BILLET D'ÉTAT

X
2017

WEDNESDAY, 17th MAY, 2017

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BILLET D'ÉTAT

TO
THE MEMBERS OF THE STATES
OF THE ISLAND OF GUERNSEY

I hereby give notice that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE,** on **WEDNESDAY,** the **17th May, 2017,** immediately after the Meeting of the States of Election convened for that day**,** to consider the items listed in this Billet d'État which have been submitted for debate.

R. J. COLLAS
Bailiff and Presiding Officer

The Royal Court House
Guernsey

27th April, 2017

P.2017/36

ELECTION OF MEMBERS OF THE
LADIES' COLLEGE BOARD OF GOVERNORS

The States are asked:

To elect Deputy H. J. R. Soulsby as a member of the Ladies' College Board of Governors who has been nominated in that behalf by the Chairman, the two States-appointed Governors and the two Governors appointed by the States on the nomination of the Committee *for* Education, Sport & Culture, and whose term of office will expire on the 31st May 2017.

N.B. Nominations cannot be made from the floor of the Assembly.

The Ladies' College
Guernsey

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Tel: (01481) 721602
Fax: (01481) 724209

The Bailiff
Bailiff's Chambers
The Royal Court House
St Peter Port
GY1 2NZ

10th April 2017

Dear Sir

I am writing at the request of the Board of Governors of The Ladies' College which would be grateful if you would request the States to re-appoint Deputy Heidi Soulsby as a member of the Board of Governors with effect from 31st May 2017 for a further three-year term.

Deputy Soulsby was appointed as a member of the Board in 2016 as the Board's nominee in order to complete the unexpired term of office as governor of Mrs Kathryn Richards. Deputy Soulsby fulfils the requirement that at least one of the seven Governors of The Ladies' College shall be a member of the States.

The Board of Governors have found in the past year that Deputy Soulsby's knowledge and expertise are a very valuable addition to the Board's collective skills and experience.

Deputy Soulsby has confirmed her willingness to act in this capacity and Deputy Gavin St Pier has agreed to be her proposer in the States.

Yours faithfully

Elizabeth Bridge

Elizabeth Bridge
Clerk to the Governors

Principal
Mrs A Clancy BA (Combined Hons)
Email: principalspa@ladiescollege.ac.gg

Registrar
Miss R McClean
Email: registrar@ladiescollege.ac.gg

Bursar & Clerk to the Governors
Miss E Bridge MA Oxon, ACA
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P.2017/46

ADMINISTRATIVE DECISIONS (REVIEW) (GUERNSEY) LAW, 1986

NEW CHAIRMAN AND DEPUTY CHAIRMAN OF PANEL OF MEMBERS

The States are asked:-

To elect, in accordance with the provisions of section 4 (2) of the Administrative Decisions (Review) (Guernsey) Law, 1986:-

1. A Chairman of the Panel of Members, who shall be a sitting member of the States of Deliberation and who has held a seat in the States for a period of three years or more, to fill the vacancy which will arise on 1st June, 2017, by reason of the expiry of the term of office of Deputy C. J. Green, who is eligible for re-election.

2. A Deputy Chairman of that Panel, who shall be one of the Deans of the Douzaines but who shall not have a seat in the States, to fill the vacancy which will arise on 1st June, 2017, by reason of the expiry of the term of office of Douzenier R. L. Heaume MBE, who is eligible for re-election.

(N.B. The Deans of the Douzaines are Douzeniers R. L. Heaume, MBE, J. E. Foster, M. A. Ozanne, P. I. Le Tocq, G. Guilbert Mrs. C. E. Goodlass, B. E. Gregg, R. A. V. de Garis, M. A. Fooks Miss R. A. Henry.)

[This article is submitted for debate on the 17th May 2017 pursuant to Rule 3 (2) of the Rules of Procedure of the States of Deliberation.]

STATUTORY INSTRUMENTS LAID BEFORE THE STATES

The States of Deliberation have the power to annul the Statutory Instruments detailed below.

No. 2 of 2017

THE BOARDING PERMIT FEES ORDER 2017

In pursuance of Section 17 (3) of the Tourist Law, 1948, The Boarding Permit Fees Order, 2017, made by the Committee *for* Economic Development on 9th February 2017, is laid before the States.

EXPLANATORY NOTE

This Order prescribes the fees payable by an applicant for a boarding permit valid during the period 1st April 2017 to 31st March 2017. This Order comes into force on the 1st April, 2017.

No. 3 of 2017

THE TRADE MARKS (REGISTER OF TRADE MARK AGENTS) REGULATIONS, 2017

In pursuance of section 101 (3) of the Trade Marks (Bailiwick of Guernsey) Ordinance, 2006, "The Trade Marks (Register of Trade Mark Agents) Regulations, 2017", made by the Committee *for* Economic Development on 23rd February, 2017, are laid before the States.

EXPLANATORY NOTE

These Regulations provide, in accordance with section 80 of the Trade Marks (Bailiwick of Guernsey) Ordinance, 2006, that application for registration of a trade mark as agent for another person, and other matters under the Ordinance related to such trade marks, can only be done by a trade mark agent registered as such by the Registrar. The Regulations make provision for the establishment and maintenance of such a register, for the qualifications required for eligibility to be so registered, for the registration and annual fees and for the grounds upon which a person's name may be removed from the register or the registration suspended.

These Regulations come into force on 1st day of April 2017.

No 4. of 2017

THE REGISTERED DESIGNS (REGISTER OF DESIGN RIGHT AGENTS) REGULATIONS, 2017

In pursuance of section 35 (3) of the Registered Designs (Bailiwick of Guernsey) Ordinance, 2005, "The Registered Designs (Register of Design Right Agents) Regulations, 2017", made by the Committee *for* Economic Development on 23rd February, 2017, are laid before the States.

EXPLANATORY NOTE

These Regulations provide, in accordance with section 23 of the Registered Designs (Bailiwick of Guernsey) Ordinance, 2005, that application for registration of a design as agent for another person, and other matters under the Ordinance related to such designs, can only be done by a design right agent registered as such by the Registrar. The Regulations make provision for the establishment and maintenance of such a register, for the qualifications required for eligibility to be so registered, for the registration and annual fees and for the grounds upon which a person's name may be removed from the register or the registration suspended.

These Regulations come into force on 1st day of April 2017.

No. 9 of 2017

THE BOARDING PERMIT FEES (NO.2) ORDER, 2017

In pursuance of Section 17 (3) of the Tourist Law, 1948, The Boarding Permit Fees (No.2) Order, 2017, made by the Committee *for* Economic Development on 16th March 2017, is laid before the States.

EXPLANATORY NOTE

This Order prescribes the fees payable by an applicant for a boarding permit valid during the period 1st April 2017 to 31st March 2018 and revokes and replaces both the Boarding Permit Fees Order, 2016 and the Boarding Permit Fees Order, 2017.

The Boarding Permit Fees Order 2017 was made by the Committee on the 9th February 2017 and was subsequently found to contain technical errors in referring to legislation not approved by the States at the time the Order was made. This Order revokes and replaces the original 2017 Order to remove those references.

Although the description of the types of accommodation is different from the descriptions used in the original 2017 Order, the practical effect is the same. The fee in respect of an application for a boarding permit for accommodation which would be categorised as a hotel, guest accommodation, serviced apartment, hostel or self catering premises under the Tourist Law, 1948, were a permit to be granted, is £15 whereas the fee for any other description of accommodation is £50. This latter category is intended to cover occasional

accommodation, such as "Air Bed & Breakfast accommodation", not offered in standard, commercial visitor accommodation which would not meet the requirements for categorisation as a hotel, guest house etc. under the Tourist Law, 1948. The level of fees prescribed remains the same as in the Boarding Permit Fees Order, 2017.

This Order comes into force on the 1st April, 2017.

No. 15 of 2017

THE OPEN MARKET HOUSING REGISTER (FEES) REGULATIONS, 2017

In pursuance of sections 20 and 34 of the Open Market Housing Register (Guernsey) Law, 2016, The Open Market Housing Register (Fees) Regulations, 2017 made by the Committee *for the* Environment & Infrastructure on 31st March, 2017, are laid before the States.

EXPLANATORY NOTE

These Regulations prescribe a fee of £324 as payable on the making of an application for a declaration of registration under the Open Market Housing Register (Guernsey) Law, 2016. This is the same amount as the fee that was payable for an equivalent declaration under the previous legislation.

The Regulations came into force on 3rd April, 2017.

The full text of the statutory instruments and other legislation included in this document can be found at: http://www.guernseylegalresources.gg/article/158414/2017

THE INCOME TAX (GUERNSEY) (AMENDMENT) ORDINANCE, 2017

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Income Tax (Guernsey) (Amendment) Ordinance, 2017", and to direct that the same shall have effect as an Ordinance of the States.

This proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

EXPLANATORY MEMORANDUM

This Ordinance exempts from charge to Guernsey tax, distributions from the accumulated profits of a company which is not incorporated in Guernsey, and which has not carried on business in Guernsey whether through a permanent establishment or otherwise, nor been used to hold Guernsey investments (other than bank deposits), which arose prior to the date the beneficial member of that company becomes resident in Guernsey, providing the individual has a beneficial interest in the company of 1% or more; and the distribution is made by the end of the second full year of charge since the individual became resident. It also empowers the Committee to prescribe by regulation any limitations, conditions, restrictions and qualifications it considers necessary.

The Income Tax (Guernsey)

(Amendment) Ordinance, 2017

THE STATES, in pursuance of their Resolution of the 2nd November, 2016[a], and in exercise of the powers conferred on them by sections 203A and 208C of the Income Tax (Guernsey) Law, 1975[b] and all other powers enabling them in that behalf, hereby order:-

Amendment of 1975 Law.

1. The Income Tax (Guernsey) Law, 1975, as amended, is further amended as follows.

2. After section 40(ll)[c] insert the following paragraph -

"(mm) in the case of an individual who becomes resident in Guernsey in any year of charge, any distribution made to him by a company of which he is a beneficial member, provided that the following conditions are met -

(i) the company making the distribution is registered in a place outside Guernsey,

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[a] Billet d'État No. XXVI of 2016 (proposition 4).

[b] Ordres en Conseil Vol. XXV, p. 124; section 203A was inserted by Order in Council No. XVII of 2005 and section 208C was inserted by Order in Council No. V of 2011.

[c] Paragraph (ll) of section 40 was inserted by section 3 of the Income Tax (Pension Amendments) (Guernsey) Ordinance, 2015 (Ordinance No. XXXI of 2015).

(ii) the company has not carried on business in Guernsey, whether through a permanent establishment or otherwise,

(iii) the company has not been used to hold investments in Guernsey, other than money deposited with a licensed institution or other person exempted from the requirement to be licensed under the provisions of the Banking Supervision (Bailiwick of Guernsey) Law, 1994,

(iv) the income of the company from which the distribution was made arose prior to the date on which the individual became resident in Guernsey,

(v) the individual has a beneficial interest in the shares or any part of the shares of the company amounting to not less than 1% of the total of all beneficial interests held in the company, and

(vi) the distribution is made before the expiration of the second complete year of charge following the date on which the individual became resident in Guernsey,

and for the purposes of this paragraph the expressions "beneficial member", "beneficial interest" and "shares" shall be construed in accordance with section 62D.

The Committee may by regulation prescribe any matter relating to the exemption from tax created by this paragraph including, without limitation, any limitations, conditions, restrictions and qualifications.".

Citation.

3. This Ordinance may be cited as the Income Tax (Guernsey) (Amendment) Ordinance, 2017.

Commencement.

