

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* ECONOMIC DEVELOPMENT

AMENDMENTS TO LEGISLATION ADMINISTERED BY THE GUERNSEY REGISTRY

The States are asked to decide whether after consideration of the Policy Letter entitled “Amendments to Legislation Administered by the Guernsey Registry”, dated 19th June 2023, they are of the opinion:-

1. To agree to a set of amendments to the Commercial Laws and associated legislation described in paragraph 1.4 of the Policy Letter administered by the Guernsey Registry in accordance with the recommendations set out in sections 2 to 5 of the Policy Letter.
2. To direct the preparation of such legislation as may be necessary to give effect to the above decision.

The above Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1)(c) of the Rules of Procedure of the States of Deliberation and their Committees.

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The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

19th June 2023

Dear Sir

1. Executive Summary

- 1.1 The Guernsey Registry (the “Registry”) was established in 2008 and is operationally responsible for the registration of legal entities that can be established in Guernsey. In the same year, a statutory Registrar of Companies (the “Registrar”) was appointed and the Registry was equipped and resourced to support the Registrar in the exercise of their functions.
- 1.2 The Registrar administers several Offices¹ and maintains a suite of registers² (“Registers”) in accordance with statutory responsibilities. All Guernsey companies, limited partnerships (“LPs”), limited liability partnerships (“LLPs”) and foundations (together referred to in the policy letter as “legal entities”) must be registered at the Registry.
- 1.3 The Registrar has a vital role in enabling, encouraging, and providing oversight of, compliance with local and international legal frameworks and standards. In recent years, the Registry’s responsibilities have increased significantly, with its varied functions and powers spanning across several pieces of legislation.

¹ Including the Office of the Registrar of Companies, the Office of the Registrar of Foundations, the Office of the Registrar of Limited Liability Partnerships, the Office of the Registrar of Beneficial Ownership of Legal Persons, the Office of the Registrar of Charities and Other Non Profit Organisations, as well as acting as Deputy Greffier with respect to limited partnerships.

² The registers maintained by the Registry which are the subject of the recording keeping proposals in this policy letter are the Register of Companies, the Register of Limited Liability Partnerships, the Register of Foundations, and the Register of Limited Partnerships (the latter register is maintained by the Registrar of Companies in the Registrar’s capacity as Deputy Greffier).

- 1.4 The time is therefore right for a review of the legislation that the Registrar administers and in particular the legislation administered with respect to legal entities namely, the Companies (Guernsey) Law, 2008 (“Companies Law”), the Limited Partnerships (Guernsey) Law, 1995 (“LP Law”), the Limited Liability Partnerships (Guernsey) Law, 2013 (“LLP Law”) and the Foundations (Guernsey) Law, 2012 (“Foundations Law”) (together the “Commercial Laws”). In addition, certain provisions of other legislation administered by the Registrar, namely the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 (“Beneficial Ownership Law”), and the Charities etc. (Guernsey and Alderney) Ordinance, 2021 (“Charities Ordinance”), have also formed part of the review.
- 1.5 The aim of the review has been to achieve consistency in both legislation and practice, address points that have come to the Registry’s attention, apply recognised good practice and contribute to Guernsey’s continued dedication as a jurisdiction committed to transparency and to meeting international standards. In undertaking this review, standardisation and clarification of the enforcement measures and information and gathering powers across the legislation administered by the Registrar has also been sought in the interests of consistency and effectiveness.
- 1.6 As a result of the review, this policy letter identifies a series of amendments recommended by the Committee *for* Economic Development (“Committee”) to the legislation administered by the Registrar that will contribute to: greater consistency in the information available to the Registrar, and greater clarity, simplicity and uniformity in the oversight of legal entities administered by the Registry; further enhance and harmonise the application of the Registry’s enforcement measures and the information gathering and sharing powers across the Bailiwick’s authorities; and introduce greater operational efficiencies in practice. The proposals will also contribute to the preparations for the next evaluation of the Bailiwick of Guernsey (“Bailiwick”) by the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (“MONEYVAL”), particularly with respect to Financial Action Task Force (“FATF”) Recommendation 24 on the transparency and beneficial ownership of legal persons and Recommendation 40 on international co-operation.
- 1.7 The proposed amendments are categorised into the following four areas:
- (a) filing and record keeping (see Section 2);
 - (b) Registrar’s functions (see Section 3);
 - (c) enforcement measures (see Section 4); and
 - (d) information gathering and sharing powers (see Section 5).

2. Proposed Amendments: Filing and Record Keeping

- 2.1 Legal entities are all required to file various documents and information with the Registrar. The precise description and type of documents and information required varies, depending on the nature of the legal entity. However, in respect of all filing requirements it is imperative that legal entities comply with their filing obligations in a timely manner, providing complete and accurate information to the Registrar. In this respect, Recommendation 24 of the Financial Action Task Force Recommendations (Transparency and Beneficial Ownership of Legal Persons) requires legal entities to record and maintain certain information and for certain information to be kept in a public register maintained by a public authority. The Registrar's functions include administering and maintaining Registers of the various types of legal entities and the Registrar makes certain information available to the public. The Registrar also has powers to share information with other Bailiwick and equivalent foreign competent authorities.
- 2.2 The following set of amendments are proposed to ensure consistency to the greatest extent possible in the filing and record keeping provisions across the Commercial Laws. The proposals also seek to provide greater accuracy and consistency in the information available to the Registrar, create operational efficiencies, reduce the administrative burden on the Registry, and contribute to Guernsey's continued dedication as a jurisdiction committed to transparency and to meeting international standards.

Public Records

- 2.3 As the various offices of the Registrar are statutory public offices, information registered in the Registers is recorded and made publicly available. In the case of companies, LLPs, and foundations, the Registrar has statutory powers to publish non-confidential information. In the case of LPs and foundations, the Register of Limited Partnerships and Part A of the Register of Foundations are explicitly expressed to form part of the public records of the island. In practice information regarding all legal entities is currently publicly available at the Registry and online via reliable IT systems with the provision of an easily accessible suite of Registers. For the purposes of consistency, and so as to provide greater clarity of this principle from an external perspective, it is proposed that similar language is adopted across the Commercial Laws to provide that the Registers³ (including all information currently publicly available on the Registers and the information described below in paragraphs 2.5 to 2.12) form part of the public records of the island.

³ Part A of the Register of Foundations in the case of foundations

Information recorded at the Registry

- 2.4 The following proposals aim to achieve consistency across the Commercial Laws in respect of the information recorded by the Registry.

Proof of incorporation

- 2.5 Certificates are issued by the Registry as conclusive evidence of a legal entity's successful incorporation or registration. As copies of such certificates are publicly available at the Registry in practice, it is proposed that this is expressly stated in all of the Commercial Laws for clarity and transparency.

