

The Migration of Companies Ordinance, 1997

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The Migration of Companies Ordinance, 1997

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

PART I

REGISTRATION IN GUERNSEY OF OVERSEAS COMPANIES

Overseas companies may be registered as Guernsey companies.

1. Subject to the provisions of this Ordinance, an overseas company may, with the consent of the Commission granted under section 5 and with the consent of the Court granted under section 6, be registered as a Guernsey company.

Overseas companies cannot be registered unless authorised by foreign law.

2. An overseas company may not be registered as a Guernsey company unless-

- (a) the company is able under the law of the district, territory or place in which it is incorporated to transfer its incorporation;
- (b) the company has complied with the requirements of that law in relation to the transfer of its incorporation; and
- (c) where that law does not require the company's shareholders, or a specified proportion of them, to consent to the transfer of its incorporation, the transfer has been consented to by a

^a Order in Council No. XII of 1996.

resolution passed by a majority of not less than 75 per cent of the company's shareholders entitled to vote (or such other proportion as the Commission may in its absolute discretion specify in any particular case).

Overseas companies cannot be registered if in liquidation, etc.

3. An overseas company may not be registered as a Guernsey company if-
- (a) the company is being wound up, is in liquidation or 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 approved by the Commission), and the compromise or arrangement is in force;
 - (d) an application has been made to a court, whether in Guernsey or elsewhere-
 - (i) to put the company into liquidation, to wind it up or to have it declared insolvent;
 - (ii) for the approval of a compromise or arrangement between the company and a creditor (other than a compromise or arrangement approved by the Commission); or

(iii) for the appointment of a receiver or administrator in relation to any property of the company;

and (in each case) the application has not been disposed of;
or

(e) the company is empowered by its memorandum or articles or other equivalent constitutive documents to issue bearer shares.

Overseas companies cannot be registered unless they satisfy solvency test.

4. An overseas company may not be registered as a Guernsey company unless the company would, immediately after registration, satisfy the solvency test.

Applications to Commission for consent to register.

5. (1) An application for the consent of the Commission for the registration of an overseas company as a Guernsey company shall be made to the Commission in such form and manner as the Commission may require and shall be accompanied by-

(a) a copy of the company's certificate of incorporation or other similar document providing evidence of its incorporation;

(b) a copy of the memorandum and articles which are to be binding on the company immediately after its registration as a Guernsey company, printed in the English language and complying with the requirements of the 1994 Law as to memoranda and articles, together with, if different, a copy of the company's current memorandum and articles;

- (c) evidence acceptable to the Commission that the company is not prohibited from being registered as a Guernsey company by section 2, 3 or 4;
- (d) the names and addresses of-
 - (i) the company's directors; and
 - (ii) the persons who are to be the company's directors immediately after the company's registration as a Guernsey company;
- (e) a document signed by each person referred to in paragraph (d)(ii) containing a statement of his consent to be a director of the company;
- (f) such other information and documents, verified in such manner, as the Commission may require (whether in relation to any particular application or otherwise); and
- (g) such fee as may be prescribed by regulations of the Committee made after consultation with the Commission.

(2) The Commission's consent for the registration of an overseas company as a Guernsey company-

- (a) may be granted subject to such conditions as the Commission thinks fit (including conditions which will continue to have effect after registration); and

- (b) may be revoked at any time prior to registration or made subject to such further or amended conditions as the Commission thinks fit.

Applications to Court for consent to register.

6. An application for the consent of the Court for the registration of an overseas company as a Guernsey company shall be accompanied by-

- (a) a copy of the company's certificate of incorporation or other similar document providing evidence of its incorporation;
- (b) a copy of the memorandum and articles which are to be binding on the company immediately after its registration as a Guernsey company, printed in the English language and complying with the requirements of the 1994 Law as to memoranda and articles;
- (c) a copy of the written consent of the Commission granted under section 5 for the registration of the company as a Guernsey company;
- (d) a statement by the company of the following matters-
 - (i) the address of the company's registered office and the intended address of the company's registered office in Guernsey;
 - (ii) the names and addresses of the company's directors and of the persons who are to be the company's

directors immediately after the company's registration as a Guernsey company;

