting of the company; and it shall be the duty of the company's shareholders to observe the provisions of this subsection.

(3) The provisions of subsection (2) are without prejudice to the provisions of section 3(9).

(4) For the purposes of subsection (1), but subject to subsection (5), a personal interest in a trading partner of a States trading company shall be treated as being a significant personal direct or indirect interest if a reasonably diligent person –

- (a) placed in the position of the director in question, and
- (b) having the general knowledge, skills and experience –
 - (i) to be reasonably expected of a person in that position, and
 - (ii) of the director in question,

would be, or might reasonably be suspected of being likely to be, influenced in his activities as director of the company, by reason of the interest, in a way which might lead him to transact with or treat the trading partner in a manner to the material detriment of the States trading company.

(5) For the purposes of subsection (1), a personal interest in a trading partner of a States trading company shall not be treated as being a significant personal direct or indirect interest if –

- (a) the director in question declares the interest to the other directors of the company,
- (b) they resolve in writing that –
 - (i) the interest is not a significant personal direct or indirect interest for the purposes of subsection (1), or
 - (ii) although the interest is such a significant personal direct or indirect interest, it is unnecessary for the director to cease to be a director of the States trading company provided that he complies with such conditions as they think necessary to protect the interests of the company, and
- (c) the director in question complies with any condition imposed in respect of him under paragraph (b)(ii).

(6) The [Board] may by regulation amend the provisions of subsections (4) and (5); and regulations under this subsection may be amended or revoked by subsequent regulations hereunder.

NOTE

In section 5, the word in square brackets was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016.

Submission of strategic plan by directors of States trading companies.

6. (1) The directors of a States trading company shall, at such times

or intervals as the [Board] may require, submit to the [Board] a strategic plan setting out –

- (a) the financial and other targets to be achieved by the company in the carrying out of utility activities,
- (b) the description and extent of the activities which the company proposes to carry out for which the company does not need a utility licence,
- (c) the financial and other targets to be achieved by the company in the carrying out of the activities referred to in paragraph (b),
- (d) the policies to be pursued by the company in the carrying out of utility activities and the activities referred to in paragraph (b),
- (e) the company's proposals for any significant investment or divestment,
- (f) any other significant matter or issue relating to the company's future plans in which the shareholders of the company would have a legitimate interest, and
- (g) any other matter or issue which the [Board] requires to be addressed by the plan.

(2) For the purposes of subsection (1)(e) the [Board] may by resolution make provision as to the meaning of the expression "**significant investment or divestment**"; and any resolution under this subsection may be

amended or rescinded by a subsequent resolution hereunder.

NOTE

In section 6, the word "Board" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016.

States guidance to [States' Trading Supervisory Board].

7. (1) The States may give guidance (but only of a general nature) on the policies they wish the [Board] to pursue in exercising its functions under this Ordinance.

(2) The guidance referred to in subsection (1) shall be given only by means of the [Policy and Resource Planning Report].

(3) It shall be the duty of the [Board], in exercising its functions under this Ordinance, to have regard to any guidance given under subsection (1).

NOTES

In section 7,

the words, first, "States' Trading Supervisory Board" and, second, "Board" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 2, Schedule 1, paragraph 15(b), Schedule 2, Part 9 and section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016;²

the words in square brackets in subsection (2) were substituted by the States Trading Companies (Bailiwick of Guernsey) (Amendment) Ordinance, 2002, section 1(1), with effect from 25th September, 2002.

[Submission of accounts and annual report to the States.

8. The [Board] shall cause to be submitted to the States for their

consideration –

- (a) as soon as is reasonably practicable after the receipt thereof, the accounts of the States trading companies and the auditors' reports thereon, and
- (b) an accompanying report on the activities of those companies.]

NOTES

Section 8 was substituted by the States Trading Companies (Bailiwick of Guernsey) (Amendment) Ordinance, 2014, section 1, with effect from 1st May, 2014.

In section 8, the word in square brackets was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016.

PART III
APPLICATION OF COMPANIES LAW TO
STATES TRADING COMPANIES

Ordinance does not derogate from Companies Law.

9. The provisions of Part II of this Ordinance are in addition to and not in derogation from the provisions of the Companies (Guernsey) Law, 1994^c and any other statutory provision, rule of law or rule of court relating to companies or their corporate governance.

NOTE

^c Order in Council No. XXXIII of 1994.

The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

PART IV

TRANSFER OF UNDERTAKING TO STATES TRADING COMPANIES

Transfer of undertaking of States.

10. (1) Those parts of the undertaking of the States specified in column 2 of Schedule 2 are, on the appointed day, subject to the exceptions, conditions and other provisions set out in column 2, transferred to and vested in the States trading companies specified in relation thereto in column 1 of Schedule 2 to the intent that those companies shall succeed to those parts of the undertaking as if in all respects they were the same person in law as the States.