4. This Ordinance shall come into force on the 18th May, 2017.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

DOCUMENT DUTY AND ANTI-AVOIDANCE DUTY

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled 'Document Duty and Anti-Avoidance Duty' of the Policy & Resources Committee, they are of the opinion:

1. To approve the proposals to introduce a document duty (anti-avoidance) duty regime in accordance with Section 3 of the Policy Letter;

2. To approve the Projet de Loi entitled "The Document Duty (Anti-Avoidance) (Guernsey) Law, 2017", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Royal Sanction thereto;

3. To approve the proposals to repeal the Document Duty (Guernsey) Law, 1973 and the Document Duty (Guernsey) Ordinance, 2003 and to substitute a revised document duty regime in accordance with Section 4 of the Policy Letter;

4. To approve the Projet de Loi entitled "The Document Duty (Guernsey) Law, 2017", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Royal Sanction thereto; and

5. To direct the preparation of such other legislation as may be necessary to give effect to the above decisions.

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

EXPLANATORY MEMORANDUM

The Document Duty (Anti-Avoidance) (Guernsey) Law, 2017 introduces a regime, parallel to the existing document duty regime (to be amended in accordance with the Document Duty (Guernsey) Law, 2017 - see below), imposing a duty on transactions

which have an effect comparable to the transfer of an interest in real property but which do not involve a conveyance or other registrable document and so do not attract document duty. The Projet sets a general principle that the duty will be chargeable on all transactions for value which have the effect of conferring on a person a "significant benefit" in real property i.e. the right to enjoy the benefits of ownership without actually owning the property. The Projet carves out exceptions to that general principle and also makes provision for exemptions in defined circumstances. Duty will be payable at a rate set by Ordinance (comparable to the rate set for document duty), based on the market value of the interest transferred. The Projet imposes a duty of self-assessment jointly and severally on the transferor and transferee. HM Greffier will administer the scheme but the Director of Income Tax, who will be responsible for enforcement, will have powers to make formal assessments and to impose penalties in cases where the requirements have not been fulfilled. Provision is made for appeals to the Royal Court and for offences.

The Document Duty (Guernsey) Law, 2017 repeals and replaces the Document Duty (Guernsey) Law, 2003 to introduce a revised regime for the imposition of document duty on registered documents. The purpose of the revision is to remedy certain deficiencies in the present legislation, including lack of a formal appeals procedure and anti-avoidance provisions, and to achieve greater clarity and simplicity. The Projet sets out the general principle, subject to exemptions in defined circumstances, that duty will be charged on all documents relating to transactions which transfer an interest in Guernsey real property or create a charge against such real property. Duty on transfers of property is payable on the consideration paid, where the transaction is at arm's length; otherwise, duty is calculated on the basis of the market value of the realty transferred. The rates of duty, which will reflect the current rates, will be prescribed by Ordinance and will be similar to the rates under the Document Duty (Anti-Avoidance) (Guernsey) Law, 2017. The scheme will be administered as at present by HM Greffier. The Projet introduces appeals provisions and anti-avoidance provisions, and creates offences of making false or misleading statements.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

DOCUMENT DUTY AND ANTI-AVOIDANCE DUTY

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

30th March, 2017

Dear Sir

1 Executive Summary

1.1 As part of the 2012 Budget Report (Billet d'État XXII, 2011), the States approved the principle of the introduction of a *"regime in Guernsey which taxes sales of interests in entities which own either commercial or domestic real property in Guernsey at the same rate as applied under the Document Duty Law for standard conveyances."*

1.2 This Policy Letter is recommending the introduction of a regime, parallel to the existing document duty regime, which will impose a duty on transactions which have an effect comparable to the transfer of an interest in real property but which do not involve a conveyance or other registrable document and so do not attract document duty.

1.3 The reasons for the introduction of the new regime are two-fold; firstly to ensure a consistent, fair and equitable approach to all property transactions and secondly, to raise additional revenue for the States. It is not possible to estimate the level of additional income that these proposals could generate as little information is available on the number and value of properties held by legal entities or how often they are transferred. However, it is likely that the introduction of this new duty will at the very least be a deterrent to the use of companies for the purpose of ownership of real property where the purpose is the avoidance of document duty and thereby result in an increase in revenue from document duty when ownership of such property changes.

1.4 In addition, it is recommended that the existing Document Duty Law is revised in order to clarify and modernise it, ensure that it is human-rights compliant with the introduction of an appeals procedure, and introduce anti-avoidance provisions to discourage the use of artificial transactions designed to avoid document duty. In practice, it is not anticipated that there will be any noticeable impact on purchasers or vendors of real property as a result of these revisions and no change to the amount of duty charged.

1.5 These proposals will apply to conveyances of Guernsey property only; the current duty regime in Alderney (which, as well as document duty which currently is paid to the States of Guernsey, also includes congé, leasehold duty and transfer duty which is paid to the States of Alderney) will continue to operate as at present. As set out in the 2017 Budget Report, it is intended that, as part of the revision of the financial arrangements between Guernsey and Alderney, with effect from 2018, the document duty on conveyances of Alderney property will be paid to the States of Alderney.

2 Background

2.1 Under the present document duty regime, where Guernsey real property is transferred by way of conveyance, the document is registered at the Greffe and the transfer of ownership (and the payment) is clearly ascertainable for the purposes of assessing document duty. However, for example, where a property is owned by a company limited by shares, effective ownership of that property can be transferred to a third party by a sale of the shares in the company to a new beneficial owner, rather than by conveyance. In those circumstances, the share transfer agreement does not need to be registered, the transfer is not in the public domain and no document duty is payable, whatever the value of the property owned by the company or the price paid for it.

2.2 Other entities such as foundations, companies limited by guarantee, trusts and partnerships might enter into arrangements which enable individuals to acquire the right to enjoy or benefit from Guernsey real property without acquiring direct legal ownership by virtue of a conveyance. In all such cases, no duty would be payable.

3 Proposed Document Duty (Anti-Avoidance) (Guernsey) Law

3.1 The purpose of the proposed legislation is to ensure that transactions other than conveyances which have the effect of conferring enjoyment of Guernsey real property in a form similar to ownership are treated, for the purposes of liability to duty, in the same way, as far as possible, as conveyances registered at the Greffe. This would mean that duty, whether document duty or anti-avoidance duty, would be payable on all transfers of real property, whether directly by way of conveyance, or indirectly by virtue of some other transaction falling within the proposed legislation, at the same rate.

3.2 Rather than attempt to recite an exhaustive list of transactions to which the anti-avoidance duty will apply, which would be impossible and would tend to encourage the creation of schemes for its avoidance, it is proposed that the legislation will set out the general principles to be applied, and create exceptions in defined circumstances. The general principle will be that the proposed duty is chargeable on all transactions (called "relevant transactions") which do not fall within the scope of the Document Duty (Guernsey) Law (see Section 4), but which

(a) have the effect of conferring on the transferee a "significant benefit" in respect of any real property,

(b) are made in return for payment, whether for money or money's worth (some other form of payment), and

(c) are not specifically exempted by the legislation.

3.3 A person will be regarded as having received a "significant benefit" if, as a result of the transaction, he enjoys the benefits of ownership of real property - for example, he has the right to occupy the property or control its occupation; the right to receive rents or other income arising from the property; or generally the right to enjoy, or control the enjoyment of, the property.

3.4 It is proposed that certain transactions will expressly not be treated as conferring a significant benefit and so will not be liable to duty. However, the legislation will give the States flexibility by Ordinance to remove excluded transactions from this list, or to add others. The initial list will include:

(a) rights conferred by way of inheritance (e.g. the acquisition of real property in accordance with the laws of intestacy),

(b) transfers effected by court order such as vesting orders made in matrimonial proceedings, administration orders made in respect of the estate of a deceased property owner, and vesting orders made in saisie proceedings,

(c) the grant of leases or licences to occupy real property,

(d) transactions involving rights of way, wayleaves and other such minor rights attaching to land, and

(e) certain transfers concerning companies where the beneficial ownership is not affected.

3.5 Transfers of shares in listed companies, and transfers by or on behalf of collective investment schemes, are also proposed to be excluded. The imposition of duty on funds investing in Guernsey property, requiring as it would an assessment to duty on each occasion when an investment is made, might make such funds unviable. This would, in the Committee's view, have a disadvantageous effect on the local economy quite disproportionate to the amount of duty which would be collected. Similarly, the imposition of duty on the transfer of shares in listed companies would collect relatively little duty but would have an adverse effect on the local finance industry and, in consequence, the economy. It would also, in practice, be extremely difficult to collect duty on transfers of shares in listed companies, particularly where the listing was on a foreign stock exchange and there was no knowledge on the part of those dealing with the shares that the company (or, more likely, a distant subsidiary of the listed holding company) owned real property in Guernsey as a result of which duty became payable every time any of its shares were transferred.

3.6 Certain other transactions, which would otherwise be treated as relevant transactions, will be exempted from the requirement to pay duty. These include:

(a) family transactions (see paragraph 3.7),

(b) transfers in favour of charities or friendly societies, providers of affordable housing and the States,

(c) transactions occurring when a partnership transfers assets which confer a significant benefit in relation to real property to another partnership (for example, by reason of conversion to a different type of partnership), or to a company, where the partners (or members, where the transfer is to a company), and their respective partnership shares

(or shares of the company assets) are the same before and after the transaction,

(d) certain transfers of shares in a company where the principal use of the real property in respect of which the significant benefit arises, is for the purposes of a business, trade or undertaking operated by that company or a subsidiary, and

(e) certain transfers concerning partnerships where the principal use of the real property is for the purposes of a business, as in (d).

In order to achieve a degree of flexibility it is proposed that the States will also have power by Ordinance to amend the classes of exempt transactions.

3.7 "Family transactions" will also be exempt from duty. A transaction will be exempt under this category if both parties to a transaction are related to each other in one of the specified ways, including:

(a) as spouse or civil partner (or former spouse or civil partner),

(b) as a cohabitee or former cohabitee,

(c) as a parent or child or grandparent or grandchild or great-grandparent or great-grandchild, and

(d) as a sibling, uncle or aunt, nephew or niece.

Power to amend this category by Ordinance is also proposed.

3.8 Where a relevant transaction is not exempt, duty will be payable at a percentage of the market value of the benefit acquired. The percentage will be specified by Ordinance and will correspond to the percentage prescribed for document duty. This means that in a simple case where the significant benefit transferred is the enjoyment of a domestic property (as might occur when a company owning a single property as its principal asset is sold by share transfer) then the duty payable would be comparable to the amount payable if the property had been transferred by conveyance. In such a case the consideration paid for the transaction is likely to reflect the market value. However, in less straightforward cases, the use of the market value as a basis for calculating the duty enables a fairer and more accurate solution to be reached.

3.9 It is proposed that the legislation will impose liability, and a duty of self-assessment, jointly and severally on the transferor and the transferee in order to discourage avoidance, although in practice it is likely that the transferee (as

the "purchaser") will pay the duty. Unless the transaction is excluded from being treated as a relevant transaction (see paragraphs 3.4 and 3.5), a self-assessment form will be required to be completed and submitted to HM Greffier within 28 days after the transaction, accompanied by supporting documentation as to the market value, and by payment of the duty payable, if any. If the parties claim that the transaction is an exempt one they should make a declaration accordingly and need not submit a valuation unless subsequently required to do so. H M Greffier may request further information and will keep a register of all such returns. Fees, to be prescribed by regulations, may be charged in respect of HM Greffier's administrative functions, in lieu of the registration fees payable when a document is registered.

3.10 HM Greffier may refer any transaction to the Director of Income Tax and is likely to do so when any difficulty or dispute arises. The Director will be responsible for enforcement and will have powers to make a formal assessment, to require further documentation to be produced and to impose penalties in appropriate cases. He will also have powers similar to those under the Income Tax legislation to give directions or make adjustments as to liability where a transaction or series of transactions amounts to avoidance, reduction or deferral of liability.

3.11 Provision will be made for appeals to the Royal Court against decisions of the Director of Income Tax and for the creation of offences of fraudulent evasion of duty, failure to comply with the requirements of self-assessment and the making of false or misleading statements. It is proposed that directors and other officers of corporate bodies, limited partnerships and foundations which are convicted of an offence may also be convicted where they are proved to have consented to or connived in the offence or been guilty of neglect.

4 Proposed Document Duty (Guernsey) Law

4.1 The Policy and Resources Committee recommends a new simplified approach to the document duty regime. The present legislation, which imposes different rates of duty for different types of registered document, will be repealed (whilst maintaining the approach introduced this year in relation to banding - see paragraph 4.6) and the new legislation will be based on the general principle that any document presented for registration which relates to a transaction –

(a) transferring an interest in Guernsey real property, or

(b) creating a charge against real property ("bond")

will be chargeable to document duty except in defined circumstances. As at

present, the document will not be registered until duty has been paid.

4.2 A transaction will be exempt from document duty if it is a family transaction (see paragraph 3.7) or if it is a transfer in favour of, or a charge against the real property of, a charity, friendly society, affordable housing provider or the States (see paragraph 3.6(b)). Other proposed exemptions include documents:

(a) settling property on trust, making a transfer of property from a trustee to a trust beneficiary, or transferring property from retiring to new trustees,

(b) conveying property from a company to its beneficial owner or to another member of the same group of companies,

(c) transferring property by will, by partage or by conveyance between co-heirs,

(d) creating or affecting servitudes, wayleaves or covenants, and

(d) which are Acts of Court evidencing a transfer of property, such as a vesting order, an administration order or an order relating to provision for family and dependants under inheritance legislation, or a vesting order in saisie proceedings.

