

PROJET DE LOI

ENTITLED

The Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996 *

[CONSOLIDATED TEXT]

NOTE

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* No. III of 1996 (Ordres en Conseil Vol. XXXVI, p. 488); as amended by the Company Securities (Insider Dealing) (Bailiwick of Guernsey) (Amendment) Law, 2001 (No. XVI of 2001, Ordres en Conseil Vol. XLI, p. 580); the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. XIII of 2010); the Company Securities (Insider Dealing) (Bailiwick of Guernsey) (Amendment) Law, 2007 (No. VIII of 2014); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the Deputy Bailiff (Guernsey) Law, 1969 (Ordres en Conseil Vol. XXII, p. 122).

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THE STATES, in pursuance of their Resolution of the 26th day of April, 1995^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.

PART I

THE OFFENCE OF INSIDER DEALING

Insider dealing.

1. (1) An individual who has information as an insider is guilty of insider dealing if, in the circumstances mentioned in subsection (3), he deals in securities which are price affected securities in relation to the information.

(2) An individual who has information as an insider is also guilty of insider dealing if –

- (a) he encourages another person to deal in securities which are (whether or not that other knows it) price affected securities in relation to the information, knowing or having reasonable cause to believe that the dealing would take place in the circumstances

^a Article VIII of Billet d'État No. IX of 1995.

mentioned in subsection (3), or

- (b) he discloses the information, otherwise than in the proper performance of the functions of his employment, office or profession, to another person.

(3) The circumstances referred to above are that the acquisition or disposal in question occurs on a regulated market, or that the person dealing relies on a professional intermediary or is himself acting as a professional intermediary.

(4) This section has effect subject to section 2.

Defences.

2. (1) An individual is not guilty of insider dealing by virtue of dealing in securities if he shows that –

- (a) he did not at the time expect the dealing to result in a profit attributable to the fact that the information in question was price sensitive information in relation to the securities,
- (b) at the time he believed on reasonable grounds that the information had been disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information, or
- (c) he would have done what he did even if he had not had the information.

(2) An individual is not guilty of insider dealing by virtue of encouraging another person to deal in securities if he shows that –

- (a) he did not at the time expect the dealing to result in a profit attributable to the fact that the information in question was price sensitive information in relation to the securities,
- (b) at the time he believed on reasonable grounds that the information had been or would be disclosed widely enough to ensure that none of those taking part in the dealing would be prejudiced by not having the information, or
- (c) he would have done what he did even if he had not had the information.

(3) An individual is not guilty of insider dealing by virtue of a disclosure of information if he shows –

- (a) that he did not at the time expect any person, because of the disclosure, to deal in securities in the circumstances mentioned in section 1(3), or
- (b) that, although he had such an expectation at the time, he did not expect the dealing to result in a profit attributable to the fact that the information was price sensitive information in relation to the securities.

(4) Schedule 1 (special defences) shall have effect.

(5) The States may by Ordinance amend Schedule 1.

(6) In this section references to a profit include references to the avoidance of a loss.

PART II INTERPRETATION

Securities to which this Law applies.

3. (1) This Law applies to any security which –
- (a) falls within any paragraph of Schedule 2, and
 - (b) satisfies any conditions applying to it under an order made by the Committee for the purposes of this subsection,

and in the provisions of this Law (other than Schedule 2) any reference to a security is a reference to a security to which this Law applies.

- (2) The States may by Ordinance amend Schedule 2.

NOTE

The following Orders have been made under section 3:

Insider Dealing (Securities and Regulated Markets) Order, 1996;
Insider Dealing (Securities and Regulated Markets) (Amendment)
Order, 1997;
Insider Dealing (Securities and Regulated Markets)
(Amendment) Order, 2000;
Insider Dealing (Securities and Regulated Markets) (Amendment)
Order, 2008;
Insider Dealing (Securities and Regulated Markets) (Amendment)
Order, 2017.

"Dealing" in securities.

