

Island of



Guernsey

Ordinance of the States

XXV
2008

Made16th June, 2008

Coming into Operation.....1st July, 2008

Laid before the States.....30th July, 2008

The Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2008

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THE STATES LEGISLATION SELECT COMMITTEE, in pursuance of the Resolutions of the States of the 29th March, 2007^a and the 1st November, 2007^b, and in exercise of the powers conferred on the States by sections 533, 538 and 545 of the Companies (Guernsey) Law, 2008^c and all other powers enabling them in that behalf, and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948^d, hereby orders:-

Commencement of Law.

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

2. In section 17(2)(a) of the Law after the words "the memorandum of incorporation" insert "or a copy thereof (which need not contain the signature of the founder member)".

3. After section 20(2) of the Law insert the following subsections -

"(3) Subject to the provisions of this Law, the memorandum and articles of a company are, from the time of incorporation, binding on the company and its members in all respects as if the memorandum and articles -

^a Article XIV of Billet d'État No. XI of 2007.

^b Articles XII and XIII of Billet d'État No. XXII of 2007.

^c Approved by the States of Deliberation on the 30th January, 2008.

^d Ordres en Conseil Vol. XIII, p. 288 (there are amendments not material to this Ordinance).

- (a) were comprised in an agreement duly executed by the company and each member, and
- (b) contained covenants on the part of the company and each member to observe all provisions thereof.

(4) Money payable to a company by a member under the memorandum and articles are a civil debt due from him to the company."

4. Section 89(a) of the Law is repealed.

5. In section 162(4) of the Law after "does not" insert "subject to the provisions of section 163".

6. For sections 163 and 164 of the Law substitute -

"Avoidance of transactions.

163. (1) A transaction entered into by a company in which a director is interested is voidable by the company at any time within 3 months after the date the transaction is disclosed to the board of directors unless -

- (a) the director's interest was -
 - (i) disclosed to the board in accordance with section 162 prior to the company entering into the transaction, or

- (ii) not required to be disclosed by virtue of section 162(2),
 - (b) the transaction is ratified in accordance with section 160, or
 - (c) the company received fair value for the transaction.
- (2) For the purposes of subsection (1)(c) -
- (a) a determination as to whether a company receives fair value for a transaction shall be made on the basis of the information known to the company and the interested director at the time that the transaction was entered into,
 - (b) if a transaction is entered into by the company in the ordinary course of its business and on usual terms and conditions, the company is presumed to receive fair value under the transaction,
 - (c) a person seeking to uphold a transaction and who knew or ought to have known of the director's interest at the time the transaction is entered into has the burden of establishing fair value, and

- (d) in any other case, the company has the burden of establishing that it did not receive fair value.

(3) The fact that a transaction is not avoidable pursuant to this section is without prejudice to any remedy the company may have against the director.

Effect on third parties.

164. The avoidance of a transaction under section 163 does not affect the right, title or interest of a person in property which he has acquired -

- (a) in good faith,
- (b) for valuable consideration, and
- (c) without knowledge of the director's failure to disclose his interest."

Citation.

7. This Ordinance may be cited as the Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2008.

Commencement.

8. This Ordinance shall come into force on the 1st July, 2008.

K.H. TOUGH,
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