The legislation will enable further exemptions to be introduced by Ordinance.

4.3 It is proposed that where a chargeable transaction is not exempt, duty will be calculated according to whether the transaction is made at arm's length (i.e. on normal commercial terms) or otherwise than at arm's length.

4.4 Where the transaction is made at arm's length, the amount of document duty payable shall be a percentage (specified by Ordinance) of the stated consideration, or of the sum secured against the property. In such a case the parties will be required to file a declaration, in practice normally in the document itself, stating that the consideration stated in the document is the total consideration for the transaction.

4.5 Where the transaction is made otherwise than at arm's length, the amount of duty payable will be a percentage (specified by Ordinance) of the market value of the property transferred, or of the sum secured.

4.6 In each case there will be flexibility to prescribe different rates for different types of transaction, as the States may from time to time see fit. It is proposed that the initial rates for conveyances and bonds will correspond to those set

out in the Document Duty Ordinance 2003, which was amended in consequence of the 2017 Budget to provide a graduated system whereby progressively higher rates are applied to conveyances for each band of the transaction value. The rates for the charging of real property will be prescribed separately as at present.

4.7 It is proposed that the parties to a chargeable transaction will be under a duty to file a declaration stating the consideration or the market value (according to whether the transaction is at arm's length or otherwise). HM Greffier may, if he is of the opinion that the consideration stated, in respect of a transaction declared to be at arm's length, is inadequate, require the market value of the property to be used as the basis for calculation of the duty payable. HM Greffier will also have powers to require further evidence to be supplied and to assess the amount of document duty which is, in his opinion, properly payable. In practice, it is likely (as at present) that in any case where there is doubt as to the correct treatment of a document for duty purposes, the party wishing to register the document will discuss the matter with HM Greffier in advance of the date of registration.

4.8 Provision will be made for appeals to the Royal Court against decisions of HM Greffier. Where an appeal is lodged, registration of the document will still be possible pending the determination of the appeal: the appellant may lodge a sum equal to the amount of document duty which HM Greffier alleges is due, the document will be registered and the money deposited in a bank pending such determination.

4.9 The legislation will create offences of making false or misleading statements which may also extend to directors and officers of corporate bodies (see paragraph 3.11). HM Greffier will also have powers to make adjustments of liability, as in the anti-avoidance duty scheme (see paragraph 3.10), where there has been avoidance, reduction or deferral of liability.

5 Financial Implications

5.1 In 2015, the General Revenue income from Document Duty on conveyancing totalled approximately £10million. The rates currently are:

- 2% on up to £250,000 of the transaction value;
- 3.25% on up to the next £150,000 (ie the portion from £250,000 to £400,000);

- 3.5% on up to the next £350,000 (ie the portion from £400,000 to £750,000);

- 3.75% on up to the next £250,000 (ie the portion from £750,000 to £1,000,000);

- 4% on the remaining amount (ie the portion above £1,000,000).

5.2 The following table show the Document Duty payable for a range of conveyances:

Value of Conveyance £	Document Duty Payable £
500,000	13,375
750,000	22,125
1,000,000	31,500
2,000,000	72,500
5,000,000	191,500

5.3 It is not possible to estimate the level of additional income that the introduction of anti-avoidance duty could generate as little information is available on the number and value of properties held by legal entities or how often they are transferred.

5.4 The introduction of anti-avoidance duty would remove the justification for the existence of companies which own Guernsey real property solely for the purpose of the avoidance of document duty. The transfer of such a property to the beneficial owner of the company would, under the new document duty regime, be exempt from document duty and so it is possible that some such owners would decide to save future company administration costs and hold the property personally. This would mean that any future conveyances of that property would attract document duty. Whilst it is not possible to establish exact numbers of such companies, it is estimated that there could be in the region of 1,400 companies with a potential Guernsey property connection. The new anti-avoidance duty will also discourage the formation of new property-holding companies where the primary purpose is the avoidance of document duty.

5.5 Avoidance of document duty is not the only reason for holding property in a company, trust or other entity. Other reasons include property held:

- As part of a pension arrangement (eg a buy to let property held in a Retirement Annuity Trust Scheme);

- As part of an individual's complex inheritance arrangements (eg to hold a property in trust to ensure that it is available for occupation by various family members in a specific way and for a specific period);

- In order to separate the personal property of an individual operating an unincorporated business (eg a sole trader) from the assets of the business;

- In an investment fund or by a multi-member pension fund (where there will be many ultimate owners of the property);

- As part of a larger commercial operation which may have numerous ultimate owners (eg. shareholders of a listed company).

5.6 As each company pays an annual validation fee of £250, in the extreme, if all of these 1,400 companies were to dissolve, some £350,000 of annual validation income would be lost. However, the conveyance of a property with a market value of £1million would currently attract document duty of £31,500 which is equivalent to 126 years of annual validation fee.

5.7 It is not envisaged that any additional resources will be required in order to administer the anti-avoidance duty although this will be reviewed in light of the number of appeals referred to the Director of Income Tax.

5.8 The Committee is keen that any delay in its commencement be minimised in order to avoid further income loss to General Revenue caused by the absence of liability for duty on such transactions. The potential for such loss has increased in 2017 with the introduction of a graduated system of document duty with progressively higher rates of duty applying as the conveyance value increases.

5.9 Therefore, the Bailiff has granted permission[1] for the policy letter and draft legislation to be considered by the States at the same meeting.

5.10 When the Projets de Loi have received Royal Assent and been registered in the Royal Court it will be necessary to enact a commencement Ordinance and one setting the rates of duty. The Committee has the power, should it deem it necessary or expedient in the public interest to do so, to enact those

[1] in accordance with paragraph 5.2.1 of Directive No 1 of 2016 (entitled The Submission of Propositions to the States) issued by HM Greffier on 20 May 2016

Ordinances under Article 66A of the Reform (Guernsey) Law, 1948. The Committee will consider exercising that power if it deems it appropriate to do so in order to avoid further delay in implementation of the new regime which would be caused by taking the Ordinances through the normal legislative processes. If this procedure is followed, the Ordinances would subsequently be laid before the States.

6 Engagement and Consultation

6.1 The development of the anti-avoidance duty proposals has been immensely complicated and it has taken substantially longer than anticipated to develop proposals which are as fair and comprehensive as possible and encompass both domestic and commercial property.

6.2 The development of detailed proposals has been undertaken through preparation of draft legislation as this was considered to be the most appropriate and efficient method to identify and address the multitude of transaction types and reach a workable solution.

6.3 The former Treasury and Resources Department consulted widely on this issue including a public consultation exercise in 2014 followed by consultation on the revised draft legislation with the Guernsey Bar in 2015 and 2016, including meetings with interested parties. The final drafts of the legislation take into account the representations received and detailed responses have been given to the groups and individuals who submitted their views.

7 Propositions

The States are asked to decide whether they are of the opinion:-

1. To approve the proposals to introduce a document duty (anti-avoidance) duty regime in accordance with Section 3 of the Policy Letter;

2. To approve the Projet de Loi entitled "The Document Duty (Anti-Avoidance) (Guernsey) Law, 2017", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Royal Sanction thereto;

3. To approve the proposals to repeal the Document Duty (Guernsey) Law, 1973 and the Document Duty (Guernsey) Ordinance, 2003 and to substitute a revised document duty regime in accordance with Section 4 of the Policy Letter;

4. To approve the Projet de Loi entitled "The Document Duty (Guernsey) Law, 2017", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Royal Sanction thereto; and

5. To direct the preparation of such other legislation as may be necessary to give effect to the above decisions.

8 Committee Support for Propositions

8.1 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Committee.

Yours faithfully

G A St Pier
President

L S Trott
Vice-President

A H Brouard
J P Le Tocq
T J Stephens

PROJET DE LOI

ENTITLED

The Document Duty (Anti-Avoidance) (Guernsey) Law, 2017

ARRANGEMENT OF SECTIONS

1. Document duty (anti-avoidance) duty.
2. Exempt transactions.
3. Family transactions.
4. Amount of duty payable.
5. Duty of self-assessment.
6. Referral to Director of Income Tax.
7. Assessment by Director of Income Tax.
8. Production of documents and information.
9. Penalties and recovery of unpaid duty.
10. Provision against legal avoidance.
11. Appeals against decisions of Director.
12. Offences.
13. Criminal liability of directors etc.
14. Criminal proceedings against unincorporated bodies.
15. Service of documents.
16. Submission, etc., of documents in electronic form.
17. General provisions as to Ordinances and regulations.
18. Interpretation.
19. Citation.
20. Commencement.

PROJET DE LOI

ENTITLED

The Document Duty (Anti-Avoidance) (Guernsey) Law, 2017

THE STATES, in pursuance of their Resolutions of the 15th December, 2011[a] and 17th May, 2017[b], have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

Document duty (anti-avoidance) duty.

1. (1) Duty is payable to the Greffier, for the account of the States, in accordance with and subject to the provisions of this Law, in respect of any relevant transaction unless it is an exempt transaction.

(2) Subject to subsection (4), a transaction is a relevant transaction if -

(a) in consideration for a payment in money or money's worth to, or for the benefit of, any person ("**the transferor**"), it confers on any person ("**the transferee**") a significant benefit arising from, or relating to, any real property ("**the property**"), and

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a Billet d'État No. XXII of 2011.

b Article * of Billet d'État No. * of 2017.

(b) the transaction is not a transaction in respect of which document duty is payable under the Document Duty (Guernsey) Law, 2017.

(3) For the purposes of this section, and subject to subsection (4), a transaction confers a significant benefit if, as a result of the transaction, the transferee acquires, whether directly or indirectly -

(a) any right or opportunity to occupy, or to control the occupation of, the property,

(b) any right or opportunity to receive, or to direct the distribution of, any rents or other money or money's worth arising from the property, or

(c) any right or opportunity to enjoy, or control the enjoyment of, the property in any way whatsoever.

(4) A transaction shall not be treated as conferring a significant benefit for the purposes of this section if the right or opportunity acquired by the transferee, which would but for this subsection fall within one of the categories set out in subsection (3), arises only by virtue of one of the following -

(a) by succession to an interest in the property of a deceased person (whether under a will or otherwise),

(b) by an order of court including, without limitation -

(i) an order made pursuant to a divorce or judicial

separation,

(ii) an administration order made under Part II of the Law Reform (Inheritance and Miscellaneous Provisions) Law, 2006[c],

(iii) an order made under Part II (provision for family and dependants) of the Inheritance (Guernsey) Law, 2011[d],

(iv) a vesting order made pursuant to saisie proceedings,

(c) a lease or a licence to occupy,

(d) the creation, variation or discharge of a servitude, wayleave or covenant,

(e) the transfer of shares of a company which is listed on a stock exchange recognised by the Registrar under the Companies (Recognised Stock Exchanges) Regulations, 2009[e],

(f) the transfer of shares of a company from a person who

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[c] Order in Council No. IV of 2008.

[d] Order in Council No. XIII of 2011; amended by No. V of 2016.

[e] GSI No. 25 of 2009; amended by GSI No. 76 of 2014.

holds those shares as nominee for the beneficial owner ("A") of those shares -

(i) to A, or

(ii) to another person who, immediately after such transfer, will hold those shares as nominee for A,

(g) any purchase or sale by or on behalf of a collective investment scheme within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987[f] or any issue, transfer or redemption of any units in such a collective investment scheme,

(h) an agreement giving a person an option to purchase any property, whether real or personal, at some time in the future (provided that, for the avoidance of doubt, nothing in this paragraph shall prevent the exercise of such an option being treated as conferring a significant benefit for the purposes of this section),

(i) a transaction of which the bona fide principal purpose is to secure the repayment of a loan,

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[f] Ordres en Conseil, Vol. XXX, p. 281; amended by Vol. XXX, p. 243; Vol. XXXVII, p. 24; Order in Council Nos. XV and XXXII of 2003; No. XVIII of 2008; No. XIII of 2010; Recueil d'Ordonnances, Tome XXIV, p. 324. There are other amendments not relevant to this provision.

(j) a transaction of which the bona fide principal purpose is the management of real property on an arm's length basis, or

(k) a transaction of a description prescribed for the purposes of this section by Ordinance.

(5) The States may by Ordinance amend subsection (4) so as to remove or amend any of the classes of transaction which are not to be treated as conferring a significant benefit for the purposes of this section.

