

ORDER IN COUNCIL

**XV
2003**

ratifying a Projet de Loi

ENTITLED

The Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003

(Registered on the Records of the Island of Guernsey
on the 11th August, 2003.)



2003

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 11th day of August, 2003 before Sir de Vic Carey, Bailiff;
present:— David Charles Lowe, Esquire, Mrs. Eileen May Glass,
Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward
Francis Le Poidevin, Alan Cecil Bisson, David Michael Jory, Keith
Bichard, OBE, Michael Henry De La Mare, and Michael John
Tanguy, Esquires, Jurats.*

The Bailiff having this day placed before the Court the copy of an Order of Her Majesty in Council dated the 17th day of July, 2003, approving and ratifying a *Projet de Loi* of the States of Guernsey entitled “The Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003”, THE COURT, 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 Clerk of the Court of Alderney and to the Seneschal of Sark for registration on the records of those Islands respectively.

At the Court at Buckingham Palace

The 17th day of July, 2003

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 the 22nd day of February 1952 the Committee have considered a petition of the States of Guernsey:”

“That, in pursuance of their Resolution of the 1st of November, 2001, the States of Deliberation at a meeting on the 29th January 2003, approved a Projet de Loi entitled “The Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003” 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 the 19th of March 2003 considering the Projet de Loi when a Resolution was passed agreeing to its application to Alderney. That the Chief Pleas of the Island of Sark at a meeting held on the 23rd April 2003 considered the Projet de Loi when a Resolution was passed agreeing to its 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 Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003” 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 of and ratify the said 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.

A. K. Galloway

PROJET DE LOI

ENTITLED

The Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003

THE STATES, in pursuance of their Resolution of the 1st November, 2001^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 Bailiwick of Guernsey.

Amendment of Law of 1987.

1. (1) The Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended^b, hereinafter called "**the Law**", is further amended as follows.

(2) In the arrangement of sections to the Law -

(a) after the entry relating to section 38 insert the following entry -

"38A. Misleading statements and practices.";

^a Article XXII of Billet d'État No. XXI of 2001.

^b Ordres en Conseil Vol. XXX, p. 281; amended by Vol. XXX, p. 243; Vol. XXXI, p. 278; Vol. XXXII, p. 324; No. XIII of 1994, No. XII of 1995; No. II of 1997; and No. XVII of 2002. Also amended by Recueil d'Ordonnances Tome XXIV, p. 324, Tome XXVI, p. 333 and Ordinances No. X and No. XX of 1998.

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- (b) after the entry relating to section 41 insert the following entries -

"Penalties For Market Abuse

- 41A. Market abuse.
- 41B. The code.
- 41C. Provisions included in code by reference to City Code on Takeovers and Mergers.
- 41D. Codes: procedure.
- 41E. Effect of code.
- 41F. Offences and penalties in cases of market abuse.
- 41G. Effect on transactions.
- 41H. Power to amend by Ordinance."

(3) In section 27(2)(a) of the Law, after "that activity" insert "or to the investigation of, or to any proceedings in respect of, an offence or suspected offence under this Law".

(4) In section 27(2)(b) of the Law, and in paragraphs (a) and (b) of section 27(4) of the Law, after "any controlled investment business," insert "or to any offence or suspected offence under this Law,".

(5) After section 27(8) of the Law add the following subsection -

"(9) A requirement imposed by or under this section shall have effect notwithstanding any obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or otherwise; and, accordingly, the obligation or restriction is not contravened

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by the making of a disclosure pursuant to such a requirement."

(6) In section 33(1)(a) of the Law for "section 1 or section 7" substitute "section 1, 7, 38A or 41A".

(7) Section 38(4) of the Law is repealed.

(8) After section 38 of the Law insert the following section -

"Misleading statements and practices.

