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The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018

The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018

THE STATES, in pursuance of their Resolution of the 26th September, 2018^a, and in exercise of the powers conferred upon them by sections 53A and 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^b and other powers enabling it them that behalf, hereby order:-

Amendment of the Law.

1. (1) The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 ("**the Law**") is further amended as follows.

(2) At the start of section 49(1), insert "Subject to subsection (1A),".

(3) After section 49(1), insert –

"(1A) For the avoidance of doubt, a business is a financial services business only in respect of the businesses specified in Schedule 1, and only to the extent that it conducts one or more of those businesses."

^a Article VI of Billet d'État No. XX of 2018.

^b Order in Council No. VIII of 1999; as amended by Order in Council No. II of 2005; No. XV of 2007; No. XIII of 2010; No. XI of 2011; Ordinance No. XXVIII of 1999; No. XII of 2002; No. XXXIII of 2003; No. XLVII of 2007; No. XXXVII of 2008; No. XVI of 2010; No. XXXIV of 2010; No. XVII of 2014; No. IX of 2016; No. XVIII of 2007; G.S.I. No. 33 of 2007; G.S.I. Nos. 48 and 73 of 2008; G.S.I. No. 12 of 2010; G.S.I. No. 14 of 2013; G.S.I. No. 45 of 2016; and certain sections of the Law are modified in their application to external confiscation orders by Ordinance XXXIII of 1999.

(4) Subsections (3) to (11) of section 49 are repealed.

(5) At the start of section 49A(1), insert "Subject to subsection (1A),".

(6) After section 49A(1), insert –

"(1A) For the avoidance of doubt, a business is a relevant business only in respect of the businesses specified in Schedule 2, and only to the extent that it conducts one or more of those businesses."

(7) Subsections (3) to (11) of section 49A are repealed.

(8) After section 49A, insert –

"Specified businesses, and registration

Specified businesses, etc.

49AA. (1) Schedule 3 (Specified businesses) has effect.

(2) Schedule 4 (Registration of financial services businesses) has effect.

(3) Schedule 5 (Registration of prescribed businesses) has effect.

(4) The Committee may by regulation amend Schedules 3, 4 and 5 to make further or different provision in respect of the duties and requirements to be complied with by financial services and prescribed

businesses for the purposes of forestalling and preventing money laundering, and for related purposes.

(5) A disclosure made to a police officer or to any other person or body under the provisions of Schedules 3, 4 and 5 –

(a) shall not be treated as a breach of any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise, and

(b) does not involve the person making it in any liability of any kind to any person by reason of such disclosure.

(6) The Commission may make rules, instructions and guidance for the purposes of Schedules 3, 4 and 5.

(7) Any court shall take the rules, instructions and guidance into account in determining whether or not any person has complied with those schedules.

(8) Section 54 (general provisions as to subordinate legislation) has effect in relation to rules, instructions and guidance made by the Commission as if references in that section to an Ordinance and to the States were references respectively to rules, instructions and guidance and to the Commission.".

(9) In sections 49B and 49C, wherever it appears for "regulations

under section 49 and any rules, instructions and guidance of the Commission under that section" substitute "Schedules 3, 4 and 5 and any rules, instructions and guidance of the Commission under those Schedules".

(10) In section 54(1)(c), after "in the case of regulations" insert "(other than regulations made under section 49AA(4))", and after section 54(1) insert–

"(1A) Regulations made under section 49AA(4) (amendments to Schedules 3, 4 and 5) shall not have effect unless and until approved by a resolution of the States."

(11) In paragraph 23 of Schedule 1, after "Carrying on "**regulated activities**" as defined in the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000", insert "(other than acting as a director of a company which has been declared to be a registered collective investment scheme under section 8 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, or as a director of a subsidiary company of such a company within the meaning of Schedule 2 to the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000)".

(12) After Schedule 2, insert the schedules at Schedules 1, 2 and 3 as Schedules 3, 4 and 5 respectively.

Revocation.

2. The Criminal Justice (Proceeds of Crime) (Financial Services

Businesses) (Bailiwick of Guernsey) Regulations 2007^c and the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations 2008^d are hereby revoked.

Transitional and saving provisions.

3. (1) Anything done or having effect as if done under or for the purposes of any provision repealed or revoked by this Ordinance has effect as if done under or for the purposes of any corresponding provision of this Ordinance.

(2) Where a person commits an offence under a provision repealed by this Ordinance –

- (a) before the commencement of this Ordinance, or
- (b) partly before and partly after the commencement of this Ordinance,

that person shall be charged and proceeded against under that provision as if it had not been repealed or revoked.

^c G.S.I. No. 33 of 2007; as amended by Order in Council No. XV of 2008; No. XI of 2011; No. XXVII of 2017; Alderney Ordinance No. III of 2017; Sark Ordinance No. X of 2017; G.S.I. No. 48 of 2008; G.S.I. No. 30 of 2009; G.S.I. No. 13 of 2010; G.S.I. No. 58 of 2010; G.S.I. No. 13 of 2013; G.S.I. No. 20 of 2013; and G.S.I. No. 47 of 2014.

^d G.S.I. No. 49 of 2008; as amended by Order in Council No. XI of 2011; G.S.I. No. 72 of 2008; G.S.I. No. 31 of 2009; G.S.I. No. 86 of 2009; G.S.I. No. 14 of 2010; G.S.I. No. 57 of 2010; G.S.I. No. 113 of 2010; G.S.I. No. 69 of 2012; G.S.I. No. 15 of 2013; G.S.I. No. 21 of 2013; 66 of 2013; G.S.I. No. 46 of 2014; G.S.I. No. 95 of 2014; G.S.I. No. 113 of 2015; G.S.I. No. 80 of 2016; G.S.I. and No. 110 of 2017.

(3) Any reference in an enactment to a provision revoked by this Ordinance shall be construed as a reference to the equivalent provision in the Schedules to the Law inserted by this Ordinance.

Citation and commencement.

4. (1) This Ordinance may be cited as the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018, and shall come into force on 31st March, 2019.

SCHEDULE 1

Section 1(11).

"SCHEDULE 3
SPECIFIED BUSINESSES

ARRANGEMENT OF PARAGRAPHS

PART I
INTRODUCTORY PROVISIONS AND RISK ASSESSMENT

1. Application.
2. General duty to understand, and assess and mitigate, risks.
3. Duty to carry out risk assessments.

PART II
CUSTOMER DUE DILIGENCE ETC.

4. Customer due diligence.
5. Enhanced customer due diligence.
6. Customer due diligence for low risk relationships.
7. Timing of identification and verification.
8. Accounts and shell banks.
9. Non-compliance with customer due diligence measures etc.
10. Introduced business.

PART III
ENSURING COMPLIANCE AND RECORD KEEPING

11. Monitoring transactions and other activity.
12. Reporting suspicion.
13. Employee screening and training.
14. Record-keeping.
15. Ensuring compliance, corporate responsibility and related requirements.

PART IV
DESIGNATION OF SUPERVISORY AUTHORITY

16. Guernsey Financial Services Commission.

PART V
MISCELLANEOUS

17. Notification etc: financial services businesses.
18. Extension of sections 49B and 49C: prescribed businesses.
19. Offences as to false and misleading information.
20. Offences: general.
21. Interpretation.
22. Meaning of "beneficial owner".

SCHEDULE 3
SPECIFIED BUSINESSES

PART I
INTRODUCTORY PROVISIONS AND RISK ASSESSMENT

Application.

1. (1) Subject to subparagraph (2), this Schedule applies to any business that is a financial services business or a prescribed business; and a business to which this Schedule applies is referred to in this Schedule as a specified business.

(2) This Schedule does not apply to a prescribed business where -

(a) the total turnover of the person carrying on the prescribed business in respect of the prescribed business does not exceed £50,000 per annum,

(b) the prescribed business -

(i) if it is an estate agent, does not hold deposits, or

(ii) if it is a prescribed business other than an estate agent, does not carry out occasional transactions,

(c) the services of the prescribed business are provided only to customers or clients resident in the Bailiwick, and

- (d) the funds received by the prescribed business are drawn on a bank operating from or within the Bailiwick.

General duty to understand, and assess and mitigate, risks.

- 2. A specified business must –
 - (a) understand its money laundering and terrorist financing risks, and
 - (b) have in place effective policies, procedures and controls to –
 - (i) identify,
 - (ii) assess,
 - (iii) mitigate,
 - (iv) manage, and
 - (v) review and monitor,

those risks in a way that is consistent with the requirements of this Schedule, the relevant enactments, the requirements of the Handbook, and the NRA; and this Schedule shall be construed consistently with this duty.

Duty to carry out risk assessments.

- 3. (1) Without prejudice to the generality of the duty under

paragraph 2, a specified business must –

- (a) carry out and document a suitable and sufficient money laundering business risk assessment, and a suitable and sufficient terrorist financing business risk assessment, which are specific to the specified business, and
- (b) regularly review its business risk assessments, at a minimum annually and more frequently when changes to the business of the specified business occur, so as to keep them up to date and, where, as a result of that review, changes to the business risk assessments are required, it must make those changes.

(2) In carrying out its business risk assessments under subparagraph (1) the business must consider all relevant risk factors before determining –

- (a) the level of overall risk to the business,
 - (b) the type and extent of the risks that the business is willing to accept in order to achieve its strategic objectives (its "**risk appetite**"), and
 - (c) the appropriate level and type of mitigation to be applied.
- (3) The business risk assessments must be appropriate to the

nature, size and complexity of the business, and be in respect of –

- (a) customers, and the beneficial owners of customers,
 - (b) countries and geographic areas, and
 - (c) products, services, transactions and delivery channels (as appropriate), and in particular in respect of the money laundering or terrorist financing risks that may arise in relation to –
 - (i) the development of new products and new business practices, before such products are made available and such practices adopted, and
 - (ii) the use of new or developing technologies for both new and pre-existing products, before such technologies are used and adopted.
- (4) A specified business must -
- (a) prior to the establishment of a business relationship or the carrying out of an occasional transaction, undertake a risk assessment of that proposed business relationship or occasional transaction, and
 - (b) regularly review any risk assessment carried out under subparagraph (a) so as to keep it up to date and, where changes to that risk assessment are required, it must

make those changes.

