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The Terrorism and Crime (Bailiwick of Guernsey) (Amendment) Ordinance, 2007

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THE STATES, in pursuance of their Resolutions of 28 September, 2005^a, 27th July, 2006^b and 12th December, 2007^c, and in exercise of the powers conferred on them by sections 81A and 82 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002^d and all other powers enabling them in that behalf, hereby order:-

Amendment of the Terrorism Law.

1. (1) The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 ("**the Law**") is amended as follows.

(2) In section 1 ("Terrorism: interpretation."), in paragraph (b), after the word "government" insert "or an international organisation".

(3) For section 12 ("Disclosure of information: duty of persons not connected with Financial Services Businesses."), substitute the following section

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"Failure to disclose knowledge or suspicion etc. of terrorist financing- non financial services businesses.

12. (1) A person commits an offence if each of the following conditions is satisfied.

^a Article XI of Billet d'État No. XIV of 2005.

^b Article XXIV of Billet d'État No. XIII of 2006.

^c Article I of Billet d'État No. XXVI of 2007.

^d Order in Counsel No. XVI of 2002 as amended by No. XIII of 2006.

(2) The first condition is that he -

(a) knows or suspects, or

(b) has reasonable grounds for knowing or suspecting,

that another person is engaged in terrorist financing.

(3) The second condition is that the information or other matter -

(a) on which his knowledge or suspicion is based, or

(b) which gives reasonable grounds for such knowledge or suspicion,

came to him in the course of the business of a non financial services business.

(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

(5) The required disclosure is a disclosure of the information or other matter to a police officer.

(6) But a person does not commit an offence under this

section if-

- (a) he does not know or suspect that another person is engaged in terrorist financing and he has not been provided by his employer with any training required by regulations made under section 49A of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,
- (b) if paragraph (a) does not apply, the person was in employment at the time in question and he disclosed the information or other matter to the appropriate person in accordance with any procedure established by his employer for the making of such disclosures,
- (c) he has some other reasonable excuse for not disclosing the information or other matter, or
- (d) he is a professional legal adviser and the information or other matter came to him in privileged circumstances.

(7) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant rules or guidance which were at the time concerned -

- (a) made or issued by the Guernsey Financial Services Commission under section 15 of the

Disclosure (Bailiwick of Guernsey) Law, 2007
or any other enactment, and

- (b) published in a manner it approved as appropriate in its opinion to bring the rules or guidance to the attention of persons likely to be affected by it.

(8) Information or another matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him -

- (a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,
- (b) by (or by a representative of) a person seeking legal advice from the adviser, or
- (c) by a person in connection with legal proceedings or contemplated legal proceedings.

(9) But subsection (8) does not apply to information or another matter which is communicated or given with a view to furthering a criminal purpose.

(10) A disclosure to a police officer does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise."

- (4) In section 13 ("Disclosure of information: permission.") -
- (a) in the heading, after the word "information" insert "relating to terrorist property".
 - (b) subsection (2) is repealed,
 - (c) in subsection (3), for "Subsections (1) and (2)" substitute "Subsection (1)", and
 - (d) in subsection (4) -
 - (i) in paragraph (b) -
 - (A) for "kinds" substitute "kind", and
 - (B) the words "and section 12(2)" are repealed, and
 - (ii) for "subsections (1) and (2)" substitute "subsection (1)".

(5) For sections 15 ("Failure to disclose: financial services businesses.") and 16 ("Protected disclosures.") substitute the following sections -

"Failure to disclose knowledge or suspicion etc. of terrorist financing - financial services businesses.

15. (1) A person commits an offence if each of the following conditions is satisfied.

(2) The first condition is that he -

(a) knows or suspects, or

(b) has reasonable grounds for knowing or suspecting,

that another person is engaged in terrorist financing.

(3) The second condition is that the information or other matter -

(a) on which his knowledge or suspicion is based, or

(b) which gives reasonable grounds for such knowledge or suspicion,

came to him in the course of the business of a financial services business.

(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

(5) The required disclosure is a disclosure of the information or other matter -

(a) to a nominated officer or a police officer,

(b) in the form and manner (if any) prescribed for the purposes of this subsection by regulations under section 15C.

(6) But a person does not commit an offence under this section if-

(a) he has a reasonable excuse for not disclosing the information or other matter,

(b) he is a professional legal adviser and the information or other matter came to him in privileged circumstances, or

(c) subsection (7) applies to him.

(7) This subsection applies to a person if -

(a) he does not know or suspect that another person is engaged in terrorist financing, and

(b) he has not been provided by his employer with such training as is required by regulations made under section 49 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.

(8) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant rules or guidance which were at the time concerned -

- (a) made or issued by the Guernsey Financial Services Commission under section 15 of the Disclosure (Bailiwick of Guernsey) Law, 2007 or any other enactment, and
- (b) published in a manner it approved as appropriate in its opinion to bring the rules or guidance to the attention of persons likely to be affected by it.

(9) A disclosure to a nominated officer is a disclosure which -

- (a) is made to a person nominated by the alleged offender's employer to receive disclosures under this section, and
- (b) is made in the course of the alleged offender's employment and in accordance with the procedure established by the employer for the purpose.

(10) For the purposes of a disclosure to a nominated officer-

- (a) references to a person's employer include any body, association or organisation (including a voluntary organisation) in the course of the business of which the person carries out a

function (whether or not for gain or reward),
and

- (b) references to employment are to be construed accordingly.

(11) Information or another matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him -

- (a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,
- (b) by (or by a representative of) a person seeking legal advice from the adviser, or
- (c) by a person in connection with legal proceedings or contemplated legal proceedings.

(12) But subsection (11) does not apply to information or another matter which is communicated or given with a view to furthering a criminal purpose.

