

COLLAS DAY | COMMERCIAL

New Company Law for Guernsey

Key points for directors

January 2009

1. Introduction

1.1 In force

The Companies (Guernsey) Law, 2008 came into force on 1st July 2008.

1.2 The Registrar

The new office of Registrar of Companies became effective on 12th June 2007.

1.3 Purpose

The purpose of this briefing note is to advise practical steps directors should now have taken following the coming into force of the new law.

2. The New Regime

2.1 Action for Directors

2.1.1 In order to use the new on-line directory all directors must register. Directors should now have registered online.

2.1.2 For those who have not done so, a form is available on the Company Registry website; www.guernseyregistry.com

2.1.3 Registration can be effected by the individual director who must attend the Company Registry personally with formal identification such as a passport, driving licence or other photographic identification or by a licensed corporate service provider who, depending on the current arrangements with its clients, will probably charge a fee.

2.1.4 A director, once registered, will receive a unique PIN number.

2.1.5 Unless a director has a PIN number he will be unable to undertake certain actions in relation to a company of which he is a director (see 2.3 below).

2.2 Director Eligibility

2.2.1 New Companies

A person cannot be appointed a director unless he has in writing:

- consented to be a director; and
- declared that he is not ineligible (not a minor or subject to a disqualification order in Guernsey or elsewhere).

2.2.2 Director eligibility requirements should have been satisfied by 1st January 2009

2.2.3 The eligibility requirements are a continuing requirement and regular confirmations of eligibility should be obtained.

2.3 Re-registration of companies

All existing companies should now have re-registered on the website using the form provided on it. Re-registration can be effected by:

- a director using his PIN; or
- a licensed corporate service provider.

A company will not be able to file its annual validation (required no later than 31st January) if it has not done so.

2.4 Registers and Officers

2.4.1 Subject to certain exceptions, a Guernsey company must appoint a resident agent who must keep a record of beneficial owners of a company. The resident agent must be either a Guernsey resident director or a licensed corporate service provider.

2.4.2 A company must have a register of secretaries.

2.5 Memorandum and Articles of Association
(now called Incorporation)

2.5.1 New Companies

New Companies' Memorandum and Articles of Incorporation must comply with the new Company Law.

2.5.2 Existing Companies

2.5.2.1 Transitional provisions state that nothing in existing Memorandum and Articles is rendered invalid or unenforceable by the new Company Law until 1st July 2009.

2.5.2.2 However, directors need to consider whether to amend a company's Memorandum or Articles to give the company additional flexibility, for example, to:

- enable a company to have unlimited objects in its memorandum
- remove unnecessary restrictions in the memorandum or articles
- become a single member company; or
- take advantage of the new more flexible dividend and distribution regime under the new Company Law.

2.6 Disclosure of Interests

There are complicated provisions relating to disclosure of directors' interests in transactions with the company.

Failure to disclose does not necessarily affect the validity of a transaction but the director will be guilty of a criminal offence. Directors should ensure that their interests in transactions are appropriately disclosed.

3. Conclusion

Our Corporate team are available to discuss the points raised in this briefing note.

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