

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE COMPANIES (GUERNSEY) LAW, 2008 (MISCELLANEOUS AMENDMENTS)
ORDINANCE, 2021

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Companies (Guernsey) Law, 2008 (Miscellaneous Amendments) Ordinance, 2021", and to direct that the same shall have effect as an Ordinance of the States.

This proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

EXPLANATORY MEMORANDUM

This Ordinance amends the Companies (Guernsey) Law, 2008 (the "Law").

Sections 2, 4, 5, 8 and 10 amend the Law to provide that the Registrar of Companies may specify the form of certain applications without prescribing the form by regulations.

Section 3 amends section 25 of the Law to allow a company to change its name by any other means as may be specified in its articles, as an alternative to passing a special resolution.

Section 6 amends section 52A of the Law to permit a poll of the holders of cell shares to be held or demanded on a proposal to convert a cell of a protected cell company into a non-cellular company, in addition to the current provision for written consent or a show of hands.

Section 7 amends section 69(2)(b) of the Law to provide that in the case of an amalgamated body corporate which is a new company, the requirement of section 15(3) of the Law that the founder member shall subscribe to the memorandum of the company will be satisfied where at least one founder member of the company subscribes. Section 9 amends section 84(1)(b) of the Law to provide that in the case of an amalgamated body corporate which is a company which is migrating to Guernsey, the requirement of section 15(3) of the Law that the founder member shall subscribe to the memorandum of the company will be satisfied where at least one founder member of the company as proposed immediately after registration as a Guernsey company subscribes.

Section 11 amends section 110 of the Law to define the meaning of 75% in value in that section.

Section 12 and 13 amend the Law to allow divergence between the membership of the board of directors of an incorporated cell that of its incorporated cell company, provided that at least one of the directors of an incorporated cell shall also be a director of its incorporated cell company.

Section 14 amends the Law to provide that the deeming of a meeting of directors to be held in the place in which the chairman is present, is subject to the company's memorandum and articles, or a resolution of the company's board.

Section 15 amends the Law to provide that a notice of a general meeting which is to be held entirely electronically must state the means and manner by which persons may attend.

Sections 16 to 21, 23 and 26 repeal provisions of the Law which are no longer considered to be necessary.

Section 22 amends section 260 of the Law to widen the scope of which partnerships or body corporates are qualified for appointment as auditor of a Guernsey company; inserts a power for the Committee for Economic Development (the "Committee") to authorise partnerships and body corporates to audit the accounts of companies; and inserts a power for the Committee to make regulations prescribing a fee payable to the Committee by any person or body making an application for authorisation.

Section 24 amends the Law to provide that a company's shares may not be converted into stock.

Section 25 amends the Law to provide that, for the purposes of the Law, companies may make an offer of shares in lieu of dividends to shareholders by publication in La Gazette Officielle, or in any other manner allowed by the company's articles, should the law of the jurisdiction in which the shareholder is resident prohibit or restrict the making of an offer of shares in lieu of dividends.

Sections 27 and 28 amend the Law so that member approval of certain actions relating to 'off-market' acquisition by a company of its own shares need only be by ordinary resolution rather than special resolution. Members will also only be required to authorise the minimum and maximum amounts to be paid rather than the terms of the acquisition, where acquisition of the shares is for the purpose of an employee share scheme. The member whose shares are to be acquired is excluded from voting on the resolution except where that member is the sole shareholder in that company.

Section 29 amends section 337 of the Law enabling a notice to acquire shares in a company takeover to be issued as soon as the requisite 90% threshold has been reached.

It also makes further provision relating to shares which will not be taken into account in calculating the 90% threshold.

Section 30 amends the Law to provide that the Registrar of companies may destroy documents received or issued by, or on behalf of, the Registrar where a copy in electronic form is retained.

Section 31 amends the definition of confidential information in section 532(1), to clarify, for the avoidance of doubt, that a director's usual residential address is only confidential information where the address in the company's register of directors is a service address and his usual residential address has been notified to the Registrar in accordance with the requirements of section 148.

