

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

**THE CRIMINAL JUSTICE (PROCEEDS OF CRIME) (BAILIWICK OF GUERNSEY)
(AMENDMENT) (NO. 4) ORDINANCE, 2023**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 4) Ordinance, 2023", and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

This Ordinance amends the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 ("the Law"). The purpose of the amendments is to introduce obligations in relation to the transparency of legal arrangements.

Section 1 inserts a new section 49AB to the Law, which deals with unregulated officers. This section also gives effect to a new Schedule 10, extends the application of provisions concerning amendments and protected disclosures at section 49AA to unregulated officers and Schedule 10, and makes provision for the issuing of guidance by the Policy & Resources Committee. Section 1 also introduces definitions of "supervisory Laws" and "unregulated officer" into the interpretation provisions and replaces existing references to "regulatory Laws" with "supervisory Laws".

Sections 2, 3 and 4 deal respectively with extent, citation and commencement. The Ordinance will be brought into force by regulations made by the Policy & Resources Committee.

The Schedule sets out the provisions of the new Schedule 10. These provisions create obligations in relation to obtaining and maintaining information on the identity of certain parties connected to the trust or partnership, and on the identity of regulated agents and service providers to the trust or partnership, as the case may be. There are also obligations in relation to record keeping and disclosure of a person's status as a trustee or partner when entering into a business relationship in that capacity, together with a power for unregulated officers to disclose information to the authorities at any time or to other businesses when entering into a business relationship. The obligations on unregulated officers are underpinned by criminal offences, which are subject to a reasonable precautions defence. Finally, there are interpretation provisions in respect of various terms used in the new Schedule 10.

The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 4) Ordinance, 2023

THE STATES, in pursuance of their Resolutions of the ** July, 2023^a and in exercise of the powers conferred on them by sections 53A and 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^b, and all other powers enabling them in that behalf, hereby order:-

Amendment of the Proceeds of Crime Law.

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

(2) After section 49AA, insert -

"Unregulated officers

Unregulated officers.

49AB. (1) Schedule 10 (Unregulated officers) has effect.

(2) Subsections (4) and (5) of section 49AA have effect in relation to Schedule 10 and unregulated officers as if references in those subsections to Schedules 3, 4 and 5 and financial services businesses were references respectively to Schedule 10 and unregulated officers.

^a Article * of Billet d'État No. * of 2023.

^b Ordres en Conseil Vol. XXXIX, p. 137; this enactment has been amended.

(3) The Committee may issue guidance for the purposes of Schedule 10.

(4) Subsections (7) and (8) of section 49AA have effect in relation to guidance issued under subsection (3) as if references in those subsections to rules, instructions or guidance made by the Commission were references to guidance issued by the Committee."

(3) In section 51(1), in the appropriate places, insert the following definitions -

""**supervisory Laws**" has the same meaning as in the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020," and

""**unregulated officer**" means an individual or an entity who -

(a) is a trustee of a relevant trust or a partner of a relevant partnership (other than a limited partner in the case of a limited partnership), and

(b) in that capacity, neither holds, nor is required to hold, a licence or authorisation from the Commission under any of the supervisory Laws,".

(3) In section 52, in the appropriate places, insert -

""**supervisory Laws**" (section 51(1)," and

""**unregulated officer**" (section 51(1)),".

(4) In Schedule 5, for the words "regulatory Laws" wherever they appear, substitute "supervisory Laws".

(5) After Schedule 9, insert Schedule 10 set out in the Schedule to this Ordinance.

Extent.

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

Citation.

3. This Ordinance may be cited as the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No.4) Ordinance, 2023.

Commencement.

4. This Ordinance shall come into force on the day appointed for this purpose by regulations made by the Committee; and different dates may be appointed for different provisions and for different purposes.

SCHEDULE

Section 1(5)

"SCHEDULE 10

Section 49AB(1)

UNREGULATED OFFICERS

Application.

1. This Schedule applies to all unregulated officers.

Information duties.

2. (1) An unregulated officer shall obtain and hold adequate, accurate and current information ("**the required information**") within the meaning of subparagraphs (2) to (4).

