

# ORDER IN COUNCIL

**XI**  
**2008**

ratifying a Projet de Loi

ENTITLED

## **The Guernsey Bar (Bailiwick of Guernsey) Law, 2007**

(Registered on the Records of the Island of Guernsey  
on the 7th July, 2008.)



2008



## ORDER IN COUNCIL



### IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

7<sup>th</sup> day of July, 2008 before Geoffrey Robert Rowland, Esquire, Bailiff; present:- David Charles Lowe, OBE, Alan Cecil Bisson, Keith Bichard, OBE, The Reverend Peter Gerald Lane, Michael Henry De La Mare, Michael John Tanguy, Esquires, Susan Mowbray, Barbara Jean Bartie, David Osmond Le Conte and John Ferguson, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 11<sup>th</sup> June 2008 approving and ratifying a Projet de Loi entitled “The Guernsey Bar (Bailiwick of Guernsey) Law, 2007”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ORDERED: -

1. That the said Order in Council be registered on the records of this Island;  
and
2. That an extract of this present Act, together with a copy of the said Order in Council be sent by Her Majesty’s Greffier to the Greffier of the Court of Alderney and to the SÉNÉSCHAL of Sark for registration on the records of those Islands respectively.



*At the Court at Buckingham Palace*

THE 11th DAY OF JUNE 2008

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY  
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

“In accordance with Your Majesty’s General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

“That, in pursuance of their Resolution of 25th July 2007, the States of Deliberation at a meeting on 12th December 2007 approved a *Projet de Loi* entitled *The Guernsey Bar (Bailiwick of Guernsey) Law, 2007* and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the States of the Island of Alderney at a meeting held on 9th January 2008 considered the *Projet de Loi* when a Resolution was passed agreeing to the application to Alderney. That the Chief Pleas of the Island of Sark at a meeting held on 16th January 2008 considered the *Projet de Loi* when a Resolution was passed agreeing to the application to Sark. That the *Projet de Loi* is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction *The Guernsey Bar (Bailiwick of Guernsey) Law, 2007*, and to order that it shall have force of law in the Bailiwick of Guernsey.

“The Committee have considered the *Projet de Loi* and have agreed to report that it may be advisable for Your Majesty to approve and ratify it.”

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the *Projet de Loi* (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Bailiwick of Guernsey and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty’s Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty’s Order and to proceed accordingly.

*Judith Simpson*

# PROJET DE LOI

ENTITLED

## **The Guernsey Bar (Bailiwick of Guernsey) Law, 2007**

### ARRANGEMENT OF SECTIONS

#### PART I INCORPORATION OF THE GUERNSEY BAR

1. Incorporation of the Guernsey Bar.
2. Objects.
3. Power to make regulations.
4. Rules as to the conduct and management of affairs.
5. Officers.
6. Members of the Bar Council.
7. Membership of the Bar.
8. Liability of Members.
9. Property to vest in the Bar.
10. Annual General Meetings.
11. Accounts and audits.
12. Registered office.
13. Application of assets and income.
14. The Register of Advocates.
15. Offences.
16. Employment of any person who has been disbarred or suspended from practice as an Advocate.

#### PART II DISCIPLINE OF ADVOCATES

17. La Chambre de Discipline.
18. The Chambre Panels.
19. The President of the Chambre.
20. The Registrar of the Chambre.
21. Action upon receipt of a complaint.
22. Investigation and initial disclosure.
23. Selection of members to constitute the Chambre.
24. Directions.
25. Proceedings of the Chambre.
26. Powers of the Chambre to take evidence.
27. Decision of and disposals available to the Chambre.
28. Appeals against decisions of the Chambre.

- 29. Reference by the Chambre to the Royal Court.
- 30. Appeal to the Court of Appeal.
- 31. Performance of functions by the Deputy Bâtonnier.
- 32. Fines.

### PART III

#### DISCLOSURE OF INFORMATION BY AND TO THE SUPERVISORY AGENCY

- 33. Disclosure of information by the supervisory agency.
- 34. Disclosure of information to the agency by relevant person.

### PART IV

#### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

- 35. The Royal Court and Her Majesty's Procureur.
- 36. Protection of persons acting in good faith.
- 37. Offences.
- 38. Proceedings to be confidential.
- 39. Power to make rules.
- 40. General provisions as to subordinate legislation.
- 41. Interpretation.
- 42. Repeals.
- 43. Citation.
- 44. Commencement.

Schedule: Powers

# PROJET DE LOI

ENTITLED

## **The Guernsey Bar (Bailiwick of Guernsey) Law, 2007**

**THE STATES**, in pursuance of their resolution of the 25<sup>th</sup> July, 2007<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### PART I

#### INCORPORATION OF THE GUERNSEY BAR

##### **Incorporation of the Guernsey Bar.**

1. (1) The association called "the Guernsey Bar" ("**the former association**") is incorporated by the name of "the Guernsey Bar" ("**the Bar**").

(2) The Bar –

(a) is a body corporate with perpetual succession and a common seal, and

(b) may sue and be sued in its name.

(3) The Bar may exercise all the powers that a natural person may exercise for the purpose of carrying out its objects and, without limitation, may exercise the powers set out in the Schedule to this Law.

---

<sup>a</sup> Article VII of Billet d'Etat XIX of 2007.

