**Comments on the Mergers and Acquisitions Consultation Document issued by CICRA (the "Consultation Document")**

**Responses from the Commercial Bar Association**

This response document has been prepared for and on behalf of members of the Commercial Bar Association in Guernsey.

This response document follows a report submitted to the Board of Commerce and Employment by Tom Carey in January 2015, to which the Commercial Bar Association contributed and which raised a number of issues and concerns regarding the merger control regime in Guernsey (a copy of which is enclosed) (the "**C&E Report**"). The Commercial Bar Association is pleased to note that many of the comments and observations made in the C&E Report have been reflected in the Consultation Document. However, the C&E Report made a number of specific suggestions which are not covered by the limited number of general questions raised by the Consultation Document. The detailed comments, observations and suggestions made in the C&E Report are repeated and should be regarded as forming part of this response to the Consultation Document.

The Consultation Document refers to the Competition (Prescribed Mergers and Acquisitions) (Guernsey) Regulations, 2012 (the "**Regulations**"). Also relevant to the consultation are the Competition (Calculation of Turnover) (Guernsey) Regulations, 2012 and changes will need to be made to both regulations in order to implement the result of the consultation. In this response document, we refer to both regulations together as the "**Merger Regulations**".

All definitions used in the Consultation Document are adopted in this response document.

Responses to the specific questions raised in the Consultation Document:

1. **ISSUE 1: LOCAL TURNOVER TEST**

1.1 **Applicable Turnover**

The use of a "local" turnover notification test in Guernsey is fully supported. It is noted that the original proposals for the current merger legislation (as presented to the States in the Billet of 30 May 2012) considered only the regulation of mergers involving businesses operating within the island, and the assessment of local turnover only.

As indicated in paragraph 18 of the Consultation Document, the current Merger Regulations for result in the inclusion of non-local turnover. This issue is particularly obvious in relation to financial institutions and insurance undertakings.

Paragraph 20 of the Consultation Document mentions the introduction of a test which only requires local turnover to be taken into account. We consider that it is essential that the turnover test is amended so that it only takes account of local turnover. Such a revised test would achieve the proper objectives of controlling mergers that affect competition within the island, and would ensure that the Merger Regulations are brought into line with the original intention of the States.

In order to ensure that only local turnover is taken into account, we suggest that the following steps are taken:

1.1.1 Amend the types of applicable turnover for financial institutions so that they are the same as for "standard" businesses – i.e. turnover from the supply of goods or services.

This would address the issue highlighted in paragraph 36 of the Consultation Document.

Alternatively, as described in the response to Issue 2 below, we agree with the proposal in the Consultation Document that the definition of financial institution could be amended to be consistent with the EU Regulations, which would have the effect of removing the vast majority of financial services businesses from that category.

In essence, all businesses should be assessed on the basis of turnover arising from the supply of goods or services, except where there are clear reasons why that is not appropriate (as would be the case with businesses falling within the EU definitions of financial institutions, credit institutions and insurance undertakings).

1.1.2 Change the manner in which the turnover of financial institutions is assessed so that it is the same as for "standard" businesses – i.e. turnover from customers located in Guernsey or Jersey.

The current regulations work to the disadvantage of the financial services industry by requiring financial institutions (which, under the current definition, are providers of services) to take account of worldwide income, and not just local income, when calculating applicable turnover. The Merger Regulations should state that financial institutions must only take account of income received from customers located in Guernsey (or the Channel Islands, for the first limb of the turnover threshold test).

Alternatively, as described in the response to Issue 2 below, the definition of financial institution could be amended to be consistent with the EU Regulations, which would have the effect of removing the vast majority of financial services businesses from that category.

A secondary point is that a significant number of Guernsey legal entities or structures (such as investment funds, listed companies, trusts for overseas settlors, etc.) are international in nature and should not be regarded as being "local customers" where they provide revenue to another Guernsey business. In order to fully exclude non-local turnover, additional measures should be introduced in order to exclude income received from such entities or structures. This is addressed in point 1.1.4 below.

1.1.3 Change the manner in which the turnover of insurance undertakings is assessed so that only gross premiums from domestic insurance business are treated as applicable turnover.

The current method of assessment of turnover for insurance undertakings captures non-local turnover and brings international captive insurance vehicles within the scope of the Merger Regulations, even though a merger involving such vehicles will have no impact on local competition.

Under the EU Regulations, only gross premiums received from EU residents are counted towards the relevant turnover threshold, meaning that the above change would bring the Merger Regulations into line with the approach taken under the EU Regulations.