- (2) In the case of a relevant trust, the required information is information on the identity of -

- (a) the settlor of the trust,
 - (b) any other trustee of the trust,
 - (c) the protector (if any) of the trust,
 - (d) subject to subparagraph (4), the beneficiaries of the trust, and
 - (e) any other natural person exercising ultimate effective control over the trust.

- (3) In the case of a relevant partnership, the required information is

information on the identity of -

- (a) any other general partner of the partnership,
- (b) where the relevant partnership is a limited partnership, and subject to subparagraph (4), the limited partners of the partnership, and
- (c) any other natural person exercising ultimate effective control over the partnership.

(4) In respect of a class of beneficiaries or limited partners of such a size that it is not reasonably practicable to identify each member of the class, the information that should be obtained and held is information sufficient to identify and describe the class of individuals who are beneficiaries or limited partners, as the case may be, with sufficient accuracy to make it possible to ascertain that an individual is or is not a member of that class.

(5) An unregulated officer must hold information on the identity of any regulated agents and service providers to the relevant trust or relevant partnership as the case may be.

(6) An unregulated officer must ensure that all information required to be held by that officer under this paragraph -

- (a) so far as is possible, is accurate and up to date, and
- (b) is updated on a timely basis.

Record keeping etc.

3. (1) Records of the information required to be obtained and held under paragraph 2 -

(a) must be maintained for the period specified within the meaning of subparagraph (2) ("**the specified period**"), and

(b) may be kept in any manner or form, provided that they are readily retrievable.

(2) The specified period is -

(a) in the case of the required information, a period of at least five years starting from the date of the dissolution or termination of the relevant trust or relevant partnership in question, as the case may be,

(b) in the case of information required within paragraph 2(5), a period of at least five years starting from the date -

(i) where the regulated agent or service provider has established a business relationship in respect of the trust or partnership, as the case may be, that relationship ceased, or

(ii) where the regulated agent or service provider has carried out an occasional transaction in respect of the trust or partnership, the

transaction was completed.

(3) Without prejudice to subparagraphs (1) and (2), where an unregulated officer is requested to retain or provide any information obtained and held under paragraph 2 by any of the relevant authorities in the exercise of their functions (including, for the avoidance of doubt, assessing the risks to the Bailiwick from money laundering, terrorist financing, breach of international sanctions measures or any other form of economic or financial crime) the unregulated officer should retain that information for as long as requested by the relevant authority in question.

Disclosure of status.

4. (1) Where -
- (a) an unregulated officer -
 - (i) enters into a business relationship with, or
 - (ii) carries out or is otherwise involved in an occasional transaction with,a financial services business or a relevant business, and
 - (b) the unregulated officer is carrying out the activity at item (a) in that unregulated officer's capacity as a trustee of a relevant trust or a partner of a relevant partnership, as the case may be,

the unregulated officer must disclose the matters in item (b) to the financial services business or relevant business in question.

(2) The provisions of this paragraph are without prejudice to any powers or duties of disclosure that may otherwise be applicable.

Power to disclose information

5. (1) An unregulated officer of a relevant trust or a relevant partnership may disclose upon request -

(a) to any of the relevant authorities, any information relating to the trust or partnership, as the case may be, and

(b) to a financial services business or a relevant business in the circumstances described in paragraph 4(1)(a), any information relating to -

(i) the beneficial ownership of the trust or partnership, as the case may be, and

(ii) any assets of the trust or partnership, as the case may be, that are to be held or managed under the terms of a business relationship or occasional transaction in question.

(2) The provisions of this paragraph are without prejudice to any powers or duties of disclosure that may otherwise be applicable.

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 item (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 relied upon by, as the case may be, a relevant authority, a financial services business or a relevant business,

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 six months or a fine not exceeding level 5 on the uniform scale or both.

Offences: general.

7. (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 six 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 any guidance issued by the Committee 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 they have taken all reasonable precautions or measures to avoid the commission of the offence.

Interpretation.

8. (1) In this Schedule, unless the context requires otherwise,

expressions defined in this Law have those meanings, and the following expressions have the following meanings -

"regulated agent": see Schedule 3,

"relevant authorities": see Schedule 3 (and **"relevant authority"** shall be construed accordingly),

"the required information": see paragraph 2,

"service provider": see Schedule 3, and

"the specified period ": see paragraph 3."