(6) For the avoidance of doubt, and without prejudice to the generality of subsection (2), a transaction may be a relevant transaction in the following circumstances -

(a) the property is owned by a company which is limited by shares and the transaction is a transfer of the legal or beneficial ownership of any of the shares of that company,

(b) the property is owned by a company limited by guarantee and the transaction is a transfer or creation (for the benefit of the transferee) of any right or interest in that company,

(c) the property is owned by a foundation and the transaction has the effect of conferring a significant benefit on the transferee in respect of that property,

(d) the property is owned by the trustees of a trust and the transaction is a transfer or creation of any interest in that trust or of any expectation that the trustees of the trust will confer any significant benefit on the transferee in respect of that property,

(e) the property is owned by a partnership, limited partnership or limited liability partnership and the transaction is a transfer or creation of any interest in such partnership, limited partnership or limited liability partnership.

(7) A transaction may be a relevant transaction whether or not -

(a) any party to the transaction is present, or resident, in Guernsey, and

(b) any legal person being the owner of the property is registered, or has a presence, in Guernsey.

Exempt transactions.

2. (1) A transaction is an exempt transaction if -

(a) it is a "**family transaction**" within the meaning of section 3,

(b) the transferee is -

(i) a Guernsey Registered Charity (registered in

accordance with the Charities and Non-Profit Organisations (Registration) (Guernsey) Law, 2008[g],

(ii) a friendly society registered under the Friendly Societies Act 1974[h] or registered and incorporated under the Friendly Societies Act 1992[i],

(iii) a housing provider within the meaning of the Real Property (Housing Schemes, Leaseholds and Miscellaneous Provisions) (Guernsey) Law, 2004[j], or

(iv) the States of Guernsey,

(c) its effect is the transfer of an interest in any property (whether real or personal) owned by a company to –

(i) the beneficial owner of all the shares in the transferor,

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g Order in Council No. XXVI of 2008; amended by No. III of 2010; No. VIII of 2011; Ordinance Nos. XXXVI and XLIX of 2008; No. XXIX of 2010; No. VI of 2015; No. IX of 2016.

h An Act of Parliament (1974 c. 46).

i An Act of Parliament (1992 c. 40).

j Order in Council No. X of 2005; amended by Ordinance No. IX of 2016.

(ii) another company the shares in which are all in the same beneficial ownership as the shares in the transferor,

(iii) another company which is a wholly-owned subsidiary of the transferor or of which the transferor is a wholly-owned subsidiary, or

(iv) another company where both the transferor and the transferee are wholly-owned subsidiaries of the same holding company,

(d) it is the transfer of an interest in any property (whether real or personal) owned by or on behalf of -

(i) all or some of the partners of a partnership, not being a partnership within subparagraph (ii) or (iii),

(ii) a limited partnership with legal personality, or

(iii) a limited liability partnership,

to another partnership within subparagraph (i), (ii) or (iii), or to a company, where

(A) the partners of the transferor partnership are the same as the partners of the transferee partnership or the

members of the transferee company (as the case may be) and

(B) the share of the partnership or company assets to which any such partner or member would be entitled, in the event that the transferee partnership (or the transferee company) was dissolved immediately following such transfer, is not materially different to the share of the partnership assets to which such partner or member would have been entitled had the transferor partnership been dissolved immediately prior to such transfer,

(e) it is the transfer of shares in a company ("A") where the significant benefit conferred arises from, or relates to, any real property which is owned by A, or by any subsidiary of A, and the principal use of that real property is the carrying on by A, or by any subsidiary of A, of a business, trade or undertaking, other than the letting out (howsoever described) of such real property for money or money's worth,

(f) it is the transfer of an interest in any property (whether real or personal) owned by or on behalf of a partnership ("P"), as described in subparagraph (d)(i), (ii) or (iii), where the significant benefit conferred

arises from, or relates to, any real property which is owned by or on behalf of P, and the principal use of that real property is the carrying on by P of a business, trade or undertaking, other than the letting out (howsoever described) of such real property for money or money's worth, or

(g) it is a transaction of a description prescribed for the purposes of this section by Ordinance.

(2) The States may by Ordinance amend subsection (1) so as to remove or amend any of the classes of transaction which are exempt transactions.

Family transactions.

3. (1) A transaction is a family transaction for the purposes of this Law if all the parties to the transaction are associated with each other within the meaning of subsection (2).

(2) A person is associated with another person for the purposes of subsection (1) if, in relation to that other person –

(a) they are, or have been, spouses or civil partners of each other,

(b) they are cohabitants, or former cohabitants,

(c) he or she is -

(i) a parent, stepparent, child, stepchild,

grandparent, grandchild, great-grandparent, great-grandchild, or

(ii) a sibling, uncle, aunt, nephew or niece (whether of the full blood or of the half blood),

of that other person or of that other person's spouse, civil partner or cohabitant.

(3) For the purposes of subsection (2) –

(a) "**cohabitants**" means two people who are not spouses or civil partners of each other but are living together as if they were married, and "**cohabitant**" shall be construed accordingly,

(b) a reference to a person's spouse, civil partner or cohabitant includes (without limitation) a reference to -

(i) a deceased spouse, civil partner or cohabitant who had been the spouse, civil partner or cohabitant of that person until his or her death, and

(ii) a person who has the bona fide intention of becoming the spouse or civil partner of that person.

(4) Any reference in this section, however expressed, to any

relationship between two persons shall be construed without regard to whether either of those persons, or any person through whom the relationship is deduced, is legitimate or illegitimate.

(5) The States may by Ordinance amend the definition of "**family transaction**" set out in this section.

Amount of duty payable.

4. (1) The amount of duty payable under this Law in respect of a relevant transaction which is not an exempt transaction shall be such percentage of the assessable market value of the significant benefit as may from time to time be prescribed by Ordinance.

(2) For the purposes of subsection (1) the assessable market value of the significant benefit shall be its market value at the date of the relevant transaction.

Duty of self-assessment.

5. (1) The transferee and the transferor in a relevant transaction ("**the parties**") are jointly and severally liable to comply with the requirements imposed by or under this Law and, in so doing, must make full and frank disclosure of all facts which may be material and generally demonstrate utmost good faith in their dealings with the Greffier and the Director of Income Tax.

(2) The parties must furnish to the Greffier, in such form and manner as the Greffier may from time to time require, within 28 days of the date of the relevant transaction -

(a) a description of the relevant transaction, accompanied

by supporting documentation, together with -

(i) except where the parties claim that the transaction is an exempt transaction, a statement of the assessable market value of the significant benefit transferred, and

(ii) such other information as the Greffier may from time to time require,

(b) a calculation of the duty, if any, payable in respect of the relevant transaction,

(c) payment of the duty payable, if any, in respect of the relevant transaction,

(d) payment to the Greffier, for the account of the States, of such fee as may from time to time be prescribed by regulations of the Committee,

(e) where the parties claim that the transaction is an exempt transaction, a declaration stating the grounds on which it is claimed that the transaction is exempt, and

(f) a joint declaration by the parties that the statement is complete and accurate to the best of their knowledge and belief and that the amount of duty tendered, if any, is correct.

(3) The Greffier may, within 60 days after receipt of a return under subsection (2), require the applicant to provide such additional information and documents, including (for the avoidance of doubt) a statement, or further statement, of the assessable market value of the significant interest transferred, as the Greffier may reasonably require for the purpose of assessing any liability to duty under this Law.

(4) The Greffier shall keep a register of all relevant transactions in respect of which returns under subsection (2) are received, or which are otherwise notified to the Greffier, containing such information as the Greffier may consider necessary or expedient, including (without limitation) –

(a) the names of the parties,

(b) the date of the relevant transaction,

(c) a brief description of the relevant transaction,

(d) the real property in relation to which the relevant transaction occurred and the assessable market value of the significant benefit,

(e) the amount of any duty paid, and

(f) where the transaction is exempt, the reason for such exemption,

and the Greffier shall, upon payment of such fee as may from time to time be prescribed by regulations of the Committee, supply copies of any entry on the register upon application by, or on behalf of, a party to the transaction.

Referral to Director of Income Tax.

6. The Greffier may, at the Greffier's discretion, refer any transaction to the Director of Income Tax and in relation to any such transaction the Director shall have the powers and duties set out in this Law.

Assessment by Director of Income Tax.

7. (1) If, in relation to any transaction referred by the Greffier -

(a) the Director of Income Tax is of the opinion that a transaction is a relevant transaction within the meaning of this Law, and the parties have failed to comply with the duties imposed on them by section 5, or

(b) the parties have purported to comply with the duties so imposed but, in the opinion of the Director –

(i) any document furnished is not authentic,

(ii) any statement or declaration furnished is false, misleading or incomplete in any particular,

(iii) any calculation of the duty payable under this Law is inaccurate, or

(iv) where the parties claim that the transaction is

an exempt transaction, the transaction is not exempt,

then the Director may exercise the powers under this section to make a formal assessment of the liability to duty under this Law and in connection therewith may exercise the powers under sections 8, 9 and 10.

(2) A formal assessment under this section shall -

(a) be made in writing,

(b) specify the duty assessed,

(c) identify separately the amount and basis of any penalty imposed in accordance with section 9, and any direction given in accordance with section 10,

(d) set out the information and assumptions on the basis of which the duty and any penalty has been assessed or imposed,

(e) be served on the parties and copied to the Greffier,

(f) contain a statement of the right of appeal under section 11, and

(g) be conclusive, subject to any appeal, of the liability to duty under this Law, and of liability to any penalty thereby imposed.

(3) The powers of the Director under this section are without prejudice to the provisions of section 12.

Production of documents and information.

8. (1) Where the Director of Income Tax has reason to believe that a transaction may fall within section 7(1) the Director may, by notice in writing served on the parties, require them to furnish, within such reasonable time as may be specified in the notice, such information or documents, verified in such manner if any as may be so specified, as the Director may require as being relevant for the purpose of determining whether or not the transaction is liable to any duty under this Law, and, if so, the amount of that duty.

(2) The Director must give written reasons for such belief when exercising the powers under this section.

Penalties and recovery of unpaid duty.

9. (1) When making an assessment under section 7, the Director of Income Tax may include within it by way of penalty a fixed sum of an amount not exceeding 100% of the total amount of duty thereby assessed.

(2) Any duty due and not paid in accordance with the provisions of this Law and any penalty levied under subsection (1) shall be recoverable by the States as a civil debt.

Provision against legal avoidance.

10. (1) Where the effect of a transaction or series of transactions is the avoidance, reduction or deferral of the liability of any person ("**the person concerned**") to duty under this Law, the Director of Income Tax may, in the

Director's discretion, make such adjustments as respects the liability of the person concerned to duty as may in the Director's opinion be appropriate to counteract the avoidance, reduction or deferral of liability which would otherwise be effected by or as a result of that transaction or series of transactions and, without limitation, may give such directions as provided for in subsections (2) and (3) as the Director thinks fit.

(2) The Director may include in an assessment made under section 7 a direction that -

(a) such liability to duty shall be imposed upon the relevant transaction, or

(b) such adjustments shall be made in respect of the liability of that relevant transaction to that duty,

as may in the opinion of the Director be appropriate to counteract the avoidance, reduction or deferral of liability which would otherwise be effected by or in consequence of the arrangement; and that relevant transaction shall, subject to section 11, be liable accordingly.

(3) The Director may in any particular case direct that -

(a) duty shall be charged on a relevant transaction which, but for the direction, would not be liable to that duty or would not be so liable to the same extent,

(b) duty shall be charged on any transaction in a greater amount than would be chargeable but for the direction,

and the parties to the relevant transaction shall, subject to section 11, be liable accordingly.

(4) For the purposes of this section, a transaction includes any arrangement, agreement, operation, scheme or event, or any action, omission, decision or concurrence, whether or not -

(a) enforceable by legal proceedings,

(b) involving or dependent on any action by, or any omission, decision or concurrence of, the person concerned or any other person, or more than one person,

(c) brought to a conclusion, or

(d) involving or dependent on any other transaction.

(5) For the purposes of this section, and for the avoidance of doubt, it is immaterial **-**

(a) when or where the transaction or series of transactions (or any of the series of transactions) occurs,

(b) whether or not the transaction or series of transactions (or any of the series of transactions) -

(i) was undertaken by or on behalf of, or in

conjunction with, the person concerned, or

(ii) was undertaken by or on behalf of, or in conjunction with, more than one person, or

(c) whether or not the avoidance, reduction or deferral of liability -

(i) was an intended effect of the transaction or series of transactions, or any of the series of transactions, or

(ii) was the only or principal effect.

Appeals against decisions of Director.

