

*Consolidated text*

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# PROJET DE LOI

ENTITLED

## **The Companies (Guernsey) Law, 2008 <sup>a</sup>**

*[CONSOLIDATED TEXT]*

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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<sup>a</sup> Approved by the States of Deliberation on the 30<sup>th</sup> January, 2008; amended by the Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2008.

# **The Companies (Guernsey) Law, 2008**

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# PROJET DE LOI

ENTITLED

## **The Companies (Guernsey) Law, 2008**

**THE STATES**, in pursuance of their Resolutions of the 29<sup>th</sup> March, 2007<sup>b</sup> and the 1<sup>st</sup> November, 2007<sup>c</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

### PART I

#### NATURE AND TYPES OF COMPANIES

##### **Nature of a company.**

1. A company is a legal person, separate from its members, which comes into existence upon incorporation and continues until it is removed from the Register of Companies.

##### **Types of company.**

2. (1) A company is -
- (a) a cell company, which may be either -
- (i) a protected cell company, or

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<sup>b</sup> Article XIV of Billet d'État No. XI of 2007.

<sup>c</sup> Articles XII and XIII of Billet d'État No. XXII of 2007.



- (ii) an incorporated cell company,
  - (b) an incorporated cell of an incorporated cell company, or
  - (c) a company which is neither of the above (a non-cellular company).
- (2) In respect of the liability of its members, a company is either-
- (a) limited -
    - (i) by shares, or
    - (ii) by guarantee,
  - (b) unlimited, or
  - (c) of mixed liability.

(3) Where the word "company" is used without further qualification in this Law and unless the context otherwise requires, it means any type of company referred to in subsection (1) or (2).

**Protected cell company.**

3. Part XXVII sets out the meaning of and makes further provision in respect of protected cell companies.

**Incorporated cell company.**

4. Part XXVIII sets out the meaning of and makes further provision in respect of incorporated cell companies.

**Incorporated cell.**

5. Part XXVIII sets out the meaning of and makes further provision in respect of incorporated cells.

**Company limited by shares.**

6. (1) A company limited by shares shall have a share capital.
- (2) A company limited by shares -
- (a) shall have members whose liability for the company's debts is limited to the amount, if any, unpaid on the shares held by them ("**shareholders**"), and
- (b) shall have no other type of member.

**Company limited by guarantee.**

7. (1) A company limited by guarantee may have a share capital.
- (2) A company limited by guarantee -
- (a) shall have members whose liability for the company's debts is limited to the guaranteed amount ("**guarantee members**"),
- (b) may, where the company has a share capital, have shareholders, and
- (c) shall have no other type of member.

(3) In the case of a company limited by guarantee which has a share capital, the memorandum and articles may -

- (a) require a guarantee member also to be a shareholder, or
- (b) prohibit a guarantee member from also being a shareholder.

(4) If the memorandum or articles of a company limited by guarantee do not make provision under subsection (3), a guarantee member may also be a shareholder.

(5) In this Law "**guaranteed amount**" means the amount a guarantee member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within a period of one year after he ceases to be a member

- (a) for the payment of the company's debts incurred before he ceased to be a member and of the costs, charges and expenses of winding up, and
- (b) for any adjustment of the rights of the contributories as between themselves.

(6) If the guaranteed amounts are different for different members, the different amounts shall not of themselves create differing interests in the company as between those guarantee members.

**Unlimited liability company.**

8. (1) An unlimited liability company may have a share capital.

- (2) An unlimited liability company -
  - (a) shall have members whose liability for the company's debts is unlimited while they are members, or within a period of one year after they cease to be members ("**unlimited members**"),
  - (b) may, where the company has a share capital, have shareholders, and
  - (c) shall have no other type of member.

(3) In the case of an unlimited liability company which has a share capital, the memorandum and articles may -

- (a) require an unlimited member also to be a shareholder, or
- (b) prohibit an unlimited member from also being a shareholder.

(4) If the memorandum or articles of an unlimited liability company do not make provision under subsection (3), an unlimited member may also be a shareholder.

**Mixed liability company.**

- 9. (1) A mixed liability company may have a share capital.
- (2) A mixed liability company may have members of the following

types -

- (a) guarantee members,
- (b) unlimited members,
- (c) where the company has a share capital, shareholders.

(3) The memorandum or articles of a mixed liability company may

-

- (a) require a member of one type also to be a member of any other type, and
- (b) prohibit a member of one type from also being a member of any other type.

(4) If the memorandum or articles of a mixed liability company do not make provision under subsection (3), a person may be a member of more than one type.

(5) Without prejudice to any liability that a member has to a mixed liability company, the memorandum and articles of that company may make provision for any adjustments or contributions to be made between members in respect of their liabilities to the company, and if no such provision is made, the liability of members shall be joint and several to the maximum extent of their liability to the company.

PART II  
INCORPORATION

*Conditions precedent to incorporation*

**Consent of Commission required before incorporation of a cell company.**

10. A company cannot be incorporated as a cell company unless it has the written consent of the Commission in accordance with the provisions of -

- (a) Part XXVII in the case of a protected cell company, or
- (b) Part XXVIII in the case of an incorporated cell company.

**Special resolution of incorporated cell company required before incorporation of an incorporated cell.**

11. An incorporated cell of an incorporated cell company cannot be incorporated unless the incorporated cell company has passed a special resolution in accordance with the provisions of Part XXVIII.

**Consent of Procureur not required for the incorporation of a company.**

12. The consent of Her Majesty's Procureur is not required for the incorporation of a company.

*Incorporation of a company*

**Founder member.**

13. A company shall have at least one (and may have more than one) founder member.

**Prohibition of minors, etc. being founder member.**

14. No minor or person under legal disability may be a founder member of a company.

**Memorandum of incorporation.**

15. (1) The memorandum of incorporation is a memorandum stating that the founder member wishes to incorporate a company.

(2) The memorandum shall state -

- (a) the company's name (which must be in compliance with Part III),
- (b) that the company's registered office is situated in Guernsey,
- (c) the type of company within the meaning of section 2(1),
- (d) the type of company in respect of the liability of its members within the meaning of section 2(2).

(3) The founder member shall subscribe to the memorandum by entering in it his name, address and signature and this subscription shall form part of the memorandum.

(4) In the case of a company with a share capital, the memorandum shall also state, in respect of each founder member who is to hold shares -

- (a) the number of shares to be taken on formation by that member,
- (b) the aggregate value of those shares (whether on account of the nominal value of the shares or by way of

premium), and

- (c) the amount to be paid up and the amount (if any) to be unpaid on those shares (whether on account of the nominal value of the shares or by way of premium),

and where the company is to have more than one class of share upon incorporation, the statement shall also state the above matters in respect of each class of share.

(5) In the case of a company with a founder member who is a guarantee member, the memorandum shall also state -

- (a) the guaranteed amount of each member, and
- (b) the maximum number of guarantee members which the company may have.

(6) The memorandum shall also state, in the case of a company whose objects are restricted, those objects.

(7) The memorandum may make provision for any other matter, not referred to above, concerning the company, its members or officers.

(8) The memorandum may be in the French language.

**Articles of incorporation.**

**16.** (1) Every company shall have articles of incorporation which set out regulations for the conduct of the company.

(2) Standard articles shall be prescribed by the Department and



different standard articles may be prescribed for different types and descriptions of companies.

(3) The standard articles shall apply to a company save to the extent that they are varied or disapplied by the company, and that variation or disapplication must be set out in the company's articles.

(4) The articles may be in the French language.

**Application for incorporation.**

17. (1) An application for the incorporation of a company shall be made to the Registrar.

(2) The application shall be in a form prescribed by the Registrar and shall include or be accompanied by -

- (a) the memorandum of incorporation *or a copy thereof (which need not contain the signature of the founder member)<sup>d</sup>*,
- (b) a statement of the proposed first directors,
- (c) a statement of the proposed address of the company's registered office,
- (d) a statement of the proposed first resident agent, comprising the particulars required to be entered in its

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<sup>d</sup> Words inserted by the Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2008.

record of resident agent under section 485,

- (e) the name and address of the founder member of the company,
  - (f) in the case of a company with a share capital, a statement of initial share capital,
  - (g) in the case of a company with a founder member who is a guarantee member, a statement of initial guarantee,
  - (h) a copy of any consent required under section 10,
  - (i) a copy of any special resolution required under section 11, and
  - (j) a declaration of compliance (incorporation).
- (3) The statement of the proposed first directors shall comprise -
- (a) the consents and declarations required under section 138,
  - (b) the particulars required by section 143 to be entered in the register of directors, and
  - (c) where the address of a director required by section 143(4)(b) is a service address, his usual residential address.

(4) The statement of initial share capital shall comprise a statement of -

- (a) the total number of shares to be taken on formation by the founder member,
- (b) the aggregate value of those shares (whether on account of the nominal value of the shares or by way of premium), and
- (c) the amount to be paid up and the amount (if any) to be unpaid on those shares (whether on account of the nominal value of the shares or by way of premium),

and where the company is to have more than one class of share, the statement shall also state the above matters in respect of each class of share.

(5) Where shares are to be issued otherwise than for cash, the amounts referred to in subsection (4)(b) shall distinguish between cash and consideration other than cash.

(6) The statement of initial guarantee shall comprise the total guaranteed amount.

(7) The application may propose the date on which the incorporation shall take effect, provided that that date is not later than 3 months after the date of the application.

(8) The application may be accompanied by the articles of incorporation and, if it is not so accompanied, the standard articles apply in

accordance with section 16.

(9) An application for incorporation of a company may only be made by a corporate services provider.

(10) Where the memorandum or articles are in the French language they are authoritative, but they shall be accompanied by a translation into the English language.

**Prohibition of incorporation for an unlawful purpose.**

18. A company may not be incorporated for an unlawful purpose.

**Declaration of compliance (incorporation).**

19. (1) A declaration of compliance (incorporation) is a declaration, signed by the applicant, that all the requirements of this Law in respect of the incorporation of a company have been fulfilled.

(2) The Registrar, when performing his functions under this Law, may rely upon the declaration in all respects and accordingly shall not be bound to enquire further as to whether, in relation to any application for incorporation, the provisions of this Law have been complied with.

(3) An applicant who without reasonable excuse makes a declaration which is false, deceptive or misleading in a material particular is guilty of an offence.

**Effect of incorporation.**

20. (1) If the Registrar grants the application for incorporation -

- (a) the Registrar shall register the memorandum (and articles as the case may be) in the Register of Companies,
- (b) the company is incorporated on the coming into effect of that registration,
- (c) the Registrar shall issue a certificate of incorporation in respect of the company, stating the date of incorporation, which is conclusive evidence that the company is duly incorporated, and
- (d) the Registrar shall allocate a registration number to the company.

(2) If the application proposes a date on which the incorporation is to have effect and that date is later than the date on which the Registrar issues the certificate of incorporation, then the date stated on the certificate as the date of incorporation shall be the proposed date.

(3) *Subject to the provisions of this Law, the memorandum and articles of a company are, from the time of incorporation, binding on the company and its members in all respects as if the memorandum and articles -*

- (a) *were comprised in an agreement duly executed by the company and each member, and*
- (b) *contained covenants on the part of the company and each member to observe all provisions thereof.*

(4) *Money payable to a company by a member under the memorandum and articles are a civil debt due from him to the company.*<sup>e</sup>

PART III

NAME, OFFICE, SEAL AND RECORDS

*Name*

**Compulsory components in a company's name.**

21. (1) A company shall have the following word or words at the end of its name -

(a) in the case of a company limited by shares -

(i) "Limited",

(ii) "With limited liability",

(iii) "Ltd.",

(iv) "Avec responsabilité limitée", or

(v) "ARL",

(b) in the case of a company limited by guarantee (but subject to section 22) -

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<sup>e</sup> Subsections (3) and (4) inserted by the Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2008.

- (i) "Limited by guarantee", or
- (ii) "LBG",
- (c) in the case of a mixed liability company -
  - (i) "Mixed liability", or
  - (ii) "ML",

and that word or those words shall form part of its name.

(2) A company shall have the following word or words directly before any words required to be at the end of its name by subsection (1) or, where no words are required to be at the end of its name by subsection (1), at the end of its name -

- (a) in the case of a protected cell company -
  - (i) "Protected Cell Company",
  - (ii) "PCC", or
  - (iii) such cognate expression as may be approved in writing by the Commission,
- (b) in the case of an incorporated cell company -
  - (i) "Incorporated Cell Company",

- (ii) "ICC", or
  - (iii) such cognate expression as may be approved in writing by the Commission, and
- (c) in the case of an incorporated cell -
- (i) "Incorporated Cell",
  - (ii) "IC", or
  - (iii) such cognate expression as may be approved in writing by the Commission,

and that word or those words shall form part of its name.

(3) For the purposes of this section, the case of letters, accents, spaces between letters and punctuation marks are to be disregarded.

**Exemption from section 21(1)(b) for charitable, etc. companies.**

22. (1) A company limited by guarantee which does not have a share capital is exempt from section 21(1)(b) provided that the requirements set out in subsection (2) are complied with.

- (2) The requirements referred to in subsection (1) are as follows -
- (a) the objects of the company are (or, in the case of a company about to be incorporated, are to be) the promotion of commerce, art, science, education, sport,



religion, charity or any profession, and anything incidental or conducive to any of those objects, and

- (b) the company's memorandum and articles -
  - (i) require its profits (if any) or other income to be applied in promoting its objects,
  - (ii) prohibit it from making a distribution to its members, and
  - (iii) require all the assets which would otherwise be available to its members generally to be transferred on its winding up either -
    - (A) to another body with objects similar to its own, or
    - (B) to another body the objects of which are any of those specified in paragraph (a) and anything incidental or conducive thereto (whether or not the body is a member of the company),

and that other body has similar provision in its memorandum and articles (or other constitutional provisions if it is not a company) to the provisions required by this paragraph.

