

Island of



Guernsey

## Ordinance of the States

**XVIII**  
**2006**

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**Made** .....26th April, 2006

**Coming into Operation** .....1st May, 2006

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## **The Incorporated Cell Companies Ordinance, 2006**

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# **The Incorporated Cell Companies Ordinance, 2006**

**THE STATES**, in pursuance of their Resolution of the 26<sup>th</sup> day of April, 2006, and in exercise of the powers conferred on them by section 1 of the Companies (Enabling Provisions) (Guernsey) Law, 1996<sup>a</sup>, sections 1 and 6 of the Document Duty (Guernsey) Law, 1973<sup>b</sup>, and all other powers enabling them in that behalf, hereby order:-

## *Formation and nature of incorporated cell company*

### **Incorporation of incorporated cell company.**

1. (1) It shall be lawful, subject to the provisions of this Ordinance, to incorporate a company which shall be an incorporated cell company.

(2) The provisions of section 9 of the Protected Cell Companies Ordinance 1997<sup>c</sup> ("**the 1997 Ordinance**") (incorporation of company as protected cell company) shall apply to incorporated cell companies as they apply to protected cell companies.

(3) The memorandum of an incorporated cell company shall state that it is an incorporated cell company.

### **Consent of Commission required for incorporated cell company.**

2. (1) The provisions of section 7 (consent of Commission required

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

<sup>b</sup> Ordres en Conseil Vol. XXIV, pp 74 and 236; Vol. XXV, p. 43; Order in Council No. XXVI of 2002; Recueil d'Ordonnances Tome XXVI, pp. 139 and 465; Ordinance No. IX of 1997; No. XXII of 2000; No. XXXVI of 2001.

<sup>c</sup> No. V of 1997.

for protected cell company) and section 8 (application for consent of Commission) of the 1997 Ordinance shall apply to the incorporation of incorporated cell companies as they apply to the incorporation of protected cell companies.

(2) The Commission shall have the same power to prescribe fees in respect of applications for consent for the incorporation of incorporated cell companies as it does for applications for consent for the incorporation of protected cell companies.

**Name of incorporated cell company.**

3. The name of an incorporated cell company shall, without prejudice to the provisions of section 21 of the Companies (Guernsey) Law, 1994<sup>d</sup> ("**the 1994 Law**"), include the expression "Incorporated Cell Company", "ICC" or any cognate expression approved in writing by the Commission.

**Status of incorporated cell company.**

4. An incorporated cell company is a company and accordingly the Companies Laws shall, subject to the provisions of this Ordinance, and unless the context requires otherwise, apply in relation to it.

*Formation and nature of incorporated cell*

**Incorporation of incorporated cell.**

5. (1) An incorporated cell company may, by special resolution which complies with the requirements of this section ("**the cell resolution**"), incorporate one or more incorporated cells.

(2) The cell resolution shall -

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<sup>d</sup> No. XXXIII of 1994.

- (a) assign a name to the incorporated cell, and
- (b) specify the terms of its memorandum and articles, setting out, amongst other things, the matters mentioned in sections 2 and 4 of the 1994 Law,

(3) When the cell resolution has been passed, the directors of the incorporated cell company may make an application to the Court for the registration of the incorporated cell's memorandum and articles, under the authority of an Act of Court, in the Register of Companies.

(4) An application under subsection (3) shall be deemed to be an application under section 3 of the 1994 Law, that has complied with subsection (2) of that section and accordingly -

- (a) the incorporated cell may be registered as a company in accordance with Part I of the 1994 Law, and
- (b) section 120 of the 1994 Law shall apply to the application (Greffier may rely upon Act of Court when registering company).

**Consent of Procureur not required for registration of an incorporated cell.**

6. The prior consent of Her Majesty's Procureur shall not be required for the registration of an incorporated cell.

**Constitution of incorporated cell.**

7. (1) The cell resolution may provide that the incorporated cell shall be wound up and dissolved upon -

- (a) the bankruptcy, death, dissolution, expulsion, insolvency, legal incapacity, resignation or retirement of any member of the incorporated cell,
  - (b) the expiration of a fixed period of time, or
  - (c) the happening of some other event.
- (2) The cell resolution may provide that -
- (a) in respect of the incorporated cell it creates, there may be issued shares with a par value or shares of no par value within the meaning of the Companies (Shares of No Par Value) Ordinance, 2002<sup>e</sup>,
  - (b) the incorporated cell may be a company limited by guarantee within the meaning of the Guarantee Companies Ordinance, 1997<sup>f</sup>,
  - (c) the incorporated cell may purchase its own shares in accordance with the provisions of the Companies (Purchase of Own Shares) Ordinance, 1998<sup>g</sup>,
  - (d) the incorporated cell may give financial assistance for the acquisition of its shares in accordance with the

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<sup>e</sup> No. VI of 2002.

<sup>f</sup> No. X of 1997.

<sup>g</sup> No. VIII of 1998.

provisions of the Companies (Financial Assistance for Acquisition of Own Shares) Ordinance, 1998<sup>h</sup>, and

- (e) the incorporated cell may hold its shares as treasury shares in accordance with the provisions of the Companies (Purchase of Own Shares) (Treasury Shares) Ordinance, 2006.

(3) There shall be taken to be included in the memorandum or articles of an incorporated cell -

- (a) a provision that the incorporated cell may not own shares in its incorporated cell company, and
- (b) unless the contrary intention appears in the memorandum or articles, a provision that the incorporated cell may own shares in any other incorporated cell of its incorporated cell company.

**Name of incorporated cell.**

8. The name of an incorporated cell shall, without prejudice to the provisions of section 21 of the 1994 Law, include the expression "Incorporated Cell", "IC" or any cognate expression approved in writing by the Commission.

**Status of incorporated cell.**

9. (1) An incorporated cell is a company.

(2) Notwithstanding the provisions of any other enactment, an

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<sup>h</sup> No. V of 1998.

incorporated cell is not a subsidiary of its incorporated cell company solely by virtue of the fact of it being an incorporated cell of its incorporated cell company.

(3) An incorporated cell may not itself be an incorporated cell company or a protected cell company.

(4) An incorporated cell shall have the same -

(a) registered office, and

(b) (subject to the provisions of this Ordinance) directors,

as its incorporated cell company.

*Separate nature of incorporated cell company and its incorporated cells*

**Separation of assets and liabilities.**

**10.** (1) It shall be the duty of the directors of an incorporated cell company and its incorporated cells -

(a) to keep the assets and liabilities of the incorporated cell company separate and separately identifiable from the assets and liabilities of its incorporated cells,

(b) to keep the assets and liabilities of each incorporated cell separate and separately identifiable from the assets and liabilities of the other incorporated cells of the incorporated cell company.

(2) The duty imposed by subsection (1) is not breached by reason

only that the directors cause or permit assets of the incorporated cell company or any of its incorporated cells to be collectively invested, or collectively managed by an investment manager, provided that the assets in question remain separately identifiable in accordance with subsection (1).

**Transactions.**

11. (1) An incorporated cell company shall have no power, by virtue of its position as an incorporated cell company, to enter into transactions on behalf of any of its incorporated cells.

(2) An incorporated cell shall have no power, by virtue of its position as an incorporated cell, to enter into transactions on behalf of its incorporated cell company.

(3) The directors and officers of an incorporated cell company or its incorporated cells must ensure that, in respect of every transaction that the incorporated cell company or incorporated cell enters into, it is stated whether the transaction is being entered into by the incorporated cell company or by an incorporated cell and, if it is by an incorporated cell, which incorporated cell.

*Application of Companies Laws to incorporated cells*

**General application of Companies Laws to incorporated cells.**

12. Save as otherwise provided by this Ordinance or any other enactment, the provisions of the Companies Laws shall apply to an incorporated cell as if a reference in the Companies Laws -

(a) to a company were a reference to an incorporated cell,

(b) to the directors of a company were a reference to the

directors of the incorporated cell,

- (c) to the memorandum or articles of a company were a reference to the memorandum or articles of the incorporated cell,
- (d) to the members of a company were a reference to the members of the incorporated cell,
- (e) to shares in a company were a reference to shares in the incorporated cell,
- (f) to assets and liabilities of a company were a reference to the assets and liabilities of the incorporated cell, and
- (g) to the share capital of a company were a reference to the share capital of the incorporated cell.