- (iii) except in the case of redeemable preference shares, the names and addresses of the company's members;
- (iv) the number of shares issued to each member, the amount paid up thereon and, subject to section 43(3) of the 1994 Law, the distinguishing numbers of those shares;
- (v) the company's share capital and the number of shares that it is divided into, distinguishing between those which have been issued for cash and those which have been allotted in whole or in part for a consideration other than cash;
- (vi) the number of shares issued since the formation of the company;
- (vii) the number of calls made by the company on its members, the amount per share of each call, the total amount of capital called up for payment by means of such calls, the amount received by the company for those calls and the amount still payable to the company on further calls;

- (e) a statement by the company that all information and documents accompanying the application to the Court are current as at the date of the application; and
- (f) such other information and documents, verified in such manner, as the Court may require (whether in relation to any particular application or otherwise).

Registration.

7. (1) Where the Court grants an application by an overseas company for consent to register as a Guernsey company, the company shall give notice of the fact to the Greffier.

(2) The Greffier shall, upon receipt of such notice or as soon as reasonably practicable thereafter-

- (a) register the company's memorandum and articles in the Register of Companies;
- (b) issue a certificate of registration in respect of the company; and
- (c) allocate a registration number to the company.

(3) A certificate of registration of a company issued under subsection (2) is, subject to the provisions of subsections (6), (7) and (8) below, conclusive evidence that, on and from the date of registration stated in the certificate, the company is duly registered as a Guernsey company.

(4) Notice given by a company to the Greffier under subsection (1) shall be in such form and manner as the Greffier may require and shall be accompanied by-

- (a) such information and documents, verified in such manner, as the Greffier may require;
- (b) evidence satisfactory to the Greffier that, on the date of registration of the company's memorandum and articles in the Register of Companies, the company will cease to be incorporated under the law of any district, territory or place outside Guernsey;
- (c) evidence satisfactory to the Greffier that all consents to the registration of the company's memorandum and articles in the Register of Companies are current as at the date of the notice;
- (d) such fee as may be prescribed by regulations of the Committee; and
- (e) the amount of document duty which, under the provisions of the Document Duty (Guernsey) Law, 1973^b, would have been payable had the company's memorandum been registered pursuant to Part I of the 1994 Law; and the provisions of the Document Duty (Guernsey) Law, 1973 shall apply accordingly.

^b Ordres en Conseil Vol. XXIV, pp. 74 and 236; and Ordinances XL of 1992 and XXV of 1995.

(5) When an overseas company is registered as a Guernsey company under this section the company shall, as soon as possible, file with the Greffier any certificate or other document issued under the law of the district, territory or place in which the company has ceased to be incorporated evidencing the fact that the company has ceased to be incorporated under the law thereof.

(6) If the Court is satisfied that-

- (a) an overseas company has been registered as a Guernsey company pursuant to the provisions of this Ordinance; and
- (b) the company continues to be incorporated under the law of any district, territory or place outside Guernsey;

the Court may, in its absolute discretion, on the application of the company or any of its members, directors or creditors or the Commission, make such order as it thinks fit for the removal of the company's name from the Register of Companies.

(7) An order under subsection (6) may be made subject to such terms and conditions and subject to such penalty as the Court thinks fit.

(8) On the making of an order under subsection (6) the company's registration as a Guernsey company shall (unless the Court orders otherwise) be void ab initio.

(9) The Committee may make such regulations as it thinks fit in relation to the formalities required for the registration, under this section, of overseas companies as Guernsey companies; and regulations under this section-

- (a) may be amended or repealed by subsequent regulations hereunder;
- (b) may contain such consequential, incidental, supplemental and transitional provisions as the Committee thinks fit, including the making of consequential amendments to this section; and
- (c) shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

Effect of registration.

8. (1) The registration of an overseas company as a Guernsey company shall not-

- (a) create a new legal person;
- (b) prejudice or affect the identity of the body corporate constituted by the overseas company or its continuity as a legal person;
- (c) prejudice the rights of any person or affect the property, rights, liabilities or obligations of that body corporate; or

- (d) render defective any legal proceedings by or against that body corporate.