(3) Where a company relies upon the exemption granted by this section upon its incorporation, the declaration of compliance (incorporation) shall include within it a declaration that the requirements of this section have been fulfilled.

(4) A company which relies upon the exemption granted by this section -

(a) shall not alter its memorandum and articles so that it ceases to comply with the requirements of subsection (2), and

(b) shall have in legible characters in all business letters and order forms of the company the words "a company limited by guarantee".

(5) A company which relies upon the exemption granted by this section which -

(a) carries on any business other than the promotion of any of the objects mentioned in subsection (2),

(b) applies any of its profits or other income otherwise than in promoting such objects, or

(c) makes a distribution to its members,

is guilty of an offence.

(6) If it appears to the Department that a company which relies upon the exemption granted by this section -

- (a) has carried on any business other than the promotion of any of the objects mentioned in subsection (2),
- (b) has applied any of its profits or other income otherwise than in promoting such objects, or
- (c) has made a distribution to its members,

the Department may, in writing, direct the company to change its name in accordance with the provisions of section 25 within such period as may be specified in the direction, so that its name complies with section 21(1)(b).

(7) A company which contravenes subsection (4) or a direction by the Department under subsection (6) is guilty of an offence.

**Name of cell of protected cell company.**

**23.** (1) Each cell of a protected cell company shall have its own distinct name or designation.

(2) Notwithstanding that a cell of a protected cell company is not a company, its name shall comply with the provisions of section 24.

**Prohibited names.**

**24.** (1) A company shall not have the word or words referred to in section 21(1) or (2) at the end of its name if it is not a company of the type which is so required (subject to section 22) to have that word or those words.

(2) A company must not have a name which is the same as a name

-

- (a) currently appearing on the Register of Companies, or
- (b) that has been reserved in accordance with section 27 and subject to the provisions of that section.

(3) In determining for the purposes of subsection (2) whether one name is the same as another, there are to be disregarded -

- (a) the definite article, where it is the first word of the name,
- (b) the expressions "company", "and company" and any of the word or words required by section 21(1) or (2) to be at the end of a name,
- (c) type and case of letters, accents, spaces between letters and punctuation marks,

and "and" and "&" are to be taken as the same.

(4) Without prejudice to the Trade Marks (Bailiwick of Guernsey) Ordinance, 2006<sup>f</sup>, a company must not have a name which, in the opinion of the Registrar, is likely to cause the public to confuse the company with -

- (a) some other person already established in Guernsey, or

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<sup>f</sup> Ordinance No. I of 2006; amended by the Trade Marks (Bailiwick of Guernsey) (Amendment) Ordinance, 2006.

- (b) a trade mark which has already been registered in accordance with the Trade Marks (Bailiwick of Guernsey) Ordinance, 2006,

unless that other person or the proprietor of that trade mark (as the case may be) has consented to the use of that name.

(5) The Registrar may consider, in exercising his functions under subsection (4) -

- (a) whether the name of the company and -
  - (i) the name of the person already established in Guernsey or elsewhere, or
  - (ii) the trade mark (as the case may be),are the same or similar, and
- (b) whether the company engages in the provision of the same or similar goods and services as -
  - (i) the person already established in Guernsey or elsewhere, or
  - (ii) the goods and services in respect of which the trade mark was registered (as the case may be).

(6) A company must not have a name which, in the opinion of the Registrar, gives so misleading an indication of its activity as to be likely to cause confusion.

(7) A company must not have a name -

- (a) the use of which would in the opinion of the Registrar constitute a criminal offence, or
- (b) which would in the opinion of the Registrar be contrary to public policy or to accepted principles of morality.

(8) A company must not have a name which in the opinion of the Registrar implies, or might be taken to imply, royal or government connection, support or patronage, unless Her Majesty's Procureur has given written permission for the use of that name.

**Application to change name.**

25. (1) A company may apply to the Registrar to change its name in accordance with the provisions of this section.

(2) The company shall pass a special resolution authorising the change of name.

(3) The application shall be in the form prescribed by the Registrar and shall be accompanied by -

- (a) the special resolution authorising the change of name, and

(b) a declaration of compliance (name change).

(4) The Registrar shall, upon receipt of the documents specified in subsection (3) publish the proposed new name in such manner and for such period as he thinks fit.

(5) The Registrar shall -

(a) consider any relevant representations made to him concerning the proposed change of name, and

(b) where relevant representations are made by a person other than the applicant, afford the applicant an opportunity to comment upon those representations,

in such manner as may be prescribed by the Registrar or as he thinks fit.

(6) If the Registrar grants the application for change of name he shall -

(a) issue a certificate of change of name, and the certificate shall state the date upon which the certificate has effect,

(b) register the new name of the company in the Register of Companies, and

(c) publish the new name in such manner and for such period as he thinks fit.

(7) Where a company changes its name by virtue of this section, for the avoidance of doubt -

- (a) all property and rights to which it was entitled immediately before that change remain its property and rights,
- (b) it remains subject to all criminal and civil liabilities, and all contracts, debts and other obligations to which it was subject immediately before that change, and
- (c) all actions and other legal proceedings which, immediately before that change, were extant or pending by or against it may be continued by or against it in the new name.

**Declaration of compliance (name change).**

26. (1) A declaration of compliance (name change) is a declaration, signed by a director or secretary of the company, that all the requirements of this Law in respect of the change of name have been fulfilled.

(2) The Registrar, when performing his functions under this Law, may rely upon the declaration in all respects and accordingly is not bound to enquire further as to whether, in relation to any application for a change of name, the provisions of this Law have been complied with.

(3) A person who without reasonable excuse makes a declaration which is false, deceptive or misleading in a material particular is guilty of an offence.



**Reservation of names.**

27. (1) A corporate services provider may apply to the Registrar to reserve a name for a company if -

- (a) it intends to apply for the incorporation of that company within 3 months, and
- (b) it is acting on behalf of the persons who wish that company to be incorporated.

(2) An application under this section must be in the form prescribed by the Registrar.

(3) Where a name has been reserved under this section and for the period for which it is reserved, that name -

- (a) cannot be used in an application for incorporation of a company otherwise -
  - (i) than by the person who reserved that name, or
  - (ii) than with the consent of the person who reserved that name, and
- (b) cannot be reserved by any other person.

(4) A reservation under this section lapses after a period of 3 months commencing on the date the reservation was made.

(5) The Registrar may -

- (a) refuse an application to reserve a name, or
- (b) revoke a reservation already made,

if the name breaches any of the provisions of this Part.

(6) The Registrar may refuse to register a name, notwithstanding that it has already been reserved, if it breaches any of the provisions of this Part.

**Enforcement of provisions on names.**

**28.** (1) The Registrar shall refuse -

- (a) to incorporate, or
- (b) to issue a certificate of change of name to,

a company if its proposed name or change of name would breach the provisions of this Part.

(2) The Registrar may direct -

- (a) a company to change its name, or
- (b) a protected cell company to change the name of a cell,

in order to comply with the provisions of this Part, within such period as he may direct.

(3) A company which fails to comply with a direction under

subsection (2) is -

- (a) guilty of an offence, and
- (b) liable to be wound up under section 406.

**Right to object to a company's name.**

29. (1) A person may apply to the Court to -

- (a) set aside the incorporation,
- (b) set aside the name,
- (c) set aside the change of name, or
- (d) set aside the reservation of a name,

of a company which has breached (or which would breach, if it were incorporated) the provisions of section 24(2) or (4).

(2) A person can only make an application under this section if he is (or claims to be) the company referred to in section 24(2) or the person or proprietor referred to in section 24(4).

(3) The Court on an application under this section may make such order, on such terms and conditions, as it thinks fit, including, without limitation, an order validating the incorporation of a company but directing the company and the Registrar to change the company's name.

*Office*

**Registered office.**

30. (1) A company shall at all times have a registered office in Guernsey to which all communications and notices may be addressed.

(2) On incorporation, the address of the company's registered office is that specified in the statement given to the Registrar under section 17.

(3) The company may change the address of its registered office -

(a) by giving notice to the Registrar in the form prescribed by the Registrar,

(b) if it is an incorporated cell being transferred in accordance with section 50, in accordance with the provisions of subsection (7)(e) of that section, or

(c) if it is non-cellular company being converted and transferred in accordance with section 51, in accordance with the provisions of subsection (7)(e) of that section.

(4) The change takes effect upon the notice being registered by the Registrar, but until the end of the period of 14 days beginning with the date on which it is registered, a person may validly serve any document on the company at its previous registered office.

(5) For the purposes of any duty of a company -

- (a) to keep at its registered office, or make available for public inspection there, any register, index or other document, or
- (b) to mention the address of its registered office in any document,

a company which has given notice to the Registrar of a change of the address of its registered office may act on the change as from such date, not more than 14 days after the notice is given, as it may determine.

(6) Where a company unavoidably ceases to perform at its registered office any such duty as is mentioned in subsection (5)(a) in circumstances in which it was not practicable to give prior notice to the Registrar of a change in the address of its registered office, but -

- (a) resumes performance of that duty at other premises as soon as practicable, and
- (b) gives notice accordingly to the Registrar of a change in the situation of its registered office within 14 days of doing so,

it shall not be treated as having failed to comply with that duty.

(7) In proceedings for an offence of failing to comply with any such duty as is mentioned in subsection (5), it is for the person charged to show that by reason of the matters referred to in that subsection or subsection (6) no offence was committed.

**Registered office of an incorporated cell.**

31. An incorporated cell shall have the same registered office as its incorporated cell company.

**Registered office provided by corporate services provider becoming ineffective.**

32. (1) A corporate services provider may give notice stating that a registered office address which it provides for a company is no longer effective.

(2) A notice under subsection (1) shall be sent to -

(a) the Registrar, and

(b) each director at -

(i) his service address, and

(ii) his usual residential address where that address is different from his service address.

(3) The notice must state -

(a) the company's name and registration number,

(b) that the address of the registered office is no longer effective, and

(c) that the company may be struck off the Register of Companies in accordance with Part XX if it does not provide a new address for its registered office.

(4) The notice sent to the Registrar must be accompanied by a declaration of compliance (ineffective office).

(5) A company which does not provide a new address for its registered office following a notice under this section is liable to be struck off the Register of Companies in accordance with Part XX.

(6) Notwithstanding any notice under this section, the address of the company's registered office can only be changed in accordance with the provisions of section 30.

**Declaration of compliance (ineffective office).**

**33.** (1) A declaration of compliance (ineffective office) is a declaration, signed by a corporate services provider, that all the requirements of this Law in respect of a notice under section 32 have been fulfilled.

(2) The Registrar, when performing his functions under this Law, may rely upon the declaration in all respects and accordingly is not bound to enquire further as to whether, in relation to a notice under section 32, the provisions of this Law have been complied with.

(3) A corporate services provider who without reasonable excuse makes a declaration which is false, deceptive or misleading in a material particular is guilty of an offence.

*Identification*

**Display of name at registered office etc.**

**34.** (1) A company's name shall be displayed, in a conspicuous place and in letters which are easily legible -

- (a) at its registered office, and
  - (b) at any other office or place in which its business is ordinarily carried on.
- (2) In this section "displayed" means -
- (a) displayed outside, or
  - (b) displayed inside, in a place to which the general public have access during ordinary business hours.
- (3) A company which fails to comply with the provisions of this section is guilty of an offence.

**Details to appear in company's correspondence.**

35. (1) A company's name shall appear in all its correspondence unless the company's identity is readily ascertainable -
- (a) from the context of the correspondence, or
  - (b) from a course of dealing between the company and the person to whom the correspondence is addressed.
- (2) A company's particulars shall appear in all order forms and formal business letters of the company.
- (3) Where a company has a website, the company's particulars shall appear in a reasonably prominent location on that website.



(4) A person purporting to act on behalf of a company who signs or issues any negotiable instrument, letter of credit, invoice or order form in which the company's name does not appear is personally liable for the amount of it (unless it is duly paid by the company).

(5) A company in relation to which there is a contravention of subsection (1), (2) or (3) is guilty of an offence.

(6) The particulars referred to in subsection (2) and (3) are -

- (a) its name,
- (b) its registration number,
- (c) the address of its registered office, and
- (d) in the case of a company to which section 22 applies, the fact that it is a company limited by guarantee.

(7) The provisions of this section apply whether or not the correspondence is in electronic form.

*Seal*

**Common seal.**

**36.** (1) A company may, but need not, have one or more common seals.

(2) A common seal may be used in any jurisdiction unless the articles provide to the contrary.

(3) For the avoidance of doubt, no rule of law (whether arising under statute, rule of court or otherwise) shall require a common seal for the valid execution of a document by the company.

(4) The name of the company shall be engraved in legible characters on its common seal.

(5) A company in relation to which there is a contravention of subsection (4) is guilty of an offence.

*Company records*

**Form of company records.**

37. (1) Company records -

- (a) may be kept in hard copy or electronic form, and
- (b) may be arranged in such manner as the directors or secretary think fit,

provided that the information in question is adequately recorded for future reference.

(2) Where company records are kept in electronic form -

- (a) they must be capable of being reproduced in hard copy form, and

- (b) they are deemed for the purposes of this Law to be kept at a place if access to them and a hard copy can be obtained at that place.