1.1.4 Amend the Merger Regulations , or enable CICRA to issue guidance which can be relied upon as a matter of law, to specify types of customers which are to be regarded as local or non-local customers in relation to specific types of business.

To the extent reasonably possible, the mandatory "local" turnover-based notification test should be designed so as not to include within its scope turnover generated by what are

essentially Guernsey's export markets, including financial services turnover where the underlying clients are not resident in Guernsey.

In particular, consider whether income received from the following types of customer should be regarded as non-local turnover:

- investment funds regulated by the GFSC;
- international insurance vehicles;
- companies listed on a recognised stock exchange (unless more than a set percentage (such as 25%) is beneficially owned by residents of Guernsey);
- companies with no local employees or assets (to the extent that the income is received by a GFSC licensee);
- trustees of trusts in respect of which the settlor and beneficiaries are not resident in Guernsey (to the extent that the income is received by a GFSC licensee).

In addition, the Mergers Regulations (or guidance) should clarify the following points:

- that the applicable turnover of the undertaking to be acquired does not include the turnover of those connected undertakings which will not be acquired by the acquirer (i.e. the seller's retained group);
- that where a business being acquired represents only part of the total business conducted by the seller (a partial asset sale), only the business relevant to the assets being disposed of should be considered when calculating the seller's turnover; and
- where there is a limited partnership in an ownership structure, and a limited partner owns more than 50% of the limited partnership, that limited partner should not be regarded as a connected undertaking. The Merger Regulations indicate that such a limited partner is a connected undertaking and that its own turnover should be included in the calculations. Under the EU Regulations, such a limited partner would not be considered to have control over the limited partnership and so would not be included.

1.2 **Threshold Levels**

Provided that the Merger Regulations are amended so as to fully exclude non-local turnover, we have no objections to the current turnover thresholds.

In the C&E Report we suggested that higher thresholds should apply when the target of a merger is a financial services business. If the Merger Regulations are not amended to fully exclude all non-local turnover, we consider that it would be necessary to introduce a higher turnover threshold which would apply to financial services businesses, in recognition of the total monetary value of that market sector.

1.3 **"Undertakings Concerned"**

We agree with CICRA's suggestion, as set out in paragraphs 30 to 32 of the Consultation Document, of the use of terminology consistent with that used in the EU Regulations. We consider that this approach would be helpful to create certainty, and would greatly assist the need to apply the Merger Regulations in a manner consistent with EU jurisprudence (as required

by section 54 of the Ordinance). We would also welcome the extension of guidelines to expressly reflect the EC Jurisdictional Notice (as suggested in paragraph 32 of the Consultation Document).

However, in relation to CICRA's suggested definition of "Undertakings Concerned" as set out in paragraph 31 of the Consultation Document, we consider that the proposed definition of "Undertakings Concerned" and the definitions of "Acquirer" and "Target" may cause difficulties by seeking to be too prescriptive and by introducing definitions which are not present in the EU Regulations.

As highlighted in the C&E Report, the EU Regulations take a high-level, macro view of transactions which enables the EU Regulations to focus on the effect of a particular transaction, rather than to presuppose the nature of the parties involved or the precise actions that may be taken by them. The current Merger Regulations have adopted a different approach in a number of areas and have created narrow and exhaustive definitions which focus on the identity or actions of the parties concerned. This different approach has two effects:

(a) the Merger Regulations, by seeking to be narrower and more prescriptive in their definitions, give rise to unintended consequences by not capturing transactions that should be caught, or by capturing transactions that should not be caught. Examples of both are set out in the C&E Report; and

(b) the divergence from the accepted principles on which the EU Regulations are based makes it extremely difficult to determine, in relation to certain questions, whether EU jurisprudence should apply (in accordance with section 54 of the Ordinance) or whether Guernsey law has taken a different path so that the EU jurisprudence has no application. Such uncertainty is not beneficial and adds to the cost of conducting transactions.

We consider that the revised Merger Regulations should remedy, rather than compound, these existing issues.

The need for the definitions outlined in paragraph 31 of the Consultation Document is not made clear, and their precise terms can only be properly assessed when the use of the definitions is known. Nevertheless, the proposed definitions of Acquirer and Target appear to assume that a joint venture consists solely of two parties, which is contrary to the proposed definition of "Undertakings Concerned". In addition, it is not clear why it is considered necessary to designate one joint venture party as the acquirer and one as the target. The effect of this designation is not clear. If the intention is to identify the major party within the joint venture, we suggest that the relative strengths of the parties within the joint venture is unlikely to be related to their respective turnovers.

