

# PROJET DE LOI

ENTITLED

## **The Duty on Share Transfers (Alderney) Law, 1994 \***

[CONSOLIDATED TEXT]

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* No. II of 1994 (Ordres en Conseil Vol. XXXV(1), p. 26); as amended by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. XIII of 2010); the Duty on Share Transfers (Alderney) Law 1994 (Amendment) Ordinance, 2012 (Alderney Ordinance No. I of 2012). See also the Police Force (Bailiwick of Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); the Age of Majority (Alderney) Law, 2001 (No. XXV of 2001, Ordres en Conseil Vol. XLI, p. 738); the Government of Alderney Law, 2004 (No. III of 2005); the Duty on Share Transfers (Variation of Rate and Ratio) (Alderney) Ordinance, 2003 (Alderney Ordinance No. II of 2003); the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010); the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018 (Alderney Ordinance No. VIII of 2018); the Duty on Share Transfers (Variation of Ratio) (Alderney) Ordinance, 2020 (Alderney Ordinance No. IV of 2020).

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## **The Duty on Share Transfers (Alderney) Law, 1994**

### ARRANGEMENT OF SECTIONS

1. Transfer duty to be payable.
2. Rate of transfer duty.
3. Assessable value.
4. Tax payable and returns to be delivered within 28 days.
5. Interest and penalties on unpaid duty.
6. Transfer duty a debt due to the States.
7. Burden of proof.
8. Legal avoidance.
9. Provisions as to holding companies and subsidiaries.
10. Clerk to give receipt for duty.
11. Power of Clerk to call for documents.
12. Offences.
13. Offences by officers of corporations.
14. Valuation disputes.
15. Transfers void if Law not complied with.
16. Effect of conviction for making false statement, etc.
17. Exempt transfers.
18. Power to vary rate of transfer duty, etc.
19. General provisions in relation to Ordinances.
20. Service of documents.
21. Interpretation.
22. Citation.
23. Commencement.

SCHEDULE 1 Form of Return.

SCHEDULE 2 Meaning of "Holding Company" and "Subsidiary".

# PROJET DE LOI

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## **The Duty on Share Transfers (Alderney) Law, 1994**

**THE STATES**, in pursuance of their Resolution of the 1<sup>st</sup> day of June, 1993, 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.

### **Transfer duty to be payable.**

1. A duty to be called transfer duty shall be payable in accordance with the provisions of this Law in respect of any transfer of any share capital of a land holding corporation.

### **Rate of transfer duty.**

2. (1) Transfer duty in respect of any transfer described in section 1 shall be payable at the rate of 5½ per cent of the assessable value of the transfer.

(2) Transfer duty shall accrue for the benefit of the States of Alderney and the States of Guernsey respectively in the ratio of 4 to 1½.

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### **NOTES**

*In accordance with the provisions of the Duty on Share Transfers (Variation of Rate and Ratio) (Alderney) Ordinance, 2003, section 1, with effect from 1st April, 2003 and for the purposes of subsection (1) of this section, the rate of transfer duty is varied as stated therein.*

*In accordance with the provisions of the Duty on Share Transfers (Variation of Ratio) (Alderney) Ordinance, 2020, section 1, with effect from 1st January, 2020 and for the purposes of subsection (2) of this section, the ratio for all transfer duty is varied as stated therein.*

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**Assessable value.**

3. For the purposes of section 2 the assessable value of a transfer shall be a sum equivalent to the proportion of the market value of all the land of the corporation at the time of the transfer which the nominal value of the share capital to which the transfer relates bears to the nominal value of the whole of the issued share capital of the corporation.

**Tax payable and returns to be delivered within 28 days.**

4. (1) Within a period of 28 days beginning on the day of any transfer of any share capital of a land holding corporation, the corporation shall deliver to the Clerk –

- (a) a duly completed return in the form set out in Schedule 1, completed by an individual who is resident in Alderney or who is an Advocate of the Royal Court, and containing particulars as to the transfer and connected matters and a declaration by that individual as to the truth of the contents of the return,
- (b) the instrument, if any, whereby the transfer was effected,
- (c) the transfer duty payable in respect of the transfer.