(3) Where company records are kept otherwise than in bound books, adequate precautions must be taken -

- (a) to guard against falsification, and
- (b) to facilitate the discovery of falsification.

(4) Any duty imposed by law to allow inspection, or to furnish a copy of a company record required by this Law to be kept by a company, shall be treated, where the company records are in electronic form, as a duty to allow inspection, or to furnish a copy -

- (a) in hard copy, or
- (b) if the person seeking inspection or a copy consents, in electronic form.

(5) In this section "**company records**" means any register, index, record, accounting records, agreement, memorandum, articles, minutes or other document required by this Law to be kept by a company.

(6) A company which fails to comply with this section is guilty of an offence.

#### PART IV

#### ALTERATIONS OF MEMORANDUM AND ARTICLES

*Alterations of the memorandum of incorporation*

**Restriction on alteration of memorandum.**

38. (1) A company may not alter any provision of its memorandum except in the cases, in the manner and to the extent expressly provided for by this section.

(2) A company may alter the statement of its name -

(a) in all cases, if it changes its name in accordance with the provisions of section 25, or

(b) in the cases set in Part V, if it converts to a different type of company in accordance with the provisions of that Part.

(3) A company may delete the statement that its registered office is situated in Guernsey if it migrates from Guernsey in accordance with the provisions of Part VII.

(4) A company may alter the statement of the type of company it is if it converts to a different type of company in accordance with the provisions of Part V.

(5) A company may, subject to section 40, alter the statement of its objects, including inserting a statement of its objects if it previously had no such statement, by special resolution.

(6) A company limited by guarantee may alter a statement of the maximum number of guarantee members which it is to have by special resolution.

(7) A company which -

(a) wishes to make provision in its memorandum for any matter mentioned in section 15(7), or

(b) wishes to alter any provision in its memorandum mentioned in section 15(7),

may make (or alter) that provision -

(i) in accordance with the terms of its memorandum, or

(ii) by unanimous resolution of all its members.

**Alteration of memorandum of an incorporated cell.**

**39.** Unless the memorandum of an incorporated cell provides to the contrary, its memorandum may not be altered unless its incorporated cell company has also passed a special resolution so authorising that alteration.

**Court may annul alteration of objects.**

**40.** (1) An application may be made to the Court under this section for the annulment of an alteration of a company's objects; and where such an application is made, the alteration shall not have effect except in so far as it is confirmed by the Court.

(2) An application under this section -

- (a) may be made by -
  - (i) members who hold at least 15% of such of the capital of the company as carries the right of voting at general meetings of the company (excluding any shares held as treasury shares),  
or
  - (ii) in the case of a company not having shareholders, or having shareholders and other types of members, members who represent at least 15% of the total voting rights of all members having a right to vote at general meetings,
- (b) shall not be made by or on behalf of any person who consented to or voted in favour of the alteration,
- (c) may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose,
- (d) shall be made within a period of 21 days immediately following the day upon which the resolution altering the company's objects was passed,
- (e) shall not be heard unless the Court is satisfied that the company has been notified of the date, time and place of the application.

(3) On an application under this section the Court may, on such terms and conditions as it thinks fit -

- (a) annul or confirm the alteration in whole or in part,
- (b) adjourn the proceedings to enable an arrangement to be made to the satisfaction of the Court for the purchase of the interests of dissentient members, in which case the Court may give such directions for facilitating or implementing the arrangement as the Court thinks fit.

(4) Without prejudice to the generality of subsection (3), an order of the Court under this section may -

- (a) provide for the purchase by the company of the shares of any member,
- (b) provide for a reduction of the company's share capital,

and the order may make such consequential alterations to the company's memorandum and articles as the Court thinks fit.

(5) Notwithstanding any other provision of this Law, where an order of the Court under this section -

- (a) annuls an alteration of a company's memorandum in whole or in part, the company may not, without the leave of the Court, make any alteration to its

memorandum in contravention of any provision of the order,

- (b) makes an alteration of a company's memorandum or articles, or confirms an alteration of a company's memorandum in whole or in part, any alteration made by or pursuant to the order shall be of the same effect as if duly made under this Law, and the provisions of this Law shall apply accordingly to the memorandum or articles as so altered.

(6) The validity of an alteration of a company's objects shall not be questioned on the ground that it was not authorised in accordance with section 38 except in proceedings taken for the purpose (whether under this section or otherwise) within a period of 21 days immediately following the day upon which the resolution in question was passed; and where any such proceedings are taken otherwise than under this section, subsections (3) to (5) shall so far as appropriate apply in relation to an order of the Court pursuant to such proceedings as they would apply in relation to an equivalent order under this section.

**Delivery of altered memorandum to Registrar.**

**41.** (1) Where a company alters its memorandum it shall, in addition to any other requirements imposed by this Law or any other enactment, deliver a copy of the memorandum as altered to the Registrar.

(2) A company which fails to comply with subsection (1) is guilty of an offence.

*Alterations of the articles of incorporation*



**Alteration of articles.**

42. (1) Subject to the provisions of this Law, a company may by special resolution alter its articles.

(2) An alteration so made in respect of a company's articles shall, subject to the provisions of this Law, have the same effect as if originally contained therein and shall be subject in the like manner to alteration by special resolution.

(3) The power of a company under this section to alter its articles includes power to add to them, modify any of them, rescind them in whole or in part and substitute other articles.

**Alteration of articles of an incorporated cell.**

43. Unless the memorandum or articles of an incorporated cell provide to the contrary, its articles may not be altered unless its incorporated cell company has also passed a special resolution so authorising that alteration.

**Entrenched provisions of the articles.**

44. (1) A company's articles may contain provision ("**provision for entrenchment**") to the effect that specified provisions of 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.

(2) Provision for entrenchment may only be made -

(a) in the company's articles on formation, or

(b) by an amendment of the company's articles by unanimous resolution.

(3) Provision for entrenchment does not prevent amendment of the company's articles -

- (a) by unanimous resolution, or
- (b) by order of the Court or other authority having power to alter the company's articles.

*Rectification of memorandum or articles*

**Rectification of memorandum or articles.**

**45.** (1) The Registrar may, in his absolute discretion and on such terms and conditions as he thinks fit -

- (a) on an application by or on behalf of a company's members, directors or creditors, or
- (b) of his own motion,

rectify any error or formal defect in the company's memorandum or articles as registered in the Register of Companies.

(2) Where the Registrar rectifies any memorandum or articles under subsection (1) he shall give notice of that rectification to the company.

(3) Except where the Registrar directs otherwise, the effect of rectification is that the error or defect in question shall be deemed never to have been made.

## CONVERSIONS

### *Conversions and transfers concerned with cellular status of companies*

#### **Conversion of non-cellular company into protected cell company.**

46. (1) A non-cellular company may be converted into a protected cell company in accordance with the provisions of this section.

(2) The company cannot be converted unless it has the written consent of the Commission in accordance with the provisions of Part XXVII.

(3) The company must pass a special resolution authorising -

(a) that conversion, and

(b) the alteration in its memorandum of the statement of -

(i) the company's name, in order to comply with the requirements of section 21(2)(a) and 24(1), and

(ii) the company's type to protected cell company.

(4) The special resolution under subsection (3) may also -

(a) authorise the alteration of the company's articles,

(b) authorise the creation of cells of the protected cell company and attribute members, shares, capital, assets and liabilities between those cells and between those cells and the core, and

- (c) propose the date on which the conversion shall have effect.
- (5) The company shall deliver to the Registrar -
- (a) a copy of the consent of the Commission under subsection (2),
  - (b) a copy of the special resolution under subsection (3),
  - (c) a copy of its memorandum (and articles, as the case may be) as it is proposed to be altered, and
  - (d) a declaration of compliance (conversion).
- (6) The declaration of compliance (conversion) must also include a declaration that -
- (a) the protected cell company and each cell will satisfy the solvency test immediately after the conversion, and
  - (b) there are no creditors of the company whose interests will be unfairly prejudiced by the conversion.
- (7) Upon receipt of the documents specified in subsection (5), the Registrar shall -
- (a) issue a certificate of conversion into protected cell company, and the certificate shall state the date upon

which -

- (i) the conversion, and
- (ii) the alteration of the memorandum (and articles, as the case may be),

has effect, and

- (b) publish the fact that the company has been converted in such manner and for such period as he thinks fit.

(8) If the special resolution under subsection (3) proposes a date on which the conversion shall have effect and that date is later than the date on which the Registrar issues the certificate under subsection (7), then the date stated in the certificate shall be the date proposed in that special resolution.

(9) Where a company is converted into a protected cell company by virtue of this section -

- (a) all property and rights to which it was entitled immediately before that conversion remain its property and rights,
- (b) it remains subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which it was subject immediately before that conversion,
- (c) all actions and other legal proceedings which, immediately before that conversion, could have been

instituted or continued by or against it may be instituted or continued by or against it in its new name,

- (d) a conviction, ruling, order or judgment in favour of or against it before the conversion may be enforced by or against it after the conversion, and
- (e) subject to subsection (10), its members, shares, capital, assets and liabilities are attributed between its cells, and between its cells and the core, in accordance with the terms of any special resolution which makes such provision as is mentioned in subsection (4)(b).

(10) Regardless of the provisions of subsection (9)(e) and Part XXVII, any creditor who entered into a transaction with a company before that company converted into a protected cell company shall have recourse to all core and cellular assets (other than any cellular assets attributable to a cell created after that conversion) in respect of any liability for that transaction, unless the creditor has agreed otherwise.

(11) If the directors had no reasonable grounds for believing that the protected cell company and each cell would satisfy the solvency test immediately after the conversion, any director who signed the declaration of compliance is personally liable to pay to the core or cell of the protected cell company so much monies as the core or cells had to pay to a creditor which the core or cells would not have had to pay, but for the provisions of subsection (10).

**Conversion of non-cellular company into incorporated cell company.**

**47.** (1) A non-cellular company may be converted into a incorporated cell company in accordance with the provisions of this section.

(2) The company cannot be converted unless it has the written consent of the Commission in accordance with the provisions of Part XXVIII.

(3) The company must pass a special resolution authorising -

(a) that conversion, and

(b) the alteration in its memorandum of the statement of -

(i) the company's name, in order to comply with the requirements of section 21(2)(b) and 24(1), and

(ii) the company's type to incorporated cell company.

(4) The special resolution under subsection (3) may also -

(a) authorise the alteration of the company's articles, and

(b) propose the date on which the conversion shall have effect.

(5) The company shall deliver to the Registrar -

(a) a copy of the consent of the Commission under subsection (2),

(b) a copy of the special resolution under subsection (3),

- (c) a copy of its memorandum (and articles, as the case may be) as it is proposed to be altered, and
- (d) a declaration of compliance (conversion).

(6) Upon receipt of the documents specified in subsection (5), the Registrar shall -

- (a) issue a certificate of conversion into incorporated cell company, and the certificate shall state the date upon which -

- (i) the conversion, and

- (ii) the alteration of the memorandum (and articles, as the case may be),

has effect, and

- (b) publish the fact that the company has been converted in such manner and for such period as he thinks fit.

(7) If the special resolution under subsection (3) proposes a date on which the conversion shall have effect and that date is later than the date on which the Registrar issues the certificate under subsection (6), then the date stated in the certificate shall be the date proposed in that special resolution.

(8) Where a company is converted into an incorporated cell company by virtue of this section -



- (a) all property and rights to which it was entitled immediately before that conversion remain its property and rights,
- (b) it remains subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which it was subject immediately before that conversion,
- (c) all actions and other legal proceedings which, immediately before that conversion, could have been instituted or continued by or against it may be instituted or continued by or against it in its new name, and
- (d) a conviction, ruling, order or judgment in favour of or against it before the conversion may be enforced by or against it after the conversion.

**Conversion of protected cell company into incorporated cell company.**

48. (1) A protected cell company may be converted into an incorporated cell company and its cells incorporated as incorporated cells of that incorporated cell company, as a single process, in accordance with the provisions of this section.

(2) The company cannot be converted unless it has the written consent of the Commission in accordance with the provisions of Part XXVIII.

(3) The company must pass a special resolution authorising -

- (a) that conversion, and

- (b) the alteration in its memorandum of the statement of -
  - (i) the company's name, in order to comply with the requirements of section 21(2)(b) and 24(1), and
  - (ii) the company's type to incorporated cell company.
  
- (4) The special resolution under subsection (3) may also -
  - (a) authorise the alteration of the company's articles, and
  - (b) propose the date on which the conversion shall have effect.
  
- (5) Each cell must pass a special resolution -
  - (a) authorising an application to be made to the Registrar under section 17 for its incorporation as an incorporated cell of the incorporated cell company, and
  - (b) setting out the memorandum and articles with which it proposes to be incorporated.
  
- (6) The company shall deliver to the Registrar -
  - (a) a copy of the consent of the Commission,
  - (b) a copy of the special resolution of the company,

- (c) a copy of its memorandum (and articles, as the case may be) as it is (or they are) proposed to be altered,
- (d) a copy of the special resolution passed by each cell,
- (e) an application for the incorporation of each cell as an incorporated cell of the incorporated cell company in accordance with section 17 and that application shall be deemed to have complied with the requirements of section 11, and
- (f) a declaration of compliance (conversion).

(7) The declaration of compliance (conversion) must also include a declaration that -

- (a) the incorporated cell company and each incorporated cell will satisfy the solvency test immediately after the conversion, and
- (b) there are no creditors of the company whose interests will be unfairly prejudiced by the conversion.

