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THE COMPANIES (ALDERNEY) LAW (EXTERNAL COMPANIES) ORDINANCE, 1998

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THE COMPANIES (ALDERNEY) LAW (EXTERNAL COMPANIES) ORDINANCE, 1998

THE STATES OF ALDERNEY, in exercise of the powers conferred upon them by sections 152, 164 and 165 of The Companies (Alderney) Law, 1994 (a), hereby order:

1. In this Ordinance the expression "external company" means any body corporate other than one—

Application of Ordinance to external companies.

- (a) the memorandum and articles of which are registered in the Alderney Register of Companies; or
- (b) which is prescribed or of a prescribed class or description.

2. An external company shall not, after the date of the commencement of this Ordinance, establish a place of business in Alderney or have an established place of business in Alderney unless—

Control of external companies.

- (a) it is registered by the Registrar in the Register of External Companies; and
- (b) it does so in accordance with any conditions subject to which it is registered.

3. (1) An application for the registration of an external company shall be made to the Registrar in such form and manner as the Registrar may require and shall be accompanied by—

Registration of external companies.

- (a) particulars of the company's name, the place and date of incorporation and the company's registered number in that place;
- (b) the address of the company's registered office, principal place of business and place of business in Alderney;
- (c) the names and addresses of the company's directors and secretary;

- (d) an address for service in Alderney where all legal process concerning the company may be served and to which all other communications and notices to be given to the company may be delivered or posted;
 - (e) the nature of the business to be carried on at the company's place of business in Alderney;
 - (f) in cases only where the Registrar has, under the provisions of section 10, refused to register the company under the company's name, particulars of the different name, which shall have been approved by the Registrar, under which the company proposes to carry on business in Alderney;
 - (g) a copy of the company's certificate of incorporation or other similar document providing evidence of its incorporation;
 - (h) a copy, certified by or on behalf of the company as being true and complete, of the memorandum and articles or other equivalent constitutive documents which are to be binding on the company immediately after its registration and, if any of them are not printed in the English language, a complete and accurate translation, which shall also be so certified;
 - (i) such other information and documents, verified in such manner, as the Registrar may require (whether in relation to any particular application or otherwise); and
 - (j) the prescribed registration fee.
- (2) The registration of an external company by the Registrar—
- (a) may be granted subject to such conditions as the Registrar thinks fit (including conditions which will continue to have effect after registration);
 - (b) may be made subject to such further or amended conditions as the Registrar thinks fit.

(3) The Registrar may at any time require an external company registered in the Register of External Companies to provide him with such information and documents, verified in such manner, in relation to the company or its affairs as he thinks fit.

4. (1) The information referred to in paragraphs (a) to (f) of section 3(1) shall be stated in the Register of External Companies.

Matters to be stated in Register.

(2) The documents referred to in paragraphs (g) and (h) of section 3(1) shall be filed in the Register of External Companies.

(3) The Register of External Companies may contain such additional information and documents as the Registrar may think fit.

5. (1) An external company registered in the Register of External Companies shall give written notice to the Registrar of any change in any of the information or documents referred to in paragraphs (a) to (h) of section 3(1) within a period of 28 days beginning on the day of the change.

Changes in registered particulars.

(2) A change by an external company registered in the Register of External Companies of the address for service in Alderney stated in the Register pursuant to sections 3(1)(d) and 4(1) shall not be effective until the change is entered in the Register.

6. (1) The Registrar shall remove the name of an external company from the Register of External Companies –

Revocation of registration and effects thereof.

- (a) upon the company ceasing to have an established place of business in Alderney or upon delivery to the Registrar by the company of notice to that effect;
- (b) if the company fails to comply with any requirement of or under section 3 or 5;
- (c) if the company–
 - (i) fails to comply with a requirement under section 7(1) to change the name under which it carries on business in Alderney; or

- (ii) fails to lodge with the Registrar, in accordance with the provisions of section 7(3), the different name under which it proposes to carry on business in Alderney;
- (d) if the company fails to pay the prescribed fee under section 8 within a period of 28 days beginning on the day on which the fee is payable;
- (e) upon receipt by him of a direction of the Committee under section 9 that the company's name be removed from the Register of External Companies;
- (f) if the company is insolvent within the meaning of this Ordinance or is wound up or otherwise ceases to exist;
- (g) if there is a contravention of, or failure to comply with, any condition subject to which the registration of the company is subject.

(2) Notwithstanding the provisions of subsection (1), the Registrar may, for such period and subject to such terms and conditions as he thinks fit, defer the removal pursuant to subsection (1) of the name of an external company from the Register of External Companies.

(3) If in relation to an external company there is a contravention or failure to comply with any term or condition imposed pursuant to subsection (2), the Registrar may immediately remove the name of the company from the Register of External Companies.