(2) Upon receipt of a return under subsection (1)(a) and at any time thereafter, the Clerk may require the corporation or any person who is a director, manager, secretary or other similar officer of the corporation or who has a controlling interest in the corporation to supply such additional information and documentation as the Clerk may require.

**Interest and penalties on unpaid duty.**

5. (1) In default of delivery of any transfer duty within the period of 28 days mentioned in section 4(1), the amount of unpaid duty shall carry interest at the rate of 10 per cent per annum from the expiry of that period until the amount of unpaid duty is paid.

(2) Where, in respect of a transfer of any share capital of a land holding corporation, a person is convicted of an offence under section 12(1), there shall be recoverable, notwithstanding the provisions of section 13 of the Government of Alderney Law, 1987<sup>a</sup>, and in addition to any fine which may be imposed in relation to the offence, a penalty of three times the amount of transfer duty payable in respect of the transfer and not duly paid in accordance with the provisions of section 4(1).

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**NOTE**

*The Government of Alderney Law, 1987 has since been repealed by the Government of Alderney Law, 2004, section 63(1), Schedule 3, with effect from 1st May, 2005, subject to the savings and transitional provisions in section 63(2) and section 64 of the 2004 Law.*

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**Transfer duty a debt due to the States.**

6. Transfer duty payable in respect of any transfer of any share capital of a land holding corporation, together with any interest or penalty recoverable in respect thereof under section 5, shall be recoverable by the States from the corporation as a civil debt.

**Burden of proof.**

7. (1) If in any proceedings, whether civil or criminal, to which any person described in subsection (2) is a party it is alleged that –

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<sup>a</sup> Ordres en Conseil Vol. XXX, p. 37; No. VI of 1989.

- (a) any transfer duty payable in respect of a transfer of any share capital of a land holding corporation has not been paid,
- (b) there has been a transfer of any share capital of a land holding corporation,
- (c) there has been a transfer of a particular proportion of the share capital of a land holding corporation,
- (d) there has been a transfer of any share capital of a land holding corporation on a particular date, or
- (e) a transfer of any share capital of a land holding corporation was not an exempt transfer,

the burden of disproving the allegation shall lie upon that person.

(2) The persons referred to in subsection (1) are any of the following –

- (a) the land holding corporation,
- (b) any person who is a director, manager, secretary or other similar officer of the corporation, or
- (c) any person with a controlling interest in the corporation.

**Legal avoidance.**

8. (1) Where the Clerk is of the opinion that there has been a transaction the main purpose or one of the main purposes of which is the avoidance or reduction of the liability of any person to transfer duty, he may, in his discretion, direct that –

- (a) such liability to transfer duty shall be imposed upon that person, or
- (b) such adjustments shall be made in respect of the liability of that person to transfer duty,

as may in his opinion be appropriate to counteract the avoidance or reduction of liability which would otherwise be effected by the transaction; and that person shall (unless he can show that the transaction in question was not such a transaction as is described in this subsection) be liable accordingly.

(2) Without prejudice to the generality of the provisions of subsection (1), the Clerk may in particular direct that –

- (a) transfer duty shall be charged on any person who, but for the direction, would not be liable to transfer duty or would not be so liable to the same extent,
- (b) transfer duty shall be charged on any person in a greater amount than would be chargeable but for the direction.

**Provisions as to holding companies and subsidiaries.**

9. (1) Where there is a transfer of any share capital of a corporation which is the holding company of a land owning corporation, the land of the subsidiary shall be deemed for the purposes of this Law to be the land of the holding company; and transfer duty in respect of the transfer shall be leviable accordingly.

(2) Subsection (1) is without prejudice to any liability to transfer duty arising in respect of a transfer of share capital of the subsidiary.

**Clerk to give receipt for duty.**

**10.** (1) The Clerk shall, upon receipt of the amount of transfer duty appearing to him to be the amount properly payable in respect of a transfer of any share capital of a land holding corporation, issue to the corporation a receipt therefor under his hand.

(2) The issue by the Clerk of a receipt under subsection (1) shall not be evidence that, in respect of any transfer, the proper amount of transfer duty has been paid or that section 4 has otherwise been complied with.

