

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**THE COMPANIES (GUERNSEY) LAW, 2008 (AMENDMENT) ORDINANCE, 2023**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2023", and to direct that the same shall have effect as an Ordinance of the States.

**EXPLANATORY MEMORANDUM**

This Ordinance amends the Companies (Guernsey) Law, 2008 ("the 2008 Law"). The amendments are in large part concerned with the functions of the Registrar of Companies under that Law (especially in relation to obtaining and disclosing information), companies' obligations to keep and maintain records, and related matters. The provisions also create offences and make more breaches of duties under the Law punishable by imposition by the Registrar of a civil penalty. Particular amendments include: conferring new powers of specified authorities (such as the Chief Officer of Police and the Director of the Economic and Financial Crime Bureau) to require the disclosure of information by resident agents of companies through the service of information notices; specifying new purposes for which information held by the Registrar of Companies may be disclosed; conferring new powers on the Registrar to request and obtain information, including provisions in respect of site visits and applications for warrants; introducing a new appeal procedure in respect of decisions of the Registrar; and conferring power on the Registrar to issue private reprimands and public statements in respect of companies and company officers.

The majority of the provisions in the Ordinance come into force on 29<sup>th</sup> July, with certain civil penalty and offence provisions coming into force on 13<sup>th</sup> October.



# **The Companies (Guernsey) Law, 2008**

## **(Amendment) Ordinance, 2023**

**THE STATES**, in pursuance of their Resolution of the \*\* July, 2023<sup>a</sup>, and in exercise of the powers conferred on them by sections 533 and 538 of the Companies (Guernsey) Law, 2008<sup>b</sup>, and all other powers enabling them in that behalf, hereby order:-

### **Amendment of Companies Law.**

1. (1) The Companies (Guernsey) Law, 2008 ("**the Law**") is amended as follows.

(2) At the end of section 17 (application for incorporation), insert -

"(11) For the avoidance of doubt, the Registrar shall reject an application for incorporation of a company if the requirements of this section are not met."

(3) At the end of section 20 (effect of incorporation), insert -

"(5) For the avoidance of doubt, on incorporation of a company the Registrar shall register in the Register of Companies –

(a) a copy of the certificate of incorporation of the

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<sup>a</sup> Article \* of Billet d'Etat No. \* of 2023.

<sup>b</sup> Order in Council No. VIII of 2008; this enactment has been amended.

company,

(b) the records listed in paragraphs (b) to (h) of section 496(2), and

(c) the address particulars required by section 143(4)(b) to be entered in the register of directors."

(4) In section 30 (registered office), after subsection (1) insert -

"(1A) Without prejudice to any other duty imposed under this Law or any other enactment, the company shall keep at its registered office -

(a) a record of its name and, where relevant, its alternative name,

(b) a record of the address of the registered office of the company,

(c) a copy of the certificate of incorporation, conversion, amalgamation or registration of the company, and any certificate of change of name,

(d) a record of the type of company the company is, within the meaning of section 2(1),

- (e) a record of the nature of the liability of the members of the company, within the meaning of section 2(2),
- (f) a record of the date of registration of the company,
- (g) a record of the registration number of the company,
- (h) a copy of the memorandum and articles of the company, and
- (i) (for the avoidance of doubt) any other records, registers or documents that the company is under a duty to keep at its registered office under any other provision of this Law or any other enactment (including, but not limited to, the register of members under section 123, any index of members under section 124 and the register of directors under section 143).

(1B) The company shall -

- (a) ensure that the records and documents referred to in subsection (1A) are accurate, maintained and kept up to date,
- (b) record any changes to the records and

documents referred to in subsection (1A) when such changes occur, and

- (c) keep that record, and the records and documents as so amended, at its registered office.

(1C) A company that fails to comply with subsection (1A) or (1B) is guilty of an offence and liable to a civil penalty.