The Companies (Guernsey) Law, 2008

(Miscellaneous Amendments) Ordinance, 2021

THE STATES, in pursuance of their Resolution of the 26th September 2019^a, and in exercise of the powers conferred on them by sections 533 and 538 of the Companies (Guernsey) Law, 2008, as amended^b, and all other powers enabling them in that behalf, hereby order:-

Amendments to the Companies (Guernsey) Law.

1. The Companies (Guernsey) Law, 2008 ("**the principal Law**") is further amended as follows.

2. In section 17(2) of the principal Law, insert " or otherwise specified" immediately after "prescribed".

3. In section 25 of the principal Law –

(a) for subsection (2), substitute the following subsection –

^a Article XIV of Billet d'État No. XVIII of 2019.

^b Order in Council No. VIII of 2008; No. XIII of 2010; No. I of 2013; No. VI of 2014; No. VI of 2017; Ordinance No. XXV of 2008; No. LIV of 2008; No. VII of 2009; No. XIV of 2009; No. XI of 2010; No. XXXI of 2012; No. XXXI of 2013; No. IV of 2015; No. XII of 2015; No. XXVI of 2015; No. IX of 2016; No. XXIX of 2017; No. XXVII of 2018; G.S.I. No. 34 of 2009; G.S.I. No. 37 of 2013; G.S.I. No. 84 of 2014; G.S.I. No. 29 of 2016; G.S.I. No. 35 of 2016; G.S.I. No. 38 of 2016; G.S.I. No. 35 of 2017; G.S.I. No. 43 of 2017; G.S.I. No. 103 of 2017; G.S.I. No. 90 of 2018; G.S.I. No. 18 of 2019; G.S.I. No. 19 of 2019; G.S.I. No. 14 of 2020; G.S.I. No. 81 of 2020; and G.S.I. No. 111 of 2020.

"(2) In order to authorise a change of name, a company shall -

- (a) pass a special resolution authorising the change of name, or
- (b) authorise the change of name by any other means as may be specified in its articles.", and

(b) for subsection (3), substitute the following subsection –

"(3) The application shall be in the form prescribed or otherwise specified by the Registrar and shall be accompanied by –

- (a) where the change of name was authorised by special resolution in accordance with subsection (2)(a) -
 - (i) the special resolution authorising the change of name, and
 - (ii) a declaration of compliance (name change), and
- (b) in all other cases, a declaration of compliance (name change).".

4. In section 27(2) of the principal Law, insert " or otherwise specified" immediately after "prescribed".

5. In section 30(3)(a) of the principal Law, insert " or otherwise specified" immediately after "prescribed".

6. In section 52A of the principal Law –

(a) for subsection (3), substitute –

"(3) Subject to subsection (3A), if cell shares have been issued in respect of the cell, the holders of those shares must give the requisite consent to –

(a) the conversion and incorporation,

(b) the non-cellular company name, in order to comply with the requirements of sections 21(1) and 24(1),

(c) the non-cellular company type (limited by shares, limited by guarantee, unlimited or mixed liability, as the case may be),

(d) upon conversion –

(i) the adoption of a memorandum and articles of incorporation which are to be binding on the non-cellular company immediately after conversion and incorporation (and for the purposes of this section, the

requirements of section 15(3) will be satisfied where at least one founder member of the non-cellular company enters his name, address and signature in the memorandum as required by that section),

- (ii) the registration of the cell as a non-cellular company on the Register of Companies,
- (iii) the translation of the capacity, status and interest of the members of the protected cell company (including where applicable, and for the avoidance of doubt, members who are the holders of cell shares) in respect of or attributable to the cell from that of member of the protected cell company into that of member of the non-cellular company, and
- (iv) the translation of the shares (including, where applicable, cell shares), guarantees, rights, interests, debts, obligations and liabilities of the members of the protected cell company in respect of, or attributable to, the cell into shares, guarantees,

rights, interests, debts, obligations and liabilities in or to the non-cellular company,