(5) When undertaking a risk assessment under subparagraph (4)(a) or reviewing a risk assessment under subparagraph (4)(b), a specified business must –

- (a) take into account its risk appetite and risk factors relating to the type or types of customer (and the beneficial owners of the customer), country or geographic area, and product, service, transaction and delivery channel that are relevant to the business relationship or occasional transaction in question, and
- (b) understand that such risk factors, and any other risk factors, either singly or in combination, may increase or decrease the potential risk posed by the business relationship or occasional transaction.

(6) A specified business must –

- (a) have in place policies, procedures and controls approved by its board that are appropriate and effective, having regard to the assessed risk, to enable it to mitigate and manage –
 - (i) risks identified in the business risk assessments and in risk assessments undertaken under subparagraph 4(a), and

- (ii) risks relevant, or potentially relevant, to the business identified in the NRA (which risks must be incorporated into the business risk assessments),
 - (b) regularly review and monitor the implementation of those policies, controls and procedures, and enhance them if such enhancement is necessary or desirable for the mitigation and management of those risks, and
 - (c) take additional measures to manage and mitigate higher risks identified in the business risk assessments and in risk assessments undertaken under subparagraph 4(a).
- (7) A specified business must have regard to -
- (a) any relevant rules and guidance in the Handbook,
 - (b) any relevant notice or instruction issued by the Commission under this Law, and
 - (c) the NRA,

in determining, for the purposes of this Schedule, what constitutes a high or low risk, what its risk appetite is, and what constitute appropriate measures to manage and mitigate risks.

- (8) A specified business must comply with subparagraphs (1)(a)

and (6)(a) -

- (a) as soon as reasonably practicable after 31st March 2019,
or
- (b) in the case of a specified business which only becomes
such on or after 31st March 2019, as soon as reasonably
practicable after it becomes such a business,

and subparagraphs (a) and (b) shall be construed consistently with the provisions of the Handbook.

(9) Without prejudice to subparagraph (8), until a specified business has complied with subparagraph (6)(a) it must continue to maintain the policies, procedures and controls it was required to establish and maintain under the FSB Regulations and the PB Regulations.

PART II

CUSTOMER DUE DILIGENCE ETC.

Customer due diligence.

4. (1) A specified business shall, subject to the following provisions of this Schedule, ensure that the steps in subparagraph (3) are carried out -

- (a) when carrying out the activities in subparagraphs (2)(a) and (b) and in the circumstances in subparagraphs (2)(c) and (d), and
- (b) in relation to a business relationship established prior

to the coming into force of this Schedule -

- (i) in respect of which there is maintained an anonymous account or an account in a fictitious name, as soon as possible after the coming into force of this Schedule and in any event before such account is used again in any way, and
- (ii) where it does not fall within subparagraph (i) and to the extent that such steps have not already been carried out, at appropriate times on a risk-sensitive basis.

(2) The activities and circumstances referred to in subparagraph (1) are -

- (a) establishing a business relationship,
- (b) carrying out an occasional transaction,
- (c) where the specified business knows or suspects or has reasonable grounds for knowing or suspecting -
 - (i) that, notwithstanding any exemptions or thresholds pursuant to this Schedule, any party to a business relationship is engaged in money laundering or terrorist financing, or
 - (ii) that it is carrying out a transaction on behalf of

a person, including a beneficial owner, who is engaged in money laundering or terrorist financing, and

- (d) where the specified business has doubts about the veracity or adequacy of previously obtained identification data.
- (3) The steps referred to in subparagraph (1) are that –
- (a) the customer shall be identified and the identity of the customer verified using identification data,
 - (b) any person purporting to act on behalf of the customer shall be identified and that person's identity and authority to so act shall be verified,
 - (c) the beneficial owner shall be identified and reasonable measures shall be taken to verify such identity using identification data and such measures shall include, in the case of a customer which is a legal person or legal arrangement, measures to understand the ownership and control structure of the customer,
 - (d) a determination shall be made as to whether the customer is acting on behalf of another person and, if the customer is so acting, reasonable measures shall be taken to identify that other person and to obtain sufficient identification data to verify the identity of

that other person,

- (e) the purpose and intended nature of each business relationship and occasional transaction shall be understood, and information shall be obtained as appropriate to support this understanding, and
- (f) a determination shall be made as to whether the customer or beneficial owner is a politically exposed person, and, if so, whether he or she is a foreign politically exposed person, a domestic politically exposed person or a person who is or has been entrusted with a prominent function by an international organisation.

(4) A specified business is not required to identify any shareholder or beneficial owner in relation to –

- (a) a customer, and
- (b) a person which ultimately controls a customer,

that is a company listed on a recognised stock exchange within the meaning of the Beneficial Ownership (Definition) Regulations, 2017^e, or a majority owned subsidiary of such a company.

^e G.S.I. No. 38 of 2017; as amended by G.S.I. No. 51 of 2017; G.S.I. No. 99 of 2017; and G.S.I. No. 121 of 2017.

- (5) Where a specified business –
- (a) forms a suspicion of money laundering or terrorist financing by a customer or other person, and
 - (b) reasonably believes that carrying out the steps in subparagraph (3), paragraph 5(3) or paragraph 11 would tip off that customer or person,

it shall not carry out those steps, but shall instead make a disclosure pursuant to Part I of the Disclosure Law, or section 15 or 15A, or section 12 (as appropriate) of the Terrorism Law.

(6) For the avoidance of doubt, a specified business must not treat a business relationship or occasional transaction as low risk for all money laundering and terrorist financing purposes solely because the business relationship or occasional transaction was assessed to be low risk.

(7) A specified business must have regard to any relevant rules and guidance in the Handbook in determining, for the purposes of this paragraph and paragraph 5, what constitutes reasonable measures.

Enhanced customer due diligence.

5. (1) Where a specified business is required to carry out customer due diligence, it must also carry out enhanced customer due diligence in relation to high risk business relationships and occasional transactions, including, without limitation -

- (a) a business relationship or occasional transaction in which the customer or any beneficial owner is a foreign politically exposed person,
- (b) where the specified business is a financial services business, a business relationship which is -
 - (i) a correspondent banking relationship, or
 - (ii) similar to such a relationship in that it involves the provision of services, which themselves amount to financial services business or facilitate the carrying on of such business, by one financial services business to another,
- (c) a business relationship or an occasional transaction -
 - (i) where the customer or beneficial owner has a relevant connection with a country or territory that -
 - A. provides funding or support for terrorist activities, or does not apply (or insufficiently applies) the Financial Action Task Force Recommendations, or
 - B. is a country otherwise identified by the Financial Action Task Force as a country for which such measures are appropriate,

- (ii) which the specified business considers to be a high risk relationship, taking into account any notices, instructions or warnings issued from time to time by the Commission and having regard to the NRA,
- (d) a business relationship or an occasional transaction which has been assessed as a high risk relationship, and
- (e) a business relationship or an occasional transaction in which the customer, the beneficial owner of the customer, or any other legal person in the ownership or control structure of the customer, is a legal person that has bearer shares or bearer warrants.

(2) A specified business must also carry out enhanced measures in relation to business relationships and occasional transactions, whether otherwise high risk or not, which involve or are in relation to –

- (a) a customer who is not resident in the Bailiwick,
- (b) the provision of private banking services,
- (c) a customer which is a legal person or legal arrangement used for personal asset holding purposes, or
- (d) a customer which is –

- (i) a legal person with nominee shareholders, or
 - (ii) owned by a legal person with nominee shareholders.
- (3) In subparagraphs (1) and (2) –
- (a) **"enhanced customer due diligence"** means -
 - (i) obtaining senior management approval for establishing a business relationship or undertaking an occasional transaction,
 - (ii) obtaining senior management approval for, in the case of an existing business relationship with a foreign politically exposed person, continuing that relationship,
 - (iii) taking reasonable measures to establish and understand the source of any funds and of the wealth of -
 - (A) the customer, and
 - (B) the beneficial owner, where the beneficial owner is a politically exposed person,

- (iv) carrying out more frequent and more extensive ongoing monitoring, including increasing the number and timing of controls applied and selecting patterns of activity or transactions that need further examination, in accordance with paragraph 11, and

- (v) taking one or more of the following steps as would be appropriate to the particular business relationship or occasional transaction-
 - (A) obtaining additional information about the customer, such as the type, volume and value of the customer's assets and additional information about the customer's beneficial owners,

 - (B) verifying additional aspects of the customer's identity,

 - (C) obtaining additional information to understand the purpose and intended nature of each business relationship and occasional transaction, and

 - (D) taking reasonable measures to establish and understand the source of wealth of beneficial owners not falling within subparagraph (iii), and

- (b) "**enhanced measures**" means the carrying out of appropriate and adequate enhanced measures in relation to a business relationship or occasional transaction, to mitigate and manage the specific higher risk of money laundering and terrorist financing resulting from the matters listed in subparagraph (2) that are relevant to that relationship or transaction.