(2) Where the transfer to or vesting in a States trading company of any property or liability comprised in any part of the undertaking of the States specified in column 2 of Schedule 2 is governed by the law of any country or territory outside the Bailiwick, the States shall, if the company so requires, use their best endeavours to secure that the transfer to and vesting in the company of the property or liability is fully effective under the law of that country or territory.

(3) Until such time as any property or liability referred to in subsection (2) is transferred to and vested in the States trading company under the law of the country or territory concerned –

- (a) the States shall hold any such property as trustee for the company, and

- (b) the company shall fully indemnify the States in respect of any such liability.

Supplementary provisions as to transfer and vesting.

11. (1) Without prejudice to the generality of section 10, but subject to any provision of this Ordinance to the contrary, the following provisions shall have effect in relation to any part of the undertaking of the States transferred to and vested in a States trading company by or by virtue of section 10.

(2) Every contract to which the States are a party shall be construed and have effect from the appointed day –

- (a) as if the States trading company had been a party thereto instead of the States,
- (b) subject to subsection (4), as if for any reference (however worded and whether express or implied) to the States there were substituted a reference to the States trading company,
- (c) as if any reference (however worded and whether express or implied) to the members, officers, representatives or employees or to any member, officer, representative or employee of the States were a reference to the directors, officers, representatives or employees of the States trading company, as the case may require, or to such director, officer, representative or employee of the company as the company may nominate for that purpose or, in default of nomination, to the director, officer, representative or employee of

the company who corresponds as nearly as may be to the first mentioned member, officer, representative or employee, and

- (d) where the contract relates to property or liabilities which are for the time being only partly transferred to, and vested in, the States trading company by virtue of this Ordinance, as if the contract, to the extent to which it is enforceable by and against the States, constituted two separate contracts, one of which is enforceable by and against the company as regards the part of the property or, as the case may be, liabilities so transferred to, and vested in, the company and not as regards the other part, and the other of which is enforceable by and against the States as regards the part of the property or, as the case may be, liabilities not so transferred to, and vested in, the company and not as regards the other part.

(3) Paragraphs (b) and (c) of subsection (2) shall, on and from the appointed day, apply to any enactment other than the provisions of this Ordinance and to any provision of any contract to which the States were not a party; and paragraphs (a), (b) and (c) of that subsection shall, on and from that day, apply to any provision of any other document (not being a contract) as they apply to a contract to which subsection (2) applies.

(4) Paragraph (b) of subsection (2) above shall not apply to the name or title of any rate, charge, tariff, scale of fees, terms or conditions of the States which includes the initials, the name or part of the name of the States or any committee thereof, but on or after the appointed day the States trading company may change the name or title.

(5) An offer or invitation to treat made to or by the States before the appointed day shall be construed and have effect on and after the appointed day as an offer or invitation to treat, as the case may be, made to or by the States trading company.

(6) Any account between the States and a customer shall, on and from the appointed day, become an account between the States trading company and the customer subject to the same conditions and incidents (including rights of compensation and set-off) as theretofore; and such account shall be deemed for all purposes to be a single continuing account:

Provided that nothing herein shall affect any right of the company or the customer on or after that date to vary the conditions or incidents subject to which any account is kept.

(7) For the purpose of construing and giving effect to any contract which –

- (a) has effect or continues to have effect on, or on and after, the appointed day, and
- (b) makes reference to a rate, charge, tariff or scale of fees or to terms or conditions published, determined or ascertained from time to time by the States,

the States trading company shall have the same right under that contract as the States had to publish, determine, ascertain, vary or amend rates, charges, tariffs, scales of fees, terms or conditions, and any such rates, charges, tariffs, scales of fees, terms or conditions published, determined, ascertained, varied or amended by the company shall apply in place of those which could have been published, determined,

ascertained, varied or amended by the States.

(8) Any existing instruction, order, direction, mandate, power of attorney, authority, undertaking or consent given to or by the States (whether in writing or not) shall have effect, on and from the appointed day, as if given to or, as the case may be, by the States trading company.

(9) Any negotiable instrument, cheque, warrant, draft, letter of credit or order for payment of money drawn on or by, or given to, or accepted or endorsed by, the States, or payable at any place of business of the States, whether so drawn, given, accepted, endorsed or payable before, on or after the appointed day, shall have the same effect, on and from the appointed day, as if it had been drawn on or by, or given to, or accepted or endorsed by, the States trading company or were payable at the same place of business of the company.

(10) Any document, claim or demand addressed on or after the appointed day to the States pursuant to an existing contract shall be deemed to have been addressed to the States trading company.

