

Registry Update for Industry August 2015

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Introduction

In what has been another busy and successful year so far for the Registry, with continued growth in companies, limited partnerships, limited liability partnerships and foundations, we are continuing with our programme of improvements designed to provide an enhanced user experience and once again, I would like to thank the Registry team for their hard work.

The main focus of this update is to advise you of the impact of the Company Law Amendments which are due to come into force on **September 3rd 2015**.

System shutdown 2/3 September 2015

In order to implement the necessary system changes introduced by the Amendment Ordinance, **NO SUBMISSIONS WILL BE AVAILABLE AFTER 4 PM ON 2 SEPTEMBER 2015**. All other functionality on the online-services portal will be available i.e. company search, account statements etc.

Once the necessary regulations have been signed on 3 September submissions will be available again. It is planned that an email will be sent out to registered presenters as soon as the new/amended submissions are available.

Charities and non-profit organisations

The Registry took over the administration of charities and non-profit organisations in 2014. Please don't forget for those charities/NPOs that are also registered companies you must complete the online company annual validation in January 2016 **AS WELL AS** the renewal documentation for the charity/NPO as they are requirements under 2 separate pieces of legislation and one submission does not automatically update the other.

Should you wish to provide feedback to the Registry please contact us:

tel: +44 1481 743800

or email: enquiries@guernseyregistry.com

Alan Bougourd
Registrar of Companies

Company Law Amendments 2015.

Following consultation with Industry, the Commerce and Employment Department has made necessary amendments to the Companies (Guernsey) Law, 2008 (The Law) to address practical issues and to ensure that Guernsey remains a highly regarded and competitive jurisdiction.

The Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2015 (the Amendment Ordinance) will come into force on **3 September 2015**. The following details the changes that have a direct impact on Registry processes/procedures.

For full details regarding the changes please read the full amendment ordinance (<http://www.guernseylegalresources.gg/article/119040/Companies-Guernsey-Law-2008-Amendment-Ordinance-2015>) and seek independent legal advice where there is any uncertainty. In addition, a number of law firms have issued guidance which you may wish to refer to for further detail.

Changes that affect Registry submissions:

Alternative name – The Amendment Ordinance has introduced the ability for companies to register an alternative name, alongside their principal company name, in non-Roman alphabet, characters or script i.e. using foreign characters.

A company which has not yet been incorporated can request an alternative name at the time of incorporation. An existing company can apply to the Registrar to register an alternative name. A cost of £25 is likely to be introduced in October 2015 but initially this will be offered at no charge.

Full details on the requirements of the Ordinance and an application to register an alternative company name can be found in the guidance section of our website: <http://www.guernseyregistry.com/LCGuidance>

Reserve a name for a change of name – The Amendment Ordinance enables a name reservation submission to be made for a change of name.

Upper and lower case names - The system changes to allow for an alternative name also mean that companies who wish to incorporate a company using upper and lower case Roman script will now be able to do so. The system will no longer default to capital letters on incorporation certificates.

If you have previously relied on the system automatically converting names to capital letters then you will need to take care with effect from 3 September 2015 that the name you provide is in the required format in terms of upper and lower case letters.

Migrations and Amalgamations – the Amendment Ordinance will speed up the migration and amalgamation process as the Registrar will be able to publish a 'notice of intent to apply'. Therefore, the publication period can run alongside other administrative processes rather than waiting until everything is finalised.

Minor changes have been made to the Registry's amalgamation and migration checklists which can be found here: <http://www.guernseyregistry.com/LCGuidance>

Directors report waiver – The Law requires that the directors of all companies shall prepare a directors' report for each of the company's financial years unless they are exempt under s248A.

Regulations due to come into force on 3 September 2015 mean that some companies will be automatically exempt but some will need to pass a waiver resolution if they wish to be exempt (please note some companies are not eligible for exemption).

The exemptions are likely to be as follows:

Automatic exemption

Regulations made under section 248 (4) of The Law, 2008 are likely to exempt the directors of certain non-regulated companies **automatically** from the duty to prepare a directors' report **without the need to file a waiver resolution**.

