

ORDER IN COUNCIL

**XIX
2012**

ratifying a Projet de Loi

ENTITLED

The Companies (Alderney) (Amendment) Law, 2012

(Registered on the Records of the Island of Guernsey
on the 5th November, 2012.)



2012

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

5th day of November, 2012 before John Russell Finch, Esquire, Judge of the Royal Court; present:- Susan Mowbray, Barbara Jean Bartie, David Osmond Le Conte, Stephen Murray Jones, Esquires, Claire Helen Le Pelley, Terry George Snell, David Percy Langley Hodgetts LVO, Esquires, Margaret Ann Spaargaren, Terry John Ferbrache, Esquire, Jurats.

Judge Finch having this day placed before the Court an Order of Her Majesty in Council dated 17th October, 2012 approving and ratifying a Projet de Loi entitled “The Companies (Alderney) (Amendment) Law, 2012”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ORDERED:

1. That the said Order be registered on the records of this Island;
and
2. That an extract of this present Act, together with a copy of the said Order be sent by Her Majesty’s Greffier to the Greffier of the Court of Alderney for registration on the records of that Island.



At the Court at Buckingham Palace

THE 17th DAY OF OCTOBER 2012

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 Alderney:

“That, at a meeting of the States of Alderney on 18th July 2012 the States approved a *Projet de Loi* entitled the Companies (Alderney) (Amendment) Law, 2012 and requested the President 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 (Alderney) (Amendment) Law, 2012 and to order that it shall have force of law in the Island of Alderney.

“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 Island of Alderney; 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.

Richard Tilbrook

PROJET DE LOI

ENTITLED

The Companies (Alderney) (Amendment) Law, 2012

THE STATES OF ALDERNEY, in pursuance of their Resolution of the 18th day of July, 2012, 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 Alderney.

Amendment of Law of 1994.

1. (1) The Companies (Alderney) Law, 1994, as amended^a, is further amended as follows.

(2) After section 4(1)(b)(iv), insert the following subparagraph –

"(v) written notice signed by a corporate service provider of the company's first resident agent, stating the particulars required to be entered in the company's record of resident agent under section 152C;".

(3) After Part XXI, insert the following Part –

^a Ordres en Conseil Vol. XXXV (2) p. 777; there are amendments not material to this Law.

**"PART XXIA
BENEFICIAL OWNERSHIP**

Companies to which this Part applies.

152A. This Part applies to all companies other than companies which are -

- (a) listed on a stock exchange recognised by the Registrar for the purposes of this section,
- (b) open-ended investment companies,
- (c) closed-ended investment companies, or
- (d) of any other class or description prescribed by the Committee for the purposes of this section.

Obligation for companies to have a resident agent.

152B. (1) Every company to which this Part applies shall have a resident agent who is either -

- (a) an individual, resident in Alderney, who is a director of the company, or
- (b) a corporate services provider.

(2) If a company has more than one director who satisfies subsection (1)(a), then some or all of them may be resident agents, and if this is the case, their functions and liabilities shall be joint and several.

(3) A company which fails to comply with this section is guilty of an offence.

(4) A company which fails to comply with this section is liable to be struck off the Register of Companies in accordance with Part XVI.

Record of resident agent.

152C. (1) A company shall keep a record of its resident agent, which shall comprise -

(a) in the case of a resident agent who is a director, his name,

(b) in the case of a resident agent who is a corporate services provider -

(i) its corporate or firm name, and

(ii) its address.

(2) A company must, within 14 days after the date of the occurrence of -

(a) any change in its resident agent, or

(b) any change in the details contained in its record of resident agent,

give notice to the Registrar of the change and of the date on which it occurred.

(3) A company which fails to comply with this section is guilty of an offence.

Duties of resident agent.

152D. The resident agent of a company shall take reasonable steps to ascertain the identity of the persons who are the beneficial owners of members' interests in that company.

Record of beneficial owners.

152E. (1) Where a resident agent has ascertained, in accordance with section 152D, that a member of a company is not a beneficial owner of that member's interest, he shall keep a record of the required details of the beneficial owner in respect of that member in the "**record of beneficial owners**".

