

PROJET DE LOI

ENTITLED

The Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009

THE STATES, in pursuance of their Resolution of the 26th November, 2008^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 Islands of Guernsey, Herm and Jethou.

Amendment of Law of 2008.

1. The Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008, as amended^b, is further amended as follows.

2. In section 1(1) for "The Administrator of Income Tax (**the Administrator**)" substitute "The Registrar of Non Profit Organisations, the office of whom is established by section 1A,".

3. In section 1(1), (2) and (5) for "the Schedule" substitute "Schedule 1".

^a Article I of Billet d'État No. XV of 2008.

^b No. XXVI of 2008; registered by the Royal Court on the 28th October, 2008; amended by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) Ordinance, 2008 (in force 3rd November, 2008) and by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) (No. 2) Ordinance, 2008 (in force 26th November, 2008).

4. After section 1 insert the following sections -

"Office of Registrar of Non Profit Organisations."

1A. (1) The States Treasury and Resources Department ("**the Department**") shall establish an office to be called the Office of the Registrar of Non Profit Organisations ("**the Office of the Registrar**").

(2) The holder of that office shall be called the Registrar of Non Profit Organisations ("**the Registrar**").

(3) The Registrar shall be appointed by the Department.

(4) An appointment of the Registrar under this section -

(a) may be periodic or for a fixed term,

(b) is subject to such terms and conditions as the Department may from time to time think fit, and

(c) may be varied or terminated at any time by the Department, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment.

(5) The Registrar shall, subject to the terms and conditions of his appointment, exercise the functions assigned or transferred to him by or under this Law and any other enactment.

(6) For the purposes of the Public Functions (Transfer and

Performance) (Bailiwick of Guernsey) Law, 1991^c -

- (a) the Office of the Registrar is a public office,
and
- (b) the Registrar is an office holder.

(7) The provisions of Schedule 2 have effect in respect of the Office of the Registrar.

Functions of Registrar.

1B. The functions of the Registrar are -

- (a) to maintain the Register in accordance with Schedule 1,
- (b) to advise the Department generally in relation to the administration and enforcement of this Law and the practice and procedures relating thereto,
- (c) to administer the Office of the Registrar,
- (d) to determine -
 - (i) the fees payable (whether generally or in any particular case) under paragraphs 1 and 11 of Schedule 1,

^c Order in Council No. XXI of 1991.

- (ii) the interest payable in the event of default in the due payment of fees, and
 - (iii) the classes or descriptions of person by whom such fees and interest are to be payable, and
- (e) to exercise, subject to the terms and conditions of his appointment, such other functions as may be assigned or transferred to him -
 - (i) by or under this Law and any other enactment, or
 - (ii) by Resolution of the States.

Ancillary powers of Registrar.

1C. (1) The Registrar, having regard to the provisions of section 1B, has power to do anything that appears to him to be necessary or expedient for the purposes of or in connection with the exercise of his functions including, without limitation, power -

- (a) to require the production of and otherwise obtain such documents, accounts and information from such persons and within such periods and at such times and intervals as he thinks fit,
- (b) to prepare and, subject to any provision to the

contrary in this Law or any other enactment, to publish information, reports, codes of practice, guidance, recommendations and other documents,

(c) to appoint any person or body to advise him in relation to the exercise of any of his functions, and

(d) to apply to the Court for directions under section 1F.

(2) For the purposes of exercising his functions the Registrar may, having regard to the provisions of section 1B -

(a) acquire, lease, use, dispose of, exchange or otherwise deal with any movable or immovable property and any interest in it, and

(b) enter into any contract, including any contract of purchase, sale, insurance, hire or bailment, or make any arrangement with any person.

(3) The Registrar may sue and be sued as Registrar.

Reports.

1D. (1) The Registrar shall, whenever directed by the Department, and without prejudice to his powers to prepare and publish reports of his own motion, submit to the Department a report on the exercise of his functions in such form and in respect of such matters and such periods as the Department may specify.