**Annual return in respect of incorporated cells.**

13. (1) Section 28 of the 1994 Law (annual return) shall not apply to an incorporated cell.

(2) However, an incorporated cell company must -

- (a) include in its annual return the information required by that section in respect of each of its incorporated cells, and
- (b) in addition, in respect of each of its incorporated cells, deliver to the Greffier a copy of so much of its annual

return as relates to the incorporated cell.

(3) An incorporated cell company that fails to comply with subsection (2) -

(a) is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the uniform scale, and

(b) is liable, together with its incorporated cells, to be struck off the Register of Companies in accordance with section 28(4)(b) of the 1994 Law, and subsection (4)(c) of that section shall apply accordingly.

**Minute books of incorporated cells.**

14. (1) The duties imposed on a company by section 53 of the 1994 Law (minute books) shall, in the case of an incorporated cell, be performed by its incorporated cell company.

(2) An incorporated cell company that fails to comply with subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the uniform scale.

**Register of directors and secretaries of incorporated cells.**

15. (1) The duties imposed on a company by section 54 of the 1994 Law (register of directors and secretaries) shall, in the case of an incorporated cell, be performed by its incorporated cell company.

(2) Accordingly, an incorporated cell company must, in addition to keeping a register of its directors and secretaries, keep separate registers of the

directors and secretaries of each of its incorporated cells, which it must keep in accordance with that section.

(3) An incorporated cell company that fails to comply with this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the uniform scale.

#### **Register of members of incorporated cells.**

16. (1) The duties imposed on a company by section 55 of the 1994 Law (register of members) shall, in the case of an incorporated cell, be performed by its incorporated cell company.

(2) Accordingly, an incorporated cell company must, in addition to keeping a register of its members, keep separate registers of the members of each of its incorporated cells, which it must keep in accordance with that section.

(3) An incorporated cell company that fails to comply with this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the uniform scale.

#### **Index of members of incorporated cells.**

17. (1) The duties imposed on a company by section 57 of the 1994 Law (index of members) shall, in the case of an incorporated cell, be performed by its incorporated cell company.

(2) An incorporated cell company that fails to comply with subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the uniform scale.

#### **Inspection of minute books, registers and index of incorporated cells.**

18. (1) The duties imposed on a company by section 58 of the 1994 Law (inspection of minute books, registers and index) shall, in the case of an incorporated cell, be performed by its incorporated cell company.

(2) An incorporated cell company that fails to comply with subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the uniform scale.

**Accounting records of incorporated cells.**

19. (1) Section 59 of the 1994 Law (accounting records) shall not apply to an incorporated cell.

(2) However, an incorporated cell company shall keep accounting records, in respect of each of its incorporated cells, that comply with the requirements of that section.

(3) The accounting records kept by an incorporated cell company in respect of itself under that section may include matters included by it in any accounting records kept by the company in respect of its incorporated cells under subsection (2).

(4) An incorporated cell company that fails to comply with this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

**Accounts of incorporated cells.**

20. (1) The requirements of Part IX of the 1994 Law (company records and accounts) shall not apply to an incorporated cell in respect of the preparation of a profit and loss account and balance sheet (in this section "**the annual accounts**").

(2) However, an incorporated cell company shall prepare separate annual accounts, in respect of each of its incorporated cells, that comply with the requirements of that Part, and those accounts shall be treated as the annual accounts of the incorporated cell for the purposes of the Companies Laws.

(3) The requirement in subsection (2) shall be satisfied if an incorporated cell, with the agreement of the directors of its incorporated cell company elects -

- (a) in its memorandum or articles, or
- (b) by way of a special resolution,

that the preparation of its annual accounts may be combined with the preparation of the annual accounts of -

- (i) its incorporated cell company, or
- (ii) another incorporated cell of its incorporated cell company which also so elects,

and that preparation is so combined.

(4) Where no election has been made under subsection (3), the annual accounts of an incorporated cell company prepared by it under that Part need not include matters already included by it in the annual accounts of an incorporated cell prepared by it in accordance with subsection (2).

(5) Subject to any provision in the memorandum or articles of an

incorporated cell or its incorporated cell company to the contrary -

- (a) a member of the incorporated cell company who is not a member of the incorporated cell shall only be entitled to be provided with so much of the annual accounts of the incorporated cell company as is prepared under that Part,
- (b) a member of an incorporated cell shall only be entitled to be provided with so much of the annual accounts as is mentioned in subsection (2) as relate to the incorporated cell of which he is a member.

(6) An incorporated cell company that fails to comply with this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

**Annual general meetings of incorporated cells.**

21. An incorporated cell is not required to hold annual general meetings under section 68(1) of the 1994 Law unless it is so required by -

- (a) its memorandum or articles,
- (b) a special resolution, or
- (c) the Court, under section 68(6) of the 1994 Law.

**Directors' report where no annual general meeting held.**

22. (1) If, in accordance with section 21, an incorporated cell does not hold an annual general meeting, its directors shall -

- (a) firstly, within a period of 18 months beginning on the date on which the incorporated cell is entitled to commence business, and
- (b) thereafter, at least once in every calendar year,

send every member of the incorporated cell a copy of the directors' report referred to in section 68(4) of the 1994 Law.

(2) No more than 15 months may elapse between the sending of successive directors' reports.

(3) If default is made in sending a directors' report in accordance with any provision of subsection (1) or (2), the incorporated cell is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the uniform scale.

**Auditors where no annual general meeting held.**

**23.** If, in accordance with section 21, and subject to section 24, an incorporated cell does not hold an annual general meeting -

- (a) the duty of the members at each annual general meeting to appoint auditors under section 62(1) of the 1994 Law shall be carried out by the directors of the incorporated cell -
  - (i) firstly, within a period of 18 months beginning on the date on which the incorporated cell is entitled to commence business, and

- (ii) thereafter, at least once in every calendar year,  
  
and no more than 15 months may elapse between successive appointments of auditors,
- (b) the directors of the incorporated cell shall fix the remuneration of those auditors,
- (c) the auditors' report referred to in section 64(1) of the 1994 Law shall be made by reference to the profit and loss account and balance sheet contained in the directors' report,
- (d) subject to section 25, the auditors' report shall not be laid before the company in general meeting in accordance with section 64(1) of the 1994 Law but the directors shall include a copy of it in each directors' report sent out to members in accordance with section 22.

**Incorporated cell company responsibility for audit of its incorporated cells.**

**24.** (1) The requirements of Part X of the 1994 Law (audit), in respect of the appointment and remuneration of auditors, shall apply to an incorporated cell of an incorporated cell company unless, with the agreement of the directors of the incorporated cell company, that incorporated cell has elected -

- (a) in its memorandum or articles, or
- (b) by way of a special resolution,

that those requirements shall not apply.

(2) Where an incorporated cell has made an election under subsection (1), those requirements shall apply to the directors of the incorporated cell company in respect of that incorporated cell.

**Combining audit of incorporated cells with their incorporated cell company.**

**25.** (1) The requirement in Part X of the 1994 Law to have an audit shall be satisfied if an incorporated cell, with the agreement of the directors of its incorporated cell company, elects -

- (a) in its memorandum or articles, or
- (b) by way of a special resolution,

that its audit may be combined with the audit of -

- (i) its incorporated cell company, or
- (ii) another incorporated cell of its incorporated cell company which also so elects,

and those audits are so combined.

(2) Subject to any provision in the memorandum or articles of an incorporated cell or its incorporated cell company to the contrary -

- (a) a member of the incorporated cell company who is not a member of the incorporated cell shall only be

entitled to be provided with so much of the auditors' report of the incorporated cell company as relates to that company,

- (b) a member of an incorporated cell shall only be entitled to be provided with so much of the auditors' report of the incorporated cell company as relates to that incorporated cell of which he is a member.

**Relief for members of incorporated cell unfairly prejudiced by incorporated cell company.**

26. A member of an incorporated cell may apply to the Court under section 75 of the 1994 Law (relief for members unfairly prejudiced) in respect of an incorporated cell company an incorporated cell of which he is a member, and section 75 shall apply to such an application as if the applicant were a member of that incorporated cell company.