(8) Upon receipt of the documents specified in subsection (6) (including any documents required for the incorporation of any incorporated cells) the Registrar shall give notice of the proposed conversion in such manner and for such period as he thinks fit.

(9) Subject to subsection (13), not less than 28 days after giving notice under subsection (8) and upon granting the application for incorporation of

each cell in accordance with section 20, the Registrar shall -

(a) issue a certificate of conversion from protected cell company into incorporated cell company, and the certificate shall state the date upon which -

(i) the conversion, and

(ii) the alteration of the memorandum (and articles, as the case may be),

has effect, and

(b) publish the fact that the company has been converted in such manner and for such period as he thinks fit.

(10) The Registrar shall provide that the conversion of the protected cell company and the incorporation of its cells shall take effect at the same time.

(11) If the special resolution under subsection (3) proposes a date on which the conversion shall have effect and that date is later than the date on which the Registrar issues the certificate under subsection (9), then -

(a) the date stated in the certificate, and

(b) the date on which the incorporation of the incorporated cells has effect,

shall be the date proposed in that special resolution.

(12) Where a company is converted into an incorporated cell company by virtue of this section -

- (a) all property and rights to which the core of the protected cell company was entitled immediately before its conversion remain the property and rights of the incorporated cell company,
- (b) the incorporated cell company remains subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which the core of the protected cell company was subject immediately before its conversion,
- (c) all actions and other legal proceedings which, immediately before the conversion, could have been instituted or continued by or against the core of the protected cell company may be instituted or continued by or against the incorporated cell company,
- (d) a conviction, ruling, order or judgment in favour of or against the core of the protected cell company before the conversion may be enforced by or against the incorporated cell company after the conversion,
- (e) all property and rights attributable to a cell of the protected cell company immediately before its conversion become the property and rights of the incorporated cell which it has become,

- (f) an incorporated cell becomes subject to all criminal and civil liabilities, and all contracts, debts and other obligations, which immediately before the conversion were attributable to the cell of the protected cell company which it was,
- (g) all actions and other legal proceedings which, immediately before the conversion, could have been instituted or continued by or against the protected cell company in respect of any of its cells may be instituted or continued by or against the incorporated cell which that cell has become, and
- (h) a conviction, ruling, order or judgment in favour of or against the protected cell company in respect of any of its cells may be enforced by or against the incorporated cell which that cell has become.

(13) If the Court is satisfied that the conversion would unfairly prejudice a member or creditor of the company, it may, on the application of that person made at any time before the date on which the conversion has effect, or within such further time as the Court may in any particular case allow, make such order as it thinks fit in relation to the conversion, including, without prejudice to the generality of the foregoing, an order -

- (a) directing that effect shall not be given to the conversion,
- (b) modifying the conversion in such manner as may be specified in the order,

- (c) directing the company or its directors to reconsider the conversion or any part of it.

(14) An order under subsection (13) may be made on such terms and conditions and subject to such penalty as the Court thinks fit.

**Conversion of incorporated cell into non-cellular company.**

**49.** (1) An incorporated cell may be converted into a non-cellular company in accordance with the provisions of this section.

(2) The incorporated cell must pass a special resolution authorising

-

(a) that conversion, and

(b) the alteration in its memorandum of the statement of -

(i) the company's name, in order to comply with the requirements of section 24(1), and

(ii) the company's type to non-cellular company.

(3) The special resolution under subsection (2) may also -

(a) authorise the alteration of the company's articles, and

(b) propose the date on which the conversion shall have effect.

(4) The incorporated cell shall deliver to the Registrar -

- (a) a copy of the special resolution under subsection (2),
- (b) a copy of its memorandum (and articles, as the case may be) as it is (or they are) proposed to be altered, and
- (c) a declaration of compliance (conversion).

(5) Upon receipt of the documents specified in subsection (4), the Registrar shall give notice of the proposed conversion in such manner and for such period as he thinks fit.

(6) Subject to subsection (9), not less than 28 days after giving notice under subsection (5), the Registrar shall -

- (a) issue a certificate of conversion of incorporated cell into non-cellular company, and the certificate shall state the date upon which -
  - (i) the conversion, and
  - (ii) the alteration of the memorandum (and articles, as the case may be),has effect, and
- (b) publish the fact that the company has been converted in such manner and for such period as he thinks fit.



(7) If the special resolution under subsection (2) proposes a date on which the conversion shall have effect and that date is later than the date on which the Registrar issues the certificate under subsection (6), then the date stated in the certificate shall be the date proposed in that special resolution.

(8) Where an incorporated cell is converted into a non-cellular company by virtue of this section -

- (a) all property and rights to which it was entitled immediately before its conversion remain its property and rights,
- (b) it remains subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which it was subject immediately before its conversion,
- (c) all actions and other legal proceedings which, immediately before its conversion, could have been instituted or continued by or against it may be instituted or continued by or against it after its conversion, and
- (d) a conviction, ruling, order or judgment in favour of or against it before the conversion may be enforced by or against it after the conversion.

(9) If the Court is satisfied that the conversion would unfairly prejudice a member or creditor of the company, it may, on the application of that person made at any time before the date on which the conversion has effect, or within such further time as the Court may in any particular case allow, make such order as it

thinks fit in relation to the conversion, including, without prejudice to the generality of the foregoing, an order -

- (a) directing that effect shall not be given to the conversion,
- (b) modifying the conversion in such manner as may be specified in the order,
- (c) directing the company or its directors to reconsider the conversion or any part of it.

(10) An order under subsection (9) may be made on such terms and conditions and subject to such penalty as the Court thinks fit.

**Transfer of incorporated cells between incorporated cell companies.**

**50.** (1) An incorporated cell of an incorporated cell company may be transferred to another incorporated cell company in accordance with the provisions of this section.

(2) The incorporated cell companies shall enter into a written agreement that sets out the terms of the transfer ("**the transfer agreement**").

(3) The directors of each incorporated cell company must approve the transfer agreement.

(4) Each incorporated cell company must pass a special resolution authorising the transfer in the terms set out in the transfer agreement.

(5) The incorporated cell being transferred must pass a special

resolution authorising the transfer in the terms set out in the transfer agreement.

(6) The special resolution under subsection (5) may also -

- (a) authorise the alteration of the company's articles, and
- (b) propose the date on which the transfer shall have effect.

(7) The incorporated cell company to which the incorporated cell is being transferred shall deliver to the Registrar -

- (a) a copy of the special resolution of each incorporated cell company authorising the transfer,
- (b) a copy of the special resolution of the incorporated cell being transferred approving the transfer,
- (c) a copy of the transfer agreement,
- (d) a copy of its articles if they are proposed to be altered,
- (e) a notice of the proposed new address of the registered office of the incorporated cell which is being transferred, in order to comply with section 31, and
- (f) a declaration of compliance (conversion).

(8) The declaration of compliance (conversion) must also include a declaration that -

- (a) the incorporated cell being transferred satisfies the solvency test, and
- (b) there are no creditors of the incorporated cell whose interests will be unfairly prejudiced by the transfer.

(9) Upon receipt of the documents specified in subsection (7), the Registrar shall -

- (a) issue to the incorporated cell a certificate of transfer of incorporated cell, and the certificate shall state the date upon which -
  - (i) the transfer, and
  - (ii) the alteration of the articles (if any alteration is proposed),has effect, and
- (b) publish the fact that the incorporated cell has been transferred in such manner and for such period as he thinks fit.

(10) If the special resolution under subsection (5) proposes a date on which the transfer shall have effect and that date is later than the date on which the Registrar issues the certificate under subsection (9), then the date stated in the certificate shall be the date proposed in that special resolution.

(11) Where an incorporated cell is transferred by virtue of this

section -

- (a) the incorporated cell ceases to be an incorporated cell of the incorporated cell company that transferred it,
- (b) the incorporated cell becomes an incorporated cell of the incorporated cell company to which it has been transferred,
- (c) all property and rights to which the incorporated cell was entitled immediately before its transfer remain the property and rights of the incorporated cell,
- (d) all civil and criminal liabilities and all contracts, debts and other obligations to which the incorporated cell was subject immediately before its transfer remain the liabilities, contracts, debts and other obligations of the incorporated cell,
- (e) all actions and other legal proceedings which, immediately before its transfer, could have been instituted or continued by or against the incorporated cell may be instituted or continued by or against the incorporated cell after the transfer, and
- (f) a conviction, ruling, order or judgment in favour of or against it before the transfer may be enforced by or against it after its transfer.

**Conversion of non-cellular company into incorporated cell and transfer to**

**incorporated cell company.**

**51.** (1) A non-cellular company may be converted into an incorporated cell and transferred to an incorporated cell company, as a single process, in accordance with the provisions of this section.

(2) The non-cellular company and the incorporated cell company shall enter into a written agreement that sets out the terms of the conversion and transfer ("**the conversion and transfer agreement**").

(3) The directors of the non-cellular company and the incorporated cell company must approve the conversion and transfer agreement.

(4) The incorporated cell company must pass a special resolution authorising the conversion and transfer in the terms set out in the conversion and transfer agreement.

(5) The non-cellular company must pass a special resolution authorising -

(a) that conversion and transfer, and

(b) the alteration in its memorandum of the statement of -

(i) the company's name in order to comply with the requirements of section 21(2)(c) and 24(1), and

(ii) the company's type to incorporated cell.

(6) The special resolution under subsection (5) may also -

- (a) authorise the alteration of the company's articles, and
  - (b) propose the date on which the conversion and transfer shall have effect.
- (7) The non-cellular company shall deliver to the Registrar -
- (a) a copy of the special resolution of the non-cellular company,
  - (b) a copy of the special resolution of the incorporated cell company,
  - (c) a copy of the conversion and transfer agreement,
  - (d) a copy of its memorandum (and articles, as the case may be) as it is (or they are) proposed to be altered,
  - (e) a notice of the proposed new address of its registered office, in order to comply with section 31, and
  - (f) a declaration of compliance (conversion).
- (8) The declaration of compliance (conversion) must also include a declaration that -
- (a) the non-cellular company satisfies the solvency test, and
  - (b) there are no creditors of the non-cellular company whose interests will be unfairly prejudiced by the

conversion and transfer.

(9) Upon receipt of the documents specified in subsection (8), the Registrar shall -

(a) issue to the non-cellular company a certificate of conversion into incorporated cell, and the certificate shall state the date upon which -

(i) the conversion and transfer, and

(ii) the alteration of its memorandum (and articles, as the case may be),

has effect, and

(b) publish the fact that the non-cellular company has been converted and transferred in such manner and for such period as he thinks fit.

(10) If the special resolution under subsection (5) proposes a date on which the conversion and transfer shall have effect and that date is later than the date on which the Registrar issues the certificate under subsection (9), then the date stated in the certificate shall be the date proposed in that special resolution.

(11) Where a non-cellular company is converted and transferred by virtue of this section -

(a) it becomes an incorporated cell of the incorporated cell company to which it is transferred,



- (b) all property and rights to which it was entitled immediately before its conversion and transfer remain its property and rights,
- (c) all civil and criminal liabilities and all contracts, debts and other obligations to which it was subject immediately before its conversion and transfer remain its liabilities, contracts, debts and other obligations,
- (d) all actions and other legal proceedings which, immediately before its conversion and transfer, could have been instituted or continued by or against it may be instituted or continued by or against it after its conversion and transfer, and
- (e) a conviction, ruling, order or judgment in favour of or against it before the conversion and transfer may be enforced by or against it after its conversion and transfer.

**Conversion of protected cell company into non-cellular company.**

52. (1) A protected cell company may be converted into a non-cellular company in accordance with the provisions of this section.

(2) The company cannot be converted unless it has the written consent of the Commission in accordance with the provisions of Part XXVII.

(3) The company must pass a special resolution authorising -

- (a) that conversion, and
- (b) the alteration in its memorandum of the statement of -
  - (i) the company's name, in order to comply with the requirements of section 24(1), and
  - (ii) the company's type to a non-cellular company.
- (4) The special resolution under subsection (3) may also -
  - (a) authorise the alteration of the company's articles, and
  - (b) propose the date on which the conversion shall have effect.
- (5) A cell must, if cell shares have been issued in respect of it, pass a special resolution authorising that conversion.
- (6) The company shall deliver to the Registrar -
  - (a) a copy of the consent of the Commission,
  - (b) a copy of the special resolution of the company,
  - (c) a copy of its memorandum (and articles, as the case may be) as it is (or they are) proposed to be altered,
  - (d) a copy of the special resolution of each cell, and

(e) a declaration of compliance (conversion).

(7) The declaration of compliance (conversion) must also include a declaration that -

(a) the company satisfies the solvency test, and

(b) there are no creditors of the company whose interests will be unfairly prejudiced by the conversion.

(8) Upon receipt of the documents specified in subsection (6), the Registrar shall give notice of the proposed conversion in such manner and for such period as he thinks fit.

(9) Subject to subsection (12), not less than 28 days after giving notice under subsection (8), the Registrar shall -

(a) issue a certificate of conversion from protected cell company to non-cellular company and the certificate shall state the date upon which -

(i) the conversion, and

(ii) the alteration of the memorandum (and articles, as the case may be),

has effect, and

(b) publish the fact that the company has been converted in such manner and for such period as he thinks fit.

(10) If the special resolution under subsection (3) proposes a date on which the conversion shall have effect and that date is later than the date on which the Registrar issues the certificate under subsection (9), then the date stated in the certificate shall be the date proposed in that special resolution.

