

The Protection of Investors (Administration and Intervention) (Bailiwick of Guernsey) Ordinance, 2008

ARRANGEMENT OF SECTIONS

PART I

ADMINISTRATION

1. Administration orders.
2. Application for administration order.
3. Notification of administration order.
4. General powers of administration manager.
5. General duties of administration manager.
6. Discharge or variation of administration order.
7. Remuneration, and swearing in, of administration manager.
8. Vacation of office.
9. Release of administration manager.
10. Information to be given by administration manager.
11. Protection of interests of investors, etc.
12. Remedy against delinquent persons.

PART II

INTERVENTION

13. Injunctions.

PART III

GENERAL PROVISIONS

14. Appeal to the Court of Appeal.
15. Interpretation.
16. Citation and commencement.

Schedule - Powers of administration manager.

The Protection of Investors (Administration and Intervention) (Bailiwick of Guernsey) Ordinance, 2008

THE STATES, in pursuance of their Resolution of the 25th July, 2007^a, and in exercise of the powers conferred on them by section 28AA of the Protection of Investors (Bailiwick of Guernsey) Law, 1987^b and all other powers enabling them, hereby order:-

PART I

ADMINISTRATION

Administration orders.

1. (1) Subject to the provisions of this section, if the Court –
 - (a) is satisfied that a relevant person -
 - (i) after the commencement of this Ordinance, has performed an act or made an omission, or
 - (ii) will or is likely to perform any act or make any omission that would cause undue risk to investors, and
 - (b) considers that the making of an order under this section would be for the protection of investors,

the Court may make an order under this section (an "**administration order**") in relation to the relevant person.

a Article V of Billet d'État No. XIX of 2007.

b Ordres en Conseil Vol. XXX, p. 281; amended by Vol. XXX, p. 243, Vol. XXXI, p. 278, Vol. XXXII, p. 324, No. XIII of 1994, No. XII of 1995, No. II of 1997, No. XVII of 2002, No's XV and XXXII of 2003, and by No. *** of 2008. Also amended by Recueil d'Ordonnances Tome XXIV, p. 324, Tome XXVI, p. 333, Ordinance X and XX of 1998, and the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

(2) An administration order is an order directing that, during the period for which the order is in force, the affairs, business and property of the relevant person shall be managed by a person (an "**administration manager**") appointed for the purpose by the Court.

(3) For the avoidance of doubt, the Court may appoint the Commission to be the administration manager.

(4) An administration order made under subsection (1) may be made notwithstanding that -

- (a) the relevant person has been declared by the Court to be insolvent, or that a Commissioner or Committee of Creditors has been appointed by the Court to supervise or secure his estate,
- (b) the relevant person's affairs have been declared *en désastre* by his arresting creditors at a meeting held before a Commissioner, or
- (c) a preliminary vesting order has been made against the relevant person in respect of any real property in the Bailiwick,

and, if an administration order is so made, then the declaration, appointment or preliminary vesting order (as the case may be) shall be discharged or suspended on such terms as the Court thinks fit.

(5) For the purposes of this Ordinance, "**undue risk**" means an investment risk that a reasonable person informed of the investment strategy and potential returns of the relevant person would consider excessive.

Application for administration order.

2. (1) An application for an administration order may only be made by the Commission.

(2) The Court, on hearing an application for an administration order, may, on such terms and conditions as it thinks fit –

- (a) grant or dismiss the application,
- (b) adjourn the hearing, conditionally or unconditionally, or
- (c) make an interim administration order or any other order it thinks fit.

(3) An interim order made under subsection (2)(c) may, without limitation, restrict the performance of any functions of the relevant person or any other person controlling the affairs of the relevant person, whether by reference to the consent of the Court or otherwise.

(4) Notice of an application to the Court for an administration order in respect of a relevant person shall, unless the Court orders otherwise, be served on -

- (a) the relevant person, and
- (b) such other persons, if any, as the Court may direct,

who shall each be given an opportunity of making representations to the Court before the order is made.

(5) Notice of an application for an administration order shall be –

- (a) served on the relevant person, and
- (b) placed by the Commission in La Gazette Officielle,

at least 2 business days before the day of the making of the application or, if that is not reasonably practicable, then as soon as reasonably practicable after that day.

Notification of administration order.

3. (1) All correspondence of a relevant person subject to an administration order shall contain the administration manager's name and a statement that the affairs, business and property of the relevant person are being managed by the administration manager, unless this is readily ascertainable –

- (a) from the context of the correspondence, or
- (b) from a course of dealing between the relevant person and the person to whom the correspondence is addressed.

(2) Where a relevant person subject to an administration order has a website, the administration manager's name and a statement that the affairs, business and property of the relevant person are being managed by the administration manager shall appear in a reasonably prominent location on that website.

