

Companies (Guernsey) Law, 2008 (as amended)

Insights - 05/09/2016

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Provisions which may be displaced or supplemented by contrary provisions in a company's memorandum or articles of incorporation.

This memorandum has been prepared to assist our clients in connection with the provisions in the Companies (Guernsey) Law, 2008 (as amended) (most recently by the Companies (Guernsey) Law, 2008 (Amendment) Ordinance 2015) (the "**Companies Law**") which may (i) be displaced by contrary provisions in a company's memorandum or articles of incorporation or (ii) allow a Guernsey company to make express provision in its memorandum or articles permitting such company to undertake anything which it would not otherwise be able to take. It is intended to provide only a summary of the main legal and general principles and it is not intended to be comprehensive in scope. It is strongly recommended that you seek specific legal advice on such matters and we would be pleased to assist in this respect. A series of briefings on other specific aspects of Guernsey companies has been produced by Ogier and is available on our website www.ogier.com.

The memorandum has been prepared on the basis of the law and practice in Guernsey as at 11 August 2016.

Provision	Description	Section
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	In the case of a company that is limited by guarantee which has a share capital, the memorandum or articles may:	
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Types of Member	<ul style="list-style-type: none"> i. require a guarantee member also to be a shareholder; or ii. prohibit a guarantee member from also being a shareholder. 	s.7(3)
Types of Member	<p>In the case of an unlimited liability company which has a share capital, the memorandum or articles may:</p> <ul style="list-style-type: none"> i. require an unlimited member also to be a shareholder; or ii. prohibit an unlimited member from also being a shareholder 	s.8(3)
Types of Member	<p>The memorandum or articles of a mixed liability company may:</p> <ul style="list-style-type: none"> i. require a member of one type also to be a shareholder; and ii. prohibit a member of one type from also being a shareholder. 	s.9(3)
Contributions of Members	Without prejudice to any liability that a member has to a mixed liability company, the memorandum or articles of that company may make provisions for any adjustments or contributions to be made between members.	s.9(5)
Memorandum of Incorporation	The memorandum may be in the French language	s.15(8)
Seal	A common seal may be used in any jurisdiction unless the articles provide to the contrary,	s.36(2)
Alteration of Memorandum or Articles of an Incorporated Cell	In the case of an incorporated cell company the articles of an incorporated cell may not, unless the memorandum or articles of the incorporated cell provide to the contrary, be altered unless the incorporated cell company (as well as the incorporated cell) has also passed a special resolution authorising the alteration.	s.39 and s.43

Entrenchment of Provisions of Articles	Articles may contain provision for entrenchment to the effect that specified provisions in the articles may be amended or repealed only if conditions are met, or procedures complied with, that are more restrictive than those applicable in the case of a special resolution.	s.44
Objects	A company's objects are unrestricted unless specifically limited in its memorandum.	s.113
Power of Attorney	A company may, by power of attorney, empower any person, either generally or in respect of specified matters, to represent it, act in its name and execute documents on its behalf, and such a power is not valid unless signed by a director of the company or in such manner as provided for in its articles.	s.118
Release of Guarantee Member	A person does not cease to be a guarantee member of a company except by dissolution of the company or by retirement in accordance with such formalities as may be set out by the company's articles.	s.122(1) (b) (i)
Release of unlimited liability member	A person shall not cease to be an unlimited member of a company except by dissolution of the company or by retirement in accordance with such formalities as may be set out by the company's articles.	s.122(2) (b) (i)
Management	The business and affairs of a company must be managed by or under the direction, or supervision of the board of the company. This is subject to any modifications, exceptions or limitations in the Companies Law or in the company's memorandum and articles.	s.134(3)
Appointment of Directors	Subject to any provision to the contrary in a company's memorandum or articles of incorporation, any directors appointed, subsequent to the first directors, must be appointed by ordinary resolution. Subject to the memorandum or articles, the members of the company may vote in a resolution to appoint a director only if- (i) the resolution is for the appointment of one	s.139(2)a and s.140

director; or

(ii) the resolution is a single resolution for the appointment of two or more directors and a separate resolution that it be so voted on has first been passed without a vote being cast against it.