**Objects.**

2. The objects of the Bar are to -

- (a) encourage and promote the upholding of the rule of law,
- (b) promote the efficient and fair administration of justice,
- (c) maintain high standards of professional conduct among its members including, without limitation -
  - (i) to protect the public and others against the negligence and wilful misconduct of any Advocate, and
  - (ii) to ensure that the professional fees and charges of any Advocate are fair and reasonable,
- (d) maintain effective complaints and disciplinary procedures,
- (e) promote the education and training of Advocates,
- (f) encourage and promote the study of law,
- (g) conduct research into, and promote the views of Advocates on matters affecting the administration of justice, including substantive law reform,
- (h) promote the interests of Advocates in such manner as the Bar may think fit both within and outside the Bailiwick, and
- (i) do all such things as are reasonably incidental or conducive to the attainment of those objects.



**Power to make regulations.**

3. (1) The Bar may make regulations -

- (a) requiring Advocates to hold valid practising certificates issued by such person or body, in respect of such period and upon payment of such fee as may be specified,
- (b) requiring Advocates to obtain and maintain in force professional indemnity insurance in respect of such risks and such minimum amount as may be specified,
- (c) concerning the professional conduct of Advocates,
- (d) relating to the obligation of Advocates to undertake continuing professional development by way of such activities as may be specified,
- (e) for the resolution of any dispute between an Advocate and any of his clients in respect of professional fees or charges raised by the Advocate, and
- (f) for all such matters as are reasonably necessary to give effect to Part I of this Law.

(2) No regulations under subsection (1) shall come into force until they have been -

- (a) approved by Her Majesty's Procureur, and
- (b) sanctioned by the Royal Court.

**Rules as to the conduct and management of affairs.**

**4.** (1) The Bar may, from time to time, by special resolution passed at a general meeting make all such rules as to the conduct and management of its affairs as may be necessary ("**the Rules**") and (without prejudice to the generality of the foregoing) as to -

- (a) the calling, conduct and proceedings of general meetings including, without limitation, the entitlement of any Advocate to vote,
- (b) the constitution and election of the Bar Council ("**the Council**") to act as governing body of the Bar, and the appointment by the Council of such sub-committees for such purposes and with such powers as the Council deems necessary or expedient,
- (c) the proceedings, powers and duties of the Council and any sub-committees,
- (d) the tenure, powers and duties of, and appointment to, the offices of the Bar, and
- (e) the method of changing the Rules.

(2) Rules under subsection (1) may provide -

- (a) that all powers conferred by this Law on the Bar, other than powers required to be exercised in general meeting, may be exercised by the Council, and
- (b) for the delegation of any such power by the Council, with or

without such conditions, rules or limitations as it may see fit,  
to any subcommittee appointed by it under the Rules,

(3) Rules under subsection (1) shall not come into force until they have  
been -

(a) approved by Her Majesty's Procureur, and

(b) sanctioned by the Royal Court.

**Officers.**

5. (1) The officers of the Bar are -

(a) the Bâtonnier,

(b) the Deputy Bâtonnier,

(c) the Secretary, and

(d) the Treasurer,

who shall be elected and hold office in the manner and for the periods set out in the Rules.

(2) The Bâtonnier and the Deputy Bâtonnier shall not practise in or from  
the same firm of Advocates.

(3) The officers of the former association shall upon the incorporation of  
the Bar become the first officers of the Bar and shall each hold office until the first election  
for their positions under the Rules.

**Members of the Council.**

6. The members of the Bar Council of the former association shall, upon the incorporation of the Bar, become the first members of the Council and shall each hold office until the first elections for their position under the Rules.

**Membership of the Bar.**

7. (1) Subject to the provisions of this Law, any person who -

(a) upon incorporation of the former association, is an Advocate,  
or

(b) after the incorporation of the former association, is admitted  
as an Advocate,

shall be a member of the Bar.

(2) Every Advocate shall register on the Register of Advocates.

**Liability of Members.**

8. (1) No Advocate shall be liable for or to contribute towards the payment of the liabilities of the Bar beyond the amount of any subscription, contribution or other debt due from him to the Bar.

(2) For the purposes of this section only, the Bar includes the former association.

**Property to vest in the Bar.**

9. All real and personal property (and including for the avoidance of doubt, any monies) vested in the former association or in any person in trust for the former association shall, upon the incorporation of the former association, be vested in the Bar, which shall be subject to and shall discharge all obligations and liabilities to which the former association was subject immediately prior to incorporation.

### **Annual General Meetings.**

10. A general meeting of the Bar, to be designated as the Annual General Meeting ("**the Annual General Meeting**"), shall be held once in every calendar year.

### **Accounts and Audits.**

11. Proper accounts should be kept of all sums received and expended by the Bar and, at least once in every calendar year, the accounts shall be examined and certified as true and fair accounts by an auditor elected at the Annual General Meeting.

### **Registered office.**

12. (1) The Bar shall establish and maintain in the Island of Guernsey a registered office at which all instruments for service upon the Bar shall be served.

(2) Notice of the address of the registered office and of any change thereof shall be given in writing to Her Majesty's Greffier within 7 days of the establishment or change, as the case may be.

### **Application of assets and income.**

13. The assets and income of the Bar may be applied only in furtherance of the objects in section 2 or for such other purposes as are, for the time being, authorised or required by any enactment or rule of law.

### **The Register of Advocates.**

14. (1) Her Majesty's Greffier shall establish and maintain a register to be called the Register of Advocates ("**the Register**").

(2) The Register -

(a) need not be kept in documentary form,

(b) for each Advocate registered, shall contain -

(i) his name,

(ii) the name of -

(A) any firm, or

(B) other institution,

of which he is a member or an employee, and any address from where he practises in the Bailiwick or elsewhere,

(iii) all professional legal qualifications that he holds,

(iv) the date of all qualifications in (iii),

(v) the details of any professional conduct complaint proved against him in any jurisdiction,

(vi) the disposal of any complaint in (v),

(vii) notwithstanding the provisions of any enactment concerning the rehabilitation of offenders, any conviction or caution for an offence committed in any jurisdiction and which was punishable by a term of imprisonment exceeding 2 years,

(viii) any sentence consequent upon any conviction in (vii),  
and

(ix) the date of his admission to the Guernsey Bar.

