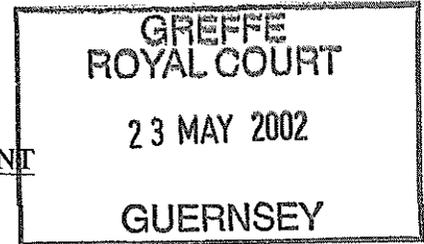


GUERNSEY STATUTORY INSTRUMENT

2002 No. 6



**The Companies (Shares of No Par Value)
(Modification of Legislation) Regulations, 2002**

<i>Made</i>	<i>22 May, 2002</i>
<i>Coming into operation</i>	<i>1st June, 2002</i>
<i>Laid before the States</i>	

THE STATES ADVISORY AND FINANCE COMMITTEE, in exercise of the powers conferred upon it by sections 5 and 6 of the Companies (Shares of No Par Value) Ordinance, 2002^a, hereby makes the following regulations:-

PART I
MODIFICATION OF COMPANIES LAW IN ITS APPLICATION
TO SHARES OF NO PAR VALUE

Memorandum of association.

1. In relation to the requirements of section 2 of the Companies (Guernsey) Law, 1994^b ("the Companies Law") as they apply to the memorandum of a company with power to issue shares of no par value, the memorandum shall state, instead of the matters required to be stated by section 2(1)(c) and (d) of the Companies Law, the following matters -

^a Ordinance No. ** of 2002.

^b Order in Council No. XXXIII of 1994; amended by No. XIV of 1996 and No. II of 2002.

- (a) the number of shares of no par value in the company or that the number of shares of no par value in the company is unlimited; and
- (b) the amount of the company's share capital (if any) to be represented by shares with a nominal or par value, the number of such shares in the company (if any) and the value of each of them.

Annual return.

2. (1) In the case of a company with power to issue shares of no par value -

- (a) which is declared (or which will, when incorporated, be declared) by the Commission to be an authorised collective investment scheme under section 8 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987^c; or
- (b) which is a closed-ended investment company within the meaning of paragraph 2(2) of Schedule 1 to that Law;

section 28(2)(c) of the Companies Law shall not apply in relation to shares of no

^c Ordres en Conseil Vol. XXX, pp. 281 and 243; Recueil d'Ordonnances Tome XXIV, p. 324; Order in Council No. XIII of 1994; Ordinance No. XXIX of 1994; Order in Council No. XII of 1995; Order in Council No. II of 1997; and Ordinances No. X and No. XX of 1998.

par value which are redeemable.

(2) In relation to the requirements of section 28(2)(e) of the Companies Law as they apply to shares of no par value, the annual return shall state, instead of the matters required to be stated by that section, the number of shares in the company, distinguishing between those which have been issued for cash and those which have been allotted in whole or in part for a consideration other than cash.

Other modifications to Companies Law.

3. (1) In section 29(4) of the Companies Law in its application to the allotment of shares of no par value, the reference to the nominal amount of the share shall be construed as a reference to the value of the consideration for the allotment of the share.

(2) In section 31(1)(a)(i) of the Companies Law in its application to the allotment of shares of no par value, the reference to the nominal amount of the shares comprised in the allotment shall be omitted.

(3) Section 31(1)(a)(ii) of the Companies Law shall be inapplicable to the allotment of redeemable shares of no par value by a company described in regulation 2(1).

(4) In section 31(1)(b)(ii) of the Companies Law in its application to the allotment of shares of no par value, the references to the nominal amount of the shares comprised in the allotment shall be construed as references to the value of the consideration for the allotment of those shares.

(5) In relation to shares of no par value and the companies with power to issue them, for section 38 of the Companies Law substitute the following

section -

"No par value shares issued for a consideration and shares issued at a premium.

38. (1) If a company -

(a) issues shares of no par value; or

(b) issues shares at a premium;

whether for cash or otherwise, a sum equal to the aggregate amount or value of -

(i) the consideration received by the company for those shares of no par value or, as the case may be,

(b) the premiums,

shall be transferred to an account to be called the "**share premium account**".

(2) The provisions of this Law relating to the reduction of a company's share capital shall, subject to the provisions of this section, apply as if the share premium account were part of the company's paid up share capital.