(4) When pursuant to the provisions of this section the Registrar removes the name of an external company from the Register of External Companies -

- (a) the company shall thereupon cease to be registered for the purposes of this Ordinance, and the provisions of section 2 shall apply accordingly;
- (b) the removal of the company's name shall not affect the rights, liabilities or obligations of the company or render defective any legal proceedings by or against it;
- (c) legal proceedings which could have been instituted or continued by or against the company before the removal of the company's name may be instituted or continued by or against the company thereafter.

7. (1) The Registrar may, in the circumstances described in subsection (2), by notice served on an external company, require the company to change the name under which it carries on business in Alderney.

Requirement to change name.

(2) The circumstances referred to in subsection (1) are any circumstances in which, if the external company in question were applying for registration, the Registrar would be entitled to refuse to register the company by virtue of the provisions of section 10.

(3) An external company on which a notice is served under subsection (1) shall, within a period of 28 days beginning on the date of the notice, lodge with the Registrar the different name, which shall have been approved by the Registrar, under which it proposes to carry on business in Alderney.

(4) The name lodged with the Registrar under subsection (3) shall be stated in the Register of External Companies.

8. An external company registered in the Register of External Companies shall on the 1st January in each year pay the prescribed annual fee.

Annual fee payable.

9. (1) The Committee may issue a direction to the Registrar that the name of an external company shall be removed from the Register of External Companies in any case where the Committee is of the opinion that it is desirable that the company's name should be removed for the protection of the public or of the reputation of the Bailiwick of Guernsey or any part thereof.

Direction of Committee to remove company name from Register.

(2) A direction of the Committee under subsection (1) shall be expressed to take effect immediately or on such date as may be specified.

(3) When the Committee issues a direction under subsection (1), it shall give a copy of the direction to the external company concerned.

(4) The Committee shall not issue a direction under this section in the case of an external company carrying on finance business unless the Commission has recommended in writing that the Committee should issue such a direction in relation to that company.

Refusal of registration if name unsatisfactory, etc.

10. The Registrar shall refuse to register an external company where in his opinion, in relation to the name of the company—

- (a) the name is such as to induce the public to confuse the company with some other person or body previously established or incorporated in Alderney or elsewhere;
- (b) the name is the same as a name appearing in the Register of Companies or in the Register of External Companies;
- (c) the use of the name constitutes a criminal offence or is offensive, misleading or inappropriate in relation to the company concerned;
- (d) the name includes any word such as "Imperial", "Royal", "Queen" or "Crown" which implies or might be taken to imply royal or government connection, support or patronage, unless Her Majesty's Procureur has given written permission for the use of that word; or
- (e) the use of the name would be unsafe, unsatisfactory or not in the public interest.

Use of business name not to affect third parties.

11. Where, pursuant to section 3(1)(f) or 7(3), an external company with a particular name (its "**company name**") has lodged with the Registrar a different name under which it proposes to carry on business in Alderney (its "**business name**")—

- (a) legal proceedings which could have been instituted or continued by or against the company under its company name may (but need not) be instituted or continued by or against the company under its business name;
- (b) the existence or use of the business name shall not affect the rights, liabilities or obligations of the company or render defective any legal proceedings by or against it.

12. (1) The Register of External Companies shall, subject to payment of the prescribed fee, be available for public inspection at the office of the Registrar during the ordinary business hours of that office.

Register to be open to public inspection.

(2) A person may take a note or extract from, and may on payment of the prescribed fee request a copy of any part of, the Register of External Companies.

13. The registration of an external company does not amount to a representation or warranty, in any form whatsoever, that the company is of good standing or is conducting business and is being administered in conformity with the law of Alderney or elsewhere.

Registration not to warrant good standing.

14. (1) Without prejudice to any other enactment or rule of law relating to the service of documents—

Service of documents on external companies.

(a) any document to be given to or served on an external company which is registered in the Register of External Companies may be given or served—

(i) by being left at; or

(ii) except in the case of a summons, by being sent by post to;

the company's address for service in Alderney stated in the Register of External Companies pursuant to sections 3(1)(d) and 4(1);

(b) any document to be given to or served on an external company which is not registered in the Register of External Companies may be given or served—

(i) by being left at; or

(ii) except in the case of a summons, by being sent by post to:

any established place of business of the company in Alderney.

(2) In this section the expression "by post" means by registered post, recorded delivery service or ordinary letter post.

(3) A document sent by post in accordance with the provisions of subsection (1) shall, unless the contrary is shown, be deemed for the purposes of this Ordinance to have been received—

- (a) in the case of a document sent from the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting;
- (b) in the case of a document sent from elsewhere, on the seventh day after the day of posting;

excluding in each case any non-business day within the meaning of section 1(1) of The Bills of Exchange (Guernsey) Law, 1958, as amended(b).

(4) Service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

Regulations of Committee to be published in Gazette.

15. (1) Regulations of the Committee under this Ordinance shall be published in the Alderney Official Gazette as soon as possible after being made.

