

# ORDER IN COUNCIL

**VI**  
**2006**

ratifying a Projet de Loi

ENTITLED

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

(Registered on the Records of the Island of Guernsey  
on the 15th May, 2006.)



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2006

## ORDER IN COUNCIL



### IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 15<sup>th</sup> day of May, 2006 before Richard John Collas, Esquire, Deputy Bailiff; present:- David Charles Lowe, OBE, Stephen Edward Francis Le Poidevin, 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, Barbara Jean Bartie, 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 11<sup>th</sup> day of April, 2006 approving and ratifying the Projet de Loi entitled "The Uncertificated Securities (Enabling Provisions) (Guernsey) 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 Windsor Castle*

The 11th DAY OF APRIL 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 28 September 2005, the States of Deliberation at a meeting on 26 October 2005 approved a *Projet de Loi* entitled The Uncertificated Securities (Enabling Provisions) (Guernsey) 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 Uncertificated Securities (Enabling Provisions) (Guernsey) Law, 2005, and to order that it shall have force of law in the Islands 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 Islands 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 Uncertificated Securities (Enabling Provisions) (Guernsey) Law, 2005**

**THE STATES**, in pursuance of their Resolution of the 28<sup>th</sup> September, 2005<sup>a</sup>, 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 Commerce and Employment Department ("**the Department**") 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.

### **Particular matters as to which regulations may make provision.**

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

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<sup>a</sup> Article XIII of Billet d'État No. XIV of 2005.

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 Department 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.

**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

Department 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 Department 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.

### **Interpretation.**

4. (1) In this Law -

"**Department**" means the of Guernsey States Commerce and Employment Department,

"**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<sup>b</sup> ("*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*"),

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<sup>b</sup> 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 No's 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).

*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 Department.

(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.

### **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<sup>c</sup>.

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<sup>c</sup> 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).

**Citation.**

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

S M SIMMONDS

Her Majesty's Deputy Greffier