We suggest that the definitions for "the undertakings concerned" should follow the approach taken in the EU Regulations and the EC Jurisdictional Notice.

Following the approach taken in the EU Regulations would also resolve the current issue that a transfer of a business by way of an asset transfer is not caught by the Merger Regulations, as the current definition of "undertakings" refers only to "persons".

On a related point, we also suggest that the definition of "joint venture" should follow the approach taken in the EU Regulations and the EC Jurisdictional Notice. At present, the definition of a "joint venture" is set out in section 61(4) of the Ordinance and is a relatively short definition which could capture a wide range of business arrangements between two or more parties, including combinations which would not be capable of being operated as stand-alone businesses, or which are created for a temporary period.

In contrast, the EU Regulations will only regulate a joint venture if it is a "full-function joint venture" which performs "on a lasting basis all the functions of an autonomous economic entity".

In addition, neither the Ordinance nor the Merger Regulations take account of the respective degrees of control which may be held by the parties to any joint venture. Under the Ordinance, the existence of a 5% interest in a new business could cause that business to be a joint venture, even if the 5% party has no effective control. In contrast, the EU Regulations will only regulate those parties who exercise joint control over the joint venture.

2. **ISSUE 2: DEFINITION OF "FINANCIAL INSTITUTION"**

We agree that the use of the definition "financial institution" does not fit with the nature of the businesses caught by that definition. We would support the adoption of the definition used in the EU Regulations. This would have the effect of ensuring that the vast majority of the businesses providing financial services in Guernsey would cease to be treated as financial institutions.

Paragraph 38 of the Consultation Document raises the question of whether, following the above change, the preliminary review process should be made available to businesses which are currently treated as financial institutions. In response to this, our comments are as follows:

2.1.1 as mentioned in our response to Issue 5, we suggest that the preliminary review process is made available for all mergers (irrespective of the nature of the business of the acquiring entity or the target). We note that a report prepared by Oxera for the States of Jersey dated 16 November 2015 (entitled "A review of the Jersey regulatory and competition framework") recommended that a simple short form procedure should apply in all cases. This would enable transactions to proceed without unnecessary cost or delay provided that CICRA is satisfied that there is little likelihood of the merger creating competition issues for local residents. CICRA would retain the ability to require a detailed review when it has concerns that competition issues may arise for local residents. Applicants should be able to proceed directly to an application for a detailed review if the parties, on their own assessment, determine that CICRA is likely to require such a review, thereby avoiding an unnecessary preliminary review;

2.1.2 if the above proposition is not accepted, and if the Merger Regulations are not amended so as to exclude all non-local turnover (including turnover received from local entities which are internationally owned or controlled), the preliminary review process must be extended to businesses which are currently defined as financial institutions, together with all types of business regulated by or registered with the GFSC (such as fiduciary businesses, insurance managers and non-regulated FSBs) which are not currently covered, in view of the relatively high levels of turnover as compared to true local businesses and the international nature of the market in which they operate.

3. **ISSUE 3: EXEMPTIONS**

We would welcome a competition regime pursuant to which mergers and acquisitions involving Guernsey's export markets, including financial services where the underlying clients are not resident in Guernsey, are not subject to a mandatory competition notification requirement.

We are of the view that the use of block exemption mechanisms (as permitted by section 14 of the Ordinance) can be an effective means of streamlining the merger control process where it is clear that particular types of transaction are unlikely to cause substantive competition issues irrespective of the levels of turnover involved. As well as reducing administrative burdens for

contracting parties, this would have the effect of reducing the time and resources deployed by CICRA in considering transactions that have little or no competition effects in Guernsey.

In relation to the possible exemptions set out in paragraph 40 of the Consultation Document, we have the following comments:

- First bullet point – we would support the introduction of this exemption provided that the full text of the relevant drafting reflects all of the elements present in the equivalent exemption under the EU Regulations. Consideration would need to be given to the consequences that would arise if a sale did not occur within a year to ensure that such an eventuality is legislated for.

- Third bullet point and fourth bullet point – the difference between these exemptions is not clear. As highlighted in the C&E Report, the EU Regulations only apply to mergers if there is a change of control on a lasting basis, with control being determined by reference to ultimate control, rather than intermediate control. Instead of introducing exemptions to exclude mergers for which there is no change of control, it may be preferable (in order to ensure consistency with the EU Regulations and ease the application of EU jurisprudence in accordance with section 54 of the Ordinance) to amend the definition of "merger or acquisition" to require there to be a change of control on a lasting basis. It would be helpful for CICRA to issue guidance as to what constitutes a lasting change of control.

