



GUERNSEY STATUTORY INSTRUMENT

2020 No. 81

The Companies (Annual Validation) Regulations, 2020

Made , 2020
Coming into operation , 2020
Laid before the States , 2020

THE COMMITTEE FOR ECONOMIC DEVELOPMENT, in exercise of the powers conferred on it by sections 237A, 535 and 538 of the Companies (Guernsey) Law, 2008^a and all other powers enabling it in that behalf, hereby orders:-

Amendment of section 235 of the Companies Law.

1. (1) Section 235 (content of annual validation) of the Companies (Guernsey) Law, 2008 is amended as follows.

(2) In subsection (1) -

(a) after paragraph (a), insert -

"(aa) the category or categories of company to which it belongs, by reference to a system of classifying companies prepared by the Registrar,"

(b) after paragraph (b), insert -

^a Order in Council No.VIII of 2008, as amended by Order in Council No. VI of 2017; there are other amendments not material to these Regulations.

- "(ba) with regard to each director who is an individual, whether or not that director is licensed to act as a director of the company,
- (bb) where a director who is an individual is not licensed to act as a director of the company -
 - (i) whether that director is unrewarded or is exempt, and
 - (ii) in the case of a director who is exempt, the applicable provisions,"
- (c) after paragraph (c), insert –
 - "(ca) whether the company is exempt from the beneficial ownership requirements at Part XXIX and, if so, the grounds on which it is so exempt,"
- (d) in paragraph (d), after the words "section 485" insert "(if applicable)",
- (e) after paragraph (d), insert –
 - "(da) where the resident agent is a director and does not hold a fiduciary licence -
 - (i) an address for service for the resident agent, and
 - (ii) where no other person linked to the company holds a fiduciary licence -

(A) the length of time for which the resident agent has been a director of the company or otherwise associated with it,

(B) whether the resident agent is a beneficial owner of the company, and

(C) whether the resident agent has served a notice under section 9 of the Beneficial Ownership Law on any person in respect of the beneficial owners of the company within such period as the Registrar may direct,"

and

(f) after paragraph (e), insert -

"(ea) other than for companies within paragraphs (a) or (b) of subsection (5), whether the company has an ongoing business relationship with a person licensed or authorised by, or registered with, the Commission, and, if so, the nature of that relationship,

(eb) for companies to which this paragraph applies -

(i) whether the accounts of the company have been audited or otherwise examined by an accountant, and

- (ii) whether the company is directed and managed in Guernsey,
- (ec) for companies to which this paragraph applies, the jurisdiction of incorporation of any direct subsidiaries of the company and such other matters in relation to those subsidiaries as the Registrar may specify,
- (ed) for companies to which this paragraph applies, the location of any real property held by the company, and such other matters in relation to that property as the Registrar may specify,
- (ee) for companies to which this paragraph applies -
 - (i) the nature of the activities of the company,
 - (ii) the locations in which those activities are carried out, and
 - (iii) such other matters in relation to those activities as the Registrar may specify,
- (ef) other than for companies within paragraphs (a) or (b) of subsection (5), whether the company is a settlor, trustee, protector or beneficiary of an existing express trust (or occupies an equivalent role in relation to another form of legal arrangement), and, if so, such other matters in relation to that trust or other legal arrangement as the Registrar may specify,".

(2) After subsection (4), insert –

"(5) Paragraphs (eb) to (ee) of subsection (1) do not apply to -

(a) supervised companies , or

(b) companies that are created by a supervised company (or by a financial services business licensed by the Commission that is not a company) on its own behalf for the purposes of carrying out the services provided by that supervised company or financial services business as the case may be.

(6) Without prejudice to the generality of subsection (5) -

(a) paragraph (eb) of subsection (1) applies to companies that do not have an ongoing business relationship with a person licensed or authorised by, or registered with, the Commission,

(b) paragraph (ec) of subsection (1) applies to companies that are classified as holding companies under the system of classifying companies referred to in subsection (1)(aa),

(c) paragraph (ed) of subsection (1) applies to companies that are classified as investment companies, as asset companies, or as charities or other non-profit companies under the system of classifying companies referred to in subsection (1)(aa), and

- (d) paragraph (ee) of subsection (1) applies to companies that are classified as activity companies or as charities or other non-profit companies under the system of classifying companies referred to in subsection (1)(aa).
- (7) For the purposes of this section -
- (a) "**directed and managed in Guernsey**" has the same meaning as in the Income Tax (Substance Requirements) (Implementation) Regulations, 2018,
 - (b) "**the Fiduciaries Law**" means the Regulation of Fiduciaries, Administration Businesses and Company Directors etc (Bailiwick of Guernsey) Law, 2000,
 - (c) "**fiduciary licence**" has the same meaning as in the Fiduciaries Law,
 - (d) a director is licensed to act as a director of the company if that director holds a fiduciary licence,
 - (e) an unrewarded director is one who not rewarded within the meaning of paragraph (f),
 - (f) a director is rewarded if that director is acting as a director of the company by way of business within the meaning of the Fiduciaries Law,

- (g) a director is exempt if that director would be required to hold a fiduciary licence in acting as a director of the company but for the application of one or more of the exemptions at section 3 of the Fiduciaries Law,
- (h) the applicable provisions are the subsections of section 3 of the Fiduciaries Law which have the effect of exempting the director in question from the requirement to hold a fiduciary licence with regard to his or her directorship of the company, and
- (i) a person is linked to a company if -
 - (i) that person is a director of the company or is otherwise involved in its management or administration, or
 - (ii) an employee or official of that person is a director of the company or is otherwise involved in its management or administration."

Citation.

2. These Regulations may be cited as the Companies (Annual Validation) (Guernsey) Regulations, 2020.

Commencement

3. These Regulations shall come into force on the day on which they are made.

Dated this 1 day of Sept, 2020



CHARLES PARKINSON

President of the Committee for Economic Development

For and on behalf of the Committee

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations widen the category of information that must be provided by companies when submitting an annual validation. This additional information is required in order to assist the Registrar of Companies in discharging his or her functions on the basis of risk.

These Regulations will come into force on the day on which they are made.