

ORDER IN COUNCIL

VIII

ratifying a Projet de Loi

1962

ENTITLED

The Companies (Amendment) (Alderney) Law, 1962

(Registered on the Records of the Island of Guernsey
on the 15th day of May, 1962.)



1962.

ORDER IN COUNCIL.



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 15th day of May, 1962, before William Henry Arnold, Esquire, C.B.E., Bailiff; present :— William Robert Freake Clark, Esquire, Donald Carey Brock, Esquire, C.B.E., Wilfred John Corbet, Esquire, O.B.E., Théophile Le Messurier Allez, Bertram Guy Blampied, Claude Fortescue Nason, Stanley Walter Gavey, Esquires, Gilbert Carey de Jersey, Esquire, C.B., Carl Edward Blad and Albert Victor Dorey, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 18th day of April, 1962, ratifying a *Projet de Loi* of the States of Alderney entitled "The Companies (Amendment) (Alderney) Law, 1962",—the Court, after the reading of the said Order in Council and after having heard Her Majesty's Procureur thereon, ordered that the said Order in Council be registered on the records of this Island and that an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty's Greffier to the Clerk of the Court of Alderney for registration on the records of that Island, of which Order in Council the tenor followeth :—

At the Court at Windsor Castle,

The 18th day of April, 1962.

PRESENT,

The Queen's Most Excellent Majesty.

LORD PRESIDENT
LORD CARRINGTON
MR. WATKINSON
MR. POWELL

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey, dated the 3rd day of April, 1962, in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February, 1952, to refer unto this Committee a humble Petition of Sydney Peck Herivel, Esquire, President of the States of the Island of Alderney setting forth:—

‘That at a meeting of the States of Alderney held on the twenty-first day of November, 1961, the States adopted a Resolution that a Projet de Loi entitled “The Companies (Amendment) (Alderney) Law, 1962” be approved: That at the meeting of the States aforesaid Your Humble Petitioner was authorised to present to Your Majesty in Council a Petition that the said Projet de Loi be sanctioned: That the said Projet de Loi is set forth in the words and figures of the Schedule annexed hereunto: And most humbly praying that Your Majesty be graciously pleased to grant Your Royal Sanction to the Projet de Loi entitled “The Companies (Amendment)

(Alderney) Law, 1962 " and order that the same shall have the force of law within the Island of Alderney.'

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition, and the Projet de Loi annexed thereto, into consideration, and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi."

HER MAJESTY, having taken the said Report into consideration, is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, as it is hereby ordered, that the same shall have the force of Law within the Island of Alderney.

AND HER MAJESTY doth hereby further direct that this Order and the said Projet de Loi (a copy whereof is hereunto annexed) be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being, of the said Island of Guernsey, and also the Jurats of the said Island of Alderney, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

W. G. Agnew.

Projet de Loi referred to in the foregoing
Order in Council.

PROJET DE LOI

ENTITLED

The Companies (Amendment) (Alderney) Law, 1962

THE STATES, in pursuance of their Resoution of the third day of September, nineteen hundred and fifty-nine, 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.

PART I

COMPULSORY WINDING UP BY THE COURT

1. The Court of Alderney (hereinafter referred to as "the Court") shall have jurisdiction to wind up any company registered in the Island of Alderney. Jurisdiction of Court to wind up companies.
- 2—(1) A company may be wound up by the Court if— Cases in which companies may be wound up by Court.
 - (a) the company has by special resolution resolved that the company be wound up by the Court;
 - (b) the company does not commence its business within a year from its registration or suspends its business for a whole year;
 - (c) the number of members is reduced below seven;

- (d) the company is unable to pay its debts;
- (e) the company has omitted to comply with the provisions of Articles XV or XVII of the principal Law as respects notices to the Clerk as required by those Articles, such omission having been notified to the Court by the Clerk;
- (f) default is made in holding the annual general meeting in accordance with the provisions of Article XX of the principal Law.

(2) A company shall be deemed to be unable to pay its debts—

- (a) if a creditor to whom the company is indebted in a sum exceeding fifty pounds sterling then due has served on the company, by leaving it at, or by sending it by registered post to, the registered office of the company a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter omitted or neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;
- (b) if it is proved to the satisfaction of the Court that the company is unable to pay its debts and in determining whether a company is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the company.

Petition for
winding up
a company.

