COLLAS CRILL

Moving with the times: The Companies (Guernsey) Law, 2008 (Miscellaneous Amendments) Ordinance, 2021

MAY 2021

On 1 May 2021 the Companies (Guernsey) Law, 2008 (Miscellaneous Amendments) Ordinance, 2021 brought into force a number of amendments to the Companies (Guernsey) Law, 2008 (the **Law**). The amendments themselves are fairly minor in nature, but the general theme of the amendments is an aim to ensure that Guernsey remains a competitive jurisdiction in which it is easy to do business.

Changes relating to remotely held board meetings and shareholder meetings stem from the increased necessity to rely on technology to counter the issues created by lockdowns and travel restrictions due to the coronavirus pandemic.

Allowing for different board compositions for the incorporated cells (IC) of an incorporated cell company (ICC) will hopefully make the ICC a more practical and appealing structure. It opens up new possibilities for the management of an ICC structure, such as allowing an IC shareholder to enjoy board representation in respect of its IC.

Changes to sections dealing with takeovers, off-market acquisitions and offers to issue shares in lieu of dividends are aimed at clarifying or fixing issues in the existing legislation that will be familiar to practitioners. Although minor changes, they will create welcome improvements to these procedures.

The table below provides a summary of all the key amendments that have been made to the Law.

RELEVANT AREA	COMPANY LAW SECTIONS AMENDED	AMENDMENT	RATIONALE

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Deemed location of remotely held board meetings	Section 153(2)4	The law currently provides that where board meetings are held by telephone or video conference the deemed location of the meeting will be the location of the chairman of the meeting. This presumption can be superseded with an alternative presumption detailed in the company's articles of incorporation.	This addition will assist companies in meeting substance requirements and ensuring that their management and control remains based in Guernsey. It will also allow stability of meeting chairs without the need to appoint a chairman based on location to avoid the unintended consequences of the original wording.
Remotely held general meetings	Section 210(1)(b)	Where a general meeting is proposed to be held remotely by telephone or video conference, the notice of the meeting must state the means and manner by which persons may attend.	This updates the Law to reflect changes in the use of technology and the manner in which general meetings have been conducted during the pandemic.
Directors of an ICC and its ICs	Section 136 Section 143	Previously the board of an IC had to be the same as the board of the ICC. This amendment allows ICs to have different board compositions provided that at least one board member from the main ICC board sits on an IC board. The register of directors must clearly set out any differences in board composition between the ICs and the main ICC.	This will offer greater flexibility for the management of an ICC structure and hopefully increase the appeal and marketability of the ICC structure internationally.

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Takeovers	Section 337	On a takeover offer, once 90% of shareholders have approved the offer, a notice to acquire the shares of dissenting shareholders can be issued immediately after hitting that 90% threshold. Previously such a notice could not be issued until the expiration of the four-month offer period.	This streamlines the takeover process to maintain Guernsey as a competitive jurisdiction.
"off market" acquisition of own shares	Section 314 Section 317(2)	An "off-market" acquisition of a company's own shares previously had to be made pursuant to a contract authorised by a special resolution of the company. The amendment changes this to an ordinary resolution. In respect of an acquisition for an employee share scheme, an ordinary resolution that sets out the minimum and maximum amount that may be paid for the shares. A member whose shares are to be acquired under this section is excluded from exercising the voting rights attaching to those shares when voting on the resolution.	The streamlining of the "off-market" acquisition process will avoid the need to file a publically available document that contains the names of the company's shareholders (a special resolution is a publically available document).

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Conversion of a cell of a PCC into a non-cellular Company	Section 52A	Provides that, on a proposal to convert the cell of a protected cell company into a non-cellular company, the cellular members may vote on the proposal by a poll. This will be in addition to the current processes of written consent and vote by show of hands.	This offers convenience and additional voting options for cellular members, focussing on the affected cell.
Arrangements & reconstructions - Court sanction for compromise or arrangement	Section 110	Clarifies that, in respect to an agreement to agree a compromise or agreement, "75% in value" of members or creditors means: • 75% of voting rights; or • 75% of the value of the debts owed to the creditors, as applicable.	This adds clarification to assist members, creditors and insolvency practitioners.
Amalgamations and migrations	Section 69(2)(b) Section 84(1)(b)	In respect of an amalgamated company continuing as a new company, or a company that has migrated into Guernsey, the requirements of section 15(3) for founder members to subscribe to the company's memorandum of incorporation will be satisfied by ONE founder member subscribing.	This makes the amalgamation and migration process more convenient which in turn makes Guernsey a more appealing jurisdiction to do business with.

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Qualification for appointment as an auditor	Section 260	Expands the scope by which a partnership or body corporate may be qualified for appointment as an auditor of a Guernsey company (e.g. partnerships or body corporates whose control rests with individuals who are qualified to audit the accounts of companies under the law of an EEA member state). Alternatively a partnership or body corporate can be qualified for appointment as an auditor if authorised to do so by the Committee for Economic Development (the ordinance gives the committee power to make regulations prescribing a fee for an application for authorisation).	This amendment broadens the general scope of entities that are qualified to act as an auditor, it also provides an alternative authorisation pathway and process for entities that still do not fit within the expanded qualification criteria.

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Capital & Shares – offers of shares in lieu of dividends	Section 305	Where it is proposed to issue shares in a company in lieu of a dividend, that proposal must be offered to all shareholders in that class on the same terms. The amendment clarifies that the company can make such an offer to a shareholder even if that shareholder is resident in a territory where it is prohibited to make or accept such an offer. It also provides a mechanism to make the offer in those circumstances, the offer can be made by publication in La Gazette Officielle or such other manner allowed by the articles.	This amendment has been brought in to find a solution around the practical issue of when one or more shareholders in a class are based in a territory where it is prohibited to make such an offer as envisioned by section 305.
Capital & Shares – conversion into stock	Section 283	Shares may NOT be converted into stock.	This (historical) practice has ultimately been deemed to be an unnecessary corporate mechanism.

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Change of Company Name	Section 25	The current process to change a company's name is to pass a special resolution of the members and file that resolution, with a certificate of compliance, with the Registrar. This amendment allows a company to amend its articles by "any other means as may be specified in its articles". The only filing requirement when changing a company name by this method will just be certificate of compliance.	This provides for an easier process to change a company's name. It also avoids the need to file a publically available document that contains the names of the company's shareholders (a special resolution is a publically available document).

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RELEVANT AREA	COMPANY LAW SECTIONS AMENDED	AMENDMENT	RATIONALE
Greater autonomy for the Registrar of Companies	Section 17 (application for incorporation) Section 27 (reservation of company name) Section 30 (application for change of registered office address) Section 83 (application for registration as a Guernsey company (migration)) Section 97 (application for transfer of registration)	Previously these applications had to be in the form "prescribed" by the Registrar by regulations, now they shall be as "prescribed or otherwise specified".	This small change is aimed at giving the Registrar more flexibility to amend the application requirements for certain corporate processes other than by regulation. The ultimate aim being, as with the other amendments listed above, to ensure that Guernsey is a competitive jurisdiction in which it is easy to do business.

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