(1D) For the avoidance of doubt, the obligations imposed under subsections (1A) and (1B) are without prejudice to any other obligation imposed under this Law."

(5) In section 41 (delivery of altered memorandum to Registrar), at the end of subsection (1), insert "within 30 days of the alteration being made; and for the avoidance of doubt, the Registrar shall record the altered memorandum in the Register of Companies on its delivery", and at the end of subsection (2) insert "and liable to a civil penalty".

(6) At the end of section 42 (alteration of articles), insert -

"(4) Where a company alters its articles by special resolution it shall, in addition to any other requirements imposed by this Law or any other enactment, deliver a copy of the articles as altered to the Registrar within 30 days of the alteration being made; and for the avoidance of doubt, the Registrar shall record the altered articles in the Register of Companies on its delivery.

(5) A company which fails to comply with subsection (4) is a guilty of an offence and liable to a civil penalty."

(7) In section 123 (register of members), in subsection (4) at the end of paragraph (a)(ii) delete "and", at the end of paragraph (b) for "." substitute ", and", after paragraph (b) insert -

"(c) the nature of the voting rights associated with each class of share.",

and at the end of section 123(8) insert "and liable to a civil penalty".

(8) In section 124 (index of members), at the end of subsection (6), insert "and liable to a civil penalty".

(9) At the end of section 127 (rights to inspect and require copies), insert -

"(5) For the avoidance of doubt, and without prejudice to any other powers under this Law or any other enactment, the requirements and restrictions in this section do not apply to the persons listed at section 490(10) acting in exercise of their functions."

(10) Section 130 (exception for redeemable and non-voting shares) is repealed.

(11) In section 145 (duty to notify Registrar of changes), at the end of subsection (1), insert "; and for the avoidance of doubt, on such notice being given the Registrar shall update the Register of Companies accordingly".

(12) In section 147 (record of usual residential address), at the end of subsection (1) insert "at the company's registered office", and in section 147(2), at the end "and liable to a civil penalty".

(13) In section 148 (duty to notify Registrar of change in usual residential address), at the end of subsection (3), insert "and liable to a civil penalty".

(14) Section 151 (disclosure of usual residential address by Registrar) is repealed.

(15) In section 178 (special resolutions), at the end of subsection (7) insert ", and (for the avoidance of doubt) the Registrar shall record the special resolution in the Register of Companies".

(16) Renumber the existing text of section 255 (requirement for audit) as subsection (1), and after subsection (1) insert -

"(2) A company of a type, class or description prevented from being exempt from audit under regulations made by the Committee under section 256(6) which fails to comply with this section is guilty of an offence and liable to a civil penalty."

(17) For subsection (3) of section 274B (register of recognised auditors), substitute -

"(3) The Register of Recognised Auditors (hereafter, in this section only, "**the Register**") shall be kept in such form as the Registrar thinks fit and may (without limitation) be kept in electronic form; and the Register



shall be part of the public records of the Island of Guernsey, and (subject to the provisions of this Law and any subordinate legislation made under it in respect of the payment of fees) shall be available for inspection accordingly."

(18) In section 355 (striking defaulting company off the register of companies) -

(a) in subsection (1) -

(i) in paragraph (a), for "the requirements of section 235 before the end of January in any year" substitute "the requirements of sections 234 and 235 before the end of February in any year",

(ii) at the end of paragraphs (d) and (e) delete "or", at the end of paragraph (f) for "." substitute ", or", and after subsection 1(f) insert -

"(g) a company has failed to pay a civil penalty and the period in which the company may appeal against the decision to impose that civil penalty has lapsed (including, for the avoidance of doubt, in circumstances where the company has appealed against the decision and that appeal has been dismissed).",

(b) for subsection (7)(b)(i), substitute -

"(i) any penalty imposed in respect of the company's failure to deliver its annual validation in accordance with the requirements of sections 234 and 235 before the end of February, and", and

(c) for subsection (8), substitute -

"(8) The Committee may amend subsection (1)(a) by regulations."