Directors of companies which fulfil both criteria 1 and 2 below are likely to be automatically exempt from the duty to prepare a directors' report, and **will not need to file a waiver resolution**:

1. **Companies where the resident agent is an individual director of the company** who is resident in Guernsey and is not the holder of a personal fiduciary licence or acting as director of the company in contravention of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000, and
2. where all the equity share capital of the company is held by the directors, as **beneficial owners**, or any close relatives of the directors, as beneficial owners.

Exemption by waiver resolution:

If the company does not meet the requirements for automatic exemption, a waiver resolution must be filed if the directors wish to be exempt from the duty to prepare directors' reports.

The members of a supervised company (within the meaning of section 530 of The Law **may not** pass a waiver resolution of this type and therefore their directors cannot be exempt from the duty to prepare a directors' report.

A pro-forma waiver resolution can be found in the guidance section of the website :
<http://www.guernseyregistry.com/LCGuidance>

Memorandum and articles – The commencement of the Amendment Ordinance means that the current transitional provisions will not be extended beyond 31 December 2016 (noting that some of the provisions NEVER time expire). Whilst it may not be strictly necessary for all pre-2008 companies to amend their memorandum and articles upon expiry of the remaining time limited provisions, directors should review their articles to satisfy themselves that the company will not be adversely affected. As an example:

A pre-2008 company may have filed a waiver resolution to exempt the company from the requirement to hold an AGM.

If you have filed an AGM waiver resolution the waiver is valid in relation to the section of the law under which it is made. However, if the company's articles state that a meeting must be held then the AGM waiver may be in breach of those articles.

Where this is the case, a company can resolve to change its articles and file the new articles with the Registry for a charge of £50.

Standard Articles – The Amendment Ordinance will introduce new articles. These have removed the sections of the law that have been repealed and tidy up any typographical errors. The articles of any companies incorporated before the Ordinance comes into force on 3 September using the standard articles will not change i.e. the standard articles do not automatically update.

Should you wish to adopt the **new** standard articles after the 3 September you can make an 'alter articles' submission at a cost of £50.

System shutdown 2/3 September 2015

In order to implement the necessary system changes introduced by the Amendment Ordinance, **NO SUBMISSIONS WILL BE AVAILABLE AFTER 4 PM ON 2 SEPTEMBER 2015**. All other functionality on the online-services portal will be available i.e. company search, account statements etc.

Once the necessary regulations have been signed on 3 September submissions will be available again. It is planned that an email will be sent out to registered presenters as soon as the new/amended submissions are available.

Transitional Provisions for the Amendment Ordinance – A number of transitional provisions apply to the introduction of the Amendment Ordinance. However only one specifically impacts on a Registry submission: once the Amendment Ordinance is in place, a company will not be able to make an application under s357 to have itself struck off where it has any outstanding liabilities. However, where a company has already made an application for a voluntary strike off when the Ordinance has commenced will be allowed to continue in accordance with the provisions of the law as they had effect immediately before the amendments came into force. For full details of the transitional provisions please see the legislation section of our website

<http://www.guernseylegalresources.gg/article/119259/No-54---The-Companies-Transitional-Provisions-and-Commencement-Regulations-2015>

Annual Validation - countdown to January 2016

Please note that the Annual Validation fees are unchanged for 2016

Annual Validation:

Please note: companies incorporated after 1 December 2015 will not be required to make an annual validation submission in January

The following list details the timeline for the annual validation process:

31 October 2015

All companies wishing to submit a Voluntary Strike Off application **MUST** have done so by 31 October 2015 in order to remove the requirement to make an annual validation submission in 2016.

Companies making Voluntary Strike Off submissions received between 1 November and 31 December are required to make an annual validation submission but there will be no charge for the annual validation.

If the annual validation is not made for companies who have made a voluntary strike off submission—the strike off submission will be rejected and the company listed for strike off for being in default of the Law.

1 November 2015

AV form available in draft to allow users to complete submissions and save in draft until 1 January 2016.

1 December 2015

Voluntary Liquidation— If the company has appointed a liquidator **BEFORE** 1 December and remains on the register as at 31 December, an annual validation submission **will be** required. Again, there will be no charge for this submission.

If the final meeting of the liquidator has been held **BY** 31 December—there is **NO** requirement to make an annual validation submission.

1 January 2016

AV submissions will be accepted by the Registry together with the appropriate fee.