(e) in the case of a non-cellular company which is to have shares, the inclusion in its memorandum of a statement of –

(i) the number of shares to be taken on conversion and incorporation by each member,

(ii) the aggregate value of those shares (whether on account of the nominal value of the shares or by way of premium), and

(iii) the amount to be paid up and the amount (if any) to be unpaid on those shares (whether on account of the nominal value of the shares or by way of premium),

(f) in the case of a non-cellular company which is to be limited by guarantee, the inclusion in its memorandum of a statement of the guaranteed amount of each member.", and

(b) immediately after subsection (3), insert the following

subsections –

"(3A) For the purposes of subsection (3), the holders of the cell shares are considered to have given the requisite consent to the matters set out in paragraphs (a) to (f) of that subsection only if –

- (a) the holders of not less than 75% in number of those shares give their written consent thereto, or
- (b) consent thereto is given at a meeting on a show of hands by not less than 75% of –
 - (i) the holders of those shares who vote in person on the matter, and
 - (ii) the persons who vote on the matter as duly appointed proxies of the holders of those shares, or
- (c) consent thereto is given on a poll at a meeting of the holders of cell shares by holders of cell shares representing not less than 75% of the total voting rights of the holders of cell shares who, being entitled to do so, vote in person or by proxy on the matter.

(3B) In relation to consent given on a poll of the holders of cell shares at a meeting referred to in subsection (3A)(c), the following have

voting rights in respect of the poll –

- (a) if –
 - (i) the cell has shares with no voting rights, a share entitles every holder to one vote in respect of each share held,
 - (ii) the cell has shares with voting rights, a share entitles every holder to one vote subject to any provision of the company's memorandum or articles,
- (b) every proxy present who has been duly appointed by a holder of cell shares entitled to vote on the resolution has the same number of votes as the holder of those shares would have in respect of the shares for which the proxy was appointed, and
- (c) if a company's articles provide that a holder of cell shares has a different number of votes in relation to consent when it is given in writing and when it is given at a meeting on a poll –
 - (i) the provision about how many votes a holder of cell shares has in relation to the matter on a poll is void, and

- (ii) a holder of cell shares has the same number of votes in relation to the matter on a poll as he has when his consent is given in writing.

(3C) When giving his written consent for the purposes of subsection (3A)(a), or on a poll taken at a meeting referred to in subsection (3A)(c), any holder of cell shares entitled to more than one vote need not, if voting, use all such votes or cast all available votes in the same way."

- 7. For section 69(2)(b) of the principal Law, substitute –

"(b) in cases where the amalgamated body corporate will not be one of the amalgamating bodies corporate but a new company, the particulars required under section 17(2) in respect of the incorporation of a company (and for the purposes of this paragraph, the requirements of section 15(3) will be satisfied where at least one founder member of the company enters his name, address and signature in the memorandum as required by that section),".

- 8. In section 83(2) of the principal Law, insert " or otherwise specified" immediately after "prescribed".

- 9. For section 84(1)(b) of the principal Law, substitute –

"(b) a copy of the memorandum and articles which are to be binding on the company immediately after its registration in Guernsey, complying with the requirements of this Law as to memoranda

and articles, together with, if different, a copy of the company's current memorandum and articles, (and for the purposes of this paragraph, the requirements of section 15(3) will be satisfied where at least one member of the company as proposed immediately after registration as a Guernsey company enters his name, address and signature in the memorandum as required by that section),".

10. In section 97(2) of the principal Law, insert " or otherwise specified" immediately after "prescribed".

11. In section 110 of the principal Law, immediately after subsection (1) insert the following subsection –

"(1A) The reference to 75% in value mentioned in subsection (1) means –

- (a) in the case of members, 75% of the voting rights of the members or class of members (as the case may be), and
- (b) in the case of creditors, 75% of the value of the debts owed to the creditors or class of creditors (as the case may be).".

12. For section 136 of the principal Law, substitute –

"Directors of incorporated cell companies.

