

# Guernsey Companies Law - Arrangements and Reconstructions

This memorandum has been prepared for the assistance of our clients in connection with the provisions relevant to arrangements and reconstructions under the Companies (Guernsey) Law, 2008 (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](http://www.ogier.com). Transitional provisions have also been made (a separate briefing addresses the operation of these).

The memorandum has been prepared on the basis of the law and practice in Guernsey as at 1 July 2008.

## Introduction

The Companies Law came into force on 1 July 2008.

The Companies Law has introduced statutory provisions dealing with compromises and arrangements between the Company and its members or the Company and its creditors.

An "arrangement" would include a reorganisation of share capital by consolidation of classes or by division into classes.

## Scope of Application

The Companies Law does not prescribe any particular situations where these provisions can be utilised. Accordingly a company may be able to effect any kind of arrangement provided all necessary procedures and approvals have been obtained. The essential requirements for a compromise or arrangement are as follows:

- an application to the Royal Court of Guernsey for an order convening a meeting of the creditors or class of creditors, or the members or class of members. The application may be made by:
  - the company;
  - any creditor or member of the company;
  - if the company is being wound-up, the liquidator;

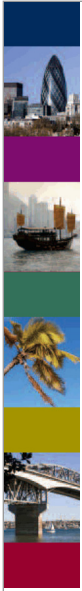
- if the company has an administration order in force, the administrator; or
- if the cell of the protected cell company has a receivership order in force, the receiver;
- where a meeting has been convened by the Court notice must be given to creditors or members along with a statement explaining the effect of the compromise or arrangement;
- that meeting must then approve the compromise or arrangement by majority and number representing 75% in value of the members or class of members or creditors or class of creditors present and voting either in person or by proxy; and
- once such approval has been obtained application must be made to the Court for the Court to sanction the compromise or arrangement.

## Effect of Application

Once a compromise or arrangement has been sanctioned by the Court it will be binding upon:

- all creditors or the class of creditors, or on the members or class of members (as the case may be);
- the company;
- in the case of a company in the course of being wound-up, the liquidator and contributories of the company;
- in the case of a company with an administration order in force, the administrator and contributories of the company; and
- in the case of a cell of a protected cell company with a receivership order in force, the receiver and all contributories of the protected cell company.

It should be noted that where a proposed compromise or arrangement would amount to, for example, an alteration of the company's memorandum or articles, or an amalgamation or migration, the Court may allow the compromise or arrangement to be effected in accordance with the above provisions rather than in accordance with the provisions relating to alteration of the memorandum and articles or to amalgamation or migration.



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Compromises or arrangements can be used in a number of situations including but not limited to acquisitions, group reorganisations and mergers.

The Companies Law allows the Court to make provision for a number of matters where an application is made to the Court to sanction a compromise or arrangement and it is shown that (a) the compromise or arrangement is in connection with a reconstruction of any company or the merger of two or more companies; and (b) that compromise or arrangement would result in the transfer of the whole or any part of the undertaking or property of any company concerned in the compromise or arrangement to another company.

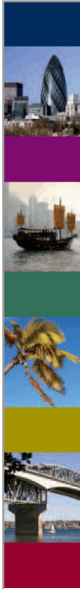
These matters include making arrangements for the transfer of undertaking and property, the issuing or appropriation of shares or debentures etc, the continuation of any legal proceedings and such incidental, consequential and supplemental matters to ensure the compromise or arrangement is effectively carried out.

Where such an order is made a copy of the order must be delivered to the Registrar of Companies within seven days.

## About Ogier

Ogier is an award winning offshore legal and fiduciary services provider. The Group advises on all aspects of BVI, Cayman, Guernsey and Jersey law and associated fiduciary services through a global network of offices covering all time zones and key financial markets.

Ogier continues to be recognised as a leading law firm by the principal legal directories, including Legal 500 and Chambers.



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