Legal form and status

- 2.6 The legal form and status of the legal entities administered by the Registry is, in practice, available from the information filed in the Registers and made public by the Registrar. Again, as such information is publicly available at the Registry in practice, for clarity and transparency it is proposed that the Commercial Laws explicitly require that the public Registers maintained by the Registrar include core information relating to legal form and status, including in respect of all registered legal entities (i) the legal entity type (including, for example, in the case of companies the type of company and in the case of LPs whether or not it is a LP with separate legal personality), (ii) the date of registration, (iii) the registration number, and (iv) where applicable, the date of removal from the Register. The Registrar should retain the discretion to add further information to the Registers regarding the status of registered legal entities. It should however be highlighted that interested stakeholders would be consulted before any additional legislative changes were made with respect to the core information relating to legal form and status required to be on the public Registers.

Registered office address

- 2.7 The Companies Law and the LLP Law require companies and LLPs to provide the Registrar with a statement of the address of the entity's registered office as part of its application for incorporation⁴. Once established, companies and LLPs are required, under section 30 of the Companies Law and section 9(1) of the LLP Law, to notify the Registrar of any change in the address of its registered office. In practice, this registered office information is therefore publicly available at the Registry in relation to all companies and LLPs. From an external perspective, it would provide greater clarity if it was expressly stated in the Companies Law and the LLP Law that this registered office information is a matter of public record, and it is therefore proposed that the legislation is amended accordingly.

⁴ See section 17 of the Companies Law where the requirement is to provide a statement of the proposed address of the company's office and see section 8(3) of the LLP Law where the requirement is to provide a statement of the registered office address .

Names and addresses

- 2.8 Names and addresses of company directors: The Companies Law requires the name and addresses of company directors to be provided to the Registry as part of the application for incorporation and companies are also required to notify the Registrar of any changes to this information in the register of directors⁵. The names and addresses of directors are also required to be confirmed in the annual validation. Whilst there is no explicit requirement for the Registrar to make this information publicly available, in practice (with the exception of a confidential residential address where a service address has been entered in the register of directors) it is made publicly available by the Registrar relying on her powers to publish non-confidential information. From an external perspective, it would provide greater clarity if it was expressly stated in the Companies Law that this director information forms part of the public record and that any changes will be updated in the Register of Companies by the Registrar, and it is therefore proposed that the legislation is amended accordingly.
- 2.9 Name of a foundation's resident agent: Information regarding the identity of the resident agent is publicly available in respect of companies, LPs and LLPs. Although it is clear who a foundation's resident agent is at the time of the annual validation, in the interest of consistency with the other legal entities, it is proposed that the Foundations Law is amended so that the name of a foundation's resident agent appears in Part A, the public section of the Register of Foundations so that it is publicly accessible (rather than in Part B, which is not publicly accessible).
- 2.10 Names of LLP members: Under the LLP Law, the names of members of LLPs must be included in the incorporation statement filed with the Registry. It is proposed that it will be clarified in the LLP Law that this information is publicly available and that any changes in such registered particulars will be updated in the Register of Limited Liability Partnerships by the Registrar.

Basic governing powers

- 2.11 For consistency across the Commercial Laws, to ensure proper oversight of legal entities and to keep pace with developing international standards, it is proposed that the basic governing powers for all legal entities should be recorded by the Registry and made publicly available. This is already the case for companies, where a company's memorandum and articles of incorporation, which provide details of the governance of the company, are filed with the Registry and publicly available.
- 2.12 It is well understood that for other legal entities, as well as details of basic governing powers, the constitutional documents may contain commercially sensitive information or information relating to individuals which should properly remain private. To address any legitimate concerns about confidentiality, it is proposed that for LPs with legal personality, LLPs and foundations, rather than the

⁵ See sections 17 and 145 of the Companies Law.

full constitutional documents being provided to the Registry, only particulars of governance provisions will be required in the form prescribed by the Registrar. Further, no commercially sensitive information or personal information that may identify a person will need to be included in the governance particulars provided to the Registrar. In order to address industry input and to ensure that the proposals are as user-friendly as possible, it is proposed that the Registrar will prescribe a standard form to capture the relevant information, which will be designed so that it is simple to complete and tailored to each legal entity type. To seek to ensure that this new requirement is straightforward to implement in practice, the Committee and the Registrar will continue to liaise with industry on the content of the standard forms, and the Registrar may issue guidance from time to time on the content of the governance particulars. Further, for entities that are already registered, a transitional period of just under three months will be included to allow time for them to comply with this requirement.

Changes in information recorded at the Registry

- 2.13 Change of registered office: It is proposed that registered office address changes for LPs, LLPs and foundations, like companies, only become effective when the relevant Register is updated by the Registrar.
- 2.14 Changes to basic governing powers: In practice, changes to a company's memorandum and articles of incorporation must be notified to the Registry. A special resolution amending a company's articles of incorporation must be notified to the Registry within 30 days, however, no such time period is specified with respect to a company's memorandum of incorporation⁶. It is therefore recommended that any changes to a company's memorandum must also be notified to the Registry within 30 days, that it is clarified from an external perspective that the amended articles of incorporation (together with the special resolution) need to be notified to the Registry and that the Registrar is required to register any altered memorandum or articles of incorporation that it has been notified of so that such changes are publicly available as is the case in practice. It is also proposed that LPs, LLPs and foundations, like companies, would have a similar duty to notify the Registrar of any changes to particulars of governance provisions filed at the Registry and that such changes would be made publicly available by the Registrar.
- 2.15 Updating the Register: It is implicit that upon the Registrar being notified of a change to a legal entity's registered particulars, the Registrar updates the relevant Register accordingly. This reflects the Registrar's current practice, and is generally expressly stated in the Commercial Laws⁷. However, for the purposes of consistency, and so as to provide greater clarity of this principle from an external perspective, it is proposed that similar language is adopted across the Commercial

⁶ See sections 41(1), 42 and 178(7) of the Companies Law.

⁷ See, for example, section 9(3) of the LP Law and 10(3) of the Foundations Law.

Laws, providing that upon receipt, or as soon as reasonably practicable thereafter, of a notice of change to a legal entity's registered particulars, the Registrar shall make the appropriate entry in the relevant Register⁸.

Records maintained by legal entities

- 2.16 In practice, legal entities keep and maintain their registration and ownership records at their registered office. This includes information filed with the Registrar. The following proposed amendments aim to achieve consistency in respect of the records maintained by legal entities –

Record maintenance

- 2.17 Legal entities are required to notify the Registry of changes to their registration details. It is therefore implicit that a legal entity's records must be kept up to date. For clarity, it is proposed that an explicit requirement is introduced across the Commercial Laws which obliges legal entities to keep and maintain accurate and up to date records of documentation, registers and information that they are legally required to keep at their registered office and retain any subsequent changes to such records as and when they occur. In line with current practice, it is envisaged that such records can be kept and maintained by legal entities in paper or electronic form.