136. (1) Subject to the provisions of this Law, any person may be

a director of an incorporated cell provided that at least one of the directors of an incorporated cell shall also be a director of its incorporated cell company.

(2) An incorporated cell of an incorporated cell company must notify the incorporated cell company within 7 days of a director of the cell being appointed or of a director of the cell ceasing to be a director.

(3) Subsection (1) is subject to –

(a) any exercise of the powers of an administrator under section 379(6) or (7),

(b) any direction given during a liquidation under section 478."

13. For section 143(3) of the principal Law, substitute –

"(3) Where, in accordance with sections 136(1), 379(6) or (7) or 478, the directors of an incorporated cell are different from the directors of its incorporated cell company, the register shall set out those differences."

14. For section 153(2) of the principal Law, substitute –

"(2) Subject to the company's memorandum or articles or a resolution of the company's board, a meeting of directors conducted pursuant to subsection (1) shall be deemed to be held in the place in which the chairman of the meeting is present."

15. For section 210(1)(b) of the principal Law, substitute –

"(b) state the place of the meeting or, where the meeting is to be held entirely electronically or via telephone, the means and manner by which persons may attend,".

16. In section 224(2) of the principal Law, repeal paragraph (c).

17. In section 226(6) of the principal Law, repeal paragraph (c).

18. Repeal section 241 of the principal Law.

19. Repeal section 246 of the principal Law.

20. In section 251 of the principal Law, repeal subsection (3).

21. Repeal section 253 of the principal Law.

22. In section 260 of the principal Law –

(a) for subsection (2), substitute the following subsection –

"(2) A partnership is not qualified for appointment as auditor unless the requirements of either subsection (2A) or subsection (2B) are satisfied.",

(b) immediately after subsection (2), insert the following subsections -

"(2A) A partnership is qualified for appointment as auditor

if -

- (a) control of the partnership rests with any of the following, or a combination of any of the following –
 - (i) qualified individuals,
 - (ii) individuals who hold a qualification to audit the accounts of companies under the law of a European Economic Area member state,
 - (iii) one or more partnerships or bodies corporate, control of which rests with qualified individuals, or
 - (iv) one or more partnerships or bodies corporate which have been recognised by an appropriate body as qualified to audit the accounts of companies incorporated in the United Kingdom or Republic of Ireland,
- (b) every partner or member who is not a qualified individual satisfies any applicable requirement of an appropriate body to observe and uphold the ethical standards thereof, and

- (c) each person who will be responsible for the conduct of the audit is a qualified individual.

(2B) A partnership is qualified for appointment as auditor if the partnership is for the time being authorised by the Committee to audit the accounts of companies.",

- (c) for subsection (3), substitute the following subsection –

"(3) A body corporate is not qualified for appointment as auditor unless the requirements of either subsection (3A) or subsection (3B) are satisfied.",

- (d) immediately after subsection (3), insert the following subsections -

"(3A) A body corporate is qualified for appointment as auditor if -

- (a) control of the body corporate rests with any of the following, or a combination of any of the following –
 - (i) qualified individuals,
 - (ii) individuals who hold a qualification to audit the accounts of companies under the law of a European Economic Area member state,

- (iii) one or more partnerships or bodies corporate, control of which rests with qualified individuals, or
 - (iv) one or more partnerships or bodies corporate which have been recognised or accepted by an appropriate body as qualified to audit the accounts of companies incorporated in the United Kingdom or Republic of Ireland,
- (b) every director who is not a qualified individual satisfies any applicable requirement of an appropriate body to observe and uphold the ethical standards thereof, and
- (c) each person who will be responsible for the conduct of the audit is a qualified individual.

(3B) A body corporate is qualified for appointment as auditor if the body corporate is for the time being authorised by the Committee to audit the accounts of companies.", and

- (e) immediately after subsection (8), insert the following subsections –

"(9) The Committee may by regulation prescribe the fees payable to the Committee for an authorisation to audit mentioned under

subsections (1)(b), (2B) and (3B).

