

What to know about the May 2021 changes to the Companies (Guernsey) Law 2008

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Recent changes to the Guernsey Companies Law are set to improve the administration process for Guernsey companies and have been welcomed by the industry.

The Companies (Guernsey) Law, 2008 (Miscellaneous Amendment) Ordinance, 2020 (the **Ordinance**) came in to force on 1 May 2021, amending the Companies (Guernsey) Law, 2008 (the **Law**). In this article, we take a look at some of the key changes.

| Key changes to note

Off-market purchase of own shares

In one of the more significant changes, Sections 313 and 314 of the Law have been amended to simplify the process for approving off-market acquisitions of own shares by a company. In summary:

- the selling member's consent is no longer required;
- member approval of the various actions required in an "off-market" acquisition need only be passed by ordinary resolution rather than special resolution as previously required; however, the member whose shares are to be acquired is excluded from voting on the resolution except where that member is the sole shareholder in that company;
- where acquisition of the shares is for the purpose of an employee share scheme, members will also only be required to authorise the minimum and maximum amounts to be paid rather than the terms of the acquisition.

Takeover closeout provisions

In order to facilitate takeover transactions, Section 337 of the Law has been amended to enable the issue of a notice to acquire shares in a company takeover as soon as the requisite 90% threshold has been reached, rather than waiting for the last day on which the offer can be approved or accepted.

In addition, the amendment also identifies certain categories of shares that will not be taken into account in calculating the 90% threshold, being:

- shares held as treasury shares;
- shares held by the transferee or any class or description of person specified in section 337A at the date of the offer; and
- shares acquired by the transferee during the offer period at a price higher than the offer price, save where the offer price is raised to match the higher price.

Court sanction for compromise or arrangement

Section 110(1) of the Law has been amended to define the meaning of a majority in number representing "75% in value" needed to agree a proposed compromise or arrangement before the court would consider sanctioning such compromise or arrangement. The new definition provides that the reference to "75% in value" mentioned in subsection (1) means:

- a) in the case of members, 75% of the voting rights of the members or class of members (as the case may be); and
- b) in the case of creditors, 75% of the value of the debts owed to the creditors or class of creditors (as the case may be).

Formalities required to change a company's name

Section 25 of the Law has been amended to allow a company to change its name by any means as may be specified in its articles, as an alternative to passing a special resolution.

Location of board meetings

In response to the COVID-19 travel restrictions, and the subsequent issues faced by boards in identifying where a meeting is physically held, Section 153(2) of the Law has been amended to assist in determining the location of a board meeting by providing that the deeming of a meeting of directors to be held in the place in which the chairman is present is now subject to the company's memorandum and articles or a resolution of the company's board.

Electronic general meetings

Similarly, as a new provision, the Law now provides that a notice of a general meeting which is

to be held entirely electronically must state the means and manner by which persons may attend.

Divergence in composition of board of an ICC and its ICs

The Law has been amended to allow divergence between the membership of the board of directors of an incorporated cell (IC) and that of its incorporated cell company (ICC), provided that at least one of the directors of an IC must also be a director of its ICC. Hand in hand with this, by the repeal of sections 241, 246, 251(3), 253 and 261(1), the duties imposed on ICCs and their directors in respect of their ICs have been removed, leaving such obligations with the directors of the IC itself.

Proxies

Sections 224(2) (c) and 226(6) (c) of the Law have been repealed to allow more flexibility in the use and termination of proxies in poll votes.

Offers of shares in lieu of dividends to persons residing in certain jurisdictions

Recognising that certain jurisdictions prohibit or restrict the making of an offer of shares in lieu of dividends to shareholders residing in these jurisdictions, Section 306 has been extended to provide that, in such circumstances, companies may make a valid offer of shares in lieu of dividends to those shareholders by publication in La Gazette Officielle, or in any other manner allowed by the company's articles.

Other changes

Updating Registry Forms

Various sections of the Law have been amended to allow the Registrar of Companies to specify the form of certain applications without prescribing the form by regulations, facilitating an efficient process to respond to improvements in IT infrastructure and similar.

Process for conversion of cells into a non-cellular company

Section 52A of the Law has been amended to expressly 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.

Amalgamations

Section 69(2) (b) of the Law has been amended to provide that in the case of an amalgamated

body corporate which is a new company, the requirement of section 15(3) of the Law – that the founder member must subscribe to the memorandum of the company – will be deemed satisfied where at least one founder member of the company subscribes to the memorandum. Similarly, Section 84(1) (b) of the Law has been amended to provide that in the case of an amalgamated body corporate which is a company migrating to Guernsey, the requirement of section 15(3) of the Law will be deemed satisfied where at least one founder member of the company as proposed subscribes immediately after registration as a Guernsey company.

Auditor Qualification

Section 260 of the Law has been amended to widen the scope of partnerships or body corporates which are qualified for appointment as auditor of a Guernsey company and now contains a power for the Committee for Economic Development (the **Committee**) to authorise partnerships and body corporates to audit the accounts of companies. It also now contains a power for the Committee to make regulations prescribing a fee payable to the Committee by any person or body making an application for authorisation.

Shares to stock prohibited

The Law now provides that a company's shares may not be converted into stock.

Document retention by the Registrar

The Law now provides that the Registrar of Companies may destroy documents received or issued by, or on behalf of, the Registrar where a copy in electronic form is retained.

Clarification regarding residential addresses of directors

Section 532(1) has been clarified to make it clear that a director's usual residential address is only confidential information where the address in the company's register of directors is a service address and the director's usual residential address has been notified to the Registrar.

For further information, please contact any member of our Guernsey corporate team or your usual Ogier contact.

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