Location of company records

- 2.18 With respect to companies, it is proposed that it is clarified that, in addition to the registers of directors and shareholders, it will be a requirement for other basic company information to be kept and maintained at the company's registered office, namely information legally required to be filed with, or issued by, the Registrar⁹ together with evidence of the company's legal form and status¹⁰.

Content of records

- 2.19 Proof of incorporation and legal form and status: In practice, legal entity records tend to include their proof of incorporation or registration, and their legal form and status¹¹. From an external perspective, it would provide greater clarity if a requirement to keep such proof at the registered office was expressly stated

⁸ See, for example, section 9 of the LLP Law where no express provision is in place where a change in the registered particulars has been notified to the Registrar.

⁹ This will include the company name, registered office address, memorandum of incorporation and articles of incorporation.

¹⁰ For further information regarding legal form and status, see paragraph 2.19.

¹¹ Legal form and status includes, in respect of all registered legal entities: (i) the legal entity type (including, for example, in the case of companies the type of company and in the case of LPs whether or not it is a LP with separate legal personality); (ii) the date of registration; and (iii) the registration number. In practice, this information is generally found in a legal entity's certificate of incorporation or registration and any subsequent certificate of conversion.

across the Commercial Laws and it is therefore proposed that the legislation is amended accordingly.

- 2.20 Record of beneficiaries (foundations): In the interests of good practice, it is proposed that foundations should be required to keep a record of beneficiaries at their registered office. It is proposed that the record of beneficiaries includes a list of the foundation's known beneficiaries¹² together with basic information on each beneficiary's interest in the foundation (e.g. whether or not the beneficiary (a) is enfranchised or disenfranchised; (b) has received any benefits as a beneficiary; or (c) has disclaimed, or has any restrictions on the rights attaching to, their interest. This proposal will not require the record of beneficiaries to be publicly available, due to the confidential nature of this information, but a record needs to be maintained for good practice and to ensure it is available and accessible to Bailiwick authorities if and when needed.
- 2.21 Register of members (companies): Companies are required to keep a register of members at their registered office which contains the name and addresses of the members, the date on which a person was registered as a member and the date in which a person ceased to be a member¹³. For companies having a share capital, the register of members must also record the shares held by each member by its distinguishing number, its class and the amount paid on the shares. To ensure proper oversight of companies and to keep pace with developing international standards, it is proposed that for companies having a share capital, they would also be required to record in their register of members the nature of the voting rights associated with each class of share. The Registrar intends to issue guidance on how this requirement can be fulfilled by legal entities in practice.
- 2.22 Register and record of members (LLPs): To reflect current practice, it is proposed that LLPs must record in their register of members the date in which a person was registered as a member and the date in which a person ceased to be a member. In the interests of good practice, it is also proposed that LLPs should be required to keep a separate record of the nature and extent of each member's interest in the LLP by recording the amount of capital which has been contributed or committed by each member. This record should also be kept at the LLP's registered office. This proposal will not require the record of beneficiaries to be publicly available, due to the confidential nature of this information, but a record needs to be maintained for good practice and to ensure it is available and accessible to Bailiwick authorities if and when needed.
- 2.23 Register of limited partners (LPs): To reflect current practice, it is proposed that LPs must record in their register of limited partners the date in which a person was

¹² As per section 31 of the Foundations Law, a beneficiary means a person so identified in the foundation's Constitution or whose identity is ascertainable as a member of a class or by their relationship to another person.

¹³ See section 123 of the Companies Law.

registered as a limited partner and the date in which a person ceased to be a limited partner.

Inspection of a company's shareholder register

Disclosure of purpose

- 2.24 Persons wishing to inspect the company's register and index of members are required to disclose the purpose for which the information will be used or whether the information will be disclosed to any other person ("purpose test provisions")¹⁴. It is implicit under the Registrar's current information gathering powers that a company's register and index of members can be inspected and copied without reference to the purpose test provisions. From an external perspective, it would provide greater clarity if it was expressly stated in the Companies Law that the purpose test does not apply to the Registrar and other Bailiwick competent authorities and it is therefore proposed that the legislation is revised accordingly.

Exception for redeemable and non-voting shares

- 2.25 Currently, the provisions set out in Part X of the Companies Law, in relation to the inspection of the register and index of members and requiring a copy of the register, do not apply in relation to members in respect of any redeemable or non-voting shares held by them¹⁵. To ensure the proper oversight of legal entities and to keep pace with developing international standards, it is proposed that the exception in place with respect to redeemable shares and non-voting shares is repealed so that all companies and classes of share are subject to the inspection provisions set out in Part X of the Companies Law.

Rectification of the Register

- 2.26 Currently, the Registrar has the power across the Commercial Laws to rectify an error or formal defect in the Register. In the LP Law and the Foundations Law, the Registrar may also rectify any declaration or other document filed with the Registrar in relation to that entity on behalf of a foundation official, and in the case of the LP Law, on behalf of any partner or on the Registrar's own motion. In the interests of consistency and accuracy of legal entity records held by the Registrar, it is proposed that rectification provisions across the Commercial Laws are revised so that their scope and language is harmonised and that they therefore each include the Registrar's ability to rectify any declaration or other document filed with the Registrar in relation to that entity on behalf of an entity's official¹⁶ or of the Registrar's own motion.

¹⁴ See section 127 of the Companies Law.

¹⁵ See section 130 of the Companies Law.

¹⁶ Entity's official is proposed to mean a foundation official, an LP's partner, a company's member, director, or creditor, or an LLP's member.

3. Proposed Amendments: Registrar's Functions

Registrar's functions

- 3.1 In order to further harmonise the Registrar's duties with respect to the administration of the registers, it is proposed that the functions of the Registrar are made more consistent across the Commercial Laws, the Beneficial Ownership Law, and the Charities Ordinance. It is important to highlight that some of the functions detailed below reflect the key role that the Registrar occupies in the Bailiwick's anti-money laundering and counter-terrorist financing ("AML/CFT") framework in light of the Registrar's core responsibilities vis à vis legal entities (including the oversight of compliance with local and international legal frameworks). Under Recommendation 40 of the Financial Action Task Force Recommendations (Other Forms of International Co-operation) it is vital that Bailiwick competent authorities can rapidly provide the fullest possible international cooperation in relation to money laundering, associated predicate offences and terrorist financing. Such exchanges of information should be possible both spontaneously and upon request with the widest range of foreign counterparts. It is therefore crucial that the Registrar's AML/CFT domestic advisory role as well as the Registrar's international cooperation responsibilities are reflected in the Registrar's functions across the legislation administered by the Registrar.
- 3.2 The proposals are to include clarification, where necessary, that the Registrar has functions of –
- a) verifying the accuracy of information filed with and recorded by the Registrar or maintained by legal entities pursuant to their registration, filing, notification and record keeping duties under the respective piece of legislation;
 - b) monitoring and enforcing the compliance of legal entities (and any of the legal entity's officers) with their statutory obligations owed to the Registrar under the respective piece of legislation (including registration, filing, notification, record keeping and provision of information obligations);
 - c) advising the Committee in relation to the administration and enforcement of the respective piece of legislation, the registration, regulation, and governance of legal entities, and the practice and procedures relating to them (including, making recommendations to the Committee for improving the Registrar's functions and the adequacy and effectiveness of relevant legislative provisions);