(11) The custody of any document, goods or other thing held by the States as bailee shall pass to the States trading company on the appointed day, and the rights and obligations of the States under any contract of bailment relating to any such document, goods or thing shall on that day become rights and obligations of the company.

(12) Any security held immediately before the appointed day by or on behalf of the States as security for the payment or discharge of any liability shall, on and from the appointed day, be held by or on behalf of the States trading company and be available to the company (whether for its own benefit or, as the case may be, for the benefit of any other person) as security for the payment or discharge of that liability.

(13) In relation to any security transferred to, and vested in, the States trading company by or under this Ordinance and any liabilities thereby secured, the States trading company shall be entitled to the same rights and priorities and be subject to the same obligations and incidents to which the States would have been entitled or subject if they had continued to hold the security.

(14) Without prejudice to the generality of subsection (13), in any case where any existing liability subsists between the States and the States trading company in respect of which the States or the States trading company, or a nominee or agent of or trustee for the States or the States trading company, holds a security, that liability shall, for the purpose of enforcing or realising that security, be deemed to continue in effect notwithstanding the transfer to, and vesting in, the States trading company of the part of the undertaking of the States.

(15) Any security referred to in subsection (12), (13) or (14) which extends to future advances or liabilities shall, on and from the appointed day, be available to the States trading company (whether for its own benefit or, as the case may be, for the benefit of any other person) as security for the payment or discharge of future advances and future liabilities to the same extent and in the same manner in all respects as it extends immediately before that day to future advances or liabilities.

(16) Where by virtue of this Ordinance any property or liability of the States becomes property or a liability of the States trading company, the States trading company and all other persons shall, on and from the appointed day, have the same rights, powers and remedies (and in particular the same rights and powers as to taking or resisting legal proceedings or making or resisting applications to any authority) for ascertaining, perfecting or enforcing that property or liability as if it had at all times been property or a liability of the States trading company.

(17) Any right of action and any remedy available in consequence

thereof which accrues, arises or becomes enforceable or available before the appointed day by or against the States, or which would, but for this Ordinance, accrue, arise or become enforceable or available by or against the States on or after the appointed day, may be enforced or availed of by or against the States trading company on or after the appointed day and any legal proceedings, applications to any authority or other proceedings for the resolution of a dispute pending or current immediately before the appointed day by or against the States may be continued by or against the States trading company.

(18) Any judgment, order or award obtained by or against the States and not fully satisfied before the appointed day shall on that day, to the extent to which it is enforceable by or against the States, become enforceable by or against the States trading company.

(19) The Data Protection Commissioner may, on and from the appointed day, serve on the States trading company any notice under section 10 of the Data Protection (Bailiwick of Guernsey) Law, 1986^d which he could have served on the States or any committee thereof in respect of a breach by the States or committee of the data protection principles; but the transfer to, and vesting in, the States trading company by this Ordinance of any part of the undertaking of the States (and any disclosure to the States trading company of any information in contemplation or as a result thereof) shall not amount to a breach of any duty of confidentiality to which the States are subject at the date of such disclosure or to a contravention by the States trading company or the States of the data protection principles within the meaning of Schedule 1 to the said Law.

NOTE

The Data Protection (Bailiwick of Guernsey) Law, 1986 has since been repealed by the Data Protection (Bailiwick of Guernsey) Law, 2001, section

^d Ordres en Conseil Vol. XXIX, p. 426.

72, Schedule 12, paragraph 1, with effect from 1st August, 2002, subject to the transitional provisions and savings in section 71 of, and Schedule 11 to, the 2001 Law. The Data Protection (Bailiwick of Guernsey) Law, 2001 has since been repealed by the Data Protection (Bailiwick of Guernsey) Law, 2017, section 113(a), with effect from 25th May, 2018, subject to the provisions of the Data Protection (Commencement, Amendment and Transitional) (Bailiwick of Guernsey) Ordinance, 2018.

Auditors.

12. No auditor of the States shall by virtue only of this Ordinance become an auditor of a States trading company.

Evidence of transfer and vesting.

13. (1) The production of this Ordinance shall, for all purposes, be conclusive evidence of the transfer to and vesting in a States trading company of any part of the undertaking of the States transferred to or vested in the company by or by virtue of section 10.

