

Guernsey Companies Law - Amalgamations and Takeovers

This memorandum has been prepared for the assistance of our clients in connection with the provisions relevant to amalgamations and takeovers under the Companies (Guernsey) Law, 2008 (as amended) (the "**Companies Law**"). It is intended to provide only a summary of the main legal and general principles and it is not intended to be comprehensive in scope. It is strongly recommended that you seek specific legal advice on such matters and we would be pleased to assist in this respect. A series of briefings on other specific aspects of Guernsey companies has been produced by Ogier and is available on our website www.ogier.com.

The memorandum has been prepared on the basis of the law and practice in Guernsey as at 1 April 2010.

Introduction

The Companies Law came into full force on 1 July 2008 and contains provisions in relation to amalgamations (sections 60-74) and takeovers (sections 336-340).

Amalgamations

Two or more bodies corporate (i.e. a Guernsey registered company or an overseas company) may amalgamate and continue as one body corporate, which may be one of the existing bodies corporate or a new body corporate.

At least one of the amalgamating bodies corporate must be a Guernsey registered company and the bodies corporate must be of the same type which may be either:

- protected cell companies;
- incorporated cell companies;
- incorporated cells of the same incorporated cell company; or
- non-cellular companies.

Amalgamation Proposal

The amalgamating bodies shall prepare an amalgamation proposal in accordance with section 63 of the Companies Law, which shall set out the terms of the amalgamation.

The directors of each amalgamating body corporate must confirm that the amalgamation is in the best interests of the body corporate and that they are satisfied that the

body corporate will, immediately after the amalgamation becomes effective, satisfy the solvency test.

For companies that are not "supervised companies" (see section 530), a company satisfies the solvency test if:

- the company is able to pay its debts as they become due; and
- the value of the company's assets is greater than the value of its liabilities.

It should be noted that there are additional requirements set out in section 527 in relation to supervised companies.

The directors must give written notice of the proposed amalgamation to every member and creditor of each body corporate, not less than 28 days before the amalgamation is proposed to take effect.

The amalgamation proposal must also be approved by a special resolution of the members of each amalgamating body corporate.

A Guernsey registered company and any other Guernsey registered company which is a wholly-owned subsidiary of it, or two or more companies, each of which is a wholly-owned subsidiary of the same company, may amalgamate and continue as one company without giving notice to members, having to prepare an amalgamation proposal or having it approved by the directors and members, provided the requirements of section 65 of the Companies Law are satisfied.

Application for consent of the Guernsey Financial Services Commission (the "Commission") (where applicable)

The consent of the Commission is also required in circumstances where any of the amalgamating bodies is:

- a supervised company;
- a cell company;
- an incorporated cell; or
- an overseas company.



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An application for the Commission consent shall be made in such form as the Commission may require and in accordance with section 66 of the Companies Law.

In deciding whether to grant any application made and, if so, subject to what, if any, terms or conditions, the Commission must have regard to the protection of the public interest, including matters such as countering financial crime and the financing of terrorism, etc.

An applicant may appeal to the Royal Court of Guernsey against the refusal of an application for consent, the imposition of terms and conditions upon that consent and other matters in accordance with section 68 of the Companies Law.

Application to Registrar

When the above requirements have been met, an application for the amalgamation shall be made to the Registrar by the directors of each amalgamating body corporate. The application shall be in such form as may be required by the Registrar and shall be accompanied by the documents set out in section 69 of the Companies Law. In addition, where the amalgamated body corporate will be a Guernsey registered company, it must conform with the requirements of Part III of the Companies Law (as to name, office, seal and records etc). However, it will not be required to make an application to change its name under section 25.

Legal Effect

Under the Companies Law, upon amalgamation, all property, rights, debts and obligations to which the amalgamating bodies corporate were entitled or subject to immediately before the amalgamation become the property, rights, debts and obligations of the amalgamated body corporate.

Takeovers

The Companies Law introduces “squeeze out” provisions, whereby the maker of an offer (the “**Transferee**”) which has been approved by shareholders comprising 90% or more in value of the shares affected may compulsorily acquire the remaining shares. The Transferee is entitled and bound to acquire the remaining shares on the terms of the offer.

Any shareholder who does not agree to the transfer of shares may apply to the Court to cancel any notice to acquire shares. The Court may cancel the notice or make such order as it thinks fit.

The Companies Law was amended with effect from 1 July 2009 to put the authority of the Panel on Takeovers and Mergers of the UK and the City Code on Takeovers and Mergers onto a statutory footing in Guernsey. Please see the separate briefing “Guernsey Companies Law - Guernsey Takeover and Mergers Panel and Code”.

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Client briefing

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