(11) Where a protected cell company is converted into a non-cellular company by virtue of this section -

- (a) all property and rights to which the core and cells were entitled immediately before that conversion remain the property and rights of the non-cellular company,
- (b) the non-cellular company remains subject to all criminal and civil liabilities, and all contracts, debts, and other obligations, to which the core and each cell were subject immediately before its conversion,
- (c) all actions and other legal proceedings which, immediately before the conversion, could have been instituted or continued by or against the core or any cell may be instituted or continued by or against the non-cellular company after the conversion, and
- (d) a conviction, ruling, order or judgment in favour of or against the core or any cell may be enforced by or against the non-cellular company after the conversion.

(12) If the Court is satisfied that the conversion would unfairly prejudice a member or creditor of the company, it may, on the application of that

person made at any time before the date on which the conversion has effect, or within such further time as the Court may in any particular case allow, make such order as it thinks fit in relation to the conversion, including, without prejudice to the generality of the foregoing, an order -

- (a) directing that effect shall not be given to the conversion,
- (b) modifying the conversion in such manner as may be specified in the order,
- (c) directing the company or its directors to reconsider the conversion or any part of it.

(13) An order under subsection (12) may be made on such terms and conditions and subject to such penalty as the Court thinks fit.

**Subsumption of incorporated cells into incorporated cell company and conversion to non-cellular company.**

**53.** (1) The incorporated cells of an incorporated cell company may be subsumed into the incorporated cell company and the incorporated cell company converted into a non-cellular company, as a single process, in accordance with the provisions of this section.

(2) The incorporated cells cannot be subsumed and the incorporated cell company converted unless the incorporated cell company has the written consent of the Commission in accordance with the provisions of Part XXVIII.

(3) The incorporated cell company must pass a special resolution authorising -

- (a) the subsumption of the incorporated cells and the conversion of the incorporated cell company, and
  - (b) the alteration in its memorandum of the statement of -
    - (i) the incorporated cell company's name in order to comply with the requirements of section 24(1), and
    - (ii) the incorporated cell company's type to a non-cellular company.
- (4) The special resolution under subsection (3) may also -
- (a) authorise the alteration of the incorporated cell company's articles, and
  - (b) propose the date on which the subsumption and conversion shall have effect.
- (5) Each incorporated cell must pass a special resolution authorising it being subsumed into the incorporated cell company.
- (6) The special resolutions under subsections (3) and (5) shall state the manner in which the interests and liabilities of each member of each incorporated cell are to be subsumed into interests and liabilities of the incorporated cell company or, if they are not to be so subsumed, the consideration a member will receive, and in particular -

- (a) the manner in which shares of each incorporated cell are to be converted into shares of the incorporated cell company,
  - (b) if shares of an incorporated cell are not to be converted into shares of the incorporated cell company, the consideration that the holders of those shares are to receive instead of shares in the incorporated cell company.
- (7) The incorporated cell company shall deliver to the Registrar -
- (a) a copy of the consent of the Commission,
  - (b) a copy of the special resolution of the incorporated cell company,
  - (c) a copy of its memorandum (and articles, as the case may be) as it is (or they are) proposed to be altered,
  - (d) a copy of the special resolution of each incorporated cell, and
  - (e) a declaration of compliance (conversion).
- (8) The declaration of compliance (conversion) must also include a declaration that -
- (a) each incorporated cell and the incorporated cell company satisfy the solvency test, and

- (b) there are no creditors of any incorporated cell or the incorporated cell company whose interests will be unfairly prejudiced by the subsumption and conversion.

(9) Upon receipt of the documents specified in subsection (7), the Registrar shall give notice of the proposed subsumption and conversion in such manner and for such period as he thinks fit.

(10) Subject to subsection (13), not less than 28 days after giving notice under subsection (9), the Registrar shall -

- (a) issue a certificate of subsumption into incorporated cell company and conversion to non-cellular company and the certificate shall state the date upon which -
  - (i) the subsumption and conversion, and
  - (ii) the alteration of the memorandum (and articles, as the case may be),

has effect, and

- (b) publish the fact that the incorporated cells have been subsumed and the incorporated cell company has been converted in such manner and for such period as he thinks fit.

(11) If the special resolution under subsection (3) proposes a date on which the subsumption and conversion shall have effect and that date is later than the



date on which the Registrar issues the certificate under subsection (10), then the date stated in the certificate shall be the date proposed in that special resolution.

(12) Where the incorporated cells are subsumed and the incorporated cell company converted into a non-cellular company by virtue of this section -

- (a) all property and rights to which the incorporated cells were entitled immediately before that subsumption and conversion become the property and rights of the non-cellular company,
- (b) the non-cellular company becomes subject to all criminal and civil liabilities, and all contracts, debts, and other obligations, to which the incorporated cells were subject immediately before that subsumption and conversion,
- (c) all actions and other legal proceedings which, immediately before that subsumption and conversion, could have been instituted or continued by or against the incorporated cells may be instituted or continued by or against the non-cellular company,
- (d) a conviction, ruling, order or judgment in favour of or against the incorporated cells before the subsumption and conversion may be enforced by or against the non-cellular company after the subsumption and conversion,
- (e) all property and rights to which the incorporated cell

company was entitled immediately before that subsumption and conversion remain the property and rights of the non-cellular company,

- (f) the non-cellular company remains subject to all criminal and civil liabilities, and all contracts, debts, and other obligations, to which the incorporated cell company was subject immediately before that subsumption and conversion,
- (g) all actions and other legal proceedings which, immediately before that subsumption and conversion, could have been instituted or continued by or against the incorporated cell company may be instituted or continued by or against the non-cellular company, and
- (h) a conviction, ruling, order or judgment in favour of or against the incorporated cell company before the subsumption and conversion may be enforced by or against the non-cellular company after the subsumption and conversion.

(13) If the Court is satisfied that the subsumption and conversion would unfairly prejudice a member or creditor of any incorporated cell or the incorporated cell company, it may, on the application of that person made at any time before the date on which the subsumption and conversion has effect, or within such further time as the Court may in any particular case allow, make such order as it thinks fit in relation to the subsumption and conversion, including, without prejudice to the generality of the foregoing, an order -

- (a) directing that effect shall not be given to the subsumption and conversion,
- (b) modifying the subsumption and conversion in such manner as may be specified in the order,
- (c) directing the incorporated cell company or its directors to reconsider the subsumption and conversion or any part of it.

(14) An order under subsection (13) may be made on such terms and conditions and subject to such penalty as the Court thinks fit.

*Conversions concerned with liabilities of members of companies*

**Conversion of company into unlimited liability company.**

54. (1) A company which is -

- (a) limited by shares,
- (b) limited by guarantee, or
- (c) of mixed liability,

may be converted into an unlimited company in accordance with the provisions of this section.

(2) The company must pass a unanimous resolution authorising -

- (a) that conversion, and

- (b) the alteration in its memorandum of the statement of -
  - (i) the company's name, in order to comply with the requirements of section 24(1), and
  - (ii) the company's type to unlimited company.
  
- (3) The unanimous resolution under subsection (2) may also -
  - (a) authorise the alteration of the company's articles, and
  - (b) propose the date on which the conversion shall have effect.
  
- (4) The company shall deliver to the Registrar -
  - (a) a copy of the unanimous resolution passed under subsection (2),
  - (b) a copy of its memorandum (and articles, as the case may be) as it is proposed to be altered, and
  - (c) a declaration of compliance (conversion).
  
- (5) Upon receipt of the documents specified in subsection (4), the Registrar shall -
  - (a) issue a certificate of conversion into unlimited company, and the certificate shall state the date upon

which -

- (i) the conversion, and
- (ii) the alteration of the memorandum (and articles, as the case may be),

has effect, and

- (b) publish the fact that the company has been converted in such manner and for such period as he thinks fit.

(6) If the unanimous resolution under subsection (2) proposes a date on which the conversion shall have effect and that date is later than the date on which the Registrar issues the certificate under subsection (5), then the date stated on the certificate shall be the date proposed in that unanimous resolution.

**Conversion of company into limited liability company.**

55. (1) An unlimited or mixed liability company may be converted into a company -

- (a) limited by shares, or
- (b) limited by guarantee,

in accordance with the provisions of this section.

(2) The company must pass a special resolution authorising -

- (a) that conversion,

- (b) the alteration in its memorandum of the statement of -
  - (i) the company name, in order to comply with the requirements of section 21(1) and 24(1),
  - (ii) the company type to limited by shares or limited by guarantee (as the case may be),
  
- (c) in the case of a company which is to have shares, the insertion into its memorandum of a statement of -
  - (i) the number of shares to be taken on conversion by each member,
  - (ii) the aggregate value of those shares (whether on account of the nominal value of the shares or by way of premium),
  - (iii) the amount to be paid up and the amount (if any) to be unpaid on those shares (whether on account of the nominal value of the shares or by way of premium), and
  
- (d) in the case of a company which is to be limited by guarantee, the insertion into its memorandum of a statement of -
  - (i) the guaranteed amount of each member, and

- (ii) the maximum number of guarantee members which the company may have.
- (3) The special resolution under subsection (2) may also -
  - (a) authorise the alteration of the company's articles, and
  - (b) propose the date on which the conversion shall have effect.
- (4) The company shall deliver to the Registrar -
  - (a) a copy of the special resolution passed under subsection (2),
  - (b) a copy of its memorandum (and articles, as the case may be) as it is proposed to be altered, and
  - (c) a declaration of compliance (conversion).
- (5) The declaration of compliance (conversion) must also include a declaration that -
  - (a) the company satisfies the solvency test, and
  - (b) there are no creditors of the company whose interests will be unfairly prejudiced by the conversion.
- (6) Upon receipt of the documents specified in subsection (4), the Registrar shall give notice of the proposed conversion in such manner and for such

period as he thinks fit.

(7) Subject to subsection (9), not less than 28 days after giving notice under subsection (6), the Registrar shall -

(a) issue a certificate of conversion into company limited by shares or company limited by guarantee (as the case may be), and the certificate shall state the date upon which -

(i) the conversion, and

(ii) the alteration of the memorandum (and articles, as the case may be),

has effect, and

(b) publish the fact that the company has been converted in such manner and for such period as he thinks fit.

(8) If the special resolution under subsection (2) proposes a date on which the conversion shall have effect and that date is later than the date on which the Registrar issues the certificate under subsection (7), then the date stated on the certificate shall be the date proposed in that unanimous resolution.

(9) If the Court is satisfied that the conversion would unfairly prejudice a member or creditor of the company, it may, on the application of that person made at any time before the date on which the conversion has effect, or within such further time as the Court may in any particular case allow, make such order as it



thinks fit in relation to the conversion, including, without prejudice to the generality of the foregoing, an order -

- (a) directing that effect shall not be given to the conversion,
- (b) modifying the conversion in such manner as may be specified in the order,
- (c) directing the company or its directors to reconsider the conversion or any part of it.

(10) An order under subsection (9) may be made on such terms and conditions and subject to such penalty as the Court thinks fit.

**Conversion of limited liability company into mixed liability company.**

56. (1) A company which is limited -

- (a) by shares, or
- (b) by guarantee,

may be converted into a mixed liability company in accordance with the provisions of this section.

(2) The company must pass a special resolution authorising -

- (a) that conversion, and
- (b) the alteration in its memorandum of the statement of -

- (i) the company's name, in order to comply with the requirements of section 21(1)(c) and 24(1), and
  - (ii) the company's type to mixed liability company,
- (c) in the case of a company which is to have a share capital, the insertion into its memorandum of a statement of -
- (i) the number of shares to be taken on conversion by each member,
  - (ii) the aggregate value of those shares (whether on account of the nominal value of the shares or by way of premium), and
  - (iii) the amount to be paid up and the amount (if any) to be unpaid on those shares (whether on account of the nominal value of the shares or by way of premium), and
- (d) in the case of a company which is to have guarantee members, the insertion into its memorandum of a statement of -
- (i) the guaranteed amount of each member,
  - (ii) the maximum number of guarantee members which the company may have.

- (3) The special resolution under subsection (2) may also -
  - (a) authorise the alteration of the company's articles, and
  - (b) propose the date on which the conversion shall have effect.
  
- (4) The company shall deliver to the Registrar -
  - (a) a copy of the special resolution passed under subsection (2),
  - (b) a copy of its memorandum (and articles, as the case may be) as it is proposed to be altered, and
  - (c) a declaration of compliance (conversion).
  
- (5) Upon receipt of the documents specified in subsection (4), the Registrar shall -
  - (a) issue a certificate of conversion into mixed liability company, and the certificate shall state the date upon which -
    - (i) the conversion, and
    - (ii) the alteration of the memorandum (and articles, as the case may be),

has effect, and

- (b) publish the fact that the company has been converted in such manner and for such period as he thinks fit.

(6) If the special resolution under subsection (2) proposes a date on which the conversion shall have effect and that date is later than the date on which the Registrar issues the certificate under subsection (5), then the date stated on the certificate shall be the date proposed in that special resolution.

**Conversion of unlimited liability company into mixed liability company.**

**57.** (1) An unlimited company may be converted into a mixed liability company in accordance with the provisions of this section.