**Striking off incorporated cells when their incorporated cell company is struck off.**

27. (1) Where subsection (1) of section 76 of the 1994 Law (striking a company off the Register) applies to an incorporated cell company, the other provisions of that section shall also apply to its incorporated cells, and accordingly its incorporated cells shall be struck off the Register if their incorporated cell company is struck off the Register.

(2) An incorporated cell may only be restored to the Register under section 77 of the 1994 Law if its incorporated cell company has been so restored, and an application for restoration of an incorporated cell company under that section may also include an application for restoration of one or more of its incorporated cells.

## *Winding up*

### **Winding up of incorporated cell company not to prejudice its incorporated cells.**

28. The winding up of an incorporated cell company shall be carried out in such a way as not to prejudice the affairs, business and property of any of its incorporated cells, and accordingly, during the winding up, the incorporated cell company shall continue to carry on business to the extent necessary for the continuance of business of its incorporated cells.

### **Directors of incorporated cell during winding up of its incorporated cell company.**

29. (1) The appointment of a liquidator in respect of an incorporated cell company shall not affect the position of the directors of its incorporated cells, subject to any direction to the contrary given by -

- (a) the liquidator,
- (b) the incorporated cell in general meeting, or
- (c) the Court,

in the course of a winding up.

(2) The Commission may make an application to the Court for the Court to give a direction under subsection (1).

### **No dissolution of incorporated cell company until position of its incorporated cells resolved.**

30. An incorporated cell company that is being wound up shall not be dissolved until each of its incorporated cells is either -

- (a) converted into companies independent of their incorporated cell company under section 50,
- (b) transferred to another incorporated cell company under section 53,
- (c) expelled from its incorporated cell company under section 55,
- (d) continued as a body corporate under the law of another jurisdiction, or
- (e) wound up,

and the Court may stay such dissolution on such terms as it thinks fit.

**Commission may be heard on winding up application.**

31. In section 96A(3) of the 1994 Law (Commission may be heard on winding up application) after paragraph (c) insert the following paragraph -

- "(ca) a company which is an incorporated cell company or an incorporated cell within the meaning of the Incorporated Cell Companies Ordinance, 2006;"

*Administration*

**Administration orders.**

32. (1) Subject to the provisions of this section, if the Court -

(a) is satisfied that -

(i) an incorporated cell company, or

(ii) an incorporated cell,

(in this section, the "**company**") is or is likely to become unable to pay its debts, and

(b) considers that the making of an order under this section may achieve one or more of the purposes set out in subsection (3),

the Court may make an order under this section (an "**administration order**") in relation to that company.

(2) An administration order is an order directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed by a person (the "**administrator**") appointed for the purpose by the Court.

(3) The purposes for the achievement of which an administration order may be made are -

(a) the survival of the company, and the whole or any part of its undertaking, as a going concern,

- (b) a more advantageous realisation of the company's assets than would be effected on a winding up,

and the order shall specify the purpose or purposes for which it is made.

- (4) An administration order may be made notwithstanding that -
  - (a) an order for the company's winding up has been made by the Court, or
  - (b) the company has passed a resolution for voluntary winding up,

and, if an administration order is so made, then -

- (i) the order for the company's winding up shall be discharged or suspended, or (as the case may be),
- (ii) the resolution for voluntary winding up shall cease to have effect or shall be suspended,

on such terms and conditions as the Court thinks fit.

**Administration of incorporated cell company not to prejudice its incorporated cells.**

33. The administration of an incorporated cell company shall be carried on in such a way as to not prejudice the affairs, business and property of any of its incorporated cells, and accordingly, during the administration, the incorporated cell company shall continue to carry on business to the extent necessary for the continuance of business of its incorporated cells.

**Application for administration order.**

34. (1) An application for an administration order in respect of an incorporated cell company may be made by -

- (a) the incorporated cell company,
- (b) an incorporated cell of the incorporated cell company,
- (c) the directors of the incorporated cell company,
- (d) any shareholder of the incorporated cell company,
- (e) any creditor of the incorporated cell company, including any contingent or prospective creditor,
- (f) the Commission,
- (g) in the case of an incorporated cell company in respect of which the Court has made an order for winding up or which has passed a resolution for voluntary winding up, the liquidator,

or by all or any of those parties, together or separately.

(2) An application for an administration order in respect of an incorporated cell may be made by -

- (a) the incorporated cell,

- (b) its incorporated cell company,
- (c) the directors of the incorporated cell,
- (d) any shareholder of the incorporated cell,
- (e) any creditor of the incorporated cell, including any contingent or prospective creditor,
- (f) the Commission,
- (g) in the case of an incorporated cell in respect of which the Court has made an order for winding up or which has passed a resolution for voluntary winding up, the liquidator,

or by all or any of those parties, together or separately.

(3) The Court, on hearing an application for an administration order, may, on such terms and conditions as it thinks fit -

- (a) grant or dismiss the application,
- (b) adjourn the hearing, conditionally or unconditionally,  
or
- (c) make an interim order or any other order it thinks fit.

(4) An interim order under subsection (3) may, without limitation, restrict the performance of any functions of the directors or of the

incorporated cell company or the incorporated cell, whether by reference to the consent of the Court or otherwise.

(5) Notice of an application to the Court for an administration order in respect of an incorporated cell company shall, unless the Court orders otherwise, be served on -

- (a) the incorporated cell company,
- (b) each incorporated cell of the incorporated cell company,
- (c) the Commission, and
- (d) such other persons, if any, as the Court may direct, including (without limitation) any creditor,

who shall each be given an opportunity of making representations to the Court before the order is made.

(6) Notice of an application to the Court for an administration order in respect of an incorporated cell shall, unless the Court orders otherwise, be served on -

- (a) the incorporated cell,
- (b) its incorporated cell company,
- (c) the Commission, and

- (d) such other persons, if any, as the Court may direct, including (without limitation) any creditor,

who shall each be given an opportunity of making representations to the Court before the order is made.

(7) Notice of an application for an administration order shall be placed in La Gazette Officielle at least 2 clear days before the day of the making of the application or, if that is not reasonably practicable, then as soon as reasonably practicable thereafter.

**Effect of application for administration order.**

35. (1) During the period between the presentation of an application for an administration order and ending with the making of such an order or the dismissal of the application -

- (a) no resolution may be passed or order made for the winding up of -
  - (i) the incorporated cell company, or
  - (ii) the incorporated cell,

to which the application relates (in this section the "**company**"),

- (b) no proceedings may be commenced or continued against the company except with the leave of the Court and subject to such terms and conditions as the Court may impose (but, for the avoidance of doubt and

without limitation, rights of set-off and secured interests, including security interests (within the meaning of the Security Interests (Guernsey) Law, 1993<sup>i</sup>) and rights of enforcement thereof, are unaffected by the provisions of this paragraph).

(2) Nothing in subsection (1) requires the leave of the Court for the presentation of an application for the company's winding up.

**Effect of administration order.**

36. (1) On the making of an administration order any application for the winding up of -

- (a) the incorporated cell company, or
- (b) the incorporated cell

to which the order relates (in this section the "**company**") shall be dismissed.

(2) During the period for which an administration order is in force -

- (a) no resolution may be passed or order made for the company's winding up, and
- (b) no proceedings may be commenced or continued against the company except with the consent of the administrator or the leave of the Court and subject

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<sup>i</sup> Order in Council No. III of 1993.

(where the Court gives leave) to such terms and conditions as the Court may impose (but, for the avoidance of doubt and without limitation, rights of set-off and secured interests, including security interests (within the meaning of the Security Interests (Guernsey) Law, 1993) and rights of enforcement thereof, are unaffected by the provisions of this paragraph).

**Notification of administration order.**

37. (1) Every invoice, order for goods, business letter or other document which, at a time when an administration order is in force in relation to -

- (a) an incorporated cell company, or
- (b) an incorporated cell,

(in this section the "**company**") is issued by or on behalf of the company or the administrator, being a document on or in which the company's name appears, shall also contain the administrator's name and a statement that the affairs, business and property of the company are being managed by the administrator.

(2) If default is made in complying with this section, the company and any of the following persons who without reasonable excuse authorises or permits the default, namely, the administrator and any officer of the company, is guilty of an offence and liable to a fine not exceeding level 5 on the uniform scale.

**General powers of administrator.**

38. (1) The administrator of -

- (a) an incorporated cell company, or
- (b) an incorporated cell,

(in this section the "**company**") may do all such things as may be necessary or expedient for the management of the affairs, business and property of the company.