(2) Legal proceedings which could have been instituted or continued by or against an overseas company before registration as a Guernsey company may be instituted or continued by or against the company after registration.

PART II

TRANSFER OF REGISTRATION OF GUERNSEY COMPANIES

Guernsey companies may transfer registration.

9. Subject to the provisions of this Ordinance, a Guernsey company may, with the consent of the Commission granted under section 14, be removed from the Register of Companies for the purpose of becoming incorporated under the law of another district, territory or place.

Special resolution of shareholders required.

10. A Guernsey company may not be removed from the Register of Companies for the purpose of becoming incorporated under the law of another district, territory or place unless the company has passed a special resolution that it be so removed.

Company to give public notice.

11. A Guernsey company may not be removed from the Register of Companies for the purpose of becoming incorporated under the law of another district, territory or place unless, not less than 28 days before the company applies to the Commission under section 14 for consent for the removal, the company-

- (a) gives written notice to all its creditors; and

- (b) gives notice in La Gazette Officielle;

stating that it intends to apply to the Commission under section 14 of this Ordinance for consent for the company to be removed from the Register of Companies for the purpose of becoming incorporated under the law of the district, territory or place specified in the notice.

Guernsey companies cannot transfer registration if in liquidation, etc.

12. A Guernsey company may not be removed from the Register of Companies for the purpose of becoming incorporated under the law of another district, territory or place if-

- (a) the company has been declared by the Court to be insolvent or a Commissioner or Committee of Creditors has been appointed by the Court to supervise or secure the company's estate;
- (b) the company's affairs have been declared in a state of "désastre" by its arresting creditors at a meeting held before a Commissioner;
- (c) a preliminary vesting order has been made against the company in respect of any of its real property in the Bailiwick;
- (d) a liquidator of the company (provisional or otherwise) has been appointed to act;

- (e) the company has passed a special resolution requiring that it be voluntarily wound up, otherwise than for the sole purpose of solvent amalgamation or solvent reconstruction;
- (f) possession or control has been taken of any of the company's property or affairs by or on behalf of creditors;
- (g) an application has been made to the Court under section 96 of the 1994 Law for the company's compulsory winding up; or
- (h) in the case of a protected cell company-
 - (i) a receivership order within the meaning of the Protected Cell Companies Ordinance, 1997^c is in force or has been applied for in respect of any of the company's cells; or
 - (ii) an administration order within the meaning of that Ordinance is in force or has been applied for in respect of the company or any of its cells.

Guernsey companies cannot transfer registration unless they satisfy solvency test.

13. A Guernsey company may not be removed from the Register of Companies for the purpose of becoming incorporated under the law of another district, territory or place unless the company would, immediately before removal, satisfy the solvency test.

^c Ordinance No. V of 1997.

Applications to Commission for consent to transfer registration.

14. (1) An application for the Commission's consent for the removal of a Guernsey company from the Register of Companies for the purpose of becoming incorporated under the law of another district, territory or place shall be made to the Commission in such form and manner as the Commission may require and shall be accompanied by-

- (a) evidence acceptable to the Commission that the removal of the company from the Register of Companies is not prohibited by section 10, 11, 12 or 13;
- (b) confirmation (in writing, unless the Commission directs otherwise in any particular case) from Her Majesty's Procureur and the Administrator of Income Tax that they have no objection to the removal of the company from the Register of Companies;
- (c) evidence acceptable to the Commission that the company is able to become incorporated under the law of the district, territory or place in question;
- (d) such other information and documents, verified in such manner, as the Commission may require (whether in relation to any particular application or otherwise); and
- (e) such fee as may be prescribed by regulations of the Committee made after consultation with the Commission.

(2) The Commission's consent for the removal of a Guernsey company from the Register of Companies for the purposes of becoming incorporated in another district, territory or place-

- (a) may be granted subject to such conditions as the Commission thinks fit (including conditions which will continue to have effect after removal from the Register); and
- (b) may be revoked at any time prior to removal from the Register or made subject to such further or amended conditions as the Commission thinks fit.