(2) The record of beneficial owners shall be kept at the company's registered office.

(3) In this Part, "**required details**" means, in respect of an individual -

- (a) his name,
- (b) his usual residential address,
- (c) his nationality, and

(d) his date of birth.

(4) In this Part, "**required details**" means, in respect of a company or external company -

(a) its corporate or firm name,

(b) its registered office (or, if it has no registered office, its principal office),

(c) its legal form and the law by which it is governed,

(d) if applicable, the register in which it is entered and its registration number in that register.

(5) In this Part, "**required details**" means, in respect of a class of beneficial owners of such a size that it is not reasonably practicable to identify each member of the class, information sufficient to identify and describe the class of individuals who are beneficial owners.

Notice to members to disclose beneficial ownership.

152F. (1) A resident agent of a company may give notice to a member of that company requiring that member to disclose -

(a) whether they are holding their interest in that company for their own benefit or the benefit of another person, and

- (b) if for the benefit of another person, the required details in respect of that person.

(2) A member who receives a notice under subsection (1) must comply with that notice within such reasonable time as may be specified in the notice.

(3) A member who without reasonable excuse -

- (a) fails to comply with subsection (2), or
- (b) makes a statement in response to a notice under this section which is false, deceptive or misleading in a material particular,

is guilty of an offence.

Suspension or cancellation of interests for failure to disclose beneficial ownership.

152G. (1) If, in the opinion of the resident agent of a company, a member has -

- (a) failed, without reasonable excuse, to comply with section 152F(2), or
- (b) made a statement in response to a notice under that section which is false, deceptive or misleading in a material particular,

the resident agent shall give notice of this to the company.

(2) On receipt of a notice under subsection (1), the company may -

(a) place such restrictions as it thinks fit on rights attaching to the member's interest in the company, including, without limitation -

(i) any right to transfer the interest,

(ii) any voting rights,

(iii) any right to further shares in respect of shares already held, and

(iv) any right to payment due to the member's interest, whether in respect of capital or otherwise, or

(b) cancel the member's interest in the company.

(3) Any restriction under subsection (2)(a) is removed if the company is struck off or upon the commencement of the company's winding up.

(4) A member may apply to the Court to set aside any restriction or cancellation under subsection (2).

(5) The Court shall not hear an application under subsection (4) unless satisfied that the company has been notified of the date and time of the hearing.

(6) The Court may make such order on such terms and conditions as it thinks fit on an application under subsection (4).

Disclosure of beneficial ownership information by resident agent.

152H. (1) The resident agent shall, on receipt of a certificate described in subsection (2), disclose to (as the case may be) -

- (a) Her Majesty's Procureur,
- (b) the Commission,
- (c) a police officer,
- (d) a customs officer, or
- (e) such other person prescribed by the Committee for the purposes of this section,

any information required by that person which the resident agent is required to hold by virtue of his obligations under this Part and any other information he holds in respect of the beneficial ownership of a company.

(2) The certificate referred to in subsection (1) is a certificate signed by -

- (a) Her Majesty's Procureur,

- (b) the Director General of the Commission,
- (c) the Chief Officer of Police,
- (d) the Chief Officer of Customs, or
- (e) such other person prescribed by the Committee for the purposes of this section,

(as the case may be) or any person appointed by any of them for that purpose.

(3) The certificate shall state -

- (a) what information is required,
- (b) that the information is required for the purpose of -
 - (i) any criminal or regulatory investigation which is being or may be carried out, whether in Alderney or elsewhere,
 - (ii) any criminal or regulatory proceedings which have been or may be initiated, whether in Alderney or elsewhere,

(iii) the initiation or bringing to an end of any such investigation or proceedings, or

(iv) facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end, and

(c) that the person signing it has satisfied himself that the making of the disclosure is proportionate to what is sought to be achieved by it.

(4) Nothing in this section prejudices any power to disclose information which exists apart from this section.

(5) The information that may be disclosed by virtue of this section includes information obtained before this Law came into force.

(6) A resident agent who without reasonable excuse -

(a) fails to comply with this section, or

(b) makes a statement, in response to a certificate under this section, which is false, deceptive or misleading in a material particular,

is guilty of an offence.

