

ORDER IN COUNCIL

IX
2006

ratifying a Projet de Loi

ENTITLED

The Companies (Guernsey) (Amendment) Law, 2005

(Registered on the Records of the Island of Guernsey
on the 13th November, 2006.)



2006

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 13th day of November, 2006 before Richard John Collas, Esquire, Deputy Bailiff;
present:- David Charles Lowe OBE, Derek Martin Le Page, Alan Cecil Bisson, David
Michael Jory, Keith Bichard OBE, Esquires, The Reverend Peter Gerald Lane,
Michael Henry De La Mare, Michael John Tanguy, Esquires, Susan Mowbray, and
David Osmond Le Conte Esquire, Jurats.*

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 7th June, 2006 approving and ratifying the Projet de Loi entitled “The Companies (Guernsey) (Amendment) Law, 2005”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller, thereon, ORDERED that the said Order in Council be registered on the records of this Island.

At the Court at Buckingham Palace

The 7th DAY OF JUNE 2006

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

"In accordance with Your Majesty's General Order of Reference of 22 February 1952 the Committee have considered a Petition of the States of Guernsey:

"That, in pursuance of their Resolution of 28th day of September 2005, the States of Deliberation at a meeting on 28th day of September 2005 approved a Projet de Loi entitled The Companies (Guernsey) (Amendment) Law 2005 and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the Projet de Loi is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction The Companies (Guernsey) (Amendment) Law 2005, and to order that it shall have force of law in the Island of Guernsey.

"The Committee have considered the Projet de Loi and have agreed to report that it may be advisable for Your Majesty to approve and ratify it."

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the Projet de Loi (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Bailiwick of Guernsey and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty's Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty's Order and to proceed accordingly.

A. K. Galloway

PROJET DE LOI

ENTITLED

The Companies (Guernsey) (Amendment) Law, 2005

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.

Amendment of Law of 1994.

1. The Companies (Guernsey) Law, 1994, as amended^b ("**the Law of 1994**"), is further amended as follows.

2. In section 67A(2)^c of the Law of 1994 for "5 years" substitute "15 years".

3. Section 73(3)(a) of the Law of 1994 is repealed.

4. After section 77 of the Law of 1994 insert the following Part -

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

^b Order in Council No. XXXIII of 1994; amended by No. XIV of 1996, No. I of 2001 and No. II of 2002.

^c Section 67A was inserted by Order in Council No. XIV of 1996.

"PART XIVA
ADMINISTRATION

Administration orders.

77A. (1) Subject to the provisions of this section, if the Court -

- (a) is satisfied that a company is or is likely to become unable to pay its debts, and
- (b) considers that the making of an order under this section may achieve one or more of the purposes set out in subsection (3),

the Court may make an order under this section (an "**administration order**") in relation to the company.

(2) An administration order is an order directing that, during the period for which the order is in force, the affairs, business and property of the company shall be managed by a person (the "**administrator**") appointed for the purpose by the Court.

(3) The purposes for the achievement of which an administration order may be made are -

- (a) the survival of the company, and the whole or any part of its undertaking, as a going concern,
- (b) a more advantageous realisation of the company's assets than would be effected on a winding up,

and the order shall specify the purpose or purposes for which it is made.

(4) An administration order may be made notwithstanding that -

- (a) an order for the company's winding up has been made by the Court, or
- (b) the company has passed a resolution for voluntary winding up,

and, if an administration order is so made, then -

- (i) the order for the company's winding up shall be discharged or suspended, or (as the case may be),
- (ii) the resolution for voluntary winding up shall cease to have effect or shall be suspended,

on such terms and conditions as the Court thinks fit.

Application for administration order.

77B. (1) An application for an administration order may be made by -

- (a) the company,

- (b) the directors of the company,
- (c) any shareholder of the company,
- (d) any creditor of the company, including any contingent or prospective creditor,
- (e) the Commission, in respect of supervised companies and companies engaged in financial services business, or
- (f) in the case of a company in respect of which the Court has made an order for winding up or which has passed a resolution for voluntary winding up, the liquidator,

or by all or any of those parties, together or separately.

