

UPDATE

# Changes to Guernsey's Companies Law

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A number of amendments to the Companies (Guernsey) Law, 2008 have been approved by the States of Deliberation (28 April 2021). The amendments, which come into effect on 1 May 2021, are the result of industry feedback to a consultation in 2018 and are intended to ensure that the Companies (Guernsey) Law, 2008 continues to best serve the needs of the business community.

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The amendments to the Companies (Guernsey) Law, 2008 (the **Law**) are set out in the Companies (Guernsey) Law, 2008 (Miscellaneous Amendments) Ordinance, 2021 (the **Ordinance**) and are effective on **1 May 2021**. A summary of the key changes are as follows:

## Company name changes

The Law permits a company to change its name only by passing a special resolution of the members, requiring approval of 75 per cent or more. The Ordinance amends the Law by allowing a company to also change its name by any other means as may be specified in its articles of incorporation (**Articles**); for example by a resolution of the board of directors (the **Board**).

## Amalgamations, migrations and cell conversions

The Ordinance clarifies that, in the case of an amalgamated body corporate which is a new company, or a company which is migrating to Guernsey, only **one** member is required to sign the Memorandum in order to satisfy the requirement that the founder members shall subscribe to the Memorandum of the company. The same clarification is made in relation to the conversion of a cell of a protected cell company into a non-cellular company.

## Board meetings

Currently, a meeting of the Board that is not held in person (i.e. a meeting held by telephone or video conference) is deemed to be held in the place in which the chairman is present. The Law is amended to provide greater flexibility allowing a company's memorandum of incorporation (**Memorandum**), Articles or a resolution of its Board to stipulate where such meeting is deemed to take place (in the absence of which, the meeting will be deemed to be held in the place in which the chairman is present).

## General meetings

If a general meeting is to be held entirely electronically or via telephone, the notice of meeting must state the means and manner by which persons may attend.

## Conversion of shares into stock

This provision has been the subject of some debate, with many seeing the ability to convert shares into stock as a useful mechanism, particularly in share reorganisations. However following further consultation it has been decided that the ability to convert shares to stock is unnecessary and to repeal this provision (as was the position when the Law was originally enacted).

## Offers of shares in lieu of dividends

The Law requires that any offer of shares in lieu of dividends is made to all shareholders of the same class. This has caused problems in cases where a company has members resident in jurisdictions which prohibit or restrict the ability to make such offers to a person resident or otherwise present in that jurisdiction. As a solution, the Ordinance amends the Law by permitting a company in those circumstances to make such an offer by publication in *La Gazette Officielle* or in any other manner set out in its Articles.

## Authority for acquisitions

Member approval of 'off-market' acquisitions by a company of its own shares will now only need to be made by ordinary resolution (as opposed to special resolution), with any shares that are to be acquired being excluded from the voting.

## Qualification for appointment as auditor

The Ordinance widens the class of partnerships or body corporates that are qualified for appointment as auditor of a Guernsey company. It further permits the Committee for Economic Development (the **Committee**) to authorise those entities to audit the accounts of companies and inserts power for the Committee to make regulations prescribing a fee payable by any person making an application for authorisation.

## Company takeovers

The current restriction that a takeover cannot proceed until the last date on which an offer made can be approved/accepted, even if the requisite 90 per cent threshold has been reached beforehand, is removed. A notice to acquire shares in a company takeover can be issued as soon as the requisite 90 per cent threshold has been reached (and the Ordinance adds to the class of shares which will not be taken into account in calculating the 90% threshold).

## Court sanction of compromise or arrangement

The requirement for 75 per cent in value of the members or creditors to agree a compromise or arrangement (in order for the Court to sanction) is clarified so that, for creditors this means 75 per cent in value of relevant debts owed, and for members the requirement is 75 per cent of relevant members' voting rights.

## Directors of incorporated cell companies and incorporated cells

The Ordinance removes the requirement that an incorporated cell company (**ICC**) and each of its incorporated cells (**ICs**) have the same board, provided that **at least one** of the directors of an IC shall also be a director of its ICC.

## Conversion of a cell of a protected cell company

The Law is amended to permit a poll of the holders of cell shares to be held or demanded on a proposal to convert a cell of a protected cell company into a non-cellular company, in addition to the current provision for written consent or a show of hands.

## Conclusion

This latest round of changes to the Law provides welcome clarification, as well as giving effect to changes that ensure Guernsey companies remain internationally competitive.

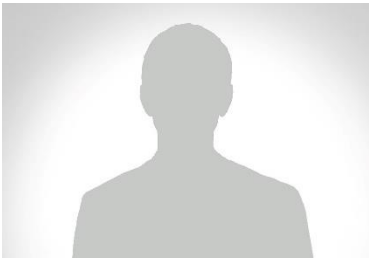
If you require our advice about any of the amendments referred to in this Update, please do get in touch with your usual contact.

# Contacts

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