

## 1. INTRODUCTION

- 1.1** The new Company Law came into force on 1 July 2008 and on the same day the on-line Company Registry was launched.
- 1.2** Information, (including a copy of The Companies (Guernsey) Law, 2008) can be found and a basic company search can be carried out at the Registry's website at [www.guernseyregistry.com](http://www.guernseyregistry.com)
- 1.3** The information held on the Registry's website has been updated by the compulsory registration of directors' details and the re-registration of companies' details and this is to be completed by 31st December 2008.

## 2. ANNUAL VALIDATION

### 2.1 Validation and Declaration of Compliance (in place of the submission of an Annual Return).

In January 2009 an Annual Validation including a Declaration of Compliance will have to be submitted to the Registry. The information contained will be as at 31st December 2008 and must be verified by either a director or secretary of a company.

### 2.2 Fees

The annual statutory fee (determined by the company classification code) must be submitted to the Registry at the same time as the Annual Validation. The minimum fee payable is £250, which covers all non-regulated companies.

### 2.3 Failure to Submit Annual Validation Penalties

If the Annual Validation documents and fee are not submitted by 31st January 2009, a company is guilty of an offence and will be liable to a default fine of £5.00 per calendar day and is also liable to a civil penalty.

- 2.4** It should be further noted that failure to file an Annual Validation is an offence and that this may be grounds for bringing an action before the Court for a disqualification order against the directors of a company.

## 3. REGISTERS AND OFFICERS

### 3.1 Resident Agent Appointment and Duties

Every company must have a resident agent, who is either a Guernsey resident individual director of the company or a corporate services provider (a GFSC licensed fiduciary service provider such as Guernsey Trust Company Limited).

- 3.2** It is the resident agent's responsibility to ascertain the identity of the persons who are the beneficial owners of members' interests in a company to which they provide this service.

### 3.3 Directors

A person cannot be appointed a director unless he has in writing:

- Consented to be a director; and
- Declared that he is not ineligible (not a minor or subject to a disqualification order in Guernsey or elsewhere).

### 3.4 Notification of Changes

Any changes made to the Board of Directors, Company Secretary, (if applicable) and resident agent (including changes to address details) must be notified to the Company Registry within 14 days, or a company will be guilty of an offence and penalties may be charged on a daily basis.

## 4. DETAILS TO APPEAR IN A COMPANY'S CORRESPONDENCE

### 4.1 Letterhead

The following details must appear in all correspondence and electronic correspondence, including invoices and websites:

- Its name, including "Limited" (if applicable)
- Its registration number
- The address of its registered office

### 4.2 Registered Office

The Registry must be notified in advance of any proposed change to the registered office address of a company.

## 5. MEMORANDUM AND ARTICLES OF INCORPORATION

### 5.1 Changes to Existing Articles

From 1st January 2010 any individual articles, which are not compliant with the new Law will be void as of that date and, therefore, it may be necessary to review and amend a company's articles prior to this date. One may also wish to make amendments to take advantage of the greater flexibility permitted under the new Law.

### 5.2 Examples

- A company is no longer required to have a specified limit of authorised share capital. This can give companies the flexibility to issue shares beyond the previously nominated authorised share capital.
- There is greater flexibility with regard to distributions, which can be made if the directors certify that the company will satisfy a statutory solvency test immediately after the relevant distribution and are no longer required to be paid only from profits available for that purpose.
- Any existing indemnity clauses in a company's articles, which indemnifies director(s) in respect of any liability for negligence, default, breach of duty or trust will be void under the new Law.
- It is now possible to waive the requirement for a company to hold an Annual General Meeting each year.
- It is now possible to have single member companies in Guernsey, in which case that member constitutes a quorum for meetings. It is also possible to reduce the quorum to one for any company (whether or not they have one member), though this requires a specific amendment to the Articles.

### 5.3 Adoption of New Articles

Amendments can be made to individual Articles in the existing Articles of Association, (under the new Law, Articles of Incorporation) or alternatively, new Articles of Incorporation in their entirety, which are fully compliant within the terms of the new Law can be adopted. Any amendment to a company's articles requires the passing of a special resolution at an Extraordinary General Meeting or by written resolution.

## 6. AUDIT AND ACCOUNTS

### 6.1 Accounts

All companies must keep accounting records, which are sufficient to show and explain its transactions and the directors of a company must prepare accounts of every company for each of the company's financial years, which give a true and fair view and which shall include a profit and loss account and a balance sheet.

### 6.2 Financial Year

The maximum permitted length of a financial year is 18 months.

### 6.3 Appointment of Auditor

An auditor must be appointed for each financial year of a company unless the company is exempt from audit.

### 6.4 Exemption from Audit

Where a company is exempt from audit the members of a company must pass a Waiver Resolution ahead of the financial year to which it refers, to exempt the company from the requirement to have its accounts audited. (In the first financial year after incorporation, this waiver resolution must be passed during that first financial year).

Any waiver resolution must be filed with the Registrar of Companies within 30 days of its passing.

## 7. CONCLUSION

Please note that this is a general information note and in no way does it attempt to cover all of the changes that have been introduced under the new Companies Law or to provide advice on any specific matter. For further information or to arrange for formal legal advice on your company's position under the new Law, please do not hesitate to contact us.

*For further information or professional advice, please contact:*

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