(2) Without prejudice to subsection (1), and unless the Court orders otherwise, the administrator of the company has the powers specified in Schedule 1.

(3) The administrator may apply to the Court for directions in relation to -

- (a) the extent or performance of any function, and
- (b) any matter arising in the course of his administration,

and on such an application the Court may make such order, on such terms and conditions, as it thinks fit.

(4) In performing his functions the administrator is deemed to act as the company's agent, but shall not incur personal liability except to the extent that he is fraudulent, reckless or grossly negligent or acts in bad faith.

(5) A person dealing with the administrator in good faith is not concerned to enquire whether the administrator is acting within his powers.

(6) The administrator also has power -

- (a) to remove any director of the company and to appoint any person to be a director of it, whether to fill a vacancy or otherwise,
- (b) to call any meeting of members or creditors of the company.

(7) In the case of the administration of an incorporated cell company, the administrator also has power -

- (a) to remove any director of any of its incorporated cells and to appoint any person to be a director of them, whether to fill a vacancy or otherwise,
- (b) to call any meeting of members or creditors of any of its incorporated cells.

**General duties of administrator.**

39. (1) The administrator of -

- (a) an incorporated cell company,
- (b) or an incorporated cell,

(in this section the "**company**") shall, on his appointment, take into his custody or under his control all the property to which the company is or appears to be entitled.

(2) The administrator shall manage the affairs, business and property of the company in accordance with any directions given by the Court.

**Co-operation with, and by, administrator.**

40. (1) Any function conferred on -
- (a) an incorporated cell company,
  - (b) any of its incorporated cells, or
  - (c) any of their respective officers,

whether by the Companies Law or by the memorandum or articles or otherwise, which could be performed during the administration of the incorporated cell company or (as the case may be) the cell, in such a way as to interfere with the performance by the administrator of his functions, may not be performed except with the consent of the administrator, which may be given either generally or in relation to particular cases.

(2) Any function conferred on an incorporated cell or its officers, whether by the Companies Law or by the memorandum or articles or otherwise, which could be performed during the administration of its incorporated cell company in such a way as to interfere with the performance by the administrator of his functions may not be performed except with the consent of the administrator, which may be given either generally or in relation to particular cases.

(3) Any function conferred on an incorporated cell company or its officers, whether by the Companies Law or by the memorandum or articles or otherwise, which could be performed during the administration of any of its incorporated cells in such a way as to interfere with the performance by the administrator of his functions may not be performed except with the consent of the administrator, which may be given either generally or in relation to particular cases.

(4) The administrator of an incorporated cell company shall co-operate, in the management of the affairs, business and property of the incorporated cells of the incorporated cell company, with -

(a) those incorporated cells, and

(b) their directors and officers,

to the extent that such co-operation will not interfere with the performance of his functions as administrator.

(5) The administrator of an incorporated cell shall co-operate, in the management of the affairs, business and property of the incorporated cell company with -

(a) the incorporated cell company, and

(b) its directors and officers,

to the extent that such co-operation will not interfere with the performance of his functions as administrator.

**Discharge or variation of administration order.**

41. (1) The administrator of -

(a) an incorporated cell company, or

(b) an incorporated cell,

(in this section the "**company**") may at any time apply to the Court for the administration order to be discharged or varied.

(2) The administrator of the company shall apply to the Court for the administration order to be discharged or varied if it appears to him that -

- (a) the purpose or each of the purposes specified in the order has been achieved or is incapable of achievement, or
- (b) it would otherwise be desirable or expedient to discharge or vary the order.

(3) The Court, on hearing an application under this section for the discharge or variation of an administration order, may, on such terms and conditions as it thinks fit -

- (a) grant or dismiss the application,
- (b) adjourn the hearing, conditionally or unconditionally, or
- (c) make an interim order or any other order it thinks fit.

(4) Where an administration order is discharged or varied under this section -

- (a) the Greffier shall enter a copy of the order effecting the discharge or variation in the Register of Companies, and

- (b) the administrator shall, within such time as the Court may direct, send a copy thereof to such persons as the Court may direct.

**Remuneration, and swearing in, of administrator.**

42. (1) The administrator's remuneration, and any costs, charges and expenses properly incurred in the administration of -

- (a) an incorporated cell company, or
- (b) an incorporated cell,

(in this section the "**company**"), are payable from the company's assets in priority to all other claims.

(2) The administrator's fees shall be fixed by the Court.

(3) An administrator shall be sworn before the Court when the Court makes the administration order or at any other time directed by the Court.

**Vacation of office.**

43. (1) The administrator -

- (a) may at any time be removed from office by order of the Court,
- (b) may resign his office by giving notice of resignation to the Court, and

(c) shall vacate office if the administration order is discharged.

(2) Where there is a vacancy in the office of administrator the Court may, on the application of any interested party, appoint a replacement.

**Release of administrator.**

44. (1) A person who has ceased to be the administrator of an incorporated cell company or an incorporated cell has his release with effect from -

(a) in the case of a person who has died, the time at which notice is given to the Court that he has ceased to hold office,

(b) in any other case, such time as the Court may determine.

(2) Where a person has his release under this section he is, with effect from the time of release, discharged from all liability both in respect of his acts and omissions in the administration and otherwise in relation to his conduct as administrator, except to the extent that he has incurred personal liability by virtue of section 38(4).

(3) However, nothing in this section prevents the exercise, in relation to a person who has his release under this section, of the Court's powers under section 106 of the 1994 Law (remedy against delinquent officers).

**Information to be given by administrator.**

45. (1) Where an administration order has been made, the administrator shall -

- (a) forthwith send to -
  - (i) the incorporated cell company, or
  - (ii) the incorporated cell,

in respect of which the order was made (in this section the "**company**") and publish in La Gazette Officielle notice of the order, and

- (b) within 28 days after the day of the making of the order-
  - (i) unless the Court orders otherwise, send notice of the order to all creditors of the company (so far as he is aware of their addresses),
  - (ii) where the order is in respect of an incorporated cell company, send notice of the order to its incorporated cells,
  - (iii) where the notice is in respect of an incorporated cell, send notice of the order to its incorporated cell company, and
  - (iv) send notice of the order to the Commission.

- (2) Where an administration order has been made -

- (a) the Greffier shall enter a copy of the order in the Register of Companies, and
- (b) the administrator shall, within such time as the Court may direct, send a copy of the order to such persons as the Court may direct.

**Statement of affairs to be submitted to administrator.**

46. (1) Where an administration order has been made, the administrator may require all or any of the persons mentioned in subsection (3) to make out and submit to him a statement in such form as he may require as to the affairs of -

- (a) the incorporated cell company, or
- (b) the incorporated cell,

in respect of which the order was made (in this section the "**company**").

(2) The statement shall be verified by affidavit of the persons required to submit it (or in such other manner as the administrator may require) and shall show -

- (a) particulars of the company's assets, debts and liabilities,
- (b) the names and addresses of its creditors,
- (c) any securities held by any of its creditors,

- (d) the dates when those securities were respectively given, and
  - (e) such further or other information as the administrator may require.
- (3) The persons referred to in subsection (1) are -
- (a) those who are or have been officers of the company,
  - (b) those who have taken part in the company's formation at any time within the period of one year before the date of the administration order ("the preceding year"),
  - (c) those who are in the company's employment or have been in its employment within the preceding year, and are in the administrator's opinion capable of giving the information required,
  - (d) those who are or have within the preceding year been officers of or in the employment of a company which is, or within the preceding year was, an officer of the company,

and in this subsection "employment" includes employment under a contract for services.

(4) Where any persons are required under this section to submit a statement of affairs to the administrator, they shall do so (subject to the next

subsection) within a period of 21 days after the day on which written notice of the requirement is given to them by the administrator.

- (5) The administrator, if he thinks fit, may -
  - (a) at any time release a person from an obligation imposed on him under subsection (1) or (2), or
  - (b) either when giving notice under subsection (4) or subsequently, extend the period mentioned in that subsection,

and where the administrator has refused to exercise a power conferred by this subsection, the Court, if it thinks fit, may exercise it.

(6) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he is guilty of an offence and liable to a fine not exceeding level 5 on the uniform scale and to a further fine not exceeding level 2 on the uniform scale for each day on which the failure to comply continues after the date of conviction.