- d) advising the Committee, and other Bailiwick authorities, regarding the nature and activities of legal entities that may be linked to Guernsey, and the extent to which such nature or activities may or do affect the Bailiwick, including identifying, assessing and understanding the risks to the Bailiwick of, and/or exposing the Bailiwick to 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;
- e) cooperating and communicating with any Bailiwick authority or external authority with corresponding functions, or such other persons as the Registrar thinks fit, (i) to assist any Bailiwick authority in their functions, the Registrar in the exercise of the Registrar's functions or in the case of an external authority with corresponding functions, to assist them in their equivalent functions, (ii) to assist them or the Registrar in the prevention, detection, investigation or prosecution 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 or (iii) to promote or enhance the Register or relevant legislation¹⁷; and
- f) administering the Office of the Registrar.

Transfer of HM Greffier's functions to the Registrar

3.3 Currently, under the LP Law, HM Greffier is required to maintain the Register of Limited Partnerships. In practice, LPs are administered by the Registrar on behalf of HM Greffier in the Registrar's capacity as Deputy Greffier of the Royal Court. It is therefore proposed, that for the purposes of consistency and clarity, the functions of HM Greffier under the LP Law are transferred to the Registrar.

¹⁷ This cooperation and communication may take the form of information gathering or sharing. Any such information gathering or sharing could extend to confidential information. However the sharing of any such information would be limited to the purposes described in paragraph 5.5 below (Registrar's disclosure of information powers).

4. Proposed Amendments: Enforcement Measures

4.1 It is proposed that the enforcement provisions are further harmonised across the Beneficial Ownership Law, the Charities Ordinance and the Commercial Laws.

Consistency in sanctions

4.2 Greater harmonisation will provide more consistency in the Registrar's oversight processes and enforcement measures, and a wider set of powers at the Registrar's disposal so that the most appropriate and proportionate sanction can be applied to the individual circumstances in the event of non-compliance with obligations owed to the Registrar, such as the registration, filing, notification, record keeping and provision of information obligations under the Commercial Laws. It is hoped that this will in turn further increase the dissuasive impact of the sanctions regime and help ensure that legal entities and related persons meet their obligations.

4.3 To achieve greater consistency in the sanctions measures available to the Registrar, it is proposed that equivalent provisions to the following enforcement powers found in the Beneficial Ownership Law are incorporated into the Registrar's current suite of statutory powers in the Commercial Laws:

- a) *Private reprimands*¹⁸ – Private reprimands would be formal warnings which could be issued by the Registrar to any registered legal entity, or their officers, in respect of non-compliance with obligations owed to the Registrar under the Commercial Laws;
- b) *Public statements*¹⁹ – Public statement powers would allow the Registrar to make open public statements about misconduct, in respect of non-compliance with their obligations owed to the Registrar under the Commercial Laws, as a form of enforcement action against registered legal entities or their officers. It is proposed that such public statement powers would only be used when the Registrar considers it necessary to do so in the interests of the public or the reputation of the Bailiwick.

The Committee also recommends that it is clarified, where necessary, that any breach of any of the various obligations owed to the Registrar (i.e. filing, registration, notification, record keeping and provision of information requirements) in the legislation administered by the Registrar is subject to an appropriate sanction or range of sanctions, which may include the introduction of a new sanction (such as a criminal offence or a civil penalty) or a variation in the current fee, civil penalty or fine level.

¹⁸ See section 27 of the Beneficial Ownership Law, and for example, section 32 of the Charities Ordinance.

¹⁹ See section 28 of the Beneficial Ownership Law, and for example, section 33 of the Charities Ordinance.

Strike off powers

- 4.4 Currently, the Registrar only has the power to strike off a LP which has failed to comply with its obligation to file an annual validation²⁰. It is recommended that this power should be extended to include circumstances where a LP appears defunct.
- 4.5 The Companies Law provides for the striking off of a defaulting company in certain circumstances²¹. It is recommended that the grounds in section 355 of the Companies Law are reviewed and revised as necessary to ensure they reflect amendments to other provisions of the Companies Law and also, specifically, to insert new grounds for strike off where a company has failed to pay a civil penalty and is out of time to apply to have the penalty set aside. For consistency, it is recommended that this particular ground for strike off is also added for LPs, LLPs and foundations in the respective pieces of legislation. In addition, it is proposed that the strike off ground for annual validations can be amended by regulation so that it can reflect any amendments made by regulation to sections 234 and 235 of the Companies Law²².
- 4.6 The Companies Law and LLP Law includes the power to strike off for persistent or gross contraventions of the Companies Law or LLP Law respectively²³. In the interests of consistency, it is proposed that a similar strike off ground is included in the LP Law and the Foundations Law.
- 4.7 With respect to non-compliance with a foundation's obligation to have a resident agent and to complete its annual renewal, foundations must be non-compliant for a period of more than six months before it can be demonstrated that the foundation has persistently failed to comply with the Foundations Law and strike off proceedings can be initiated²⁴. In the interests of consistency with the other Commercial Laws, it is proposed that with respect to these two grounds the time period of six months is removed so that strike off proceedings can be initiated more promptly²⁵.

²⁰ See the Limited Partnerships (Annual Validations) (Striking Off) Regulations 2022.

²¹ See section 355 of the Companies Law.

²² See sections 234, 235, 237A and 355(1)(a) of the Companies Law.

²³ See sections 519 of the Companies Law and section 99 of the LLP Law.

²⁴ See regulations 2(1)(a)(ii) and 2(2) of the Foundations (Guernsey) (Strike Off) Regulations, 2014.

²⁵ With respect to these two grounds, it is envisaged that the concept of "persistently failed to comply with the Law" is substituted with the notion of "failed to comply with the Law".

Restoration to the Register of Companies

- 4.8 The Companies Law provides that an application cannot be made for restoration to the Register of Companies if the company was struck off for a reason set out in section 519 of the Companies Law²⁶ i.e. that the Registrar was of the opinion that there had been persistent or gross contraventions of the Companies Law, or its predecessor the Companies (Guernsey) Law, 1994 (the “1994 Law”). The Registrar and the Committee believe that this prohibition on restoration in these circumstances should be repealed, as it not only prevents an application for restoration by the company in question but also an application by a third party such as a creditor. Under the Companies Law, the Royal Court would have a discretion as to whether to order restoration and is required to have regard to a wide range of factors including the circumstances in which the company was struck off, whether there were persistent or gross contraventions of the Companies Law or the 1994 Law, and whether restoration to the Register would jeopardize the reputation of the Bailiwick as a financial centre²⁷.