**Power of Clerk to call for documents.**

**11.** (1) Where the Clerk has reason to believe that there has been a transfer of any share capital of a land holding corporation he may, by notice in writing served on the corporation or any person who is or who he believes to be a director, manager, secretary or other similar officer of the corporation or a person with a controlling interest in the corporation, require the corporation or that person to furnish, within such time as may be specified in the notice, such information or documents as the Clerk may reasonably require for the purpose of determining whether or not there has been such a transfer and, if so, the amount of transfer duty payable in respect of that transfer.

(2) The Clerk shall not be obliged to divulge his reasons for belief when exercising his powers under this section.

(3) Subject to subsection (4), no duty to which a person is subject is contravened by reason of his complying with a requirement of the Clerk under subsection (1) to furnish any information or documents.



(4) Nothing in this section shall compel the production by an advocate or other legal adviser of a document containing a privileged communication made by him or to him in that capacity.

[ (5) A statement made by a person in compliance with a requirement of the Clerk under subsection (1) –

(a) may be used in evidence against him in proceedings other than criminal proceedings, and

(b) may not be used in evidence against him in criminal proceedings except –

(i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or

(ii) in proceedings for –

(A) an offence under section 12(1),

(B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.]

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**NOTE**

*In section 11, subsection (5) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.*

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**Offences.**

- 12.** (1) A person who –
- (a) without reasonable excuse, proof whereof shall lie on him, fails to comply with any provision of section 4 or of any requirement under section 4(2) or 11,
  - (b) in making or in connection with the making of a return or declaration under section 4(1)(a), or in supplying or in connection with the supply of any information or document under section 4(2) or 11, or for the purposes of obtaining a certificate of the Clerk under section 17(1)(h)(ii), or otherwise for the purposes of or in connection with the provisions of this Law –
    - (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
    - (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
    - (iii) produces or furnishes or causes or permits to be produced or furnished any information or

document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or

- (iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

is guilty of an offence.

(2) Subject to the provisions of subsection (3), a person who –

- (a) under or for the purposes of this Law receives information relating to the business or other affairs of any person, or
- (b) obtains any such information directly or indirectly from a person who has so received it,

and who discloses the information without the consent of the person to whom it relates and (if different) the person from whom it was so obtained is guilty of an offence.

(3) Subsection (2) does not preclude –

- (a) the disclosure of information which at the time of disclosure is or has already been made available to the public from other sources or information in the form of a summary or collection of information so framed as

not to enable information relating to any particular person to be ascertained from it,

- (b) the disclosure of information with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings, whether under this Law or otherwise,
- (c) the disclosure of information in connection with any other proceedings (whether in a court of law or by way of arbitration) arising out of this Law,
- (d) the disclosure of information to Her Majesty's Procureur or an officer of police as to any suspected offence under this Law,
- (e) where information is disclosed to an officer of police under paragraph (d), the disclosure of that information by an officer of police for the purposes of a prosecution either in the Bailiwick or, with the prior consent of Her Majesty's Procureur to such disclosure, elsewhere,
- (f) the disclosure of information in compliance with an order of a court of law, or
- (g) the disclosure of information for the purpose of enabling or assisting the Clerk to discharge his functions conferred by or under this Law.

(4) A person guilty of an offence under subsection (1) or (2) is liable –

- (a) on summary conviction, and notwithstanding the provisions of section 13 of the Government of Alderney Law, 1987<sup>b</sup>, to a fine not exceeding level 5 on the Alderney uniform scale, to imprisonment for a term not exceeding 3 months or to both,
- (b) on conviction on indictment, to a fine, to imprisonment for a term not exceeding 2 years or to both.

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**NOTE**

*The Government of Alderney Law, 1987 has since been repealed by the Government of Alderney Law, 2004, section 63(1), Schedule 3, with effect from 1st May, 2005, subject to the savings and transitional provisions in section 63(2) and section 64 of the 2004 Law.*

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**Offences by officers of corporations.**

**13.** (1) Where an offence under this Law is committed by a corporation and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any person who is a director, manager, secretary or other similar officer of the corporation or any person purporting to act in any such capacity or any person with a controlling interest in the corporation, that person as well as the corporation shall be guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a corporation are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

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<sup>b</sup> Ordres en Conseil Vol. XXX, p. 37; No. VI of 1989.