4. (1) For the purposes of this Law, a person **"deals"** in securities if –

- (a) he acquires or disposes of the securities (whether as principal or agent), or
- (b) he procures, directly or indirectly, an acquisition or disposal of the securities by any other person.

(2) For the purposes of this Law, **"acquire"**, in relation to a security, includes –

- (a) agreeing to acquire the security, and
- (b) entering into a contract which creates the security.

(3) For the purposes of this Law, **"dispose"**, in relation to a security, includes –

- (a) agreeing to dispose of the security, and
- (b) bringing to an end a contract which created the security.

(4) For the purposes of subsection (1), a person procures an acquisition or disposal of a security if the security is acquired or disposed of by a person who is –

- (a) his agent,
- (b) his nominee, or

- (c) a person who is acting at his direction,

in relation to the acquisition or disposal.

(5) Subsection (4) is not exhaustive as to the circumstances in which one person may be regarded as procuring an acquisition or disposal of securities by another.

"Inside information", etc.

5. (1) For the purposes of this section and section 6, **"inside information"** means information which –

- (a) relates to particular securities or to a particular issuer of securities or to particular issuers of securities and not to securities generally or to issuers of securities generally,
- (b) is specific or precise,
- (c) has not been made public, and
- (d) if it were made public would be likely to have a significant effect on the price of any securities.

(2) For the purposes of this Law, securities are **"price affected securities"** in relation to inside information, and inside information is **"price sensitive information"** in relation to securities, if and only if the information would, if made public, be likely to have a significant effect on the price of the securities.

- (3) For the purposes of this section **"price"** includes value.

"Insiders".

6. (1) For the purposes of this Law, a person has information as an **"insider"** if and only if –

- (a) it is, and he knows that it is, inside information, and
- (b) he has it, and knows that he has it, from an inside source.

(2) For the purposes of subsection (1), a person has information from an inside source if and only if –

- (a) he has it through –
 - (i) being a director, employee or shareholder of an issuer of securities, or
 - (ii) having access to the information by virtue of his employment, office or profession, or
- (b) the direct or indirect source of his information is a person within paragraph (a).

Information "made public".

7. (1) For the purposes of section 5, **"made public"**, in relation to information, shall be construed in accordance with the following provisions of this section; but those provisions are not exhaustive as to the meaning of that expression.

(2) Information is made public if –

- (a) it is published in accordance with the rules of a

regulated market for the purpose of informing investors and their professional advisers,

- (b) it is contained in records which by virtue of any enactment are open to inspection by the public,
 - (c) it can be readily acquired by those likely to deal in any securities –
 - (i) to which the information relates, or
 - (ii) of an issuer to which the information relates, or
 - (d) it is derived from information which has been made public.
- (3) Information may be treated as made public even though –
- (a) it can be acquired only by persons exercising diligence or expertise,
 - (b) it is communicated to a section of the public and not to the public at large,
 - (c) it can be acquired only by observation,
 - (d) it is communicated only on payment of a fee, or
 - (e) it is published only outside the Bailiwick.

"Professional intermediary".

8. (1) For the purposes of this Law, a "**professional intermediary**" is a person –

- (a) who carries on a business consisting of an activity mentioned in subsection (2) and who holds himself out to the public or any section of the public (including a section of the public constituted by persons such as himself) as willing to engage in any such business, or
- (b) who is employed by a person falling within paragraph (a) to carry out any such activity.

(2) The activities referred to in subsection (1) are –

- (a) acquiring or disposing of securities (whether as principal or agent), or
- (b) acting as an intermediary between persons taking part in any dealing in securities.

(3) A person is not to be treated as carrying on a business consisting of an activity mentioned in subsection (2) –

- (a) if the activity in question is merely incidental to some other activity not falling within subsection (2), or
- (b) merely because he occasionally conducts one of those activities.

(4) For the purposes of section 1, a person dealing in securities relies on a professional intermediary if and only if a person who is acting as a

professional intermediary carries out an activity mentioned in subsection (2) in relation to that dealing.

Other interpretation provisions.