Removal from register.

15. (1) Where the Commission consents to an application under section 14 for the removal of a Guernsey company from the Register of Companies, the company shall give notice of the fact to the Greffier.

(2) The Greffier shall, upon receipt of notice under subsection (1) or as soon as reasonably practicable thereafter-

- (a) remove the company's name from the Register of Companies; and
- (b) enter a notice in-
 - (i) La Gazette Officielle; and
 - (ii) the Register of Companies;

stating that the company's name has, pursuant to the provisions of this section, been so removed for the purpose of the company becoming incorporated under the law of the district, territory or place specified in the notice.

(3) Upon completion of the formalities specified in subsection (2) the company shall, subject to the provisions of subsections (6), (7) and (8) below, cease to be a Guernsey company.

(4) Notice given by a company to the Greffier under subsection (1) shall be in such form and manner as the Greffier may require and shall be accompanied by-

- (a) such information and documents, verified in such manner, as the Greffier may require;
- (b) evidence satisfactory to the Greffier that on the date of the removal of the company's name from the Register of Companies the company will be incorporated under the law of the district, territory or place in question;
- (c) evidence satisfactory to the Greffier that all consents to the removal of the company's name from the Register of Companies are current as at the date of the notice; and
- (d) such fee as may be prescribed by regulations of the Committee.

(5) When a company's name is removed from the Register of Companies under this section the company shall, as soon as possible, file with the

Greffier the certificate or other document issued under the law of the district, territory or place in which the company has become incorporated evidencing the fact that the company has become incorporated under the law thereof.

(6) If the Court is satisfied that-

- (a) a company's name has been removed from the Register of Companies pursuant to the provisions of this Ordinance; and
- (b) the company has not become incorporated under the law of any district, territory or place outside Guernsey;

the Court may, in its absolute discretion, on the application of the company or any of its members, directors or creditors or the Commission, make such order as it thinks fit for the restoration of the company's name to the Register of Companies.

(7) An order under subsection (6) may be made subject to such terms and conditions and subject to such penalty as the Court thinks fit.

(8) On the making of an order under subsection (6) the removal of the company's name from the Register of Companies shall (unless the Court orders otherwise) be void ab initio.

(9) The Committee may make such regulations as it thinks fit in relation to the formalities required for the removal, under this section, of the names of companies from the Register of Companies; and regulations under this section-

- (a) may be amended or repealed by subsequent regulations hereunder;

- (b) may contain such consequential, incidental, supplemental and transitional provisions as the Committee thinks fit, including the making of consequential amendments to this section; and
- (c) shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

Effect of removal from register.

16. (1) The removal of a Guernsey company from the Register of Companies under section 15 shall not-

- (a) prejudice or affect the identity of the body corporate constituted by the Guernsey company or its continuity as a legal person;
- (b) prejudice the rights of any person or affect the property, rights, liabilities or obligations of that body corporate; or
- (c) render defective any legal proceedings by or against that body corporate.

(2) Legal proceedings which could have been instituted or continued by or against a Guernsey company before removal from the Register of Companies under section 15 may be instituted or continued by or against the body corporate which continues in existence after removal.

Powers of Court to make orders as to transfer of registration.

17. (1) If the Court is satisfied that the removal of a Guernsey company from the Register of Companies under section 15 would unfairly prejudice a member or creditor of the company or any other person to whom the company is under any obligation or liability, the Court may, on the application of that person made at any time before the date on which the removal of the company takes place, or within such further time as the Court may in any particular case allow, make such order as it thinks fit in relation to the removal, including, without limiting the generality of this subsection, an order-

- (a) directing that the removal of the company shall not take place, or shall only take place subject to such terms and conditions as the Court thinks fit;
- (b) modifying the proposal for the removal of the company in such manner as may be specified in the order;
- (c) directing the company or its directors to reconsider the proposal for the removal of the company or any part of the proposal.

(2) An order under subsection (1) may be made on such terms and conditions and subject to such penalty as the Court thinks fit.