(2) The Court, on hearing an application for an administration order, may, on such terms and conditions as it thinks fit -

- (a) grant or dismiss the application,
- (b) adjourn the hearing, conditionally or unconditionally, or
- (c) make an interim order or any other order it thinks fit.

(3) An interim order under subsection (2) may, without limitation, restrict the performance of any functions of the directors or of the company, whether by reference to the consent of the Court or otherwise.

(4) Notice of an application to the Court for an administration order in respect of a company shall, unless the Court orders otherwise, be served on -

- (a) the company,
- (b) the Commission, in respect of supervised companies and companies engaged in financial services business, and
- (c) such other persons, if any, as the Court may direct, including (without limitation) any creditor,

who shall each be given an opportunity of making representations to the Court before the order is made.

(5) Notice of an application for an administration order shall be placed in La Gazette Officielle at least 2 clear days before the day of the making of the application or, if that is not reasonably practicable, then as soon as reasonably practicable thereafter.

Effect of application for administration order.

77C. (1) During the period between the presentation of an application for an administration order and ending with the making of such an order or the dismissal of the application -

- (a) no resolution may be passed or order made for the company's winding up, and
- (b) no proceedings may be commenced or continued against the company except with the leave of the Court and subject to such terms and conditions as the Court may impose (but, for the avoidance of doubt and without limitation, rights of set-off and secured interests, including security interests (within the meaning of the Security Interests (Guernsey) Law, 1993^d) and rights of enforcement thereof, are unaffected by the provisions of this paragraph).

(2) Nothing in subsection (1) requires the leave of the Court for the presentation of an application for the company's winding up.

Effect of administration order.

77D. (1) On the making of an administration order any application for the company's winding up shall be dismissed.

(2) During the period for which an administration order is in force -

- (a) no resolution may be passed or order made for the company's winding up, and

^d Order in Council No. III of 1993.

- (b) no proceedings may be commenced or continued against the company except with the consent of the administrator or the leave of the Court and subject (where the Court gives leave) to such terms and conditions as the Court may impose (but, for the avoidance of doubt and without limitation, rights of set-off and secured interests, including security interests (within the meaning of the Security Interests (Guernsey) Law, 1993) and rights of enforcement thereof, are unaffected by the provisions of this paragraph).

Notification of administration order.

77E. (1) Every invoice, order for goods, business letter or other document which, at a time when an administration order is in force in relation to a company, is issued by or on behalf of the company or the administrator, being a document on or in which the company's name appears, shall also contain the administrator's name and a statement that the affairs, business and property of the company are being managed by the administrator.

(2) If default is made in complying with this section, the company and any of the following persons who without reasonable excuse authorises or permits the default, namely, the administrator and any officer of the company, is guilty of an offence and liable to a fine not exceeding level 5 on the uniform scale.

General powers of administrator.

77F. (1) The administrator of a company may do all such things as may be necessary or expedient for the management of the affairs, business and property of the company.

(2) Without prejudice to subsection (1), and unless the Court orders otherwise, the administrator of a company has the powers specified in Schedule 4.

(3) The administrator may apply to the Court for directions in relation to -

- (a) the extent or performance of any function, and
- (b) any matter arising in the course of his administration,

and on such an application the Court may make such order, on such terms and conditions, as it thinks fit.

(4) In performing his functions the administrator is deemed to act as the company's agent, but shall not incur personal liability except to the extent that he is fraudulent, reckless or grossly negligent or acts in bad faith.

(5) A person dealing with the administrator in good faith is not concerned to enquire whether the administrator is acting within his powers.

(6) The administrator also has power -

- (a) to remove any director of the company and to appoint any person to be a director of it, whether to fill a vacancy or otherwise,
- (b) to call any meeting of members or creditors of the company.