**Valuation disputes.**

14. (1) Where, upon receipt of a return under section 4(1) in respect of a transfer of any share capital of a land holding corporation and such further information as may be required under section 4(2), the Clerk disputes the market value of the land of the corporation at the time of the transfer or the assessable value of that transfer, the matter in dispute may be referred by the Clerk or by the corporation to the arbitration of a single arbitrator.

(2) The Arbitration (Alderney) Law, 1983, as amended<sup>c</sup>, shall apply to an arbitration under this section.

(3) The arbitrator may be appointed by the Chairman of the Court on the application (which need not be in open court) of the Clerk or the corporation.

**Transfers void if Law not complied with.**

15. A transfer of any share capital of a land holding corporation, other than an exempt transfer, shall not be valid or have legal effect unless and until, in relation to the transfer, section 4 is complied with in all respects.

**Effect of conviction for making false statement, etc.**

16. (1) Where, in respect of any transfer of any share capital of a land holding corporation, a person is convicted of an offence under section 12(1)(b), the transfer shall be void ab initio.

(2) Where a person is convicted of an offence under section 12(1)(b) in relation to the obtaining of a certificate of the Clerk under section 17(1)(h)(ii), the certificate shall be void ab initio.

**Exempt transfers.**

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<sup>c</sup> Ordres en Conseil Vol. XXVIII, p. 236; and Vol. XXIX, p. 171.

**17.** (1) Transfer duty shall not be payable in respect of any of the following transfers of share capital of a land holding corporation ("**exempt transfers**") –

- (a) a transfer executed before the commencement of this Law,
- (b) a transfer to which the only parties are the trustees of a trust or nominees, provided that –
  - (i) there is no change in beneficial ownership,
  - (ii) the sole purpose of the dealing is the appointment of new or additional trustees or nominees, and
  - (iii) there is no consideration in money or money's worth in respect of the transfer,
- (c) a transfer occurring by operation of law by way of inheritance upon and in consequence of the death of any person,
- (d) a transfer made solely for natural love and affection between [two spouses], parents and their children, children of the same parents and grandparents and grandchildren, provided that there is no consideration in money or money's worth in respect of the transfer,
- (e) a transfer ordered to be made or sanctioned by the Matrimonial Causes Division of the Royal Court,

provided that the Royal Court declares that transfer duty is not to be payable in respect of the transfer,

- (f) a transfer effected by Her Majesty's Receiver-General in respect of share capital which is bona vacantia,
- (g) a transfer which relates exclusively to the share capital of a charitable corporation,
- (h) a transfer which relates exclusively to share capital –
  - (i) which is dealt in on a stock exchange, or
  - (ii) in respect of which the Clerk has issued a certificate that there exists a commercial market, conducted by stockbrokers, in which the shares are and will continue to be freely traded without restriction, being shares in respect of which information indicating the prices at which persons are willing to deal in those shares has been published or otherwise made freely available for the purpose of facilitating trading or dealing in them[,]
- (i) a transfer which relates exclusively to the share capital of the company known as Alderney Electricity Limited, referred to in the Alderney Electricity Concession Law, 1953, whose current registered office is situate at Maison des Venelles, Venelles des Gaudion, Alderney.]



(2) For the purposes of subsection (1)(h)(ii) the Clerk may issue a certificate described therein –

- (a) for the purposes of a particular transfer of share capital,  
or
- (b) generally for the purposes of all transfers of the share capital (or any class thereof) of a particular corporation (in which case he may at any time cancel the certificate if satisfied that the circumstances in which he issued the certificate no longer prevail or that the certificate should not have been issued in the first place).