N.B Where the status of the company as at 31 December 2015 is as follows:

- **Voluntary Winding up Part 1**
- **Voluntary Winding up Part 2**
- **Compulsory Winding Up Part 1**
- **Compulsory Winding up Part 2**
- **Winding Up Resolution**
- **Voluntary Strike Off Application**

No Fee will be charged by the system.

Data Download Functionality

Users are reminded that the online services portal allows Corporate Service Providers and Regulated Presenters to export the data held by the Registrar on each of the companies on their 'watch list'. (Please note this is 'real time' data and may change if similar data is pulled off the system on different days and submissions have been received and processed in the meantime).

This is particularly useful for checking the information held ahead of preparing annual validations.

Details of what information is available on the data download can be found here:
<http://www.guernseyregistry.com/datadownload>

Other Registry Updates

Transitional Provisions - general

Updates on the savings and transitional provisions have been included in previous industry updates. The time limited provisions included in the current regulations will expire on 31 December 2016.

Full details and frequently asked questions can be found here:
<http://www.guernseyregistry.com/transprovisionsMay2015>

Resident Agents

CSPs and RPs are reminded of the legal requirements with regard to resident agents which are detailed here: <http://guernseyregistry.com/article/102795/Resident-Agent-Guidance>.

CSPs and RPs are also reminded to ensure that, where they provide company formation only services, the directors of newly incorporated companies are fully aware of the resident agent regime in Guernsey and the obligations of being a resident agent.

Filing of resolutions to change a name or voluntarily wind up a company

CSPs and RPs are reminded that using the 'resolution' submission on the online service portal DOES NOT make the necessary changes to the company. It is a submission type to file the resolution with the Registry ONLY.

Companies wishing to change the company name or commence voluntary winding up proceedings should use the submission type:

- 'Change Name'
- 'Voluntary Wind Up'

A similar situation applies to migrations in and out, amalgamations and conversions. However, the submissions are made on paper rather than online.

Please bear in mind, in addition to the company Law requirements for prohibited names, account must also be taken of the Regulatory laws – please see www.gfsc.gg for more information.

Registry Account Balances

CSPs and RPs are reminded of the payment terms for Registry accounts. The closing balance on the account is due in full (with the exception of any amount that has recently been sent and does not appear on the statement) within 30 days of the date of the account statement.

CSPs and RPs are also reminded that if they overpay on an account by BACS the Registry is unable to refund any credit and the credit balance will remain on the account.

If you are paying your account by BACS please include a clear reference with the payment so it can be applied to the account. It would also be helpful if you could email enquires@guernseyregistry.com with a remittance advice.

Guidance on how to access account statements on line can be found here:

<http://www.guernseyregistry.com/article/103861/Accessing-online-account-statements>

Training

The Registry would be pleased to offer staff training on the use of the online services portal for both new and existing staff. This training would also provide updates on new products and services or changes to existing processes.

Should you wish to book any training - either at the Registry or at your own offices—please email enquiries@guernseyregistry.com

Guernsey Finance Funding

Users are reminded that the Guernsey Finance Funding levy is due for any company who is licensed by the Guernsey Financial Services Commission between 1 January and 31 January 2016.

The fees for 2016 remain unchanged at £80 per full time equivalent employee and are capped at a maximum of £7,500 per license.

Intellectual Property Office updates

The Registry is currently working with the Policy Council and the Law Officers of the Crown to secure extension of a number of other IP conventions to further enhance the Bailiwick's intellectual property regime globally.

Trade Marks

Have you thought about registering your trade mark? If you have invested time and money in developing a brand then serious consideration should be given to protecting your intellectual property. More information can be found on our website <http://ipo.guernseyregistry.com/article/114367/Why-register-a-Trade-Mark->

Christmas and New Year closing 2015/2016

Thursday 24 December 2015 - **building will close to the public at 2pm**

Friday 25 and Monday 28 December 2015 – Bank holidays – building closed

Thursday 31 December 2015 - **building will close to the public at 4pm**

Friday 1st January 2016 – Bank Holiday – building closed

The Registry is always keen to receive feedback on its services so please do not hesitate to email enquiries@guernseyregistry.com with your comments and suggestions.

The interpretation of the legislation is a matter on which the Guernsey Registry cannot advise and individuals will need to form their own view on compliance.

Independent legal advice is advised where there is any uncertainty.