(19) Subsection (4) of section 370 (application for restoration to Register of Companies) is repealed.

(20) In section 484 (obligation for companies to have a resident agent), at the end of subsection (4) insert "and liable to a civil penalty."

(21) In section 485 (record of resident agent), in subsection (6) for "subsection (3)" substitute "this section", and in section 489 (suspension of interests for failure to disclose beneficial ownership), in subsection (2) for "paragraph 4" substitute "paragraphs 4 to 4D".

(22) For section 490 (disclosure of beneficial ownership information by resident agent), substitute -

**"Disclosure of information by resident agent."**

**490.** (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 company 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 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 company 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 his or her obligations under this Part and any other information he or she holds in respect of the beneficial owners of the company,
- (b) any of the records or copy certificates, notices or other documents specified in paragraphs (a) to (i) of section 30(1A),
- (c) the names and usual residential addresses of the directors of the company,
- (d) a copy of the register of members and index of members of the company,
- (e) any other information specified in the notice as being required -
  - (i) to ascertain the identity of the beneficial

owners of the company, 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

(f) 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 Law.

(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 under the Limited Partnerships (Guernsey) Law, 1995),
- (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.**

**490A.** (1) A person listed in section 490(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 490 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."

(23) In section 491 (tipping off), in subsection (1), the first time it appears, for "a certificate" substitute "an information notice", and the second time it appears for "certificate" substitute "notice".

(24) In section 496 (Register of Companies), renumber the existing text as subsection (1), and after subsection 1 insert -

"(2) The Register of Companies shall contain a record of all companies registered in Guernsey pursuant to the provisions of this Law, including -

- (a) a copy of the certificate of incorporation, conversion, amalgamation or registration of the company,
- (b) a record of the name of the company, where relevant, the alternative name of the company, and any certificate of change of name,
- (c) a record of the type of company the company is, within the meaning of section 2(1),

- (d) a record of the nature of the liability of the members of the company, within the meaning of section 2(2),
- (e) a record of the date of registration of the company,
- (f) a record of the registration number of the company,
- (g) a record of the address of the registered office of the company,
- (h) a record of the names of the directors of the company,
- (i) a record of the addresses of the directors of the company entered in the register of directors under section 143(4)(b),
- (j) a copy of the memorandum and articles of the company,
- (k) where relevant, the date of the company's removal from the Register, and
- (l) such other declarations, documents and information contained in applications made to, or otherwise sent to, filed with, or issued by the

Registrar under this Law (other than declarations, documents and information containing confidential information) that the Registrar determines, in his or her absolute discretion, should be contained on the Register.

(3) The Register of Companies shall be part of the public records of the Island of Guernsey, and (subject to the provisions of this Law and any subordinate legislation made under it in respect of the payment of fees) shall be available for inspection accordingly."

(25) In section 497 (register of disqualification orders), at the end of subsection (2), insert ", and (for the avoidance of doubt) shall be part of the public records of the Island of Guernsey".

(26) In section 499 (functions of Registrar), in subsection (1) -

(a) in paragraph (a), after "the Register of Companies" insert ", the Register of Recognised Auditors", and at the end insert "including, but not limited to, the following -

(i) to verify from time to time the accuracy of information in declarations and other documents contained in applications made to, or otherwise sent to, or filed with, the Registrar, or maintained by companies pursuant to their obligations under

section 30 to keep and maintain records, documents and information, and

- (ii) to monitor and enforce the compliance of persons with their obligations in respect of the Register of Companies or owed to the Registrar (including, without limitation, their obligations under section 30 to keep and maintain records, documents and information),",

(b) after paragraph (b), insert -

"(ba) to advise the Committee and other authorities within the Bailiwick in relation to the nature and activities of companies that may be linked to Guernsey, and the extent to which such nature or activities affect or are likely to affect the Bailiwick, including but not limited to identifying, assessing and understanding the risks to the Bailiwick of, and exposing the Bailiwick to the risks of -