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#### NOTES

*In section 17,*

*the words in square brackets in paragraph (d) of subsection (1) were substituted by the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018, section 1, Schedule 1, paragraph 11, with effect from 14th June, 2018;*

*paragraph (i) of subsection (1) was inserted by the Duty on Share Transfers (Alderney) Law 1994 (Amendment) Ordinance, 2012, section 1, with effect from 11th January, 2012.*

*In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 1, with effect from 4th January, 2010, the references in this section to "parents" shall mean, in relation to a child and subject to the conditions in paragraph (a) and (b) of subsection (1) and the exceptions in paragraph (a) and (b) of subsection (2) of that section, fathers or mothers who have parental responsibility in respect of the child.*

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#### **Power to vary rate of transfer duty, etc.**

18. The States may by Ordinance –

- (a) vary the rate of transfer duty specified in section 2, provided that no Ordinance shall prescribe a rate which exceeds the aggregate of the following rates –
  - (i) the rate of document duty for the time being payable in respect of documents described in paragraph 1 of the First Schedule to the Document Duty (Guernsey) Law, 1973<sup>d</sup>,
  - (ii) the rate for the time being determined by Ordinance under section 16(5)(a) of the Alderney Land and Property Law, 1949<sup>e</sup> in respect of the amount payable in accordance with that section in substitution for treizième,
- (b) vary the ratio specified in section 2 in which transfer duty is divisible,
- (c) vary the rate of interest specified in section 5,
- (d) amend section 17 by adding to the list of exempt transfers set out therein or by removing or modifying any exempt transfer,
- (e) amend the definitions of "long leasehold", "share capital" and "transfer" set out in section 22(1),

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<sup>d</sup> Ordres en Conseil Vol. XXIV, pp. 74 and 236 and Ordinance No. XXVII of 1989; the 1973 Law was extended to Alderney by Ordinance No. XXXIX of 1973 (Tome XIX, p.111).

<sup>e</sup> Ordres en Conseil Vol. XIV, p. 67; and Vol. XXVIII, p. 578.

- (f) amend the form of return set out in Schedule 1,
- (g) prescribe a minimum amount of transfer duty to be payable in respect of any transfer of share capital of a land holding corporation,
- (h) make such provision as they may deem necessary or expedient for the purposes of the implementation and administration of this Law, including procedural and formal matters.

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## NOTES

*The following Ordinances have been made under section 18:*

*Duty on Share Transfers (Variation of Rate and Ratio) (Alderney) Ordinance, 2003;*

*Duty on Share Transfers (Alderney) Law 1994 (Amendment) Ordinance, 2012;*

*Duty on Share Transfers (Variation of Ratio) (Alderney) Ordinance, 2022.*

*The First Schedule to the Document Duty (Guernsey) Law, 1973 has since been repealed by the Feudal Dues (General Abolition of Congé) (Guernsey) Law, 2002, section 5(7), with effect from 1st April, 2003.*

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## **General provisions in relation to Ordinances.**

- 19.** (1) An Ordinance under this Law –
- (a) may be amended or repealed by a subsequent Ordinance hereunder,
  - (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to the States to be necessary or expedient.

(2) Any power conferred upon the States by this Law to make an Ordinance 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 prescribed conditions.

**Service of documents.**

**20.** (1) Any document to be given or served under or for the purposes of this Law may be given or served –

- (a) on an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode,

- (b) on a body corporate with a registered office in the Island, by being left at, or sent by post or transmitted to, that office,
- (c) on a body corporate without a registered office in the Island, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in the Island or, if there is no such place, its registered or principal office outside the Island,
- (d) on an unincorporated body, by being given to or served on any partner, member, manager or officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in the Island or, if there is no such place, its principal or last known principal place of business elsewhere,
- (e) on the Clerk, by being left at, or sent by post or transmitted to, the Alderney Court House,

and in this section the expression "**by post**" means by registered post or recorded delivery service and the expression "**transmitted**" means transmitted by telex, facsimile transmission or any similar means producing a document containing the text of the communication.

(2) If a person notifies the Clerk of an address for service within the Island for the purposes of this Law, any document to be given to or served upon him may be given or served by being left at, or sent by post or transmitted to, that address.

(3) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served by being –

- (a) published on two occasions in La Gazette Officielle,
- (b) delivered to, left at or sent by post to, or (where the foregoing is impracticable) affixed to some conspicuous part of, the land (if any) to which it relates,

and a document served under this subsection is sufficient if addressed to the owner of the land in question.

(4) Subsections (1) to (3) are without prejudice to any other lawful method of service.

(5) Notwithstanding the provisions of subsections (1) to (4) and of any other rule of law in relation to the service of documents, no document to be given to or served on the Clerk under this Law shall be deemed to have been given or served until it is received.