(2) Without prejudice to the generality of subsection (1) –

(a) any document made or executed on or after the appointed day whereby the States trading company, whether alone or jointly with any other person, conveys, or transfers, or purports to convey or transfer, to any person (whether for consideration or not), or applies to be registered as the holder or proprietor of, any property held by the States immediately before the appointed day, whether alone or jointly with any other persons, shall be sufficient evidence that the interest of the States in that property has been transferred to and vested in the States trading company, alone or jointly, under this Ordinance, and

- (b) where there is any other transaction by the States trading company on or after the appointed day in connection with, or in relation to, any property or liability which was the property or a liability of the States immediately before the appointed day, it shall be deemed in favour of any other party to the transaction, or any person claiming through or under him, that the States trading company has full power and authority for that transaction as if the property or liability had been transferred to and vested in it under this Ordinance.

- (3) Without prejudice to the generality of subsection (1) –

 - (a) any document made or executed on or after the appointed day whereby the States, whether alone or jointly with any other person, convey or transfer, or purport to convey or transfer, to any person (whether for consideration or not), or apply to be registered as the holder or proprietor of, any property held by them immediately before the appointed day, whether alone or jointly with any other person, shall be as effective as if that property had been conveyed, transferred or registered by the States trading company, and

 - (b) where there is any other transaction by the States on or after the appointed day in connection with, or in relation to, any property or liability which was property or a liability of the States immediately before the appointed day, that transaction shall be as effective as if it had been a transaction by the States trading company.

(4) A certificate given by or on behalf of a States trading company, whether given before, on or after the appointed day, that any property or liability of the States specified in the certificate will transfer and vest, or has transferred and vested, as the case may be, to and in the company under this Ordinance shall (subject to the provisions of Schedule 2) be conclusive evidence for all purposes of the fact so certified.

(5) Nothing in this section affects the liability of the States or a States trading company to the other of them in respect of anything done, or purported to have been done, by either of them in connection with, or in relation to, any property or liabilities.

Evidence: documents.

14. All documents which would, before the appointed day, have been evidence in respect of any matter for or against the States in relation to any part of the undertaking of the States transferred to or vested in a States trading company by or by virtue of section 10 shall, on and from the appointed day, be admissible in evidence in respect of the same matter for or against the States trading company; and "**document**" means anything in which information of any description is recorded.

Savings in respect of transfer and vesting of property.

15. The transfer to and vesting in a States trading company of any property or liability by virtue of this Ordinance shall not –

- (a) constitute an assignment, transfer, devolution, alienation, parting with possession or other disposition of or dealing with property or of an interest in property for the purposes of any enactment other than this Ordinance or any provision in any instrument, contract or order of any court concerning that property or that interest,

- (b) give rise to any forfeiture,
- (c) invalidate or discharge any contract, security or other thing,
- (d) require further registration in respect of any security,
- (e) cause or enable the benefit of any contract, permission, licence or privilege enjoyed by the States or the States trading company to be lost or surrendered or otherwise affected, or require the disposal by the States or the States trading company of any interest, otherwise than as provided in this Ordinance,
- (f) relieve any person under an obligation to the States of a corresponding obligation to the States trading company,
- (g) constitute a breach of, or default under, or require any obligation to be performed sooner or later than would have otherwise been the case under, any contract or instrument to which the States or the States trading company is a party or is bound,
- (h) allow any party to a contract to terminate that contract when he would not otherwise have been able to terminate it,
- (i) operate so as to merge any leasehold interest in the reversion expectant on it,

- (j) entitle any party to any contract to which the States or the States trading company is a party to vary the terms of that contract when he would not otherwise have been able to vary those terms or confer a right or benefit on him which he would not otherwise have had, or
- (k) cause the imposition of any greater or lesser obligations on any party to any contract to which the States or the States trading company is a party when that greater or lesser obligation would not otherwise have been imposed.

PART V
GENERAL PROVISIONS

Interpretation.

16. (1) In this Ordinance, unless the context requires otherwise –

"account", in Part IV of this Ordinance, includes any contract or facility between a person and the States by virtue of which money or any unit of account is or may be deposited or borrowed by any person,

"alteration" of share capital means any reduction thereof within the meaning of Part VII of the Companies (Guernsey) Law, 1994^e and any alteration described in section 37 of that Law,

"appointed day", in Part IV of this Ordinance, means –

- (a) in relation to Guernsey Post Limited and Guernsey

^e Order in Council No. XXXIII of 1994.