9. (1) For the purposes of this Law, "**regulated market**" means any market, however operated, which, by an order made by the Committee, is identified (whether by name or by reference to criteria prescribed by the order) as a regulated market for the purposes of this Law.

(2) For the purposes of this Law an "**issuer**", in relation to any securities, means any company, public sector body or individual by which or by whom the securities have been or are to be issued.

(3) For the purposes of this Law –

(a) "**Bailiff**" means –

(i) in relation to the Bailiwick, the Bailiff,

(ii) in relation to Alderney, the Chairman of the Court of Alderney,

(iii) in relation to Sark, the Seneschal,

(b) "**Bailiwick**" means the Bailiwick of Guernsey,

(c) "**Commission**" means the Guernsey Financial Services Commission,

(d) "**Committee**" means the States of Guernsey [Committee for Economic Development] or such other

Committee as the States of Guernsey may by Ordinance appoint for the purposes of this Law,

- (e) **"company"** means any body (whether or not incorporated and wherever incorporated or constituted) which is not a public sector body,
- (f) **"Her Majesty's Procureur"** includes Her Majesty's Comptroller,
- (g) **"public sector body"** means –
 - (i) the government of any island of the Bailiwick or of any other country or territory,
 - (ii) a local authority in the United Kingdom or elsewhere,
 - (iii) any international organisation the members of which include the United Kingdom or another member state within the meaning of section 1(1) of the European Communities (Bailiwick of Guernsey) Law, 1973^b,
 - (iv) the Commission,
 - (v) the Bank of England, or

^b Ordres en Conseil Vol. XXIV, p. 87; Vol. XXVII, p. 242; Vol. XXIX, pp. 127 and 419; and Ordinance No. XIX of 1994.

(vi) the central bank of any sovereign State.

(4) For the purposes of this Law, information shall be treated as relating to an issuer of securities which is a company not only where it is about the company but also where it may affect the company's business prospects.

(5) The Interpretation (Guernsey) Law, 1948^c shall apply to the interpretation of this Law.

[(6) Any reference in this Law to an enactment, statutory instrument or rule of court is a reference thereto as from time to time amended, replaced or re-enacted (in either case, with or without modification), extended or applied.]

NOTES

In section 9,

the words in square brackets in the definition of the expression "Committee" in subsection (3) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(a), with effect from 1st May, 2016;¹

subsection (6) was inserted by the Company Securities (Insider Dealing) (Bailiwick of Guernsey) (Amendment) Law, 2001, section 1(1), with effect from 7th August, 2001.

The functions, rights and liabilities of the Commerce and Employment Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Economic Development and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.²

The following Orders have been made under section 9:

^c Ordres en Conseil Vol. XIII, p. 355.

Insider Dealing (Securities and Regulated Markets) Order, 1996;
Insider Dealing (Securities and Regulated Markets) (Amendment)
Order, 1997;
Insider Dealing (Securities and Regulated Markets)
(Amendment) Order, 2000;
Insider Dealing (Securities and Regulated Markets) (Amendment)
Order, 2008;
Insider Dealing (Securities and Regulated Markets) (Amendment)
Order, 2017.

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained in this Law relating to the discharge of such functions or the exercise of such powers shall have effect as if the references in this Law to the Bailiff included a reference to the Deputy Bailiff.

The European Communities (Bailiwick of Guernsey) Law, 1973 has since been repealed by the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018, section 1, with effect from 11 p.m. on 31st December, 2020, subject to the saving in section 2 of the 2018 Law.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

PART III

INVESTIGATIONS INTO INSIDER DEALING

Investigations into insider dealing.

10. (1) If it appears to Her Majesty's Procureur that there are circumstances suggesting –

- (a) that an offence of insider dealing may have been committed under this Law, or
- (b) that an offence under the laws of another country or territory relating to insider dealing may have been

committed and that a person in the Bailiwick –

- (i) may have been concerned (directly or indirectly) in the commission of any such offence, or
- (ii) may have information or documents which may be of assistance in the investigation of any such offence,

he may appoint one or more competent inspectors [(who, without limitation, may be officers, servants or agents of the Commission)] to carry out such investigations as are requisite to establish or assist in establishing whether or not any such offence has been committed and, if so, to investigate it, and to report the results of their investigations to him.