(6) If a person upon whom a document is to be served under this Law is an infant or person under guardianship, the document shall be served on his guardian; and if there is no guardian, the Clerk may apply to the Court for the appointment of a person to act as guardian for the purposes of this Law.

(7) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Law to have been received –

- (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of

Man, on the third day after the day of posting,

- (b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958, as amended<sup>f</sup>.

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## NOTES

*In accordance with the provisions of the Age of Majority (Alderney) Law, 2001, section 1(1), section 1(3) and section 3, with effect from 14th December, 2001 and subject to the transitional and savings provisions in section 1(5) of, and the Schedule to, the 2001 Law, the reference in this section to an "infant" shall be construed as a reference to a "minor", that is to say a person under the age of 18 years.*

*In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 2, with effect from 4th January, 2010, and having regard to the references in this section to "guardian", a guardian or person referred to as such has parental responsibility in respect of a child if the conditions in paragraph (a) or paragraph (b) of that section are satisfied.*

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## **Interpretation.**

- 21.** (1) In this Law, unless the context otherwise requires –

**"assessable value"** has the meaning given by section 3,

**"charitable corporation"** means a corporation –

- (a) entered in the register of charities established and maintained by the Charity Commissioners under

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<sup>f</sup> Ordres en Conseil Vol. XVII, p. 384; and Vol. XXIV, p. 84.

section 4 of the Charities Act 1960<sup>g</sup>,

- (b) excepted from the requirement to be so registered by section 4(4) of that Act, or
- (c) incorporated or constituted solely for charitable purposes according to the laws of the Island of Alderney,

**"children"** includes adopted, step and illegitimate children, and **"grandchildren"** shall be construed accordingly,

**"the Clerk"** means the Clerk of the Court,

**"the Companies Laws"** means the Companies (Alderney) Laws, 1894 and 1962<sup>h</sup>,

**"contravention"** includes failure to comply, and cognate expressions shall be construed accordingly,

**"controlling interest"** means, in relation to a corporation, the power of a person to secure, by means of the holding of shares or the possession of voting power in or in relation to that or any other corporation, or by virtue of any powers conferred by the memorandum or articles of association of that corporation or by any other document, whether or not a document regulating that corporation, or by virtue of his being a loan creditor of that or any other corporation, that the affairs of that corporation are conducted in accordance with his wishes,

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<sup>g</sup> An Act of Parliament (1960 c. 58).

<sup>h</sup> Ordres en Conseil Vol. II, p. 451; and Vol. XIX, p. 33.



**"corporation"** means any company registered in Alderney under the Companies Laws and any corporation constituted or incorporated with or without limited liability in a jurisdiction other than Alderney, whether or not a **"société étrangère"** within the meaning of the Law entitled "Loi relative à l'acquisition de Propriété Immobilière en cette Île par des Étrangères ou par des Sociétés Étrangères" registered on the 14<sup>th</sup> August, 1906<sup>i</sup>,

**"the Court"** means the Court of Alderney,

**"exempt transfer"** means a transfer of share capital of a land holding corporation in respect of which, by virtue of section 17, transfer duty is not payable,

**"holding company"** has the meaning given by Schedule 2,

**"land"** means any land or other immovable property in Alderney and any legal or beneficial interest therein, whether freehold or long leasehold, but does not include the interest of a mortgagee or chargee held by way of bona fide security for the payment of money or money's worth,

**"land holding corporation"** means a corporation which is –

- (a) the legal or beneficial owner of any land, or
- (b) the holding company of a land holding corporation,

**"long leasehold"**, in relation to an interest in land, means a lease granted before or after the commencement of this Law for a term of years

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<sup>i</sup> Ordres en Conseil Vol. IV, p. 106; and Vol. XXIV, p. 33.

certain of 21 years or more, whether or not at a premium or rack rent and whether or not the lease is or may become terminable before the end of that term by notice given by or to the tenant or by re-entry, forfeiture or otherwise, and also any other lease which contains, or in relation to which there is, a covenant, obligation or option –