Civil penalty regime

Establishment of civil penalty regime in the LP Law and the Foundations Law

- 4.9 The Companies Law and the LLP Law provide for a civil penalty regime, whereas the Foundations Law provides for the imposition of financial penalties and the LP Law does not provide for the imposition of civil penalties. In the interests of consistency, the Committee recommends that the LP Law and Foundations Law provide for a civil penalty regime whereby the Registrar is able to prescribe the amount of the civil penalty by regulations²⁸.

Introduction of new civil penalties

- 4.10 With the proposed application of the civil penalty regime across the Commercial Laws, it is envisaged that as part of the Registrar’s enforcement powers, the Registrar will have the ability to apply civil penalties in a wider range of circumstances so that the most appropriate and proportionate sanction can be applied to the individual circumstances in the event of non-compliance with obligations owed to the Registrar.
- 4.11 Non-compliance with annual validation obligations: One key filing requirement in respect of each type of legal entity is an annual filing verifying information held by the Registrar and providing information required by the Registrar. In the context of companies, LPs and LLPs this is called an annual validation and in the case of foundations it is an annual renewal. Where documents or information are not

²⁶ See section 370(4) of the Companies Law.

²⁷ See section 371 of the Companies Law.

²⁸ Please note that as there is already a financial penalty regime in place under the Foundations Law, it may be that the terminology of “financial penalty” is retained but that the regime is enhanced so that it has equivalent provisions to those set out in the other Commercial Laws.

filed, the Registrar can exercise powers to strike legal entities off and, in many cases, non-compliance with filing requirements is also a criminal offence. In more recent times, in the context of companies, the Registrar has moved away from relying on late filing fees as the means of incentivising timely filing of annual validations and has implemented a civil penalty regime where non-compliance with the obligations to file an annual validation automatically leads to the imposition of a civil penalty. The Registrar considers it appropriate to use civil penalties to penalise non-compliance with these obligations, considering the importance attached to the timely provision of the information gathered in these annual filings. The civil penalty regime in respect of non-compliance with the annual validation requirement imposed on companies is now established and the Registrar would like to harmonise this approach with the other legal entities. The Committee recommends that an LP, LLP and foundation is liable to a civil penalty for non-compliance with its annual filing obligation (rather than a late filing fee), reflecting the established regime for companies.

4.12 Non-compliance with resident agent obligation: The obligation for legal entities to have a resident agent²⁹ is an essential piece of the beneficial ownership framework. The obligation to notify the Registrar of any change in its resident agent or any change in the details contained in its record of resident agent is equally important to ensure that the information held by Bailiwick authorities is accurate and up to date. Given the importance of these resident agent obligations³⁰ to the beneficial ownership framework, the Committee recommends that a company, LLP, LP or foundation is liable to a civil penalty for non-compliance with these obligations.

4.13 Non-compliance with record keeping and information gathering requirements: It is proposed that a breach of any of the various obligations owed to the Registrar (i.e. filing, registration, notification, record keeping and provision of information requirements) would attract a civil penalty considering the importance given to the maintenance of accurate records and the timely provision of relevant information to the Bailiwick competent authorities in the exercise of their functions.

Removal of certain additional penalties/fines

4.14 Removal of “appropriate penalties” for late company filings: The Companies Law also makes provision in section 355 to an “appropriate penalty” for the late filing of an annual validation, which may be prescribed by the Registrar and which must be paid before a company will be considered to have shown “cause to the contrary” for the purposes of halting the striking off of a company³¹. The Registrar

²⁹ See paragraph 5.10 below where it is proposed that the requirement to have a resident agent is introduced for LPs.

³⁰ For companies, see sections 484 and 485 of the Companies Law. For LLPs, see paragraphs 1 and 2 of Schedule 2 to the LLP Law. For foundations, see paragraphs 1 and 2 of Schedule 1A to the Foundations Law.

³¹ See sections 355(7) and 355(8) of the Companies Law.

has not prescribed an “appropriate penalty” for the purposes of this section and in light of the civil penalty regime now in place does not intend to do so. It is therefore recommended that the reference in the Companies Law to “appropriate penalty” is amended to refer to any civil penalty imposed for non-filing of the annual validation (instead of the “appropriate penalty”), and the power of the Registrar to prescribe “appropriate penalties” is repealed.

- 4.15 Removal of Registrar’s power to determine “daily default fines” for LLPs: The LLP Law makes provision, in section 96, for the Registrar to determine the amount of a daily default fine where a person is liable, to the same, in respect of any offence under the LLP Law. The Registrar believes that this provision should be amended to remove the power of the Registrar to determine the amount of a daily default fine, which should be determined by the Royal Court upon conviction. The Committee recommends that section 96 should be amended in this regard to reflect the equivalent section 514 of the Companies Law.

Consistency in enforcement process

- 4.16 Currently, the Beneficial Ownership Law has an enforcement process which is administratively burdensome and inconsistent with the Registrar’s other enforcement processes. It is proposed therefore that the beneficial ownership regime has a more timely and streamlined decision making procedure whereby –
- a) Sanctions will generally take effect 4 weeks (rather than 6 weeks) following the date of the sanctions notice (during which time the relevant legal entity or person may apply to the court to have the decision set aside);
 - b) The Registrar can make an application for a court order directing that the sanctions decision has immediate effect where it is in the public interest or in the interests of the reputation of the Bailiwick as a financial centre; and
 - c) The period of the “sanctions proposal notice” issued by the Registrar (which provides a 28 day period for the legal entity or person to make representations) before the Registrar makes an enforcement decision may be reduced where necessary to do so in the public interest or for the reputation of the Bailiwick. Further, if by reason of those interests a decision needs to be taken immediately as a matter of urgency, the sanctions proposal notice may be dispensed by the Registrar with the prior confirmation of the Law Officers³².
- 4.17 It is also proposed that the decision making procedure for enforcement decisions under the Commercial Laws, particularly in respect of any new sanctions introduced under paragraph 4.3(a) and (b) above, are also aligned with sections 35, 36 and 37 of Part V of the Charities Ordinance to the extent practicably possible. It is envisaged that this would provide more clarity and consistency to

³² This is similar to the provision set out in section 103(6) of the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law 2020.

the enforcement process across the Commercial Laws with respect to (a) the considerations that need to be taken into account by the Registrar before making a decision, (b) the notification provisions and (c) the point at which a sanction takes effect.

Consistency in due process

- 4.18 It is recommended by the Committee that all of the above enforcement proposals are implemented in a manner that ensures due process and fairness and which is as consistent as possible across the various pieces of legislation.

Mandatory audit obligations for large companies

- 4.19 In accordance with the requirements under Part XVI of the Companies Law, large companies³³ are required to appoint auditors to prepare an auditors' report as they are unable to rely on the audit exemption³⁴. However, in the event of the company failing to fulfil its audit obligations, there is currently no penalty in place. It is therefore proposed that a large company failing to comply with their audit obligations would be liable to a civil penalty or an offence³⁵.