(2) The Department -

(a) may submit the Registrar's report made under subsection (1) to the States, and

(b) may at the same time or at any other time submit their own report to the States on the exercise by the Registrar of his functions.

Financial and accounting provisions.

1E. (1) All fees and similar sums received by the Registrar in the exercise of his functions shall be paid by him to the Department for the general revenue account of the States.

(2) Subsection (1) does not apply if and to the extent that, in accordance with financial procedures agreed between the Department and the Registrar, the Department directs otherwise.

(3) The Registrar shall -

(a) keep proper accounts and proper records in relation to those accounts, and

(b) submit to the Department, whenever the Department may direct but not less than once in any 12 month period, a statement of account giving a true and fair view of the state of affairs of the Office of the Registrar.

(4) Without prejudice to the preceding provisions of this section, the Registrar shall, whenever directed by the Department, submit to the Department, in respect of such period as the Department may specify, audited accounts of the Office of the Registrar together with the auditors' report thereon prepared by auditors appointed by the Registrar with the approval of the Department.

Power to apply for directions.

1F. (1) The Registrar may, if he believes that it would assist him in the proper and lawful exercise of his functions, apply to the Court for directions, or for a determination of any question of fact, law or procedure, in such manner as may be prescribed by order of the Royal Court, and on such an application the Court may make such order as it thinks fit.

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

(3) An appeal from an order of the Court under this section lies, with leave of the Court or the Court of Appeal, to the Court of Appeal on a question of law.

(4) Section 21 of the Court of Appeal (Guernsey) Law, 1961^d ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

Power to amend sections concerning Office of Registrar, etc.

1G. The States may by Ordinance amend sections 1A to 1F where it appears to them to be necessary or expedient to do so for any of the purposes set out in section 11(1)(a)."

5. In section 2(c) for "the Administrator" substitute "the Registrar".
6. In section 4(1)(b) for "the Administrator" substitute "the Registrar".
7. In section 11(1)(a)^e for "the Schedule" substitute "Schedule 1 or 2".
8. In section 12(1) -
 - (a) the definition of "Administrator" is repealed,
 - (b) insert the following definitions at the appropriate places -

""**Bailiff**"" means the Bailiff, Deputy Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué,

^d Ordres en Conseil Vol. XVIII, p. 315.

^e Section 11(1)(a) was substituted by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) Ordinance, 2008 (in force 3rd November, 2008).

"**employee**" includes a person employed under a contract of service or apprenticeship (whether written or oral, express or implied) and a person engaged under a contract for services or on a consultancy or secondment basis,

"**Office of the Registrar**" has the meaning assigned to it in section 1A(1),

"**Registrar**" has the meaning assigned to it in section 1A(2),".

9. The Schedule is numbered as Schedule 1.

10. (1) In the paragraphs of Schedule 1 (as so numbered) specified in subsection (2) for "Administrator" and "Administrator's", wherever appearing, substitute respectively "Registrar" and "Registrar's".

(2) The paragraphs are 1(1), 1(2), 1(3), 1(4)(b), 2(1), 2(2)(b), 3, 4, 5(1), 5(2), 6, 7(1), 7(2), 8(1)(b), 8(1)(c), 9(1), 9(2)(a), 9(2)(b), 10(1) [including items (a) and (b) thereof], 10(2), 11, 12(1) [including the heading], 12(3), 12(4)(a), 12(5), 13(2)(b), 13(2)(c) and 13(2)(d).

11. In paragraph 13 of Schedule 1 (as so numbered) -

(a) in the heading the words "by Administrator" are repealed,
and

(b) after subparagraph (2)(h) insert the following -

"(i) the disclosure of information which is authorised or

required by or under this Law or any other enactment."

12. After Schedule 1 (as so numbered) insert the following Schedule -

"SCHEDULE 2
OFFICE OF THE REGISTRAR

Section 1A(7)

Salary or fees of Registrar.

1. The Registrar shall be paid such salary, fees, emoluments and other allowances as the Department may determine.

Appointment of staff.