In addition to the possible exemptions set out in paragraph 40 of the Consultation Document, we would suggest that CICRA considers the following additional exemptions:

(a) any merger or acquisition which is the result of the creation of a joint venture where the undertakings involved do not perform in or from within Guernsey on a lasting basis all the functions of an autonomous economic entity – our preference would be for the definition of "joint venture" to be amended as detailed above, but if such amendments cannot be made it would be necessary (but less desirable) to achieve the same effect by way of an exemption;

(b) any merger or acquisition where the turnover thresholds will only be exceeded by virtue of turnover which is legally controlled by an undertaking involved but in respect of different beneficial owners (eg a trustee, nominee, liquidator or similar) – this may be appropriate in some circumstances but not others, and so the full effect of such an exemption would need to be considered;

(c) any merger or acquisition involving the acquisition of assets which are not capable of being operated as fully functional stand-alone businesses on a lasting basis.

In the event that the amendments to the Merger Regulations do not fully exclude non-local turnover (as detailed above), additional exemptions may be required in order to achieve the same effect.

We also assume that the Mergers Regulations (or guidance) will be amended so that the applicable turnover of the undertaking to be acquired does not include the turnover of those connected undertakings which will not be acquired by the acquirer (i.e. the seller's retained group). If this is not the case, additional exemptions or exclusions of turnover will be required.

## 4. ISSUE 4: SHARE OF SUPPLY/PURCHASE

### 4.1 General

We support the continuation of a mandatory notification regime (based on the turnover threshold test) for the reasons stated in the Consultation Document.

We also agree with CICRA's stated goal of simplifying and reducing compliance burdens in Guernsey. However, we have grave concerns that this goal would be significantly undermined by the introduction of a share of supply test, even if such a regime was to be voluntary.

If CICRA were to be granted the ability to assess completed transactions on the basis of share of supply/purchasing power, and impose conditions or undertakings on the parties after the event, the effect of that regime would be to cause every party to a transaction to undertake legal and market analysis before entering into any transaction, in order to determine the likelihood of there being competition issues in Guernsey, or of CICRA wishing to conduct an investigation into potential competition issues.

In many cases, it is likely that the parties to a transaction that may be subject to assessment on the basis of share of supply/purchasing power would seek to pre-agree with CICRA whether or not CICRA had the power to call for that transaction to be assessed on that basis, or make a formal voluntary notification, in order to mitigate the risk that undertakings are sought by CICRA after the event.

As a consequence, we would submit that giving CICRA a power to call in such mergers and acquisitions for assessment would significantly increase the caseload which CICRA currently experiences in Guernsey, albeit that the number for mandatory merger applications may be reduced.

We also note that the report presented by the Commerce and Employment Department to the States of Deliberation dated 13 March 2012 (included in the Billet of 30 May 2012) details the reasons for removing a share of supply test from the original proposals. The report states:

> "In Jersey, since 2005, the JCRA has experience of administering its mergers and acquisitions regime using share of supply thresholds. However, this use of share of supply thresholds has not been without difficulties and one of the difficulties faced is that the level of business information in small economies is generally lower than larger economies. This considerably weakens the ability of businesses to reasonably estimate subjective measures such as share of supply and the same is true of market share measures. Given this, the JCRA's consultation concluded that neither a share of supply nor a market share test were appropriate and it has instead opted for a turnover threshold approach only. The ability of businesses to assess whether their transaction meets such a criterion was seen to improve considerably under such an approach, given the objective and transparent nature of such a criterion. Thereby the burden on business is reduced.
>
> This view was also informed by a review carried out by the International Competition Network (ICN) which has published best practice guidelines6 for merger notification thresholds. These state that merger notification thresholds should be based on objectively quantifiable criteria, such as assets or turnover that reflect domestic activity. The ICN regards market share based tests (including share of supply) as not objectively quantifiable or appropriate in making the initial determination as to whether a transaction should be notified. They cannot therefore be relied on to give an accurate picture."

The report goes on to state:

> "The case for moving to a turnover only merger and acquisition threshold is therefore compelling in the light of experience in Jersey and international recommended practice. Such a system is far simpler than that approved in 2009, and is particularly appropriate for Guernsey, being easier for relatively small businesses to understand and generally avoiding the need for professional advice. The sole application of turnover thresholds should achieve overall the same result at a significantly reduced cost and inconvenience.
>
> A less onerous notification regime is also important given that businesses in Guernsey are on average smaller than in larger economies and cannot benefit from the same economies of scale, although in reality of course only a very small number of businesses will be directly affected by the legislation."