(7) Nothing in this section compels the production or divulgence by an advocate or other legal adviser of an item subject to legal professional privilege (within the meaning of section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>j</sup>), but an advocate or other legal adviser may be required to give the name and address of any client.

(8) A requirement imposed by an administrator under this section

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<sup>j</sup> Order in Council No. XXIII of 2003.

has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise, and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

**Protection of interests of creditors and members.**

47. (1) At any time when an administration order is in force, the Commission, or a creditor or member of -

- (a) the incorporated cell company, or
- (b) the incorporated cell,

to which the order relates (in this section the "**company**") may apply to the Court for an order under this section on the ground -

- (i) that the company's affairs, business and property are being or have been managed by the administrator in a manner which is unfairly prejudicial to the interests of its creditors or members generally, or of some part of its creditors or members (including, except where the applicant is the Commission, at least the applicant himself),
- (ii) that any actual or proposed act or omission of the administrator is or would be so prejudicial, or
- (iii) that it would otherwise be desirable or expedient for an order under this section to be made.

(2) The Court, on hearing an application for an order under this section, may, on such terms and conditions as it thinks fit -

- (a) dismiss the application, or make such order as it thinks fit for giving relief in respect of the matters complained of,
- (b) adjourn the hearing, conditionally or unconditionally, or
- (c) make an interim order or any other order that it thinks fit.

(3) An order under this section may in particular -

- (a) regulate the future management by the administrator of the company's affairs, business and property,
- (b) require the administrator to refrain from doing or continuing an act complained of by the applicant, or to do an act which the applicant has complained he has omitted to do,
- (c) require the summoning of a meeting of members for the purpose of considering such matters as the Court may direct,
- (d) discharge the administration order and make such consequential provision as the Court thinks fit.

(4) Where the administration order is discharged -

- (a) the Greffier shall enter a copy of the order effecting the discharge in the Register of Companies, and
- (b) the administrator shall, within such time as the Court may direct, send a copy thereof to such persons as the Court may direct.

(5) An application for an order under this section may also be made, with leave of the Court, by a person other than one described in subsection (1).

**Exclusion of other administration provisions.**

48. After section 770 of the 1994 Law (exclusion of protected cell companies from administration provisions)<sup>k</sup> insert the following section -

**"Exclusion of incorporated cell companies.**

770A. An administration order may not be made under this Part of this Law in respect of an incorporated cell company or an incorporated cell (within the meaning of the Incorporated Cell Companies Ordinance, 2006), and the making of administration orders in respect of incorporated cell companies or incorporated cells shall continue to be governed by that Ordinance."

*Alterations*

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<sup>k</sup> As proposed to be inserted by the Projet de Loi entitled "The Companies (Guernsey) (Amendment) Law, 2005" approved by resolution of the States on 26<sup>th</sup> October 2005, Billet D'État XV, Article 1.

**Amendment of constitution of incorporated cells.**

49. The articles of an incorporated cell may be amended -

- (a) in the manner set out in those articles, or
- (b) in the absence of such a provision, by special resolution of both the incorporated cell and of its incorporated cell company.

**Conversion of company into incorporated cell company.**

50. (1) A company may be converted into an incorporated cell company in accordance with the provisions of this section.

(2) The company must -

- (a) have the consent of the Commission to so convert,
- (b) pass a special resolution to authorise that conversion and to alter its memorandum to state that it is an incorporated cell company,
- (c) change its name, to comply with section 3, in accordance with section 22 of the 1994 Law,

and in addition, each of its directors who has authorised the conversion must sign a declaration that he believes, on reasonable grounds, that the requirements of this section have been fulfilled.

(3) The provisions of section 7 (consent of Commission required for protected cell company) and section 8 (application for consent of Commission)

of the 1997 Ordinance shall apply to the conversion of a company into an incorporated cell company as they apply to the conversion of a company into a protected cell company.

(4) The Commission shall have the same power to prescribe fees in respect of an application for consent for the conversion of a company into an incorporated cell company as it does for the conversion of a company into a protected cell company.

(5) The company shall deliver to the Greffier -

- (a) a copy of the consent of the Commission,
- (b) a copy of the special resolution altering its memorandum,
- (c) a copy of its amended memorandum,
- (d) a copy of the special resolution authorising its change of name,
- (e) the declaration of the directors under subsection (2), and
- (f) a fee of £150.

(6) The Greffier shall file in the Register of Companies a copy of the Commission's consent granted under section 7(1) of the 1997 Ordinance.

(7) The Greffier shall, upon receipt of the documents and fee

specified in subsection (5) issue a certificate of conversion into incorporated cell company, and the certificate shall state the date upon which the certificate has effect.

**Conversion of protected cell company into incorporated cell company.**

**51.** (1) A protected cell company may be converted into an incorporated cell company in accordance with the provisions of this section.

(2) The protected cell company must -

- (a) have the consent of the Commission to so convert,
- (b) pass a special resolution authorising that conversion and altering its memorandum and articles accordingly,
- (c) change its name, in order to -
  - (i) remove from its name the expression required by section 6 of the 1997 Ordinance, and
  - (ii) comply with section 3 of this Ordinance,in accordance with section 22 of the 1994 Law,

and in addition -

- (d) the holders of cell shares of each cell must pass a special resolution -
  - (i) authorising its conversion into an incorporated

cell of the incorporated cell company,

- (ii) specifying its new name (which must comply with the requirements of section 8), and
  - (iii) specifying its memorandum and articles accordingly, and
- (e) each of its directors who authorised the conversion must sign a declaration in accordance with subsection (5).

(3) The provisions of section 7 (consent of Commission required for protected cell company) and section 8 (application for consent of Commission) of the 1997 Ordinance shall apply to the conversion of a protected cell company into an incorporated cell company as they apply to the conversion of a company into a protected cell company.

(4) The Commission shall have the same power to prescribe fees in respect of an application for consent for the conversion of a protected cell company into an incorporated cell company as it does for the conversion of a company into a protected cell company.

(5) The declaration referred to in subsection (2)(e) must state that each such director believes on reasonable grounds that -

- (a) the protected cell company is able to discharge its liabilities as they fall due,
- (b) there are no creditors of the protected cell company

whose interests will be unfairly prejudiced by the conversion, and

(c) the requirements of this section have been fulfilled.

(6) Notice of an application under this section shall, before the application is made, be placed in La Gazette Officielle on two successive weekly occasions setting out the terms of the application.

(7) The protected cell company shall deliver to the Greffier -

(a) a copy of the consent of the Commission,

(b) a copy of the special resolution of the protected cell company,

(c) a copy of the special resolution passed by the holders of cell shares of each cell,

(d) a copy of its amended memorandum and articles,

(e) a copy of the memorandum and articles of its cells,

(f) a copy of the special resolution authorising its change of name,

(g) the declaration of the directors under subsection (2)(e),  
and

(h) a fee of £150 together with a fee of £125 for each cell.

(8) The special resolution passed by the holders of cell shares of each cell of the protected cell company shall be treated as a cell resolution within the meaning of section 5, and accordingly subsections (3) and (4) of that section shall apply to it.

(9) Upon receipt of the documents and fee specified in subsection (7), and if the Court authorises the registration of the cells' memorandum and articles submitted under subsection (8), and if the Court by order confirms the change of name in accordance with section 22 of the 1994 Law, the Greffier shall -

(a) in respect of the protected cell company -

- (i) issue to it a certificate of conversion from protected cell company into incorporated cell company, and the certificate shall state the date upon which the certificate has effect,
- (ii) register its conversion into an incorporated cell company, and
- (iii) register its amended memorandum and articles, and

(b) in respect of each cell of the protected cell company -

- (i) register the conversion of those cells into incorporated cells of the incorporated cell company,

- (ii) register their memorandum and articles,
- (iii) issue to them a certificate of registration which shall be conclusive evidence that they are duly registered, and
- (iv) allocate a registration number to them.