Telecoms Limited, the date of commencement of this Ordinance,

- (b) in relation to Guernsey Electricity Limited, the date appointed by resolution of the States,
- (c) in relation to a States trading company in respect of which an entry is added to column 1 of Schedule 2 after the date of commencement of this Ordinance, the date on which that entry comes into force,

"[Board]" means the States [States' Trading Supervisory Board],

"contract", in Part IV of this Ordinance, includes any agreement, transaction, arrangement or understanding, whether or not conditional or in writing and governed by the law of the Bailiwick or any part thereof,

"customer", in Part IV of this Ordinance, includes any person having an account or other dealing with the States,

"executive director" of a States trading company means a person who is appointed as such under the company's articles of association and who is an employee of the company or engaged in the day to day business of the company,

"liability" includes a duty and an obligation of any description (whether present or future, actual, contingent or prospective),

"non-executive director" of a States trading company means a person who is appointed as such under the company's articles of association and who is neither an employee of the company nor engaged in the day to day

business of the company,

"property" means property and assets of every description and includes property and assets held on trust or in a fiduciary capacity and securities, rights, benefits and powers of every description,

"Regulation Law" means the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001^f,

"rotation of membership provisions" of the articles of association of a States trading company means the provisions of those articles which require a certain number of the company's non-executive directors to retire from office at each ordinary annual general meeting of the company (or at any other time or upon any other event specified in those provisions),

"security", in Part IV of this Ordinance, includes a bond, mortgage or charge (in each case whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, lien, pledge (whether actual or constructive), security interest, assignment by way of security, indemnity, right of set-off, right of compensation, hypothèque, flawed asset arrangement, undertaking or other means of securing payment or discharge of a debt or liability and also includes any agreement or undertaking (whether in writing or not) to give or execute any of the foregoing whether upon demand or otherwise,

"States" means the States of Guernsey,

"States trading company" means any company –

(a) which is designated in Schedule 1 and in relation to

^f Order in Council No. XI of 2001.

which the requirements of section 2(2) are for the time being met, or

- (b) which satisfies such other criteria as the States may by resolution direct for the purposes of section 1,

"Strategic and Corporate Plan" means the written statement of that name prepared and approved in accordance with the provisions of the Island Development (Amendment) (Guernsey) Law, 1990^g,

"undertaking of the States" means the business, property and liabilities of the States, and includes any trade or business of, and any department or operation conducted by, the States,

"utility activities" means the establishment, operation and maintenance of a utility network (within the meaning of the Regulation Law), or the provision of utility services (within the meaning of that Law), in the Bailiwick,

"utility licence" means a licence granted to a person to carry out utility activities under any Law which provides for the regulation by the Director General (within the meaning of the Regulation Law) of utility activities within the Bailiwick or any part thereof,

and other expressions have the meanings given by the States Trading Companies (Bailiwick of Guernsey) Law, 2001.

- (2) The Interpretation (Guernsey) Law, 1948^h applies to the

^g Ordres en Conseil Vol. XXXII, p. 33.

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

interpretation of this Ordinance throughout the Bailiwick.

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

(4) For the purposes of Part IV of this Ordinance, any reference therein to property or liabilities of the States is a reference to property or liabilities wherever they are situated or arise and whether or not they are capable of being transferred or assigned by the States and whether the States are entitled or subject to them under the law of the Bailiwick or any part thereof or under the law of any country or territory outside the Bailiwick.

NOTES

In section 16, the words in the first and second pairs of square brackets in the definition of the expression "Board" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 12 and section 2, Schedule 1, paragraph 15(b), Schedule 2, Part 9, with effect from 1st May, 2016.³

The functions, rights and liabilities of the Treasury and Resources Department and of its Minister or Deputy Minister arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the States' Trading Supervisory Board and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 15(b), Schedule 2, Part 9, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.⁴

The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

The Island Development (Amendment) (Guernsey) Law, 1990 has since been repealed by the Land Planning and Development (Guernsey) Law, 2005,

section 93, Schedule 3, Part I, paragraph 8, with effect from 6th April, 2009, subject to, first, the savings in section 93 of the 2007 Law and, second, the savings and transitional provisions in the Land Planning and Development (Guernsey) Law, 2005 (Savings and Transitional Provisions) Ordinance, 2007.

Delegation of functions.

17. (1) The States may by resolution, either generally or otherwise as specified in the resolution, arrange for any of their functions –

- (a) under Part II of this Ordinance, other than the power to give guidance under section 7, or
- (b) under the memorandum or articles of association of a States trading company,

to be exercised in their name by the [Board].

(2) A function exercised by the [Board] pursuant to an arrangement made under this section is for all purposes exercised by the States; and every decision taken or other thing done by the [Board] pursuant to such an arrangement has the same effect as if taken or done by the States.

(3) An arrangement made under this section for the exercise of a function by the [Board] –

- (a) may be varied or terminated at any time by resolution of the States, 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

States while the arrangement subsists.

(4) The provisions of this section are in addition to and not in derogation from any other rule of law relating to the delegation of functions.

(5) The [Board] shall, as soon as is reasonably practicable, report to the States on the exercise by it of any functions of the States pursuant to an arrangement made under this section.

NOTE

In section 17, the word "Board" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016.

Extent.

18. This Ordinance has effect throughout the Bailiwick.

Citation.