11. (1) A person aggrieved by a decision of the Director of Income Tax under this Law -

(a) that a transaction is a relevant transaction within the meaning of this Law,

(b) that a transaction is not an exempt transaction within the meaning of this Law,

(c) as to the amount of duty properly payable under this Law in relation to any transaction,

(d) to levy a penalty under section 9, or as to the amount of the penalty so levied, or

(e) in relation to any other matter arising from the application of this Law,

may appeal to the Court against the decision.

(2) The grounds of an appeal under this section are 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.

(3) An appeal under this section must be instituted -

(a) within a period of 28 days immediately following the date of the assessment served under section 7, and

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

(4) The Director 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 be dismissed for want of prosecution, and upon hearing the application the Court may -

(a) dismiss the appeal or dismiss the application (in either case upon 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 of the Royal Court Civil Rules, 2007[k].

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

(a) set aside the decision of the Director, or

(b) confirm the decision, in whole or in part,

and, in either case, if the Court considers it appropriate to do so, remit the matter to the Director with such directions as the Court thinks fit.

(6) On an appeal under this section against a decision of the Director the Court may, on the application of the appellant and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

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[k] Order of the Royal Court No. IV of 2007.

(7) An appeal from a decision of the Court under this section lies to the Court of Appeal on a question of law.

(8) In this section, "**the Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting alone, and for the purposes of an appeal under this section the Court may appoint one or more assessors to assist it in the determination of any matter before it.

Offences.

12. (1) A person who is knowingly concerned in the fraudulent evasion of duty payable under this Law by that person or any other person is guilty of an offence.

(2) A person who, without reasonable excuse, fails to comply with the requirements of section 5 is guilty of an offence.

(3) A person who, for the purposes of section 5 of this Law, or for the purposes of purported compliance with any other provision of this Law, does any of the following: -

(a) makes a statement which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

(b) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,

(c) produces or furnishes or causes or permits to be produced or furnished any information or document which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or

(d) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence.

(4) A person who fails to provide the Greffier or the Director of Income Tax with any information which is in that person's possession, knowing or having reasonable cause to believe -

(a) that the information is relevant to the exercise by the Greffier or the Director of any functions under this Law, and

(b) that the withholding of the information is likely to result in the Greffier or Director being misled as to any matter which is relevant, and of material significance, to the exercise of those functions,

is guilty of an offence.

(5) A person guilty of an offence under this section is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the uniform scale, or to both, or

(b) on conviction on indictment, to imprisonment not exceeding a term of five years or a fine or both.

Criminal liability of directors etc.

13. (1) Where an offence under this Law is committed by a body corporate, limited partnership with legal personality or foundation and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

(a) in the case of a body corporate, any director, manager, secretary or other similar officer,

(b) in the case of a limited partnership with legal personality, any general partner,

(c) in the case of a foundation, any foundation official, or

(d) any person purporting to act in any capacity described in paragraphs (a) to (c),

that person as well as the body corporate, limited partnership or foundation is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with the member's functions of management as if the member were a director.

Criminal proceedings against unincorporated bodies.

14. (1) Where an offence under this Law is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

(a) in the case of a partnership (not being a limited partnership with legal personality or a limited liability partnership), any partner,

(b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or

(c) any person purporting to act in any capacity described in paragraph (a) or (b),

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where an offence under this Law is alleged to have been committed by an unincorporated body, proceedings for the offence must, without prejudice to subsection (1), be brought in the name of the body and not in the name of any of its members.

(3) A fine imposed on an unincorporated body on its conviction for an offence under this Law must be paid from the funds of the body.

Service of documents.

15. (1) Any notice or document other than a summons to be served under or for the purposes of this Law may be served on -

(a) an individual, by being delivered to that individual, or by being left at, or sent by post or transmitted to, that individual's usual or last known place of abode,

(b) a legal person with a registered office in Guernsey, by being left at, or sent by post or transmitted to, that office,

(c) a legal person without a registered office in Guernsey, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Guernsey or, if there is no such place, its registered office or principal or last known principal place of business elsewhere,

(d) an unincorporated body -

(i) by being served on any partner, member of the committee or other similar governing body, manager, director or other similar officer thereof in accordance with paragraph (a), or

(ii) by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Guernsey or, if there is no such place, its principal or last known principal place of business elsewhere,

(e) the Greffier, by being left at, or sent by post or transmitted to, the Greffe,

(f) the Director of Income Tax, by being left at, or sent by post or transmitted to, the offices of the Director of Income Tax.

(2) Where the provisions of this Law authorise or require a document to be served on a person who is a minor or a person under legal disability, the document may be served on –

(a) in the case of a minor, the minor's parent or guardian, and

(b) in the case of a person under legal disability, that person's guardian,

and if there is no guardian, the party wishing to effect service may apply to the Royal Court for the appointment of a person to act as guardian for the purposes of those provisions.

(3) Subsections (1) and (2) are without prejudice to any other

lawful method of service and to the provisions of section 16.

(4) Where a document is sent by post it shall, unless the contrary is shown, be deemed for the purposes of the provisions of this Law to have been received -

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any non-business day.

(5) For the purposes of the provisions of this Law, service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(6) Notwithstanding the provisions of this section and of any other rule of law in relation to the service of documents, no document to be served on the Greffier or the Director of Income Tax under or for the purposes of this Law shall be deemed to have been served until it is received.

(7) In this section -

"**non-business day**" means -

(a) a Saturday, a Sunday, Christmas Day and Good

Friday, and

(b) any day appointed as a public holiday by Ordinance of the States under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958[1],

"**summons**" includes any document compelling a person's attendance before a court, and

"**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication (in which event the document shall be regarded as served when it is received).

Submission, etc., of documents in electronic form.

16. (1) Any document to be served on the Greffier or the Director of Income Tax under or for the purposes of this Law shall or, as the case may be, may be in such electronic form and served by such electronic means as the Greffier or the Director (as the case may be) may require or, as the case may be, permit, whether in any particular case or class of cases or generally.

(2) Accordingly, where under this Law any information or document is required to be in such form or to be served by such means, or anything is required to be done in such manner, as (in whatever words) the Greffier or the Director of Income Tax may require, the Greffier or the Director (as the case may be)

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1 Ordres en Conseil Vol. XVII, p. 384; amended by Vol. XXIV, p. 84; Vol. XXXIV, p. 504; Vol. XXXV(1), p. 367.

may, without limitation, require the information or document to be in electronic form or, as the case may be, to be served, or the thing to be done, by electronic means.

(3) This section is without prejudice to -

(a) section 15(6), and

(b) the Electronic Transactions (Guernsey) Law, 2000[m].

General provisions as to Ordinances and regulations.

17. (1) Any Ordinance or regulations made under this Law -

(a) may be amended or repealed by a subsequent Ordinance or regulations, as the case may be, hereunder, and

(b) may contain consequential, incidental, supplementary and transitional provisions.

(2) Any power to make an Ordinance or regulations under this Law may be exercised -

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or

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[m] Order in Council No. VIII of 2000; amended by Ordinance No. XXXIII of 2003; No. XIV of 2014 and No. IX of 2016.

classes of cases, and

(b) so as to make, as respects the cases in relation to which it is exercised -

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

(iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Any regulations made under this Law must be laid as soon as practicable before a meeting of the States; and if, at that or their next meeting, the States resolve to annul the regulations, they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

Interpretation.

18. (1) In this Law, unless the context otherwise requires -

"**assessable market value**" - see section 4(2),

"**Bailiff**" includes the Bailiff, the Deputy Bailiff, a Lieutenant Bailiff, a Juge-Délegué and a Judge of the Royal Court,

"**body corporate**" means a body of persons, of whatever description, incorporated with or without limited liability in any part of the world,

"**civil partner**" means a person who has registered as the civil partner of another person under the Civil Partnership Act 2004[n], or who is treated under that Act as having formed a civil partnership by virtue of having registered an overseas relationship within the meaning of that Act, and whose civil partnership, or registered overseas relationship, has not been dissolved or annulled, and "**civil partnership**" shall be construed accordingly,

"**Committee**" means the States Policy & Resources Committee,

"**Director of Income Tax**" has the same meaning as in the Income Tax (Guernsey) Law, 1975[o], and "**Director**" shall be construed accordingly,

"**enactment**" means any Law, Ordinance or subordinate legislation and includes (without limitation) an enactment of the Parliament of the United Kingdom, of the Scottish Parliament and of the Northern Ireland Assembly, and a Measure of the National Assembly for Wales,

"**exempt transaction**" - see section 2,

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n An Act of Parliament (2004 c. 33).

o Ordres en Conseil Vol. XXV, p. 124; amended by Order in Council No. XVII of 2005; Ordinance No. VII of 2009; No. VII of 2015. There are other amendments not relevant to this provision.

"**foundation**" means -

(a) a foundation created under the Foundations (Guernsey) Law, 2012[p], or

(b) an equivalent or similar body created or established under the law of another jurisdiction (however named),

"**foundation official**" means -

(a) in relation to a foundation created under the Foundations (Guernsey) Law, 2012, a foundation official within the meaning of that Law, and

(b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person with functions corresponding to those of a foundation official described in paragraph (a) of this definition,

"**general partner**" means –

(a) in relation to a limited partnership falling within paragraph (a) of the definition of "**limited partnership**", a general partner within the meaning of

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p Order in Council No. I of 2013; amended by Ordinance No. IX of 2016.

the Limited Partnerships (Guernsey) Law, 1995[q], and

(b) in relation to a limited partnership falling within paragraph (b) of the definition of "**limited partnership**", a person whose liability for, and functions in relation to, the partnership correspond to that of a general partner described in paragraph (a) of this definition,

"**the Greffier**" means Her Majesty's Greffier,

"**holding company**" has the meaning given in section 531 of the Companies (Guernsey) Law, 2008[r], and also includes a body corporate which would be a holding company within the meaning of section 531 but for the fact that it is an overseas company,

"**Judge of the Royal Court**" means the office of that name established by section 1 of the Royal Court (Reform) (Guernsey) Law, 2008[s],

"**this Law**" includes any Ordinance or subordinate legislation made thereunder,

"**limited liability partnership**" means -

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[q] Ordres en Conseil Vol. XXXVI, p. 264; amended by Vol. XXXVI, p. 571; Vol. XLI, p. 158; Order in Council No. X of 2007; No. VIII of 2008; Ordinance No. XXXIII of 2003; Nos. IX of 2016; G.S.I. No. 89 of 2008; No. 51 of 2016.

[r] Order in Council No. VIII of 2008; amended by Ordinance No. XXVI of 2015. There are other amendments not relevant to this provision.

[s] Order in Council No. XXII of 2008; amended by Ordinance No. IX of 2016.

(a) a limited liability partnership formed in Guernsey under the Limited Liability Partnerships (Guernsey) Law, 2013[t], or

(b) an entity formed under the laws of a jurisdiction outside Guernsey, being an entity corresponding to a limited liability partnership described in paragraph (a),

"**limited partnership**" means -

(a) an arrangement which is registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships (Guernsey) Law, 1995, or

(b) an arrangement entered into under the laws of a jurisdiction outside Guernsey between two or more persons, under which -

(i) one or more of them is, or are jointly and severally, liable without limitation for all debts and obligations to third parties incurred pursuant to the arrangement, and

(ii) the others have, by whatever means, contributed or agreed to contribute specified

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[t] Order in Council No. VI of 2014; amended by Ordinance No. XII of 2015; No. IX of 2016.

amounts pursuant to the arrangement and are not liable for those debts and obligations (unless they participate in controlling the business or are otherwise subjected to a greater liability by those laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality,

"**the parties**" – see section 5,

"**person**" includes -

(a) an individual,

(b) a body corporate,

(c) any other legal person, and

(d) an unincorporated body of persons,

"**the property**" - see section 1,

"**real property**" means real property situate in the Island of Guernsey and includes (without limitation) any right or interest which by the law of Guernsey is or is deemed to be real property,

"**relevant transaction**" – see section 1,

"**served**" means served in accordance with sections 15 and 16 and includes given and submitted,

"**significant benefit**" - see section 1,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect but does not include an Ordinance,

"**subsidiary**" and "**wholly-owned subsidiary**", in relation to a company, has the meaning given in section 531 of the Companies (Guernsey) Law, 2008 and also includes a body corporate which would be a subsidiary within the meaning of section 531 but for the fact that it is an overseas company,

"**the transferee**" - see section 1(2),

"**the transferor**" - see section 1(2),

"**uniform scale**" means the uniform scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989[u], and

"**units**", in relation to a collective investment scheme, has the meaning given in the Protection of Investors (Bailiwick of Guernsey) Law, 1987.