- (a) for perpetual renewal, pursuant to which the holder of the lease is entitled to enforce (whether or not subject to the fulfilment of any condition) the perpetual renewal or extension thereof,
- (b) for renewal, pursuant to which the holder of the lease is entitled to enforce (whether or not subject to the fulfilment of any condition) the renewal or extension thereof (whether on one or more occasions, and whether or not for a specified term) which, if exercised in accordance with the terms of the covenant, obligation or option, and on whatever number of occasions, would bring the aggregate of terms granted to 21 years or more,

and for the purposes of this Law –

- (c) a lease for a fixed term and thereafter until determined shall be deemed to be a lease for a term equal to the fixed term together with such further period as must elapse before the earliest date upon which the lease can be determined,
- (d) a lease for life or for any term determinable with life or on marriage shall be deemed to be a lease granted for a

term of years certain of 21 years or more,

- (e) without prejudice to the generality of paragraphs (a) and (b) above, any covenant, obligation or option to take a lease for a further or extended term shall be taken into account in calculating the length of the term for which the lease was granted, and accordingly a lease for a definite term with an option to renew or extend for a further definite term shall be deemed to be a lease for the aggregate term,
- (f) the expression "**lease**" includes an underlease or other tenancy,

**"market value"** in relation to land means the open market value of the land as between a willing buyer and a willing seller,

**"officer of police"** means a member of the salaried police force of the Island of Guernsey and a member of any police force which may be established by the States of Alderney,

**"share capital"**, in relation to a corporation, includes all shares, stock, securities, scrip and other subdivisions of capital, whether registered, inscribed or bearer, which, other than by way of a fixed and predetermined right to interest and repayment of subscribed capital at par, entitles the owner or holder to any variable right of participation in the corporation's profit or capital, whether by way of dividend, bonus, conversion or distribution on winding-up, but does not include any part of the share capital which, as respects neither dividends nor capital, carries any right to participate beyond a specified amount in a distribution,

**"the States"** means the States of Alderney,

**"subsidiary"** has the meaning given by Schedule 2,

**"transfer"** includes any disposal or transfer of share capital or of any beneficial interest therein and any other dealing, transaction or event whereby or upon which (whether by the issue, allotment, placement, exchange or conversion of shares, the grant, exercise or take-up of any right or option, the appointment of a beneficiary under a trust or by any means whatsoever) –

- (a) the whole or any part of the corporation or its share capital, or any right, power, interest, entitlement or potential entitlement in respect thereof –
  - (i) undergoes a change in beneficial ownership or proportion of beneficial ownership, or
  - (ii) is acquired by any person or is transferred from one person to another, or
- (b) a change occurs in the entitlement or potential entitlement of any person to participate in the corporation's profit or capital, whether by way of dividend, bonus, conversion or distribution on winding-up,

**"transfer duty"** means the duty payable under and by virtue of the provisions of this Law in respect of any transfer of any share capital of a land holding corporation.

(2) The provisions of the Interpretation (Guernsey) Law, 1948<sup>j</sup> shall apply to the interpretation of this Law as they apply in Guernsey to the interpretation of an enactment.

(3) Any reference in this Law to an enactment is a reference thereto as amended, repealed and replaced, extended or applied.

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## NOTES

*In accordance with the provisions of the Government of Alderney Law, 2004, section 20(1), with effect from 1st May, 2005, the person appointed to the office of Greffier is to act as the Clerk of the Court and in accordance with the provisions of section 25(1)(e), with effect from that same date, the functions of the Greffier include the functions assigned by law to the Clerk of the Court.*

*In accordance with the provisions of the Police Force (Bailiwick of Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.*

*The Companies (Alderney) Law, 1894 and the Companies (Alderney) Law, 1962 have since been repealed by the Companies (Alderney) Law, 1994, section 170, with effect from 3rd May, 1995, subject to the savings and transitional provisions in section 169 of, and Schedule 2 to, the 1994 Law.*

*The Loi relative à l'acquisition de Propriété Immobilière en cette Île par des Étrangers, ou par des Sociétés Étrangères (Alderney), 1906 has since been repealed by the Acquisition of Immovable Property by Aliens (Brexit) (Repeal) (Alderney) Regulations, 2020, regulation 1, with effect from 11 p.m. on 31st December, 2020.*

*The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.*

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## **Citation.**

22. This Law may be cited as the Duty on Share Transfers (Alderney)

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<sup>j</sup> Ordres en Conseil Vol. XIII, p. 355.