19. This Ordinance may be cited as the States Trading Companies (Bailiwick of Guernsey) Ordinance, 2001.

Commencement.

20. (1) This Ordinance shall, subject to the provisions of subsection (2), come into force on the 1st October, 2001.

(2) Section 3 of this Ordinance shall, in relation to Guernsey Electricity Limited, come into force on the day appointed by resolution of the States.

NOTE

Consolidated text

The "appointed day" for the purposes of this section is, by virtue of Resolution 1 on Article VII of Billet d'État No. XXIV of 2001, 1st February, 2002.

SCHEDULE 1
STATES TRADING COMPANIES

Section 1

1. Guernsey Electricity Limited.
2. Guernsey Post Limited.
3. [...]

NOTE

In Schedule 1, the words omitted in square brackets were repealed by the States Trading Companies (Bailiwick of Guernsey) (Amendment) Ordinance, 2002, section 1(2), with effect from 25th September, 2002.

SCHEDULE 2

Section 10

TRANSFER OF UNDERTAKING OF THE STATES

<p style="text-align: center;">1.</p> <p style="text-align: center;">States Trading Company</p>	<p style="text-align: center;">2.</p> <p style="text-align: center;">Part of undertaking of the States transferred to and vested in company</p>
<p>Guernsey Electricity Limited.</p>	<p>That part of the undertaking of the States attributable to, conducted by or (as the case may require) entered into on behalf of the States by the States Electricity Board or any member, officer or servant thereof including (without limitation) all property specified in the schedule of assets signed for the purposes of identification by the [President] of the [Board] and lodged at the Greffe with the exception of any contract of employment described in section 2(1) of the Transfer of States Undertakings (Protection of Employment) (Guernsey) Law, 2001 (as that Law applies in relation to the States Electricity Board by virtue of an Ordinance under section 10 thereof):</p> <p>Provided always that –</p> <p>(a) any real property, and any leasehold interest in any real property, hereby transferred to Guernsey Electricity Limited shall be vested</p>

in that company subject to the condition that it may not be sold, disposed of, assigned, charged, encumbered (by lease, sublease or otherwise) or otherwise alienated without the written consent of the [Board] as recorded by an instrument under the hand of the [President] thereof,

- (b) the written consent of the [Board] referred to in paragraph (a) shall not be refused at any time if the real property or leasehold interest has, within the period of six months preceding that time, been offered for sale to the States at the open market value thereof as between a willing purchaser and a willing vendor and the States have not, within the period of four months following receipt of that offer, agreed to purchase the said property or interest at that value,
- (c) in the absence of agreement between the States and Guernsey Electricity Limited, the open market value of the said property or interest shall be determined for the purposes of paragraph (b) by a single arbitrator,
- (d) the provisions of the Arbitration (Guernsey) Law, 1982 shall apply to any arbitration under paragraph (c); and for the purposes of that Law an arbitration agreement shall be
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deemed to exist between the States and Guernsey Electricity Limited,

- (e) the condition referred to in paragraph (a) may be registered by the States against the real property referred to in that paragraph in the Livre des Hypothèques, Actes de Cour et Obligations held at the Greffe, and
 - (f) whether or not the said condition is so registered, any sale, disposal, assignment, charging, encumbering (by lease, sublease or otherwise) or other alienation of any real property or leasehold interest in contravention of the condition shall be void,
 - (g) if it appears to the [Board] expedient to do so for the purpose of removing any difficulties or uncertainties arising from the operation of Part IV of this Ordinance or of this Schedule, it may by order direct that any property or liability specified in the order shall, with effect from such date as may be specified in the order (not being earlier than the date of the commencement of this Ordinance in respect of Guernsey Electricity Limited), be deemed to have been or not to have been transferred to and vested in Guernsey Electricity Limited by Part IV of this Ordinance and by this Schedule; and any
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property or liability so specified shall accordingly be the property or liability of Guernsey Electricity Limited or, as the case may be, of the States:

Provided always that an order under this paragraph may not relate to a contract of employment described in section 2(1) of the Transfer of States Undertakings (Protection of Employment) (Guernsey) Law, 2001 (as that Law applies in relation to the States Electricity Board by virtue of an Ordinance under section 10 thereof),