3. Any application for the winding up of a company shall be by petition presented to the Court by the Company, by any member or members, by any creditor or creditors (including any contingent or prospective creditor or creditors) or other interested

parties, and any order made by the Court on any such petition shall operate in favour of all the creditors of the company as if such petition had been presented by all the creditors of the company.

4. The Court may, at any time after the presentation of a petition for winding up a company upon the application of one or more of the creditors of the company, restrain any action or proceeding whatsoever against the company, and this upon such terms as the Court thinks fit to order, and the Court may also appoint provisionally a liquidator to superintend and ascertain the estate and effects of the company.

Court may restrain any action against company and provisionally appoint a liquidator.

5. Upon hearing the petition for the winding up of a company, the Court may dismiss the same and assess the petitioners with costs, adjourn the hearing conditionally or unconditionally or make any interim order or any other order that it deems just.

Power of Court on hearing of a petition.

6. The Court, after having made an order for the winding up of a company under the provisions of the last preceding section, shall appoint one or more persons presented to it by the petitioners as liquidators or, in default of the petitioners so presenting any such persons or if the persons so presented are, in the opinion of the Court, not suitable to be appointed as liquidators, the Court may appoint, in its discretion, one or more persons of its own choosing as liquidators.

Power of Court to appoint liquidators.

7. Subject to the provisions of section nine of this Law, as from the date on which the Court makes an order for the winding up of a company under the provisions of section five of this Law, the company shall not undertake any business nor contract any debts or obligations and if any member or members of the company perform any act in contravention of

Company not to undertake any business, etc.

this section, that member or members shall be liable personally for such act.

Court may attach conditions to appointment of liquidators.

8. The Court may attach to the appointment of any person as liquidator such conditions as it may deem necessary or expedient and any conditions so attached may, from time to time, be varied or revoked by the Court.

Swearing of liquidators and their powers.

9. Every liquidator appointed by the Court as aforesaid shall be sworn and have power—

- (a) to bring or to defend any civil action in the name and on behalf of the company;
- (b) to carry on the business of the company in in so far as it is necessary to do so for winding up the company;
- (c) to make calls of capital, sign all receipts and other documents in the name and on behalf of the company, and for this object to use the seal of the company whenever necessary and to do any act so far as it is necessary for winding up the company;
- (d) to do any act which shall be authorised by the Court.

Resignation or removal of liquidators.

10. Any liquidator appointed by the Court as aforesaid may resign or may be removed from his post by the Court, and in such a case the Court shall appoint another liquidator in his place.

Liquidator to apply to Court to appoint Commissioner to audit accounts and distribute funds.

11.—(1) When a liquidator shall have realised all the assets of the company, he shall apply to the Court to appoint a Commissioner of the Court to audit his accounts and to distribute such funds as he may have in hand derived from the real and personal estate of the company.

(2) The Commissioner shall as soon as may be after appointment examine and verify the accounts and fix a day on which he shall verify the respective demands and preferences of the creditors and a day on which he will distribute the assets of the company save that he shall not proceed to so distribute the said assets until prior notice of the day fixed for it shall have been given by the liquidator by notice exhibited on the official noticeboards for at least fifteen days and published on at least two occasions during that period in such newspaper as the liquidator may consider expedient.

(3) If at any time a liquidator considers an interim distribution of part of the assets of the company to be necessary he may apply to the Court to appoint a Commissioner for that purpose and the Commissioner shall for that purpose act in the manner hereinbefore provided.

(4) If any demand of a creditor is disputed, the Commissioner shall refer the decision on such demand to the Court.

12. When the affairs of a company have been completely wound up, the Court, if the liquidator makes an application in that behalf within the fifteen days next following the completion of such winding up, shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

Dissolution
of a
company.

13. Where in the course of the winding up of a company under the provisions of this Law it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, liquidator, or other officer of the company has misapplied or retained or become liable or accountable for any monies or property of the com-

Powers of
Court in
cases of mis-
application,
etc. of pro-
perty of, or
misfeasance,
etc. in
relation to
the company.

pany, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the Commissioner or of any liquidator of the company, or of any creditor or contributory of the company, examine into the conduct of such promoter, director, manager, liquidator, or other officer of the company, and order him to repay any monies or restore any property so misapplied or retained, or for which he has become liable or accountable, together with interest at such rate as the Court thinks just, or to contribute such sum of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust as the Court thinks just.

Liquidators' fees.