(2) The appointment under this section of an inspector may limit the period during which the inspector is to continue his investigation or confine it to particular matters.

(3) At any time during the investigation Her Majesty's Procureur may vary the appointment by limiting or extending the period during which the inspector is to continue his investigation or by confining the investigation to particular matters.

(4) If the inspectors consider that any person is or may be able to give information concerning any such offence, or that any person is or may be in possession or control of any documents relevant to the investigation, they may require that person –

- (a) to attend before them,

- (b) to produce to them any documents in his possession or under his control which appear to them to be relevant to the investigation, and
- (c) to reply to such questions and to furnish such information as they consider to be necessary for the purposes of the investigation and otherwise to give them all assistance in connection with the investigation which he is reasonably able to give,

and the inspectors may also exercise the following powers in relation to any documents considered by them to be relevant for the purposes of the investigation –

- (i) they may take copies or extracts of them,
- (ii) they may retain them for the purposes of the investigation or, if they suspect that they may otherwise be destroyed, damaged, tampered with or removed, take any other steps necessary to preserve them or protect them from interference,
- (iii) if they consider that any person is or may be able to provide an explanation of them or of anything in them, they may require that person to provide such an explanation, and
- (iv) in relation to any documents which are not furnished to them in accordance with their requirements, they may require any person to state to the best of his knowledge and belief

their whereabouts (whether or not that person is in possession or control of the documents).

(5) An inspector may examine on oath any person who he considers is or may be able to give information concerning any such offence and may administer an oath accordingly.

(6) The inspectors shall make such interim reports to Her Majesty's Procureur as they think fit or he may direct and on the conclusion of the investigation they shall make a final report to him[; and Her Majesty's Procureur may, subject to such conditions (if any) as he thinks fit, provide copies of any such interim or final report to the Commission].

(7) If Her Majesty's Procureur thinks fit, he may direct the inspectors to take no further steps in the investigation or to take only such further steps as are specified in the direction; and, where an investigation is the subject of such a direction, the inspectors shall make a final report to Her Majesty's Procureur only where Her Majesty's Procureur directs them to do so.

[(8) A statement made by a person in compliance with a requirement imposed under this section –

- (a) may be used in evidence against him in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against him in criminal proceedings except –
 - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or

- (ii) in proceedings for –
 - (A) an offence under section 16(1) or 17(1),
 - (B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
 - (C) perjury, or
 - (D) perverting the course of justice.]

(9) Subject to subsections (10) and (11), no obligation or duty of secrecy or of confidence nor any other restriction on the disclosure of information to which a person is subject, whether imposed by statute, contract or otherwise, shall be regarded as being contravened by reason of the compliance by that person with a requirement imposed under this section.

(10) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the Royal Court; but an advocate or other legal adviser may be required to give the name and address of any client.

(11) A person shall not under this section be required to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless –

- (a) the person to whom the obligation of confidence is owed consents to the disclosure or production, or
- (b) the making of the requirement was authorised by Her Majesty's Procureur.

(12) Where a person claims a lien on a document its production under this section shall be without prejudice to his lien.

(13) In this section "**document**" includes information recorded in any form; and in relation to information recorded otherwise than in legible form the power to require its production includes power to require the production of a copy of the information in legible form.

(14) A person who is convicted on a prosecution instituted as a result of an investigation under this section may in the same proceedings be ordered to pay the expenses of the investigation to such extent as may be specified in the order.

(15) For the purposes of subsection (14) there shall be treated as expenses of the investigation, in particular, such reasonable sums as Her Majesty's Procureur may determine in respect of general staff costs and overheads.

(16) Functions conferred by this section on inspectors may, where more than one inspector is appointed, be exercised by any one or more of them.