- (i) money laundering,
- (ii) bribery and corruption,

- (iii) the financing of terrorism,
  - (iv) the financing of the proliferation of weapons of mass destruction, or
  - (v) any other form of financial or non-financial crime," and
- (c) in paragraph (c), after "communicate" insert "and co-operate", in subparagraph (i) for "authority" substitute "Bailiwick authority or authority", and for "for the purposes of" to the end, substitute "for the purposes of
- 
- (A) assisting any Bailiwick authority in its functions (or, in the case of any authority appearing to the Registrar to exercise, in a place outside the Bailiwick, functions corresponding to the Registrar's, assisting that authority with those corresponding functions),
  - (B) assisting the Registrar in the exercise of his or her functions,

- (C) assisting 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,
- (D) promoting or enhancing the Register of Companies, or
- (E) promoting or enhancing this Law (including any subordinate legislation made under it),

and, for the avoidance of doubt, such communication and co-operation may include obtaining information (including confidential information), and disclosing information (including confidential information, the disclosure of which is subject to the duties on the Registrar set out at section 504A(8)) where such disclosure is necessary for any of the purposes set out in section 504A(1) and

504A(2),".

(27) Section 499(2) is repealed.

(28) In section 500 (ancillary powers of the Registrar), in subsection (1)(a), substitute -

"(a) to request and obtain information and documents in accordance with the provisions of section 508A to 508F,".

(29) After section 500, insert -

**"Co-operation with foreign authorities.**

**500A.** (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."

(30) In section 502 (rectification of the Register of Companies) -

- (a) in subsection (1), at the end insert", or in any document filed with the Registrar",
- (b) in subsection (2), for "rectifies the Register of Companies in respect of a company", substitute "makes a rectification under subsection (1)", and
- (c) in subsection (3), for "rectification of the Register of Companies", substitute "the Registrar making a rectification under subsection (1)".

(31) In the heading of section 504 (disclosure and publication of non-confidential information) delete "Disclosure and", in the text of section 504 delete "disclosed or".

(32) After section 504 (publication of non-confidential information), insert -

**"Disclosure of information by the Registrar.**



**504A.** (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 the carrying out by the Commission of its functions,

- (h) assisting or enabling the carrying out by the Director of the Revenue Service of the Director's functions,
- (i) assisting or enabling the Alderney Gambling Control Commission to carry out its functions,
- (j) 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,
- (k) assisting or enabling the Director of the Economic and Financial Crime Bureau to carry out his or her functions,
- (l) assisting or enabling the Financial Intelligence Unit to carry out its functions,
- (m) assisting or enabling the Data Protection Authority to carry out its functions,
- (n) assisting or enabling the Overseas Aid Commission to carry out its functions,
- (o) assisting or enabling any person with functions relating to the Social Investment Fund to carry out those functions,

- (p) assisting or enabling any of the Registrars to carry out their functions,
- (q) 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,
- (r) 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,
- (s) 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
- (t) promoting the public interest or the reputation of the Bailiwick as a finance centre.

(3) For the purposes of subsection (2)(p), the Registrars

are -

- (a) the Registrar of Beneficial Ownership,
- (b) the Registrar in his or her capacity as the Registrar of Foundations and under the Limited Partnerships (Guernsey) Law, 1995,
- (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."

- (33) After section 508 (power of Registrar to apply for directions)

insert -

*"Information Powers of the Registrar*

**Power of Registrar to request and obtain information and documents.**

508A. (1) The Registrar may, by notice in writing served on any person, require that person to provide the Registrar in such form and manner, at such times or intervals, at such place and in respect of such periods as may be specified in the notice, with such information as may reasonably be required by the Registrar for the performance of the Registrar's functions.