38A. (1) This subsection applies to a person who -

- (a) makes a statement, promise or forecast which he knows to be misleading, false or deceptive in a material particular;
- (b) dishonestly conceals any material facts whether in connection with a statement, promise or forecast made by him or otherwise; or
- (c) recklessly makes (dishonestly or otherwise) a statement, promise or forecast which is misleading, false or deceptive in a material particular.

(2) A person to whom subsection (1) applies is guilty of an offence if he makes the statement, promise or forecast or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce, another person (whether or not the person to whom the statement, promise or forecast is made or from whom the facts are concealed) -

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- (a) to enter or offer to enter into, or to refrain from entering or offering to enter into, a controlled investment agreement; or
- (b) to exercise, or refrain from exercising, any rights conferred by a controlled investment.

(3) Any person who does any act or engages in any course of conduct which creates a false or misleading impression as to the market in or the price or value of any controlled investments is guilty of an offence if he does so for the purpose of creating that impression and of thereby inducing another person to acquire, dispose of, subscribe for or underwrite those controlled investments or to refrain from doing so or to exercise, or refrain from exercising, any rights conferred by those controlled investments.

(4) In proceedings for an offence under subsection (2) brought against a person to whom subsection (1) applies as a result of paragraph (a) of that subsection, it shall be a defence for him to show that the statement, promise or forecast was made in conformity with -

- (a) price stabilising rules made by the Commission; or
- (b) guidance issued by the Commission on the management of conflicts of interests.

(5) In proceedings brought against a person for an offence under subsection (3), it shall be a defence for him to show -

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- (a) that he reasonably believed that his act or conduct would not create an impression that was false or misleading as to the matters mentioned in that subsection;
- (b) that he acted or engaged in the conduct -
 - (i) for the purpose of stabilising the price of controlled investments; and
 - (ii) in conformity with -
 - (A) price stabilising rules made by the Commission; or
 - (B) such provisions corresponding to price stabilising rules, made by a body or authority outside the Bailiwick, as may be applicable to the relevant market, taking into account the circumstances of the act or the course of conduct; or
- (c) that he acted or engaged in the conduct in conformity with guidance issued by the Commission on the management of conflicts of interests.

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(6) Subsections (1) and (2) do not apply unless -

- (a) the statement, promise or forecast is made in or from, or the facts are concealed in or from, the Bailiwick or arrangements are made in or from the Bailiwick for the statement, promise or forecast to be made or the facts to be concealed;
- (b) the person on whom the inducement is intended to or may have effect is in the Bailiwick; or
- (c) the agreement is or would be entered into, or the rights are or would be exercised, in the Bailiwick.

(7) Subsection (3) does not apply unless -

- (a) the act is done, or the course of conduct is engaged in, in the Bailiwick; or
- (b) the false or misleading impression is created there.

(8) In this Law "price stabilising rules" means rules made by the Commission as to -

- (a) the circumstances and manner in which;
- (b) the conditions subject to which; and

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- (c) the time when and the period during which;

action may be taken for the purpose of stabilising the price of controlled investments of specified kinds; and such rules -

- (i) may make different provision in relation to different kinds of controlled investment; and

- (ii) may be amended or repealed by subsequent such rules.

(9) The States may by Ordinance amend the provisions of this section."

- (9) For section 39 of the Law substitute the following section -

"Penalties.

39. A person guilty of an offence under section 38 or 38A shall be liable -

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

- (10) After section 41 of the Law insert the following sections -

"Penalties For Market Abuse

Market abuse.

41A. (1) For the purposes of this Act, market abuse is behaviour (whether by one person alone or by two or more persons jointly or in concert) -

- (a) which occurs in relation to qualifying investments traded on a market to which this section applies;
- (b) which satisfies any one or more of the conditions set out in subsection (2); and
- (c) which is likely to be regarded by a regular user of that market who is aware of the behaviour as a failure on the part of the person or persons concerned to observe the standard of behaviour reasonably expected of a person in his or their position in relation to the market.