NOTES

In section 10,

the words in square brackets in, first, subsection (1) and, second, subsection (6) were inserted by the Company Securities (Insider Dealing) (Bailiwick of Guernsey) (Amendment) Law, 2001, respectively section 1(2)

and section 1(3), with effect from 7th August, 2001;

subsection (8) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

Search warrants.

11. (1) If on the application of Her Majesty's Procureur the Bailiff is satisfied by information on oath –

- (a) that there are reasonable grounds for suspecting that there are on any premises documents (whether or not they can be particularised) likely to be of relevance (whether by themselves or together with other documents) to an investigation under section 10, and
- (b) that the investigation might be seriously prejudiced unless immediate entry can be secured to the premises,

he may grant a warrant authorising an officer of police and any other person named in the warrant to enter and search the premises, using such force as may be reasonably necessary for the purpose.

(2) A person acting under the authority of a warrant granted under subsection (1) may –

- (a) make such inspection and examination of the premises in respect of which the warrant was granted, and
- (b) require any person thereon to reply to such questions and to furnish such information and documents,

as he considers to be necessary for the purposes of the investigation; and he may also exercise the following powers in relation to any documents considered by him to be relevant for the purposes of the investigation –

- (i) he may take copies or extracts of them,
- (ii) he may seize them, or take any other steps necessary to preserve them or protect them from interference, if he suspects that they may otherwise be destroyed, damaged, tampered with or removed,
- (iii) if he considers that any person is or may be able to provide an explanation of them or of anything in them, he may require that person to provide such an explanation, and
- (iv) in relation to any documents which are not furnished to him in accordance with his requirements, he may require any person to state to the best of his knowledge and belief their whereabouts (whether or not that person is in possession or control of the documents).

(3) A person seeking to exercise any power conferred by this section in relation to any premises shall, if so requested by the owner or occupier of the premises, furnish evidence of his office or authority.

[(4) A statement made by a person in compliance with a requirement imposed under this section –

- (a) may be used in evidence against him in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against him in criminal proceedings except –
 - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or
 - (ii) in proceedings for –
 - (A) an offence under section 16(1) or 17(1),
 - (B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
 - (C) perjury, or
 - (D) perverting the course of justice.]

(5) Subject to subsection (6), no obligation or duty of secrecy or of confidence nor any other restriction on the disclosure of information to which a person is subject, whether imposed by statute, contract or otherwise, shall be regarded as being contravened by reason of the compliance by that person with a requirement imposed under this section.

(6) A person shall not under this section be required to disclose

any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the Royal Court; but an advocate or other legal adviser may be required to give the name and address of any client.

(7) Where a person claims a lien on a document its production under this section shall be without prejudice to his lien.

(8) No person seeking to exercise any power conferred by this section shall be obliged to divulge his reasons for belief or suspicion when exercising that power.

(9) In this section –

- (a) **"document"** includes information recorded in any form; and in relation to information recorded otherwise than in legible form the power to require its production includes power to require the production of a copy of the information in legible form,
- (b) **"premises"** includes any place, vehicle, vessel or aircraft.

NOTE

In section 11, subsection (4) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

[Assistance for proceedings in other jurisdictions.]

12. (1) Her Majesty's Procureur, if satisfied that any material produced or seized under this Law is likely to be of relevance to criminal proceedings or an

investigation in a country or territory outside the Bailiwick in respect of a contravention or suspected contravention of the laws thereof relating to insider dealing, may, subject to such conditions (if any) as he thinks fit, transmit that material to the prosecuting authorities or supervisory authorities of that country or territory for the purposes of those proceedings or that investigation.

(2) Without prejudice to the generality of subsection (1), it may be a condition of the transmission of any material under that subsection that the material shall be returned to the Bailiwick authorities within such period as may be specified in the condition or, if no period is so specified, within a period of 7 days of any request in that behalf being made by Her Majesty's Procureur.

(3) In subsection (1) and in section 13(b) the expression "**supervisory authority**", in relation to a country or territory outside the Bailiwick, means –

- (a) an authority discharging in that country or territory functions corresponding to any functions of the Commission, and
- (b) an authority of any other class or description specified for the purposes of this section by order of the Committee.]