(4) Subject to subparagraph (5), in this Schedule "**politically exposed person**" means –

- (a) a natural person who has, or has had at any time, a prominent public function, or who has been elected or appointed to such a function, including, without limitation –
- (i) heads of state or heads of government,
 - (ii) senior politicians and other important officials of political parties,
 - (iii) senior government officials,
 - (iv) senior members of the judiciary,
 - (v) senior military officers, and
 - (vi) senior executives of state owned body

corporates,

(and such a person shall be referred to as a "**foreign politically exposed person**" unless he or she holds or has held or has been elected or appointed to the prominent public function in question in respect of the Bailiwick, in which case he or she shall be referred to as a "**domestic politically exposed person**"),

- (b) a person who is, or who has been at any time, entrusted with a prominent function by an international organisation,
- (c) an immediate family member of a person referred to in (a) or (b) including, without limitation, a spouse, partner, parent, child, sibling, parent-in-law or grandchild of such a person and in this subparagraph "**partner**" means a person who is considered by the law of the country or territory in which the relevant public function is held as being equivalent to a spouse, or
- (d) a close associate of such a person, including, without limitation -
 - (i) a person who is widely known to maintain a close business relationship with such a person, or
 - (ii) a person who is in a position to conduct

substantial financial transactions on behalf of such a person.

(5) A specified business may treat a domestic politically exposed person as not being a politically exposed person five years after the person ceased to be entrusted with a public function if the senior management of the business has documented that the business is satisfied that –

- (a) it understands the source of the funds within the business relationship or occasional transaction, and
- (b) there is no reason to continue to treat the person as a politically exposed person.

(6) Subject to subparagraph (9), a specified business may treat a person falling within subparagraph (4)(b) as not being a politically exposed person seven years after the person ceased to be entrusted with a prominent function by an international organisation if the senior management of the business has documented that the business is satisfied that –

- (a) it understands the source of the funds within the business relationship or occasional transaction, and
- (b) there is no reason to continue to treat the person as a politically exposed person.

(7) Subject to subparagraph (9), a specified business may treat any other politically exposed person as not being a politically exposed person for the purposes of this Schedule seven years after the person ceased to be entrusted with a

public function if the senior management of the business has documented that the business is satisfied that–

- (a) it has established and understands the source of the person's wealth, and that of the funds within the business relationship or occasional transaction, and
- (b) there is no reason to continue to treat the person as a politically exposed person.

(8) Subparagraphs (5) to (7) apply in respect of persons falling within subparagraphs (4)(c) and (d) (immediate family members and close associates) in respect of the person in question as they do in respect of that person.

(9) Subparagraphs (6) and (7) do not apply in respect of a head of state or a head of government, a head of an international organisation, a person with the power to direct the spending of significant sums, or persons falling within subparagraphs (4)(c) and (d) in respect of such persons.

(10) For the purposes of subparagraph 1(c), a customer or beneficial owner has a "**relevant connection**" with a country or territory if the customer or beneficial owner –

- (a) is the government, or a public authority, of the country or territory,
- (b) is a politically exposed person within the meaning of subparagraph (4) in respect of the country or territory,

- (c) is resident in the country or territory,
- (d) has a business address in the country or territory,
- (e) derives funds from –
 - (i) assets held by the customer or beneficial owner, or on behalf of the customer or beneficial owner, in the country or territory, or
 - (ii) income arising in the country or territory, or
- (f) has any other connection with the country or territory which the specified business considers, in light of that business' duties under this Schedule (including but not limited to its duties under paragraph 2), to be a relevant connection for those purposes.

(11) A specified business must have regard to any relevant rules and guidance in the Handbook in determining –

- (a) for the purposes of subparagraph (1), what constitute high risk business relationships and occasional transactions, and
- (b) for the purposes of subparagraphs (5) to (7), if there is a reason to continue to treat the person mentioned there as a politically exposed person.

Customer due diligence for low risk relationships.

6. (1) Where a specified business is required to carry out customer due diligence in relation to a business relationship or occasional transaction which has been assessed as a low risk relationship pursuant to paragraph 3(4)(a) or in accordance with the NRA, it may, subject to the following provisions of this paragraph, apply reduced or simplified customer due diligence measures.

(2) The discretion in subparagraph (1) may only be exercised -

- (a) in accordance with the requirements set out in the Handbook, and
- (b) by a specified business that complies with the requirements of paragraph 3.

(3) For the avoidance of doubt, the discretion in subparagraph (1) shall not be exercised -

- (a) where the specified business forms a suspicion that any party to a business relationship or occasional transaction or any beneficial owner is or has been engaged in money laundering or terrorist financing, or
- (b) in relation to business relationships or occasional transactions where the risk is other than low.

Timing of identification and verification.

7. (1) Identification and verification of the identity of any person or legal arrangement pursuant to paragraphs 4 to 6 must, subject to subparagraph (2)

and paragraph 4(1)(b), be carried out before or during the course of establishing a business relationship or before carrying out an occasional transaction.

(2) Verification of the identity of the customer and any of the beneficial owners may be completed following the establishment of a business relationship provided that to do so would be consistent with the risk assessment of the business relationship conducted pursuant to paragraph 3(4)(a), and -

- (a) the verification is completed as soon as reasonably practicable thereafter,
- (b) the need to do so is essential not to interrupt the normal conduct of business, and
- (c) appropriate and effective policies, procedures and controls are in place which operate so as to manage risk, including, without limitation, a set of measures, such as a limitation of the number, types and/or amount of transactions that can be performed or the monitoring of large or complex transactions being carried outside the expected norms for that business relationship.

Accounts and shell banks.

8. (1) A specified business must, in relation to all customers-
- (a) not set up or keep anonymous accounts or accounts in fictitious names, and

- (b) maintain accounts in a manner which facilitates the meeting of the requirements of this Schedule, and the relevant rules and guidance in the Handbook.
- (2) A specified business must-
- (a) not enter into, or continue, a correspondent banking relationship with a shell bank, and
 - (b) take appropriate measures to ensure that it does not enter into, or continue, a correspondent banking relationship where the respondent bank is known to permit its accounts to be used by a shell bank.
- (3) In this paragraph -
- (a) "**consolidated supervision**" means supervision by a regulatory authority of all aspects of the business of a group of bodies corporate carried on worldwide, to ensure compliance with-
 - (i) the Financial Action Task Force Recommendations, and
 - (ii) other international requirements,
- and in accordance with the Core Principles of Effective Banking Supervision issued by the Basel Committee on

Banking Supervision as revised or reissued from time to time,

- (b) "**physical presence**" means the presence of persons involved in a meaningful way in the running and management of the bank which, for the avoidance of doubt, is not satisfied by the presence of a local agent or junior staff, and
- (c) "**shell bank**" means a bank that has no physical presence in the country or territory in which it is incorporated and licensed and which is not a member of a group of bodies corporate which is subject to effective consolidated supervision.

Non-compliance with customer due diligence measures etc.

9. Where a specified business can not comply with any of paragraph 4(3)(a) to (d) or paragraph 11(1)(a) to (b) it must -

- (a) in the case of an existing business relationship, terminate that business relationship,
- (b) in the case of a proposed business relationship or occasional transaction, not enter into that business relationship or carry out that occasional transaction with the customer, and
- (c) consider whether a disclosure must be made pursuant to Part I of the Disclosure Law, or section 15 or 15A, or

section 12 (as appropriate) of the Terrorism Law.

Introduced business.

10. (1) In the circumstances set out in subparagraph (2), a specified business may accept a written confirmation of identity and other matters from an introducer in relation to the requirements of paragraph 4(3)(a) to (e) provided that -

- (a) the specified business also requires copies of identification data and any other relevant documentation on the identity of the customer and beneficial owner to be made available by the introducer to the specified business immediately upon request, and
- (b) the introducer keeps such identification data and documents.

(2) The circumstances referred to in subparagraph (1) are that the introducer -

- (a) is an Appendix C business, or
- (b) is either an overseas branch office of, or a member of the same group of legal persons or legal arrangements as, the specified business with which it is entering into the business relationship ("**receiving specified business**"), and -
 - (i) the ultimate legal person or legal arrangement

of the group of legal persons or legal arrangements of which both the introducer and the receiving specified business are members, falls within subparagraph (a), and

- (ii) the conduct of the introducer is subject to requirements to forestall, prevent and detect money laundering and terrorist financing (including the application of any appropriate additional measures to effectively handle the risk of money laundering or terrorist financing) that are consistent with those in the Financial Action Task Force Recommendations in respect of such a business (particularly Recommendations 10, 11 and 12), and the introducer has implemented a programme to combat money laundering and terrorist financing that is consistent with the requirements of Recommendation 18, and

- (iii) the conduct both of the introducer, and of the group of legal persons or legal arrangements of which both the introducer and the receiving specified business are members, is supervised or monitored for compliance with the requirements referred to in subparagraph (ii), by the Commission or an overseas regulatory authority.

(3) Notwithstanding subparagraph (1), where reliance is placed upon the introducer the responsibility for complying with the relevant provisions of paragraph 4 remains with the receiving specified business.

PART III
ENSURING COMPLIANCE AND RECORD KEEPING

Monitoring transactions and other activity.

11. (1) A specified business shall perform ongoing and effective monitoring of any business relationship, which shall include -

- (a) reviewing identification data and records to ensure they are kept up to date, accurate and relevant, and updating such data and records when they are not up to date, accurate or relevant,
- (b) scrutinising any transactions or other activity to ensure that the transactions are consistent with the financial service business' knowledge of the customer, their business and risk profile (including, where necessary, the sources of funds) and paying particular attention to all -
 - (i) complex transactions,
 - (ii) transactions which are both large and unusual, and
 - (iii) unusual patterns of activity or transactions,

which have no apparent economic purpose or no apparent lawful purpose, and

- (c) ensuring that the way in which identification data is recorded and stored is such as to facilitate the ongoing monitoring of each business relationship.

(2) The extent of any monitoring carried out under this paragraph and the frequency at which it is carried out shall be determined on the basis of materiality and risk including, without limitation, whether or not the business relationship is a high risk relationship.

(3) Without prejudice to the generality of paragraph (2), where within an existing business relationship there are complex and unusually large transactions, or unusual patterns of transactions, which have no apparent economic or lawful purpose, a specified business shall –

- (a) examine the background and purpose of those transactions, and
- (b) increase the degree and nature of monitoring of the business relationship.