(10) Where a protected cell company is converted into a incorporated cell company by virtue of this section -

- (a) all property and rights to which the core of the protected cell company (within the meaning of the 1997 Ordinance) was entitled immediately before its conversion remain the property and rights of the incorporated cell company,
- (b) the incorporated cell company remains subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which the core of the protected cell company was subject immediately before its conversion,
- (c) all actions and other legal proceedings which, immediately before the conversion, were pending by or against the core of the protected cell company may be continued by or against the incorporated cell company,
- (d) all property and rights attributable to a cell of the

protected cell company immediately before its conversion become the property and rights of the incorporated cell which it has become,

- (e) an incorporated cell becomes subject to all criminal and civil liabilities, and all contracts, debts and other obligations, which immediately before the conversion were attributable to the cell of the protected cell company which it was,
- (f) all actions and other legal proceedings which, immediately before the conversion, were pending by or against the protected cell company in respect of any of its cells, may be continued by or against the incorporated cell which that cell has become.

(11) A creditor or member of the protected cell company (including a creditor or member in respect of any of its cells) may apply to the Court, within the period of 30 days following the date upon which the certificate comes into effect, to set aside the conversion on the grounds that it, or its terms, will unfairly prejudice his interests.

(12) The Court on hearing an application under subsection (11) may make such order, on such terms and conditions, as it thinks fit.

**Conversion of incorporated cell into independent company.**

**52.** (1) An incorporated cell may be converted into a company independent of its incorporated cell company in accordance with the provisions of this section.

- (2) The incorporated cell must -
  - (a) pass a special resolution to that effect,
  - (b) change its name in order to remove from its name the expression required by section 8 of this Ordinance, in accordance with section 22 of the 1994 Law,

and in addition, each of its directors who has authorised the conversion must sign a declaration that he believes, on reasonable grounds, that the requirements of this section have been fulfilled.

- (3) The incorporated cell shall deliver to the Greffier -
  - (a) a copy of the special resolution referred to in subsection (2)(a),
  - (b) a copy of the special resolution authorising its change of name,
  - (c) a copy of its amended memorandum,
  - (d) the declaration of the directors under subsection (2),  
and
  - (e) a fee of £150.

(4) Upon receipt of the documents and fee specified in subsection (3), and if the Court by order confirms the change of name in accordance with section 22 of the 1994 Law, the Greffier shall issue a certificate of conversion of

incorporated cell into company, and the certificate shall state the date upon which it has effect.

(5) Where an incorporated cell is converted into a company by virtue of this section -

- (a) all property and rights to which it was entitled immediately before its conversion remain its property and rights,
- (b) it remains subject to all criminal and civil liabilities, and all contracts, debts and other obligations to which it was subject immediately before its conversion,
- (c) all actions and other legal proceedings which, immediately before its conversion, were pending by or against it may be continued by or against it.

(6) A member of the incorporated cell who objects to its conversion may apply to the Court for an order under section 75 of the 1994 Law, to set aside the conversion on the grounds that the conversion or the terms of the conversion unfairly prejudice his interests.

(7) An application under subsection (6) may not be made after the expiration of the period of 30 days following the date on which the certificate comes into effect.

(8) The prior consent of Her Majesty's Procureur shall be required for the conversion of an incorporated cell into a company independent of its incorporated cell company.

**Transfer of incorporated cells between incorporated cell companies.**

53. (1) An incorporated cell of an incorporated cell company may be transferred to another incorporated cell company in accordance with the provisions of this section.

(2) The incorporated cell companies shall enter into a written agreement that sets out the terms of the transfer ("**the transfer agreement**").

(3) A transfer of an incorporated cell is approved when -

(a) the directors of each incorporated cell company have approved the transfer agreement,

(b) the transfer agreement is approved by a special resolution of -

(i) the incorporated cell company to which the incorporated cell is being transferred, and

(ii) the incorporated cell which is being transferred.

(4) Within 21 days of a transfer agreement being approved, the incorporated cell company to which the incorporated cell is being transferred shall deliver to the Greffier -

(a) a copy of the special resolution of the company approving the transfer agreement,

- (b) a copy of the special resolution of the incorporated cell being transferred approving the transfer agreement,
- (c) a copy of the transfer agreement,
- (d) a copy of any amended memorandum and articles of the incorporated cell being transferred,
- (e) a declaration made in accordance with subsection (5), signed by each director of the incorporated cell company transferring the incorporated cell who authorised the transfer, and
- (f) a fee of £150.

(5) The declaration referred to in subsection (4)(e) must state that each such director believes on reasonable grounds that -

- (a) the incorporated cell being transferred is able to discharge its liabilities as they fall due,
- (b) the transfer agreement has been approved in accordance with this section, and
- (c) the requirements of this section have been fulfilled.

(6) The Greffier shall, upon receipt of the documents and fee specified in subsection (4) -

- (a) issue to the incorporated cell a certificate of transfer of

incorporated cell, and the certificate shall state the date upon which it has effect,

- (b) register the transfer of the incorporated cell and any amended memorandum and articles of the incorporated cell, and
- (c) record that the incorporated cell has ceased to be an incorporated cell of the incorporated cell company that transferred it.

(7) Where an incorporated cell is transferred by virtue of this section -

- (a) the incorporated cell ceases to be an incorporated cell of the incorporated cell company that transferred it,
- (b) the incorporated cell becomes an incorporated cell of the incorporated cell company to which it has been transferred,
- (c) the memorandum and articles of the incorporated cell shall be as provided for in the transfer agreement,
- (d) all property and rights to which the incorporated cell was entitled immediately before its transfer remain the property and rights of the incorporated cell,
- (e) all civil and criminal liabilities and all contracts, debts and other obligations to which the incorporated cell

was subject immediately before its transfer remain the liabilities, contracts, debts and other obligations of the incorporated cell, and

- (f) all actions and other legal proceedings which, immediately before its transfer were pending by or against the incorporated cell may be continued by or against the incorporated cell.

**Conversion of company into incorporated cell and transfer to incorporated cell company.**

**54.** (1) A company that is neither an incorporated cell company nor a protected cell company ("**the non-cellular company**") may become an incorporated cell of an incorporated cell company in accordance with the provisions of this section.

(2) The non-cellular company and the incorporated cell company shall enter into a written agreement that sets out the terms of the transfer ("**the transfer agreement**").

(3) The non-cellular company shall change its name, to comply with section 8, in accordance with section 22 of the 1994 Law.

(4) A transfer of a non-cellular company is approved when -

(a) the directors of the non-cellular company and the incorporated cell company have approved the transfer agreement, and

(b) the transfer agreement is approved by a special

resolution of the non-cellular company and the incorporated cell company.

(5) Within 21 days of a transfer agreement being approved, the incorporated cell company shall deliver to the Greffier -

- (a) a copy of the special resolution of the non-cellular company,
- (b) a copy of the special resolution of the incorporated cell company,
- (c) a copy of the transfer agreement,
- (d) a copy of the amended memorandum and articles of the non-cellular company,
- (e) a declaration made in accordance with subsection (6), signed by each director of the non-cellular company and the incorporated cell company who authorised the transfer, and
- (f) a fee of £150.

(6) The declaration referred to in subsection (5)(e) must state that each such director believes on reasonable grounds that -

- (a) the non-cellular company is able to discharge its liabilities as they fall due,

(b) the transfer agreement has been approved in accordance with this section, and

(c) the requirements of this section have been fulfilled.

(7) If an incorporated cell company fails to deliver the documents and fee specified in subsection (5) within the period mentioned in that subsection, it is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the uniform scale.

(8) Upon receipt of the documents and fee specified in subsection (5), and if the Court by order confirms the change of name in accordance with section 22 of the 1994 Law, the Greffier shall -

(a) issue to the non-cellular company a certificate of conversion into incorporated cell, and the certificate shall state the date upon which it has effect,

(b) register the conversion of the non-cellular company and its transfer as an incorporated cell to the incorporated cell company, and

(c) register any amended memorandum and articles of the non-cellular company.

(9) Where a non-cellular company becomes the incorporated cell of an incorporated cell company by virtue of this section -

(a) its memorandum and articles shall be as provided for in the transfer agreement,

- (b) all property and rights to which it was entitled immediately before its conversion remain its property and rights,
- (c) all civil and criminal liabilities and all contracts, debts and other obligations to which it was subject immediately before its conversion remain its liabilities, contracts, debts and other obligations,
- (d) all actions and other legal proceedings which, immediately before its conversion, were pending by or against it may be continued by or against it.