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[u] Ordres en Conseil Vol. XXXI, p. 278; amended by Order in Council No. XVIII of 2009; Recueil d'Ordonnances Tome XXV, p. 344; Ordinance No. XXIX of 2006; Ordinance No. XXIX of 2013.

(2) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation.

19. This Law may be cited as the Document Duty (Anti-Avoidance) (Guernsey) Law, 2017.

Commencement.

20. (1) This Law shall come into force on the day appointed by Ordinance of the States; and different dates may be appointed for different provisions and for different purposes.

(2) An Ordinance made under this section may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient.

PROJET DE LOI

ENTITLED

The Document Duty (Guernsey) Law, 2017

ARRANGEMENT OF SECTIONS

1. Document duty.
2. Meaning of "chargeable transaction".
3. Exempt transactions.
4. Family transactions.
5. Parties to file declaration.
6. Amount of duty payable.
7. Appeals against decisions of Greffier.
8. Offences as to false or misleading information, etc.
9. Criminal liability of directors etc.
10. Provision against legal avoidance.
11. Service of documents.
12. Submission, etc., of documents in electronic form.
13. General provisions as to Ordinances.
14. Interpretation.
15. Repeal.
16. Citation.
17. Commencement.

PROJET DE LOI

ENTITLED

The Document Duty (Guernsey) Law, 2017

THE STATES, in pursuance of their Resolution of the 17th May, 2017[a], have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

Document duty.

1. (1) Subject to the provisions of this Law, no document effecting or evidencing a chargeable transaction shall be registered on the records of the Island of Guernsey unless -

(a) document duty in the appropriate sum has been paid to the Greffier, for the account of the States, in accordance with those provisions, or

(b) the transaction is an exempt transaction.

(2) Liability for payment of document duty under subsection (1) lies with the person by or on behalf of whom the document is to be registered.

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[a] Article * of Billet d'État No. * of 2017.

Meaning of "chargeable transaction".

2. (1) A transaction is a chargeable transaction for the purposes of this Law if its effect is –

(a) the acquisition by any person of an interest in real property, or

(b) the creation of any charge against real property by means of registration in the Livres des Hypothèques, Actes de Cour et Obligations.

(2) For the avoidance of doubt, a partage is deemed to be a chargeable transaction within subsection (1)(a).

Exempt transactions.

3. (1) A transaction is an exempt transaction if -

(a) it is a "**family transaction**" within the meaning of section 4,

(b) the person acquiring the interest in real property, or against whose real property a charge is created, is -

(i) a Guernsey Registered Charity (registered in accordance with the Charities and Non Profit Organisations (Registration) (Guernsey) Law,

2008[b]),

(ii) a friendly society registered under the Friendly Societies Act 1974[c] or registered and incorporated under the Friendly Societies Act 1992[d],

(iii) a housing provider within the meaning of the Real Property (Housing Schemes, Leaseholds and Miscellaneous Provisions) (Guernsey) Law, 2004[e], or

(iv) the States of Guernsey,

(c) it is the transfer of an interest in real property –

(i) by or on behalf of a settlor to another person who (in consequence of such transfer) holds that property, or in whom that property is vested, as trustee,

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b Order in Council No. XXVI of 2008; amended by No. III of 2010; No.VIII of 2011; Ordinance Nos. XXXVI and XLIX of 2008; No. XXIX of 2010, No. VI of 2015; No. IX of 2016.

c An Act of Parliament (1974 c. 46).

d An Act of Parliament (1992 c. 40).

e Order in Council No. X of 2005; amended by Ordinance No. IX of 2016.

(ii) by or on behalf of a trustee who holds that property, or in whom that property is vested, as trustee to a person for whose benefit that property was held, or

(iii) from a person who has ceased to be a trustee to the new or continuing trustees in circumstances where there is no change in the beneficial ownership of that property,

(d) its effect is the transfer of an interest in real property owned by a company ("the transferor company") to –

(i) the beneficial owner of all the shares in the transferor company,

(ii) another company the shares in which are all in the same beneficial ownership as the shares in the transferor company,

(iii) another company which is a wholly-owned subsidiary of the transferor company or of which the transferor company is a wholly-owned subsidiary, or

(iv) another company in circumstances where both the transferor company and the company to which the interest is transferred are wholly-owned subsidiaries of the same holding

company,

(e) the document effecting the transfer of an interest in real property is a will,

(f) the transaction is a partage or délaissance between co-heirs, or the creation, variation or discharge of a servitude, wayleave or covenant,

(g) the interest in real property is acquired by virtue of an order of court including, without limitation -

(i) an order made pursuant to a divorce or judicial separation,

(ii) an administration order made under Part II of the Law Reform (Inheritance and Miscellaneous Provisions) Law, 2006[f],

(iii) an order made under Part II (provision for family and dependants) of the Inheritance (Guernsey) Law, 2011[g],

(iv) a vesting order made pursuant to saisie proceedings, or

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[f] Order in Council No. IV of 2008.

[g] Order in Council No. XIII of 2011; amended by No. V of 2016.

(h) it is a transaction of a description prescribed for the purposes of this section by Ordinance.

(2) The States may by Ordinance amend subsection (1) so as to remove or amend any of the classes of transaction which are exempt transactions.

Family transactions.

4. (1) A transaction is a family transaction for the purposes of this Law if all the parties to the transaction are associated with each other within the meaning of subsection (2).

(2) A person is associated with another person for the purposes of subsection (1) if, in relation to that other person –

(a) they are, or have been, spouses or civil partners of each other,

(b) they are cohabitants, or former cohabitants,

(c) he or she is -

(i) a parent, stepparent, child, stepchild, grandparent, grandchild, great-grandparent, great-grandchild, or

(ii) a sibling, uncle, aunt, nephew or niece (whether of the full blood or of the half blood),

of that other person or of that other person's spouse, civil partner or cohabitant.

(3) For the purposes of subsection (2) –

(a) "**cohabitants**" means two people who are not spouses or civil partners of each other but are living together as if they were married, and "**cohabitant**" shall be construed accordingly,

(b) a reference to a person's spouse, civil partner or cohabitant includes (without limitation) a reference to-

(i) a deceased spouse, civil partner or cohabitant who had been the spouse, civil partner or cohabitant of that person until his or her death, and

(ii) a person who has the bona fide intention of becoming the spouse or civil partner of that person.

(4) Any reference in this section, however expressed, to any relationship between two persons shall be construed without regard to whether either of those persons, or any person through whom the relationship is deduced, is legitimate or illegitimate.

(5) Where an administrator has been appointed in respect of any real property pursuant to Part II of the Law Reform (Inheritance and Miscellaneous

Provisions) Law, 2006, and the subsequent sale of that property would, but for the appointment of the administrator, have been a family transaction within this section, the sale shall be deemed for the purposes of this Law to be a family transaction notwithstanding that one of the parties to the transaction was the administrator of the real property.

(6) The States may by Ordinance amend the definition of "**family transaction**" set out in this section.

Parties to file declaration.

5. (1) A declaration, in such form and manner, and accompanied by such information and documents, as the Greffier may require, shall be made by the parties to a chargeable transaction in accordance with the provisions of this section.

(2) The parties to a chargeable transaction shall make a joint declaration -

(a) where the transaction is made at arm's length, confirming that the consideration stated in the document is the total consideration for the said transaction, or

(b) where the transaction is not made at arm's length, stating the market value of the real property transferred.

(3) A person claiming that a transaction is an exempt transaction shall make a declaration stating the grounds on which it is claimed that the transaction is exempt.

(4) A person claiming that a transaction is made at arm's length shall make a declaration stating the grounds on which it is claimed that the transaction is made at arm's length.

(5) Where a consideration is expressed in money's worth, a declaration made in accordance with this section shall include a declaration of the market value of the money's worth.

(6) The parties making a declaration under this section must make full and frank disclosure of all facts which may be material and generally demonstrate utmost good faith in their dealings with the Greffier.

Amount of duty payable.

6. (1) Subject to subsections (2) and (3), the amount of document duty payable in respect of a chargeable transaction which is not an exempt transaction shall be as follows –

(a) where the transaction is made at arm's length, such percentage of the total consideration, or of the sum secured, as may from time to time be prescribed by Ordinance, and

(b) where the transaction is made otherwise than at arm's length, such percentage of the market value of the real property transferred, or of the sum secured, as may from time to time be prescribed by Ordinance.

(2) Where any part of the consideration is expressed in money's

worth, the amount of document duty payable in respect of that part of the consideration shall be calculated by reference to the market value of that money's worth.

(3) Notwithstanding that a transaction is made at arm's length and in good faith, if the Greffier is of the opinion that the amount of the consideration stated in the document is inadequate, the transaction may be deemed to be made otherwise than at arm's length, and in such a case the amount of document duty payable will be calculated by reference to the market value of the real property transferred.

(4) Where document duty is calculated by reference to the consideration and such consideration is expressed in money in a currency other than the currency of Guernsey, the document duty shall be calculated by reference to the value of the consideration in the currency of Guernsey according to the rate of exchange on the date of registration.

(5) The Greffier may, by notice in writing, require the parties to a chargeable transaction to furnish, within such reasonable time as may be specified in the notice, such information or documents, verified in such manner if any as may be specified, as the Greffier may require as being relevant for the purpose of making any decision under this Law.

(6) Where the Greffier is of the opinion, in relation to any declaration made under section 5, that -

(a) where the parties claim that the transaction is exempt, the transaction is not exempt,

(b) the consideration stated in the declaration is not the total consideration for the transaction,

(c) the market value stated in the declaration is inaccurate,

(d) a transaction which the parties claim is made at arm's length is not so made,

(e) any document furnished in support of the declaration is not authentic, or

(f) any statement or declaration furnished is false, misleading or incomplete in any particular,

the Greffier shall serve a written notice on the parties containing the matters set out in subsection (7).

(7) The notice served by the Greffier under subsection (6) shall -

(a) state the amount of the document duty which in the Greffier's opinion is properly payable in relation to the transaction,

(b) set out the information and assumptions on the basis of which the document duty has been assessed, and

(c) contain a statement of the right of appeal under section 7.

Appeals against decisions of Greffier.

7. (1) A person aggrieved by a decision of the Greffier under this Law -

(a) that a transaction is a chargeable transaction within the meaning of this Law,

(b) that a chargeable transaction is not an exempt transaction within the meaning of this Law,

(c) as to the amount of document duty properly payable in relation to any chargeable transaction, or

(d) in relation to any other matter arising from the application of this Law,

may appeal to the Court against the decision.

(2) The grounds of an appeal under this section are 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.

(3) A person wishing to appeal against a decision of the Greffier under this section shall, within a period of 28 days immediately following the date of the decision –

(a) lodge at the Greffe a sum of money equal to the amount of document duty which the Greffier avers is properly payable, and

(b) serve notice of such appeal on the Greffier by summons stating the grounds and material facts on which the appellant relies.

(4) Upon receipt of the payment lodged under subsection (3), the Greffier shall –

(a) cause the document to be registered on the records of the Island of Guernsey, and

(b) deposit the money with an institution holding a banking licence under the Banking Supervision (Bailiwick of Guernsey) Law, 1994[h].

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[h] Ordres en Conseil, Vol. XXXV(1), p. 271; amended by Order in Council Nos. XVII and XXI of 2002; No. XVI of 2003; No. XVI of 2008; No. IV of 2009; Nos. XIII and XXI of 2010; Ordinance No. XXXIII of 2003; Ordinance Nos. XII, XX and XXXIX of 2015; Nos. II and IX of 2016; G.S.I.s No. 3 of 2000; No. 1 of 2008; Nos. 35 and 83 of 2010.

(5) The Greffier 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 upon hearing the application the Court may -

(a) dismiss the appeal or dismiss the application (in either case upon 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 of the Royal Court Civil Rules, 2007[i].

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

(a) set aside the decision of the Greffier, or

(b) confirm the decision, in whole or in part,

and, in either case, if the Court considers it appropriate to do so, remit the matter to the Greffier with such directions as the Court thinks fit.

(7) If, on an appeal under this section, the Court considers that the amount of document duty payable in relation to the transaction was greater than the amount lodged under subsection (3)(a), the Court may, in addition to making such

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[i] Order of the Royal Court No. IV of 2007.

directions as it thinks fit in relation to the sum lodged, order the appellant to pay to the Greffier for the account of the States a sum equivalent to the balance, such sum to be recoverable as a civil debt.

(8) An appeal from a decision of the Court under this section lies to the Court of Appeal on a question of law.