(2) The company must pass a special resolution authorising -

(a) that conversion,

(b) the alteration in its memorandum of the statement of -

(i) the company's name, in order to comply with the requirements of section 21(1)(c) and 24(1), and

(ii) the company's type to mixed liability company,

(c) in the case of a company which is to have a share capital, the insertion into its memorandum of a statement of -

(i) the number of shares to be taken on conversion

by each member,

- (ii) the aggregate value of those shares (whether on account of the nominal value of the shares or by way of premium),
  - (iii) the amount to be paid up and the amount (if any) to be unpaid on those shares (whether on account of the nominal value of the shares or by way of premium), and
- (d) in the case of a company which is to have guarantee members, the insertion into its memorandum of a statement of -
- (i) the guaranteed amount of each member,
  - (ii) the maximum number of guarantee members which the company may have.
- (3) The special resolution under subsection (2) may also -
- (a) authorise the alteration of the company's articles, and
  - (b) propose the date on which the conversion shall have effect.
- (4) The company shall deliver to the Registrar -
- (a) a copy of the special resolution passed under subsection

(2),

- (b) a copy of its memorandum (and articles, as the case may be) as it is proposed to be altered, and
- (c) a declaration of compliance (conversion).

(5) The declaration of compliance (conversion) must also include a declaration that -

- (a) the company satisfies the solvency test, and
- (b) there are no creditors of the company whose interests will be unfairly prejudiced by the conversion.

(6) Upon receipt of the documents specified in subsection (4), the Registrar shall give notice of the proposed conversion in such manner and for such period as he thinks fit.

(7) Subject to subsection (9), not less than 28 days after giving notice under subsection (6), the Registrar shall -

- (a) issue a certificate of conversion into mixed liability company, and the certificate shall state the date upon which -
  - (i) the conversion, and
  - (ii) the alteration of the memorandum (and articles, as the case may be),

has effect, and

- (b) publish the fact that the company has been converted in such manner and for such period as he thinks fit.

(8) If the special resolution under subsection (2) proposes a date on which the conversion shall have effect and that date is later than the date on which the Registrar issues the certificate under subsection (7), then the date stated on the certificate shall be the date proposed in that special resolution.

(9) If the Court is satisfied that the conversion would unfairly prejudice a member or creditor of the company, it may, on the application of that person made at any time before the date on which the conversion has effect, or within such further time as the Court may in any particular case allow, make such order as it thinks fit in relation to the conversion, including, without prejudice to the generality of the foregoing, an order -

- (a) directing that effect shall not be given to the conversion,
- (b) modifying the conversion in such manner as may be specified in the order,
- (c) directing the company or its directors to reconsider the conversion or any part of it.

(10) An order under subsection (9) may be made on such terms and conditions and subject to such penalty as the Court thinks fit.

*General provisions in respect of conversions*

**Declaration of compliance (conversion).**

58. (1) A declaration of compliance (conversion) is a declaration, signed by a director (or, in the case of a transfer under section 50, signed by directors of both incorporated cell companies), that all the requirements of this Law in respect of the conversion, transfer, or subsumption and conversion (as the case may be) of a company have been fulfilled.

(2) The Registrar, when performing his functions under this Law, may rely upon the declaration in all respects and accordingly is not bound to enquire further as to whether, in relation to any conversion or transfer, the provisions of this Law have been complied with.

(3) A director who without reasonable excuse makes a declaration which is false, deceptive or misleading in a material particular is guilty of an offence.

**Conversions or transfers not a default.**

59. A conversion or transfer under this Part shall not be regarded -

- (a) as a breach of contract or confidence or otherwise as a civil wrong,
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities, or
- (c) as giving rise to any remedy, by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting



the termination of any contract or other instrument or of any obligation or relationship.

PART VI  
AMALGAMATIONS

**Amalgamation of bodies corporate.**

60. (1) Two or more bodies corporate may amalgamate and continue as one body corporate which may be one of the bodies corporate or a new body corporate, in accordance with the provisions of this Part.

(2) In this Law, "**body corporate**" means -

- (a) a company, or
- (b) an overseas company.

**Types of bodies corporate which can amalgamate.**

61. (1) In an amalgamation, all of the bodies corporate must be of the same type, which may be either -

- (a) protected cell companies,
- (b) incorporated cell companies,
- (c) incorporated cells of the same incorporated cell company, or
- (d) non-cellular companies,

and in this subsection, references to types of body corporate include references to their equivalent in the law of the territory, district or place outside Guernsey in which they are registered or incorporated.

(2) At least one of the amalgamating bodies corporate must be a company.

**Consent of Commission required in certain cases.**

**62.** (1) Where any of the amalgamating bodies corporate is-

- (a) a supervised company,
- (b) a cell company,
- (c) an incorporated cell, or
- (d) an overseas company,

it cannot amalgamate unless it has the written consent of the Commission, and the amalgamation must be in accordance with the terms and conditions of that consent.

(2) The Commission may, from time to time and in such manner as it thinks fit -

- (a) vary or revoke any term or condition subject to which a consent under subsection (1) was granted, and
- (b) impose any new term or condition in relation to any such consent.

**Amalgamation proposal.**

**63.** (1) Where it is proposed to amalgamate two or more bodies corporate pursuant to the provisions of this Part, an amalgamation proposal shall be prepared which shall set out the terms of the amalgamation, and in particular -

- (a) the name of the amalgamated body corporate,
- (b) where the amalgamated body corporate is to be a company, the type of company it is to be within the meaning of section 2,
- (c) the registered office of the amalgamated body corporate,
- (d) the particulars of the directors of the amalgamated body corporate which would be required to be entered in the register of directors under section 143 if the amalgamated body corporate was a company,
- (e) where the amalgamated body corporate is to have a share capital -
  - (i) the number of shares of the amalgamated body corporate,
  - (ii) the aggregate value of those shares (whether on account of the nominal value of the shares or by way of premium),

- (iii) the amount to be paid up and the amount (if any) to be unpaid on those shares (whether on account of the nominal value of the shares or by way of premium),
- (iv) the rights, privileges, limitations and conditions attached to the shares,

and where the amalgamated body corporate is to have more than one class of share, the amalgamation proposal shall also state the above matters in respect of each class of share,

- (f) where the amalgamated body corporate is to have guarantee members -
  - (i) the guaranteed amount of each member, and
  - (ii) the maximum number of guarantee members which the company may have,
- (g) the manner in which the interests and liabilities of each member of the amalgamating body corporate are to be converted into interests and liabilities of the amalgamated body corporate or, if they are not to be so converted, the consideration a member will receive, and in particular -
  - (i) the manner in which shares of each amalgamating body corporate are to be

converted into shares of the amalgamated body corporate, and

(ii) if shares of an amalgamating body corporate are not to be converted into shares of the amalgamated body corporate, the consideration that the holders of those shares are to receive instead of shares in the amalgamated body corporate,

(h) any payment to be made to a member or director of an amalgamating body corporate, other than payment of a kind described in paragraph (g), and

(i) details of any arrangement necessary to complete the amalgamation.

(2) The amalgamation proposal shall specify the date on which it is intended to become effective.

(3) If shares of one of the amalgamating bodies corporate are held by or on behalf of another of the amalgamating bodies corporate, the amalgamation proposal -

(a) shall provide for the cancellation of those shares without payment or the provision of other consideration when the amalgamation becomes effective, and

(b) shall not provide for the conversion of those shares into shares of the amalgamated body corporate.

**Approval of amalgamation proposal.**

**64.** (1) Where it is proposed to amalgamate two or more bodies corporate pursuant to the provisions of this Part, the directors of each amalgamating body corporate must resolve that -

- (a) in their opinion the amalgamation is in the best interests of the body corporate, and
- (b) they are satisfied on reasonable grounds that the amalgamated body corporate will, immediately after the amalgamation becomes effective, satisfy the solvency test.

(2) The directors who vote in favour of a resolution required by subsection (1) shall sign a certificate stating that, in their opinion, the conditions set out in subsection (1) are satisfied, and the grounds for that opinion.

(3) The directors of each amalgamating body corporate shall give to each member of the body corporate, not less than 28 days before the day on which the amalgamation is proposed to take effect -

- (a) a copy of the amalgamation proposal,
- (b) copies of the certificates given by the directors of each body corporate under subsection (2),
- (c) a summary of the principal provisions of, or a copy of, the memorandum and articles of the amalgamated body corporate,

- (d) where a copy of the memorandum and articles of the amalgamated body corporate has not been sent to each member, a statement that a copy thereof will be supplied to any member who requests it,
- (e) a statement of any material interests of the directors and other officers of the body corporate in the proposal, whether in that capacity or otherwise, and
- (f) such further information and explanation as may be necessary to enable a reasonable member to understand the nature and implications for the body corporate and its members of the proposed amalgamation.

(4) The directors of each amalgamating body corporate shall, not less than 28 days before the day on which the amalgamation is proposed to take effect, give written notice of the proposed amalgamation to every creditor of the body corporate.

(5) The directors of each amalgamating body corporate shall ensure that -

- (a) copies of the amalgamation proposal are available for inspection by any member or creditor of the amalgamating body corporate, or any other person to whom an amalgamating body corporate is under any obligation or liability, at the registered offices of the amalgamating bodies corporate, and at such other

places as may be specified by the directors, during normal business hours, and

(b) a member or creditor of an amalgamating body corporate, or any other person to whom an amalgamating body corporate is under any obligation or liability, is supplied free of charge with a copy of the amalgamation proposal upon request to an amalgamating body corporate.

(6) The amalgamation proposal shall be approved -

(a) by special resolution of the members of each amalgamating body corporate,

(b) if any provision in the amalgamation proposal would, if contained in an alteration to an amalgamating body corporate's memorandum or articles or otherwise proposed in relation to that body corporate, require the approval of any particular class of members, by a special resolution of that class.

(7) A director who in any respect fails to comply with subsection (2), (3), (4) or (5) is guilty of an offence.

(8) In this section "**special resolution**" means, in relation to an overseas company, such resolution of the overseas company or such other action on the part of the overseas company or its members as the Commission shall certify in writing as being equivalent to a special resolution of a company.



**Short form amalgamations for subsidiary companies.**

**65.** (1) A company and any other company which is a wholly-owned subsidiary of it may amalgamate and continue as one company (being the company first referred to) without complying with sections 63 and 64 (but subject in all other respects to the provisions of this Part) if -

- (a) each amalgamating company is a company limited by shares,
- (b) the amalgamation is approved by a resolution of the directors of each amalgamating company, and
- (c) each resolution provides that -
  - (i) the shares of each amalgamating company (including, for the avoidance of doubt, any shares held as treasury shares) other than the amalgamated company will be cancelled without payment or other consideration,
  - (ii) the memorandum and articles of the amalgamated company will be the same as the memorandum and articles of the company first referred to, and
  - (iii) the directors are satisfied on reasonable grounds that the amalgamated company will, immediately after the amalgamation becomes effective, satisfy the solvency test.

(2) Two or more companies, each of which is a wholly-owned subsidiary of the same company, may amalgamate and continue as one company without complying with sections 63 and 64 (but subject in all other respects to the provisions of this Part) if -

- (a) each amalgamating company is a company limited by shares,
- (b) the amalgamation is approved by a resolution of the directors of each amalgamating company, and
- (c) each resolution provides that -
  - (i) the shares (including, for the avoidance of doubt any shares held as treasury shares) of all but one of the amalgamating companies will be cancelled without payment or other consideration,
  - (ii) the memorandum and articles of the amalgamated company will be the same as the memorandum and articles of the amalgamating company whose shares are not cancelled, and
  - (iii) the directors are satisfied on reasonable grounds that the amalgamated company will, immediately after the amalgamation becomes effective, satisfy the solvency test.

(3) In the case of an amalgamation pursuant to the provisions of this section -

(a) the directors of each amalgamating company, not less than 28 days before the day on which the amalgamation is proposed to take effect, shall give written notice of the proposed amalgamation to every creditor of the company,

(b) the resolutions approving the amalgamation, taken together, shall be deemed to constitute an amalgamation proposal which has been approved, and

(c) the directors who vote in favour of a resolution required by subsection (1) or subsection (2) shall sign a certificate stating that, in their opinion, the conditions set out in subsection (1) or (as the case may be) subsection (2) are satisfied, and the grounds for that opinion.

(4) The directors of each amalgamating company shall ensure that-

(a) copies of the resolution required by subsection (1) or subsection (2) are available for inspection by any member or creditor of an amalgamating company, or any other person to whom an amalgamating company is under any obligation or liability, at the registered offices of the amalgamating companies, and at such other places as many be specified by the directors, during normal business hours, and

- (b) a member or creditor of an amalgamating company, or any other person to whom an amalgamating company is under any obligation or liability, is supplied free of charge with a copy of the said resolution upon request to an amalgamating company.

(5) A director who fails to comply with subsection (3)(a), (3)(c) or (4) is guilty of an offence.

**Application for consent of Commission for amalgamation.**

**66.** (1) An application for the Commission's consent for the amalgamation of two or more bodies corporate pursuant to the provisions of this Part shall be made in accordance with this section.