(13) A disclosure to a nominated officer or to a police officer does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

Failure to disclose knowledge or suspicion etc. of terrorist financing -

nominated officers in financial services businesses.

15A. (1) A person who is a nominated officer under section 15(9)(a) commits an offence if the conditions in subsections (2) to (4) are satisfied.

(2) The first condition is that he -

(a) knows or suspects, or

(b) has reasonable grounds for knowing or suspecting,

that another person is engaged in terrorist financing.

(3) The second condition is that the information or other matter -

(a) on which his knowledge or suspicion is based, or

(b) which gives reasonable grounds for such knowledge or suspicion,

came to him in consequence of a disclosure made under section 15.

(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

(5) The required disclosure is a disclosure of the

information or other matter -

- (a) to a police officer,
- (b) in the form and manner (if any) prescribed for the purposes of this subsection by regulations under section 15C.

(6) But a person does not commit an offence under this section if he has a reasonable excuse for not disclosing the information or other matter.

(7) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant rules or guidance which were at the time concerned -

- (a) made or issued by the Guernsey Financial Services Commission under section 15 of the Disclosure (Bailiwick of Guernsey) Law, 2007 or any other enactment, and
- (b) published in a manner it approved as appropriate in its opinion to bring the rules or guidance to the attention of persons likely to be affected by it.

(8) A disclosure to a police officer does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

Penalties for offences under sections 12, 15 and 15A.

15B. A person guilty of an offence under section 12, 15 or 15A is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the uniform scale or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

Power to prescribe form and manner of, and other matters concerning, disclosures.

15C. (1) The States of Guernsey Home Department may by regulations prescribe -

- (a) the form and manner in which a disclosure under section 12, 15 or 15A must be made, and
- (b) such other matters as are reasonably necessary to enable any person to whom a disclosure is made under this Law, or any other enactment, to obtain additional information.

(2) Without prejudice to the generality of the power under subsection (1), regulations made thereunder may make provision for, or concerning-

- (a) the period of time within which any additional information must be supplied by the discloser following its request,
- (b) the form and manner in which any such request must be made, and
- (c) the creation, trial (summarily or on indictment) and punishment of offences, provided that the penalties for the punishment of any such offences shall not exceed those prescribed under section 15B.

(3) A disclosure made in pursuance of a request made under regulations under subsection (1) does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

(4) For the purposes of this section -

"additional information" -

- (a) means information which is reasonably necessary to enable the person to whom any disclosure is made to decide -
 - (i) where the disclosure concerns terrorist financing, whether to start a terrorist financing investigation, or

(ii) where the disclosure concerns any other matter, whether to pass the information on so that a decision may be made as to whether to start a criminal investigation in the Bailiwick or elsewhere, and

(b) includes financial, administrative and law enforcement information,

"criminal investigation" means an investigation of any criminal conduct including an investigation of alleged or suspected criminal conduct or an investigation of whether criminal conduct has taken place,

"discloser" means the person making a disclosure under any provision referred to in subsection (1)(a), and

"a terrorist financing investigation" is an investigation into whether a person has engaged in terrorist financing."

(6) In section 40 ("Disclosure of information, etc."), in subsection (3) for the figures and word "12 to 16" substitute "12 to 15A".

(7) In section 79 ("Interpretation.") -

(a) for the definition of **"financial services businesses"** substitute -

"financial services business" has the same meaning as in

the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999," , and

(b) insert the following definitions in the appropriate places -

"**business**" includes any trade, profession or economic activity," ,

"**information**" includes documents," ,

"**non financial services business**" is a business which is not a financial services business, including any voluntary organisation," ,

"**terrorist financing**" means doing any act which -

(a) constitutes an offence under section 8, 9, 10 or 11 and, for the purposes of this definition, the "purposes of terrorism" shall include, to the extent that they do not already do so -

(i) any attempt, conspiracy or incitement to carry out terrorism within the meaning of section 1, or

(ii) aiding, abetting, counselling or procuring the carrying out of such terrorism,

- (b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),
- (c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or
- (d) would, in the case of an act done otherwise than in the Bailiwick, constitute an offence specified in paragraph (a), (b) or (c) if done in the Bailiwick,

irrespective of the value of the property involved, and for the purposes of this definition having possession of any property shall be taken to be doing an act in relation to it, ".

(8) In section 80 ("Index of defined expressions.") -

(a) for the reference relating to the expression "Nominated officer" substitute -

"nominated officer.....section 15(9)", and

(b) insert the following references to expressions at the appropriate places -

"additional information.....section 15C(4)",

"business.....section 79",

"criminal investigation.....section 15C(4)",

"disclosersection 15C(4)",

"information.....section 79",

"non financial services business.....section 79",

"terrorist financing investigation.....section 15C(4)",

"terrorist financing.....section 79(8)".

(9) In section 82 ("General provisions as to subordinate legislation.") -

(a) for "regulation" wherever appearing, substitute "regulations",

(b) for the full stop at the end of subsection (1)(b) substitute a semi-colon,

(c) after subsection (1)(b) insert -

"and

(c) in the case of regulations, shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but

without prejudice to anything done under them
or to the making of any new regulations.", and

- (d) in subsection (5), for the words "subsection (4) or (5)"
substitute "subsection (3) or (4)".

(10) In paragraph 1(1)(d) of Schedule 2 ("FORFEITURE
ORDERS), for the word and figures "section 23(7)" substitute "section 18(7)".

Interpretation.

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

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

Extent.

3. This Ordinance has effect throughout the Bailiwick of Guernsey.

Citation.

4. This Ordinance may be cited as the Terrorism and Crime (Bailiwick
of Guernsey) (Amendment) Ordinance, 2007.

Commencement.

5. This Ordinance shall come into force on the 15th December 2007.

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