

Island of  Guernsey

Ordinance of the States

XIII  
1991

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Made ... .. 25th April, 1991.

Coming into Operation ... .. 1st May, 1991.

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**The Companies (Exemption from Audit)  
Ordinance, 1991**

THE STATES, in pursuance of their Resolution of 24th April, 1991(a) and in exercise of the powers conferred on them by section 37(1)(b)(i) and (2) of the Companies (Guernsey) Law, 1990(b), hereby order:-

Application of Ordinance.

1.(1) Subject to subsection (3) of this section, this Ordinance applies to -

- (a) dormant companies; and
- (b) asset-holding companies.

(2) For the purposes of this Ordinance -

- (a) a company is "dormant" during any period in which (disregarding any transaction arising from a founder's

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(a) on Article VI of Billet d'Etat No. IX of 1991.

(b) Order in Council No. XXVII of 1990.

subscription for shares in accordance with the company's memorandum, and disregarding any fees payable under the Companies Laws) no transaction occurs which is required by section 17 of the 1990 Law to be entered in its accounting records (and a company ceases to be dormant on the occurrence of such a transaction);

(b) a company is an "asset-holding company" during any period in which -

- (i) its principal purpose is to own specified assets or assets of specified descriptions; and
- (ii) it does not engage in trade; and
- (iii) its activities (if any) are all directly connected with its ownership of those assets; and
- (iv) it receives no significant income other than income derived directly from its ownership of those assets; and
- (v) it incurs no significant expenditure other than expenditure incidental to its ownership of those assets

(and a company ceases to be an asset-holding company when it no longer has

all of the above attributes).

- (3) This Ordinance does not apply to -
  - (a) a company which has more than 10 members; or
  - (b) a company which carries on banking business, insurance business or controlled investment business.

Acquisition and retention of unaudited status.

2.(1) A company to which this Ordinance applies may become an unaudited company by the unanimous agreement in writing of all of its members.

(2) A company which has become an unaudited company in accordance with subsection (1) of this section ceases to be an unaudited company -

- (a) at the conclusion of any annual general meeting of the company held thereafter, unless a resolution is passed at that meeting with the approval of every member voting thereon (whether in person or by proxy) that the company shall continue to be an unaudited company;
- (b) whenever its annual return is delivered thereafter to Her Majesty's Greffier, unless there is endorsed on that annual return a certificate signed by two directors of the company or by one

director and the Secretary of the company:

- (i) that this Ordinance applies to the company; and
  - (ii) that it is a dormant company, or an asset-holding company, as the case may be; and
  - (iii) that all of its members agreed in writing on a specified date to its being an unaudited company; and
  - (iv) if an annual general meeting of the company has taken place since that agreement, that a resolution has been passed at each such meeting with the approval of every member voting thereon (whether in person or by proxy) that the company shall continue to be an unaudited company;
- (c) when it ceases to be a company to which this Ordinance applies.

Effect of unaudited status.

3. In the case of an unaudited company -
- (a) Article LIII of the 1908 Law and section 20 of the 1990 Law do not apply; but

- (b) the directors' report referred to in Article XL of the 1908 Law must state that the company's balance sheet and profit and loss account -
- (i) have been prepared properly, in accordance with generally accepted accounting principles, and in accordance with any relevant enactment for the time being in force; and
  - (ii) are in agreement with the accounting records, which have been properly kept in accordance with section 17 of the 1990 Law; but
  - (iii) have not been audited.

Offences.

4.(1) If section 3(b) of this Ordinance is not complied with in the case of an unaudited company, every officer of that company who is in default is guilty of an offence and liable, on conviction, to a fine not exceeding level 5 on the uniform scale.

(2) If any certificate such as is referred to in section 2(2)(b) of this Ordinance or any report containing such a statement as is referred to in section 3(b) of this Ordinance is false in a material particular, any director or Secretary who signed it when he knew, or could with reasonable diligence have

discovered, its falsity is guilty of an offence and liable, on conviction, to a fine not exceeding 10 times level 5 on the uniform scale.

Savings.

5.(1) The fact that a company is an unaudited company does not preclude a member or creditor from applying to the Court for the appointment of an auditor under Article LIV of the 1908 Law.

(2) This Ordinance does not prejudice any rights of a member of a company under section 11 or section 12 of the 1990 Law or under the company's articles, and is subject to those articles.

Interpretation and construction.

6.(1) For the purposes of this Ordinance, unless the context otherwise requires, -

(a) "assets" means any property, whether  
 real or personal, immovable or  
 movable, corporeal or incorporeal,  
 and includes money, securities,  
 things in action, intellectual  
 property and other intangible  
 assets;

"banking business" means the business  
 of accepting money for the purpose  
 of investment on deposit;

"controlled investment business" has  
 the meaning given in the Protection

of Investors (Bailiwick of Guernsey)  
Law, 1987(c);

"insurance business" has the same  
meaning as in the Insurance Business  
(Guernsey) Law, 1986(d);

"the 1908 Law" means the Law entitled  
"Loi relative aux Sociétés Anonymes  
ou à Responsabilité Limitée"  
registered on 21st March 1908(e);

"the 1990 Law" means the Companies  
(Guernsey) Law, 1990;

"specified" means stated in a company's  
memorandum;

- (b) a word or expression which has a  
meaning assigned by the 1990 Law has  
the same meaning;
- (c) where a word or expression has a  
meaning given to it in or by virtue of  
this section, related expressions and  
parts of speech have corresponding  
meanings;
- (d) a reference to an enactment is to that  
enactment as amended, replaced,  
extended or applied by or under any  
other enactment.

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(c) Order in Council No. XX of 1987.  
(d) Order in Council No. XIII of 1986.  
(e) Ordres en Conseil Vol. IV, p.178.

(2) This Ordinance is to be construed as one with the Companies Laws.

Consequential amendments.

7.(1) In Article XL of the 1908 Law, insert at the end: "Et dans le cas d'une Société dite "unaudited company" conformément à l'Ordonnance intitulée "the Companies (Exemption from Audit) Ordinance, 1991" le dit rapport devra aussi comprendre l'attestation requise par section 3(b) de cette Ordonnance."

(2) In Article LIII of the 1908 Law, immediately after "Toute Société" insert "(sauf une Société dite "unaudited company" conformément à l'Ordonnance intitulée "the Companies (Exemption from Audit) Ordinance, 1991")".

(3) In section 20(1) of the 1990 Law, for "A company's auditors" substitute "Subject to section 3(a) of the Companies (Exemption from Audit) Ordinance, 1991, a company's auditors".

Citation.

8. This Ordinance may be cited as the Companies (Exemption from Audit) Ordinance, 1991.

Commencement.

9. This Ordinance shall come into force on 1st May 1991.

K. H. TOUGH,  
Her Majesty's Greffier

Copies may be purchased from  
Her Majesty's Greffier, Royal Court House, Guernsey.