Tipping off.

152I. (1) A resident agent is guilty of an offence if he knows or suspects that a certificate has been issued, or is proposed to be issued, under section 152H in respect of a company for which he is a resident agent, and he discloses to any person information or any other matter which may prejudice -

- (a) any criminal or regulatory investigation which is being or may be carried out, whether in Alderney or elsewhere, or
- (b) any criminal or regulatory proceedings which have been or may be initiated, whether in Alderney or elsewhere,

which are connected with the issue of that certificate.

(2) Nothing in subsection (1) makes it an offence for an Advocate or other legal adviser to disclose any information or other matter -

- (a) to, or to a representative of, a client of his in connection with the giving by him of legal advice to the client, or
- (b) to any person -
 - (i) in contemplation of or in connection with legal proceedings, and
 - (ii) for the purpose of those proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(4) In proceedings against a person for an offence under this section, it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in subsection (1).

Privileged information.

152J. (1) Nothing in this Part 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), but an advocate or other legal adviser may be required to give the name and address of any client.

(2) A requirement imposed by or under this Part 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.

Provisions in articles concerning beneficial ownership.

152K. (1) The operation of this Part does not limit or otherwise restrict any provision in a company's articles that relieves the company from recognising any interests other than the interests of the members of the company.

(2) Without prejudice to the generality of subsection (1), the operation of this Part does not limit or otherwise restrict any provision in a company's articles that relieves the company from recognising -

(a) any trust, express, implied or constructive, in respect of shares, or

(b) any beneficial owner of shares."

(4) In section 155(1) -

(a) in paragraph (b), for "or 152(3)" substitute ", 152(3), 152B(3), 152C(3), 152F(3) or 152H(6)", and

(b) for the full stop substitute a semi colon and after paragraph (c), insert the following paragraph -

"(d) under section 152I(1) is liable -

(i) on summary conviction, to a fine not exceeding level 5 on the Alderney uniform scale, imprisonment for a term not exceeding 3 months or both,

(ii) on conviction on indictment, to a fine, imprisonment for a term not exceeding 2 years or both."

(5) In section 163(1), insert the following definitions in the appropriate places -

"closed-ended investment company" means a collective investment scheme within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 under which -

- (a) the property in question belongs beneficially to, and is managed by or on behalf of, a body corporate having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds, and
- (b) the investors are not entitled under the terms of the scheme -
 - (i) to have their units redeemed or repurchased by, or out of funds provided by, the body, or
 - (ii) to sell their units on an investment exchange,

at a price related to the value of the property to which they relate;"

"customs officer" means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972;"

"open-ended investment company" means a collective investment scheme within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 under which -

- (a) the property in question belongs beneficially to, and is managed by or on behalf of, a body corporate having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds, and
- (b) the investors are entitled under the terms of the scheme -
 - (i) to have their units redeemed or repurchased by, or out of funds provided by, the body, or
 - (ii) to sell their units on an investment exchange,

at a price related to the value of the property to which they relate;" ,

"police officer" means -

- (a) a member of the salaried police force of the Island of Guernsey,
- (b) a member of any police force which may be

established by the States of Alderney, or

- (c) within the limits of his jurisdiction, a special constable appointed under section 47 of the Government of Alderney Law, 2004;"

"**resident agent**" : see section 152B;"

- (6) In section 164, after paragraph (p) insert the following paragraph -

"(pa) amend Part XXIA;"

- (7) In Schedule 1, omit "(including the consent of the States of Guernsey Policy Council under the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959 and of Her Majesty's Procureur)".

Interpretation.

- 2. The Interpretation (Guernsey) Law, 1948^b shall apply to the interpretation of this Law as it applies to the interpretation of an enactment in force in Guernsey.

Citation.

- 3. This Law may be cited as the Companies (Alderney) (Amendment) Law, 2012.

Commencement.

- 4. This Law shall come into force on the day appointed by Ordinance of

^b Ordres en Conseil Vol. XIII, p. 355.

the States; and different days may be appointed for different provisions.

S. M. SIMMONDS,
Her Majesty's Deputy Greffier.

**Copies may be purchased from
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