- (2) The conditions are that -

- (a) the behaviour is based on information which is not generally available to those using the market but which, if available to a regular user of the market, would or would be likely to be

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regarded by him as relevant when deciding the terms on which transactions in investments of the kind in question should be effected;

(b) the behaviour is likely to give a regular user of the market a false or misleading impression as to the supply of, or demand for, or as to the price or value of, investments of the kind in question;

(c) a regular user of the market would, or would be likely to, regard the behaviour as behaviour which would, or would be likely to, distort the market in investments of the kind in question.

(3) The Committee may by regulations prescribe (whether by name or by description) -

(a) the markets to which this section applies; and

(b) the investments which are qualifying investments in relation to those markets.

(4) The regulations may prescribe different investments or descriptions of investment in relation to different markets or descriptions of market.

(5) Behaviour is to be disregarded for the purposes of subsection (1) unless it occurs -

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- (a) in the Bailiwick; or
- (b) in relation to qualifying investments traded on a market to which this section applies which is situated in the Bailiwick or which is accessible electronically in the Bailiwick.

(6) For the purposes of this section, the behaviour which is to be regarded as occurring in relation to qualifying investments includes behaviour which -

- (a) occurs in relation to anything which is the subject matter, or whose price or value is expressed by reference to the price or value, of those qualifying investments; or
- (b) occurs in relation to investments (whether qualifying or not) whose subject matter is those qualifying investments.

(7) Information which can be obtained by research or analysis conducted by, or on behalf of, users of a market is to be regarded for the purpose of this section as being generally available to them.

(8) Behaviour does not amount to market abuse -

- (a) if it conforms with -
 - (i) price stabilising rules made by the Commission; or

(ii) guidance issued by the Commission on the management of conflicts of interests; and

(b) the rules or guidance include a provision to the effect that behaviour conforming with the rule or (as the case may be) the guidance does not amount to market abuse.

(9) Any reference in this Law to a person engaged in market abuse is a reference to a person engaged in market abuse whether alone or with one or more other persons.

(10) In this section -

“**behaviour**” includes action or inaction;

“**investment**” includes any asset, right or interest and is to be read with section 1(3)(b) and Schedule 1;

“**regular user**”, in relation to a particular market, means a reasonable person who regularly deals on that market in investments of the kind in question.

The code.

41B. (1) The Commission may prepare and issue a code containing such provisions as the Commission considers will give appropriate guidance to those determining whether or not behaviour amounts to market abuse.

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(2) The code may among other things specify -

- (a) descriptions of behaviour that, in the opinion of the Commission, amount to market abuse;
- (b) descriptions of behaviour that, in the opinion of the Commission, do not amount to market abuse;
- (c) factors that, in the opinion of the Commission, are to be taken into account in determining whether or not behaviour amounts to market abuse;
- (d) an indication of the circumstances referred to in section 41F(4).

(3) The code may make different provision in relation to persons, cases or circumstances of different descriptions.

(4) The Commission may at any time alter or replace the code.

(5) If the code is altered or replaced, the altered or replacement code shall be issued by the Commission.

(6) A code issued under this section shall be published by the Commission in the way appearing to the Commission to be best calculated to bring it to the attention of the public; and notice that the code

has been issued shall be published by the Commission in La Gazette Officielle.

(7) The Commission may charge a reasonable fee for providing a person with a copy of the code.

Provisions included in code by reference to City Code on Takeovers and Mergers, etc.

41C. (1) The Commission may include in a code issued by it under section 41B (“**the Commission’s code**”) provision to the effect that in its opinion behaviour conforming with the City Code or with any other code or guidance issued in relation to takeovers and mergers issued in any other jurisdiction -

- (a) does not amount to market abuse;
- (b) does not amount to market abuse in specified circumstances; or
- (c) does not amount to market abuse if engaged in by a specified description of person.