Reporting suspicion.

12. (1) Subject to subsection (2), a specified business shall -

- (a) appoint a person of at least management level as the Money Laundering Reporting Officer, provide the

name, title and email address of that person to the Commission as soon as is reasonably practicable and, in any event, within fourteen days starting from the date of that person's appointment, and ensure that all employees are aware of the name of that person,

(b) if it is a financial services business which comprises more than one individual, nominate a person to –

(i) receive disclosures, under Part I of the Disclosure Law and section 15 of the Terrorism Law (a "**nominated officer**"), in the absence of the Money Laundering Reporting Officer, and

(ii) otherwise carry out the functions of the Money Laundering Reporting Officer in that officer's absence,

and ensure that all employees are aware of the name of that nominated officer,

(c) if it is a prescribed business which comprises more than one individual, nominate a person to –

(i) receive disclosures, under Part I of the Disclosure Law and section 12 of the Terrorism Law (a "**nominated officer**"), in the absence of the Money Laundering Reporting Officer, and

- (ii) otherwise carry out the functions of the Money Laundering Reporting Officer in that officer's absence,

and ensure that all employees are aware of the name of that nominated officer,

- (d) provide the name, title and email address of the Money Laundering Reporting Officer appointed under (a), and of any person nominated under (b) or (c), to the Financial Intelligence Service as soon as is reasonably practicable and, in any event, within fourteen days starting from the date of that person's appointment or nomination (as the case may be),
- (e) ensure that where an employee, other than the Money Laundering Reporting Officer, is required to make a disclosure under Part I of the Disclosure Law, or section 15 or section 12 (as appropriate) of the Terrorism Law, that this is done by way of a report to the Money Laundering Reporting Officer, or, in that officer's absence, to a nominated officer,
- (f) ensure that the Money Laundering Reporting Officer, or in that officer's absence a nominated officer, in determining whether or not he or she is required to make a disclosure under Part I of the Disclosure Law, or section 15A or section 12 (as appropriate) of the Terrorism Law, takes into account all relevant

information,

- (g) ensure that the Money Laundering Reporting Officer, or, in his or her absence, a nominated officer, is given prompt access to any other information which may be of assistance to him or her in considering any report, and
- (h) ensure that it establishes and maintains such other appropriate and effective procedures and controls as are necessary to ensure compliance with requirements to make disclosures under Part I of the Disclosure Law, and sections 15 and 15A or section 12 (as appropriate) of the Terrorism Law.

(2) A person who, immediately prior to the coming into force of this Schedule ("**Commencement**"), was a money laundering reporting officer of a financial services business or a prescribed business, having been appointed as such under Part III of the FSB Regulations or Part III of the PB Regulations, as the case may be, shall be deemed to have been appointed as that business' Money Laundering Reporting Officer under subparagraph (1)(a) on Commencement, for the purposes of this Schedule.

(3) A person who, immediately prior to Commencement, was a nominated officer of a financial services business or a prescribed business, having been nominated as such under Part III of the FSB Regulations or Part III of the PB Regulations, as the case may be, shall be deemed to have been nominated as that business' nominated officer under subparagraph (1)(a) on Commencement, for the purposes of this Schedule.

(4) **The requirement at subparagraph (1)(a) to provide the name, title and email address of the Money Laundering Reporting Officer to the Commission, and the requirements at subparagraph (1)(d), do not apply in respect of a person deemed to have be appointed or nominated under subparagraph (2) or (3) (as the case may be).**

Employee screening and training.

13. (1) A specified business shall maintain appropriate and effective procedures, proportionate to the nature and size of the business and to its risks, when hiring employees or admitting any person as a partner in the business, for the purpose of ensuring high standards of employee and partner probity and competence.

(2) A specified business shall ensure that relevant employees, and any partners in the business, receive comprehensive ongoing training (at a frequency which has regard to the money laundering and terrorist financing risks to the business) in -

- (a) the relevant enactments, this Schedule and the Handbook,
- (b) the personal obligations of employees, and partners, and their potential criminal liability under this Schedule and the relevant enactments,
- (c) the implications of non-compliance by employees, and partners, with any rules, guidance, instructions, notices

or other similar instruments made for the purposes of this Schedule, and

- (d) its policies, procedures and controls for the purposes of forestalling, preventing and detecting money laundering and terrorist financing.

(3) A specified business shall identify relevant employees and partners in the business who, in view of their particular responsibilities, should receive additional and ongoing training, appropriate to their roles, in the matters set out in subparagraph (2) and must provide such additional training.

Record-keeping.

14. (1) Subject to the provisions of this paragraph, a specified business must keep a comprehensive record of each transaction with a customer or an introducer, including the amounts and types of currency involved in the transaction (if any); and such a record shall be referred to as a "**transaction document**".

- (2) A specified business shall keep-
 - (a) all transaction documents, risk assessments undertaken under paragraph 3(4), and any customer due diligence information, or
 - (b) copies thereof,

for the minimum retention period.

(3) A specified business must keep copies of business risk assessments carried out under paragraph 3(1) until the expiry of the period of five years starting from the date on which they cease to be operative.

(4) Where a specified business is required by any enactment, rule of law or court order to provide a transaction document or any customer due diligence information to any person before the end of the minimum retention period, the specified business shall -

- (a) keep a copy of the transaction document or customer due diligence information until the period has ended or the original is returned, whichever occurs first, and
- (b) maintain a register of transaction documents and customer due diligence information so provided.

(5) A specified business shall also keep records of -

- (a) any reports made to a reporting officer as referred to in paragraph 12 and of any disclosure made under Part I of the Disclosure Law, or section 15 or 15A, or section 12 (as appropriate), of the Terrorism Law made other than by way of a report to the reporting officer, for five years starting from -
 - (i) in the case of a report or a disclosure in relation to a business relationship, the date the business relationship ceased,

- (ii) in the case of a report or a disclosure in relation to an occasional transaction, the date that transaction was completed, or
 - (iii) in any other case, the event in respect of which the report or disclosure was made,
 - (b) any training carried out under paragraph 13 for five years starting from the date the training was carried out,
 - (c) any minutes or other documents prepared pursuant to paragraph 15(1)(c) until -
 - (i) the expiry of a period of five years starting from the date they were finalised, or
 - (ii) they are superseded by later minutes or other documents prepared under that paragraph,whichever occurs later, and
 - (d) its policies, procedures and controls which it is required to establish and maintain pursuant to this Schedule, until the expiry of a period of five years starting from the date that they ceased to be operative.
- (6) Documents and customer due diligence information, including any copies thereof, kept under this paragraph -

- (a) may be kept in any manner or form, provided that they are readily retrievable, and
- (b) must be made available promptly –
 - (i) to an auditor, and
 - (ii) to any police officer, the Financial Intelligence Service, the Commission or any other person, where such documents or customer due diligence information are requested pursuant to this Schedule or any relevant enactment.

Ensuring compliance, corporate responsibility and related requirements.

15. (1) A specified business must, in addition to complying with the preceding requirements of this Schedule -

- (a) if it is a specified business which comprises more than one individual, appoint a person of at least management level as the Money Laundering Compliance Officer and provide the name, title and email address of that person to the Commission as soon as is reasonably practicable and, in any event, within fourteen days starting from the date of that person's appointment,
- (b) establish such other policies, procedures and controls as may be appropriate and effective (having regard to

the risk of money laundering and terrorist financing and the size of the business) for the purposes of forestalling, preventing and detecting money laundering and terrorist financing,

- (c) establish and maintain an effective policy, for which responsibility must be taken by the board, for the review of its compliance with the requirements of this Schedule and the Handbook, and such policy shall include provision as to the extent and frequency of such reviews,
- (d) ensure that a review of its compliance with this Schedule and the Handbook is discussed and minuted at a meeting of the board at appropriate intervals, and in considering what is appropriate a specified business must have regard to the risk taking into account -
 - (i) the size, nature and complexity of the specified business,
 - (ii) its customers, products and services, and
 - (iii) the ways in which it provides those products and services,
- (e) subject to subparagraph (2) ensure that any of its branch offices and, where it is a body corporate, any body corporate of which it is the majority shareholder

or control of which it otherwise exercises, which, in either case, is a specified business in any country or territory outside the Bailiwick (together, for the purposes of this paragraph, its "subsidiaries"), complies there with -

- (i) the requirements of this Schedule and the Handbook, and
- (ii) any requirements under the law applicable in that country or territory which are consistent with the Financial Action Task Force Recommendations,

provided that, where requirements under subparagraphs (i) and (ii) differ, a specified business must ensure that the requirement which provides the highest standard of compliance, by reference to the Financial Action Task Force Recommendations, is complied with,

- (f) subject to subparagraph (2), ensure that it and its subsidiaries effectively implement policies, procedures and controls in respect of the sharing of information (including but not limited to customer, account and transaction information) between themselves for the purposes of -
 - (i) carrying out customer due diligence,

- (ii) sharing suspicions relating to money laundering and terrorist financing that have been formed and reported to the Financial Intelligence Service (unless the Financial Intelligence Service has instructed that they should not be so shared), and
- (iii) otherwise forestalling, preventing and detecting money laundering and terrorist financing,

whilst ensuring that such policies, procedures and controls protect the confidentiality of such information, and

- (g) where it is a specified business to which Schedule 4 applies, ensure that the conduct of any agent that it uses is subject to requirements to forestall, prevent and detect money laundering and terrorist financing that are consistent with those in the Financial Action Task Force Recommendations in respect of such an agent.

(2) The obligations under subparagraphs (1)(e) and (f) apply to the extent that the law of the relevant country or territory allows and if the law of that country or territory does not so allow in relation to any requirement of this Schedule, the specified business must notify the Commission accordingly.

