

PROJET DE LOI

ENTITLED

The Beneficial Ownership of Legal Persons (Guernsey) (Amendment) Law, 2023

THE STATES, in pursuance of their Resolution of the 20th July, 2023^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

Amendment of 2017 Law.

1. The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017^b ("**the principal Law**") is amended as follows.

Amendment of section 10.

2. In section 10 of the principal Law, for subsection (3A), substitute the following subsection –

"(3A) The "**required particulars**", in the case of a beneficial owner ("**B**") that is not an individual, means -

^a Article XIX of Billet d'État No. XII of 2023.

^b Order in Council No. VI of 2017; this enactment has been amended.

- (a) B's name,
- (b) the date of incorporation of B,
- (c) the place of incorporation of B,
- (d) B's registered address,
- (e) if B became a beneficial owner in respect of the relevant legal person in question after this Part comes into force, the date on which B became a beneficial owner, and
- (f) the grounds on which B is considered to be a beneficial owner."

Amendment of section 17.

- 3. In section 17 of the principal Law, repeal paragraph (c) of subsection (1).

Amendment of section 25.

- 4. In section 25 of the principal Law –
 - (a) in subsection (1), after "section 17" insert "or paragraph 4F of Schedule 2", and
 - (b) repeal subsections (2), (4) and (5).

Amendment of section 26.

- 5. In section 26 of the principal Law, repeal subsections (1A), (5) and (6).

Amendment of section 28.

6. In section 28 of the principal Law, repeal subsection (2).

Insertion of new sections 28A and 28B.

7. Immediately after section 28 of the principal Law, insert the following sections–

"Imposition of applicable sanctions.

28A. In deciding whether or not to impose an applicable sanction on any person (and, where relevant, the amount or terms thereof), the Registrar must take into consideration the following factors –

- (a) in the case of a contravention of or under any provision of this Law –
 - (a) whether the contravention was brought to the attention of the Registrar by the person concerned,
 - (b) the seriousness of the contravention, and
 - (c) the efforts, if any, that have been made to rectify the contravention and to prevent a recurrence,
- (b) the potential financial consequences to the person concerned, and to third parties including customers and creditors of that person, of imposing an applicable sanction,

- (c) the action taken by the Registrar in relation to applicable sanctions in other cases, and
- (d) any other matter the Registrar considers relevant.

Notification of proposed sanction.

28B. (1) Where the Registrar proposes to impose an applicable sanction on any person, the Registrar must issue to the person concerned a notice specifying–

- (a) the proposed financial penalty, order, reprimand or statement, and the reasons for the same,
 - (b) the date on which it is proposed to impose the penalty, make the order, issue the reprimand or publish the statement, allowing time for written representations under section 29 (unless dispensed with under section 29(3)), and
 - (c) that person's right to make written representations to the Registrar under section 29 (unless dispensed with under section 29(3)).
- (2) Subsection (1) is subject to section 29A."

Amendment of section 29.

8. In section 29 of the principal Law –

- (a) in the heading, for "**prior to civil penalty, etc**",

substitute "**and notice of decision**",

(b) in subsection (1), for "The person on whom a notice is served under section 25(4) or section 26(5)", substitute "Subject to subsection (3), the person to whom a notice is issued under section 28B",

(c) in subsection (2), in the words following subparagraph (iv), for "inform", substitute "give written notice to", and

(d) for subsection (3), substitute the following subsections—

"(3) The period of 28 days mentioned in subsection (1) may be reduced in any case in which the Registrar considers it necessary to do so in the interests of the public or the reputation of the Bailiwick as a finance centre; and if by reason of those interests the Registrar considers that the decision in question needs to be taken immediately as a matter of urgency then, with the prior written authorisation of His Majesty's Procureur the procedure prescribed in subsection (1) may be dispensed with altogether.

(4) If the period of 28 days is reduced, or the procedure prescribed in subsection (1) dispensed with altogether, the Registrar must specify this in the notice under section 28B.

(5) A written notice of the Registrar's decision under subsection (2) must include a statement of the right to apply to the Court under section 32.

(6) This section is subject to section 29A."

Insertion of new section 29A.

9. Immediately after section 29 of the principal Law, insert the following section-

"Court may order sanctions with immediate effect.

29A. If, at any time, the Registrar decides that it is necessary or desirable to impose an applicable sanction on any person with immediate effect –

- (a) in the interests of the public, or
- (b) in the interests of the reputation of the Bailiwick as a financial centre,

the Registrar may apply to the Court for an order under this section directing that the applicable sanction should, without prejudice to any application under section 32, have immediate effect; and the Court may make an order under this subsection on any terms and conditions it thinks just."

Insertion of new section 30A.

10. Immediately after section 30 of the principal Law, insert the following section-

"Interpretation of Part 4.

30A. In this Part, "**applicable sanction**" means –

- (a) a financial penalty under section 25,
- (b) a private reprimand under section 27,
- (c) a public statement under section 28, or

- (d) in the case of a resident agent of a non-regulated relevant legal person, a resident agent disqualification order under section 26."

Amendment of section 39.

11. In section 39(2) of the principal Law, for "regulatory", substitute "supervisory".

Amendment of section 40.

12. In section 40(1) of the principal Law –

- (a) insert the following definitions in the appropriate alphabetical order –

""**applicable sanction**": see section 30A,", and

""**the supervisory Laws**" has the meaning given in section 2(b) of the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020,", and

- (b) repeal the definition of "**the regulatory Laws**".

Amendment of section 41.

13. In section 41(2)(a) of the principal Law, for "regulatory", substitute "supervisory".

Amendment of Schedule 2.

14. In Schedule 2 to the principal Law, in paragraph 2(1), for "regulatory", substitute "supervisory".

Amendment of Schedule 4.

15. In Schedule 4 to the principal Law, in the heading of paragraph 2, for "**regulatory**", substitute "**supervisory**".

Transitional provision for duty of resident agent to keep records.

16. (1) Section 17(2)(b) of the principal Law has effect as if section 10 of the principal Law had not been amended by section 2 of this Law.

(2) Subsection (1) ceases to have effect on the 28th day following the day on which this Law comes into force.

Transitional provision for civil penalties, etc. proposed before commencement.

17. (1) This section applies where, before the commencement of this Law –

- (a) the Registrar has notified a person of a proposal to impose a financial penalty on the person, under section 25(4) of the principal Law, but has not yet imposed the financial penalty (or another financial penalty) on the person, or
- (b) the Registrar has notified a person of a proposal to make a resident agent disqualification order, issue a private reprimand under section 27 of the principal Law or publish a statement under section 28 of the principal Law, under section 26(5) of the principal Law, but has not yet made the resident agent disqualification order (or another resident agent disqualification order), issued the private reprimand (or another

private reprimand) or published the statement (or another statement).

(2) Where this section applies, the Registrar may impose the financial penalty (or another financial penalty), make the resident agent disqualification order (or another resident agent disqualification order), issue the private reprimand (or another private reprimand) or (as the case may require) publish the statement (or another statement) under the principal Law as if the principal Law had not been amended by this Law.

Citation.

18. This Law may be cited as the Beneficial Ownership of Legal Persons (Guernsey) (Amendment) Law, 2023.

Commencement.

19. This Law shall come into force on the day appointed for this purpose by regulations made by the Committee for Economic Development; and different days may be appointed for different provisions.