³³ Under the Companies (Audit Exemption) Regulations, 2008, as amended, a Guernsey company is a large company if (1) it satisfies two of the following conditions: (a) it has an annual net turnover of £10.52 million or greater, (b) it has a net balance sheet of £5.1 million or greater, or (c) it has an average number of employees of 50 or more; or (2) the company does not fall into any of the classes of company set out in regulation 2 of the Companies (Audit Exemption) Regulations, 2008.

³⁴ See the Companies (Audit Exemption) Regulations, 2008, as amended.

³⁵ Please note that a company that (a) does not fall within the definition of a large company under the Companies (Audit Exemption) Regulations, 2008, and (b) has failed to carry out an audit but has not passed an audit waiver resolution, will not be liable to such new penalties.

5. Proposed Amendments: Information Gathering and Sharing Powers

5.1 Under Recommendation 40 of the Financial Action Task Force Recommendations (Other Forms of International Co-operation) it is vital that Bailiwick competent authorities can rapidly provide the fullest possible international cooperation in relation to money laundering, associated predicate offences and terrorist financing. Such exchanges of information should be possible both spontaneously and upon request with the widest range of foreign counterparts. It is therefore important that the necessary legal gateways are in place so that the Bailiwick's authorities have the requisite information gathering and sharing powers to carry out their functions. The existence of such legal gateways are fundamental for the Registrar to fulfil its international responsibilities, particularly given the presence in the Bailiwick of cross border risks and cross border individuals with links to legal persons who are incorporated in Guernsey.

Harmonisation in information gathering and sharing powers

5.2 Currently, the Registrar has a suite of existing information gathering and sharing powers under the Commercial Laws. The extent of these powers vary and the Committee would therefore like to standardise and clarify these powers as much as possible across the Commercial Laws, the Charities Ordinance and the Beneficial Ownership Law in the manner proposed below. Alongside these changes the Registrar will review its current internal processes and procedures on information gathering and sharing to ensure that comprehensive and appropriate controls and safeguards are in place (including with respect to beneficial ownership information) and to address, *inter alia*, inappropriate fishing expeditions.

Information gathering

5.3 Registrar's power to request/obtain information and visit premises: It is proposed that the Registrar, across all of the Commercial Laws and the Beneficial Ownership Law should have the powers to request by notice and obtain information as the Registrar may reasonably require for the purposes of or in connection with the exercise of the Registrar's functions³⁶. In such circumstances, so as not to impede the information gathering process, it is envisaged that the information request notice would only be required to include details regarding the information requested, and that the Registrar would not be required to set out any additional information including the grounds of the Registrar's decision. This is in line with, for example, the approach taken by the Commercial Laws and the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020³⁷.

³⁶ For equivalent powers, see paragraph 1 of Schedule 3 to the Charities Ordinance.

³⁷ See section 103(1)(a) of the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020 which specifically exempts decisions to serve a notice to obtain information and documents from a requirement to include grounds for the decision of the particulars of the right of appeal in the notice.

However, paragraph 4(7) of Schedule 2 to the Beneficial Ownership Law places the Registrar under an obligation to include the grounds of the Registrar's decision together with appeal particulars. It follows that the Registrar may have to disclose concerns when it is not appropriate to do so, and at a time which would significantly increase the risk of tipping off. It is therefore proposed that the requirement to include the grounds of the Registrar's decision under paragraph 4(7) of Schedule 2 to the Beneficial Ownership Law is removed, but that the appeal particulars remain, in the notice.

- 5.4 In addition, it is proposed that across the Commercial Laws and the Beneficial Ownership Law the Registrar should have equivalent powers to visit the premises of legal entities with notice and agreement, request information and documents during site visits, and in limited circumstances, the Bailiff should have the power to grant a warrant³⁸ to enable the Registrar to carry out non-consensual site-visits³⁹. It is proposed that the Registrar's powers may be exercised by any person authorised by the Registrar, including a third party inspector. With respect to the Beneficial Ownership Law, the site visit powers will not be applied to any legal persons that are currently exempt from the Registrar's enforcement powers.

Information sharing

- 5.5 Registrar's disclosure of information powers: It is proposed that the Registrar, across all of the Commercial Laws, the Charities Ordinance and the Beneficial Ownership Law, should have equivalent powers to disclose information. The disclosure powers would therefore include disclosing public information, non-personally identifiable summary information, information to enable the discharge of the Registrar's functions, together with information in connection with proceedings, a court order or for other specified purposes⁴⁰. The specified

³⁸ For equivalent powers, see for example, sections 1, 5 to 8 inclusive and 10 of the Financial Services Commission (Site Visits) (Bailiwick of Guernsey) Ordinance 2008 and paragraphs 2 and 6 to 10 inclusive of Schedule 3 to the Charities Ordinance.

³⁹ The circumstances in which the power to grant a warrant is proposed are equivalent to those set out in section 6 of the Financial Services Commission (Site Visits) (Bailiwick of Guernsey) Ordinance 2008. These circumstances include where the Bailiff is satisfied that there are reasonable grounds for suspecting that (a) a request for information or site visit has not been complied with; (b) any information or document furnished pursuant to such a request is false, misleading, inaccurate or incomplete; or (c) if such a request was made, it would not be complied with, any documents would be removed, tampered with, falsified or destroyed, or the making of a request could significantly prejudice any related inquiry.

⁴⁰ The specified purposes would be (a) the prevention, detection, investigation or prosecution of criminal conduct or sanctioning of conduct for which penalties are provided for in the Bailiwick of elsewhere; (b) the conduct or proceedings of any civil forfeiture investigations; (c) the implementation and enforcement, and the prevention, detection or investigation of breaches of, international sanctions measures within the Bailiwick or that have been given effect within the Bailiwick; (d) assisting or enabling the Financial Intelligence Service, the Economic and Financial Crime Bureau, His Majesty's Procureur, His Majesty's Sheriff and His Majesty's Sergeant, the Commission, the Director of the Revenue Service, the Alderney Gambling Control Commission, the Data Protection Authority, the Overseas Aid Commission, and the Social Investment Fund to carry out their functions; (e) assisting or enabling any person or body within the Bailiwick whose functions include, or any person or body in another country or territory with similar

purposes would include the power to share information with other Bailiwick competent authorities (including with other Offices of the Registrar and the Economic and Financial Crime Bureau) as well as with foreign authorities with equivalent functions.⁴¹ This proposal includes the provision of reciprocal legal gateways so that other persons may disclose information to the Registrar⁴².

- 5.6 Cooperation with foreign authorities: It is proposed that the Registrar, across all of the Commercial Laws, the Beneficial Ownership Law and the Charities Ordinance, in exercising their respective functions, should have the equivalent power to the Commission⁴³ to cooperate with foreign competent authorities, which may take the form of information gathering and sharing.