(7) Any function conferred on the company or its officers, whether by this Law or by the memorandum or articles or otherwise, which could be performed in such a way as to interfere with the performance by the administrator of his functions may not be performed except with the consent of the administrator, which may be given either generally or in relation to particular cases.

General duties of administrator.

77G. (1) The administrator of a company shall, on his appointment, take into his custody or under his control all the property to which the company is or appears to be entitled.

(2) The administrator shall manage the affairs, business and property of the company in accordance with any directions given by the Court.

Discharge or variation of administration order.

77H. (1) The administrator of a company may at any time apply to the Court for the administration order to be discharged or varied.

(2) The administrator of a company shall apply to the court for the administration order to be discharged or varied if it appears to him that -

- (a) the purpose or each of the purposes specified in the order has been achieved or is incapable of achievement, or
- (b) it would otherwise be desirable or expedient to discharge or vary the order.

(3) The Court, on hearing an application under this section for the discharge or variation of an administration order, may, on such terms and conditions as it thinks fit -

- (a) grant or dismiss the application,
- (b) adjourn the hearing, conditionally or unconditionally, or
- (c) make an interim order or any other order it thinks fit.

(4) Where an administration order is discharged or varied under this section -

- (a) the Greffier shall enter a copy of the order effecting the discharge or variation in the Register of Companies, and

- (b) the administrator shall, within such time as the Court may direct, send a copy thereof to such persons as the Court may direct.

Remuneration, and swearing in, of administrator.

77I. (1) The administrator's remuneration, and any costs, charges and expenses properly incurred in the administration of a company, are payable from the company's assets in priority to all other claims.

- (2) The administrator's fees shall be fixed by the Court.

(3) An administrator shall be sworn before the Court when the Court makes the administration order or at any other time directed by the Court.

Vacation of office.

77J. (1) The administrator -

- (a) may at any time be removed from office by order of the Court,
- (b) may resign his office by giving notice of resignation to the Court, and
- (c) shall vacate office if the administration order is discharged.

(2) Where there is a vacancy in the office of administrator the Court may, on the application of any interested party, appoint a replacement.

Release of administrator.

77K. (1) A person who has ceased to be the administrator of a company has his release with effect from -

- (a) in the case of a person who had died, the time at which notice is given to the Court that he has ceased to hold office,
- (b) in any other case, such time as the Court may determine.

(2) Where a person has his release under this section he is, with effect from the time of release, discharged from all liability both in respect of his acts and omissions in the administration and otherwise in relation to his conduct as administrator, except to the extent that he has incurred personal liability by virtue of section 77F(4).

(3) However, nothing in this section prevents the exercise, in relation to a person who has his release under this section, of the Court's powers under section 106 ("remedy against delinquent officers").

Information to be given by administrator.

77L. (1) Where an administration order has been made, the administrator shall -

- (a) forthwith send to the company and publish in La Gazette Officielle notice of the order, and

(b) within 28 days after the day of the making of the order -

(i) unless the Court orders otherwise, send notice of the order to all creditors of the company (so far as he is aware of their addresses), and

(ii) in the case of a supervised company or company engaged in financial services business, send notice of the order to the Commission.

(2) Where an administration order has been made -

(a) the Greffier shall enter a copy of the order in the Register of Companies, and

(b) the administrator shall, within such time as the Court may direct, send a copy of the order to such persons as the Court may direct.

Statement of affairs to be submitted to administrator.

77M. (1) Where an administration order has been made, the administrator may require all or any of the persons mentioned in subsection (3) to make out and submit to him a statement in such form as he may require as to the affairs of the company.

(2) The statement shall be verified by affidavit of the persons required to submit it (or in such other manner as the administrator may require) and shall show -

- (a) particulars of the company's assets, debts and liabilities,
- (b) the names and addresses of its creditors,
- (c) any securities held by any of its creditors,
- (d) the dates when those securities were respectively given, and
- (e) such further or other information as the administrator may require.