(9) In this section, "**the Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting alone, and for the purposes of an appeal under this section the Court may appoint one or more assessors to assist it in the determination of any matter before it.

Offences as to false or misleading information, etc.

8. (1) If a person, for the purposes of section 5 of this Law, or for the purposes of purported compliance with any other provision of this Law, does any of the following -

(a) makes a statement which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

(b) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,

(c) produces or furnishes or causes or permits to be produced or furnished any information or document which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a

material particular, or

(d) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

that person is guilty of an offence.

(2) A person who fails to provide the Greffier with any information which is in that person's possession, knowing or having reasonable cause to believe -

(a) that the information is relevant to the exercise by the Greffier of any functions under this Law, and

(b) that the withholding of the information is likely to result in the Greffier being misled as to any matter which is relevant, and of material significance, to the exercise of those functions,

is guilty of an offence.

(3) A person guilty of an offence under this section is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the uniform scale, or to both, or

(b) on conviction on indictment, to imprisonment not exceeding a term of five years or a fine or both.

Criminal liability of directors etc.

9. (1) Where an offence under this Law is committed by a body corporate, limited partnership with legal personality or foundation and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

(a) in the case of a body corporate, any director, manager, secretary or other similar officer,

(b) in the case of a limited partnership with legal personality, any general partner,

(c) in the case of a foundation, any foundation official, or

(d) any person purporting to act in any capacity described in paragraphs (a) to (c),

that person as well as the body corporate, limited partnership or foundation is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with the member's functions of management as if the member were a director.

Provision against legal avoidance.

10. (1) Where the effect of a transaction or series of transactions is the avoidance, reduction or deferral of the liability of any person ("**the person concerned**") to document duty, the Greffier may, in the Greffier's discretion, make such adjustments as respects the liability of the person concerned to document duty as may in the Greffier's opinion be appropriate to counteract the avoidance, reduction or deferral of liability which would otherwise be effected by or as a result of that transaction or series of transactions.

(2) For the purposes of this section, a transaction includes any arrangement, agreement, operation, scheme or event, or any action, omission, decision or concurrence, whether or not -

(a) enforceable by legal proceedings,

(b) involving or dependent on any action by, or any omission, decision or concurrence of, the person concerned or any other person, or more than one person,

(c) brought to a conclusion, or

(d) involving or dependent on any other transaction.

(3) For the purposes of this section, and for the avoidance of doubt, it is immaterial -

(a) when or where the transaction or series of transactions (or any of the series of transactions) occurs,

(b) whether or not the transaction or series of transactions (or any of the series of transactions) -

(i) was undertaken by or on behalf of, or in conjunction with, the person concerned, or

(ii) was undertaken by or on behalf of, or in conjunction with, more than one person, or

(c) whether or not the avoidance, reduction or deferral of liability -

(i) was an intended effect of the transaction or series of transactions, or any of the series of transactions, or

(ii) was the only or principal effect.

Service of documents.

11. (1) Any notice or document other than a summons to be served under or for the purposes of this Law may be served on -

(a) an individual, by being delivered to that individual, or by being left at, or sent by post or transmitted to, that individual's usual or last known place of abode,

(b) a legal person with a registered office in Guernsey, by being left at, or sent by post or transmitted to, that

office,

(c) a legal person without a registered office in Guernsey, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Guernsey or, if there is no such place, its registered office or principal or last known principal place of business elsewhere,

(d) an unincorporated body -

(i) by being served on any partner, member of the committee or other similar governing body, manager, director or other similar officer thereof in accordance with paragraph (a), or

(ii) by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Guernsey or, if there is no such place, its principal or last known principal place of business elsewhere,

(e) the Greffier, by being left at, or sent by post or transmitted to, the Greffe.

(2) Where the provisions of this Law authorise or require a document to be served on a person who is a minor or a person under legal disability, the document may be served on –

(a) in the case of a minor, the minor's parent or guardian, and

(b) in the case of a person under legal disability, that person's guardian,

and if there is no guardian, the party wishing to effect service may apply to the Royal Court for the appointment of a person to act as guardian for the purposes of those provisions.

(3) Subsections (1) and (2) are without prejudice to any other lawful method of service and to the provisions of section 12.

(4) Where a document is sent by post it shall, unless the contrary is shown, be deemed for the purposes of the provisions of this Law to have been received -

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any non-business day.

(5) For the purposes of the provisions of this Law, service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(6) Notwithstanding the provisions of this section and of any other rule of law in relation to the service of documents, no document to be served on the Greffier under or for the purposes of this Law shall be deemed to have been served until it is received.

(7) In this section -

"**non-business day**" means -

(a) a Saturday, a Sunday, Christmas Day and Good Friday, and

(b) any day appointed as a public holiday by Ordinance of the States under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958[j],

"**summons**" includes any document compelling a person's attendance before a court, and

"**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication (in which event the document shall be regarded as served when it is received).

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[j] Ordres en Conseil Vol. XVII, p. 384; amended by Vol. XXIV, p. 84; Vol. XXXIV, p. 504; Vol. XXXV(1), p. 367.

Submission, etc., of documents in electronic form.

12. (1) Any document to be served on the Greffier under or for the purposes of this Law shall or, as the case may be, may be in such electronic form and served by such electronic means as the Greffier may require or, as the case may be, permit, whether in any particular case or class of cases or generally.

(2) Accordingly, where under this Law any information or document is required to be in such form or to be served by such means, or anything is required to be done in such manner, as (in whatever words) the Greffier may require, the Greffier may, without limitation, require the information or document to be in electronic form or, as the case may be, to be served, or the thing to be done, by electronic means.

(3) This section is without prejudice to -

(a) section 11(6), and

(b) the Electronic Transactions (Guernsey) Law, 2000[k].

General provisions as to Ordinances.

13. (1) Any Ordinance made under this Law -

(a) may be amended or repealed by a subsequent Ordinance hereunder, and

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[k] Order in Council No. VIII of 2000; amended by Ordinance No. XXXIII of 2003; No. XIV of 2014 and No. IX of 2016.

(b) may contain may contain consequential, incidental, supplementary and transitional provisions.

(2) Any power to make an Ordinance under this Law may be exercised -

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases, and

(b) so as to make, as respects the cases in relation to which it is exercised -

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

(iii) any such provision either unconditionally or subject to any prescribed conditions.

Interpretation.

14. (1) In this Law, unless the context otherwise requires –

"**Bailiff**" includes the Bailiff, the Deputy Bailiff, a Lieutenant Bailiff, a Juge-Délegué and a Judge of the Royal Court,

"**body corporate**" means a body of persons, of whatever description, incorporated with or without limited liability in any part of the world,

"**chargeable transaction**" - see section 2,

"**civil partner**" means a person who has registered as the civil partner of another person under the Civil Partnership Act 2004[1], or who is treated under that Act as having formed a civil partnership by virtue of having registered an overseas relationship within the meaning of that Act, and whose civil partnership, or registered overseas relationship, has not been dissolved or annulled, and "**civil partnership**" shall be construed accordingly,

"**consideration**" means any consideration in money or money's worth given for the interest in real property, directly or indirectly, by the person by whom the interest is acquired or by any other person on his or her behalf,

"**enactment**" means any Law, Ordinance or subordinate legislation and includes (without limitation) an enactment of the Parliament of the United Kingdom, of the Scottish Parliament and of the Northern Ireland Assembly, and a Measure of the National Assembly for Wales,

"**exempt transaction**" means an exempt transaction within the

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[1] An Act of Parliament (2004 c. 33).

meaning of section 3,

"**foundation**" means -

(a) a foundation created under the Foundations (Guernsey) Law, 2012[m], or

(b) an equivalent or similar body created or established under the law of another jurisdiction (however named),

"**foundation official**" means -

(a) in relation to a foundation created under the Foundations (Guernsey) Law, 2012, a foundation official within the meaning of that Law, and

(b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person with functions corresponding to those of a foundation official described in paragraph (a) of this definition,

"**general partner**" means –

(a) in relation to a limited partnership falling within

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m Order in Council No. I of 2013; amended by Ordinance No. IX of 2016.

paragraph (a) of the definition of "**limited partnership**", a general partner within the meaning of the Limited Partnerships (Guernsey) Law, 1995[n], and

(b) in relation to a limited partnership falling within paragraph (b) of the definition of "limited partnership", a person whose liability for, and functions in relation to, the partnership correspond to that of a general partner described in paragraph (a) of this definition,

"**the Greffier**" means Her Majesty's Greffier,

"**holding company**" has the meaning given in section 531 of the Companies (Guernsey) Law, 2008[o], and also includes a body corporate which would be a holding company within the meaning of section 531 but for the fact that it is an overseas company,

"**Judge of the Royal Court**" means the office of that name established by section 1 of the Royal Court (Reform) (Guernsey) Law, 2008[p],

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[n] Ordres en Conseil Vol. XXXVI, p. 264; amended by Vol. XXXVI, p. 571; Vol. XLI, p. 158; Order in Council No. X of 2007; No. VIII of 2008; Ordinance No. XXXIII of 2003; No. IX of 2016; G.S.I. No. 89 of 2008; No. 51 of 2016.

[o] Order in Council No. VIII of 2008; there are amendments not material to this provision.

[p] Order in Council No. XXII of 2008; amended by Ordinance No. IX of 2016.

"**this Law**" includes any Ordinance or subordinate legislation made thereunder,

"**limited partnership**" means -

(a) an arrangement which is registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships (Guernsey) Law, 1995, or

(b) an arrangement entered into under the laws of a jurisdiction outside Guernsey between two or more persons, under which -

(i) one or more of them is, or are jointly and severally, liable without limitation for all debts and obligations to third parties incurred pursuant to the arrangement, and

(ii) the others have, by whatever means, contributed or agreed to contribute specified amounts pursuant to the arrangement and are not liable for those debts and obligations (unless they participate in controlling the business or are otherwise subjected to a greater liability by those laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality,

"**market value**", in relation to any real property, means the price which that property might reasonably be expected to fetch in a sale in an open market and shall be calculated as at the date of the chargeable transaction,

"**person**" includes -

(a) an individual,

(b) a body corporate,

(c) any other legal person, and

(d) an unincorporated body of persons,

"**real property**" means real property situate in the Island of Guernsey and includes (without limitation) any right or interest which by the law of Guernsey is or is deemed to be real property,

"**served**" means served in accordance with sections 11 and 12 and includes given and submitted,

"**subordinate legislation**" means any regulations, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect but does not include an Ordinance,

"**uniform scale**" means the uniform scale of fines from time to time in

force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989[q], and

"**wholly-owned subsidiary**", in relation to a company, has the meaning given in section 531 of the Companies (Guernsey) Law, 2008 and also includes a body corporate which would be a subsidiary within the meaning of section 531 but for the fact that it is an overseas company.

(2) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Repeal.

15. The Document Duty (Guernsey) Law, 1973[r] is repealed in its application to Guernsey.

Citation.

16. This Law may be cited as the Document Duty (Guernsey) Law, 2017.

Commencement.

17. (1) This Law shall come into force on the day appointed by Ordinance of the States; and different dates may be appointed for different

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[q] Ordres en Conseil Vol. XXXI, p. 278; amended by Order in Council No. XVIII of 2009; Recueil d'Ordonnances Tome XXV, p. 344; Ordinance No. XXIX of 2006; Ordinance No. XXIX of 2013.

[r] Ordres en Conseil, Vol. XXIV, p. 74; amended by Vol. XXIV, p. 236; Vol. XXXI, p. 278; Order in Council No. XXVI of 2002; Recueil d'Ordonnances Tome XIX, p. 144; Tome XXII, pp. 419 and 555; Tome XXVI, p. 139; Tome XXVII, pp. 186 and 421; Ordinance No. XXII of 2000; No. LI of 2001; No. XXXVI of 2002.

provisions and for different purposes.

(2) An Ordinance made under this section may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *for* ECONOMIC DEVELOPMENT

LEGISLATION TO FACILITATE ELECTRONIC CHEQUE IMAGING IN THE PRESENTMENT OF CHEQUES AND OTHER BILLS OF EXCHANGE

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled 'Legislation to facilitate electronic cheque imaging in the presentment of cheques and other bills of exchange' dated 6th April, 2017, they are of the opinion:-

1. To agree that legislation should be enacted in Guernsey replicating the effect of the provisions of the new Part 4A of the Bills of Exchange Act 1882.