**Directors
Ceasing to
Hold Office**

A person ceases to be a director if he (i) resigns or becomes ineligible to be a director in accordance with the Companies Law, (ii) dies, or (iii) is removed from or vacates office in accordance with the memorandum or articles of the company.

s.142

**Attendance
at Directors'
Meetings**

Subject to any provision to the contrary in a company's memorandum or articles of incorporation, each director participating by telephone, video link or similar is deemed to be present at a meeting.

s.153

**Interested
Director may
Vote**

A director who is interested in a transaction entered into by the company may vote, attend meetings, sign documents or do any other thing in his capacity as a director in relation thereto subject to the company's memorandum and articles.

s.166

**Ratification
of Acts of
Directors**

Subject to anything in a company's memorandum or articles requiring a higher majority (or unanimity), the decision of a company to ratify conduct by a director which exceeds his powers or amounts to negligence, default, breach of duty or breach of trust in relation to the company must be taken by the members pursuant to an ordinary resolution.

s.160

**Notice of
Ordinary
Resolution**

The articles may specify the manner in which notice must be given of an ordinary resolution in contemplation of a general meeting of the company at which the resolution is to be proposed.

s.176(6)

**Variation of
Majority
Voting**

Notwithstanding s.176, a company's memorandum or articles may allow certain ordinary resolutions to be passed by a different proportion of votes than a simple majority.

s.177

Period for Passing Written Special Resolutions	The memorandum or articles of incorporation may specify a period within which a written resolution is to be passed if it is not to lapse. In default of any such provision in the memorandum and articles, the default position is 28 days from the circulation date.	s.188
Written Resolutions	A provision of the articles is void if it would have the effect of not allowing any resolution that is required by or provided for in an enactment to be passed as a written resolution.	s.190
Voting	Every member has one vote, subject to provisions in the articles providing for the issue of the shares which (a) do not entitle the holder to voting rights, or (b) entitle the holder to restricted voting rights.	s.191(4)
Voting – Joint Holders of Shares	Subject to any provision of the company’s article, where there are joint holders of shares of a company only the senior holder may vote.	s.194(3)
Voting – Second Vote of Chairman	Subject to any provision of the company’s memorandum or articles the chairman has a second or casting vote.	s.197
Voting – Admissibility of Votes	Effect of provision in company’s articles as to admissibility of votes. This section applies where the company’s articles provide that an objection to a person’s entitlement to vote must be made in accordance with a procedure specified in the articles.	s.198
AGM of Incorporated Cell	An incorporated cell is not required to hold an annual general meeting, unless the memorandum or articles of incorporation require it to.	s.200
Members’ Power to call General Meeting	Unless stated otherwise in the company's memorandum or articles, the members may require the directors to call a general meeting.	s.203(1)
	Subject to any provision of the company’s memorandum or articles, notice of a general meeting must state the	s.210(2)

Notice of GM	general nature of the business to be dealt with at the meeting.	
Location of GM	Subject to the provisions of a company's articles, a general meeting may be held at any place in Guernsey or elsewhere.	s.212
Quorum	In the case of a company having more than one member, two qualifying persons holding 5% of the total voting rights of the company is a quorum, subject to its memorandum and articles.	s.213(2)
Chairman at Members' Meeting	The chairman of a meeting may be elected by a resolution passed at the meeting, subject to any provision of the company's articles that states who may or may not be chairman.	s.214
Attendance at Members' Meeting	Subject to any provision to the contrary in the company's articles of incorporation, each member participating by telephone, video link or similar is deemed to be present at a meeting.	s.217
Details of Members	Membership details shall be available throughout a meeting, unless a company's articles of incorporation request otherwise.	s.219
Proxy	A company's articles may require or permit notice of termination of proxy's authority to be given to a person other than the company.	s.226(4)
Quorum for Variation of Class Rights Meeting	Subject to the provisions of a company's memorandum and articles, the quorum for a variation of class rights meeting is two persons present holding at least one third of the voting rights of the class in question or, in the case of an adjourned meeting or class with only one member, one person present holding share(s) of class in question	s.232
Variation of Voting Rights	A share confers on the shareholder a right to vote on resolutions of the company and the right to an equal share in dividends and the right to an equal share in the distribution of surplus assets of the company unless varied	s.276