(2) The application shall be in such form as the Commission may require and shall include or be accompanied by -

- (a) either -
  - (i) the amalgamation proposal, which shall comply with the provisions of section 63 and which shall have been approved in accordance with the provisions of section 64, or
  - (ii) in the case of a short form amalgamation for subsidiary companies under section 65, the resolutions approving the amalgamation, which shall comply with the provisions of section 65(1) or (as the case may be) section 65(2),

- (b) any certificates required under section 64(2) or 65(3)(c),
- (c) a declaration of compliance (amalgamation),
- (d) a copy of the memorandum and articles of the amalgamated body corporate,
- (e) the name of the amalgamated body corporate or -
  - (i) if the amalgamated body corporate is not to be one of the amalgamating bodies corporate but is to be a new body corporate, or
  - (ii) if the amalgamation proposal provides for a change of the name of the amalgamated body corporate,the proposed name of the body corporate,
- (f) where the proportion of the claims of the creditors of the amalgamated body corporate in relation to the value of the assets of the amalgamated body corporate is greater than the proportion of the claims of creditors of any amalgamating body corporate in relation to the value of the assets of that amalgamating body corporate, a certificate signed by the directors of the amalgamating body corporate and by the directors or proposed directors of the amalgamated body corporate stating that no creditor will be prejudiced by that fact,

- (g) a document signed by each person named in the amalgamation proposal as a director of the amalgamated body corporate containing a statement of his consent to be a director thereof,
- (h) such other information and documents, verified in such manner as the Commission may require (whether in relation to any particular application or otherwise), including, without limitation, where any of the amalgamating bodies corporate is an overseas company, evidence that the amalgamation is lawful under the law of the district, territory or place where the overseas company is incorporated or registered, and
- (i) the fee prescribed by the Commission.

**Determination of applications to Commission.**

**67.** (1) In deciding whether to grant any application made under section 66 and, if so, subject to what, if any, terms or conditions, the Commission must have regard to the protection of the public interest, including the need to -

- (a) protect the public, in Guernsey and elsewhere, against the effects of dishonesty, incompetence or malpractice,
- (b) counter financial crime and the financing of terrorism in Guernsey and elsewhere,
- (c) protect and enhance the reputation of the Bailiwick as a financial centre,

and the Commission shall consider those matters, both in determining the extent to which any person would in its opinion be a fit and proper person to be concerned in the business of the amalgamated body corporate, and also more generally.

- (2) If the Commission -
  - (a) refuses an application for consent,
  - (b) imposes terms or conditions upon that consent, or
  - (c) imposes new terms and conditions or varies or revokes terms and conditions in relation to that consent,

it shall give the applicant a written notice of its decision and the reasons for it and of that person's right under section 68 to appeal.

- (3) Nothing in subsection (2) requires the Commission to disclose information the disclosure of which would be prejudicial to -
  - (a) a criminal or regulatory investigation, whether in Guernsey or elsewhere,
  - (b) co-operation or relations with any investigatory, regulatory or prosecuting authority, or
  - (c) a third party,

but, if the Commission decides pursuant to this subsection to withhold information which it considers relevant to the decision taken, the Commission must so inform the

applicant by written notice and, in the event of an appeal under section 68, subsection (2) of that section shall apply.

**Appeals from determinations of Commission.**

- 68.** (1) An applicant may appeal to the Court against -
- (a) the refusal of an application for consent,
  - (b) the imposition of terms and conditions upon that consent,
  - (c) the imposition of new terms and conditions or the variation or revocation of terms and conditions in relation to that consent, or
  - (d) the withholding of information pursuant to section 67(3),

by a summons served on the Chairman of the Commission.

The summons must state the grounds and material facts on which the appellant relies and must be served within 28 days after the date of the written notice referred to in section 67.

(2) On an appeal under subsection (1)(d), the Court may examine any information the disclosure of which the Commission considers would be prejudicial as set out in section 67(3); but that information shall not be disclosed to the appellant or any person representing him unless the Court determines that the prejudice occasioned to the appellant by its non-disclosure would be disproportionate to any legitimate objective of preventing prejudice as set out in that section.



- (3) The grounds of an appeal under this section are that -
- (a) the decision was ultra vires or there was some other error of law,
  - (b) the decision was unreasonable,
  - (c) the decision was made in bad faith,
  - (d) there was a lack of proportionality, or
  - (e) there was a material error as to the facts or as to the procedure.

(4) The Commission may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the application the Court may -

- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just.

The provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules,

2007<sup>g</sup>.

- (5) On an appeal under this section the Court may -
- (a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court thinks fit, or
  - (b) confirm the decision, in whole or in part.

(6) On an appeal under this section against a decision of the Commission the Court may, on the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

(7) An appeal from a decision of the Court under this section lies to the Court of Appeal on a question of law.

(8) In this section "**the Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of an appeal under this section the Court may appoint one or more assessors to assist it in the determination of any matter before it.

**Application to Registrar for amalgamation.**

**69.** (1) When an amalgamation proposal has been approved in accordance with the provisions of section 64 or, where section 65 applies, when the provisions of that section have been complied with, an application for the

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<sup>g</sup> Order of the Royal Court No. IV of 2007.

amalgamation shall be made to the Registrar by the directors of each amalgamating body corporate.

(2) The application shall be in such form as may be required by the Registrar and shall include or be accompanied by -

- (a) in cases where the consent of the Commission is required by section 62, a copy of that consent,
- (b) in cases where the amalgamated body corporate will not be one of the amalgamating bodies corporate but a new company, the particulars required under section 17(2) in respect of the incorporation of a company,
- (c) such other information or documents as the Registrar may require, including anything that could be required under section 17 in respect of an application for incorporation of a company, and
- (d) a declaration of compliance (amalgamation).

(3) Upon receipt of the documents specified in subsection (2), the Registrar shall give notice of the proposed amalgamation in such manner and for such period as he thinks fit, and such notice shall include a statement that information concerning the amalgamation can be obtained from the amalgamating bodies corporate.

(4) Where the amalgamated body corporate will be a company, it must conform with the requirements of Part III, but for the avoidance of doubt, it shall not be required to make an application to change its name under section 25.

**Effect of amalgamation.**

**70.** (1) If the amalgamated body corporate is the same as one of the amalgamating bodies corporate, and whether or not the amalgamated body corporate is a company -

(a) the Registrar shall issue a certificate of amalgamation stating -

(i) the registration numbers (if any) and names of the amalgamated body corporate and all amalgamating bodies corporate, and

(ii) the date upon which the certificate has effect, and

(b) that certificate shall be conclusive evidence that the bodies corporate are duly amalgamated.

(2) If the amalgamated body corporate is not one of the amalgamating bodies corporate but a new body corporate -

(a) if the new body corporate is a company -

(i) the Registrar shall register the memorandum (and articles as the case may be) in the Register of Companies,

(ii) the company is incorporated on the coming into effect of the certificate of amalgamation,

- (iii) the Registrar shall issue a certificate of incorporation in respect of the company which shall be conclusive evidence that the company is duly incorporated, and
  - (iv) the Registrar shall allocate a registration number to the company,
- (b) whether or not the new body corporate is a company -
- (i) the Registrar shall issue a certificate of amalgamation stating -
    - (A) the registration numbers (if any) and names of the amalgamated body corporate and all amalgamating bodies corporate, and
    - (B) the date upon which the certificate has effect, and
  - (ii) that certificate shall be conclusive evidence that the bodies corporate are duly amalgamated.

(3) In the case of those amalgamating bodies corporate which are companies, the Registrar shall delete the particulars of those companies (other than the amalgamated company) from the Register of Companies and enter a notice in the Register of Companies stating that the names of those companies have, pursuant to the provisions of this section, been so deleted for the purposes of the amalgamation of

those companies with the amalgamated company (the name of which shall be specified in the notice); and thereupon those first-mentioned companies shall be deemed to have been removed from the Register of Companies.

(4) If the amalgamation proposal proposed a date on which the amalgamation was to have effect and that date is later than the date the certificate of amalgamation is issued, then the date stated on the certificate as the date of amalgamation shall be the proposed date.

(5) The Registrar must not issue the certificate of amalgamation until at least 28 days have passed since the day the application for amalgamation was made.

(6) On the date stated in the certificate of amalgamation -

- (a) the amalgamation shall be effective,
- (b) the name of the amalgamated body corporate shall be the name specified in the amalgamation proposal, and
- (c) any provisions of the amalgamation proposal which provide for the conversion of shares or rights of members in the amalgamating bodies corporate shall have effect according to their tenor.

(7) The Registrar shall publish the fact that the bodies corporate have amalgamated in such manner and for such period as he thinks fit.

(8) This section is subject to any order the Court may make under section 73.

**Amalgamation not to prejudice continuity of rights and obligations of amalgamating bodies corporate.**

71. Upon amalgamation -

- (a) all property and rights to which the amalgamating bodies corporate were entitled immediately before the amalgamation become the property and rights of the amalgamated body corporate,
- (b) the amalgamated body corporate is subject to all criminal and civil penalties, and all contracts, debts and other obligations, to which the amalgamating bodies corporate were subject immediately before the amalgamation,
- (c) all actions and other legal proceedings which could have been instituted or continued by or against the amalgamating bodies corporate may be instituted or continued by or against the amalgamated body corporate, and
- (d) a conviction, ruling, order or judgment in favour of or against the amalgamating bodies corporate may be enforced by or against the amalgamated body corporate.

**Amalgamation not a default.**

72. An amalgamation under this Part shall not be regarded -

- (a) as a breach of contract or confidence or otherwise as a

civil wrong,

- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities, or
- (c) as giving rise to any remedy, by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument or of any obligation or relationship.

**Power of court to modify amalgamation proposal.**

73. (1) If the Court is satisfied that the implementation of an amalgamation proposal would unfairly prejudice a member or creditor of an amalgamating body corporate or any other person to whom an amalgamating body corporate is under any obligation or liability, it may, on the application of that person made at any time before the date on which the amalgamation becomes effective, or within such further time as the Court may in any particular case allow, make such order as it thinks fit in relation to the proposal, including, without prejudice to the generality of the foregoing, an order -

- (a) directing that effect shall not be given to the proposal,
- (b) modifying the proposal in such manner as may be specified in the order,
- (c) directing the body corporate or its directors to reconsider the proposal or any part of it.



(2) An order under subsection (1) may be made on such terms and conditions and subject to such penalty as the Court thinks fit.

**Declaration of compliance (amalgamation).**

74. (1) A declaration of compliance (amalgamation) is a declaration, signed by a director, that all the requirements of this Law in respect of the amalgamation of a body corporate (other than section 69 in respect of a declaration made to the Commission under section 66) have been fulfilled.

(2) The Registrar, when performing his functions under this Law, may rely upon the declaration in all respects and accordingly is not bound to enquire further as to whether, in relation to any application for amalgamation of a body corporate, the provisions of this Law have been complied with.

(3) A person who without reasonable excuse makes a declaration which is false, deceptive or misleading in a material particular is guilty of an offence.

PART VII  
MIGRATIONS

*Registration of overseas company as a Guernsey company*

**Overseas company may be registered as a Guernsey company.**

75. (1) An overseas company may apply to the Registrar to be registered as a Guernsey company in accordance with the provisions of this Part.

(2) In this Part "**registered as a Guernsey company**" means -

- (a) ceasing to be registered as a company in the district, territory or place in which it was incorporated or where it is now registered, and
- (b) becoming registered as a company in the Register of Companies.

**Registration must be authorised by foreign law.**

76. An overseas company cannot be registered as a Guernsey company unless -

- (a) the company is able under the law of the district, territory or place in which it is incorporated to be registered as a Guernsey company,
- (b) the company has complied with the requirements of that law in relation to its registration as a Guernsey company, and
- (c) where that law does not require the company's members, or a specified proportion of them, to consent to its registration as a Guernsey company, the transfer has been consented to by such resolution of the company or such other action on the part of the company or its members as the Commission shall certify in writing as being equivalent to a special resolution.

**Company cannot be in liquidation, etc.**

77. An overseas company cannot be registered as a Guernsey company if-

- (a) the company is being wound up, is in liquidation or has been declared insolvent,
- (b) a receiver or administrator has been appointed, whether by a court or not, in relation to any property of the company,
- (c) the company has entered into a compromise or arrangement with a creditor (other than a compromise or arrangement approved by the Commission), and the compromise or arrangement is in force,
- (d) an application has been made to a court, whether in Guernsey or elsewhere -
  - (i) to put the company into liquidation, to wind it up or to have it declared insolvent,
  - (ii) for the approval of a compromise or arrangement between the company and a creditor (other than a compromise or arrangement approved by the Commission), or
  - (iii) for the appointment of a receiver or administrator in relation to any property of the company,

and (in each case) the application has not been finally disposed of, or

- (e) the company is empowered by its memorandum or articles or other equivalent constitutive documents to issue bearer shares.

**Company must satisfy solvency test.**

78. An overseas company cannot be registered as a Guernsey company unless it would, immediately after registration, satisfy the solvency test.

**Supervised companies cannot be registered without consent of the Commission.**

79. (1) An overseas company which -

- (a) intends to become a supervised company in Guernsey,  
or
- (b) is the equivalent of a supervised company in the district, territory or place outside Guernsey from which it is migrating,

cannot be registered as a Guernsey company unless it has the written consent of the Commission, and its registration must be in accordance with the terms and conditions of that consent.

(2) The Commission may, from time to time and in such manner as it thinks fit -

- (a) vary or revoke any term or condition subject to which a consent under subsection (1) was granted, and

- (b) impose any new term or condition in relation to any such consent.

**Application for consent of Commission.**

**80.** (1) An application for the consent of the Commission for an overseas company to be registered in Guernsey shall be made in accordance with this section.

(2) The application shall be in such form as the Commission may require and shall include or be accompanied by -

- (a) the migration details,
- (b) such other information and documents, verified in such manner as the Commission may require, and
- (c) such fee as may be prescribed by the Commission.