PART IV
DESIGNATION OF SUPERVISORY AUTHORITY

Guernsey Financial Services Commission.

16. (1) The Commission is prescribed as the supervisory authority with responsibility for monitoring and enforcing compliance by specified businesses with paragraphs and other measures made or issued under this Law, or any other enactment, for the purpose of forestalling, preventing or detecting money laundering and terrorist financing.

(2) When exercising its functions under subparagraph (1), the Commission must take into account information on, or in relation to, the money laundering and terrorist financing risk associated with particular countries, territories and geographic areas and the level of cooperation it expects to receive from relevant authorities in those countries, territories and areas, including information contained in the Financial Action Task Force Recommendations, and the NRA.

(3) The Commission is also designated as the competent authority—

- (a) to register financial service businesses under Schedule 4,
- (b) to register financial services businesses under section 2 of the Registration of Non-Regulated Financial

Services Businesses (Bailiwick of Guernsey) Law,
2008^f,

(c) to register prescribed businesses under Schedule 5.

(4) For the purpose of subparagraph (1), "measures" includes rules, guidance, instructions, notices and other similar instruments.

PART V
MISCELLANEOUS

Notification etc: financial services businesses.

17. Any person who is a financial services business by virtue of providing money or value transmission services shall maintain a current list of its agents for such services, which shall be made available to the Commission on demand.

Extension of sections 49B and 49C: prescribed businesses.

18. Sections 49B and 49C extend in respect of any prescribed business as if references in those sections to "financial services business" or "section 49" were references to "prescribed business" and "section 49A" respectively.

Offences as to false and misleading information.

19. If a person -

^f Order in Council No. XV of 2008; as amended by Order in Council No. XIII of 2010; No. XXXII of 2008; No. XII of 2015; Ordinance No. XX of 2015; No. II of 2016; No. IX of 2016; No. XXVII of 2017; Alderney Ordinance No. III of 2017; Sark Ordinance No. X of 2017; G.S.I. No. 75 of 2008; G.S.I. No. 17 of 2010; G.S.I. No. 83 of 2010; G.S.I. No. 16 of 2013; and G.S.I. No. 50 of 2017.

- (a) in purported compliance with a requirement imposed by this Schedule, or
- (b) otherwise than as mentioned in subparagraph (a) but in circumstances in which that person intends, or could reasonably be expected to know, that any statement, information or document provided by the person would or might be used by the Commission for the purpose of exercising its functions conferred by this Schedule,

does any of the following -

- (i) makes a statement which the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) dishonestly or otherwise, recklessly makes a statement 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 the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (iv) dishonestly or otherwise, recklessly produces or

furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

the person is guilty of an offence and liable on conviction on indictment, to imprisonment not exceeding a term of five years or a fine or both or on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the uniform scale or both.

Offences: general.

20. (1) Any person who contravenes any requirement of this Schedule shall be guilty of an offence and liable -

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

(2) In determining whether a person has contravened a requirement of this Schedule, a court may take account of -

- (a) any rules and guidance in the Handbook, and
- (b) any notice or instruction issued by the Commission under this Law,

that the court considers relevant to the requirement concerned.

(3) It is a defence for a person charged with an offence under this paragraph to prove that he or she has taken all reasonable precautions to avoid the commission of the offence.

Interpretation.

21. (1) In this Schedule, unless the context otherwise requires, expressions defined in this Law have those meanings, and -

"account" means a bank account and any other business relationship between a specified business and a customer which is of a similar nature having regard to the services offered by the specified business,

"Appendix C business" means -

(a) a financial services business supervised by the Commission, or

(b) a business which is carried on from -

(i) a country or territory listed in Appendix C to the Handbook and which would, if it were carried on in the Bailiwick, be a financial services business, or

(ii) the United Kingdom, the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man by a

lawyer or an accountant,

and, in either case, is a business -

- (A) which may only be carried on in that country or territory by a person regulated for that purpose under the law of that country or territory,
- (B) the conduct of which is subject to requirements to forestall, prevent and detect money laundering and terrorist financing that are consistent with those in the Financial Action Task Force Recommendations in respect of such a business, and
- (C) the conduct of which is supervised for compliance with the requirements referred to in subparagraph (B), by the Commission or an overseas regulatory authority,

"**bank**" means a person who accepts deposits, including a person who does so in a country or territory outside the Bailiwick, in the course of carrying on a deposit-taking business within the

meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994⁸ and related expressions shall be construed accordingly,

"bearer share" means a negotiable instrument that accords ownership in a legal person to the individual who possesses the relevant bearer share certificate,

"bearer warrant" means a warrant or other instrument entitling the holder to subscribe for shares or other investments in the capital of a company, title of which can be transferred by delivery,

"beneficial owner": see subparagraph (4),

the **"board"** of a specified business: see subparagraph (2),

a **"branch office"** of a business means a place of business of that business that is physically separate from that business and that has no legal personality,

"business relationship" means a business, professional or commercial relationship between a specified business and a customer which is expected by the specified business, at the time when contact is established, to have an element of duration,

⁸ Order in Council No. XIII of 1994; as amended by Order in Council No. XVII of 2002; No. XXI of 2002; No. XVI of 2003; No. XVI of 2008; No. IV of 2009; No. XIII of 2010; No. XXI of 2010; Ordinance No. XXXIII of 2003; No. XII of 2015; No. XX of 2015; No. XXXIX of 2015; No. II of 2016; No. IX of 2016; No. XXVII of 2017; Alderney Ordinance No. III of 2017; Sark Ordinance No. X of 2017; G.S.I. No. 3 of 2000; G.S.I. No. 1 of 2008; G.S.I. No. 35 of 2010; G.S.I. No. 83 of 2010; and G.S.I. No. 50 of 2017.

"**business risk assessment**": see paragraph 3(3),

"**correspondent banking relationship**" means a business relationship which involves the provision of banking services by one bank to another bank ("**the respondent bank**"),

"**customer**" means a person or legal arrangement who -

- (a) is seeking to establish, or has established, a business relationship with a specified business, or
- (b) is seeking to carry out, or has carried out, an occasional transaction with a specified business,

except that where such a person or legal arrangement is an introducer, the customer is the person or legal arrangement on whose behalf the introducer is seeking to establish or has established the business relationship,

"**customer due diligence**" means the steps which a specified business is required to carry out pursuant to paragraph 4(3),

"**customer due diligence information**" means -

- (a) identification data,
- (b) any account files and correspondence relating

to the business relationship or occasional transaction, and

- (c) all records obtained through customer due diligence measures, including the results of any analysis undertaken,

"Disclosure Law" means the Disclosure (Bailiwick of Guernsey) Law, 2007^h,

"Economic Crime Division" means that branch of the Customs and Immigration Service responsible for the investigation of financial and economic crime,

"employee" means an individual working, including on a temporary basis, for a specified business whether under a contract of employment, a contract for services or otherwise,

"enhanced customer due diligence": see paragraph 5(3)(a),

"enhanced measures": see paragraph 5(3)(b),

"Financial Action Task Force Recommendations" means the International Standards on Combating Money Laundering and the

^h Order in Council No. XVI of 2007; as amended by Ordinance No. XXXIX of 2008; No. VII of 2009; Nos. XIV, XIX and No. XXXVII of 2010; Nos. XVI and LIII of 2014; No. XXXIX of 2015; and No. IX of 2016.

Financing of Terrorism & Proliferation issued by the Financial Action Task Force as revised or reissued from time to time,

"Financial Intelligence Service" means the division of the Economic Crime Division comprising persons assigned to the division for the purpose of the receipt, analysis and dissemination within the Bailiwick, and elsewhere, of disclosures under Part I of the Disclosure Law which are more commonly known or referred to as suspicious transaction reports or suspicious activity reports,

"foundation" means –

- (a) a foundation created under the Foundations (Guernsey) Law, 2012ⁱ, or
- (b) an equivalent or similar body created or established under the law of another jurisdiction (and howsoever named),

"foundation official" means -

- (a) in relation to a foundation created under the Foundations (Guernsey) Law, 2012, a foundation official within the meaning of that Law, and

ⁱ Order in Council No. I of 2013; as amended by Order in Council No. VI of 2017; and Ordinance No. IX of 2016.

- (b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person with functions corresponding to those of a foundation official described in paragraph (a),

"founder" means -

- (a) in relation to a foundation created under the Foundations (Guernsey) Law, 2012, a founder within the meaning of that Law, and
- (b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person corresponding to a founder described in paragraph (a),

"the FSB Regulations" means the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007,

"funds" means assets of all types, and documents or instruments evidencing title to or an interest in such assets,

"Handbook" means the Handbook on Countering Financial Crime and Terrorist Financing, as revised or re-issued from time to time by the Commission,

"high risk relationship" means a business relationship or an occasional transaction which has a high risk of involving money

laundering or terrorist financing and related terms shall be construed accordingly,

"identification data" means documents, data and information from a reliable and independent source ,

"international organisation" means an entity –

- (a) which was established by a formal political agreement between its member states that has the status of an international treaty,
- (b) the existence of which is recognised by law in its member states, and
- (c) which is not treated as a resident institutional unit of the country in which it is located,

"introducer" means an Appendix C business who is seeking to establish or has established, on behalf of another person or legal arrangement who is its customer, a business relationship or an occasional transaction with a specified business,

"joint arrangement" has the same meaning as in regulation 5 of the Beneficial Ownership (Definition) Regulations, 2017,

"joint interests" has the same meaning as in regulation 4 of the Beneficial Ownership (Definition) Regulations, 2017,

"**legal arrangement**" includes an express trust and any vehicle or arrangement whatsoever which has a similar legal effect to an express trust,

"**low risk relationship**" means a business relationship or an occasional transaction which has a low risk of involving money laundering or terrorist financing and related terms shall be construed accordingly,

"**minimum retention period**" means-

(a) in the case of any customer due diligence information -

(i) a period of five years starting from the date-

(A) where the customer has established a business relationship with the specified business, that relationship ceased,

(B) where the customer has carried out an occasional transaction with the specified business, that transaction was completed, or

(ii) such other longer period as the

Commission may direct,

- (b) in the case of a transaction document-
 - (i) a period of five years starting from the date that both the transaction and any related transaction were completed, or
 - (ii) such other longer period as the Commission may direct,

"Money Laundering Compliance Officer" means a manager, partner or director appointed by a specified business to have responsibility for compliance with policies, procedures and controls to forestall, prevent and detect money laundering and terrorist financing,

"Money Laundering Reporting Officer" means a manager, partner or director nominated by a specified business to receive disclosures under Part I of the Disclosure Law and sections 12 and 15 of the Terrorism Law,

"nominee shareholder" has the same meaning as "nominee" has in the Beneficial Ownership of Legal Persons (Nominee Relationships) Regulations, 2017^j

"notify" means notify in writing,

^j G.S.I. No. 102 of 2017; as amended by G.S.I. No. 120 of 2017.