14. The fees to be paid to any liquidator appointed in pursuance of the provisions of this Part of this Law shall be such as may be fixed by the Court.

PART II

POWERS OF THE CLERK TO STRIKE A COMPANY OFF THE REGISTER

Company not carrying on business or in operation.

15.—(1) Where the Clerk has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company by registered post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Clerk does not within one month of sending any such letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by registered post a letter referring to the first letter, and stating that no answer thereto has been received, and that if an

answer is not received to the second letter within one month from the date thereof the Clerk shall exhibit on the official noticeboards for at least fifteen days and publish on at least two occasions during that period in such newspaper as he may consider expedient a notice to the intent that it is proposed to strike the name of the company off the register.

(3) If the Clerk either receives an answer to the effect that the company is not carrying on business or in operation, or does not within one month after sending the aforesaid second letter receive any answer, he shall exhibit on the official noticeboards for at least fifteen days and publish on at least two occasions during that period in such newspaper as he may consider expedient, and send to the company by registered post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Clerk has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, the Clerk shall exhibit on the official noticeboards for at least fifteen days and publish on at least two occasions during that period in such newspaper as he may consider expedient, and send to the company or the liquidator, if any, a like notice as is provided in the last preceding subsection.

(5) At the expiration of the time mentioned in the notice sent as aforesaid the Clerk may, unless cause to the contrary is previously shown by the company, strike its name off the register whereupon the company shall be dissolved and notice of that dissolution and of the date thereof shall be exhibited

on the official noticeboards for at least fifteen days and published on at least two occasions during that period in such newspaper as the Clerk may consider expedient:

PROVIDED that—

- (a) the liability, if any, of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved; and
- (b) nothing in this subsection shall affect the power of the Court to wind up a company the name of which has been struck off the register.

(6) A company or any member or creditor thereof aggrieved by the company having been struck off the register, may before the expiration of twenty years from the date the company is struck off the register apply to the Court and the Court may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons as nearly as may be in the same position as if the name of the company had not been struck off.

(7) A notice to be sent under this section to a liquidator shall be addressed to the liquidator at his last known place of business, and a letter or notice to be sent under this section to a company shall be sent to the company at its registered office, or, if no office has been registered, to any director or officer

of the company, or, if there is no director or officer of the company whose name and address are known to the Clerk, may be sent to each of the persons who subscribed the memorandum addressed to him at the address mentioned in the memorandum.

16. Where a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (excluding property held by the company on trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the Court under the last foregoing section of this Law, be deemed to be bona vacantia and shall accordingly belong to the Crown and shall vest and may be dealt with in the same manner as other bona vacantia accruing to the Crown.

Property and rights of dissolved company.

PART III

AMENDMENTS TO PRINCIPAL LAW

17. Notwithstanding anything contained in Article I of the principal Law any seven or more persons associated for any lawful purpose may, by complying with the other requirements of the principal Law, form a company having the liability of its members limited by the memorandum of association to the amount, if any, unpaid on the shares respectively held by them.

Formation of company for lawful purposes.

18. A company, after having given notice of its intention by means of an announcement inserted on at least two occasions in "La Gazette Officielle" the latter of which occasions shall be in the week next succeeding the former of such occasions, shall have power in pursuance of a special resolution of its share-

Change of name of company.

holders assembled in general meeting to change its name, which resolution shall be approved of by the Court on a petition to that effect being presented to it:

PROVIDED that the Court shall not grant the prayer of the petition if it is proved that such an alteration would affect the rights of others and so that such an alteration would have the effect of preventing the pursuit of legal proceedings against the said company.

PART IV

GENERAL

Interpreta-
tion.

19.—(1) For the purposes of this Law, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them—

“the Clerk” means the Clerk to the Court;

“company” has the same meaning as the expression “société anonyme ou à responsabilité limitée” has in the principal Law;

“the principal Law” means the Law entitled “Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée” registered on the Records of the Island of Guernsey on the twenty-second day of May, eighteen hundred and ninety-four.

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

(3) References in this Law to any other enactment shall be construed as references to that enact-

ment as amended, repealed and enacted, extended or applied by or under any other enactment including this Law.

20. This Law may be cited as the Companies (Amendment) (Alderney) Law, 1962, and the principal Law and this Law may be cited together as the Companies (Alderney) Laws, 1894 and 1962. Citation and collective title.

R. H. VIDELO,

Her Majesty's Greffier.