

Island of



Alderney

# Ordinance of the States

III  
1995

Made ..... 3rd May 1995

Coming into operation..... 3rd May 1995

## THE COMPANIES (ALDERNEY) LAW (GUARANTEE COMPANIES) ORDINANCE, 1995

THE STATES OF ALDERNEY, in exercise of the powers conferred upon them by sections 164 and 165 of, and paragraph 14 of Schedule 6 to, the Companies (Alderney) Law, 1994(a), hereby order:—

1. For Schedule 6 to the Companies (Alderney) Law, 1994 there shall be substituted the following Schedule-

**Provision in  
relation to  
companies limited  
by guarantee.**

### "SCHEDULE 6

#### COMPANIES LIMITED BY GUARANTEE

1. (1) A company limited by guarantee may but need not have a share capital.

**Share Capital**

(2) If a company limited by guarantee has a share capital, its members may but (subject to any contrary provision of the memorandum or articles) need not hold shares in the company.

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(a) Ordres en Conseil No. XXXIV of 1994.

**Consent of  
Advisory and  
Finance  
Committee  
required.**

2. Whether or not a company limited by guarantee has a share capital and is capable of issuing shares, the consent of the States of Guernsey Advisory and Finance Committee under the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959(b) shall nevertheless be required in relation to the incorporation of the company; and the provisions of the said Ordinance shall accordingly apply in all respects to such a company as if it were a company limited by shares.

**Memorandum of  
association.**

3. In relation to the requirements of section 2 as they apply to the memorandum of a company limited by guarantee-

(a) the memorandum shall state (in addition to the matters specified in section 2, but subject to subparagraph (b) below)-

(i) that each member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within a period of one year after he ceases to be a member, such amount as may be required, not exceeding the amount specified in the memorandum, for the payment of the company's debts and liabilities contracted before he ceases to be a member and of the costs, charges and expenses of winding up and for any adjustment of the rights of the contributories as between themselves;

(ii) the maximum number of members which the company is to have (which number may be amended by special resolution of the company);

(b) if the company does not have a share capital, its memorandum shall not be required to state the matters set out in sections 2(c) (amount of company's share capital), 2(d) (number of shares in company and value of each) and 2(e) (terms of payment of such shares).

**Conditions for  
registration.**

4. In relation to a company limited by guarantee, sections 4(1)(d) (founder members required to own at least one share)

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(b) Recueil d'Ordonnances Tome XII, p. 105;  
there are amendments not relevant to this enactment.

and 4(1)(e) (number of shares so owned to be stated) shall not apply; and, instead, each founder member shall have entered into such an undertaking as is described in paragraph 3(a)(i) above and the amount undertaken to be so contributed shall be written opposite his signature at the foot of the memorandum.

5. In relation to the provisions of section 12 as they apply to a company limited by guarantee, the liability of each member of the company for the company's debts shall, subject to any express provision of this Law as to personal liability, be limited to the sum of the following amounts, that is to say-

**Members' liability.**

- (a) the amount, if any, unpaid on the shares held by him (in cases where the company has a share capital and the member holds shares therein); and
- (b) the amount specified in the memorandum which he has undertaken to contribute to the company's assets in accordance with paragraph 3(a)(i) above in the event of the company being wound up.

6. In relation to a company limited by guarantee-

**Annual return.**

- (a) if the company does not have a share capital, subsections (2)(d), (2)(e), (2)(f) and (2)(g) of section 37 shall not apply;
- (b) if the company has a share capital, those subsections shall apply; and
- (c) whether or not the company has a share capital, the annual return shall state in relation to each member (in addition to all other matters required to be stated) the amount that he has undertaken to contribute to the company's assets in accordance with paragraph 3(a)(i) above in the event of the company being wound up.

7. In relation to the provisions of section 71 as they apply to a company limited by guarantee, there shall be inscribed in the Register of Members (in addition to the matters set out in section 71(1), in cases where the company has a share capital)-

**Register of Members.**

- (a) the names and addresses of all persons who are or who have since the incorporation of the company been members therein;
- (b) the amount specified in the memorandum which each such person has undertaken to contribute to the company's assets in accordance with paragraph 3(a)(i) above in the event of the company being wound up;
- (c) the date upon which each such person ceased to be a member.
- (d) where applicable, the date upon which each such person ceased to be a member.

**Definition of "member".**

8. (1) In relation to the provisions of section 163 (interpretation) as they apply to a company limited by guarantee-

- (a) there shall be substituted for the definition of "member" the following definition-

"member", in relation to a company limited by guarantee, means every person who agrees to become a member of the company and whose name is entered or who is entitled to have his name entered as a member in the company's Register of Members;"

- (b) there shall be substituted for the definition of "Register of Members" the following definition-

"the Register of Members", in relation to a company limited by guarantee, means the register kept by a company pursuant to section 71 in which the names of the company's members are entered;"

(2) The subscribers of the memorandum of a company limited by guarantee shall be deemed to have agreed to become members of the company and, upon incorporation, shall be entered as such in the Register of Members.

**Cessation of membership.**

9. (1) A person shall not cease to be a member of a company limited by guarantee except-

- (a) upon his death; or

- (b) by retirement with the consent of the directors; and the directors shall not grant such consent unless and until a new member is admitted to the company and entered as such in the Register of Members;

and, in cases where the company has a share capital and the member holds shares therein, except upon the transfer of his shares.

(2) Such a new member as is described in subparagraph (1)(b) shall, upon entry in the Register of Members, be deemed to have executed such an undertaking as is described in paragraph 3(a)(i) above.

(3) The purported retirement of a member of a company limited by guarantee otherwise than in accordance with the provisions of this paragraph shall be of no effect.

10. In relation to a company limited by guarantee and not having a share capital, any provision in the memorandum or articles thereof or in any resolution thereof purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member is void.

**Participation in profits.**

11. The States of Guernsey may by Ordinance modify the provisions of the Document Duty (Guernsey) Law, 1973(c) and of any Ordinance thereunder so as to apply those provisions or any of them, or so as to modify those provisions or any of them in their application, to companies limited by guarantee.

**Document duty.**

12. Any provision of this Law referring or otherwise relating to an offence or penalty shall, in its application to a company limited by guarantee, be construed as if any reference therein howsoever expressed to any provision of this Law were a reference thereto as modified or substituted by or under this Schedule.

**Penalty provisions.**

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(c) Ordres en Conseil Vol. XXIV, p. 74; there are amendments not relevant to this enactment. The Law was applied to Alderney by Recueil d'Ordonnances Tome XIX, p. 111.

**Consequential changes.**

13. Any provision of this Law referring or otherwise relating to shares or share capital (whether in respect of their value, terms of payment, issue or allotment, amount, numbering or otherwise) shall, subject to the provisions of this Schedule, apply in respect of a company limited by guarantee subject to such modifications as may be necessary to give effect to the provisions of this Schedule and by reason of the fact that such a company may or may not have a share capital.

**Power to make Ordinances.**

14. The States may by Ordinance amend any provision of this Schedule or modify any provision of or under this Law in its application to a company limited by guarantee.”.

**Interpretation.**

2. The Interpretation (Guernsey) Law, 1948(d) shall apply to the interpretation of this Ordinance.

**Citation.**

3. This Ordinance may be cited as the Companies (Alderney) Law (Guarantee Companies) Ordinance, 1995.

**Commencement.**

4. This Ordinance shall come into force on the 3rd May 1995.

**D.V. JENKINS**  
**Clerk of the States**

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