"**NRA**" means the National Risk Assessment published by the Committee as amended from time to time,

"**occasional transaction**" means any transaction involving more than £10,000, carried out by the specified business in question in the course of that business, where no business relationship has been proposed or established and includes such transactions carried out in a single operation or two or more operations that appear to be linked,

"**the PB Regulations**" means Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008,

"**politically exposed person**": see paragraph 5(4),

"**prescribed business**" means any business which is a relevant business for the purposes of this Law, but does not include a business of a type described in paragraphs 2 or 4 of Schedule 2,

"**protector**" has the meaning in section 58 of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000^k,

^k Order in Council No. I of 2001; as amended by No. I of 2000; No. VIII of 2008; No. XXV of 2008; No. XIII of 2010; No. XIX of 2010; No. I of 2013; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. VII of 2009; No. XII of 2015; No. XXXIX of 2015; No. II of 2016; No. IX of 2016; No. XXVII of 2017; Alderney Ordinance No. III of 2017; Sark Ordinance No. X of 2017; G.S.I. No. 3 of 2008; G.S.I. No. 83 of 2010; G.S.I. No. 4 of 2013; G.S.I. No. 50 of 2017; G.S.I. No. 56 of 2017; and G.S.I. No. 72 of 2017.

"**relevant employee**" means any -

- (a) member of the board of the specified business,
- (b) member of the management of the specified business, and
- (c) employee whose duties relate to the specified business,

the "**relevant enactments**" means -

- (a) this Law,
- (b) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000¹,
- (c) the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011^m,
- (d) the Afghanistan (Restrictive Measures) (Guernsey) Ordinance, 2011ⁿ,

¹ Order in Council No. VII of 2000; amended by Order in Council No. I of 2000; No. II of 2005; Nos. XVI and XVII of 2007; No. XIII of 2010; Ordinance No. XXXIII of 2003; No. XXXVIII of 2008; Nos. XV and XXV of 2010; No. XVI of 2014; and No. IX of 2016.

- (e) the Afghanistan (Restrictive Measures) (Alderney) Ordinance, 2011^o,
- (f) the Afghanistan (Restrictive Measures) (Sark) Ordinance, 2011^p,
- (g) the Al-Qaida (Restrictive Measures) (Guernsey) Ordinance, 2013^q,
- (h) the Al-Qaida (Restrictive Measures) (Alderney) Ordinance, 2013^r,
- (i) the Al-Qaida (Restrictive Measures) (Sark) Ordinance, 2013^s,

^m Order in Council No. XI of 2011; amended by Ordinance No. IX of 2016.

ⁿ Ordinance No. XXXV of 2011; amended by Ordinance No. XXXIV of 2014; No. IX of 2016.

^o Alderney Ordinance No. XVI of 2011; amended by No. XXI of 2014; No. VIII of 2016

^p Ordinance made by the General Purposes and Advisory Committee on 3rd October, 2011; as amended by Sark Ordinances No. XXV of 2014; No. III of 2016.

^q Ordinance No. XLIV of 2013; amended by No. VI of 2014; Nos. IX and XLIII of 2016.

^r Alderney Ordinance No. XVII of 2013; amended by No. VIII of 2016; No. I of 2017.

^s Sark Ordinance No. VI of 2014; amended by No. III of 2016; No. VIII of 2017.

- (j) the Terrorism Law,
- (k) the Disclosure Law,
- (l) the Transfer of Funds (Guernsey) Ordinance, 2017^t,
- (m) the Transfer of Funds (Alderney) Ordinance, 2017^u,
- (n) the Transfer of Funds (Sark) Ordinance, 2017^v,
- (o) the Disclosure (Bailiwick of Guernsey) Regulations, 2007^w,
- (p) the Terrorism and Crime (Bailiwick of Guernsey) Regulations, 2007^x,
- (q) the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey)

^t Ordinance No. XXVII of 2017

^u Alderney Ordinance No. III of 2017.

^v Sark Ordinance No. X of 2017.

^w G.S.I. No. 34 of 2007.

^x G.S.I. No. 36 of 2007; as amended by G.S.I. No. 27 of 2008; G.S.I. No. 49 of 2010; G.S.I. No. 24 of 2011; and G.S.I. No. 51 of 2014.

Law, 2008,

- (r) the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008^y,
- (s) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017^z,
- (t) the Beneficial Ownership of Legal Persons (Alderney) Law, 2017^{aa},
- (u) the Beneficial Ownership (Definition) Regulations, 2017,
- (v) the Beneficial Ownership (Alderney) (Definition) Regulations, 2017^{bb},
- (w) the Beneficial Ownership of Legal Persons (Provision of Information) (Transitional

^y Order in Council No. XII of 2009; as amended by Ordinance No. XXXIX of 2015; Nos. II and IX of 2016; Alderney Ordinance No. III of 2017; Ordinance No. XXVII of 2017; and Sark Ordinance No. X of 2017.

^z Order in Council No. VI of 2017; as amended by Ordinance No. XXVIII of 2017.

^{aa} Order in Council No. VII of 2017; as amended by Alderney Ordinance No. X of 2017.

^{bb} Alderney Statutory Instrument No. 3 of 2017.

Provisions) Regulations, 2017^{cc},

- (x) the Beneficial Ownership of Legal Persons (Provision of Information) (Transitional Provisions) (Alderney) Regulations, 2017,
- (y) the Beneficial Ownership of Legal Persons (Nominee Relationships) Regulations, 2017,
- (z) the Beneficial Ownership of Legal Persons (Nominee Relationships) (Alderney) Ordinance, 2017^{dd},
- (aa) the Beneficial Ownership of Legal Persons (Provision of Information) (Limited Partnerships) Regulations, 2017^{ee},

and such other enactments relating to money laundering and terrorist financing as may be enacted from time to time in the Bailiwick,

"relevant legal person" has the meaning given in the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,

"risk" means a risk of money laundering or terrorist financing occurring and **"risk assessment"** shall be construed accordingly,

^{cc} G.S.I. No. 87 of 2017.

^{dd} Alderney Ordinance No. XI of 2017.

^{ee} G.S.I. No. 120 of 2017.

"**specified business**": see paragraph 1(1),

"**subordinate legislation**" means any ordinance, statutory instrument, paragraph, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect,

"**Terrorism Law**" means the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002^{ff},

"**terrorist financing**" has the meaning given in the Terrorism Law,

"**transaction document**": see paragraph 14, and

"**voting rights**" has the same meaning as in regulation 7 of the Beneficial Ownership (Definition) Regulations, 2017.

(2) Subject to subparagraph (3), in this Ordinance the "**board**" of a specified business means -

(a) the board of directors of that specified business, where it is a body corporate, or

^{ff} Order in Council No. XVI of 2002; as amended by Order in Council No. I of 2000; No. VII of 2005; No. XIII of 2006; No. XIII of 2010; No. XI of 2011; No. XIV of 2012; Ordinance No. XXXIII of 2003, No. XLVI of 2007; No. XIII of 2010; No. XX of

- (b) the senior management of a specified business, where it is not a body corporate.

(3) References in this Ordinance to the board of a specified business shall, where the specified business is a sole trader, be construed consistently with the provisions of the Handbook.

(4) References in this Schedule to "**forming a suspicion**" of money laundering or terrorist financing, and any related expressions, are references to a person -

- (a) knowing or suspecting, or
- (b) having reasonable grounds for knowing or suspecting,

that another person is engaged in –

- (i) money laundering or that certain property is or is derived from the proceeds of criminal conduct (within the meaning of the Disclosure Law), or
- (ii) terrorist financing or that certain property is or is derived from terrorist property (within the meaning of the Terrorism Law),

as the case may be.

Meaning of "beneficial owner".

22. (1) References in this Schedule to a "**beneficial owner**" are to be construed in accordance with subparagraphs (2) to (11).

(2) In relation to a legal person, "beneficial owner" means, subject to subparagraphs (3) to (11) –

- (a) the natural person who ultimately controls the legal person through ownership; or if no such person exists or can be identified,
- (b) the natural person who ultimately controls the legal person through other means; or, if no such person exists or can be identified,
- (c) the natural person who holds the position of a senior managing official of the legal person.

(3) In any case where –

- (a) the natural person who controls the legal person through ownership has been identified,
- (b) there are reasonable grounds to believe that the legal person is also ultimately controlled by another natural person through other means, and
- (c) that other natural person can be identified,

the beneficial owner in relation to the legal person is the person described in (2)(a) or (b) (as the case may be).

(4) In any case where a trust or other legal arrangement controls a legal person through ownership, the beneficial owners of that legal person are the beneficial owners of that trust or legal arrangement as defined in subparagraphs (8) and (9).