(2) If the Commission’s code includes provision of a kind authorised by subsection (1), the Commission shall keep itself informed of the way in which -

- (a) in the case of the City Code, the Panel on Takeovers and Mergers;
- (b) in the case of a code or guidance issued in

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another jurisdiction, the body in that jurisdiction charged with the administration of that code or guidance;

interprets and administers the relevant provisions of the City Code or (as the case may be) that code or guidance.

(3) In this section -

“**City Code**” means the City Code on Takeovers and Mergers issued by the Panel on Takeovers and Mergers as it has effect at the time when the behaviour occurs; and

“**specified**” means specified in the Commission’s code.

Codes: procedure.

41D. (1) Before issuing a code under section 41B, the Commission shall publish a draft of the proposed code in the way appearing to the Commission to be best calculated to bring it to the attention of the public; and notice that the draft of the code has been published shall be published by the Commission in La Gazette Officielle.

(2) The draft, and the notice of the publication thereof in La Gazette Officielle, shall be accompanied by a statement that representations about the proposal may be made to the Commission within a specified period, being a period of not less than 28 days immediately after the date of publication of the notice.

(3) Before issuing the proposed code, the Commission shall have regard to any representations made to it in accordance with

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subsection (2).

(4) If the Commission issues the proposed code it shall publish an account, in general terms, of -

(a) the representations made to it in accordance with subsection (2); and

(b) its response to them.

(5) If the code differs from the draft published under subsection (1) in a way which is, in the opinion of the Commission, significant, the Commission shall (in addition to complying with subsection (4)) publish details of the difference.

(6) Subsections (1) to (5) do not apply if the Commission considers that there is an urgent need to publish the code; but in any such case -

(a) the notice published by the Commission under section 41B(6) that the code has been issued shall be accompanied by a statement that representations about the code may be made to the Commission within a specified period, being a period of not less than 28 days immediately after the date of publication of the notice; and

(b) in default of publication by the Commission of such a statement as is required by paragraph (a)

within a period of 28 days immediately after the date of the issue of the code, the code shall cease to have effect.

(7) The Commission may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).

(8) This section also applies to a proposal to alter or replace a code.

Effect of code.

41E. (1) If a person behaves in a way which is described (in any code in force under section 41B at the time of the behaviour) as behaviour that, in the Commission's opinion, does not amount to market abuse, that behaviour of his is to be taken, for the purposes of this Law, as not amounting to market abuse.

(2) Otherwise, any code in force under section 41B at the time when particular behaviour occurs may be taken into account so far as it indicates whether or not that behaviour should be taken to amount to market abuse.

Offences and penalties in cases of market abuse.

41F. (1) Where a person ("A") -

- (a) is or has engaged in market abuse, or
- (b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if

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engaged in by A, would amount to market abuse,

A shall, subject to the provisions of subsection (2), be guilty of an offence and liable -

- (i) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale, or to both;
- (ii) on conviction on indictment, to imprisonment for a term not exceeding seven years, or to a fine, or to both.

(2) It shall be a defence for the person 'A' to show that there are reasonable grounds for the court to be satisfied that -

- (a) A believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of subsection (1); or
- (b) A took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of subsection (1).

(3) In determining what penalty should be imposed on a person convicted of an offence under subsection (1), the court may (without limitation) have regard to -

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- (a) whether the behaviour in respect of which the penalty is to be imposed had an adverse effect on the market in question and, if it did, how serious that effect was;
 - (b) the extent to which that behaviour was deliberate or reckless; and
 - (c) whether the person on whom the penalty is to be imposed is an individual.
- (4) A code issued under section 41B may include an indication of the circumstances in which a person is to be regarded as -
- (a) having a reasonable belief that his behaviour did not amount to market abuse; or
 - (b) having taken reasonable precautions and exercised due diligence to avoid engaging in market abuse.

Effect on transactions.

41G. The conviction of a person of an offence under section 41F does not make any transaction void or unenforceable.

Power to amend by Ordinance.

41H. The States may by Ordinance amend the provisions of sections 41A to 41G."

Citation.

2. This Law may be cited as the Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2003.