

PROJET DE LOI

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The Limited Partnerships (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 the Limited Partnerships Law.

1. (1) The Limited Partnerships (Guernsey) Law, 1995^b ("**the Law**") is amended as follows.

(2) After section 32HE, insert -

"Disclosure of information by resident agent.

32HF. (1) A person listed in subsection (10) may, in the course of exercising his or her functions, serve a notice under this section ("**an information notice**") on the resident agent of a limited partnership requiring, within such time as may be specified in the information notice, the disclosure by the resident agent of information falling within subsection (4) and specified

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

^b Ordres en Conseil Vol. XXXVI, p. 264; this enactment has been amended.

in the information notice, including information held by a person other than the resident agent; and for the avoidance of doubt, an information notice is lawful authority for the disclosure to the person serving it of the information specified in it.

(2) For the avoidance of doubt, an information notice may be served by a person acting on behalf of a person listed in subsection (10).

(3) An information notice shall –

- (a) be signed by the person listed in subsection (10) serving it (or by an individual appointed by that person for that purpose, in which case it shall identify the appointing person),
- (b) specify what information is required under it (including to which limited partnership it relates),
- (c) state that the information is required by the person listed in subsection (10) serving it (or on whose behalf it is served, as the case may be) for the proper and proportionate exercise of his or her functions ,
- (d) state that any person served by the resident agent with a copy of the information notice under subsection (5) and who holds information

specified in the information notice is required to provide it to the resident agent, and

(e) set out the offences at subsection (8).

(4) The information that may be specified in an information notice is –

(a) any information required by that person which the resident agent is required to hold by virtue of the resident agent's obligations under this Part and any other information he or she holds in respect of the beneficial owners of the limited partnership,

(b) any of the records or copy certificates, notices or other documents specified in paragraphs (a) to (c), and (ea) to (ee),

(c) any other information specified in the notice as being required –

(i) to ascertain the identity of the beneficial owners of the limited partnership, or

(ii) with respect to the prevention, detection, investigation or prosecution of money laundering, drug trafficking, bribery and corruption, the financing of terrorism,

the financing of the proliferation of weapons of mass destruction, and any other form of financial crime, and

- (d) any other information in a category specified in regulations made for this purpose by the Committee.

(5) The resident agent shall take reasonable steps to ascertain the information required under an information notice; and if the resident agent does not hold information required under an information notice but knows or reasonably suspects that another person ("P") holds it, the resident agent shall take reasonable steps to serve a copy of the information notice on P and request P to disclose the information to the resident agent, in order that that the resident agent may disclose the information to the person who served the information notice on the resident agent.

(6) Nothing in this section prejudices any power to disclose or obtain information which exists apart from this section.

(7) The information that may be disclosed under this section includes information obtained before this section came into force.

(8) A resident agent or any other person who, without reasonable excuse –

- (a) fails to comply with this section, or

- (b) makes a statement, in response to an information notice, which is false, deceptive or misleading in a material particular,

is guilty of an offence and liable to a civil penalty.

(9) For the avoidance of doubt, this section is without prejudice to the powers and duties of resident agents under the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017.

(10) The persons referred to in subsection (1) are -

- (a) the Director General of the Commission,
- (b) His Majesty's Procureur,
- (c) the Chief Officer of Police,
- (d) the Chief Officer of Customs,
- (e) the Director of the Economic and Financial Crime Bureau,
- (f) the Head of the Financial Intelligence Unit,
- (g) the Registrar (including in his or her capacity as the Registrar of Foundations and the Registrar of Companies),

- (h) the Registrar of Limited Liability Partnerships,
- (i) the Registrar within the meaning of the Companies (Alderney) Law, 1994,
- (j) the Registrar of Beneficial Ownership,
- (k) His Majesty's Greffier,
- (l) any body or person with the function of implementing or enforcing international sanctions measures within the Bailiwick,
- (m) the Greffier within the meaning of the Government of Alderney Law, 2004 (including in his or her capacity as the Registrar under the Beneficial Ownership of Legal Person (Alderney) Law, 2017),
- (n) the Alderney Gambling Control Commission,
- (o) the Director of the Revenue Service,
- (p) the Registrar of Charities and other Non Profit Organisations under the Charities etc. (Guernsey and Alderney) Ordinance, 2021,
- (q) the Registrar of Non-Profit Organisations appointed under the Charities and Non Profit

Organisations (Registration) (Sark) Law, 2010,
and

- (r) any other person specified in regulations made for this purpose by the Committee.