(3) The persons referred to in subsection (1) are -

- (a) those who are or have been officers of the company,
- (b) those who have taken part in the company's formation at any time within the period of one year before the date of the administration order ("the preceding year"),
- (c) those who are in the company's employment or have been in its employment within the preceding year, and are in the administrator's

opinion capable of giving the information required,

- (d) those who are or have within the preceding year been officers of or in the employment of a company which is, or within the preceding year was, an officer of the company,

and in this subsection "employment" includes employment under a contract for services.

(4) Where any persons are required under this section to submit a statement of affairs to the administrator, they shall do so (subject to the next subsection) within a period of 21 days after the day on which written notice of the requirement is given to them by the administrator.

(5) The administrator, if he thinks fit, may -

- (a) at any time release a person from an obligation imposed on him under subsection (1) or (2), or
- (b) either when giving notice under subsection (4) or subsequently, extend the period mentioned in that subsection,

and where the administrator has refused to exercise a power conferred by this subsection, the Court, if it thinks fit, may exercise it.

(6) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he is guilty of an offence and

liable to a fine not exceeding level 5 on the uniform scale and to a further fine not exceeding level 2 on the uniform scale for each day on which the failure to comply continues after the date of conviction.

(7) Nothing in this section compels the production or divulgence by an advocate or other legal adviser of an item subject to legal professional privilege (within the meaning of section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003^e), but an advocate or other legal adviser may be required to give the name and address of any client.

(8) A requirement imposed by an administrator under this section has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise, and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

Protection of interests of creditors and members.

77N. (1) At any time when an administration order is in force, a creditor or member of the company (or, in the case of a supervised company or a company engaged in financial services business, the Commission) may apply to the Court for an order under this section on the ground -

- (a) that the company's affairs, business and property are being or have been managed by the administrator in a manner which is unfairly prejudicial to the interests of its creditors or members generally, or of some part of its

^e Order in Council No. XXIII of 2003.

creditors or members (including, except where the applicant is the Commission, at least the applicant himself),

- (b) that any actual or proposed act or omission of the administrator is or would be so prejudicial, or
- (c) that it would otherwise be desirable or expedient for an order under this section to be made.

(2) The Court, on hearing an application for an order under this section, may, on such terms and conditions as it thinks fit -

- (a) dismiss the application, or make such order as it thinks fit for giving relief in respect of the matters complained of,
- (b) adjourn the hearing, conditionally or unconditionally, or
- (c) make an interim order or any other order that it thinks fit.

(3) An order under this section may in particular -

- (a) regulate the future management by the administrator of the company's affairs, business and property,

- (b) require the administrator to refrain from doing or continuing an act complained of by the applicant, or to do an act which the applicant has complained he has omitted to do,
- (c) require the summoning of a meeting of members for the purpose of considering such matters as the Court may direct,
- (d) discharge the administration order and make such consequential provision as the Court thinks fit.

(4) Where the administration order is discharged -

- (a) the Greffier shall enter a copy of the order effecting the discharge in the Register of Companies, and
- (b) the administrator shall, within such time as the Court may direct, send a copy thereof to such persons as the Court may direct.

(5) An application for an order under this section may also be made, with leave of the Court, by a person other than one described in subsection (1).

Exclusion of protected cell companies.

77O. An administration order may not be made under this Part of this Law in respect of a protected cell company (within the meaning of the Protected Cell Companies Ordinance, 1997^f) or any cell thereof, and the making of administration orders in respect of such companies and their cells shall continue to be governed by Part III of that Ordinance.

Power to amend Parts XIV to XVII by Ordinance.

77P. (1) The States may by Ordinance amend, modify or disapply the provisions of Parts XIV to XVII of this Law and any other enactment or rule of law relating to the winding-up, dissolution or insolvency of companies.