- (2) The Registrar may, by notice in writing served on any person -

- (a) require that person to produce, in such form and manner, within such time and at such place as may be specified in the notice, such information of such description as may be so specified, for the purposes of the Registrar



inspecting them,

- (b) require that person to furnish, to any of the Registrar's officers, servants or agents authorised for the purposes of this section, on production of evidence of such authority, such information or information of such description as may be specified in the notice or as the officer, servant or agent may otherwise specify, either forthwith or within such time, and at such place, and in such form and manner, as may be so specified, for the purposes of their inspecting them,

being information reasonably required by the Registrar for the performance of the Registrar's functions.

(3) Where under subsection (2) the Registrar or any officer, servant or agent thereof has power to require the production of any information from a person, the Registrar or that officer, servant or agent has the like power to require the production of that information from any person who appears to be in possession of it.

(4) The powers conferred by this section to require a person to produce any information comprised in documents include the power -

- (a) if the documents are produced, to take copies of them or extracts from them, in circumstances

where the Registrar is satisfied that the taking of such copies or extracts is necessary for the proper exercise by the Registrar of the functions of the Registrar under this Law, and

- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of that person's knowledge and belief, where they are.

(5) The powers conferred by this section to require a person to provide any information include power to require that person to attend at such time and place as may be required and to give an explanation of and to answer questions relating to any matters in relation to which the production of the information may be required.

(6) A statement made by a person ("P") in response to a requirement imposed by or under this section, section 508C(c) or section 508D(2)(d) -

- (a) may be used in evidence against P in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against P in criminal proceedings except -
  - (i) where evidence relating to it is adduced, or a question relating to it is

asked, in the proceedings by or on behalf of P, or

(ii) in proceedings for -

(A) an offence under section 509 (false or misleading information),

(B) some other offence where, in giving evidence, he or she makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.

(7) For the avoidance of doubt, the powers conferred by this section and sections 508B to 508F are without prejudice to any other powers of Bailiwick authorities, conferred by this Law, any other enactment, or customary or common law, to obtain information and inspect and copy documents.

(8) Nothing in this section or section 508B to 508D 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.

(9) A requirement imposed under this section, section 508B or 508C, or under a warrant granted under section 508D, has effect notwithstanding any obligation as to confidentiality or other restriction upon 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, or by any other act or omission, pursuant to such a requirement.

**Site visits with notice and with agreement.**

**508B.** (1) The Registrar may, at such times, intervals and places as the Registrar deems fit, and -

- (a) in the exercise of the performance of the Registrar's functions, or
- (b) if it is considered desirable to do so by the Registrar for the protection of the interests of the public or any class thereof, or any particular persons, or the reputation of the Bailiwick as a finance centre,

make arrangements with any company for the making, in such manner and for such purposes as may be mutually agreed, of site visits to the offices of the

company.

(2) Site visits may take place at any or all of the premises where the activities of the company are conducted or records are maintained by or on behalf of the company.

(3) Where a company fails to co-operate with the Registrar when exercising or attempting to exercise functions for the purposes of this section (whether by declining to reach agreement as to the making, timing or scope of a site visit, or by failing to provide any information or document or to answer any question, or otherwise), that failure may be taken into account by the Registrar in deciding whether and in what manner to exercise functions arising otherwise than under this section.

**Request for information during site visits.**

508C. If the Registrar makes a site visit under section 508B the Registrar may require the officers, servants or agents of the company -

- (a) to produce for examination (whether at the premises of the company or at the offices of the Registrar) any documents held by them,
- (b) to produce copies of any documents in a legible form for the Registrar to take away,
- (c) to answer questions relating to any matters in relation to which the production of information may be required or connected to the purposes of the site visit.