(3) The share premium account may be applied by the company -

- (a) in paying up unissued shares to be allotted to members as fully paid bonus shares;
- (b) in writing off -
 - (i) the company's preliminary expenses; or
 - (ii) the expenses of, or the commission paid on or discount allowed on, any issue of the company's shares;
- (c) in providing for any consideration payable on the redemption of any no par value shares; or
- (d) in providing for any premium payable on the redemption of any redeemable preference shares."

(6) In relation to shares of no par value and the companies with power to issue them, for section 40(1) of the Companies Law substitute the following subsection -

- "(1) A company may, if so authorised by its articles -
- (a) subject to the provisions of this section, issue preference shares of no par value which are, or at the option of the company or the shareholder are liable, to be redeemed;
 - (b) subject to the provisions of section 51, convert

all or any class of its preference shares of no par value into redeemable preference shares of no par value, provided that -

- (i) no such shares shall be redeemed except out of the profits of the company which would otherwise be available for dividend, or out of the proceeds of a fresh issue of shares made for the purposes of the redemption, or out of the company's share premium account;
- (ii) no such shares shall be redeemed unless they are fully paid."

Other provisions of the Companies Law.

4. Any provision of the Companies Law shall, as it applies to shares of no par value and to the companies which issue them, be construed as if any reference therein howsoever expressed to any other provision of the Companies Law were a reference thereto as modified by these regulations; and the provisions of that Law shall so apply subject to such modifications as may be required for the purpose of giving effect to these Regulations and the Companies (Shares of No Par Value) Ordinance, 2002.

PART II

MODIFICATION OF ORDINANCES IN THEIR APPLICATION
TO SHARES OF NO PAR VALUE

Modifications to Amalgamation of Companies Ordinance.

5. In section 15(1)(a)(ii) of the Amalgamation of Companies Ordinance,

1997^d in its application to share capital represented by shares of no par value, the reference to the holding of more than half in nominal value of the company's equity share capital shall be construed as a reference to the holding of more than half of the company's equity share capital.

Modifications to Migration of Companies Ordinance.

6. In relation to shares of no par value, section 6(d)(v) of the Migration of Companies Ordinance, 1997^e shall not apply and the statement by the company shall (in addition to stating all other matters required to be stated) distinguish, in relation to the shares of no par value issued to the company's members, between those which have been issued for cash and those which have allotted in whole or in part for a consideration other than cash.

Modifications to Financial Assistance Ordinance.

7. In the Companies (Financial Assistance for Acquisition of Own Shares) Ordinance, 1998^f-

- (a) section 3(1)(b)(ii) shall be inapplicable to share capital represented by shares of no par value;
- (b) in section 5(1)(a)(ii) thereof in its application to share capital represented by shares of no par value, the reference to the holding of more than half in nominal value of the company's equity share capital shall be construed as a reference to the holding of more than

^d Ordinance No. XIX of 1997.

^e Ordinance No. XXVI of 1997.

^f Ordinance No. V of 1998.

half of the company's equity share capital.

Modifications to Purchase of Own Shares Ordinance.

8. In the Companies (Purchase of Own Shares) Ordinance, 1998^g-

- (a) sections 3(1)(b) and 3(2) shall be inapplicable to the purchase of shares of no par value;
- (b) in section 3(3) in its application to shares of no par value the words "and the amount of the company's issued share capital shall be diminished by the nominal value of those shares accordingly" shall be omitted;
- (c) section 3(4) shall be inapplicable to shares of no par value;
- (d) in section 8(1)(a) in its application to shares of no par value, the reference to the nominal value of the shares purchased shall be omitted;
- (e) section 9(2) shall be inapplicable to shares of no par value;
- (f) section 10(4) shall be inapplicable to shares of no par value;
- (g) in section 10(5) in its application to shares of no par

^g Ordinance No. VIII of 1998.

value the nominal amount of the shares purchased shall be deemed to be zero;

- (h) section 12(3)(b)(ii) shall be inapplicable to share capital represented by shares of no par value.

Other provisions of company law Ordinances.

9. Any provision of an Ordinance made under the Companies (Enabling Provisions) (Guernsey) Law, 1996^h shall, as it applies to shares of no par value and to the companies which issue them, be construed as if any reference therein howsoever expressed to any other provision of any such Ordinance or to any provision of the Companies Law were a reference thereto as modified by these regulations; and the provisions of any such Ordinance shall so apply subject to such modifications as may be required for the purpose of giving effect to these Regulations and the Companies (Shares of No Par Value) Ordinance, 2002.