NOTE

Section 12 was substituted by the Company Securities (Insider Dealing) (Bailiwick of Guernsey) (Amendment) Law, 2001, section 1(4), with effect from 7th August, 2001.

Retention of documents.

13. Any documents produced or seized pursuant to the powers conferred

by this Law may be retained –

- (a) for a period of 3 months (or such longer period as the Bailiff may determine upon the ex parte application of Her Majesty's Procureur), or
- [(b) if proceedings to which the documents are relevant are instituted within that period, or if the documents are transmitted under section 12 to the prosecuting authorities or supervisory authorities of another country or territory for the purposes of criminal proceedings or an investigation there, until the conclusion of those proceedings or that investigation.]

NOTE

In section 13, paragraph (b) was substituted by the Company Securities (Insider Dealing) (Bailiwick of Guernsey) (Amendment) Law, 2001, section 1(5), with effect from 7th August, 2001.

PART IV
OFFENCES & PENALTIES

Penalties and prosecutions for insider dealing.

14. An individual guilty of insider dealing shall be liable –

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

Territorial scope of offence of insider dealing.

15. (1) An individual is not guilty of an offence falling within section 1(1) unless –

- (a) he was within the Bailiwick at the time when he is alleged to have done any act constituting or forming part of the alleged dealing,
- (b) the regulated market on which the dealing is alleged to have occurred is one which, by an order made by the Committee, is identified (whether by name or by reference to criteria prescribed by the order) as being, for the purposes of this Law, a regulated market, or
- (c) the professional intermediary was within the Bailiwick at the time when he is alleged to have done anything by means of which the offence is alleged to have been committed.

(2) An individual is not guilty of an offence falling within section 1(2) unless –

- (a) he was within the Bailiwick at the time when he is alleged to have disclosed the information or encouraged the dealing, or
- (b) the alleged recipient of the information or encouragement was within the Bailiwick at the time when he is alleged to have received the information or encouragement.

NOTE

The following Orders have been made under section 15:

*Insider Dealing (Securities and Regulated Markets) Order, 1996;
Insider Dealing (Securities and Regulated Markets) (Amendment)
Order, 1997;
Insider Dealing (Securities and Regulated Markets) (Amendment)
Order, 2000;
Insider Dealing (Securities and Regulated Markets) (Amendment)
Order, 2008;
Insider Dealing (Securities and Regulated Markets) (Amendment)
Order, 2017.*

Offences in relation to investigations and warrants, etc.

16. (1) A person who, without reasonable excuse, proof whereof shall lie on him –

- (a) fails to produce or furnish any information or document in accordance with any requirement imposed under this Law,
- (b) obstructs or fails to give all reasonable assistance to, or fails to comply in all respects with any requirement made of him by, any inspector or other person exercising or purporting to exercise any power or authority conferred by or under this Law,
- (c) with intent to evade the provisions of this Law relating to inquiry, investigation, search and seizure, destroys, mutilates, defaces, secretes or removes any document, or
- (d) in compliance or purported compliance with any

requirement imposed under this Law –

- (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence.

(2) A person guilty of an offence under subsection (1) is liable –

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

for a term not exceeding two years or to both.

(3) The court convicting a person of an offence under this section may, in addition to imposing any penalty mentioned in subsection (2), where the offence involved a failure to produce or furnish any information or document, to give assistance to any person or to comply with any requirement, order the person convicted, within such period as may be specified, to produce or furnish the information or document, to give the assistance or to comply with the requirement in question; and a failure to comply with such an order shall be punishable as a contempt of the Royal Court.

(4) An appeal lies from an order of the court under subsection (3) in the same manner as if it were a penalty imposed upon conviction.

Other sanctions for failure to co-operate with investigations.

17. (1) If any person –

- (a) refuses to comply with any requirement made of him by an inspector under section 10, or
- (b) refuses to answer any question put to him by an inspector appointed under that section with respect to any matter relevant for establishing whether or not any suspected offence has been committed,

the inspector may certify that fact in writing to the Royal Court which may inquire into the case.