Tipping Off

- 5.7 It is recommended that equivalent tipping off provisions to those set out under the Beneficial Ownership Law⁴⁴ are included in the Commercial Laws so that where the Registrar engages their information gathering powers with a third party, it is an offence for that person to disclose information which he knows or suspects may prejudice any criminal or regulatory investigations or proceedings. It is proposed that the tipping offence would only apply in those circumstances where the information request sent by the Registrar includes a notice stating that the tipping offence applies in relation to the specific request.

Beneficial ownership information for LPs

- 5.8 The nominated general partner of a LP with legal personality is responsible for assuming the resident agent information duties in respect of beneficial ownership⁴⁵.

functions to, those set out at item (c), to carry out their functions; (f) assisting or enabling any of the Offices of the Registrar within the Bailiwick, or any person or body in another country or territory with similar functions, to carry out their functions; (g) 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; (h) the disclosure by the Registrar of information in the interests of the public or the reputation of the Bailiwick as a finance centre.

⁴¹ It is proposed that there will also be a power to amend the list of purposes by regulations to permit the inclusion of any other functions that may necessary in future to keep pace with developing international standards. See paragraph 2(3) of Schedule 2 to the Beneficial Ownership Law.

⁴² See, for example, section 3(2) and paragraph 2(5) of Schedule 2 to the Charities Ordinance.

⁴³ See section 21A of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987.

⁴⁴ See paragraph 6 of Schedule 2 to the Beneficial Ownership Law.

⁴⁵ See paragraph 1 of the Beneficial Ownership of Legal Persons (Provision of Information) (Limited Partnerships) Regulations, 2017 and Parts 2 and 4 of the Beneficial Ownership Law.

- 5.9 In addition, the resident agents for companies, foundations and LLPs are also responsible for ascertaining the identity of the beneficial owners prior to formation. With the exception of LPs, the Commercial Laws also have an additional set of resident agent provisions which include the requirement to have a resident agent, keep a record of the resident agent, notify the Registrar of the resident agent details and any changes to the resident agent, disclose beneficial ownership to Bailiwick competent authorities as well as ancillary provisions including the suspension of interests for failure to disclose beneficial ownership information and tipping off⁴⁶.
- 5.10 To ensure consistency across the Commercial Laws, it is proposed that the LP Law is amended so that LPs with legal personality, like companies, foundations and LLPs, are required to have a resident agent to assume the resident agent obligations (rather than such obligations automatically falling on the general partner). In practice, this will mean that the resident agent will be required to be an individual who is a general partner of the LP, or a corporate services provider, resident or established in Guernsey, and will have to assume the equivalent duties to resident agents of other types of legal entity (including, the requirement to ascertain the identity of beneficial owners prior to formation and disclose information to Bailiwick competent authorities). Where the LP's nominated general partner satisfies the resident agent criteria, it is envisaged that the LP's nominated general partner will assume the role of resident agent unless and until the LP notifies the Registrar of the name and address of another person who satisfies the resident agent criteria. In those cases where the LP's nominated general partner does not satisfy the resident agent criteria, it is proposed that the LP will have a transitional period of just under three months to appoint a resident agent to allow time for them to comply with this requirement. In practice, the majority of LPs are established for collective investment schemes and are exempt from the resident agent provisions⁴⁷ and will therefore not be impacted by this aspect of the proposals. It is proposed that LPs with legal personality that fail to have a resident agent in place will be subject to the same penalties to those set out in the other Commercial Laws.

Cooperation with Bailiwick authorities: resident agents

- 5.11 Resident agents of companies, foundations and LLPs are currently required, on the receipt of a certificate, to provide beneficial ownership information to His Majesty's Procureur, the Commission, the police, or customs when such information is required for the purposes of criminal or regulatory investigations

⁴⁶ See Part XXIX Companies Law, Schedule 1A to the Foundations Law, and Schedule 2 to the LLP Law for the principal provisions relating to resident agents.

⁴⁷ See paragraph 3 of the Beneficial Ownership of Legal Persons (Provision of Information) (Limited Partnerships) Regulations, 2017.

and proceedings⁴⁸. This certification process dates back to times when the beneficial ownership regime was still in its infancy and the legal gateways available for Bailiwick competent authorities to access information were not as open as they are now. To further enhance and simplify the information gathering powers available to Bailiwick competent authorities, it is proposed that such powers should be available to all Bailiwick AML/CFT and sanctions authorities (including, without limitation, the Revenue Service and the Economic and Financial Crime Bureau) in order to enable them to directly obtain information or documents to discharge their functions. Although legal gateways are in place which allow Bailiwick competent authorities to obtain information via the Registrar⁴⁹ or in some limited cases directly from the Register of Beneficial Owners of Legal Persons, a simplified and more streamlined process is desirable for all Bailiwick AML/CFT and sanctions authorities. It is therefore envisaged that a simple notification process will replace the current certification procedures. Further, as per paragraph 5.10 above, these resident agent obligations should apply equally to LPs with legal personality.

- 5.12 Overall, it is proposed that resident agents will be required to provide information and assistance (including attending at specified premises and answering questions) to a greater number of Bailiwick agencies and in a wider set of circumstances. In addition, the information would no longer be limited to beneficial ownership information but to any basic information⁵⁰ that could be of assistance to Bailiwick competent authorities in the exercise of their functions. With respect to basic information, it is envisaged that a resident agent's obligations will be framed in a similar way to a resident agent's current beneficial ownership information obligations: taking reasonable steps to ascertain the basic information. The Registrar intends to issue guidance on how this requirement can be fulfilled by resident agents in practice. Resident agents will also be required to provide further assistance to Bailiwick AML/CFT and sanctions competent authorities where necessary to assist them in determining the beneficial owner and/or with respect to the prevention, detection, investigation or prosecution 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 crime. It is envisaged that there will be a regulation making power to enable the Committee to prescribe other categories of information or assistance that may be required by Bailiwick competent authorities. It must be highlighted

⁴⁸ See paragraph 490 of the Companies Law, paragraph 7 of Schedule 2 to the LLP Law, and paragraph 5 of Schedule 1A to the Foundations Law.

⁴⁹ See paragraph 2 of Schedule 2 to the Beneficial Ownership Law.

⁵⁰ Basic information means certain records required to be kept and maintained by legal entities, that is: the entity name, proof of incorporation, legal form and status, the registered office address, basic regulating powers, a list of the name and address of directors for companies (or of general partners for LPs, of members names for LLPs, or of councillors for foundations), and the register and index of members for companies (or the record of beneficiaries for foundations, the register of limited partners for LPs and the register of members and record of capital for LLPs).

that interested stakeholders would be consulted before any such regulations were made.