(3) An Advocate shall -

- (a) provide to Her Majesty's Greffier within 28 days of his request any information which must be contained in the Register, and
- (b) give notice of any change of any information contained in the register to Her Majesty's Greffier within 28 days of that change.

(4) Subject to such circumstances as may be prescribed, in which Her Majesty's Greffier may impose a prohibition or restriction on the publication or communication of information appearing on, or relating to, any entry on the Register of Advocates -

- (a) the Register of Advocates shall be open for public inspection, and
- (b) Her Majesty's Greffier shall, on payment of the prescribed fee, supply copies and extracts (certified or uncertified) of any entry in it.

(5) An Advocate may be deregistered from the Register -

- (a) on his application to Her Majesty's Greffier, or
- (b) by his disbarment by the Royal Court.

(6) An application for deregistration under subsection (5)(a) shall be made in such form and manner as the Royal Court may by order determine.

(7) Upon -

(a) receipt of an application under subsection (5)(a), or

(b) the Royal Court disbarring an Advocate,

Her Majesty's Greffier shall deregister the Advocate from the Register.

(8) An Advocate who, pursuant to the requirements of subsection (3) -

(a) provides, causes or permits to be provided any information or document which he knows or believes to be false, misleading or deceptive in a material particular,

(b) recklessly provides, causes or permits to be provided any information or document which is false, misleading or deceptive in a material particular, or

(c) knowingly or recklessly fails to make full disclosure of the information required of him,

(d) knowingly fails to give notice of any material change of any information contained in the Register within 28 days of that change,

shall be guilty of an offence.

(9) A person guilty of an offence under -



- (a) subsection (8)(a), (b) or (c) is liable –
  - (i) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
  - (ii) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both, and
- (b) subsection (8)(d) is liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

**Offences.**

- 15.** (1) A person who falsely or recklessly –

- (a) claims to be, or
- (b) uses any name, title or other description which tends to –
  - (i) imply, or
  - (ii) mislead the public,

that he is authorised or qualified to practise as an Advocate shall be guilty of an offence.

- (2) Subject to subsection (3), a person –

- (a) other than –

- (i) an Advocate,
  - (ii) a consultant to an Advocate or firm of Advocates in the course of his consultancy, or
  - (iii) a person employed or otherwise supervised by an Advocate in the course of his employment or when under supervision (as the case may be), and
- (b) who -
- (i) gives advice to another person on the law of the Bailiwick or one of the jurisdictions in the Bailiwick, or
  - (ii) draws up a contract under the law of one of the jurisdictions of the Bailiwick for another person,

is guilty of an offence.

(3) It shall be a defence for a person ("**person A**") to prove that when he gave advice, or drew up any contract, as the case may be -

- (a) person A represented to the other person, or
- (b) the other person knew or ought reasonably to have known,

that person A did not fall within the list of persons in subsection (2)(a).

(4) A person guilty of an offence under subsection (1) or (2) shall be liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

**Employment of any person who has been disbarred or suspended from practice as an Advocate.**

**16.** (1) An Advocate ("**the relevant Advocate**") may only, in connection with his practice, employ, retain or remunerate any person who -

- (a) has been disbarred, or
- (b) is suspended from practice as an Advocate,

with the approval of the President of the Chambre and in accordance with such conditions as he may specify in giving such approval.

(2) Where the relevant Advocate wishes to employ, retain or remunerate a person under subsection (1), he shall apply to the President in such form and in such manner as the Royal Court shall by order determine.

(3) Where the President considers an application under subsection (2), he shall -

- (a) consult Her Majesty's Procureur, and
- (b) notify the Registrar of the request.

(4) The President shall -

(a) make his decision to give or withhold his approval in writing,  
and

(b) send it to the relevant Advocate and to the Registrar.

(5) Where the President gives his approval, the Registrar may appeal to the Royal Court on a point of law against the decision of the President –

(a) to give his approval, or

(b) to give his approval –

(i) without specifying any conditions, or

(ii) with the conditions in the terms specified.

(6) Where the President withholds his approval, the relevant Advocate may appeal to the Royal Court against that refusal.

(7) Any person who desires to appeal under subsection (5) or (6) shall, within 7 days of the sending of the decision of the President, lodge a notice of appeal with Her Majesty's Greffier in such form and in such manner as the Royal Court may determine.

(8) Notwithstanding subsection (7), the Royal Court may extend the time for the lodging of the notice of appeal if it considers that it would be in the interests of justice to do so.

(9) When disposing of an appeal, the Royal Court –

- (a) shall give a reasoned decision in writing,
- (b) may confirm or reverse the decision of the President,
- (c) where approval is given, may add, vary or remove any condition specified by the Court in relation to that approval, and
- (d) may make an order of costs in respect of the appeal proceedings as it sees fit.

## PART II

### DISCIPLINE OF ADVOCATES

#### **La Chambre de Discipline.**

17. (1) La Chambre de Discipline (hereinafter referred to as "**the Chambre**") shall hear any complaint concerning a member of the Bar in respect of professional misconduct.

(2) For the purposes of this Part, a complaint in respect of professional misconduct includes a complaint that an Advocate has breached the Proceeds of Crime Regulations.

(3) For the purposes of hearing a complaint under subsection (1), the Chambre shall consist of one member from each of the following categories -

- (a) a lay person,
- (b) an Advocate, and
- (c) a senior lawyer.