2. (1) The Registrar may -
- (a) subject to the approval of the Department, appoint such officers and employees, and
 - (b) appoint and instruct such other persons,

on such terms and conditions (whether as to remuneration, expenses, pensions or otherwise) as he thinks necessary for the exercise of his functions.

(2) The Registrar may, subject to the approval of the Department, establish and maintain such schemes or make such other arrangements as he thinks fit for the payment of pensions and other benefits in respect of his officers and employees.

Delegation of functions.

3. (1) The Registrar may, by an instrument in writing, either

generally or otherwise as specified in the instrument, arrange for any of his functions to be exercised in his name by any person named or described in the instrument, other than this power of delegation.

(2) A function exercised by a delegate pursuant to an arrangement made under this paragraph is for all purposes exercised by the Registrar; and every decision taken or other thing done by a delegate pursuant to such an arrangement has the same effect as if taken or done by the Registrar.

(3) An arrangement made under this paragraph for the exercise of a function by a delegate -

- (a) may be varied or terminated at any time by the Registrar, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement,
- (b) does not prevent the exercise of the function by the Registrar while the arrangement subsists.

(4) The provisions of this paragraph, and of paragraph 4, are without prejudice to the provisions of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^f.

Appointment of Deputy Registrar.

4. (1) Without prejudice to the Registrar's powers under paragraph 3, the Department may, subject to such terms and conditions as it may from time to time think fit, appoint any person as Deputy Registrar with authority to exercise the

^f Order in Council No. XXI of 1991.

Registrar's functions during any period in which the Registrar is unavailable or unable to act or during any vacancy in that office.

(2) A function exercised by a Deputy Registrar pursuant to an appointment under this paragraph is for all purposes exercised by the Registrar; and every decision taken or other thing done by a Deputy Registrar pursuant to such an appointment has the same effect as if taken or done by the Registrar.

(3) An appointment under this paragraph of a Deputy Registrar -

(a) may be varied or terminated at any time by the Department, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment,

(b) does not prevent the exercise of the function by the Registrar while the appointment subsists.

Disclosure of interests.

5. (1) The Registrar shall, if he has any direct or indirect personal interest in the outcome of any matter of which he is seised under this Law or any other enactment, disclose the nature of his interest to the Department.

(2) For the purposes of this paragraph, a general notice given by the Registrar to the effect that he is a shareholder in, or a director of, a body corporate, and is to be regarded as interested in any matter concerning that body corporate, is a sufficient disclosure in relation to any such matter.

Proof of documents.

6. (1) In any legal proceedings the provisions of subparagraph (2)

apply in relation to any document purporting to be -

- (a) issued by or on behalf of the Registrar, or
- (b) signed by the Registrar, by any of his officers or employees or by any person to whom, pursuant to paragraph 3, he has delegated authority to sign documents of that description.

(2) The document -

- (a) may be received in evidence,
- (b) unless the contrary is proved, is deemed -
 - (i) to be the document which it purports to be, and
 - (ii) to have been issued by or on behalf of the Registrar or, as the case may be, to have been signed by the person by whom it purports to have been signed, without proof of his identity, signature or official capacity, and
- (c) is evidence of the matters stated therein."

Savings for functions performed by Administrator of Income Tax.

13. (1) Anything done before the date of commencement of this Law or in the process of being done on that date by or in relation to the Administrator of Income Tax under or by virtue of the Charities and Non Profit Organisations

(Registration) (Guernsey) Law, 2008, as amended^g, shall have effect as if done or (as the case may be) may be continued by or in relation to the Registrar of Non Profit Organisations.

(2) In subsection (1) "**the Administrator of Income Tax**" includes the Assistant Administrator and any other person or body to whom the Administrator, before the date of commencement of this Law, by instrument in writing delegated his functions under the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008, as amended.

Citation.

14. This Law may be cited as the Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009.

Commencement.

15. This Law shall come into force on the date appointed by Ordinance of the States.

^g No. XXVI of 2008; registered by the Royal Court on the 28th October, 2008; amended by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) Ordinance, 2008 (in force 3rd November, 2008) and by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) (No. 2) Ordinance, 2008 (in force 26th November, 2008).