(2) An Ordinance under this section -

- (a) may make consequential amendments to this Law and any other enactment,
- (b) may make provision for the purpose of dealing with matters arising out of or related to the winding-up, dissolution or insolvency of companies,
- (c) may make provision under the powers conferred by this section notwithstanding the provisions of any enactment or rule of law for the time being in force, and

^f Ordinance No. V of 1997; amended by No. XV of 1998.

- (d) without prejudice to the generality of the foregoing, 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 Ordinance."

5. In section 96A(3) of the Law of 1994^g, after paragraph (c) add the following paragraphs -

- "(d) a company which is a licensed fiduciary or a former licensed fiduciary within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000^h;
- (e) a company which is engaged in financial services business;"

and reletter paragraph (d) as paragraph (f).

6. In section 117(1) of the Law of 1994, insert the following definitions at the appropriate places -

"administration order" means an administration order made by the Court in respect of a company under section 77A,

^g Section 96A was inserted by Order in Council No. XIV of 1996.

^h Order in Council No. I of 2001.

"**administrator**" means a person appointed by the Court to manage the affairs, business and property of a company under an administration order,

"**financial services business**" means financial services business as defined in the schedule to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999ⁱ,

"**security**", in Part XIVA, means any mortgage, charge, hypothèque, lien or other security, and "**secured interest**" in that Part shall be read accordingly,

"**supervised company**" means -

- (a) a company which carries on or formerly carried on controlled investment business within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 and which holds or formerly held a licence under section 3 of that Law or an authorisation under section 8 of that Law,
- (b) a company which is a licensed institution or former licensed institution within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
- (c) a company which is a licensee or former licensee

ⁱ Order in Council No. VIII of 1999.

within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002 or the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,

- (d) a company which is a licensed fiduciary or former licensed fiduciary within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, and
- (e) a company which is of any other class or description prescribed for the purposes of this section by regulations of the Commission,".

7. In section 117(1) of the Law of 1994, in the definition of "officer", after the word "liquidator," insert "administrator,".

8. In section 117(2) of the Law of 1994, immediately before the word "re-enacted" insert "from time to time".

9. After Schedule 3 to the Law of 1994^j, insert the following schedule -

"SCHEDULE 4
POWERS OF ADMINISTRATOR

Section 77F

In the application of this Schedule to the administrator of a company, the

^j Schedule 3 was inserted by No. XIV of 1996.

word "he" and related expressions refer to the administrator.

1. Power to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as may seem to him expedient.
2. Power to sell or otherwise dispose of the property of the company by public auction or private contract.
3. Power to raise or borrow money and grant security therefor over the property of the company.
4. Power to appoint an Advocate or accountant or other professionally qualified person to assist him in the performance of his functions.
5. Power to bring or defend any action or other legal proceedings in the name and on behalf of the company.
6. Power to refer to arbitration any question affecting the company.
7. Power to effect and maintain insurances in respect of the business and property of the company.
8. Power to use the company's seal.
9. Power to do all acts and to execute in the name and on behalf of the company any receipt or other document.
10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.

11. Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.
12. Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the company.
13. Power to make any payment which is necessary or incidental to the performance of his functions.
14. Power to carry on the business of the company.
15. Power to establish subsidiaries of the company.
16. Power to transfer to subsidiaries of the company the whole or any part of the business and property of the company.
17. Power to grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company.
18. Power to make any arrangement or compromise on behalf of the company.
19. Power to call up any uncalled capital of the company.
20. Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company, or in désastre or saisie proceedings in relation to any such person, and to receive

dividends, and to accede to trust deeds for the creditors of any such person.

21. Power to present or defend an application for the winding up of the company.
22. Power to change the situation of the company's registered office.
23. Power to do all other things incidental to the exercise of the foregoing powers."

Citation.

10. This Law may be cited as the Companies (Guernsey) (Amendment) Law, 2005.