- (4) The proceedings of the Chambre shall be inquisitorial in their nature.

**The Chambre Panels.**

- 18.** (1) The Appointments Committee, which shall comprise -

- (a) the Bailiff,
- (b) the Senior Jurat, and
- (c) the Bâtonnier for the time being,

shall appoint a panel of 5 persons for each category of member of the Chambre.

- (2) A person shall only be eligible for appointment in the category of -

- (a) **"lay person"** if he is -
  - (i) ordinarily resident in the Bailiwick,
  - (ii) not -
    - (A) a Jurat of the Royal Court of Guernsey or of the Court of Alderney,
    - (B) a member of the Juvenile Court Panel, or
    - (C) a member of any tribunal in the Bailiwick, and
  - (iii) not and has not ever been a member of a legal profession in any jurisdiction,

(b) "**Advocate**" if he is -

(i) an Advocate,

(ii) of at least 15 years' standing, and

(iii) not -

(A) an officer of the Bar, or

(B) a member of the Bar Council, and

(c) "**senior lawyer**" if he is -

(i) in any jurisdiction in the British Islands, a -

(A) practitioner, or

(B) member of the judiciary,

of at least 15 years' standing, and

(ii) not an Advocate.

(3) A member of a panel shall -

(a) be appointed as a member of that panel for a term not exceeding 5 years, but may continue to hear any complaint in respect of which he had been selected as a member of the Chambre before the expiry of that term, and

- (b) not be eligible for reappointment within a period of 5 years of the expiry of his previous term of appointment.
- (4) A member of a panel may -
  - (a) resign by notice in writing delivered to the Appointments Committee, and
  - (b) only be removed from that panel -
    - (i) on ceasing to be eligible to be a member of that panel,
    - (ii) if he is -
      - (A) an Advocate or senior lawyer who is a practitioner, on being suspended from practice or disbarred, or
      - (B) a senior lawyer who is a member of the judiciary, on being suspended or removed from office,
    - (iii) on becoming bankrupt, and
    - (iv) on grounds of -
      - (A) misconduct, or
      - (B) incapacity,



proved to the satisfaction of the Royal Court.

(5) Where a member of a panel resigns or is removed from that panel, the Appointments Committee shall select a person to replace him.

**The President of the Chambre.**

**19.** (1) The President of the Chambre ("**the President**") shall -

(a) be selected by the Appointments Committee from the panel of lay persons, and

(b) hold office for a period not exceeding 5 years.

(2) The President shall have the responsibility for -

(a) considering with the Bâtonnier whether a complaint should be referred to the Registrar,

(b) selecting the members of the Chambre to hear a complaint,

(c) giving directions for the management of any complaint before the Chambre, and

(d) giving approval to an Advocate to permit him to employ, retain or remunerate a person who has been suspended from practice as an Advocate or disbarred.

(3) The President may -

(a) resign by notice in writing delivered to the Bâtonnier, and

- (b) only be removed from office before the expiry of his term -
    - (i) on ceasing to be eligible to be a member of the panel of lay persons,
    - (ii) on becoming bankrupt, and
    - (iii) on grounds of -
      - (A) misconduct, or
      - (B) incapacity,
- proved to the satisfaction of the Royal Court.

**The Registrar of the Chambre.**

**20.** (1) The Registrar of the Chambre ("**the Registrar**") shall be appointed by the Royal Court for a term not exceeding 5 years.

- (2) The Registrar shall be responsible for -
  - (a) the collection and presentation of evidence in respect of a complaint made against a member of the Bar,
  - (b) the organisation of hearings of the Chambre, and
  - (c) the provision of advice and assistance to -
    - (i) the President (except in relation to the exercise of his powers under sections 16 and 21), and

(ii) the Chambre.

(3) A person shall only be eligible for appointment as the Registrar if he is a practitioner in any of the jurisdictions within the British Islands of at least 5 years standing.

(4) The Registrar may –

(a) resign by notice in writing delivered to Her Majesty's Greffier, and

(b) only be removed from office before the expiry of his term –

(i) on becoming bankrupt, and

(ii) on grounds of –

(A) misconduct, or

(B) incapacity,

proved to the satisfaction of the Royal Court.

(5) The Registrar may appoint any person to assist him in the exercise of any responsibility listed in subsection (2) on such terms and conditions as he thinks fit.

**Action upon receipt of a complaint.**

**21.** (1) Upon receipt of a complaint against an Advocate ("**the respondent**"), the President and the Bâtonnier shall –

(a) give notice of the receipt of the complaint to the respondent,

and

- (b) consider if the complaint should be referred to the Registrar.

(2) No complaint, other than a complaint alleging misconduct by breaching the Proceeds of Crime Regulations, shall be entertained if it is received more than 6 months after the last of the events giving rise to the complaint, unless the President is satisfied that exceptional circumstances exist which justify the making of the complaint outside that period.

(3) In considering a complaint under subsection (1)(b), the President and Bâtonnier may request –

- (a) the respondent to comment in writing on the complaint within such period as they see fit, and
- (a) the complainant to respond in writing to any such comment within such period as they see fit.

(4) If the President and the Bâtonnier consider that a complaint is –

- (a) vexatious,
- (b) frivolous, or
- (c) not one of professional misconduct,

the Bâtonnier shall refuse to refer the complaint to the Registrar and inform the complainant of the fact of and reasons for that refusal.

(5) If either the President or the Bâtonnier considers that the complaint does not fall within subsection (4), the Bâtonnier shall -

- (a) refer the complaint to the Registrar,
- (b) send to the Registrar any comments made under subsection (3), and
- (c) inform the complainant, the respondent and Her Majesty's Procureur of that referral.