Following this recommendation, the States voted to approve the adoption of a turnover only merger and acquisition threshold. We do not consider that circumstances have changed so as to invalidate the recommendation made by Commerce and Employment in 2012, nor the decision of the States to follow that recommendation. In particular, we do not consider that the proposed changes to be made to the turnover test as a result of the current consultation are reasons for altering the position adopted by the States in May 2012. We consider that the turnover test as currently set out in the Merger Regulations is not fully in accordance with the proposals approved in principle by the States in May 2012 (since they require non-local turnover to be taken into account in certain circumstances), and that the proposed changes to the turnover test will correct that inconsistency.

Given the strength of opinion amongst the contributors to this response document on this issue, we make no attempt to comment at this stage on the details of how a voluntary share of supply regime may operate. If this suggestion is to be taken further, we would appreciate the opportunity to discuss the details at that stage.

## 5. ISSUE 5: "PRELIMINARY REVIEW" PROCESS

The changes proposed above should ensure that transactions involving undertakings with no (or few) local consumers would be outside the scope of the Merger Regulations.

Nevertheless, we consider that there is a likelihood that certain transactions will fall within the scope of the Merger Regulations notwithstanding that there are clear reasons to conclude that the particular transaction would not cause competitive issues for local consumers. For such transactions, the ability to use the preliminary review process would allow formal clearance to be provided without the contracting parties incurring unnecessary costs, and allow CICRA to use its resources efficiently.

We note that a report prepared by Oxera for the States of Jersey dated 16 November 2015 (entitled "A review of the Jersey regulatory and competition framework") recommended that a simple short form procedure should apply in all cases.

Accordingly, we suggest that the preliminary review process is made available for all mergers (irrespective of the nature of the business of the acquiring entity or the target).

This would enable transactions to proceed without unnecessary cost or delay provided that CICRA is satisfied that there is little likelihood of the merger creating competition issues for local residents.

CICRA would retain the ability to require a detailed review when it has concerns that competition issues may arise for local residents.

Applicants should be able to proceed directly to an application for a detailed review if the parties, on their own assessment, determine that CICRA is likely to require such a review, thereby avoiding an unnecessary preliminary review.

If the above proposal is not adopted, so that the preliminary review process remains available only to limited categories of parties or transactions, we would agree that the proposals outlined in paragraphs 54 and 55 of the Consultation Document should be adopted. In addition, the preliminary review process should be made available to all GFSC regulated and registered businesses, so as to include fiduciary businesses, insurance managers, those businesses which currently fall within the definition of financial institutions and non-regulated FSBs. In addition, it should be clarified that eligibility for the preliminary review should be determined by the nature of the underlying business of the acquirer or target, not by the activities of the legal party to the transaction (which may just be a holding company).

## 6. ISSUE 6: EUROPEAN COMPETITION LAW

We agree that it makes sense to take advantage of section 54 of the Ordinance so as to enable practitioners to refer to the body of EU jurisprudence, as the significant sources of information and guidance and the significant volume of European competition jurisprudence available is likely to lead to greater certainty.

In order to ensure that this works efficiently, steps should be undertaken to ensure that there is greater alignment of Merger Regulations with the EU Regulations. We disagree with the statement in paragraph 59 of the Consultation Document that the Merger Regulations largely follow the EU Regulations. As highlighted in the C&E Report, there are a number of fundamental differences which create doubt as to whether it is appropriate to refer to EU jurisprudence on certain issues.

We fully support the proposal that CICRA should makes statements in its M&A Guidelines as to which provisions of the EC Jurisdictional Note it considers apply in Guernsey and where it believes there are differences in the regimes such that EU provisions should not be applied. In addition, in order to reduce the need for EU legal advice to be taken, the M&A Guidelines should clearly state the Guernsey position on any central EU provisions, even where it is in accordance with the EU jurisprudence. Parties and their advisers should be able to rely on those guidelines as a matter of law.

## 7. OTHER OBSERVATIONS

### 7.1 Consequences of breach

If the parties to a merger fail to obtain the requisite consent from CICRA under the Merger Regulations, the result is that legal title to Guernsey assets (including shares of a Guernsey company) will be deemed to have never passed to the buyer as a result of the transaction. This is the case even if the transaction does not give rise to any substantive competition issues. CICRA then has the power to grant approval, at which point the legal title will transfer.