(5) In any case where a transparent legal person has control of a legal person through ownership ("**the controlled legal person**"), that transparent legal person shall be treated as a natural person for the purposes of this Schedule, and therefore (for the avoidance of doubt) as the beneficial owner of the controlled legal person.

(6) For the purposes of subparagraph (2), a person has control of a legal person through ownership if that person holds, directly or indirectly, any of the following –

- (a) if the legal person is a company –
 - (i) more than 25% of the shares in the company,
 - (ii) more than 25% of the voting rights in the company, or
 - (iii) the right to appoint or remove directors holding a majority of voting rights on all or substantially all matters at meetings of the board,

- (b) if the legal person is any other form of legal person other than a foundation,
 - (i) more than 25% of the shares in the legal person or an interest equivalent to a shareholding of more than 25%, including but not limited to an entitlement to more than 25% of the assets of the legal person in the event of its winding up or dissolution,
 - (ii) more than 25% of the voting rights in the conduct or management of the legal person, or
 - (iii) the right to appoint or remove a majority of the managing officials of the legal person holding a majority of voting rights on all or substantially all matters at meetings of the legal person that are equivalent to board meetings.
- (c) if the legal person is a foundation,
 - (i) any of the rights and interests under subparagraph (6)(b)(i) to (iii), or
 - (ii) a vested beneficial interest or future entitlement to benefit from more than 25% of the assets of the foundation,

and for the purposes of this paragraph, holding more than 25% of the shares in a company means holding a right or rights to share in more than 25% of the capital or, as the case may be, the profits of the company.

(7) A person holds shares or rights for the purposes of subparagraph (6) if –

- (a) those shares or rights constitute joint interests,
- (b) those shares or rights are held under a joint arrangement,
- (c) those shares or rights are held on behalf of that person by a nominee,
- (d) in the case of rights, that person controls their exercise,
- (e) in the case of rights only exercisable in certain circumstances, those rights are to be taken into account,
- (f) in the case of rights attached to shares held by way of security provided by a person, the rights are still exercisable by that person.

(8) In relation to a trust, "beneficial owner" means –

- (a) any beneficiary who is a natural person, whether his or her interest under the trust is vested, contingent or discretionary, and whether that interest is held directly

by that person or as the beneficial owner of a legal person or a legal arrangement that is a beneficiary of the trust,

- (b) any trustee, settlor, protector or enforcer of the trust who is a natural person or that is a transparent legal person,
- (c) if any trustee, settlor, protector or enforcer of the trust is a legal person (other than a transparent legal person), or a legal arrangement, any natural person who is the beneficial owner of that legal person or legal arrangement,
- (d) any natural person (other than a beneficiary, trustee, settlor, protector or enforcer of the trust), who has, under the trust deed of the trust or any similar document, power to –
 - (i) appoint or remove any of the trust's trustees,
 - (ii) direct the distribution of funds or assets of the trust,
 - (iii) direct investment decisions of the trust,
 - (iv) amend the trust deed, or
 - (v) revoke the trust,

- (e) any transparent legal person (other than a trustee, settlor, protector or enforcer of the trust) that has any of the powers set out in subparagraph (d),
- (f) where a legal person (other than a transparent legal person) or a legal arrangement holds any of the powers within subparagraph (d) (other than a trustee, settlor, protector or enforcer of the trust), any natural person who is a beneficial owner of that legal person or legal arrangement, and
- (g) any other natural person who exercises ultimate effective control over the trust.

(9) In relation to a legal arrangement other than a trust, "beneficial owner" means any natural person or transparent legal person who is in a position in relation to that legal arrangement that is equivalent to the position of any natural person or transparent legal person set out at subparagraph (8).

(10) For the purposes of this paragraph, "**transparent legal person**" means –

- (a) a company that is listed on a recognised stock exchange within the meaning of the Beneficial Ownership (Definition) Regulations, 2017, or a majority owned subsidiary of such a company,
- (b) a States trading company within the meaning of the

States Trading Companies (Bailiwick of Guernsey) Law, 2001⁸⁸,

- (c) a legal person controlled by the States of Alderney through ownership within the meaning of the Beneficial Ownership (Alderney) (Definition) Regulations, 2017 (or any successor regulations made under section 25 of the Beneficial Ownership of Legal Persons (Alderney) Law, 2017, or
 - (d) a regulated person within the meaning of section 41(2) of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017.
- (11) For the purposes of this paragraph –
- (a) a reference (however expressed) to a person controlling the exercise of a right is to be construed consistently with regulation 10(2) of the Beneficial Ownership (Definition) Regulations, 2017,
 - (b) a reference (however expressed) to taking rights into account is to be construed consistently with regulation 11 of the Beneficial Ownership (Definition) Regulations, 2017, and
 - (c) a reference (however expressed) to rights being

⁸⁸ Order in Council No. XII of 2001.

exercisable by a person is to be construed consistently with regulation 12(a) and (b) of the Beneficial Ownership (Definition) Regulations, 2017.

SCHEDULE 2

Section 1(11)

"SCHEDULE 4

REGISTRATION OF FINANCIAL SERVICES BUSINESSES

Application.

1. This Schedule applies to those persons who are financial services businesses by virtue of falling within paragraphs 20 to 23 of Part I of Schedule 1 to this Law and who are also financial services businesses by virtue of falling within paragraphs 4 or 5 ("money or value transfer services") or 12 or 13 ("money or currency changing services") of the said Part I.

Requirement to register.

2. (1) Subject to subparagraph (2), a financial services business to which this Schedule applies must be registered by the Commission for the purposes of this Schedule.

(2) A financial services business which, immediately prior to the commencement of this Schedule ("Commencement"), was registered under Part IIIA of the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007, shall be deemed to have been registered by the Commission on Commencement for the purposes of this Schedule.

Application for registration.

3. A financial services business to which this Schedule applies shall apply to the Commission in such form and manner as the Commission may determine; and such application shall be accompanied by a statement of-

(a) the legal name and any trading names of the applicant,

- (b) its principal place of business and any other business addresses in the Bailiwick, and
- (c) details of the type of money or value transfer services or money or currency changing services provided.

General requirements.

4. A financial services business which has been registered under this Schedule must inform the Commission of any change to the information given to the Commission for the purposes of its application for registration under paragraph 3, or to any information given to the Commission thereafter –

- (a) prior to making such a change, or
- (b) where a change is sudden or unexpected, promptly after such change is made,

and for the purposes of this paragraph a change to such information shall include the intention to cease providing money or value transfer services or money currency or changing services.

List of, and information as to, registered financial services businesses.

5. (1) The Commission shall –
- (a) establish and maintain, in such form as the Commission may determine, a list of all financial services businesses which are for the time being registered under this Schedule,

- (b) make available to any person, on request and on payment of such charge (if any) as the Commission may reasonably demand to cover the cost of preparation, a copy of that list, and
- (c) publish a copy of the list on the Commission's official website.

(2) The list maintained under subparagraph (1) shall contain, in relation to each financial services business registered under this Schedule -

- (a) a statement of -
 - (i) the legal name and any trading names of the business,
 - (ii) its principal place of business and any other business addresses in the Bailiwick, and
 - (iii) details of the type or types of financial services business falling within paragraph 4 or 5 ("money or value transfer services") or 12 or 13 ("money or currency changing services") by virtue of which it is a financial services business, and
- (b) such other particulars as the Commission may determine.

(3) If at any time it appears to the Commission that the list maintained under subparagraph (1), or any particular contained in an entry in that list, is, for any reason, inaccurate, the Commission shall make such addition, erasure or other alteration to that list or entry as the Commission considers necessary.

(4) The Commission may give public notice of the fact that a particular financial services business has been registered, or has ceased to be registered, under this Schedule.

Offences as to false and misleading information.

6. If a person -

- (a) in purported compliance with a requirement imposed by this Schedule, or
- (b) otherwise than as mentioned in subparagraph (a) but in circumstances in which that person intends, or could reasonably be expected to know, that any statement, information or document provided by the person would or might be used by the Commission for the purpose of exercising its functions conferred by this Schedule,

does any of the following -

- (i) makes a statement which the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

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

the person is guilty of an offence and liable on conviction on indictment, to imprisonment not exceeding a term of five years or a fine or both or on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the uniform scale or both.

Offences: general.

7. Any person who contravenes any requirement of this Schedule shall be guilty of an offence and liable -

- (a) on conviction on indictment, to imprisonment not exceeding a term of five years or a fine or both,

- (b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the Uniform Scale or both."

SCHEDULE 3

Section 1(11)

"SCHEDULE 5

REGISTRATION OF PRESCRIBED BUSINESSES

Application of this Schedule.

1. This Schedule does not apply to a prescribed business where -
 - (a) the total turnover of the person carrying on the prescribed business in respect of the prescribed business does not exceed £50,000 per annum,
 - (b) the prescribed business -
 - (i) if it is an estate agent, does not hold deposits, or
 - (ii) if it is a prescribed business other than an estate agent, does not carry out occasional transactions,
 - (c) the services of the prescribed business are provided only to customers or clients resident in the Bailiwick, and
 - (d) the funds received by the prescribed business are drawn on a bank operating from or within the Bailiwick.

Registration of prescribed businesses.

2. (1) Subject to subparagraph (2), a prescribed business carrying on, or holding itself out as carrying on, business in, or from within, the Bailiwick must register with the Commission in accordance with this Schedule.

(2) A prescribed business which, immediately prior to the commencement of this Schedule ("Commencement"), was registered under Part IV of the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008, shall be deemed to have been registered by the Commission on Commencement for the purposes of this Schedule.