(6) For the purposes of subsection (1), "complaint" means a written complaint and where the complaint is not initially made in writing, the Bâtonnier may -

- (a) require the complainant to state the complaint in writing, or
- (b) cause it to be stated in writing on the complainant's behalf,

as he thinks fit in all the circumstances.

#### **Investigation and initial disclosure.**

**22.** (1) Upon receipt of a complaint referred to him by the Bâtonnier, the Registrar shall make such investigations in respect of that complaint as he thinks fit.

(2) Without prejudice to the generality of subsection (1), for the purpose of investigating a complaint, the Registrar may -

- (a) take statements from any witness as to fact (including the complainant, the respondent and any third party),
- (b) gather any document or other evidence,

(c) instruct any expert witness, and

(d) request any legal advice,

as he considers may bear upon the complaint.

(3) Without prejudice to the generality of subsection (2)(b), the Registrar may -

(a) require the respondent -

(i) to produce or deliver, or

(ii) to cause to be produced or delivered,

to him any relevant documents in the custody or control of the respondent or his firm or institution, and

(b) retain possession of those documents until his investigation and any disciplinary proceedings that arise from the investigation are completed.

(4) Subsection (3) does not limit a right to decline to produce or deliver a document to the Registrar on the ground of -

(a) legal professional privilege, or

(b) any rule against self-incrimination.

(5) The Registrar may only use a document or information obtained by him under this section -

- (a) to investigate the complaint, or
- (b) to assist with any investigation for the purposes of proceedings in any jurisdiction which are –
  - (i) of a disciplinary, regulatory or criminal nature, and
  - (ii) related to the complaint.

(6) If after the completion of his investigations the Registrar decides that a prima facie case is -

- (a) disclosed, he shall –
  - (i) refer the complaint to the Chambre,
  - (ii) inform the complainant, the respondent, the President and Her Majesty's Procureur of that referral, and
  - (iii) send a statement of facts to the respondent, the President and the Chambre, and
- (b) not disclosed, he shall –
  - (i) refuse to refer the complaint to the Chambre, and
  - (ii) inform the complainant and the respondent of the fact of and the reasons for that refusal.

(7) For the purposes of subsection (6), a statement of facts shall include

–

- (a) the name of the complainant,
- (b) the specific allegations in reasonable particularity, and
- (c) a summary of the evidence in support of the complaint.

(8) For the avoidance of doubt, the Registrar is not precluded from exercising any of his powers under this section on the ground that he has already referred the complaint to the Chambre.

(9) For the purposes of subsections (2) to (4), "the Registrar" includes a reference to a person appointed to assist him when acting with his permission.

**Selection of members to constitute the Chambre.**

**23.** The members of the Chambre constituted to hear a complaint shall be selected from each of the panels in accordance with section 17(3) by the President.

**Directions.**

**24.** Upon a complaint being referred to the Chambre, the President shall give such directions as he sees fit to ensure that the complaint is considered fairly and expeditiously.

**Proceedings of the Chambre.**

**25.** (1) Subject to subsection (2), the Chambre shall hear any complaint in private.



(2) The Chambre may hear any complaint in public at the request of the respondent if it is satisfied that in all the circumstances it would be in the interests of justice to do so.

(3) Where the Chambre hears any complaint in public and a person who has not attained the age of 18 years is concerned in that complaint -

(a) no report shall be published which -

(i) reveals his name, address or school, or

(ii) includes any particulars which are reasonably likely to lead to his identification, and

(b) no picture shall be published which is or includes a picture of him.

(4) Any person who publishes any matter in contravention of this section is guilty of an offence and liable on conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the uniform scale, or both.

(5) Where a body corporate is guilty of an offence under this Law and it is shown that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the company is guilty of the offence and may be proceeded against and punished accordingly.

(6) Where the affairs of a body corporate are managed by its members, subsection (5) applies in relation to the acts and defaults of a member in connection with his functions of management as it applies to a director.

(7) The members of the Chambre hearing a complaint shall decide which of them shall be the chairman.

(8) Any question shall be determined by a simple majority of the members of the Chambre.

(9) The standard of proof when determining if the respondent is guilty of professional misconduct by –

- (a) breaching the Proceeds of Crime Regulations, is the civil standard of proof (that is, the balance of probabilities), and
- (b) any other misconduct, is the criminal standard of proof (that is, beyond reasonable doubt).

(10) The Chambre shall be master of its own procedure but in any event shall afford an opportunity to –

- (a) the Registrar –
  - (i) to be heard,
  - (ii) to call evidence, and
  - (iii) to cross-examine any witness, and
- (b) the respondent –
  - (i) to be heard,

(ii) to give and call evidence on his own behalf, and

(iii) to cross-examine any witness.

(11) Where any member of the Chambre cannot continue to hear a complaint, the Chambre may, in the interests of justice and after hearing submissions from the Registrar and the respondent -

(a) terminate the hearing of the complaint and request the President to select a new Chambre to hear it, or

(b) where two members of the Chambre remain, continue to hear the complaint, whether or not the President has at its request selected a replacement from the same panel as the member of the Chambre who cannot continue to hear the complaint.

**Powers of Chambre to take evidence.**

**26.** (1) Without prejudice to any power of the President to make any direction under section 24, the Chambre may, by notice in writing, signed by its chairman, require a person -

(a) to attend and give evidence before it in respect of a complaint which it is hearing,

(b) to produce to it any documents in that person's custody or control that relate to the subject matter of the complaint.

(2) The Chambre may require a person to give evidence on oath or under affirmation and for that purpose any member of the Chambre may administer an oath or take an affirmation.