	by the memorandum or articles of the company.	
Classes of Shares	Subject to the memorandum and articles of incorporation, different classes of share may be issued in a company.	s.277
No Par Value Shares	The memorandum or articles of a company may authorise a company to issue shares which have no nominal or par value.	s.278
Alteration of Share Capital	A company may, if so authorised by its memorandum or articles, by ordinary resolution alter its memorandum or articles so as to alter its share capital.	s.287
Transfer of Shares	The shares of any shareholder in a company are transferable in the manner provided by the company's memorandum or articles.	s.289
Power of Directors to Issue Shares	To the extent authorised by a company's memorandum or articles (or resolution of the company), the directors of a company may exercise any power of the company to issue shares (and grant rights to subscribe for or convert any security into shares in the company). To the extent that the directors are not prohibited from doing so by the memorandum or articles (or resolution of the company), they may issue shares (or grant rights to subscribe for or convert any security into shares in the company) in pursuance of an employee's share scheme.	s.291
Issue of Shares	The board of directors may issue shares to any shareholders who have agreed to accept the issue of shares, subject to the memorandum or articles of incorporation of the company in lieu of a proposed dividend(s) in certain circumstances.	s.306
Acquisition of own shares	A company may, if so authorised by its memorandum or articles acquire its own shares.	s.312
Treasury Shares	If so authorised by its memorandum or articles a company may acquire its own shares (section 312). A company may hold any shares acquired by it in accordance with section 312 as treasury shares if it is authorised to do so by (a) its	s.326(b)

	<p>memorandum or articles, or (b) subject to any provision to the contrary in its memorandum or articles, an ordinary resolution.</p>	
<p>Variation of Class Rights of Members (who are not shareholders)</p>	<p>The rights of a class of shareholders (without prejudice to any other restrictions on their variation) may only be varied with consent of the holders of shares of that class (in writing from 75% of the members of that class or a special resolution passed at a meeting of the members of that class) or in accordance with the company's articles.</p>	<p>s. 342</p>
<p>Variation of Class Rights of Members (who are not shareholders)</p>	<p>The rights of a class of members (without prejudice to any other restrictions on their variation) may only be varied with consent of the members of that class (in writing from 75% of the members of that class or a special resolution passed at a meeting of the members of that class) or in accordance with the company's articles.</p>	<p>s. 343</p>
<p>Voluntary winding-up</p>	<p>The memorandum or articles of a company may provide for a date upon which the company expires or an occurrence on which the company shall be dissolved, provided that in each case the company passes an ordinary resolution that it would be wound up voluntarily</p>	<p>s.391</p>
<p>Distribution of Company's Property</p>	<p>Subject to the law (including rules as to preferential payments) and any agreement between a company and any creditor(s), a company's assets in a winding-up shall be realised and applied in satisfaction of the company's debts and liabilities <i>pari passu</i>. Unless the memorandum or articles provide otherwise, any surplus shall be distributed among the members according to their respective rights and interest in the company.</p>	<p>s.419(2)</p>
<p>Distribution after Receivership</p>	<p>During the discharge or variation of receivership orders any surplus shall thereafter be distributed (a) among the holders of the cell shares or the persons otherwise entitled to the surplus, or (b) where there are no cell shares and no such persons, among the holders of the core shares, unless the memorandum or articles provide otherwise.</p>	<p>s.462(6)</p>

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