**Expulsion of incorporated cell from its incorporated cell company.**

**55.** (1) An application to the Court to expel an incorporated cell from its incorporated cell company, on a ground set out in subsection (2), may be made by -

- (a) the Commission,
  - (b) the incorporated cell company,
  - (c) the administrator of the incorporated cell company, or
  - (d) the liquidator of the incorporated cell company.
- (2) The grounds referred to in subsection (1) are -
- (a) that the affairs of the incorporated cell are being or

have been conducted in a manner which is unfairly prejudicial to its incorporated cell company or any incorporated cell of that company, or to the members of that company or its incorporated cells,

- (b) that the incorporated cell is being or has been used for fraudulent purposes,
- (c) that to fail to do so would jeopardize the reputation of the Bailiwick as a finance centre, or
- (d) that it would be just and equitable to do so.

(3) The Court can make such order as it thinks fit upon an application under this section and upon such terms and conditions as it thinks fit, including an order requiring the incorporated cell to convert into a company.

**Directors' declarations.**

56. (1) The Greffier, when performing his functions under section 50, 51, 52, 53 or 54, may rely upon the documents given to him under those sections by the directors in all respects and accordingly shall not be bound to enquire further as to whether, in relation to those companies, the provisions of this Ordinance have been complied with.

(2) A director who makes a declaration under section 50, 51, 52, 53 or 54 without having the grounds to do so is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

**Conversions, transfers or expulsions not a default.**

57. The operation of sections 50 to 55 shall not be regarded -

- (a) as a breach of contract or confidence or otherwise as a civil wrong,
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities, or
- (c) as giving rise to any remedy, by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument, or of any obligation or relationship.

*General provisions*

**Criminal liability of officers, etc.**

58. (1) Where an offence under this Ordinance committed by a company is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the company or any person purporting to act in any such capacity, he as well as the company is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a company are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were an officer.

(3) For the purposes of this section a person in accordance with whose directions or instructions any officer of a company acts shall be deemed to be an officer of the company.

- (4) In section 117(1) of the 1994 Law -
- (a) in the definition of "officer" after the word "liquidator" insert the words ", administrator of an incorporated cell company or incorporated cell", and
  - (b) insert the following definition in the appropriate place-

**"administrator of an incorporated cell company or incorporated cell"** means a person appointed by the Court to manage the affairs, business and property of an incorporated cell company or an incorporated cell under an administration order made by the Court under the Incorporated Cell Companies Ordinance, 2006."

**Applications for directions.**

**59.** (1) A director of an incorporated cell company or incorporated cell may apply to the Court for directions as to how he should or might act in any of the affairs of the incorporated cell company or incorporated cell, and upon such an application the Court may make such order as it thinks fit.

(2) An application under subsection (1) may be made ex parte.

(3) The Court hearing an application under this section may direct that the whole or any part of the application shall be heard in camera, and an application for a direction under this subsection shall be heard in camera unless the Court directs otherwise.

**Power of Court to grant relief in certain cases.**

60. (1) If in proceedings for negligence, default, breach of duty or breach of trust against an officer of an incorporated cell company or an incorporated cell, it appears to the court hearing the case that the officer is or may be liable but that -

- (a) he acted honestly and reasonably, and
- (b) having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused,

the court may relieve him, either wholly or in part, from his liability on such terms as it thinks fit.

(2) If any such officer of a company has reason to apprehend that a claim will or might be made against him in respect of negligence, default, breach of duty or breach of trust -

- (a) he may apply to the Court for relief, and
- (b) the Court has the same power to relieve him as it would have had if it had been a court before which proceedings against him for negligence, default, breach of duty or breach of trust had been brought.

**Power of the Commission to make regulations.**

61. (1) The Commission may, after consultation with the Department, make such regulations as it thinks fit concerning incorporated cell companies and incorporated cells.

(2) Without prejudice to the generality of subsection (1), regulations of the Commission under this Ordinance may make provision in respect of any of the following matters -

- (a) the conduct of the business of incorporated cell companies and incorporated cells,
- (b) the manner in which incorporated cell companies and incorporated cells may carry on, or hold themselves out as carrying on, business,
- (c) the form and content of the accounts of incorporated cell companies and incorporated cells,
- (d) the winding up or administration of incorporated cell companies and incorporated cells, and
- (e) generally for the implementation of this Ordinance.

(3) Regulations of the Commission under this Ordinance may provide that the provisions of this Ordinance shall apply in relation to any class or description of company specified by or prescribed under section 7(1) of the 1997 Ordinance, as it applies to this Ordinance, subject to such exceptions, adaptations and modifications as may be specified in the regulations.

**Power of Department to make regulations amending fees.**

**62.** The Department may by regulations amend any fee payable to the Greffier under this Ordinance.

**Regulations generally.**

63. (1) Regulations of the Commission under section 61 or of the Department under section 62 -

- (a) may be amended or repealed by subsequent regulations hereunder,
- (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the Commission or Department, as the case may be, to be necessary or expedient including provision amending this Ordinance,
- (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.

(2) Any power conferred upon the Commission or Department, as the case may be, by this Ordinance to make regulations may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised -

- (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

**Special resolutions.**

64. Notwithstanding section 73(3)(a) of the 1994 Law (resolutions void ab initio), and without prejudice to any provision of the Companies Laws requiring a special resolution to be approved by the Court, any special resolution referred to in this Ordinance shall not be void ab initio for failing to comply with any provision of section 73(2) (time within which special resolution must be delivered to Greffier).

**Modification of document duty in its application to incorporated cells.**

65. Schedule 2, which amends the Document Duty Ordinance, 2003<sup>1</sup>, as it has effect in Guernsey, shall have effect.

**Interpretation.**

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

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<sup>1</sup> No. VI of 2003; modified by G.S.I 2002 No. 6; and amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

**"administration order"** means an administration order made by the Court in respect of an incorporated cell company or an incorporated cell under section 32,

**"administrator"** means a person appointed by the Court to manage the affairs, business and property of an incorporated cell company or an incorporated cell under an administration order,

**"cell resolution"** means a special resolution of an incorporated cell company, complying with the requirements of section 5, creating an incorporated cell,

**"certificate of conversion from protected cell company into incorporated cell company"** means a certificate issued by the Greffier under section 51,

**"certificate of conversion into incorporated cell"** means a certificate issued by the Greffier under section 54,

**"certificate of conversion into incorporated cell company"** means a certificate issued by the Greffier under section 50,

**"certificate of conversion of incorporated cell into company"** means a certificate issued by the Greffier under section 52,

**"certificate of transfer of incorporated cell"** means a certificate issued by the Greffier under section 53,

**"Commission"** means the Guernsey Financial Services Commission,

**"Companies Laws"** means -

- (a) the Companies (Guernsey) Law, 1994
- (b) the Companies (Enabling Provisions) Law, 1996,
- (c) the Amalgamation of Companies Ordinance, 1997,
- (d) the Guarantee Companies Ordinance, 1997,
- (e) the Migration of Companies Ordinance, 1997,
- (f) the Companies (Purchase of Own Shares) Ordinance, 1998,
- (g) the Companies (Financial Assistance for Acquisition of Own Shares) Ordinance, 1998,
- (h) the Companies (Shares of No Par Value) Ordinance, 2002,
- (i) the Companies (Purchase of Own Shares) (Treasury Shares) Ordinance, 2006,
- (j) this Ordinance, and
- (k) all other enactments which make provision for companies.

**"Department"** means the Commerce and Employment Department,

"**enactment**" includes a Law, an Ordinance and any subordinate legislation and any provision or portion of a Law, an Ordinance or any subordinate legislation,

"**incorporated cell**" means a cell of an incorporated cell company,

"**incorporated cell company**" means a company incorporated as, or converted into, an incorporated cell company in accordance with the provisions of this Ordinance,

"**non-cellular company**" means a company which is neither an incorporated cell company nor a protected cell company,

"**protected cell company**" has the same meaning as in the Protected Cell Companies Ordinance, 1997,

"**security**" means any mortgage, charge, hypothèque, lien or other security, and "**secured interest**" shall be read accordingly,

"**special resolution**" has the same meaning as in section 73 of the 1994 Law,

"**subordinate legislation**" means any regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect,

"**the 1994 Law**" means the Companies (Guernsey) Law, 1994,

"**the 1997 Ordinance**" means the Protected Cell Companies

Ordinance, 1997,

**"transfer agreement"** means an agreement either between -

- (a) two incorporated cell companies setting out the terms of the transfer of an incorporated cell between them, in accordance with the provisions of section 53, or
- (b) an incorporated cell company and a non-cellular company setting out the terms of the transfer of the non-cellular company as an incorporated cell to the incorporated cell company, in accordance with the provisions of section 54.