- (h) at any time before the expiration of 12 months from the date of commencement of this Ordinance in respect of Guernsey Electricity Limited, the States (acting by and through the [Board]) and Guernsey Electricity Limited may, subject to the provisions of any order under paragraph (g), agree in writing that, with effect from such date as may be specified in the agreement (not being earlier than the said date of commencement), any property or liability specified in the agreement shall be deemed to have been or not to have been transferred to and vested in Guernsey Electricity Limited by Part IV of this Ordinance and by this Schedule; and any property or liability so
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	<p>specified shall accordingly be the property or liability of Guernsey Electricity Limited or, as the case may be, of the States:</p> <p>Provided always that an agreement under this paragraph may not relate to a contract of employment referred to in the proviso to paragraph (g).</p>
Guernsey Post Limited.	<p>That part of the undertaking of the States attributable to, conducted by or (as the case may require) entered into on behalf of the States by the States Post Office Board or any member, officer or servant thereof including (without limitation) all property specified in the schedule of assets signed for the purposes of identification by the [President] of the [Board] and lodged at the Greffe with the exception of any contract of employment described in section 2(1) of the Transfer of States Undertakings (Protection of Employment) (Guernsey) Law, 2001 (as that Law applies in relation to the States Post Office Board by virtue of an Ordinance under section 10 thereof),</p> <p>Provided always that –</p> <p>(a) any real property and any leasehold interest in any real property hereby transferred to</p>

Guernsey Post Limited shall be vested in that company subject to the condition that it may not be sold, disposed of, assigned, charged, encumbered (by lease, sublease or otherwise) or otherwise alienated without the written consent of the [Board] as recorded by an instrument under the hand of the [President] thereof,

- (b) the written consent of the [Board] referred to in paragraph (a) shall not be refused at any time if the real property or leasehold interest has, within the period of six months preceding that time, been offered for sale to the States at the open market value thereof as between a willing purchaser and a willing vendor and the States have not, within the period of four months following receipt of that offer, agreed to purchase the said property or interest at that value,
- (c) in the absence of agreement between the States and Guernsey Post Limited, the open market value of the said property or interest shall be determined for the purposes of paragraph (b) by a single arbitrator,
- (d) the provisions of the Arbitration (Guernsey) Law, 1982 shall apply to any arbitration under paragraph (c); and for the purposes of
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that Law an arbitration agreement shall be deemed to exist between the States and Guernsey Post Limited,

- (e) the condition referred to in paragraph (a) may be registered by the States against the real property referred to in that paragraph in the Livre des Hypothèques, Actes de Cour et Obligations held at the Greffe, and
 - (f) whether or not the said condition is so registered, any sale, disposal, assignment, charging, encumbering (by lease, sublease or otherwise) or other alienation of any real property or leasehold interest in contravention of the condition shall be void,
 - (g) if it appears to the [Board] expedient to do so for the purpose of removing any difficulties or uncertainties arising from the operation of Part IV of this Ordinance or of this Schedule, it may by order direct that any property or liability specified in the order shall, with effect from such date as may be specified in the order (not being earlier than the date of the commencement of this Ordinance in respect of Guernsey Post Limited), be deemed to have been or not to have been transferred to and vested in Guernsey Post Limited by Part IV of this Ordinance and by
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this Schedule; and any property or liability so specified shall accordingly be the property or liability of Guernsey Post Limited or, as the case may be, of the Statesⁱ:

Provided always that an order under this paragraph may not relate to a contract of employment described in section 2(1) of the Transfer of States Undertakings (Protection of Employment) (Guernsey) Law, 2001 (as that Law applies in relation to the States Post Office Board by virtue of an Ordinance under section 10 thereof),

- (h) at any time before the expiration of 12 months from the date of commencement of this Ordinance in respect of Guernsey Post Limited, the States (acting by and through the [Board]) and Guernsey Post Limited may, subject to the provisions of any order under paragraph (g), agree in writing that, with effect from such date as may be specified in the agreement (not being earlier than the said date of commencement), any property or liability specified in the agreement shall be deemed to have been or not to have been transferred to and vested in Guernsey Post Limited by Part IV of this

ⁱ See the States Trading Companies (Bailiwick of Guernsey) (Exemption of Property) Order, 2001.

	<p>Ordinance and by this Schedule; and any property or liability so specified shall accordingly be the property or liability of Guernsey Post Limited or, as the case may be, of the States:</p> <p>Provided always that an agreement under this paragraph may not relate to a contract of employment referred to in the proviso to paragraph (g).</p>
Guernsey Telecoms Limited.	<p>That part of the undertaking of the States attributable to, conducted by or (as the case may require) entered into on behalf of the States by the States Telecommunications Board or any member, officer or servant thereof) including (without limitation) all property specified in the schedule of assets signed for the purposes of identification by the [President] of the [Board] and lodged at the Greffe with the exception of any contract of employment described in section 2(1) of the Transfer of States Undertakings (Protection of Employment) (Guernsey) Law, 2001 (as that Law applies in relation to the States Telecommunications Board):</p> <p>Provided always that –</p> <p>(a) any real property and any leasehold interest</p>

in any real property hereby transferred to Guernsey Telecoms Limited shall be vested in that company subject to the condition that it may not be sold, disposed of, assigned, charged, encumbered (by lease, sublease or otherwise) or otherwise alienated without the written consent of the [Board] as recorded by an instrument under the hand of the [President] thereof,

