

# New Company Law for Guernsey The Companies (Guernsey) Law, 2008

By Ian Kirk, Head of Collas Day Commercial



as the Protected Cell Company (Guernsey was the first to have this legislation) and the Incorporated Cell Company.

## What does the new Company law do?

It consolidates existing company legislation and incorporates a number of further improvements to corporate law, which will benefit Guernsey's competitiveness as an offshore financial centre.

## What are the main Changes?

### New types of companies

Two new types of company are introduced - "Unlimited" Companies (where the liability of the membership is unlimited) and "Mixed" Liability Companies (which can have shares, unlimited liability members and guarantee members).

### The incorporation process for companies

The incorporation of companies ceases to be a judicial or court process. Currently, the consent of the Crown Officers, the Guernsey Financial Services Commission

(GFSC) and court sanction are required before a company can be registered. The incorporation process will now be controlled by the new Company Registry discussed below.

### Single member companies

Currently, a Guernsey company must have two registered members. This is reduced to one, recognising the fact that many companies are beneficially owned by one individual or company.

### Standardised Articles of Association

Standard Articles of Association are prescribed which will be automatically adopted, unless otherwise indicated on incorporation.

### Corporate capacity

Unless a company's memorandum of association specifies otherwise, its objects are unrestricted.

This should in future avoid any issues being raised as to whether a particular act or transaction is within a company's powers.

### Arrangements and reconstructions

The new law facilitates compromises and arrangements between a

company and its creditors (or any class of them) or its members (or any class of them). Subject to agreement of 75% majority of the creditors or members, the Royal Court may sanction the compromise or arrangement.

This should assist in insolvency or possible insolvency situations. Currently, despite a proposal being supported, for example by the vast majority of creditors, a minority can block a proposal.

### Company takeovers

Squeeze-out provisions will allow a proposed purchaser with 90% acceptances to compulsorily acquire the remaining shares.

### Directors' liabilities

It is not possible for a company to exempt a director to any extent from any liability for negligence, default, breach of duty or breach of trust, although the company in general meeting can ratify or approve an action which constitutes such.

This underlines the importance of directors obtaining appropriate directors' and officers' insurance in respect of potential liabilities.

### Directors' interests

The new law emphasises the need for a director to disclose his or her interest in any proposed transaction with the company.

Earlier fears concerning a proposal to codify directors' duties in the manner introduced into the UK Companies Act 2006 have not been realised.

### Dividends and distributions

Currently, the repayment of share capital or the payment of dividends to shareholders are subject to complex rules, particularly the accounts from which payments can be made or profits distributed.

The new regime does away with

these rules. As a general principle, distributions can be made or paid provided that any requirements set out in the company's memorandum and articles are fulfilled and the company satisfies a solvency test.

The directors must issue a certificate stating that in their opinion the company will, immediately after the distribution, satisfy the solvency test and the grounds for that opinion.

A distribution made at a time when the company did not satisfy the solvency test can be recovered, subject to certain exceptions.

In addition, the directors may be personally liable to repay to the company amounts which are not recoverable from the members.

The effect of these provisions will be a much more flexible regime both for repayment of capital and distributions to shareholders. However, the onus is on the board of directors to ensure that payment can properly be made.

### Solvency Test

A new solvency test will be in place which will be applicable to a number of company actions including:

- migrations;
- amalgamations;
- making distributions (including dividends);
- financial assistance for the acquisition of own shares;
- certain payments connected with the acquisition of shares by a company; and
- redemptions.

Under the new provisions, a company satisfies the solvency test if:

- the company is able to pay its debts as they become due;
- the value of the company's assets is greater than the value of its liabilities; and
- in the case of a supervised company, it satisfies the various requirements laid down

in other applicable laws.

The new test adds certainty and consistency to the processes involved.

### Electronic communication

The law permits documents to be sent electronically to shareholders by the company if such means of communication is agreed by the shareholders.

### Companies Registry

In tandem with these developments in Guernsey's company law, a new Companies Registry has been launched and is ready for operation on 1 July 2008. The new Registry will facilitate fast-track on-line registration and searches.

A new office of the Registrar of Companies been established who takes over the role currently undertaken by HM Greffier and his staff. His role will include advising the Commerce and Employment Department of the States of Guernsey on ways to promote and enhance the Register of Companies and the law relating to companies in order to encourage business growth in Guernsey.

A modern, flexible company law underpins Guernsey as both a finance centre and as an entrepreneurial jurisdiction. This progressive company law should enable Guernsey to attract further business.

Ian Kirk is the Head of Collas Day Commercial. Collas Day Corporate Finance Limited is a category 1 listing sponsor of the CISX.

For further information, please contact Ian on +44(0) 1481 734207 or [ian.kirk@collasday.com](mailto:ian.kirk@collasday.com)