Law, 1994.

**Commencement.**

**23.** This Law shall come into force on the day appointed by Ordinance of the States.

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**NOTE**

*The Law was brought into force on 1st June, 1994 by the Duty on Share Transfers (Commencement) (Alderney) Ordinance, 1994, section 1.*

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SCHEDULE 1  
FORM OF RETURN

Section 4(1)(a)

*"The Duty on Transfers (Alderney) Law, 1994*

This form of return, duly completed, signed and dated by an individual who is resident in Alderney or by an Advocate of the Royal Court, must be delivered to the Clerk of the Court of Alderney within 28 days of any non-exempt transfer of any share capital of a land holding corporation.

The amount of transfer duty payable in respect of the transfer, and the instrument, if any, whereby the transfer was effected, must also be so delivered.

It is an offence not to comply with these requirements or to furnish any false, deceptive or misleading information.

Expressions used in this return have the meanings given by the above Law.

1. Name of corporation:
2. Registered office of corporation:
3. Place in which corporation was constituted or incorporated:
4. Nature of transfer (e.g. transfer, issue, exchange or conversion of shares, or grant or exercise of option):

5. Description of shares transferred:
6. Date of transfer:
7. Name, address and description of transferor:
8. Name, address and description of transferee:
9. Market value of all land\* of corporation at time of transfer:
10. Location, description and parcel and section registration numbers of all such land:
11. Nominal value of shares to which transfer relates:
12. Nominal value of whole of issued share capital of corporation:
13. Assessable value of transfer (being the proportion of the amount shown in 9 above which the amount shown in 11 bears to the amount shown in 12):
14. Amount of transfer duty payable, being 5½% of the amount shown in 13 (if none, state why transaction is exempt):



**15.** Name, address and occupation of undersigned person making this return:

**16.** Capacity in which this return is made (eg director or secretary of corporation):

I, the undersigned, hereby declare that I have completed this return to the best of my knowledge and belief and that the information given herein is true and complete and that the transfer does not form part of any larger transfer of the share capital of the corporation.

The instrument, if any, whereby the transfer was effected is enclosed herewith.

**Name of signatory:**

**Signed:**

**Dated:**

\* Note - "**land**" means any land or other immovable property in Alderney and any legal or beneficial interest therein, whether freehold or long leasehold."

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**NOTE**

*In accordance with the provisions of the Government of Alderney Law, 2004, section 20(1), with effect from 1st May, 2005, the person appointed to the office of Greffier is to act as the Clerk of the Court and in accordance with the provisions of section 25(1)(e), with effect from that same date, the functions of the Greffier include the functions assigned by law to the Clerk of the Court.*



SCHEDULE 2  
MEANING OF "HOLDING COMPANY" AND "SUBSIDIARY"

1. For the purposes of this Law a corporation is, subject to the provisions of paragraph 3, a subsidiary of another if, but only if –

- (a) that other –
  - (i) is a member of it and controls the composition of its board of directors, or
  - (ii) holds more than half in nominal value of its issued share capital, or
- (b) the first-mentioned corporation is a subsidiary of any corporation which is that other's subsidiary.

2. For the purposes of paragraph 1 the composition of a corporation's board of directors shall be deemed to be controlled by another corporation if, but only if, that other corporation has some power, exercisable without the consent or concurrence of any other person, to appoint or remove the holders of all or a majority of the directorships; and that other corporation shall be deemed to have power to appoint a person to any directorship in respect of which any of the following conditions is satisfied –

- (a) that a person cannot be appointed thereto without the exercise in his favour by that other corporation of such a power,
- (b) that a person's appointment thereto follows necessarily from his appointment as director of that other

corporation,

- (c) that the directorship is held by that other corporation itself or by a subsidiary of it.

**3.** In determining whether a corporation is a subsidiary of another –

- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it,
- (b) subject to subparagraphs (c) and (d), any shares held or power exercisable –
  - (i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity),
  - (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other,

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned corporation or of a trust deed for securing any issue of such debentures shall be disregarded,
- (d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held

or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

**4.** For the purposes of this Law a corporation shall be deemed to be another's holding company if, but only if, that other is its subsidiary.