(11) In this section, "**information**" includes documents.

Disclosure of information by resident agent: supplementary.

32HG. (1) A person listed in section 32HF(10) ("P"), or a person acting on P's behalf, may, by notice in writing, require a resident agent to attend at such times and places as may be specified in the notice, and to answer such questions as P requires the resident agent to answer in respect of, or arising out of any response to, an information notice served under section 32HF on the resident agent by or on behalf of P.

(2) A person who, without reasonable excuse –

- (a) fails to comply with a notice served under subsection (1), or fails to answer a question asked under subsection (1), or
- (b) makes a statement, in response to a notice served or questions asked under subsection (1), which is false, deceptive or misleading in a material particular,

is guilty of an offence and liable to a civil penalty.

Tipping off.

32HI. (1) A resident agent is guilty of an offence if he knows or suspects that an information notice has been issued, or is proposed to be issued, under section 32HF in respect of a limited partnership for which he or she is a resident agent, and the resident agent discloses to any person information or any other matter which may prejudice -

- (a) any criminal or regulatory investigation which is being or may be carried out, whether in Guernsey or elsewhere, or
- (b) any criminal or regulatory proceedings which have been or may be initiated, whether in Guernsey or elsewhere,

which are connected with the issue of that notice.

(2) Nothing in subsection (1) makes it an offence for an advocate or other legal adviser ("L") to disclose any information or other matter -

- (a) to, or to a representative of, a client of L's in connection with the giving by L of legal advice to the client, or
- (b) to any person -
 - (i) in contemplation of or in connection with legal proceedings, and

(ii) for the purpose of those proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(4) In proceedings against a person for an offence under this section, it is a defence to prove that the person did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in subsection (1).

Privileged information.

32HJ. (1) Nothing in this Part compels the production or divulgence by an advocate or other legal adviser of an item subject to legal professional privilege (within the meaning of section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003), but an advocate or other legal adviser may be required to give the name and address of any client.

(2) A requirement imposed by or under this Part has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise, and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement."

(3) At the end of section 32I(1)(b), for ", in accordance with this Law" substitute "(the disclosure of which is subject to the duties on the Registrar set out at section 32M(8)) where such disclosure is necessary for any of the purposes set out in section 32M(1) and 32M(2)".

(4) In the heading of section 32L delete "Disclosure and", in the text of section 32L delete "disclosed or", and after section 32L insert -

"Disclosure of information by the Registrar.

32M. (1) Subject to the provisions of this section and any contrary provision in this Law or any Ordinance or subordinate legislation made under it in respect of any specific case or category of case, information obtained by the Registrar-

- (a) under this Law or any other enactment, or
- (b) in connection with the carrying out of any of the Registrar's functions,

(including where applicable, for the avoidance of doubt, confidential information where deemed necessary by the Registrar) may be disclosed if the disclosure is -

- (i) of information which at the time of the disclosure is or has already been made available to the public from other sources, including (for the avoidance of doubt) information on the Register that is available for public inspection,
- (ii) of information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it,

- (iii) to enable the discharge of the Registrar's functions (including, where the Registrar considers it necessary to seek advice relating to the exercise of those functions from a qualified person on any matter of law, accountancy or valuation or other matter requiring the exercise of professional skill, for the purpose of ensuring that the qualified person is properly informed on all matters on which that person's advice is sought),
- (iv) in connection with any proceedings under this Law,
- (v) to comply with an order of a court, or
- (vi) for any purposes set out in subsection (2).

(2) The purposes are any of the following –

- (a) the prevention, detection, investigation or prosecution of criminal conduct, whether in Guernsey or elsewhere,
- (b) the prevention, detection, investigation or sanctioning of conduct for which penalties other than criminal penalties are provided under the

law of Guernsey or of any country or territory outside Guernsey,

- (c) the conduct of -
 - (i) any civil forfeiture investigations within the meaning of section 18 of the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007, or
 - (ii) any proceedings under that Law or under corresponding legislation in force in a country designated under section 53 of that Law,
- (d) assisting or enabling the carrying out of any functions of any intelligence service,
- (e) the implementation of, compliance with or enforcement of international sanctions measures within the Bailiwick,
- (f) the prevention, detection or investigation of breaches of international sanctions measures that have been given effect within the Bailiwick,
- (g) assisting or enabling any person or body within the Bailiwick or in another country or territory,

whose functions include any of the matters set out at subparagraphs (e) and (f), to carry out those functions,

