

## **GUERNSEY TO MODERNISE ITS COMPANY REGISTRATION SYSTEM**

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### **INTRODUCTION**

Recently a Company Registry Group published a Report on the company registration process in Guernsey. It is hoped that the Report of the Group will be implemented within two years. Major changes to the Registry are recommended.

In order to assess this ambitious Report, it is necessary to describe the current set-up. The first company was registered in 1883 and the system has basically remained unchanged since then. The whole system revolves around the court. The Report notes that there is now a chance to bring the system into the twenty-first century as a result of changes in technology and the proposed new Company Law.

This short article will examine the main headings of the Report.

### **THE FUNCTIONS AND POWERS OF A COMPANY REGISTRY**

The Report boldly states that the registration process should cease to be a court function and be the responsibility of a Registrar of Companies. It would be necessary to give it, as in England and Wales, the powers to make specified decisions such as change of name etc without the need to apply to court.

### **HOW WILL THE REGULATORY PROCESS OF COMPANY FORMATION WORK?**

At the moment, the process of forming a company is cumbersome and time consuming and vested in the locally qualified lawyers. Before court approval is obtained it is necessary to apply to the Guernsey Financial Services Commission

('GFSC') for permission to form the company, identifying its potential name, issued share capital, beneficial owners and directors. It is also necessary to obtain the approval of the law Officers. After these two hurdles the final stage is when local advocate certifies that all the formalities have been complied with and submits all the documents to the non-contentious court for approval.

In terms of due diligence, this must be supplied to the service provider before the application is made to the GFSC, irrespective of whether the company is a local or exempt company. The system is complicated by the fact that advocates also form companies directly, albeit subject to the same due diligence requirements. This can be contrasted with the situation in England and Wales where companies can be brought "off the shelf".

Clearly, these requirements delay formation times, which typically take up to a week. The Group noted that other jurisdictions don't have the same degree of vetting and rejected the current system on the following grounds:-

- (a) beneficial owners can be changed without the need to inform the regulatory authority;
- (b) the current system is not objective and transparent, as the information available to the GFSC Law Officers is not made available to the applicants.

The Group felt that the good reputation of the Island could be maintained by a combination of the current due diligence procedures and the requirement that the licensed service provider ('LSP') should at all times be able to identify the beneficial owners of a company.

## **WHO SHOULD BE ABLE TO FORM COMPANIES?**

The Group felt that the current monopoly enjoyed by the advocates should not be maintained. It thought that in future this should be restricted to LSPs so that, consequently, the fees from formation would stay in the Island, and that there might be additional work in the form of ongoing administration. The Group also examined what might be called 'local' companies and whether the distinction with 'non-local' companies might not only be justified but also enable them to deal directly with the Registry. Effectively, they avoided the question by saying that they hope that the widening of the scope of potential service providers would encourage competition and provide everyone (including local residents) with a greater range of choices.

## **ADVANTAGES OF THE NEW SYSTEM**

The Group envisaged greater use of electronic formation and filing processes. This obviously provides greater efficiency in that it makes it much easier (and quicker) to check whether a form, such as a special resolution, has been filed. It recognises forms will have to be pre-formatted and have self-checking entry files and at the same time envisages payment with credit cards. The importance of these changes is highlighted in the Report where the Group concedes that the current system has fallen behind those of our competitors to such an extent that it undermines our image as an international centre.

## **DETERMINATION OF COSTS AND FEES TO BE CHARGED**

Whilst acknowledging the need to run the Registry as a commercial enterprise, the

Report

is vaguer on the costs of the new system and how to charge for it. More is said about the

problem than the solution. It recognised that from 2008 all exempt company fees would,

for most practical purposes, disappear but thought that an annual registration fee of

£1,000 would 'kill off' the Guernsey company. The Report is also remarkably silent on the costs of implementing the new system both in terms of the investment required in the Registry and the additional short term investment which would be required by the LSPs.

## **WHAT SHOULD BE THE MECHANISM FOR SETTING OF FEES AND CHARGES?**

Under the 1994 Companies Law, fees and charges are set by an Ordinance passed by the States. This was rejected as being inefficient in favour of the Company Registrar setting rates but the Report stops short of complete independence by requiring fees to be subject to the relevant Department's approval.

## **HOW CAN GUERNSEY COMPANY REGISTRATION BE MADE MORE ATTRACTIVE COMPARED TO OTHER JURISDICTION**

The Report noted that there are *circa* 16,000 'live' Guernsey companies and it is estimated 40,000 BVI and other non-Guernsey companies operate from Guernsey. It recommends that, rather than requiring non-resident companies to register in Guernsey, it feels, as a first step, registration as a Guernsey company should be made more attractive. Registration of non-resident companies might also make Guernsey companies more attractive.

The Group set a target for the formation of a Guernsey company of one day with a faster formation service available at a special rate. It also recommends that it should

make migration to Guernsey easier, a point this writer strongly concurs with, and should offer a 'market incentive' for migrant companies in the form of a lower fee in 2008 and thereafter.

#### **WHAT INFORMATION SHOULD BE REGISTERED?**

Mindful of the Isle of Man's new proposal for a 'New Manx Vehicle', requiring only the name and a standard memorandum of association, it recommends similar requirements but adds the necessity of having the details of the directors, the registered office, principal place of business and company secretary. It recommends that details of share capital should be made available by the company secretary on request but acknowledges that changes in directors need to be notified shortly after they occur.

#### **COMPANIES REGISTRY AND NEW PRODUCT DEVELOPMENT**

This is noted in the context of Ireland recently attracting a significant number of migrations from Germany and elsewhere. Regrettably, the Committee seems to ignore the low levels of taxation in Ireland and its extensive network of double tax treaties. It is also self-congratulatory with reference to the Protected Cell Companies (PCCs) legislation, although this legislation remains untested, and notes the possible introduction of foundations and the development of the Incorporated Cell Company ('ICC').

The Report notes that the existence of a modern IT-enabled registry can be promoted as part of the 'world-class service' available from Guernsey but ignores how the current system might be improved to deliver this advantage. For instance, why couldn't the current system of company formation be modified in the short-term by allowing companies to be formed by a local advocate, providing the instructions come from a LSP? To assist this process, the information requirements could also be modified.

## **CONCLUSIONS**

The Group has done a commendable job. However, its recommendations are in many ways deficient in that they fail to identify the short and long term costs of their recommendations. Evolution is required not revolution. The Group's recommendations have not been fully costed out and, whilst they recommend further consultations, they have not considered in enough detail the practicalities of implementing their recommendations. In this writer's view, the twofold approach identified above would have been more appropriate, particularly given the budgeting constraints on the economy over the coming years. It is hoped that the politicians will embrace this enthusiastic Report and hone it in a practical manner.