PART III

MODIFICATION OF DOCUMENT DUTY LAW IN ITS APPLICATION
TO SHARES OF NO PAR VALUE

Calculation of document duty.

10. In the Document Duty (Guernsey) Law, 1973ⁱ, as it has effect in Guernsey, in the First Schedule^j -

^h Order in Council No. XII of 1996.

ⁱ Ordres en Conseil Vol. XXIV, pp. 74 and 236, and Vol. XXV, p. 43; and Ordinances No. XL of 1992; No. IX of 1997, No. XXII of 2000 and No. LI of 2001.

^j The First Schedule to the Law was substituted by Ordinance No. XL of 1992 and amended by Ordinances No. XXV of 1995 (applicable only in relation to Alderney), No. IX of 1997, No. XXII of 2000 and No. LI of 2001.

- (a) in paragraph 12, after the words "other than a company limited by guarantee"^k, insert "or a company with power to issue shares of no par value";
- (b) after paragraph 14A of the First Schedule^l insert the following paragraphs -

<p>"14B. Memorandum of a company with power to issue shares of no par value.</p>	<p>(a) In the case of a company which will be declared by the Commission to be an authorised collective investment scheme under section 8 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended, or which will be a closed-ended investment company within the meaning of paragraph 2(2) of Schedule 1 to that Law, £2,000.</p> <p>(b) In the case of a company other than one described in subparagraph (a), but subject to the provisions of</p>
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^k The words "other than a company limited by guarantee" were inserted by Ordinance No. IX of 1997; paragraph 12 was also modified, but only in its application to Alderney, by Ordinance No. XXV of 1995.

^l Paragraph 14A was inserted by Ordinance No. IX of 1997.

	<p>subparagraph (c), £300.</p> <p>(c) In the case of a company other than one described in subparagraph (a) which has power to issue both shares of no par value and shares with a par or nominal value, £300 plus (in respect of that part of the company's share capital with a par or nominal value) the greater of -</p> <p>(i) £50; or</p> <p>(ii) one half of one per cent of the nominal capital of the company, up to a nominal capital not exceeding £1,000,000."</p>
<p>14C. Special resolution of a company altering memorandum to authorise issue of shares of no par value.</p>	<p>(a) In the case of a company described in subparagraph (a) of paragraph 14B, £2000 less the amount of document duty paid on incorporation of the company.</p> <p>(b) In the case of a company other than one described in subparagraph (a) of paragraph 14B, £300.</p>

PART IV
GENERAL PROVISIONS

Interpretation.

11. In these regulations, unless the context requires otherwise -

- (a) "the Companies Law" means the Companies (Guernsey) Law, 1994^m;
- (b) "equity share capital", in relation to a company, means its issued share capital excluding any part thereof which, as respects neither dividends nor capital, carries a right to participate beyond a specified amount in a distribution;
- (c) other expressions have the same meanings as in the Companies (Shares of No Par Value) Ordinance, 2002; and
- (d) any reference to an enactment is a reference thereto as from time to time amended, replaced or re-enacted (in either case, with or without modification), extended or applied.

^m Order in Council No. XXXIII of 1994; amended by No. XIV of 1996 and No. II of 2002.

Citation.

12. These Regulations may be cited as the Companies (Shares of No Par Value) (Modification of Legislation) Regulations, 2002.

Commencement.

13. These Regulations shall come into force on the 1st day of June, 2002.

Dated this 22nd day of May, 2002.

A handwritten signature in black ink, appearing to read 'L. C. Morgan', is written over a horizontal dotted line. The signature is stylized and cursive.

L. C. MORGAN

President of the States Advisory and Finance Committee

For and on behalf of the Committee.

EXPLANATORY NOTE.

(This note is not part of the Order)

These regulations prescribe for the purposes of the Companies (Shares of No Par Value) Ordinance, 2002 the exceptions, adaptations and modifications subject to which the provisions of -

- (a) the Companies (Guernsey) Law, 1994, as amended;
- (b) certain Ordinances made under the Companies (Enabling Provisions) (Guernsey) Law, 1996; and
- (c) the Document Duty (Guernsey) Law, 1973, as amended, as it has effect in Guernsey;

shall apply to shares of no par value and to the companies which issue them.