(2) A failure to comply with subsection (1) shall not invalidate the regulations.

Offences.

16. (1) A person who contravenes any provision of section 2 shall be guilty of an offence.

(2) A person who in connection with an application for the registration of an external company under this Ordinance, or in compliance or purported compliance with any requirement imposed by or under this Ordinance, or otherwise for the purposes of this Ordinance—

- (a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;

(b) Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; and No. XIV of 1994.

- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular;
- (c) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular; or
- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular;

shall be guilty of an offence.

17. (1) Where an offence under this Ordinance is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to or to have been facilitated by any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

Offences by bodies corporate: aiding and abetting.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

(3) A person who aids, abets, counsels or procures the commission of an offence under this Ordinance is guilty of the offence and may be proceeded against and punished accordingly, whether or not proceedings are taken against the principal offender.

18. (1) A person guilty of an offence –

Penalties.

- (a) under section 16(1), is liable on summary conviction to a fine not exceeding level 4 on the Alderney uniform scale;
- (b) under section 16(2), is liable on summary conviction to a fine not exceeding level 4 on the Alderney uniform scale, imprisonment for a term not exceeding 3 months or both.

(2) For the avoidance of doubt—

- (a) an external company may be proceeded against and punished in Alderney for an offence under this Ordinance notwithstanding that the company is incorporated elsewhere and whether or not the company is registered; and
- (b) for the purposes of any such proceedings, any document to be served on the company may be served in the manner set out in section 14.

Interpretation.

19. (1) In this Ordinance, unless the context requires otherwise—

"body corporate" means a *body of persons* incorporated under the laws of any district, territory or place, and includes a company, of whatever description and wherever registered;

"Commission" means the Guernsey Financial Services Commission;

"Committee" means the States of Alderney Policy and Finance Committee;

"external company" means any body corporate other than one—

- (a) the memorandum and articles of which are registered in the Alderney Register of Companies; or
- (b) which is prescribed or of a prescribed class or description;

"finance business" includes the carrying on of, and the provision of services in relation to, the business of banking, insurance, investment and asset management or administration, company formation or administration, trust formation or administration, trustee services and partnership formation or administration;

"insolvent" shall be construed in accordance with subsection (2);

"officers", in relation to an external company, means its directors, shadow directors and secretaries;

"place of business" includes a share transfer or share registration office;

"prescribed" means prescribed by regulations of the Committee;

"Register of External Companies" means the register of that name kept by the Registrar for the purposes of this Ordinance;

"Registrar" means the Clerk of the Court of Alderney;

"registration" means registration by the Registrar in the Register of External Companies under the provisions of this Ordinance, and related expressions shall be construed accordingly;

and other expressions shall have the same respective meanings as in The Companies (Alderney) Law, 1994(c).

(2) For the purposes of this Ordinance an external company shall be deemed to be **"insolvent"** where—

- (a) the company has been declared insolvent;
- (b) a receiver or administrator has been appointed, whether by a court or not, in relation to any property of the company;
- (c) the company has entered into a compromise or arrangement with a creditor (other than a compromise or arrangement declared by the Registrar to be inapplicable for the purposes of this section), and the compromise or arrangement is in force;
- (d) the company's affairs have been declared in a state of "desastre" by its arresting creditors at a meeting held before a Commissioner;
- (e) a preliminary vesting order has been made against the company in respect of any of its real property in the Bailiwick;

- (f) otherwise than for the sole purpose of solvent amalgamation, solvent reconstruction or solvent winding up, a liquidator (provisional or otherwise) has been appointed to act in relation to the company's estate or affairs or it has passed a special resolution requiring it to be wound up voluntarily; or
- (g) an event has occurred outside Alderney in relation to the company which corresponds as nearly as may be to any event described in paragraphs (a) to (f).

(3) For the purposes of this Ordinance an external company shall be deemed to have an established place of business in Alderney if it is the legal or beneficial owner of any land in Alderney; and the expression "land" has the meaning given by section 21 of The Duty on Share Transfers (Alderney) Law, 1994(d) .

(4) The provisions of The Interpretation (Guernsey) Law, 1948(e) shall apply to the interpretation of this Ordinance as they apply in Guernsey to the interpretation of a Guernsey enactment.

Citation.

20. This Ordinance may be cited as The Companies (Alderney) Law (External Companies) Ordinance, 1998.

Commencement and transitional provisions.

21. (1) This Ordinance shall come into force on the 1st January, 1999.

(2) An external company shall not be guilty of an offence under section 16(1) by virtue of establishing a place of business in Alderney, or having an established place of business in Alderney, at any time prior to the 1st April, 1999, being a time when the company is not registered, provided that the company has at that time submitted an application for registration in accordance with section 3:

(d) Order in Council No. II of 1994.

(e) Ordres en Conseil Vol. XIII, p. 355.