**Power of Bailiff to grant a warrant.**

508D. (1) If the Bailiff is satisfied by information on oath that there are reasonable grounds for suspecting -

- (a) that a request or requirement under section 508A or 508C has not been complied with,
- (b) that any information or document furnished pursuant to such a request or requirement is false, misleading, inaccurate or incomplete, or
- (c) that if such a request or requirement were made -
  - (i) it would not be complied with,
  - (ii) any documents to which it would relate would be removed, tampered with, falsified or destroyed, or
  - (iii) the making of the request or requirement or any attempt to enforce it might significantly prejudice any inquiry to which the request or requirement would relate,

the Bailiff may grant a warrant.

(2) A warrant under this section authorises any police officer, together with any other person named or described in the warrant (including, without limitation, the Registrar or any person authorised by the Registrar under section 508F) -

- (a) to enter any premises specified in the warrant using such force as may be reasonably necessary,
- (b) to search the premises and, in relation to any documents or other information appearing to be relevant for the purpose of establishing whether a company has complied with any of the provisions of or under this Law, to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,
- (c) to take copies of or extracts from any such documents or other information,
- (d) to require any person named in, or of a class or description specified in, the warrant -
  - (i) to answer any questions (asked pursuant to the exercise of the Registrar's functions) relevant to

establishing whether a company has complied with any of the provisions of or under this Law,

(ii) to state to the best of that person's knowledge and belief the whereabouts of any documents or other information described in paragraph (b),

(iii) to make an explanation of any such documents or other information.

(3) A warrant under this section ceases to be valid on the expiration of 28 days immediately following the day on which it was issued.

(4) Any documents or other information of which possession is taken under the powers conferred by a warrant under this section may be retained -

(a) for a period of four months or such longer period as the Bailiff may, when issuing the warrant or at any time thereafter, direct, or

(b) if within that period proceedings to which the documents or other information are relevant are commenced against any person, until the conclusion of those proceedings.

**Lien.**



**508E.** Where a person claims a lien on a document, its production pursuant to a request or requirement under sections 508A to 508C or by or under a warrant granted under section 508D is without prejudice to that person's lien.

**Exercise of the Registrar's powers.**

**508F.** The Registrar's powers under sections 508A to 508C may also be exercised by any person who has been authorised by the Registrar to do so.

**Failure to comply with request or requirement under sections 508A to 508F.**

**508G.** Any person who, without reasonable excuse, obstructs or fails to comply with a request or requirement of a person exercising or purporting to exercise any power conferred by sections 508A to 508F is guilty of an offence and liable to a civil penalty."

(34) After section 509, insert -

**"Tipping off.**

**509A. (1)** A person is guilty of an offence if -

- (a) a notice is served on the person under section 508A,
- (b) that notice states that this section applies in respect of that notice, and
- (c) he or she discloses to any person information or any other matter which may prejudice -

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

which are connected with the service 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 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)."

(35) For section 511, substitute -

**"Appeals.**

**511.** (1) A person aggrieved by a decision of the Registrar made under this Law may appeal to the Court against that decision on the grounds that -

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(2) An appeal under this section shall be instituted -

(a) within a period of 28 days immediately following the date on which notice in writing of the decision was served by the Registrar on the person to whom the decision relates (or such other period as the Court may in any particular case direct), and

(b) by summons served on the Registrar stating the grounds and material facts on which the appellant relies.

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

(a) dismiss the appeal or dismiss the Registrar's application (in either case on such terms and conditions as the Court may direct), or

(b) make such other order as the Court considers just,

and the provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 52(3) of the Royal Court Civil Rules, 2007.

(4) On an appeal under this section the Court may -

- (a) set the decision of the Registrar aside and, if the Court considers it appropriate to do so, remit the matter to the Registrar with such directions as the Court thinks fit,
- (b) confirm the decision, in whole or in part, or
- (c) make such other order as the Court considers just, including, without limitation -
  - (i) in relation to an application in respect of a civil penalty, the order may increase the amount of the civil penalty for which the company is liable, and
  - (ii) in relation to an application in respect of a striking off under section 519, the execution of the order may be stayed subject to the payment of any outstanding criminal penalties, fees or civil penalties by the company or such other person as it thinks just.

