

Island of



Guernsey

## Ordinance of the States

**XVI**  
**2014**

---

Made ..... 28th May, 2014

Coming into Operation ..... 28th May, 2014

---

## The Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2014



## **The Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2014**

THE STATES, in pursuance of their Resolution of the 15<sup>th</sup> May, 2014<sup>a</sup>, and in exercise of the powers conferred on them by section 14 of the Disclosure (Bailiwick of Guernsey) Law, 2007<sup>b</sup> and all other powers enabling them in that behalf, hereby order:-

### **Amendment of sections 1 to 3 of the Law.**

1. For sections 1 to 3 of the Law, substitute the following sections -

#### **"Obligation to disclose knowledge or suspicion etc. of money laundering - financial services businesses.**

1. (1) A person must make a required disclosure if the conditions in subsections (2) and (3) 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 money laundering or that certain property is or is derived from the proceeds of criminal conduct.

---

<sup>a</sup> Article IX of Billet d'État No. IX of 2014 (Volume 2).

<sup>b</sup> Order in Council No. XVI of 2007; amended by Recueil d'Ordonnances Tome XXXIII, pp. 161 and 472; Ordinance Nos. XIV, XIX and XXXVII of 2010.

(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) Any person who fails to make a required disclosure as soon as is practicable after the information or other matter comes to him commits an offence.

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

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

(b) in the form and manner (if any) prescribed for the purposes of this subsection by regulations under section 11.

(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 money laundering or that certain property is or represents the proceeds of criminal conduct, 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, guidance or instructions which were at the time concerned -

(a) made or issued by the Commission under section 15 or any other enactment, and

(b) published in a manner it approved as appropriate in its opinion to bring the rules,

guidance or instructions to the attention of persons likely to be affected by them.

(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 made in good faith to a nominated officer or to a prescribed police officer does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

(14) In subsection (13) "**good faith**" means that the person making the disclosure -

- (a) knows or suspects, or
- (b) has reasonable grounds for knowing or suspecting,

that the person in respect of whom the disclosure is made is engaged in

money laundering.

**Obligation to disclose knowledge or suspicion etc. of money laundering - nominated officers in financial services businesses.**

2. (1) A person who is a nominated officer under section 1(9)(a) must make a required disclosure if the conditions in subsections (2) and (3) 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 money laundering or that certain property is or is derived from the proceeds of any person's criminal conduct.

(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 1.

(4) A nominated officer who fails to make a required

disclosure as soon as is practicable after the information or other matter comes to him commits an offence.

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

- (a) to a prescribed police officer,
- (b) in the form and manner (if any) prescribed for the purposes of this subsection by regulations under section 11.

(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, guidance or instructions which were at the time concerned -

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

(8) A disclosure made in good faith to a prescribed police officer does not contravene any obligation as to confidentiality or other

restriction on the disclosure of information imposed by statute, contract or otherwise.

(9) In subsection (8) "**good faith**" means that the person making the disclosure -

- (a) knows or suspects, or
- (b) has reasonable grounds for knowing or suspecting,

that the person in respect of whom the disclosure is made is engaged in money laundering or that certain property is or is derived from the proceeds of criminal conduct.

**Obligation to disclose knowledge or suspicion etc. of money laundering - non financial services businesses.**

3. (1) A person must make a required disclosure if both of the following conditions 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 money laundering or that certain property is or is derived from the proceeds of criminal conduct.

(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) A person who fails to make a required disclosure as soon as is practicable after the information or other matter comes to him commits an offence.

(5) A required disclosure is a disclosure of the information or other matter to a prescribed 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 money laundering or that certain property is or is derived from the proceeds of any person's criminal conduct 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, guidance or instructions which were at the time concerned -

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

(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 made in good faith to a prescribed police officer does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

(11) In subsection (10) "**good faith**" means that the person making the disclosure -

- (a) knows or suspects, or
- (b) has reasonable grounds for knowing or suspecting,

that the person in respect of whom the disclosure is made is engaged in

money laundering or that certain property is or is derived from the proceeds of any person's criminal conduct."