(2) If, after hearing any witness who may be produced against or on behalf of the alleged offender and any statement which may be offered in defence, the Royal Court is satisfied that he did without reasonable excuse refuse to comply

with such a requirement or answer any such question, the Court may direct that the Commission may take account of his conduct in exercising any of its statutory functions (including, without prejudice to the generality of the foregoing, its function of determining whether or not he is a fit and proper person for the purposes of any legislation conferring functions upon the Commission); and the Court may give a direction under this section notwithstanding that the offender is not within the jurisdiction of the Court if the Court is satisfied that he was notified of his right to appear before the Court and of the powers available under this section.

(3) A person shall not be treated for the purposes of subsection (2) as having a reasonable excuse for refusing to comply with a requirement or answer a question in a case where the offence or suspected offence being investigated relates to dealing by him on the instructions or for the account of another person, by reason of the fact that at the time of the refusal –

- (a) he did not know the identity of that other person, or
- (b) he was subject to the law of a country or territory outside the Bailiwick which prohibited him from disclosing information relating to the dealing without the consent of that other person, if he might have obtained that consent or obtained exemption from that law.

PART V

GENERAL PROVISIONS

Limits on section 1.

18. (1) Section 1 does not apply to anything done by an individual acting on behalf of a public sector body in pursuit of monetary policies or policies with respect to exchange rates or the management of public debt or foreign exchange

reserves.

(2) No contract shall be void or unenforceable by reason only of section 1.

[Power to amend Law by Ordinance.]

18A. (1) The States may by Ordinance amend this Law.

(2) Subsection (1) is without prejudice to any other provision of this Law conferring power to enact Ordinances or orders (and vice versa).]

NOTE

Section 18A was inserted by the Company Securities (Insider Dealing) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 1(2), with effect from 23rd June, 2014.

[Ordinances and orders.]

19. (1) An Ordinance or order under this Law –

- (a) may be amended or repealed by a subsequent Ordinance or order, 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 or order 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.

(3) An order under this Law shall be laid before a meeting of the States as soon as possible after being made and, if at that or the next meeting, the States resolve that the order be annulled, then it shall cease to have effect, but without prejudice to anything done under it or to the making of a new order.]

NOTE

Section 19 was substituted by the Company Securities (Insider Dealing) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 1(3), with effect from 23rd June, 2014.

Repeals.

20. The Company Securities (Insider Dealing) (Bailiwick of Guernsey)

Law, 1989^d is repealed.

Citation.

21. This Law may be cited as the Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996.

Commencement.

22. This Law shall come into force on the day appointed by Ordinance of the States of Guernsey; and different days may be appointed for different provisions or for different purposes.

NOTE

The Law was brought into force on 1st October, 1996 by the Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996 (Commencement) Ordinance, 1996, section 1.

^d Order in Council No. XXX of 1989.

SCHEDULE 1
SPECIAL DEFENCES

Market makers.

1. (1) An individual is not guilty of insider dealing by virtue of dealing in securities or encouraging another person to deal if he shows that he acted in good faith in the course of –

- (a) his business as a market maker, or
- (b) his employment in the business of a market maker.

(2) A "**market maker**" is a person who –

- (a) holds himself out at all normal times in compliance with the rules of a regulated market or an approved organisation as willing to acquire or dispose of securities, and
- (b) is recognised as doing so under those rules.

(3) In this paragraph "**approved organisation**" means an international securities self-regulating organisation approved under paragraph 25B of Schedule 1 to the Financial Services Act 1986^e.

Market information.

2. (1) An individual is not guilty of insider dealing by virtue of dealing in securities or encouraging another person to deal if he shows that –

^e An Act of Parliament (1986 c. 60).

- (a) the information which he had as an insider was market information, and
- (b) it was reasonable for an individual in his position to have acted as he did despite having that information as an insider at the time.

(2) In determining whether it is reasonable for an individual to do any act despite having market information at the time, there shall, in particular, be taken into account –

- (a) the content of the information,
- (b) the circumstances in which he first had the information and in what capacity, and
- (c) the capacity in which he now acts.