(2) Expressions used in this Ordinance shall, unless the context requires otherwise, have the same meanings as in the 1994 Law.

(3) References in this Ordinance to an enactment are references thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

**Citation.**

67. This Ordinance may be cited as the Incorporated Cell Companies Ordinance, 2006.

**Commencement.**

68. (1) Subject to subsection (2), this Ordinance shall come into force on the 1<sup>st</sup> day of May, 2006.

(2) Section 48 shall come into force on the same day as section 4

of the Project de Loi entitled "The Companies (Guernsey) (Amendment) Law, 2005".

SCHEDULE 1  
POWERS OF ADMINISTRATOR

Section 38

In the application of this Schedule to the administrator of an incorporated cell company or incorporated cell (in this Schedule "the company"), the word "he" and related expressions refer to the administrator.

1. Power to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as may seem to him expedient.

2. Power to sell or otherwise dispose of the property of the company by public auction or private contract.

3. Power to raise or borrow money and grant security for that purpose over the property of the company.

4. Power to appoint an Advocate or accountant or other professionally qualified person to assist him in the performance of his functions.

5. Power to bring or defend any action or other legal proceedings in the name and on behalf of the company.

6. Power to refer to arbitration any question affecting the company.

7. Power to effect and maintain insurances in respect of the business and property of the company.

8. Power to use the company's seal.

9. Power to do all acts and to execute in the name and on behalf of the company any receipt or other document.

10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.

11. Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.

12. Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the company.

13. Power to make any payment which is necessary or incidental to the performance of his functions.

14. Power to carry on the business of the company.

15. Power to establish subsidiaries of the company.

16. Power to transfer to subsidiaries of the company the whole or any part of the business and property of the company.

17. Power to grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company.

18. Power to make any arrangement or compromise on behalf of the company.

19. Power to call up any uncalled capital of the company.
20. Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company, or in désastre or saisie proceedings in relation to any such person, and to receive dividends, and to accede to trust deeds for the creditors of any such person.
21. Power to present or defend an application for the winding up of the company.
22. Power to change the situation of the company's registered office.
23. Power to do all other things incidental to the exercise of the foregoing powers.

SCHEDULE 2  
 MODIFICATION OF DOCUMENT DUTY IN ITS APPLICATION TO  
 INCORPORATED CELLS

Section 65

In Schedule 1 of the Document Duty Ordinance, 2003 for items 12 to 15 substitute the following items-

"12.	Memorandum of a Guernsey limited liability company, other than a company limited by guarantee or a company with power to issue shares of no par value.	(a) £25, or 0.25% of the nominal capital of the company, up to a nominal capital not exceeding £1,000,000, whichever is the greater, in the case of an incorporated cell of an incorporated cell company, or  (b) £50, or 0.5% of the nominal capital of the company, up to a nominal capital not exceeding £1,000,000, whichever is the greater, in any other case.
13.	(a) Special Resolution, or Resolution passed in General Meeting, of a Guernsey limited liability company increasing the nominal capital of the company.  (b) Special Resolution of a Guernsey limited liability company other than one -  (i) increasing the nominal capital of the company or increasing the maximum number of members of a company limited by guarantee, or	0.5% (or, in the case of an incorporated cell of an incorporated cell company, 0.25%) of the increase in the nominal capital of the company, up to a nominal capital not exceeding £1,000,000.  £5.00.

	(ii) incorporating an incorporated cell of an incorporated cell company.	
14.	Annual Return of a Guernsey limited liability company.	<p>£100.00: except that no document duty is payable under this paragraph in the case of a company limited by guarantee -</p> <p>(i) which has been certified by the Guernsey Financial Services Commission as set out at item 15 (c), and</p> <p>(ii) which continues to be a company the objects of which are exclusively for charitable, social, cultural, recreational or other purposes, in each case not involving any purpose of private gain or commercial undertaking,</p> <p>provided that there is submitted to the Greffier in lieu of the fee for the annual return a statement, executed for and in the name of the company, that the conditions of (a) and (b) above are satisfied in relation to the company.</p> <p>And, for the avoidance of doubt, no additional duty shall be payable in respect of a copy of so much of the annual return of the incorporated cell company as relates to an incorporated cell, as is required to be delivered to the Greffier in accordance with section 13(2)(b) of the Incorporated Cell Companies Ordinance, 2006.</p>
14A.	Memorandum of a company with power to issue shares of no par value.	(a) In the case of a company which will be declared by the Commission to be an authorised collective investment scheme under section 8

		<p>of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended, or which will be a closed-ended investment company within the meaning of paragraph 2(2) of Schedule 1 to that Law -</p> <p>(i) £1,000 in the case of an incorporated cell of an incorporated cell company, or</p> <p>(ii) £2000 in any other case.</p> <p>(b) In the case of a company other than one described in subparagraph (a), but subject to the provisions of subparagraph (c) -</p> <p>(i) £150 in the case of an incorporated cell of an incorporated cell company, or</p> <p>(ii) £300 in any other case.</p> <p>(c) In the case of a company other than one described in subparagraph (a) which has power to issue both shares of no par value and shares with a par or nominal value -</p> <p>(i) in the case of an incorporated cell of an incorporated cell company, £150 plus (in respect of that part of the company's share capital with a par or nominal value) the greater of -</p> <p>(A) £25, or</p> <p>(B) 0.25% of the nominal capital of the</p>
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		<p>company, up to a nominal capital not exceeding 1,000,000, or</p> <p>(ii) in any other cases, £300 plus (in respect of that part of the company's share capital with a par or nominal value) the greater of -</p> <p>(A) £50, or</p> <p>(B) 0.5% of the nominal capital of the company, up to a nominal capital not exceeding 1,000,000.</p>
14B.	Special resolution of a company altering its memorandum to authorise issue of shares of no par value.	<p>(a) In the case of a company described in subparagraph (a) of paragraph 14B -</p> <p>(i) £1,000 in the case of a company so described which is an incorporated cell of an incorporated cell company, or</p> <p>(ii) £2000 in any other case</p> <p>less the amount of document duty paid on incorporation of the company.</p> <p>(b) In the case of a company other than one described in subparagraph (a) of paragraph 14B -</p> <p>(i) £150 in the case of a company not so described which is an incorporated cell of an incorporated cell company, or</p>

		(ii) £300 in any other case.
15.	<p>As respects a Guernsey company limited by guarantee -</p> <p>(a) the company's memorandum, where paragraph (c) does not apply</p> <p>(b) a special resolution of the company increasing the maximum number of its members, where paragraph (c) does not apply</p>	<p>The greater of £50 (or, in the case of an incorporated cell of an incorporated cell company, £25), or 0.5% (or in the case of an incorporated cell of an incorporated cell company 0.25%) of the sum of the following amounts, that is to say-</p> <p>(i) the amount of the nominal share capital of the company (in cases where the company has a share capital), and</p> <p>(ii) the total amount which (pursuant to the memorandum) the members of the company have collectively undertaken to contribute to the company's assets in accordance with section 4(a)(i) of the Guarantee Companies Ordinance, 1997 in the event of the company being wound up,</p> <p>up to a maximum sum of £1,000,000.</p> <p>The difference between -</p> <p>(i) the amount of document duty which, were the company being incorporated, would be payable in accordance with the provisions of item (a) by reference to its membership as increased, and</p> <p>(ii) the amount of document</p>

	<p>(c) the memorandum of the company, or a special resolution increasing the maximum number of its members, if at the time of the dutiable event, the company is certified by the Guernsey Financial Services Commission (such fee in respect of that certification as may from time to time be specified by regulation of the States Policy Council having been paid) as being a company the objects of which are exclusively for charitable, social, cultural, recreational or other purposes, in each case not involving any purpose of private gain or commercial undertaking.</p>	<p>duty which, were the company being incorporated, would be so payable by reference to its Membership immediately before the increase,</p> <p>and such additional duty shall be payable upon delivery by the company of the special resolution to the Greffier.</p> <p>(i) In the case of the registration of the memorandum of the company, £50.00,</p> <p>(ii) in the case of an increase in membership of the company, zero."</p>
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