(3) A relevant person which fails to comply with this section is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding 6 months, a fine not exceeding level 5 on the uniform scale, or both.

General powers of administration manager.

4. (1) Subject to any directions given by the Court, the administration manager may do all such things as may be necessary or expedient for the management of the affairs, business and property of the relevant person.

(2) Without prejudice to subsection (1), and unless the Court orders otherwise, the administration manager of a relevant person has the powers specified in the Schedule.

(3) The administration manager may apply to the Court for directions in relation to –

- (a) the extent or performance of any function, and
- (b) any matter arising in the course of his administration,

and on such an application the Court may make such order, on such terms and conditions, as it thinks fit.

(4) In performing his functions the administration manager is deemed to act as the relevant person's agent but shall not incur personal liability except to the extent that he is fraudulent, reckless or grossly negligent, or acts in bad faith.

(5) A person dealing with the administration manager in good faith is not concerned to enquire whether the administration manager is acting within his powers.

(6) The administration manager also has power –

- (a) to remove any director of the relevant person and to appoint any person to be a director of it, whether to fill a vacancy or otherwise, and
- (b) to call any meeting of members or creditors of the relevant person.

(7) Any function conferred on the relevant person or any other person controlling the affairs of the relevant person, whether by this Ordinance or by an agreement or otherwise, which could be performed in such a way as to interfere with the performance by the administration manager of his functions may not be performed except with the consent of the administration manager, which may be given either generally or in relation to particular cases.

(8) For the purposes of this section, "**member**" includes any shareholder, investor, partner, limited partner and general partner.

General duties of administration manager.

5. (1) The administration manager shall, on his appointment, take into his custody or under his control all the property to which the relevant person is or appears to be entitled.

(2) The administration manager shall manage the affairs, business and property of the relevant person in accordance with any directions given by the Court.

Discharge or variation of administration order.

6. (1) The administration manager may at any time apply to the Court for the administration order to be discharged or varied.

(2) The administration manager shall apply to the court for the administration order to be discharged or varied if it appears to him that –

(a) the purpose of the order has been achieved or is incapable of achievement, or

(b) it would otherwise be desirable or expedient to discharge or vary the order.

(3) Notice of an application for the discharge of an administration order shall be –

(a) served on the relevant person and the Commission, and

(b) placed by the administration manager in La Gazette Officielle,

at least 2 business days before the day of the making of the application or, if that is not reasonably practicable, then as soon as reasonably practicable thereafter.

(4) A person served with a notice of the application under subsection (3) may make representations at the hearing of that application.

(5) The Court, on hearing an application under this section for the discharge or variation of an administration order, may, on such terms and conditions as it thinks fit –

- (a) grant or dismiss the application,
- (b) adjourn the hearing, conditionally or unconditionally, or
- (c) make an interim order or any other order it thinks fit.

(6) Where an administration order is discharged or varied under this section the administration manager shall, within such time as the Court may direct, send a copy thereof to such persons as the Court may direct.

Remuneration, and swearing in, of administration manager.

7. (1) The administration manager's remuneration, and any costs, charges and expenses properly incurred in the administration of a relevant person, are payable from the relevant person's assets in priority to all other claims.

(2) The administration manager's fees shall be fixed by the Court.

(3) An administration manager shall be sworn before the Court when the Court makes the administration order or at any other time directed by the Court.

Vacation of office.

8. (1) The administration manager –

- (a) may at any time be removed from office by order of the Court (whether on application by the Commission or otherwise),
- (b) may resign his office by giving notice of resignation to the Court, and
- (c) shall vacate his office if the administration order is discharged.

(2) Where there is a vacancy in the office of administration manager the Court may, on the application of the Commission, appoint a replacement.

Release of administration manager.

9. (1) A person who has ceased to be the administration manager of a relevant person has his release with effect from –

- (a) in the case of a person who had died, the time at which notice is given to the Court that he has ceased to hold office, or
- (b) in any other case, such time as the Court may determine.

(2) Where a person has his release under this section he is, with effect from the time of release, discharged from all liability both in respect of his acts and omissions in the administration and otherwise in relation to his conduct as administration manager, except to the extent that he has incurred personal liability by virtue of section 4(4).

(3) However, nothing in this section prevents the exercise, in relation to a person who has his release under this section, of the Court's powers under section 12.

Information to be given by administration manager.

10. (1) Where an administration order has been made, the administration manager shall –

- (a) forthwith send to the relevant person and publish in La Gazette Officielle notice of that order, and
- (b) within 28 days after the day of the making of the order unless the Court orders otherwise, send notice of the order to –
 - (i) all creditors of the relevant person (so far as he is aware of their addresses), and
 - (ii) where appropriate, the Registrar of Companies.

