

## **The Guarantee Companies Ordinance, 1997**

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# **The Guarantee Companies Ordinance, 1997**

**THE STATES**, in exercise of the powers conferred upon them by section 1 of the Companies (Enabling Provisions) (Guernsey) Law, 1996<sup>a</sup>, hereby order:-

## **Incorporation of companies limited by guarantee.**

1. (1) A company may be incorporated in Guernsey with the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up.

(2) Such a company is referred to in this Ordinance as a company limited by guarantee.

(3) The provisions of the 1994 Law shall, subject to the modifications set out in this Ordinance, and unless the context requires otherwise, apply in relation to a company limited by guarantee as they apply in relation to a company limited by shares.

## **Share capital.**

2. (1) A company limited by guarantee may but need not have a 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, and subject also to section 3(2)(c) of the 1994 Law) need not hold shares in the company.

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<sup>a</sup> Order in Council No. XII of 1996.

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

3. (1) The consent of the Committee<sup>b</sup> shall be required for the incorporation of a company limited by guarantee which does not have a share capital.

(2) The provisions of sections 12(1) and 12(1A) of the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959<sup>c</sup> shall apply in relation to a consent of the Committee under subsection (1) of this section as they apply in relation to a consent of the Committee granted under that Ordinance.

(3) The provisions of this section are without prejudice to the provisions of the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959 in their application to a company limited by guarantee which has a share capital.

**Memorandum of association.**

4. In relation to the requirements of section 2 of the 1994 Law 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 of the 1994 Law, but subject to paragraph (b) below) -

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<sup>b</sup> The functions were transferred to the Commerce and Employment Department by Ordinance XXXIII of 2003.

<sup>c</sup> Recueil d'Ordonnances Tome XII, p. 105; Tome XV, p. 197; Tome XVI, p. 473; Tome XX, p. 412; Tome XXV, p. 80; and Ordinance No. IV of 2003; and section 45 of the Limited Partnerships (Guernsey) Law, 1985 (No. XII of 1995).

- (i) the amount which 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, for the payment of the company's debts and liabilities incurred 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 the following sections of the 1994 Law -
  - (i) section 2(1)(c) (amount of company's share capital);
  - (ii) section 2(1)(d) (number of shares in company and value of each); and
  - (iii) section 2(1)(e) (terms of payment of such shares).

**Conditions for registration.**

5. (1) In relation to a company limited by guarantee which does not have a share capital, the following sections of the 1994 Law shall not apply -

- (a) section 3(2)(c) (founder members required to own at least one share); and
- (b) section 3(2)(d) (number of shares so owned to be stated).

(2) The Court shall not authorise the registration of the memorandum of a company limited by guarantee unless (in addition to the requirements of sections 3(2)(c) and 3(2)(d) of the 1994 Law, in cases where the company has a share capital) each founder member has entered into such an undertaking as is described in section 4(a)(i) above and the amount undertaken to be contributed by him is written opposite his signature at the foot of the memorandum.

**Members' liability and members' interests.**

6. (1) In relation to the provisions of section 7 of the 1994 Law 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 the 1994 Law as to personal liability, be limited to the sum of the following amounts, that is to say-

- (a) the amount specified in the memorandum which he has undertaken to contribute to the company's assets in accordance with section 4(a)(i) above; and

- (b) 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 for the purposes of this section a new member admitted to a company limited by guarantee shall, upon entry in the Register of Members, be deemed to have executed such an undertaking as is described in section 4(a)(i) above.

(2) If the amounts specified in the memorandum which members of the company have undertaken to contribute to the company's assets in accordance with section 4(a)(i) above are different, the different amounts shall not of themselves create differing interests in the company as between those members.

**Annual return.**

7. In relation to a company limited by guarantee -

- (a) if the company does not have a share capital, subsections (2)(d), (2)(e), (2)(f) and (2)(g) of section 28 of the 1994 Law shall not apply;
- (b) if the company has a share capital -
  - (i) those subsections shall apply, save that any reference in those subsections to a member of the company shall be construed as a reference to a shareholder therein; and
  - (ii) the annual return shall state (in addition to all other matters required to be stated) the names and addresses of the company's shareholders

(except in relation to redeemable preference shares);

- (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 which he has undertaken to contribute to the company's assets in accordance with section 4(a)(i) above.

**Register of Members.**

8. (1) In relation to the provisions of section 55 of the 1994 Law as they apply to a company limited by guarantee, the company shall enter in the Register of Members (in addition to the matters set out in section 55(1) of the 1994 Law, in cases where the company has a share capital)-

- (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 which each such person has undertaken to contribute to the company's assets in accordance with section 4(a)(i) above;
- (c) the date upon which each such person was registered as a member; and
- (d) where applicable, the date upon which each such person ceased to be a member.

(2) A company which fails to comply with any provision of subsection (1) of this section shall be deemed to be guilty of an offence under section 55(2) of the 1994 Law and shall be punishable accordingly.

