

PROJET DE LOI

ENTITLED

The Uncertificated Securities (Enabling Provisions) (Guernsey) Law, 2005 *

[CONSOLIDATED TEXT]

NOTE

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* No. VI of 2006; as amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016).

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ARRANGEMENT OF SECTIONS

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THE STATES, in pursuance of their Resolution of the 28th September, 2005^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

Regulations as to uncertificated securities.

1. The States of Guernsey [Committee for Economic Development] ("the [Committee]") may, after consultation with the Guernsey Financial Services Commission, make regulations to provide for title to securities or to any specified class or description of securities to be evidenced and transferred without a written instrument.

NOTES

In section 1, the words in the first and second pairs of square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 2, Schedule 1, paragraph 1(a) and section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

The following Regulations have been made under section 1:

Uncertificated Securities (Guernsey) Regulations, 2009.

Particular matters as to which regulations may make provision.

2. (1) Regulations under this Law may, without limitation, provide

^a Article XIII of Billet d'État No. XIV of 2005.

for any of the following matters –

- (a) requirements and procedures, and the regulation of procedures, in relation to –
 - (i) recording and transferring title to securities, and
 - (ii) keeping any register of members or of persons with title to securities,
- (b) the regulation of persons responsible for or involved in the operation of requirements and procedures mentioned in paragraph (a),
- (c) the rights and obligations of persons in relation to securities dealt with under such requirements and procedures,
- (d) the giving of effect to –
 - (i) the transmission of title to securities by operation of law,
 - (ii) any restrictions on the transfer of title to securities arising by virtue of the provisions of any enactment, rule of law, instrument, court order or agreement, and
 - (iii) any power conferred on a person, by any provision mentioned in subparagraph (ii), to deal with securities on behalf of the person

entitled, and

- (e) in relation to the persons responsible for or involved in the operation of requirements and procedures mentioned in paragraph (a) –
 - (i) the consequences of their insolvency, bankruptcy, death or incapacity, and
 - (ii) the transfer by or from them to other persons of their functions in relation to those requirements and procedures.

(2) Regulations under this Law shall contain such safeguards as appear to the [Committee] to be appropriate for the protection of the public or any section thereof and the reputation and best economic interests of the Bailiwick of Guernsey.

NOTES

In section 2, the word in square brackets was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

The following Regulations have been made under section 2:

Uncertificated Securities (Guernsey) Regulations, 2009.

General provisions as to regulations.

3. (1) Regulations under this Law –
- (a) may make provision for the creation, trial (summarily or on indictment) and punishment of offences,

- (b) may prohibit the doing of anything in relation to which provision may be made by the regulations except under the authority of and in accordance with the conditions of a licence granted, subject to the satisfaction of such criteria and the payment of such fee as may be specified in the regulations, by such person as may be so specified,
- (c) may, for the purposes of the regulations, apply (with such exceptions, adaptations and modifications as the [Committee] thinks appropriate), amend, adapt, modify, extend or disapply any provision of any enactment or any rule of law,
- (d) may require the payment of fees of such amounts as are specified in the regulations or are determined in accordance with the regulations, and the enabling of any person specified in the regulations to require the payment of such fees,
- (e) may empower any person with functions under the regulations to delegate all or any of those functions to any other person willing to discharge them,
- (f) may make provision for matters arising out of or related to title to securities and the evidencing and transfer thereof, and
- (g) without prejudice to the generality of the provisions of this Law, may make any such provision of any such

extent as might be made by Projet de Loi, but may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the regulations.

(2) Regulations under this Law –

- (a) may be amended or repealed by subsequent regulations hereunder,
- (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the [Committee] to be necessary or expedient, and
- (c) shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

(3) Any power conferred by this Law to make regulations may be exercised –

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised –
 - (i) the full provision to which the power extends, or

any lesser provision (whether by way of exception or otherwise),

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any conditions specified in the regulations.

NOTE

In section 3, the word "Committee" in square brackets, wherever occurring, was substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

Interpretation.

4. (1) In this Law –

"[**Committee**]" means the [of Guernsey States] [Committee for Economic Development],

"**person**" includes any body or authority,

"**securities**" means –

- (a) units in a collective investment scheme within the meaning of paragraph 1 of Schedule 1 to the Protection

of Investors (Bailiwick of Guernsey) Law, 1987^b
("Category 1: Collective investment schemes"),

- (b) general securities and derivatives within the meaning of paragraph 2 of Schedule 1 to the Protection of Investors (Bailiwick of Guernsey) Law, 1987 ("Category 2: General securities and derivatives"),
- (c) shares or stock in, or securities of, an open-ended investment company within the meaning of section 44(1) of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, and
- (d) other securities of any class or description specified by regulations of the [Committee].

(2) Any reference in this Law to –

- (a) title to securities, includes any legal, equitable or other interest in securities, and
- (b) a transfer of title, includes a transfer by way of security.

(3) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

^b Ordres en Conseil Vol. XXX, p. 281; amended by Vol. XXX, p. 243; Vol. XXXI, p. 278; Vol. XXXII, p. 324; No. XIII of 1994; No. XII of 1995; No. II of 1997; No. XVII of 2002; and by Nos. XV and XXXII of 2003. Also amended by Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; Ordinances X and XX of 1998; and the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003).

NOTES

In section 4, the words in, first, the first and, second, the third pairs of square brackets in the definition of the expression "Committee" in subsection (1) and, third, the word "Committee" in square brackets wherever else occurring were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 2, section 2, Schedule 1, paragraph 1(a) and section 5(1), Schedule 3, paragraph 2, with effect from 1st May, 2016.

The functions, rights and liabilities of the Commerce and Employment Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Economic Development and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The Protection of Investors (Bailiwick of Guernsey) Law, 1987 has since been repealed by the Protection of Investors (Bailiwick of Guernsey) Law, 2020, section 80(a), with effect from 1st November, 2021, subject to the savings and transitional provisions in section 81 of the 2020 Law.

The words in the second pair of square brackets in the definition of the expression "Committee" in subsection (1) shown, incorrectly, in the printed version of this section as "of Guernsey States" should read "States of Guernsey".

Application of Companies Law.

5. The provisions of this Law and of any regulations under it have effect notwithstanding any provision of the Companies (Guernsey) Law, 1994^c.

NOTE

The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph

^c Order in Council No. XXXIII of 1994; amended by No. XIV of 1996, No. I of 2001 and No. II of 2002. Also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003).

4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

Citation.

6. This Law may be cited as the Uncertificated Securities (Enabling Provisions) (Guernsey) Law, 2005.

NOTE

The Law received Royal Sanction on 11th April, 2006 and was registered on the Records of the Island of Guernsey and came into force on 15th May, 2006.