This raises two issues:

7.1.1 by declaring that a non-compliant transaction is automatically void from the outset, regardless of whether competition in the islands is affected, the Ordinance makes it imperative that contracting parties can obtain a definitive answer as to whether the transaction requires CICRA approval or not. Unfortunately, as demonstrated in the C&E Report, the application of the Merger Regulations is often unclear and this leads to

clients needing to obtain detailed and expensive legal advice in order to seek to obtain that definitive answer;

7.1.2 if there is a breach of the Ordinance, it is likely that it will be some time after completion before the breach will be declared to have taken place. In the intervening period, the parties will have treated the transaction as valid and will have transferred the relevant shares or assets. The seller will be likely to have transferred or re-invested the sale proceeds whilst the buyer is likely to have made subsequent changes to the business. In such a scenario, it would be extremely difficult to act as if those steps had never taken place. In addition, that result would arise before CICRA has considered whether the transaction caused any anti-competitive issues. If CICRA is satisfied that there are no such issues (which again would not occur until some considerable time after the breach has been discovered and the transaction declared void) it would approve the transaction, at which time the business would be treated as having been transferred back to the buyer. As a matter of commercial practicality, this is unworkable.

A preferable approach would be that, if it transpires at a later date that CICRA's consent should have been obtained, the original transaction would remain valid but that CICRA would have the power to declare it void if the transaction gives rise to substantive competition issues.

This would mean that where it is clear to all parties that a transaction will not have a negative impact on competition, the parties can take a sensible commercial decision to proceed with the transaction without needing to resolve every ambiguity regarding the application of the Merger Regulations. The parties could be confident that their transaction would not be unravelled merely as a result of a technical misapplication of the Merger Regulations, and would only be affected if there were adverse competition issues arising as a result of the transaction.

In addition, this revised method of enforcement would avoid the uncertainty that would be caused by declaring that a transaction that has already been completed is in fact void, but may still be declared valid after further investigation.

7.2 **Private notification process**

The requirement for CICRA approval to a merger or acquisition can create significant uncertainty, as the public nature of the process means (in effect) that legally binding documentation has to be entered into and public announcements made before CICRA consent has been obtained, with a potentially significant period then passing before the transaction can complete. This uncertainty can impact on a target business, including its relationship with customers and suppliers, as well as on its employees.

Irrespective of whether a preliminary review process is available in relation to a given transaction, we would ask CICRA to consider introducing a private notification regime, with notification being possible before legally binding documentation has been entered into.

We would propose that the substance of such a regime would be as follows:

(a) a private application would be made to CICRA including a submission by the parties that they do not consider that the merger or acquisition would have any material effect on consumers in Guernsey and consequentially it is not appropriate for such transaction to be subject of a public consultation;

(b) if CICRA accepts such a submission, the transaction would not be subject to a public consultation or otherwise made public by CICRA until it has completed, at which time CICRA would make its decision public in the usual way; and

(c) if CICRA does not accept such a submission, the parties to the merger or acquisition would be required to make a public application for consent in the normal way.

We would suggest that such a private notification regime could be accompanied by guidance as to the circumstances in which CICRA considers it appropriate for a public consultation to take place (or not to take place), by reference to general criteria or certain business sectors.

7.3 **Land Agreements**

The position in relation to land agreements, and the application of section 15 of the Ordinance, should be clarified.

7.4 **Consequences of providing false information**

Parties to a merger or acquisition are obliged to rely on information provided by the other party as regards their respective applicable turnover when making an assessment as to whether the transaction needs to be notified to CICRA, or when making a notification to CICRA. Notifications made to CICRA may be made jointly or by one party and each party will be responsible for the accuracy of the information provided to CICRA. In order to ensure that no party can become criminally liable for false information provided by the other party, the applicants should be able to attribute individual items of information to one or other party, with only that party being liable under sections 48 to 51 of the Ordinance in relation to the relevant information.

7.5 **Voluntary notifications**

There may be circumstances in which the parties are unsure whether the applicable turnover exceeds the thresholds or not. This may arise due to difficulties in identifying whether turnover is applicable turnover. In such circumstances, the parties may prefer to proceed with a notification rather than run the risk that CICRA (or the Royal Court) may decide at a later date that a notification was required. Accordingly, CICRA should be given the power to consider a notification as if the turnover thresholds have been, even when it cannot be shown that the thresholds have been exceeded.

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