(3) A person required to give evidence before or produce any document to the Chambre pursuant to subsection (1) shall have the same privileges and immunities as if he were giving evidence before or producing a document to the Royal Court.

**Decision of and disposals available to the Chambre.**

**27.** (1) At the conclusion of the proceedings, the Chambre shall give a reasoned decision in writing as to its findings in respect of the complaint and shall deal with it in one of the following ways -

- (a) by dismissing it, or
- (b) if it is satisfied the complaint is proved and that it constitutes professional misconduct by the respondent, by disposing of it -
  - (i) by privately reprimanding him,
  - (ii) by publicly rebuking him,
  - (iii) by fining him in a sum not exceeding level 3 on the uniform scale,
  - (iv) by ordering that he completes such training of such nature and duration as the Chambre shall direct and to provide satisfactory proof of compliance with this order to the Chambre,
  - (v) by suspending him from practice as an Advocate for a period not exceeding 3 months, or

(vi) by referring the complaint to the Royal Court for consideration of –

(A) fining him in a sum exceeding level 3 on the uniform scale,

(B) suspending him for a period of 3 months or more, or

(C) disbarring him.

(2) The Chambre may, in addition to the disposals listed in subsection (1), make an order that the respondent pay the reasonable costs, or a proportion of the reasonable costs, of the proceedings.

(3) The Chambre shall send a copy of its reasoned decision to –

(a) the complainant,

(b) the Registrar,

(c) the respondent, and

(d) Her Majesty's Procureur.

(4) Where the Chambre refers a complaint to the Royal Court under subsection (1)(b)(vi), it shall send a copy of its reasoned decision to the Court.

### **Appeals against decisions of the Chambre.**

**28.** (1) The following persons shall have a right of appeal against a decision of the Chambre to the Royal Court -

(a) the Registrar, and

(b) the respondent.

(2) Any person who desires to appeal under subsection (1) shall, within 28 days of the sending of the reasoned decision of the Chambre, lodge a notice of appeal with Her Majesty's Greffier in such form and in such manner as the Royal Court may determine.

(3) Notwithstanding subsection (2), the Royal Court may extend the time for the lodging of the notice of appeal if it considers that it would be in the interests of justice to do so.

(4) For the avoidance of doubt, any appeal shall be presented to the Royal Court by an Advocate instructed on behalf of the Registrar.

(5) When disposing of an appeal, the Royal Court –

(a) shall give a reasoned decision in writing,

(b) shall have the powers of the Chambre under section 27 and its own powers under section 29 to dispose of the complaint and make an order of costs, and

(c) may make an order of costs in respect of the appeal proceedings as it sees fit.

**Reference by the Chambre to the Royal Court.**

**29.** (1) Where the Chambre refers a complaint to the Royal Court, the Court shall consider the most appropriate disposal in all the circumstances.

- (2) The Royal Court shall afford an opportunity to –
  - (a) an Advocate instructed by the Registrar to present the facts as found by the Chambre, and
  - (b) the respondent to be heard.
- (3) The Royal Court may deal with the complaint –
  - (a) by privately reprimanding the respondent,
  - (b) by publicly rebuking him,
  - (c) by fining him,
  - (d) by ordering him to complete such training of such nature and duration as the Royal Court shall direct and to provide satisfactory proof of compliance with that order to the Royal Court,
  - (e) by suspending him from practice as an Advocate, or subjecting his practice as an Advocate to conditions, for such period as may be specified by the Court, or
  - (f) by disbarring him.
- (4) The Royal Court may make any order as to the costs of the proceedings before the Court as it thinks fit.

**Appeal to the Court of Appeal.**

30. (1) Subject to subsection (3), the following persons shall have a right of appeal on a point of law to the Court of Appeal against a decision of the Royal Court under section 28 or 29 -

(a) the Registrar, and

(b) the respondent.

(2) Any person who desires to appeal shall within 28 days of the sending of the reasoned decision of the Royal Court give to the Registrar of the Court of Appeal a notice of application for leave to appeal.

(3) An appeal to the Court of Appeal under this Law lies only with the leave of that Court and section 21 of the Court of Appeal (Guernsey) Law, 1961<sup>b</sup> ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under this Law as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

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

(a) confirm or reverse the decision of the Royal Court, and

(b) substitute any disposal listed in section 28 or 29 (as the case may be) for the disposal made by the Royal Court.

(5) Subject to any rules of court, the costs of and incidental to all proceedings on an appeal to the Court of Appeal are in the discretion of that court.

**Performance of functions by the Deputy Bâtonnier.**

---

<sup>b</sup> Ordres en Conseil Vol. XVIII, p. 315.



**31.** For the avoidance of doubt, any function of the Bâtonnier under this Part shall be exercised by the Deputy Bâtonnier –

- (a) where the Bâtonnier so requests,
- (b) in the absence or incapacity of the Bâtonnier, or
- (c) where the respondent practises in or from the same firm as the Bâtonnier.

**Fines.**

**32.** Where the Chambre, the Royal Court or the Court of Appeal disposes of a complaint under this Part by fining a respondent, that fine is payable to Her Majesty's Receiver-General and shall be recoverable as a civil debt.

**PART III**

**DISCLOSURE OF INFORMATION BY AND TO THE SUPERVISORY AGENCY**

**Disclosure of information by the supervisory agency.**

**33.** (1) This section applies to information which is held by or on behalf of the supervisory agency ("**the agency**") including information obtained before the coming into force of this section.