- (h) assisting or enabling the carrying out by the Commission of its functions,
- (i) assisting or enabling the carrying by the Director of the Revenue Service of the Director's functions,
- (j) assisting or enabling the Alderney Gambling Control Commission to carry out its functions,
- (k) assisting or enabling His Majesty's Procureur, His Majesty's Sheriff, His Majesty's Sergeant and the Greffier within the meaning of the Government of Alderney Law, 2004 to carry out their functions,
- (l) assisting or enabling the Director of the Economic and Financial Crime Bureau to carry out his or her functions,
- (m) assisting or enabling the Financial Intelligence Unit to carry out its functions,
- (n) assisting or enabling the Data Protection Authority to carry out its functions,

- (o) assisting or enabling the Overseas Aid Commission to carry out its functions,
- (p) assisting or enabling any person with functions relating to the Social Investment Fund to carry out those functions, and
- (q) assisting or enabling any of the Registrars to carry out their functions,
- (r) assisting or enabling any person or body within the Bailiwick or in another country or territory, whose functions include any of the matters set out at items (e) and (f), to carry out those functions,
- (s) the enabling of any person or body in another country or territory, with functions similar to those of the Registrars', to carry out those functions,
- (t) assessing, or assisting another authority within the Bailiwick to assess the risks of money laundering, bribery and corruption, the financing of terrorism, the financing of the proliferation of weapons of mass destruction and any other form of financial or non-financial crime, and

(u) promoting the public interest or the reputation of the Bailiwick as a finance centre.

(3) For the purposes of paragraphs (q) and (s) of subsection (2), the Registrars are –

- (a) the Registrar of Beneficial Ownership,
- (b) the Registrar in his or her capacity as the Registrar of Foundations and the Registrar of Companies,
- (c) the Registrar of Limited Liability Partnerships,
- (d) the Registrar for the purposes of the Beneficial Ownership of Legal Persons (Alderney) Law, 2017,
- (e) the Registrar for the purposes of the Companies (Alderney) Law, 1994,
- (f) the Registrar of Charities and other Non-Profit Organisations appointed under the Charities etc. (Guernsey and Alderney) Ordinance, 2021, and

(g) the Registrar of Non-Profit Organisations appointed under the Charities and Non-Profit Organisations (Registration) (Sark) Law, 2010.

(4) The list of purposes at subsection (2) may be amended by regulations made by the Committee.

(5) For the avoidance of doubt, the Registrar may take into account any relevant procedure or agreement when considering whether to grant, grant only in part or refuse any request for the disclosure of information obtained by the Registrar and described in subsection (1).

(6) Any person to whom information may be disclosed for a purpose within subsection (2) may disclose information to the Registrar for the purposes of –

(a) ensuring that the Registrar is properly informed on all matters in respect of which information from the Registrar is being requested or provided, or

(b) enabling the carrying out of the Registrar's functions.

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

(8) The Registrar shall, when disclosing confidential

information to any person –

- (a) impose such conditions in relation to the use, disclosure, safekeeping and return of that information by that person or by any other person who may obtain the information from him or her,
- (b) require any such person to enter into such undertakings in relation to such use, disclosure, safekeeping and return, and
- (c) take such other steps to ensure that the confidentiality of the information is protected,

as the Registrar thinks fit.

- (9) In this section, "**information**" includes documents.

Co-operation with foreign authorities.

32N. (1) The Registrar shall take such steps as he or she considers appropriate to co-operate with any person or body -

- (a) who or which appears to the Registrar to exercise in a place outside the Bailiwick functions corresponding to any of the functions of the Registrar, for the purpose of the exercise of such functions, or

(b) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings,

and co-operation under this section may, without limitation, take the form of sharing or gathering any information which the Registrar may lawfully disclose or obtain.

(2) For the avoidance of doubt, the duty to co-operate imposed under subsection (1) is without prejudice to any other duties, and any powers, of the Registrar, including (but not limited to) powers to disclose or obtain information."

(5) In subsection (1) of section 40 (penalties), after "24(5)" insert ", 32HI(1)", 33N, 33O(1),".

Citation.

2. This Law may be cited as the Limited Partnerships (Guernsey) (Amendment) Law, 2023.

Commencement.

3. 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.