- 5.13 In order for the proposals to work in practice, resident agents would need to be given the necessary statutory powers to obtain such information from the legal entity. It is proposed that there will be a defence for a resident agent who has used reasonable steps to obtain such information but has, through no fault of their own, been unable to obtain the necessary information to satisfy the Bailiwick competent authority's request.
- 5.14 It is recommended that the legislation expressly states that resident agents are authorised by the relevant legal entity to hold any such basic or beneficial ownership information and provide any such basic or beneficial ownership information or further assistance required by Bailiwick competent authorities for the purposes described in paragraphs 5.11 and 5.12 above.

Required particulars of beneficial owners that are legal persons

- 5.15 The Beneficial Ownership Law sets out the particulars ("the required particulars") which resident agents of legal persons must record in relation to their beneficial owners. At present, where the beneficial owner is an individual, the required particulars include address, date on which the individual became a beneficial owner and the grounds on which he or she is considered to be a beneficial owner. However, where the beneficial owner is a legal person, the required particulars are limited to name, date and place of incorporation. To date, this discrepancy has not caused any difficulties in practice, as the circumstances in which it is permissible for a legal person to be treated as a beneficial owner are very limited and they only apply in situations where information about that legal person is available through other means. Nevertheless, it is recommended that this discrepancy be addressed by amending the definition of required particulars in relation to beneficial owners that are legal persons to bring it in line with that for individuals.

References to regulatory laws in the Beneficial Ownership Law

- 5.16 The Beneficial Ownership Law makes a number of references to the "regulatory Laws", and this term is defined by reference to various financial services enactments. These enactments have since been repealed and replaced. It is therefore proposed to amend the Beneficial Ownership Law to reflect these changes.

Transitional Provisions

- 5.17 It is recognised that some of the proposed changes in this policy letter are likely to have an impact on existing registered entities and will require some time to

implement in practice. The proposed changes also envisage the introduction of new penalties. The Committee recommends that appropriate transitional provisions are added where deemed appropriate to do so (including where new penalties are introduced).

6 Consultation

- 6.1 The Committee issued a public consultation to obtain widespread views from as many stakeholders as possible. In addition, the Committee engaged with Guernsey's finance sector, in particular the Commercial Bar Association (CBA), the Guernsey Association of Trustees (GAT) and the Guernsey Investment and Funds Association (GIFA).
- 6.2 The Committee has also consulted with the Guernsey Registry, HM Greffier, the Law Officers of the Crown, the Alderney Company Registry and the Association of Guernsey Charities.
- 6.3 The Policy & Resources Committee's mandate includes policy for the Charities Ordinance and the Beneficial Ownership Law. The Policy & Resources Committee has therefore been consulted with respect to these proposals and has indicated its support for the proposals in that regard.
- 6.4 The Committee has also engaged with the Policy & Finance Committee of the States of Alderney, as the Charities Ordinance has effect in both Guernsey and Alderney and the Policy & Finance Committee have indicated their support for the proposals in that regard.
- 6.5 This policy letter relates to a range of legislative amendments that need to be implemented in advance of the forthcoming MoneyVal Evaluation.
- 6.6 The Committee has written to the Presiding Officer seeking permission for both the policy letter and the associated legislation to be considered concurrently at the States of Deliberation's meeting commencing on 19th July 2023 and, given the need to progress legislation associated with the MoneyVal evaluation in a timely fashion, in principle, permission has been granted by the Presiding Officer.
- 6.7 The Legislative Review Panel will not be able to consider the draft legislation until the 26th June 2023 and the Committee has therefore asked the Presiding Officer to issue an additional Billet d'État containing the draft legislation in accordance with Rule 2(4) after the LRP has considered the draft legislation. Permission has been granted by the Presiding Officer provided that the legislation and propositions are submitted in time to enable the Presiding Officer to issue the additional Billet d'Etat no later than 6th July 2023.

7 Compliance with Rule 4

7.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended motions laid before the States.

7.2 In accordance with Rule 4(1):

- a) The propositions contribute to the States' objectives by helping to ensure that Guernsey continues to comply with international standards on financial crime and regulation, and prepare for international evaluations, as agreed as a priority action under the Government Work Plan 2022.
- b) The consultation undertaken with relevant stakeholders in the preparation of the propositions is detailed in Section 6 of this Policy Letter.
- c) The propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.
- d) In terms of financial implications, the new proposals will lead to operational efficiencies which will reduce the administrative burden on the Registry. Nevertheless, in light of the proposed expansion of the civil penalty regime and the wider set of oversight measures at the Registry's disposal, this will require a particular skill set within the Registry and inevitably add to the Registry's workload. To support the resilience of the Registry, it is anticipated that these proposals will necessitate one additional full time member of staff (at senior executive or junior senior officer grade) to assist the Registry carry out its activities and functions.

7.3 In accordance with Rule 4(2):

- a) propositions relate to the Committee's purpose and policy responsibilities of promoting and developing business, commerce and industry in all sectors of the economy, including the reputation of the Island as a centre for commerce and industry and regulation in the economy.
- b) is confirmed that the propositions have the support of the majority of the Committee, with Deputy Kazantseva-Miller dissenting.

Yours faithfully

N R Inder
President

S J Falla
Vice-President

A Kazantseva-Miller
N G Moakes
S P J Vermeulen

A Niles
A Mancini
Non-States Members

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR ECONOMIC DEVELOPMENT

AMENDMENTS TO LEGISLATION ADMINISTERED BY THE GUERNSEY REGISTRY

The President
Policy & Resources Committee
Sir Charles Frossard House
La Charroterie
St Peter Port
Guernsey
GY1 1FH

19th June 2023

Dear Sir,

Preferred date for consideration by the States of Deliberation

In accordance with Rule 4(3) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee *for* Economic Development requests that the Policy letter “Amendments to Legislation Administered by the Guernsey Registry” and the associated legislation be considered concurrently at the States of Deliberation’s meeting that will commence on 19th July 2023.

The policy letter relates to a range of legislative changes that need to be implemented in advance of the forthcoming MoneyVal Evaluation.

The Committee has written to the Presiding Officer seeking permission for both the policy letter and the associated legislation to be considered concurrently at the States of Deliberation’s meeting commencing on 19th July 2023 and permission has been granted.

The Legislative Review Panel will not be able to consider the draft legislation until the 26th June 2023 and the Committee has therefore asked the Presiding Officer to issue an additional Billet d’Etat in accordance with Rule 2(4) with the draft legislation, after the LRP has considered the draft legislation. Permission has been granted by the Presiding Officer provided that the Billet d’Etat can be circulated prior to 6th July 2023.

The Committee is grateful for your attention in this matter.

Yours faithfully,

A handwritten signature in blue ink, appearing to be 'NR Inder', written in a cursive style.

NR Inder
President

SJ Falla
Vice President

A Kazantseva-Miller
N G Moakes
S P J Vermeulen

A Niles
A Mancini
Non-States Members