PART III
GENERAL PROVISIONS

Exclusion of liability.

18. No liability shall be incurred by the Commission or any member, officer or servant thereof or by the Greffier or any member of his staff in respect of

anything done or omitted to be done in the discharge or purported discharge of any of their functions under this Ordinance unless the thing is done or omitted to be done in bad faith.

Offences in relation to false statements.

19. A person who, in or in connection with any document, report or record required by or for the purposes of 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) 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 deemed to be guilty of an offence under section 112 of the 1994 Law ("false statements") and punishable accordingly.

Service of documents.

20. Any document other than a summons to be given or served under or for the purposes of this Ordinance may be given or served in accordance with the provisions of section 116 of the 1994 Law ("service of documents").

Interpretation.

21. (1) In this Ordinance, unless the context requires otherwise-

"**company**" means a body of persons incorporated under the law of any district, territory or place;

"**Guernsey company**" means a company the memorandum and articles of which are registered in the Register of Companies;

"**overseas company**" means a company which is not a Guernsey company;

"**solvency test**" has the meaning given by section 22;

"**the 1994 Law**" means the Companies (Guernsey) Law, 1994^d as amended by the Companies (Amendment) (Guernsey) Law, 1996^e;

and other expressions have the same meanings as in the 1994 Law.

^d Order in Council No. XXXIII of 1994.

^e Order in Council No. XIV of 1996.

(2) Any reference in this Ordinance, however expressed, to the district, territory or place of a company's incorporation is, unless the context requires otherwise, a reference to the district, territory or place where the company is for the time being incorporated (whether or not the company was originally incorporated there).

Meaning of "solvency test".

22. (1) For the purposes of this Ordinance a company satisfies the solvency test if-

- (a) the company is able to pay its debts as they become due in the normal course of its business;
- (b) the value of the company's assets is greater than the value of its liabilities; and
- (c) in the case of a supervised company, the company satisfies any other requirements as to solvency imposed in relation to it by or under the Protection of Investors (Bailiwick of Guernsey) Law, 1987^f, the Insurance Business (Guernsey) Law, 1986^g, the Banking Supervision (Bailiwick of Guernsey) Law, 1994^h and any other enactment prescribed for the purposes of this section by regulations of the Commission.

^f Ordres en Conseil Vol. XXX, p. 281.

^g Ordres en Conseil Vol. XXIX, p. 214.

^h Order in Council No. XIII of 1994.

(2) In determining for the purposes of this Ordinance whether the value of a company's assets is greater than the value of its liabilities, regard shall be had to-

(a) in the case of a Guernsey company, the most recent auditors' report (except in the case of an unaudited company), balance sheet, profit and loss account and accounting records of the company;

(b) in the case of an overseas company, all documents equivalent to those described in paragraph (a), in each case complying with the requirements of the law of the district, territory or place of the company's incorporation; and

(c) in the case of a Guernsey company or an overseas company-

(i) all other circumstances which are known or ought to be known as affecting or being liable to affect the value of the company's assets and liabilities; and

(ii) valuations of assets and estimates of liabilities which are reasonable in all the circumstances.

(3) For the purposes of this Ordinance a "**supervised company**" is-

(a) a company which carries on controlled investment business within the meaning of the Protection of Investors (Bailiwick

of Guernsey) Law, 1987ⁱ or which holds a licence under section 3 of that Law or an authorisation under section 8 of that Law;

- (b) a company which is registered as an insurer by the Commission under the Insurance Business (Guernsey) Law, 1986^j or which is exempt from such registration by virtue of section 8 of that Law;
- (c) a company which is a licensed institution or former licensed institution within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994^k; or
- (d) a company which is of any other class or description prescribed for the purposes of this section by regulations of the Commission.

Citation.

23. This Ordinance may be cited as the Migration of Companies Ordinance, 1997.

Commencement.

24. This Ordinance shall come into force on the 1st day of August, 1997.

ⁱ Ordres en Conseil Vol. XXX, p. 281.

^j Ordres en Conseil Vol. XXIX, p. 214.

^k Order in Council No. XIII of 1994.