(2) Where an administration order has been made the administration manager shall, within such time as the Court may direct, send a copy of the order to such persons as the Court may direct.

Protection of interests of investors, etc.

11. (1) At any time when an administration order is in force, an investor, a creditor or the Commission may apply to the Court for an order under this section on the ground –

- (a) that the relevant person's affairs, business and property are being or have been managed by the administration manager in a manner which is unfairly prejudicial to the interests of its investors generally, or of some section of its investors (including, except where the applicant is the Commission, at least the applicant himself),
- (b) that any actual or proposed act or omission of the administration manager is or would be so prejudicial, or

(c) that it would otherwise be desirable or expedient for an order under this section to be made.

(2) The Court, on hearing an application for an order under this section, may, on such terms and conditions as it thinks fit –

(a) dismiss the application, or make such order as it thinks fit for giving relief in respect of the matters complained of,

(b) adjourn the hearing, conditionally or unconditionally, or

(c) make an interim order or any other order that it thinks fit.

(3) An order under this section may in particular –

(a) regulate the future management by the administration manager of the relevant person's affairs, business and property,

(b) require the administration manager to refrain from doing or continuing an act complained of by the applicant, or to do an act which the applicant has complained he has omitted to do, or

(c) discharge the administration order and make such consequential provision as the Court thinks fit.

(4) Where the administration order is discharged under this section the administration manager shall, within such time as the Court may direct, send a copy thereof to such persons as the Court may direct.

(5) An application for an order under this section may also be made, with leave of the Court, by a person other than one described in subsection (1).

Remedy against delinquent persons.

12. (1) Where in the course of the dissolution of a relevant person (in the event that such dissolution occurs), it appears that any person described in subsection (2) –

- (a) has appropriated or otherwise misapplied any of the relevant person's assets,
- (b) has become personally liable for any of the relevant person's debts or liabilities, or
- (c) has otherwise been guilty of any misfeasance or breach of fiduciary duty in relation to the relevant person,

any creditor or partner of the relevant person, any person appointed to wind up the affairs of the relevant person or the Commission may apply to the Court for an order under this section.

(2) The persons mentioned in subsection (1) are any persons who, directly or indirectly, are or have been in any way concerned in or have participated in the promotion, formation or management of the relevant person.

(3) On an application under subsection (1), the Court may examine the conduct of the person concerned and may order him –

- (a) to repay, restore or account for such money or such property,
- (b) to contribute such sum to the relevant person's assets,
- (c) to pay interest upon such amount, at such rate and from

such date,

and, where the Court is satisfied that the order is in the best interests of the creditors, the Court may make such order as it thinks fit in respect of the default, whether by way of indemnity or compensation or otherwise.

(4) For the avoidance of doubt, this section applies to the dissolution of a relevant person other than a company.

PART II INTERVENTION

Injunctions.

13. (1) If on the application of the Commission, the Court is satisfied that -

- (a) there is a reasonable likelihood that a relevant person is likely to perform any act or make any omission that would cause undue risk to investors, or
- (b) a relevant person may have performed any act or made any omission that would cause undue risk to investors and that there is a reasonable likelihood that the act or omission will continue or be repeated,

the Court may grant an injunction restraining the act or omission.

(2) If on the application of the Commission, the Court is satisfied that a relevant person may have performed any act or made any omission as is described in subsection (1), the Court may grant an injunction restraining him or any other person controlling the affairs of the relevant person from disposing of or otherwise dealing with any assets or class or description of assets while the suspected act or omission is investigated.

(3) An injunction under subsection (1) or (2) may be granted on such terms and conditions, and may contain such incidental, ancillary, consequential or supplementary provision, as the Court thinks fit including, without prejudice to the generality of the foregoing, provision for the appointment of a receiver or other person to exercise such powers as the Court may consider necessary or expedient for the purpose of ensuring that any assets subject to the injunction are not disposed of or otherwise dealt with in contravention of the injunction, including powers to locate, ascertain, hold, gather in, sequester or take possession or control of any such assets.

(4) The powers conferred upon the Court by this section are in addition to and not in derogation from the powers conferred by the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987^c; and the provisions of Parts I and V of that Law (apart from section 1(1) and (7)) shall apply in relation to injunctions under this section.

(5) An application by the Commission for an injunction under this section may, with the approval of the Court, be made ex parte.

PART III

GENERAL PROVISIONS

Appeal to the Court of Appeal.

14. (1) Subject to subsection (3), the following persons shall have a right of appeal on a point of law to the Court of Appeal against a decision of the Royal Court under section 1, 2, 6, 8, 10, 12 or 13 -

- (a) the relevant person,
- (b) the administration manager, and

^c Ordres en Conseil Vol. XXX, p. 145.

(c) in relation to a decision made under section 12, any person subject to an order made under section 12(3), and

(d) the Commission.