(2) No obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise prevents the disclosure to Her Majesty's Procureur, a police officer, the Registrar or Her Majesty's Greffier, in accordance with the following provisions of this section, of information to which this section applies if the disclosure is made for the purpose of -

- (a) any criminal investigation or investigation in contemplation of disciplinary proceedings which is being or may be carried out, whether in the Bailiwick or elsewhere,

- (b) any criminal or disciplinary proceedings which have been or may be initiated, whether in the Bailiwick or elsewhere,
- (c) the initiation or bringing to an end of any such investigation or proceedings, or
- (d) facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end.

(3) No disclosure of information to which this section applies shall be made under this section unless the person by whom the disclosure is made is satisfied that the making of the disclosure is proportionate to what is thereby sought to be achieved.

(4) Information to which this section applies shall not be disclosed to -

- (a) Her Majesty's Procureur,
- (b) a police officer,
- (c) the Court of Appeal,
- (d) the Royal Court (however constituted),
- (e) Her Majesty's Greffier,
- (f) the Bâtonnier for the time being in relation to his functions under this Law,
- (g) the President of the Chambre,

(h) the Registrar, or

(i) the Chambre,

by virtue of this section except by or on behalf of the agency.

(5) Information obtained by means of a disclosure authorised by subsection (2) and (3) shall not be further disclosed by Her Majesty's Procureur, a police officer, the Registrar or Her Majesty's Greffier except -

(a) for a purpose mentioned in those subsections, and

(b) with the consent of the agency.

(6) A consent for the purposes of subsection (5) may be given either in relation to a particular disclosure or in relation to disclosures made in such circumstances as may be specified or described in the consent.

(7) Nothing in this section authorises a disclosure, in contravention of any provisions of the Data Protection (Bailiwick of Guernsey) Law, 2001<sup>c</sup>, of personal data which are not exempt from those provisions.

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

**Disclosure of information to the agency by relevant person.**

**34.** (1) A relevant person may disclose to the agency any information in his possession which he reasonably believes may assist the agency to carry out its functions.

(2) The information that may be disclosed under this section includes

---

<sup>c</sup> Order in Council No. V of 2002.

information obtained before this Law came into force.

(3) No disclosure of information shall be made under this section unless the relevant person who makes the disclosure is satisfied that the making of the disclosure is proportionate to what is thereby sought to be achieved.

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

(5) A disclosure under this section does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

(6) For the purposes of this section, "**a relevant person**" means -

- (a) Her Majesty's Procureur,
- (b) the Court of Appeal,
- (c) the Royal Court (however constituted),
- (d) Her Majesty's Greffier,
- (e) the Bâtonnier for the time being in relation to his functions under this Law,
- (f) the President of the Chambre,
- (g) the Registrar,
- (h) the Chambre,

- (i) a police officer who holds the rank of inspector or above, or
- (j) a customs officer of the grade of senior investigation officer or above.

## PART VI

### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

#### **The Royal Court and Her Majesty's Procureur.**

**35.** This Law is without prejudice to the exercise or performance of the rights, powers and functions of -

- (a) the Royal Court, and
- (b) Her Majesty's Procureur,

existing independently of this Law in relation to Advocates and the Bar.

#### **Protection of persons acting in good faith.**

**36.** No person shall incur any criminal or civil liability in respect of any act or omission in the exercise or purported exercise of any function conferred on him by or under Law unless it is proved that the person was acting in bad faith.

#### **Offences.**

- 37.** (1) A person who -
- (a) in proceedings before the Chambre, or in making any statement or providing any information or document to the Registrar when acting in the exercise or purported exercise of their functions under this Law -

- (i) makes a statement which he knows or believes to be false, misleading or deceptive in a material particular,
  - (ii) recklessly makes a statement which is false, misleading or deceptive in a material particular, or
  - (iii) produces, or causes or permits to be produced, any information or document which he knows or believes to be false, misleading or deceptive in a material particular,
- (b) on being duly summoned as a witness before the Chambre, fails without reasonable excuse (proof of which shall lie on him) to attend,
- (c) on attending before the Chambre as a witness, fails, when legally required to do so -
  - (i) to take the oath or affirmation,
  - (ii) to produce any document in his possession, custody or power, or
  - (iii) to answer any question put to him,
- (d) does any other thing before the Chambre which, if done before the Royal Court, would constitute a contempt of court, or
- (e) without reasonable excuse (proof of which shall lie on him)

obstructs or hinders the Registrar in the exercise or purported exercise of their functions under this Law,

is guilty of an offence.

(2) A person guilty of an offence by virtue of subsection (1) is liable -

(a) on summary conviction to imprisonment for a term not exceeding 3 months, to a fine not exceeding level 5 on the uniform scale, or to both, or

(b) on conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

(3) For the purposes of subsection (1), "the Registrar" includes a reference to a person appointed to assist him when acting with his permission.

**Proceedings to be confidential.**

38. (1) No person shall disclose, except before the Chambre or with lawful excuse, any matter which came to his knowledge by reason of his being a member of the Chambre or by reason of his being present before the Chambre when it was sitting in private.

(2) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

**Power to make rules.**

39. The Royal Court may by order make rules under this Law in respect of the Chambre.

**General provisions as to subordinate legislation.**

40. (1) Any Ordinance, regulation, order or rule under this Law -

- (a) may be amended or repealed by a subsequent Ordinance, regulation, order or rule, as the case may be, hereunder, and
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient.

