

The Financial Services Commission (Site Visits) (Bailiwick of Guernsey) Ordinance, 2008

THE STATES, in pursuance of their Resolution of the 25th July, 2007^a, and in exercise of the powers conferred on them by section 21C of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^b, as amended, and all other powers enabling them in that behalf, hereby order:-

Site visits with notice and with agreement.

1. (1) The Commission's officers may, at such times, intervals and places as they think fit, and -

- (a) with a view to the performance of the Commission's statutory functions, or
- (b) if they consider it desirable to do so for the protection of the interests of the public or any class thereof, or any particular persons, or the reputation of the Bailiwick as a finance centre,

make arrangements with any licensee for the making, in such manner and for such purposes as may be mutually agreed, of site visits to the offices of the licensee or

^a Article IV(1)(f) of Billet d'État No. XIX of 2007.

^b Ordres en Conseil Vol. XXX, p. 243; amended by No. XX of 1991; No. XIII of 1994; No. II of 1997; No. II of 1998; No's. XVII and XXI of 2002; No's. III and XXII of 2003; the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII); and the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Ordinance, 2005 (No. XXXIV).

any associated party thereof (or any person acting for or on behalf of the licensee or associated party) for the purpose of ascertaining whether or not the licensee or associated party is complying with the provisions of the regulatory Laws or any Ordinance, regulation, rule, code, condition or direction under them.

(2) Site visits may take place at any or all of the premises where business is conducted or records are maintained by the licensee or associated party and are not limited to premises in the Bailiwick.

(3) Where a licensee or associated party fails to co-operate with the Commission's officers or any person acting for and on behalf of the Commission when exercising or attempting to exercise their functions for the purposes of this section (whether by declining to reach agreement as to the making, timing or scope of a site visit, or by failing to provide any information or document or to answer any question, or otherwise), that failure may be taken into account by the Commission in deciding whether and in what manner to exercise its statutory functions arising otherwise than under this section.

Site visits with notice and without agreement.

2. The Commission's officers may on request, and with 48 hours' notice given before 4 p.m. on a business day, enter any premises in the Bailiwick owned, leased or otherwise controlled or occupied by a licensee.

Site visits without notice and where suspicion of documents being removed etc.

3. If the Commission's officers have grounds to suspect that a site visit made under section 1 or 2 would result in any documents being removed, tampered with, falsified or destroyed, then they may enter any premises in the Bailiwick owned, leased or otherwise controlled or occupied by a licensee on request but without notice.

Use of the right of entry in sections 2 and 3.

4. Except in cases of urgency the right of entry conferred by sections 2 and 3 may only be exercised between 9.00 a.m. and 4.00 p.m. on a business day.

Request for information.

5. If the Commission's officers exercise their right of entry under sections 1, 2 or 3 they may require the officers, servants or agents of the licensee -

- (a) to produce for examination (whether at the premises of the licensee or at the offices of the Commission) any documents held by them,
- (b) to produce copies of any documents in a legible form for the Commission's officers to take away,
- (c) to answer questions for the purpose of verifying compliance with any of the regulatory Laws.

Power of Bailiff to grant warrant.

6. (1) If the Bailiff is satisfied by information on oath that there are reasonable grounds for suspecting -

- (a) that a request or requirement under sections 1, 2, 3 or 5 has not been complied with,
- (b) that any information or document furnished pursuant to such a request or requirement is false, misleading, inaccurate or incomplete,
- (c) that if such a request or requirement were made -

- (i) it would not be complied with,
- (ii) any documents to which it would relate would be removed, tampered with, falsified or destroyed, or
- (iii) the making of the request or requirement or any attempt to enforce it might significantly prejudice any inquiry to which the request or requirement would relate,

he may grant a warrant.