**Definition of "member".**

9. (1) In relation to the provisions of section 117 of the 1994 Law (interpretation) as they apply to a company limited by guarantee -

(a) there shall be inserted in the definition of "member", after the words "as a shareholder", the following -

"(or, in relation to a company limited by guarantee, as a member)";

(b) there shall be inserted in the definition of "Register of Members", after the words "the company's shareholders", the following-

"(or, in relation to a company limited by guarantee, the names of the company's members and, if the company has a share capital, the names of the company's shareholders)".

(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.**

10. A person shall not cease to be a member of a company limited by guarantee -

- (a) except by retirement-
  - (i) in accordance with such formalities as may be prescribed by the company's articles; or
  - (ii) where no such formalities are so prescribed, by notice in writing addressed to the directors (which notice may, in the case of the member's death or legal disability, be given by his heir, executor or other lawful representative); and
- (b) in cases where the company has a share capital and the member holds shares therein, except upon the transfer of his shares.

**Name of guarantee company.**

11. (1) The name of a company limited by guarantee shall, whether or not it has a share capital, and notwithstanding the provisions of section 21(a) of the 1994 Law, end with the expression "Limited by Guarantee" or "LBG".

(2) Notwithstanding the provisions of subsection (1), a company limited by guarantee which does not have a share capital is exempt from the requirement to include the expression "Limited by Guarantee" or "LBG" in the company name provided that the requirements set out in subsection (3) are complied with.

(3) The requirements referred to in subsection (2) are as follows -

- (a) the objects of the company are (or, in the case of a company about to be registered, are to be) the promotion of commerce, art, science, education, religion, charity or any profession, and anything incidental or conducive to any of those objects; and
- (b) the company's memorandum or articles -
  - (i) require its profits (if any) or other income to be applied in promoting its objects;
  - (ii) prohibit the payment of dividends to its members; and
  - (iii) require all the assets which would otherwise be available to its members generally to be transferred on its winding up either to another body with objects similar to its own or to another body the objects of which are the promotion of charity and anything incidental or conducive thereto (whether or not the body is a member of the company).

(4) A declaration that a company complies with the requirements of subsection (3) shall be delivered to the Court which may accept the declaration as sufficient evidence of the matters stated in it; and the Court -

- (a) in the case of a company limited by guarantee which does not have a share capital and which is to be registered, shall refuse to register the company by a

name which does not include the expression "Limited by Guarantee" or "LBG";

- (b) in the case of a company limited by guarantee which does not have a share capital which is proposing to change its name, shall refuse to confirm a change of name to a name which does not include the expression "Limited by Guarantee" or "LBG";

unless such a declaration has been delivered to it.

(5) The declaration shall be in such form as may be required by the Court (whether by rules of court or otherwise) and shall be made-

- (a) in the case of a company which is to be registered, by an Advocate of the Royal Court engaged in its formation;
- (b) in the case of a company which is proposing to change its name to a name which does not include the expression "Limited by Guarantee" or "LBG", by an Advocate of the Royal Court.

(6) Section 28(2)(c) of the 1994 Law shall not apply to a company limited by guarantee which is exempt from the requirement to include the expression "Limited by Guarantee" or "LBG" in the company name and whose company name does not include that expression.

(7) A company limited by guarantee which is exempt from the requirement to include the expression "Limited by Guarantee" or "LBG" in the company name and whose company name does not include that expression -

(a) shall not alter its memorandum or articles so that they cease to comply with the requirements of subsection (3); and

(b) shall have in legible characters in all business letters and order forms of the company the words "a company limited by guarantee".

(8) If it appears to the Commission that such a company -

(a) has carried on any business other than the promotion of any of the objects mentioned in subsection (3);

(b) has applied any of its profits or other income otherwise than in promoting such objects; or

(c) has paid a dividend to any of its members;

the Commission may, in writing, direct the company to change its name in accordance with the provisions of section 22 of the 1994 Law within such period as may be specified in the direction, so that its name ends with the expression "Limited by Guarantee" or "LBG".

(9) A company which has received a direction under subsection (8) shall not thereafter be registered by a name which does not include the

expression "Limited by Guarantee" or "LBG" without the approval in writing of the Commission.

(10) A company which contravenes subsection (7) or a direction by the Commission under subsection (8), and any officer of the company who is in default, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(11) For the avoidance of doubt, section 21(a) of the 1994 Law shall not apply in relation to a company limited by guarantee which is exempt from the requirement to include the expression "Limited by Guarantee" or "LBG" in the company name.

### **Interpretation.**

12. In this Ordinance, unless the context requires otherwise -

- (a) "the 1994 Law" means the Companies (Guernsey) Law, 1994<sup>d</sup> as amended by the Companies (Amendment) (Guernsey) Law, 1996<sup>e</sup>; and
- (b) other expressions have the same meanings as in the 1994 Law.

### **Citation.**

13. This Ordinance may be cited as the Guarantee Companies Ordinance, 1997.

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<sup>d</sup> Order in Council No. XXXIII of 1994.

<sup>e</sup> Order in Council No. XIV of 1996.

**Commencement.**

- 14.** This Ordinance shall come into force on the 26<sup>th</sup> day of March, 1997.