(5) On an appeal under this section the Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision in question, pending the determination of the appeal.

(6) An appeal from a decision of the Court made under the provisions of this Law lies, with leave of the Court or the Court of Appeal, to the Court of Appeal on a question of law.

(7) Section 21 of the Court of Appeal (Guernsey) Law, 1961 ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (6) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

(8) Save in any case where there is express provision in this Law to the contrary, and subject to subsection (5), the making of an appeal under this section does not suspend the effect of that decision."

(36) For the heading of Part XXXI (criminal and civil penalties), substitute "ENFORCEMENT".

(37) In section 513 (criminal penalties for offences under this law), for subsection (1)(a), substitute -

"(a) under section 36(5), 37(6), 64(7), 65(5), 109(2), 110(6), 111(6), 112(5), 162(5), 199(3), 223(3), 230(3), 251(4), or 447(5) is liable on summary conviction to a fine not exceeding level 2 on the uniform scale,

(ab) 30(1C), 34(3), 35(5), 41(2), 42(5), 123(8), 124(6), 128(6), 143(8), 144(3), 145(3), 147(2), 148(3), 150(8), 154(4), 156(3), 173(7), 174(3), 228(3),

231(3), 266(2), 266(3) and 352(3) is liable on summary conviction to a fine not exceeding level 3 on the uniform scale,".

(38) In section 513(1)(b) -

(a) for "490(6)" substitute "490(8)", and

(b) in the appropriate numerical order, insert "255(2)", and "490A(2)".

(39) In section 513(1)(c), in the appropriate numerical order insert "508G", and "509A".

(40) After section 518 (relationship of civil penalties with prosecutions) insert -

**"Private reprimands.**

**518A.** (1) Without prejudice to any other powers of the Registrar, where the Registrar considers that, having regard to the conduct of a company, or an officer of a company, in respect of a failure to comply with obligations in respect of the Register of Companies or obligations owed to the Registrar (including, without limitation, the obligations under section 30 to keep and maintain records, documents and information) under this Law or any Ordinance or subordinate legislation made under it, it is appropriate to do so, the Registrar may issue to the company or officer (as the case may be) a private reprimand.

(2) The Registrar may not publish a private reprimand without the written consent of the company or officer in question.

(3) A private reprimand issued under subsection (1) may be taken into account by the Registrar in considering any matter under this Law or any Ordinance or subordinate legislation made under it concerning the company or officer in question.

**Public statements.**

**518B.** (1) Without prejudice to any other powers of the Registrar, where in the opinion of the Registrar a company or any officer of a company has contravened in a material particular -

(a) a provision of this Law or any Ordinance or subordinate legislation made under it concerned with obligations in respect of the Register of Companies or obligations owed to the Registrar (including, without limitation, the obligations under section 30 to keep and maintain records, documents and information),  
or

(b) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision,

the Registrar may, if the Registrar considers that to do so would be necessary



or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre, publish, in such manner and for such period as the Registrar may determine, a statement to that effect.

The statement may contain such information in respect of any person named therein, and such ancillary, incidental and supplementary information, as the Registrar may determine.

(2) If at any time it appears to the Registrar that a statement published under this section or any information contained in it is or has become misleading, inaccurate or incomplete, or that it is necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre to do so, the Registrar shall make such addition, erasure or other alteration to the statement or content thereof as the Registrar considers necessary.

(3) A statement published under subsection (1) may be taken into account by the Registrar in considering any matter under this Law or any Ordinance or subordinate legislation made under it concerning the company or officer in question.