**Amendment of section 3A of the Law.**

2. In section 3A(1)(a) of the Law, immediately after the words "money laundering", insert "or that certain property is or is derived from the proceeds of any person's criminal conduct".

**Amendment of section 4 of the Law.**

3. In section 4 of the Law -

(a) immediately after subsection (2), insert the following subsection -

"(2A) Subsection (1) does not apply to a disclosure made -

(a) by the client of a professional legal adviser to that adviser in connection with the seeking of legal advice, or

(b) to any person -

(i) in contemplation of legal proceedings, and

(ii) for the purposes of those proceedings.",

(b) in subsection (3) for "Subsection (2) does", substitute "Subsections (2) and 2(A) do".

**Amendment of section 6 of the Law.**

4. In section 6(1) of the Law -
- (a) immediately before the words "a police officer", insert "Her Majesty's Procureur or",
  - (b) in paragraph (c), delete "or" where it appears at the end of the paragraph,
  - (c) in paragraph (d), for the full stop substitute a comma, and
  - (d) immediately after paragraph (d), insert the following paragraphs -
    - "(e) any civil forfeiture investigations within the meaning of section 18 of the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007, or
    - (f) any proceedings under that Law or under corresponding legislation in force in a country designated under section 53 of that Law."

**Amendment of section 8 of the Law.**

5. In section 8 of the Law -
- (a) in subsection (1), immediately before the words "a police officer", insert "Her Majesty's Procureur or", and

- (b) in subsection (2) -
  - (i) in paragraph (d), delete "or", and
  - (ii) immediately after paragraph (d), insert the following paragraph -
    - "(da) the conduct of -
      - (i) any civil forfeiture investigations within the meaning of section 18 of the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007, or
      - (ii) any proceedings under that Law or under corresponding legislation in force in a country designated under section 53 of that Law, or".

**Insertion of Part IVA.**

6. Immediately before Part V of the Law, insert the following Part -

"PART IVA

DISCLOSURE OF INFORMATION RELATING TO SANCTIONS

**Disclosure relating to international sanctions.**

**10A.** (1) No obligation of secrecy or confidence or other restriction on the disclosure of information to which any person may be subject, whether arising by statute, contract or otherwise, is contravened by

reason of the disclosure by that person or by any of that person's officers, servants or agents of any information or document for any of the purposes set out in subsection (2).

- (2) The purposes are any of the following -
- (a) the implementation of, compliance with or enforcement of international sanctions measures within the Bailiwick,
  - (b) the prevention, detection or investigation of breaches of international sanctions measures that have been given effect within the Bailiwick,
  - (c) the enabling of any person or body within the Bailiwick, whose functions include any of the matters set out at paragraphs (a) and (b), to carry out those functions,
  - (d) the enabling of any person or body in another country or territory, with similar functions to those set out at paragraphs (a) and (b), to carry out those functions.

(3) Nothing in this section prejudices any power to disclose information which exists apart from this section."

**Amendment of section 11 of the Law.**

7. In section 11 of the Law -

- (a) in subsection (1)(b), immediately after the words "additional information", insert "from any person", and
- (b) in subsection (2)(a), immediately after the words "by the discloser", insert "or any other person".

**Interpretation**

8. In this Ordinance, "**the Law**" means the Disclosure (Bailiwick of Guernsey) Law, 2007, as amended.

**Extent.**

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

**Citation.**

10. This Ordinance may be cited as the Disclosure (Bailiwick of Guernsey) (Amendment) Ordinance, 2014.

**Commencement.**

11. This Ordinance shall come into force on the 28<sup>th</sup> May, 2014.



**Copies may be purchased from  
Her Majesty's Greffier, Royal Court House, Guernsey.**

**PRICE £8.00**

Printed by Colour Monster Printshop, Lowlands Building, Lowlands Industrial Estate, Guernsey GY3 5XH.