(b) the written consent of the [Board] referred to in paragraph (a) shall not be refused at any time if the real property or leasehold interest has, within the period of six months preceding that time, been offered for sale to the States at the open market value thereof as between a willing purchaser and a willing vendor and the States have not, within the period of four months following receipt of that offer, agreed to purchase the said property or interest at that value,

(c) in the absence of agreement between the States and Guernsey Telecoms Limited, the open market value of the said property or interest shall be determined for the purposes of paragraph (b) by a single arbitrator,

(d) the provisions of the Arbitration (Guernsey) Law, 1982 shall apply to any arbitration

under paragraph (c); and for the purposes of that Law an arbitration agreement shall be deemed to exist between the States and Guernsey Telecoms Limited,

- (e) the condition referred to in paragraph (a) may be registered by the States against the real property referred to in that paragraph in the Livre des Hypothèques, Actes de Cour et Obligations held at the Greffe, and
- (f) whether or not the said condition is so registered, any sale, disposal, assignment, charging, encumbering (by lease, sublease or otherwise) or other alienation of any real property or leasehold interest in contravention of the condition shall be void,
- (g) if it appears to the [Board] expedient to do so for the purpose of removing any difficulties or uncertainties arising from the operation of Part IV of this Ordinance or of this Schedule, it may by order direct that any property or liability specified in the order shall, with effect from such date as may be specified in the order (not being earlier than the date of the commencement of this Ordinance in respect of Guernsey Telecoms Limited), be deemed to have been or not to have been transferred to and vested in Guernsey
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Telecoms Limited by Part IV of this Ordinance and by this Schedule; and any property or liability so specified shall accordingly be the property or liability of Guernsey Telecoms Limited or, as the case may be, of the States^j:

Provided always that an order under this paragraph may not relate to a contract of employment described in section 2(1) of the Transfer of States Undertakings (Protection of Employment) (Guernsey) Law, 2001 (as that Law applies in relation to the States Telecommunications Board),

- (h) at any time before the expiration of 12 months from the date of commencement of this Ordinance in respect of Guernsey Telecoms Limited, the States (acting by and through the [Board]) and Guernsey Telecoms Limited may, subject to the provisions of any order under paragraph (g), agree in writing that, with effect from such date as may be specified in the agreement (not being earlier than the said date of commencement), any property or liability specified in the agreement shall be deemed to have been or not to have been transferred to and vested in

^j See the States Trading Companies (Bailiwick of Guernsey) (Exemption of Property) Order, 2001.

	<p>Guernsey Telecoms Limited by Part IV of this Ordinance and by this Schedule; and any property or liability so specified shall accordingly be the property or liability of Guernsey Telecoms Limited or, as the case may be, of the States:</p> <p>Provided always that an agreement under this paragraph may not relate to a contract of employment referred to in the proviso to paragraph (g).</p>
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NOTES

In Schedule 2, the words "President" and "Board" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 2, Schedule 1, paragraph 15(b), Schedule 2, Part 9 and section 5(1), Schedule 3, paragraph 12, with effect from 1st May, 2016.⁵

The following Orders have been made under Schedule 2:

States Trading Companies (Bailiwick of Guernsey) (Exemption of Property) Order, 2001;

States Trading Companies (Bailiwick of Guernsey) (Exemption of Property) (No. 2) Order, 2001.

In accordance with the provisions of the Arbitration (Guernsey) Law, 2016, section 80(1), with effect from 12th December, 2016, the provisions of that Law apply to every arbitration under a Guernsey enactment (a "statutory arbitration"), subject to, first, the exceptions in section 80(2) and, second, the adaptations and exclusions specified in sections 81 to 83 of the 2016 Law.

1 The words "President" and "Vice-President" were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(b), Schedule 2, paragraph 1(b), with effect from 6th May, 2004.

2 The words "States' Trading Supervisory Board" were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(b), Schedule 2, paragraph 1(b), with effect from 6th May, 2004.

3 The words "States' Trading Supervisory Board" were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(b), Schedule 2, paragraph 1(b), with effect from 6th May, 2004.

4 The functions, rights and liabilities of the Treasury and Resources Department and its Minister arising under or by virtue of this Ordinance were previously transferred to and vested in them, respectively, from the Advisory and Finance Committee and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 1(b), Schedule 2, paragraph 1(b), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

5 The word "President" was previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(b), Schedule 2, paragraph 1(b), with effect from 6th May, 2004.