**Imposition of applicable sanctions.**

518C. (1) Without prejudice to any other provision in this Law or any Ordinance or subordinate legislation made thereunder imposing duties on the Registrar in respect of the imposition of applicable sanctions, in deciding whether or not to impose an applicable sanction (and, where relevant, the amount or terms thereof), the Registrar must take into consideration the following factors -

- (a) in the case of a contravention of or under any provisions of this Law -
  - (i) whether the contravention was brought to the attention of the Registrar by the company or other person concerned, as the case may be,
  - (ii) the seriousness of the contravention, and
  - (iii) the efforts, if any, that have been made to rectify the contravention and to prevent a recurrence,
- (b) the potential financial consequences to the company or other person concerned, and to third parties including customers and creditors of that company or other person, of imposing an applicable sanction,
- (c) the action taken by the Registrar in relation to applicable sanctions in other cases, and
- (d) any other matter the Registrar considers relevant.

(2) In this section and sections 518D and 518E, "**applicable sanction**" means -

(a) a private reprimand under section 518A,

(b) a public statement under section 518B.

(3) The list set out at subsection (2) may be amended by regulations made by the Committee.

**Notification.**

**518D.** (1) Where the Registrar decides to impose an applicable sanction, he or she must issue to the company or other person, as the case may be, notice of that decision.

(2) A notice under this section must include a statement of the right to appeal under section 511.

(3) This section is without prejudice to any provision in this Law or any Ordinance or subordinate legislation made under it requiring the Registrar to give notice before imposing an applicable sanction."

**Effect of applicable sanctions.**

**518E.** (1) Subject to subsections (2) and (3), a decision of the Registrar to impose an applicable sanction does not have effect until -

(a) 28 days immediately following the date of the notice of the decision issued under section 518D, or

- (b) if an appeal to the Court is instituted within that period under section 511, the final determination, or withdrawal, of that appeal,

and for the purposes of this subsection, an appeal shall be deemed not to have been finally determined until the expiration of the time allowed for the institution of an appeal to the Court of Appeal under the Court of Appeal (Guernsey) Law, 1961 or until the determination of any such appeal instituted within that time.

(2) Subsection 1 does not apply to a decision to impose a private reprimand.

(3) Where the Registrar is of the view that it is necessary or desirable to do so -

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

the Registrar may apply to the Ordinary Court ("**the Court**") for an order under this subsection directing that the Registrar's decision to impose an applicable sanction should, without prejudice to any appeal in respect of the decision under section 511, have immediate effect; and the Court may make an order under this subsection subject to such terms and conditions as it thinks just.

(4) An application by the Registrar for an order under subsection (3) may, with the approval of the Court, and subject to such terms and conditions as the Court may direct, be made ex parte."

(41) In section 532(1) in the appropriate alphabetical order insert the following definitions –

""**the Overseas Aid Commission**" means the body responsible for distributing funds voted by the States for aid and development overseas", and

""**the Social Investment Fund**" means the company incorporated by the States to provide support and guidance to charitable organisations and others,".

(42) After section 532(1), insert –

"(1A) The Committee may amend the definition of "confidential information" in subsection (1) by regulations."

**Citation.**

2. This Ordinance may be cited as the Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2023.

**Commencement.**

3. (1) Subject to subsection (2), this Ordinance shall come into force on 29<sup>th</sup> July, 2023.

(2) The following provisions of this Ordinance shall come into force

on 13<sup>th</sup> October, 2023 -

- (a) section 1(4), to the extent that it inserts subsection (1C) into section 30 of the Law,
- (b) section 1(5), to the extent that it amends section 41(2) of the Law,
- (c) section 1(6), to the extent that it inserts section 42(5) into the Law,
- (d) section 1(7), to the extent that it amends section 123(8) of the Law,
- (e) section 1(8), to the extent that it amends section 124(6) of the Law,
- (f) subsections (12), (13), (16), (20) and (21) of section 1,
- (g) section 1(37), and
- (h) section 1(38), to the extent that it inserts "255(2)" into section 513(b) of the Law.