

# **PROPOSED AMENDMENTS TO THE COMPANIES (GUERNSEY) LAW 2008**

## **REVISED PROPOSALS FOLLOWING CONSULTATION**

## **1. Background**

- 1.1 The Companies (Guernsey) Law 2008 ('the Law') has been in force since 1 July 2008.
- 1.2 The new Law represented a consolidation and, in many areas a significant revision, of Guernsey's company law. The Law has been a success, providing a competitive framework for the operation of Guernsey companies.
- 1.3 In April 2010, the Commerce and Employment Department released a consultation paper identifying a number of proposed amendments to the Law. These proposals were based on extensive discussions with those in the private sector who have been working with the Law since its introduction.
- 1.4 In addition to detailed proposals, a number of open questions were asked, seeking feedback on areas where amendments were under consideration but the Department required further information before a decision could be taken on whether any amendments were necessary.
- 1.5 Finally, as part of the ongoing review of the Law since its enactment, additional comments were invited on any matters relating to the Law which are not covered in the appendix to the consultation paper.
- 1.6 The Department received 24 detailed responses to the consultation from individuals, local companies, law firms, industry associations and the GFSC. The quality of the responses was very high, amounting to hundreds of pages of detailed technical comments on the proposals as well as over a hundred additional proposals and comments relating to matters not covered in the original consultation. The Department is grateful to all those who responded.
- 1.7 Following consultation, the Department carefully reviewed and analysed all the responses that were received. In a number of areas, it was necessary for the Department to meet with representatives from industry associations to discuss individual proposals in greater detail. It has also been necessary to consider legislative and judicial developments in other jurisdictions since the consultation closed.
- 1.8 Further additional proposals have emerged and evolved since the formal consultation closed as a result of direct approaches to the Department, as well as through the experience of the Guernsey Registry, the Law Officers and the Royal Court in working with the Law.
- 1.9 The Department has also assessed the financial, information technology and systems implications for the Guernsey Registry of the proposed amendments.

## 2. Conclusions

- 2.1 The intention of the Department in reviewing the Law was primarily to identify any teething trouble following the introduction of the Law and to take account of developments in other jurisdictions.
- 2.2 It was not the Department's intention to conduct a wholesale review of the fundamental principles underpinning Guernsey's company law. That process was comprehensively undertaken in the run up to the introduction of the new Law in 2008.
- 2.3 In the case of many proposals contained in the consultation paper, respondents expressed fundamentally opposed opinions. The Department has in general concluded that it would not be desirable to proceed with amendments where there is no clear consensus on the merits of a proposal and where the Department has no firm policy objective over and above the desire to ensure that the Law provides a framework that is conducive for business whilst maintaining high standards of corporate governance.

## 3. Summary of Response to Consultation

- 3.1 Given the detailed technical nature of many of the responses received, it has not been possible to provide lengthy analysis of the feedback received to individual proposals.

### Part I

- 3.2 Part I of the annex to this document sets out the proposals that the Department **intends to take forward**.
- 3.3 Unshaded boxes set out proposals that were included in the consultation paper. An additional column has been added indicating the level of support for the proposal and any additional matters that arose as a result of the consultation exercise.
- 3.4 Shaded boxes represent new proposals that have emerged as a result of the consultation process.

### Part II

- 3.5 Part II of the annex to this document sets out the proposals that were included in the consultation paper that the Department **does not intend to take forward** following consultation.

#### **4. Next Steps**

- 4.1 The Department is preparing a States Report outlining the proposed amendments which will be submitted to the States as soon as possible.
- 4.2 The Department intends to ask the States to approve the preparation of two separate Ordinances to implement the proposals to permit the quicker implementation of more pressing amendments while allowing sufficient time for the drafting of more complex amendments.
- 4.3 It should be noted that where specific wording is suggested in the attached document, this is only illustrative of the intention of the Department and is not intended to restrict the ability of the legislative draftsman responsible for drafting the amending legislation.

#### **5. Further Information**

- 5.1 If you wish to discuss the matters raised in this document, please contact the Director of Finance Sector Development, Jarrod Cowley-Grimmond, by e-mail on [jarrod.cowley-grimmond@gov.gg](mailto:jarrod.cowley-grimmond@gov.gg) or alternatively Tom Carpenter on [tom.carpenter@gov.gg](mailto:tom.carpenter@gov.gg).