(10) For the avoidance of doubt, the authorisation mentioned in subsections (1)(b), (2B) and (3B) may be subject to such terms and conditions as the Committee thinks fit."

23. In section 261 of the principal Law repeal subsection (1).

24. In section 283 of the principal Law, for "A company's shares may be converted into stock" substitute "A company's shares may not be converted into stock."

25. In section 306 of the principal Law -

(a) renumber the text as subsection (1),

(b) immediately after subsection (1), insert the following subsections –

"(2) For the avoidance of doubt an offer to issue shares in lieu of dividends for the purposes of subsection (1) may be made to and accepted by a shareholder who is resident or otherwise present in any district, territory or place outside Guernsey, irrespective of any law in force in that district, territory or place prohibiting or restricting the making or acceptance of such offers; and accordingly that law does not prevent such an offer being made or accepted for the purposes of this Part.

(3) If the law in force in any district, territory or place outside Guernsey prohibits or restricts the making of an offer to issue shares

in lieu of dividends by a company to a shareholder who is resident or otherwise present in that district, territory or place, then for the purposes of this Law the offer may be made by the company to the shareholder by publication in La Gazette Officielle or in any other manner allowed by the company's articles.

(4) Subsection (3) is without prejudice to any other method or means of making such offers lawfully in Guernsey or elsewhere."

26. In section 313 of the principal Law, subsection (3) is repealed.

27. In section 314 of the principal Law –

(a) for subsection (2), substitute –

"(2) The terms of the proposed contract shall –

(a) in the case of an acquisition for the purpose of an employee share scheme, be authorised by an ordinary resolution of the company before the contract is entered into specifying the minimum and maximum amount that may be paid for the shares, or

(b) in any other case, be authorised by an ordinary resolution of the company before the contract is entered into,

and the following subsections apply in respect of that

authority and to resolutions conferring it.",

- (b) in subsection (3), for "special resolution", substitute "an ordinary resolution", and
- (c) immediately after subsection (4), insert the following subsection –

"(5) The member whose shares are to be acquired under this section is excluded from voting on the resolution except where that member is the sole shareholder in that company.".

28. In section 317(2) of the principal Law for "a special resolution", substitute "an ordinary resolution".

29. In section 337 of the principal Law –

- (a) for subsection (1), substitute the following subsection –

"(1) If, within a period of four months after the date of making an offer (the "**offer period**") in respect of such a scheme or contract as is mentioned in section 336, the offer is approved or accepted by shareholders comprising not less than 90% in value of the shares affected ("the threshold"), the transferee may, within a period of two months immediately after the threshold is reached, give notice to any dissenting shareholder that it desires to acquire his shares (a "**notice to acquire**").", and

- (b) for subsection (7), substitute the following subsection –

"(7) For the purposes of calculating the threshold specified in subsection (1) of 90% in value of the shares affected, the following shall not be taken into account –

- (a) shares held as treasury shares,
- (b) shares held by the transferee or any class or description of person specified in section 337A at the date of the offer mentioned in subsection (1),
- (c) shares acquired by the transferee during the offer period at a price higher than the offer price, save where the offer price is raised to match the higher price."

30. In section 498A of the principal Law, for subsection (1), substitute the following subsection –

"(1) Documents received or issued by, or on behalf of, the Registrar under or for the purposes of this Law (including documents in electronic form or sent by electronic means) may, if a copy of the document is retained in electronic form, be destroyed or otherwise disposed of at any time."

31. In section 532(1) of the principal Law, in the definition of "confidential information", substitute for paragraph (a), the following paragraph –

- "(a) a director's usual residential address, where –

- (i) the director's address in the company's register of directors is a service address pursuant to section 143(4)(b)(ii), and
- (ii) his usual residential address has been notified to the Registrar in accordance with the requirements of section 148,".

Citation.

32. This Ordinance may be cited as the Companies (Guernsey) Law, 2008 (Miscellaneous Amendments) Ordinance, 2021.

Commencement.

33. This Ordinance shall come into force on the 1st May, 2021.