3. An individual is not guilty of insider dealing by virtue of dealing in securities or encouraging another person to deal if he shows –

- (a) that he acted –
 - (i) in connection with an acquisition or disposal which was under consideration or the subject of negotiation, or in the course of a series of such acquisitions or disposals, and
 - (ii) with a view to facilitating the accomplishment of the acquisition or disposal or the series of acquisitions or disposals, and

- (b) that the information which he had as an insider was market information arising directly out of his involvement in the acquisition or disposal or series of acquisitions or disposals.

4. For the purposes of paragraphs 2 and 3 "**market information**" is information consisting of one or more of the following facts –

- (a) that securities of a particular kind have been or are to be acquired or disposed of, or that their acquisition or disposal is under consideration or the subject of negotiation,
- (b) that securities of a particular kind have not been or are not to be acquired or disposed of,
- (c) the number of securities acquired or disposed of or to be acquired or disposed of or whose acquisition or disposal is under consideration or the subject of negotiation,
- (d) the price (or range of prices) at which securities have been or are to be acquired or disposed of or the price (or range of prices) at which securities whose acquisition or disposal is under consideration or the subject of negotiation may be acquired or disposed of,
- (e) the identity of the persons involved or likely to be involved in any capacity in an acquisition or disposal.

Price stabilisation.

5. (1) An individual is not guilty of insider dealing by virtue of dealing in securities or encouraging another person to deal if he shows that he acted in conformity with the price stabilisation rules.

(2) In this paragraph "**the price stabilisation rules**" means rules which –

- (a) are made under section 48 of the Financial Services Act 1986^f (conduct of business rules), and
- (b) make provision of a description mentioned in paragraph (i) of subsection (2) of that section (price stabilisation rules).

^f An Act of Parliament (1986 c. 60).

SCHEDULE 2
SECURITIES

Shares.

1. Shares and stock in the share capital of a company ("**shares**").

Debt securities.

2. Any instrument creating or acknowledging indebtedness which is issued by a company or public sector body, including, in particular, debentures, debenture stock, loan stock, bonds and certificates of deposit ("**debt securities**").

Warrants.

3. Any right (whether conferred by warrant or otherwise) to subscribe for shares or debt securities ("**warrants**").

Depository receipts.

4. (1) The rights under any depository receipt.
 - (2) For the purposes of subparagraph (1) a "**depository receipt**" means a certificate or other record (whether or not in the form of a document) –
 - (a) which is issued by or on behalf of a person who holds any relevant securities of a particular issuer, and
 - (b) which acknowledges that another person is entitled to rights in relation to the relevant securities or relevant securities of the same kind.
 - (3) In subparagraph (2) "**relevant securities**" means shares, debt securities and warrants.

Options.

5. Any option to acquire or dispose of any security falling within any other paragraph of this Schedule.

Futures.

6. (1) Rights under a contract for the acquisition or disposal of relevant securities under which delivery is to be made at a future date and at a price agreed when the contract is made.

(2) In subparagraph (1) –

- (a) the references to a future date and to a price agreed when the contract is made include references to a date and a price determined in accordance with the terms of the contract, and
- (b) "**relevant securities**" means any security falling within any other paragraph of this Schedule.

Contracts for differences.

7. (1) Rights under a contract which does not provide for the delivery of securities but whose purpose or pretended purpose is to secure a profit or avoid a loss by reference to fluctuations in –

- (a) a share index or other similar factor connected with relevant securities,
- (b) the price of particular relevant securities, or
- (c) the interest rate offered on money placed on deposit.

(2) In subparagraph (1) "**relevant securities**" means any security falling within any other paragraph of this Schedule.

¹ These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(c), Schedule 2, paragraph 1(c), with effect from 6th May, 2004.

² The functions, rights and liabilities of the Commerce and Employment Department and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Advisory and Finance Committee and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 1(c), Schedule 2, paragraph 1(c), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.