

Island of



Guernsey

Ordinance of the States

V
2008

Made30th January, 2008

Coming into Operation4th February, 2008

The Protected Cell Companies (Amendment) Ordinance, 2008

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THE STATES, in pursuance of their Resolution of the 25th July 2007^a, and in exercise of the powers conferred on them by section 1 of the Companies (Enabling Provisions) (Guernsey) Law, 1996^b and all other relevant powers, hereby order:-

Amendment of the 1997 Ordinance.

1. Immediately after section 8 of the Protected Cell Companies Ordinance, 1997^c, as amended ("**the 1997 Ordinance**"), insert –

"Commission to consider principles on application for consent.

8A. On an application to the Commission under section 8, the Commission shall consider the following principles in deciding whether to grant its consent for the incorporation or conversion, including whether to grant that consent subject to conditions under section 7(1) –

- (a) the protection of the public interest, including the protection of the public in the Bailiwick and elsewhere, against financial loss due to dishonesty or incompetence,
- (b) the countering of financial crime and the financing of terrorism in the Bailiwick and elsewhere, and

^a Article IV of Billet d'État No. XIX of 2007.

^b Order in Council No. XII of 1996.

^c Recueil d'Ordonnances Tome XXVII, p. 158; amended by Recueil d'Ordonnances Tome XXVIII, p.63; Ordinance No. XXI of 2005; and No. XVII of 2006. Also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII).

- (c) the protection and enhancement of the reputation of the Bailiwick as a financial centre.

Disclosure of reasons for decisions.

8B. (1) Where the Commission makes a decision in respect of which a right of appeal is conferred by section 8C, the person concerned may, whether or not he institutes an appeal, but subject to the provisions of subsection (2), require the Commission to furnish him with a written statement of the reasons for the decision.

(2) Subsection (1) does not require the Commission to specify any reason which would in its opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to -

- (a) a criminal or regulatory investigation (whether in the Bailiwick or elsewhere),
- (b) co-operation or relations with investigatory, regulatory or prosecuting authorities in any other place, or
- (c) a third party (wherever situated).

(3) Where, pursuant to subsection (2), the Commission omits any matter from a statement of reasons, it shall inform the person concerned of the fact that there has been such an omission and give particulars of the right of appeal conferred by section 8C.

(4) The "**person concerned**" means the person by whom the right of appeal is exercisable.

Appeals against decisions.

8C. (1) A person aggrieved by a decision of the Commission -

- (a) not to grant consent for the incorporation of a company as a protected cell company, or not to grant consent for the conversion of an existing company into a protected cell company, under section 7(1),
- (b) to grant consent of a type mentioned in paragraph (a) subject to one or more terms or conditions under section 7(1),
- (c) to vary, under section 7(2)(a), any term or condition imposed under section 7(1), or
- (d) to impose any new term or condition under section 7(2)(b),

may appeal to the Court against the decision.

(2) The grounds of an appeal under this section are that -

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or

(e) there was a material error as to the facts or as to the procedure.

(3) An appeal under this section shall be instituted -

(a) within a period of 28 days immediately following the date of the notice of the Commission's decision, and

(b) by summons served on the Chairman of the Commission stating the grounds and material facts on which the appellant relies.

(4) The Commission may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the application the Court may -

(a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Court may direct), or

(b) make such other order as the Court considers just.

The provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007^d.

(5) On an appeal under this section the Court may -

^d Order of the Royal Court No. IV of 2007.

(a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court thinks fit, or

(b) confirm the decision, in whole or in part.

(6) On an appeal under this section against a decision of the Commission the Court may, on the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

(7) An appeal from a decision of the Court under this section lies to the Court of Appeal on a question of law.

(8) In this section "**the Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of an appeal under this section the Court may appoint one or more assessors to assist it in the determination of any matter before it."

Citation.

2. This Ordinance may be cited as the Protected Cell Companies (Amendment) Ordinance, 2008.

Commencement.

3. This Ordinance shall come into force on the 4th February, 2008.