(2) Any person who wishes to appeal shall within 28 days of the decision of the Royal Court give to the Registrar of the Court of Appeal a notice of application for leave to appeal.

(3) An appeal to the Court of Appeal under this Law lies only with the leave of that Court and section 21 of the Court of Appeal (Guernsey) Law, 1961^d ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under this Law as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

(4) On an appeal under this section, the Court of Appeal may -

(a) confirm or reverse the decision of the Royal Court, and

(b) substitute any order which could have been made by the Royal Court.

(5) Subject to any rules of court, the costs of and incidental to all proceedings on an appeal to the Court of Appeal are in the discretion of that court.

Interpretation.

15. (1) For the purposes of this Ordinance, unless the context requires otherwise -

"administration order" has the meaning given in section 1(1),

^d Ordres en Conseil Vol. XVIII, p. 315.

"administration manager" has the meaning given in section 1(2),

"business day" means any day other than -

- (a) a Saturday, a Sunday, Christmas Day and Good Friday,
- (b) a day appointed as a public holiday by Ordinance of the States of Deliberation, the States of Alderney or (as the case may be) the Chief Pleas of Sark under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^e,

"Commission" means the Guernsey Financial Services Commission,

"Commissioner" and **"Committee of Creditors"** have the meanings given in article 7 of the Loi ayant rapport aux Débiteurs et à la Renonciation^f,

"Court" means the Royal Court sitting as an Ordinary Court,

"enactment" includes subordinate legislation,

"preliminary vesting order" has the meaning given in article 1(2) of the Saisie Procedure (Simplification) (Bailiwick of Guernsey) Order, 1952^g,

"relevant person" means any person or entity which –

- (a) carries on controlled investment business, or

^e Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; and No. XIV of 1994.

^f Ordres en Conseil Vol. VIII, pg. 310.

^g Orders of the Royal Court Vol. 1, pg. 49; amended by O.R.C. No's. XIV of 1989 and 1 of 1995.

- (b) applies for a licence under section 3 of the Protection of Investors Law (Bailiwick of Guernsey) Law, 1987, or for an authorisation or registration under section 8 of that Law,

"**subordinate legislation**" means any regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect,

"**undue risk**" has the meaning given in section 1(5), and

"**uniform scale**" means the uniform scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^h.

(2) Except where this Ordinance provides otherwise, expressions used in the Protection of Investors (Bailiwick of Guernsey) Law, 1987, which are also used in this Ordinance have the same meaning as in that Law.

(3) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation and commencement.

16. (1) This Ordinance may be cited as the Protection of Investors (Administration and Intervention) (Bailiwick of Guernsey) Ordinance, 2008.

(2) This Ordinance shall come into force on the 10th December 2008.

^h Ordres en Conseil Vol. XXXI, p. 278.

SCHEDULE
POWERS OF ADMINISTRATION MANAGER

Section 4(2)

In the application of this Schedule to the administration manager of a relevant person, the word "**he**" and related expressions refer to the administration manager.

1. Power to take possession of, collect and get in the property of the relevant person and, for that purpose, to take such proceedings as may seem to him expedient.
2. Power to sell or otherwise dispose of the property of the relevant person by public auction or private contract.
3. Power to raise or borrow money and grant security for that purpose over the property of the relevant person.
4. Power to appoint an Advocate or accountant or other professionally qualified person to assist him in the performance of his functions.
5. Power to bring or defend any action or other legal proceedings in the name and on behalf of the relevant person.
6. Power to refer to arbitration any question affecting the relevant person.
7. Power to effect and maintain insurances in respect of the business and property of the relevant person.
8. Power to use the relevant person's seal where the relevant person has a seal.
9. Power to do all acts and to execute in the name and on behalf of the relevant person any receipt or other document.

10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the relevant person.
11. Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.
12. Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the relevant person.
13. Power to make any payment which is necessary or incidental to the performance of his functions.
14. Power to carry on the business of the relevant person.
15. Power to establish subsidiaries of the relevant person.
16. Power to transfer to subsidiaries of the relevant person the whole or any part of the business and property of the relevant person.
17. Power to grant or accept a surrender of a lease or tenancy of any of the property of the relevant person, and to take a lease or tenancy of any property required or convenient for the business of the relevant person.
18. Power to make any arrangement or compromise on behalf of the relevant person.
19. Power to call up any uncalled capital of the relevant person.
20. Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the relevant person, or in *désastre* or *saisie* proceedings in relation to any such person, and to receive dividends, and to accede to trust deeds for the creditors of any

such person.

- 21.** Power to present or defend an application for the dissolution of the relevant person.
- 22.** Power to change the situation of the relevant person's registered office.
- 23.** Power to do all other things incidental to the exercise of the foregoing powers.