(2) Any power conferred by this Law to make any Ordinance, regulation, order or rule 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,
- (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.**



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

**"Advocate"** means an Advocate of the Royal Court of Guernsey,

**"Bailiwick"** means the Bailiwick of Guernsey,

**"bankrupt"**, in relation to an individual, includes an individual -

- (a) whose affairs have been declared in a state of "désastre" by his arresting creditors at a meeting held before a Commissioner of the Royal Court, the Court of Alderney or the Court of the Seneschal,
- (b) against whom an interim vesting order has been made in respect of any real property in the Bailiwick,
- (c) in respect of whom a declaration of insolvency has been made under the Loi ayant rapport aux Débiteurs et à la Renonciation, 1929<sup>d</sup>,

**"the Bar"** has the meaning given in section 1,

**"Bâtonnier"** has the meaning given in section 5,

**"the Council"** has the meaning given in section 4,

**"the Court of Appeal"** means the court established by the Court of Appeal (Guernsey) Law, 1961<sup>e</sup>,

---

<sup>d</sup> Ordres en Conseil Vol. VIII, p. 310.

<sup>e</sup> Ordres en Conseil Vol. XVIII, p. 315.

**"disbarred"** means, in respect of an Advocate, the removal of his name from the Roll of Advocates,

**"enactment"** includes a Law, an Ordinance and any subordinate legislation,

**"Her Majesty's Greffier"** includes any Deputy Greffier,

**"Her Majesty's Procureur"** includes Her Majesty's Comptroller,

**"the Juvenile Court Panel"** means the panel established by section 5 of the Juvenile Court (Guernsey) Law, 1989<sup>f</sup>,

**"this Law"** includes the Rules,

**"officer"** means any of the officers mentioned in section 5(1),

**"police officer"** means a member of the salaried police force of the Island of Guernsey,

**"practitioner"** means a person who -

(a) is entitled to practise, and

(b) practises,

law as a member of a legal profession in any jurisdiction,

---

<sup>f</sup>

Ordres en Conseil Vol. XXX, p. 326.

**"prescribed"** means prescribed by order of the Royal Court,

**"President"** has the meaning given in section 19,

**"Proceeds of Crime Regulations"** means -

- (a) any regulation made under section 49 or 49A of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>g</sup>, and
- (b) any rules, instructions and guidance made under such a regulation,

**"publish"** means to distribute, publicise or disseminate information by any medium, including by newspaper, by radio or television broadcast, or by the internet, and related expressions are to be construed accordingly,

**"Register"** has the meaning given in section 14,

**"Registrar"** has the meaning given in section 20,

**"relevant Advocate"** has the meaning given in section 16,

**"relevant person"** has the meaning given in section 34(6),

**"Royal Court"** means the Royal Court sitting as a Full Court,

---

<sup>g</sup> Order in Council No. VIII of 1999; amended by Order in Council No. II of 2005; Ordinance XXVIII of 1999; Ordinance XII of 2002; Ordinance XXXIII of 2003; G.S.I. No. 27 of 2002; and certain sections of the Law are modified in their application to external confiscation orders by Ordinance XXXIII of 1999.

**"the Rules"** means the Rules of the Bar made, approved and sanctioned in accordance with Section 4,

**"Secretary"** has the meaning given in section 5,

**"special resolution"** means a resolution that is passed by a majority of not fewer than two-thirds of the persons who, being entitled to do so, vote in person or by proxy,

**"subordinate legislation"** means any statutory instrument, regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect,

**"supervisory agency"** means any organisation appointed under the Proceeds of Crime Regulations to supervise compliance with these Regulations by practitioners,

**"Treasurer"** has the meaning given in section 5,

**"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<sup>h</sup>, and

**"years' standing"** means years -

(a) since the person was called to the Bar, or

---

<sup>h</sup> Ordres en Conseil Vol. XXXI, p. 278.

(b) post qualification experience as a lawyer,

whichever is the longer.

(2) The Interpretation (Guernsey) Law, 1948<sup>i</sup> -

(a) applies to the interpretation of this Law throughout the Bailiwick, and

(b) in the absence of any provision to the contrary contained therein, applies to the interpretation of any subordinate legislation made under this Law and, for the avoidance of doubt in the case of any subordinate legislation, as it applies to the interpretation of a Guernsey enactment.

(3) Unless the context requires otherwise, references in this Law to any enactment are references thereto as amended, varied, re-enacted (with or without modification), extended or applied.

### **Repeals.**

**42.** The following provisions are hereby repealed –

(a) Sections 5, 6 and 7 of the Ordonnance relative au Barreau et au Corps des Ecrivains<sup>j</sup>, and

(b) the Bar Ordinance, 1976<sup>k</sup>.

---

<sup>i</sup> Ordres en Conseil Vol. XIII, p.355.

<sup>j</sup> Recueil d’Ordonnances Tome VI, pg. 104.

<sup>k</sup> Recueil d’Ordonnances Tome XX, pg. 269.

**Citation.**

**43.** This Law may be cited as the Guernsey Bar (Bailiwick of Guernsey) Law, 2007.

**Commencement.**

**44.** (1) This Law shall come into force on the day appointed by Ordinance of the States.

(2) An Ordinance under subsection (1) may -

- (a) appoint different dates for different provisions of this Law and for different purposes, and
- (b) contain such saving and transitional provisions as the States consider appropriate.

K.H. TOUGH,  
Her Majesty's Greffier

Section 1  
SCHEDULE

Powers

1. The Bar may -
  - (a) enter into contracts,
  - (b) acquire, hold and dispose of property (gratuitously or onerously, beneficially or on trust),
  - (c) create, execute or perform trusts,
  - (d) operate bank accounts,
  - (e) invest in stocks, funds, shares, securities and other investments,
  - (f) borrow or lend money (with or without having given or taken security),
  - (g) guarantee the performance of obligations by other persons, and
  - (h) participate in joint ventures with other persons.
2. The Bar may retain the services of any person and employ staff on such terms and conditions (including provision for pensions or gratuities) as it may agree.











Copies may be purchased from  
Her Majesty's Greffier, Royal Court House, Guernsey

PRICE £20.00