(2) A warrant under this section authorises any police officer, together with any other person named or described in the warrant (including, without limitation, the Commission's officers) -

- (a) to enter any premises specified in the warrant using such force as may be reasonably necessary,
- (b) to search the premises and, in relation to any documents appearing to be relevant for the purpose of establishing whether the licensee has complied with any of the regulatory Laws, to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,
- (c) to take copies of or extracts from any such documents,

- (d) to require any person named in, or of a class or description specified in, the warrant -
 - (i) to answer any questions relevant to establishing whether the licensee has complied with any of the regulatory Laws,
 - (ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b),
 - (iii) to make an explanation of any such documents.

(3) A warrant under this section ceases to be valid on the expiration of 28 days immediately following the day on which it was issued.

(4) Any documents of which possession is taken under the powers conferred by a warrant under this section may be retained -

- (a) for a period of 4 months or such longer period as the Bailiff may, when issuing the warrant or at any time thereafter, direct, or
- (b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.

Disclosure of information.

7. (1) Nothing in this Ordinance compels the production or

divulgence of an item subject to legal professional privilege, but an advocate or other legal adviser may be required to give the name and address of a client.

(2) Subject to subsection (1), a requirement imposed -

(a) under sections 1, 2, 3 or 5, or

(b) imposed by or under a warrant under section 6,

has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise, and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

Use of statements as evidence.

8. (1) A statement made by a person in response to a requirement -

(a) under section 1, 2, 3, or 5, or

(b) imposed by or under a warrant under section 6,

may not be used in evidence against him in criminal proceedings except -

(i) on a prosecution for an offence under section 9,
or

(ii) on a prosecution for some other offence where
in giving evidence he makes a statement
inconsistent with it.

Offences.

9. (1) A person who without reasonable excuse obstructs or fails to comply with a request or requirement of a person exercising or purporting to exercise any power conferred by sections 2, 3, 5 or 6 of this Ordinance is guilty of an offence and 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.

(2) A person who in purported compliance with a requirement imposed by or under this Ordinance,

- (a) makes a statement which he knows to be false or misleading in a material particular,
- (b) recklessly makes a statement which is false or misleading in a material particular,

is guilty of an offence and 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.

Exercise of the Commission's powers.

10. The Commission's officers' powers under this Ordinance may also be exercised by any of the Commission's servants or agents who have been authorised by the Commission to do so.

Interpretation.

11. (1) In this Ordinance, unless the context otherwise requires -

"associated party", in relation to any person, means -

- (a) any person who is in partnership with that person;
- (b) any company of which that person is a controller;
- (c) any body of which that person is a director;
- (d) where that person is a company -
 - (i) a holding company, subsidiary or related company of that person;
 - (ii) a subsidiary or related company of a holding company of that person;
 - (iii) a holding company of a subsidiary of that

person; or

- (iv) a company in the case of which a shareholder controller of that person, alone or with associates, is entitled to exercise, or control the exercise of, more than 50% of the voting power in general meeting;

and where, pursuant to the above provisions, any person or body is an associated party in relation to another person or body, then that other person or body is an associated party in relation to that first-mentioned person or body:

Provided always that the Commission may by regulation amend the definition of the expression "associated party",

"business day" means any day except any Saturday, Sunday, Christmas Day, Good Friday or any day appointed as a public holiday by Ordinance of the States of Guernsey, the States of Alderney or, as the case may be, the Chief Pleas of Sark under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958,

"licensee" means a person who holds or is deemed to hold, or who has applied for, a licence, consent, registration, permission or authorisation from the Commission under the regulatory Laws, and cognate expressions shall be construed accordingly,

"regulatory Laws" has the same meaning as in the Financial Services Commission (Bailiwick of Guernsey) Law 1987, but does not include the Insurance Business (Bailiwick of Guernsey) Law, 2002 and the Insurance

Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,
and

"**servant**" includes a person working under a contract for service or a contract of service.

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

(3) The Interpretation (Guernsey) Law, 1948^c applies to the interpretation of this Law throughout the Bailiwick of Guernsey.

Citation.

12. This Ordinance may be cited as the Financial Services Commission (Site Visits) (Bailiwick of Guernsey) Ordinance, 2008.

Extent.

13. This Ordinance has effect throughout the Bailiwick.

Commencement.

14. This Ordinance shall come into force on the 30th January, 2008.

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