(3) A prescribed business which, by virtue of subparagraph (1), is under an obligation to register shall submit, and pay, to the Commission -

- (a) a statement, in such form and manner as the Commission may determine, of -
 - (i) the legal name and any trading names of the business,
 - (ii) its place and date of incorporation or establishment,
 - (iii) its principal place of business and any other business addresses in the Bailiwick,
 - (iv) details of the type or types of business carried out,

- (v) the names of the Money Laundering Compliance Officer and of the Money Laundering Reporting Officer, and
 - (vi) the number of full time (or full time equivalent) members of staff (including executive directors and partners), and
- (b) subject to subparagraph (4), a non-refundable registration fee of £636 plus, where the business has more than 5 full time (or full time equivalent) members of staff (including executive directors and partners), whichever is the lesser of -
- (i) an amount calculated on the basis of £97 for each full time (or full time equivalent) member of staff (including executive directors and partners), less £483, or
 - (ii) £1940,

provided that where the statement referred to in subparagraph (a) is submitted on or after 1 February in any year the fee, and any additional amount due under the preceding provisions of this subparagraph, payable upon registration, shall be reduced by one twelfth and by a further twelfth for each complete calendar month which has elapsed during the period commencing

upon the 1 February in question and ending on the day of that year in which the statement is submitted.

(4) Any fee payable under subparagraph (3)(b) or paragraph 3(2) shall be reduced as follows -

(a) by 50 per centum where the registration relates to a business -

(i) which holds or is deemed to hold a licence, consent, registration, permission or authorisation from the Commission under any of the regulatory Laws, or

(ii) which is a member of a group of bodies corporate where one or more other members of that group are also under an obligation to pay a registration fee to the Commission under this paragraph, or

(b) by 75 per centum where the registration relates to a business -

(i) which holds or is deemed to hold a licence, consent, registration, permission or authorisation from the Commission under any of the regulatory Laws, and

(ii) which is a member of a group of bodies

corporate where one or more other members of that group are also under an obligation to pay a registration fee to the Commission under this paragraph.

- (5) On receipt of -
- (a) a statement containing all the information referred to in subparagraph (3)(a), and
 - (b) the registration fee,

the Commission shall register the prescribed business.

(6) The Committee may amend any fee payable under this paragraph by regulations.

(7) In this paragraph, "Money Laundering Compliance Officer" and "Money Laundering Reporting Officer" have the same meanings as in Schedule 3.

Validity of registration, annual fee and general requirements.

3. (1) The registration of a prescribed business shall remain effective until it is surrendered under paragraph 6.

(2) An annual fee calculated in the same manner as provided for under paragraph 2(2)(b) (subject to any reduction applicable under paragraph 2(3)) shall be payable, on, or within 30 days following 1 January in each calendar year following the year of registration, in respect of each prescribed business registered

under this Part.

(3) A prescribed business must inform the Commission of any change occurring to the information given to the Commission for the purposes of its registration under paragraph 2(2)(a)(i) to (v) or to any information given to the Commission thereafter -

- (a) prior to making such a change, or
- (b) where a change is sudden or unexpected, promptly after such change is made,

and for the purposes of this paragraph a change to such information shall include the intention to cease being a prescribed business to which this Schedule applies.

(4) A prescribed business must provide to the Commission by 30 November in each year a statement of the number of full time (including full time equivalent) members of staff (including executive directors and partners) employed by, or forming, the business as at 14 November in that year, calculated in accordance with the following formula:-

$$A + B + C = X$$

Where

A is the number of full time employees,

B is the number of executive directors and partners,

C is the total hours worked by part time employees divided by the number of hours in the prescribed business's working week rounded up to the nearest whole number, where the result is equal to or greater than .5 and rounded down if less than .5

X is the number of full time (including full time equivalent) members of staff.

Conditions of registration.

4. (1) The Commission may, when registering a prescribed business or at any time thereafter, impose such conditions in respect of the registration as it thinks fit.

(2) The Commission may vary or rescind any condition of a registration.

(3) Without prejudice to the generality of paragraph (1), the conditions which may be imposed in respect of a registration may make provision in the interests of the clients or potential clients of the prescribed business and for the protection of the public or of the reputation of the Bailiwick as a finance centre, and conditions may (without limitation) -

(a) require the prescribed business to take certain steps, to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way,

(b) impose limitations on the acceptance or carrying on of business,

(c) prohibit the prescribed business from soliciting

(whether at all or in any specified manner) business, either generally or from particular persons or classes of persons, or

- (d) require the prescribed business to provide, in whatever form and manner and at whatever time the Commission may reasonably determine, evidence of compliance with any provision of, or made under, any of the relevant enactments.

(4) The Commission may give public notice of the imposition, variation or rescission of a condition in respect of a registration and the date from which any such condition is effective, and, in deciding whether or not to do so, the Commission shall have regard to the interests of the clients and potential clients of the prescribed business and the protection of the public and the reputation of the Bailiwick as a finance centre.

(5) Where the Commission decides, otherwise than with the agreement of the prescribed business concerned, to impose, vary or rescind any condition in respect of a registration, the Commission shall serve upon the prescribed business concerned, in accordance with the provisions of paragraph 8, notice in writing of the decision setting out particulars of the condition in question.

Suspension of registration.

5. (1) The Commission may suspend the prescribed business's registration at the request of the business concerned.

(2) The suspension of a registration in pursuance of subparagraph (1) shall be for such period as is approved for the purpose by the Commission.

(3) During a period of suspension of a registration in pursuance of subparagraph (1) the suspended prescribed business may not carry on, or hold itself out as carrying on, business of the description to which the registration relates in or from within the Bailiwick.

Surrender of registration.

6. (1) A prescribed business may surrender its registration by notice in writing served upon the Commission.

(2) A surrender shall take effect upon service of the notice or at such later date as may be specified therein and, where a later date is so specified, the prescribed business may by a further notice in writing served upon the Commission substitute an earlier date upon which the surrender is, subject as aforesaid, to take effect, not being earlier than the date upon which the further notice was served.

(3) The surrender of a registration shall be irrevocable unless it is expressed to take effect on a particular date and, before that date, the Commission, upon the written application of the prescribed business concerned by notice in writing to that business, allows the surrender to be withdrawn.

List of, and information as to, registered prescribed businesses.

7. (1) The Commission shall -
- (a) establish and maintain, in such form as the Commission may determine, a list of all prescribed businesses which are for the time being registered under this Part,

- (b) make available to any person, on request and on payment of such charge (if any) as the Commission may reasonably demand to cover the cost of preparation, a copy of that list, and
- (c) publish a copy of the list on the Commission's official website.

(2) The list maintained under subparagraph (1) shall contain, in relation to each prescribed business -

- (a) a statement of -
 - (i) the legal name and any trading names of the business, and
 - (ii) its principal place of business and any other business addresses in the Bailiwick, and
- (b) such other particulars as the Commission may determine.

(3) If at any time it appears to the Commission that the list maintained under subparagraph (1), or any particular contained in an entry in that list, is inaccurate, the Commission shall make such addition, erasure or other alteration to that list or entry as the Commission considers necessary.

(4) The Commission may give public notice of the fact -

- (a) that a particular business -
 - (i) has been registered under this Part, or
 - (ii) has ceased to be registered by virtue of the voluntary suspension or surrender of the registration, or
- (b) that a condition upon the registration of a particular business has been imposed, varied or rescinded,

and, in deciding whether or not to do so, the Commission shall have regard to the interests of the public and the protection and enhancement of the reputation of the Bailiwick as a finance centre.

Notice of Commission's decision to impose conditions, etc.

8. Notice of a decision of the Commission required to be served under paragraph 4(5) -

- (a) shall state the grounds of the Commission's decision, and
- (b) shall give particulars of the right of appeal conferred by paragraph 9.

Appeals against decisions of Commission.

9. (1) A person aggrieved by a decision of the Commission to impose, vary or rescind any condition in respect of the person's registration under paragraph 4 may appeal to the Court against the decision.

- (2) The grounds of an appeal under this paragraph are that -
 - (a) the decision was ultra vires or there was some other error of law;
 - (b) the decision was unreasonable,
 - (c) the decision was made in bad faith,
 - (d) there was a lack of proportionality, or
 - (e) there was a material error as to the facts or as to the procedure.

- (3) An appeal under this paragraph shall be instituted -
 - (a) within a period of 28 days immediately following the date of the notice of the Commission's decision, and
 - (b) by summons served on the Chairman, or vice-Chairman, of the Commission stating the grounds and material facts on which the appellant relies.

- (4) The Commission may, where an appeal under this paragraph has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution, and upon hearing the application the Court may -

- (a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just,

and the provisions of this paragraph are without prejudice to the inherent powers of the Court or to any other rule of law empowering the Court to dismiss the appeal or the application for want of prosecution.

(5) On an appeal under this paragraph the Court may -

- (a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court thinks fit, or
- (b) confirm the decision, in whole or in part.

(6) On an appeal under this paragraph against a decision described in subparagraph (1) the Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the condition in question, or the variation or rescission thereof, pending the determination of the appeal.

(7) In this paragraph, "**the Court**" means the Royal Court constituted by the Bailiff sitting unaccompanied by the Jurats, and the Court may appoint one or more assessors to assist it in the determination of the proceedings or any matter relevant thereto.

(8) An appeal from a decision of the Royal Court made under these Paragraph shall lie to the Court of Appeal on a question of law.

Offences as to false and misleading information.

10. If a person -

- (a) in purported compliance with a requirement imposed by this Schedule, or
- (b) otherwise than as mentioned in subparagraph (a) but in circumstances in which that person intends, or could reasonably be expected to know, that any statement, information or document provided by the person would or might be used by the Commission for the purpose of exercising its functions conferred by this Schedule,

does any of the following -

- (i) makes a statement which the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) dishonestly or otherwise, recklessly makes a statement 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 the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or

- (iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

the person is guilty of an offence and liable on conviction on indictment, to imprisonment not exceeding a term of five years or a fine or both or on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the uniform scale or both.

Offences: general.

11. Any person who contravenes any requirement of this Schedule shall be guilty of an offence and liable -

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

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