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 Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *for* ECONOMIC DEVELOPMENT

LEGISLATION TO FACILITATE ELECTRONIC CHEQUE IMAGING IN THE PRESENTMENT OF CHEQUES AND OTHER BILLS OF EXCHANGE

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

6th April, 2017

Dear Sir

1 Executive Summary

1.1 This report recommends the enactment of legislation to facilitate the use of electronic images of cheques as an alternative to the physical instrument in the presentment of cheques for payment. The Committee *for* Economic Development (**"the Committee"**) believes that it is appropriate to enact legislation amending the Bills of Exchange (Guernsey) Law, 1958 (**"the 1958 Law"**) and creating secondary legislation powers in order to replicate the effect of recent amendments in the United Kingdom to the Bills of Exchange Act 1882 (**"the 1882 Act"**) which will underpin the implementation of a new electronic image clearing system for cheques and other bills of exchange.

2 Background

2.1 The 1958 Law is closely based on the equivalent legislation in the United Kingdom (the 1882 Act).

2.2 Following discussion in the UK over a number of years regarding the future of cheques in the payments and banking industry, the UK Government decided to legislate to facilitate the use of electronic cheque imaging in the cheque clearing system. In the UK, this required amendments to the 1882 Act to remove a statutory requirement for the presentment of a physical cheque to the paying bank.

2.3 The Cheque and Credit Clearing Company (**"the C&CCC"**) is the industry body

that manages the cheque clearing system in England, Wales and Scotland. The C&CCC is working to develop a new electronic image clearing system for the processing of cheques. Banks in the Bailiwick of Guernsey clear cheques through the system managed by the C&CCC and will therefore need to participate in the new system in due course. The implementation of an electronic image clearing system will allow the banking industry and the public to benefit from faster, more efficient and more cost-effective clearing of cheques.

2.4 The amendments also facilitate the development of innovative services by banks who will, for example, in future be able to offer their customers the option of paying in an electronic image of both sides of a cheque instead of delivering the physical cheque to a branch. This customer facing aspect of the amendments to the 1882 Act is, however, optional. The legislation in the UK provides that no customer will be required to pay in an electronic image of a cheque as a result of the amendments. The necessary amendments in the UK were effected by means of section 13 of the Small Business, Enterprise and Employment Act 2015 and came into force in the UK in July 2016.

2.5 The amendments have also inserted regulation making powers for HM Treasury, which have not yet been exercised, but which will contain important supplemental provisions that will underpin the functioning of the proposed new electronic image clearing system.

2.6 In summary, the amendments to the 1882 Act comprise the insertion of a new Part 4A 'Presentment of instruments by electronic means' to:

i. provide for presentment of relevant payment instruments (cheques, certain other bills of exchange and promissory notes) to be effected by provision of an electronic image of both faces of the instrument;

ii. disapply requirements and prohibitions which are inconsistent with this;

iii. require bankers to continue to permit the customer to pay in the physical instrument;

iv. create regulation making powers allowing HM Treasury to prescribe and make provision for matters connected to the amendments including;

- circumstances in which electronic presentment is not permitted;
- copies of instruments and evidence of payment;
- compensation to be paid by a responsible banker for loss in connection with electronic presentment or purported electronic presentment; and

- supplementary matters.

3 Relevant Legislation in the Bailiwick of Guernsey

3.1 The 1958 Law governs the use of bills of exchange and promissory notes throughout the Bailiwick and is closely based on the 1882 Act and also incorporates provisions equivalent to those in the UK Cheques Act 1957. The 1882 Act was itself largely a codification of the existing common law relating to bills of exchange and promissory notes.

3.2 A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person or to bearer. Examples of bills of exchange include cheques, traveller cheques, postal orders and bankers' drafts.

3.3 A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

3.4 Each of the islands in the Bailiwick of Guernsey also has an Electronic Transactions Law which facilitate electronic commerce. In Guernsey that relevant legislation is the Electronic Transactions (Guernsey) Law, 2000 (**"the 2000 Law"**). This legislation assists by providing that a document shall not be denied legal effect solely because it is in electronic form and that a document in electronic form satisfies the requirements of any law requiring a document to be given, produced, served, sent or delivered. There is no direct equivalent to these provisions in the UK.

3.5 However, whilst the provisions of the 2000 Law are certainly helpful, in circumstances where local banks will need to participate in the new electronic clearing system managed by the C&CCC, and are also likely to wish to be able to offer the same new services to customers as banks in the UK, the Committee considers it appropriate that amendments are made to the 1958 Law to reflect the amendments to the 1882 Act as closely as possible.

3.6 The Committee also believes it is necessary to ensure that it has the power to make secondary legislation, in due course, equivalent to regulations that can be made by HM Treasury in the UK and which will underpin the new electronic image clearing system.

3.7 The Committee therefore believes that legislation should be enacted to replicate the effect of the provisions of new Part 4A of the 1882 Act.

4 Bailiwick Legislation

4.1 The Law Officers have advised that the necessary amendments can be effected through the enactment of Ordinances under the Electronic Transactions legislation in each Bailiwick island (to be underpinned by orders of the relevant Committees dealing with technical matters which will, in the case of Guernsey, be laid before the States of Deliberation who will have the option of annulment).

4.2 The Committee therefore recommends the enactment of an Ordinance under the 2000 Law making the necessary amendments to the 1958 Law in respect of the island of Guernsey, as well as necessary consequential and supplemental provision including ancillary amendments to the 2000 Law.

4.3 The Committee has engaged with the States of Alderney and Chief Pleas in Sark to advise of the recommendations in this report to enact amendments to the 1958 Law, as it applies in Guernsey, and has recommended that they enact equivalent legislation in those islands.

5 Consultation

5.1 The Finance Sector Development team has engaged with the Association of Guernsey Banks which is supportive of these proposals.

5.2 The Committee has also engaged with the States of Alderney and the Chief Pleas in Sark regarding this matter as noted in paragraph 4.3 above.

5.3 The Law Officers have been consulted and have advised on the proposals in this report.

6 Propositions

The States are asked to decide whether they are of the opinion:-

1. To agree that legislation should be enacted in Guernsey replicating the effect of the provisions of the new Part 4A of the Bills of Exchange Act 1882.

2. To direct the preparation of such legislation as may be necessary to give effect to the above decision.

7 Committee Support for Propositions

7.1 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above

have the unanimous support of the Committee**.**

Yours faithfully

P T R Ferbrache
President

J Kuttelwascher
Vice-President

A C Dudley-Owen
J S Merrett
J I Mooney

Director of Civil Aviation
Annual Report 2016

February 23rd, 2017

Executive Summary

In addition to routine oversight activities and ongoing training, 2016 saw the Guernsey aircraft registry continue its strong growth, the first air operators' certificate granted and the first large business jet registered. The DCA also completed a pan-island re-branding and introduced a new regulatory journal.

Principal Responsibilities of the DCA

The main role of the DCA is to ensure compliance with international standards set out under the Chicago Convention of 1944 and its associated annexes. The DCA also has accountability for aviation security across the Channel Islands. The Aviation Journal[1] (AJ) now sets out in detail the legal framework under which the DCA operates and readers are directed to that document for further information. For more information on the AJ, see below.

Routine Oversight Activities

A number of routine oversight audits were conducted across the Channel Islands, the majority being carried out by the UK Civil Aviation Authority (CAA) on behalf of the DCA. Ports of Jersey had an aerodrome (including the rescue and fire fighting service) audit in January, followed by an audit of their air traffic services in June. The latter focussed on controller competency. Guernsey and Alderney Airports had their aerodrome audit in June followed by air traffic services in October. In all cases the audits confirmed the providers' high level of compliance with the appropriate international standards. An audit was also conducted by the CAA on the Guernsey aircraft registry as part of the air operator certificate process, covered in more detail below.

During the summer of 2016 both the DCA and deputy DCA completed training with the CAA to qualify as "SAFA" inspectors; this will allow us to perform inspections of aircraft using Guernsey, Jersey and Alderney airports to ensure that they are fully compliant with the relevant regulations. We will use the European standards for this work to ensure commonality with neighbouring jurisdictions and the programme of inspections will commence early in 2017.

[1]The Aviation Journal can be accessed at www.cidca.aero and is normally updated on the second Friday of each month (additional updates are occasionally made).

Co-operation with Jersey

The shared DCA role continues to prove successful and resilient. The new pan-island branding replaced the previous separate identities for each Bailiwick in May; this was developed at no cost in house and allows us to more clearly position the DCA internationally. As part of this process we now have non-geographic email addresses and phone numbers, avoiding issues that arise when representing one Bailiwick but not the other.

Legislation

The States resolved in December 2015 to permit the extension of the Guernsey Aircraft Registry to commercial air transport. The Air Navigation (Bailiwick of Guernsey) (Amendment) Ordinance, 2016 and the supporting Air Navigation (Bailiwick of Guernsey) (Air Operators' Certificates) Regulations 2016 were brought into force in March to facilitate the issue of the first air operator's certificate in May (see below). In parallel, detailed technical requirements[2] in the area were published by 2-REG (see below).

The Aviation Journal

Initially introduced in February of 2016 and fully implemented in November, the Aviation Journal (AJ) is now the "one-stop" instrument where the DCA publishes notices, policies, decisions and guidance on standards and certification. As noted above, the AJ also contains a joint State Safety Programme and State Safety Plan for both Guernsey and Jersey. The AJ is updated monthly and has been well received by industry. It will evolve over time and continue to develop.

The Guernsey Aircraft Registry "2-REG"

2-REG had another strong year, with the overall number of registrations passing the 150 mark and nearly 100 aircraft on the register at year end. The main revenue stream remains "off-lease" airliners; in addition we continue to support a large number of local general aviation aircraft, but - following the changes to the Air Navigation Law that were agreed at the end of 2015 - 2-REG also issued the first Guernsey Air Operator Certificate (AOC) to Volare Aviation in May. Ahead of this milestone, the 2-REG team successfully passed a flight operations audit conducted by the UK CAA. This expansion has also led to the recruitment of a full-time flight operations inspector and SGI plans to also add a second airworthiness expert early in 2017; this will bring the number of full-time staff in Guernsey to three, all of whom have been recruited locally.

There has been considerable interest in the AOC product from operators both locally and further

[2] By means of Guernsey Aviation Requirements (GARs) 121 and 135

afield. The DCA travelled in April to the Asian Business Aviation Conference and Exhibition (ABACE) in Shanghai to support the 2-REG team in a joint effort with Guernsey Finance. This has led to several leads from South-east Asia; as a result we now have one VVIP Boeing 787 registered in Guernsey with the operator working closely with 2-REG on further opportunities.

Jersey Aircraft Registry "JAR"

The JAR is led by Jersey's Economic Development Department (EDD). Since launch in 2015 there has been a period of consolidation, with EDD considering the form that the JAR will take in future. During 2016 the DCA met regularly with the technical partner, Avisa Aviation Services.

Miscellaneous Activities

Both Jersey and Guernsey are again included in the state of registry insurance policy led by the Cayman Islands. This provides liability cover for the Bailiwicks should a locally registered aircraft be lost on the high seas where there is no "state of occurrence". Such co-operation allows us to benefit from the considerable scale of the Caymans' operation and to keep the costs at a manageable level.

Throughout the year the routine work of the DCA continued. On a day-to-day basis requests are made by operators wishing to conduct aerial work, photography and survey flights, all of which require a permit from the DCA. The simplified permit style that was introduced last year continues to work well and a list of current permit holders is now published in the Aviation Journal. The DCA is also involved in the planning for events such as Liberation Day and the annual Guernsey Air Display.

In September the DCA met with counterparts from Gibraltar and the Isle of Man in Gatwick. The meeting was hosted by the UK Civil Aviation Authority and Department for Transport and provided a forum to discuss issues of mutual interest and to promote closer working and knowledge sharing. As with last year, the event was a success and will now be repeated annually.

Aviation Security

Towards the end of 2016 there were a number of amendments and changes to the security requirements in the EU and UK. None of these changes are significant and mainly bring together a number of miscellaneous regulations which will be incorporated in The Aviation Security (Bailiwick of Guernsey) (Amendment) Direction early in 2017. A parallel document will also be amended in Jersey to maintain equivalent measures in the Channel islands.

A programme of inspections was undertaken during 2016 by the UK Civil Aviation Authority (accompanied by the Deputy DCA) and the airport continues to meet the aviation security standards required by the EU and UK. In addition to these inspections the airport continues to be subject to

regular inspections by the Deputy DCA as part of the Channel Islands Aviation Security Quality Control Programme.

The standardised approach to aviation security by both Guernsey and Jersey continues to be of benefit and the DCA meets with both airports on a regular basis to ensure continuing co-operation.

DCA

If you have any questions about anything contained in this report or any other aspect of aviation in the Channel Islands, please contact:

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