**Determination of applications to Commission.**

**81.** (1) In deciding whether to grant any application made under section 80 and, if so, subject to what, if any, terms or conditions, the Commission must have regard to the protection of the public interest, including the need to -

- (a) protect the public, in Guernsey and elsewhere, against the effects of dishonesty, incompetence or malpractice,
- (b) counter financial crime and the financing of terrorism in Guernsey and elsewhere,

- (c) protect and enhance the reputation of the Bailiwick as a financial centre,

and the Commission shall consider those matters, both in determining the extent to which any person would in its opinion be a fit and proper person to be concerned in the business of the company, and also more generally.

(2) If the Commission -

- (a) refuses an application for consent,
- (b) imposes terms or conditions upon that consent, or
- (c) imposes new terms and conditions or varies or revokes terms and conditions in relation to that consent,

it shall give the applicant a written notice of its decision and the reasons for it and of that person's right under section 82 to appeal.

(3) Nothing in subsection (2) requires the Commission to disclose information the disclosure of which would be prejudicial to -

- (a) a criminal or regulatory investigation, whether in Guernsey or elsewhere,
- (b) co-operation or relations with any investigatory, regulatory or prosecuting authority, or
- (c) a third party,

but, if the Commission decides pursuant to this subsection to withhold information which it considers relevant to the decision taken, the Commission must so inform the applicant by written notice and, in the event of an appeal under section 82, subsection (2) of that section shall apply.

**Appeals from determinations of Commission.**

- 82.** (1) An applicant may appeal to the Court against -
- (a) the refusal of an application for consent,
  - (b) the imposition of terms or conditions upon that consent,
  - (c) the imposition of new terms and conditions or the variation or revocation of terms and conditions in relation to that consent, or
  - (d) the withholding of information pursuant to section 81(3),

by a summons served on the Chairman of the Commission.

The summons must state the grounds and material facts on which the appellant relies and must be served within 28 days after the date of the written notice referred to in section 81.

(2) On an appeal under subsection (1)(d), the Court may examine any information the disclosure of which the Commission considers would be prejudicial as set out in section 81(3); but that information shall not be disclosed to the appellant or any person representing him unless the Court determines that the

prejudice occasioned to the appellant by its non-disclosure would be disproportionate to any legitimate objective of preventing prejudice as set out in that section.

- (3) The grounds of an appeal under this section are that -
- (a) the decision was ultra vires or there was some other error of law,
  - (b) the decision was unreasonable,
  - (c) the decision was made in bad faith,
  - (d) there was a lack of proportionality, or
  - (e) there was a material error as to the facts or as to the procedure.

(4) The Commission may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the application the Court may -

- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just.

The provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules,



2007<sup>h</sup>.

- (5) On an appeal under this section the Court may -
- (a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court thinks fit, or
  - (b) confirm the decision, in whole or in part.

(6) On an appeal under this section against a decision of the Commission the Court may, on the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

(7) An appeal from a decision of the Court under this section lies to the Court of Appeal on a question of law.

(8) In this section "**the Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of an appeal under this section the Court may appoint one or more assessors to assist it in the determination of any matter before it.

**Application for registration as a Guernsey company.**

**83.** (1) An application for registration as a Guernsey company shall be made to the Registrar.

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<sup>h</sup> Order of the Royal Court No. IV of 2007.

(2) The application shall be in a form prescribed by the Registrar and shall include or be accompanied by -

- (a) the migration details,
- (b) a copy of any consent required under section 79,
- (c) such other information and documents, verified in such manner, as the Registrar may require, and
- (d) a declaration of compliance (migration).

(3) The application may propose the date on which registration as a Guernsey company shall take effect, provided that that date is not later than 3 months after the date of the application.

(4) If the company wishes the standard articles to apply in accordance with section 16, its application must state this.

(5) An application for registration as a Guernsey company may only be made by a corporate services provider.

**Migration details.**

**84.** (1) In this Part "**migration details**" means -

- (a) a copy of the company's certificate of incorporation in the district, territory or place in which it is incorporated or registered,

- (b) a copy of the memorandum and articles which are to be binding on the company immediately after its registration in Guernsey, complying with the requirements of this Law as to memoranda and articles, together with, if different, a copy of the company's current memorandum and articles,
- (c) a statement of the company's current directors,
- (d) a statement of the company's directors as proposed immediately after registration as a Guernsey company,
- (e) a statement of the address of the company's registered office -
  - (i) in the district, territory or place in which it is incorporated or registered, and
  - (ii) as proposed, in Guernsey,
- (f) in the case of a company with a share capital a statement of share capital,
- (g) in the case of a company with guarantee members the aggregate guaranteed amount of all its members,
- (h) in the case of a cell company a copy of any consent required under section 10,

- (i) evidence acceptable to the Registrar or Commission (as the case may be) that the company is not prohibited from being registered in Guernsey by section 76, 77 or 78, and
  - (j) evidence satisfactory to the Registrar or Commission (as the case may be) that, on the date of registration, the company will cease to be incorporated and registered under the law of any district, territory or place outside Guernsey.
- (2) The statement of the company's current directors shall comprise -
- (a) the particulars required by section 143 to be entered in the register of directors, and
  - (b) where the address of a director required by section 143(4)(b) is a service address, his usual residential address.
- (3) The statement of the company's directors as proposed immediately after registration as a Guernsey company shall comprise -
- (a) the consents and declarations required under section 138,
  - (b) the particulars required by section 143 to be entered in the register of directors, and

- (c) where the address of a director required by section 143(4)(b) is a service address, his usual residential address.
- (4) The statement of share capital shall comprise a statement of -
- (a) the number of issued shares,
  - (b) the aggregate value of those shares (whether on account of the nominal value of the shares or by way of premium),
  - (c) the number of shares held as treasury shares,
  - (d) the amount paid up and the amount (if any) unpaid on those shares (whether on account of the nominal value of the shares or by way of premium),

and where the company has more than one class of share, the statement shall also state the above matters in respect of each class of share.

(5) Where shares have been issued otherwise than for cash, the amounts referred to in subsection (4)(b) shall distinguish between cash and consideration otherwise than cash.

(6) The memorandum and articles which are to be binding on the company immediately after its registration in Guernsey may be different from its current memorandum and articles if the amendments have been consented to by such resolution of the company or such other action on the part of the company or its

members as the Commission shall certify in writing as being equivalent to a special resolution.

**Effect of registration.**

**85.** (1) Upon receipt of the application for registration as a Guernsey company -

- (a) the Registrar shall register the memorandum and articles (as the case may be) in the Register of Companies,
- (b) subject to the provisions of this Part, the company shall be treated in all respects as a company within the meaning of this Law,
- (c) the Registrar shall issue a certificate of registration in respect of the company which shall be conclusive evidence that the company is duly registered, and
- (d) the Registrar shall allocate a registration number to the company.

(2) If the application proposed a date on which registration as a Guernsey company was to have effect and that date is later than the date on which the Registrar issues the certificate of registration, then the company shall be registered as a Guernsey company on (and the date stated on the certificate shall be) the proposed date.

**Cancellation of registration.**

86. (1) Where an overseas company is registered as a Guernsey company under this Part, the company shall, as soon as possible, file with the Registrar any certificate or other document issued under the law of the district, territory or place in which the company has ceased to be incorporated and registered evidencing the fact that the company has ceased to be incorporated and registered under the law thereof.

(2) If the Court is satisfied that -

- (a) an overseas company has been registered as a Guernsey company pursuant to the provisions of this Part, and
- (b) the company continues to be incorporated or registered under the law of any district, territory or place outside Guernsey,

the Court may, in its absolute discretion on the application of -

- (i) the company or any of its members, directors or creditors,
- (ii) the Commission, or
- (iii) the Registrar,

make such order as it thinks fit for the removal of the company's name from the Register of Companies.

(3) An order under subsection (2) may be made subject to such terms and conditions and subject to such penalty as the Court thinks fit.

(4) On the making of an order under subsection (2) the company's registration in Guernsey shall (unless the Court orders otherwise) be void from the outset.

*Transfer of registration of companies to overseas*

**Companies may transfer registration.**

**87.** (1) A company may apply to the Registrar to be removed from the Register of Companies in accordance with the provisions of this Part.

(2) In this Part "**removed from the Register of Companies**" means removed from the Register of Companies for the purposes of becoming registered as a company under the law of a district, territory or place outside Guernsey.

**Companies cannot transfer registration without a special resolution.**

**88.** A company cannot be removed from the Register of Companies unless it has passed a special resolution that it be so removed.

**Companies cannot transfer registration if in liquidation, etc.**

**89.** A company cannot be removed from the Register of Companies if -

(a) .....<sup>i</sup>

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<sup>i</sup> Paragraph (a) repealed by the Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2008.



- (b) a Commissioner or Committee of Creditors has been appointed under that Law to supervise or secure the company's estate,
- (c) the company's affairs have been declared to be in a state of *désastre* at a meeting of arresting creditors held before a Commissioner,
- (d) an interim vesting order has been made against the company in respect of any of its real property in the Bailiwick,
- (e) otherwise than for the sole purpose of solvent amalgamation, solvent reconstruction or solvent winding up -
  - (i) a liquidator of the company (provisional or otherwise) has been appointed to act, or
  - (ii) the company has passed a special resolution requiring that it be voluntarily wound up,
- (f) possession or control has been taken of any of the company's property or affairs by or on behalf of creditors or the holders of debentures issued by it,
- (g) an application has been made to the Court under Part XXIII for the company's compulsory winding up,

- (h) in the case of a protected cell company, a receivership order has been applied for or is in force in respect of any of its cells, or
- (i) an administration order has been applied for or is in force in respect of the company or, in the case of a protected cell company, in respect of any of its cells.

**Companies cannot transfer registration unless they satisfy solvency test.**

90. A company cannot be removed from the Register of Companies unless it would immediately before removal satisfy the solvency test.

**Transfer of registration of cell companies.**

91. (1) An incorporated cell cannot be removed from the Register of Companies unless its incorporated cell company is also removed.

(2) An incorporated cell company cannot be removed from the Register unless all of its incorporated cells are also removed.

**Companies cannot transfer registration without giving notice to creditors.**

92. A company cannot be removed from the Register of Companies unless, before it applies to the Registrar under section 97 for removal, it gives written notice to all its creditors stating that it intends to so apply.

**Supervised companies cannot transfer registration without consent of the Commission.**

93. (1) A supervised company cannot be removed from the register unless it has the written consent of the Commission, and its removal must be in accordance with the terms and conditions of that consent.

(2) The Commission may, from time to time and in such manner as it thinks fit -

- (a) vary or revoke any term or condition subject to which a consent under subsection (1) was granted, and
- (b) impose any new term or condition in relation to any such consent.

**Application for consent of Commission.**

**94.** (1) An application for the consent of the Commission for a supervised company to be removed from the Register of Companies shall be in accordance with this section.

(2) The application shall be in such form as the Commission may require and shall include or be accompanied by -

- (a) evidence acceptable to the Commission that the removal of the company from the Register is not prohibited by sections 88, 89, 90, 91 or 92,
- (b) confirmation from Her Majesty's Procureur and the Administrator of Income Tax that they have no objection to the removal of the company from the Register,
- (c) evidence acceptable to the Commission that the company is able to become incorporated under the law of the district, territory or place in question,

- (d) such other information and documents, verified in such manner, as the Commission may require (whether in relation to any particular application or otherwise), and
- (e) such fee as may be prescribed by the Commission.

**Determination of applications to Commission.**

95. (1) In deciding whether to grant any application made under section 94 and, if so, subject to what, if any, terms or conditions, the Commission must have regard to the protection of the public interest, including the need to -

- (a) protect the public, in Guernsey and elsewhere, against the effects of dishonesty, incompetence or malpractice,
- (b) counter financial crime and the financing of terrorism in Guernsey and elsewhere,
- (c) protect and enhance the reputation of the Bailiwick as a financial centre,

and the Commission shall consider those matters, both in determining the extent to which any person would in its opinion be a fit and proper person to be concerned in the business of the company, and also more generally.

(2) If the Commission -

- (a) refuses an application for consent,
- (b) imposes terms or conditions upon that consent, or

- (c) imposes new terms and conditions or varies or revokes terms and conditions in relation to that consent,

it shall give the applicant a written notice of its decision and the reasons for it and of that person's right under section 96 to appeal.

(3) Nothing in subsection (2) requires the Commission to disclose information the disclosure of which would be prejudicial to -

- (a) a criminal or regulatory investigation, whether in Guernsey or elsewhere,
- (b) co-operation or relations with any investigatory, regulatory or prosecuting authority, or
- (c) a third party,

but, if the Commission decides pursuant to this subsection to withhold information which it considers relevant to the decision taken, the Commission must so inform the applicant by written notice and, in the event of an appeal under section 96, subsection (2) of that section shall apply.

**Appeals from determinations of Commission.**

**96.** (1) An applicant may appeal to the Court against -

- (a) the refusal of an application for consent,
- (b) the imposition of terms or conditions upon that consent,

- (c) the imposition of new terms and conditions or the variation or revocation of terms and conditions in relation to that consent, or
- (d) the withholding of information pursuant to section 95(3),

by a summons served on the Chairman of the Commission.

The summons must state the grounds and material facts on which the appellant relies and must be served within 28 days after the date of the written notice referred to in section 95.

(2) On an appeal under subsection (1)(d), the Court may examine any information the disclosure of which the Commission considers would be prejudicial as set out in section 95(3); but that information shall not be disclosed to the appellant or any person representing him unless the Court determines that the prejudice occasioned to the appellant by its non-disclosure would be disproportionate to any legitimate objective of preventing prejudice as set out in that section.

(3) The grounds of an appeal under this section are that -

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or

- (e) there was a material error as to the facts or as to the procedure.

(4) The Commission may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the application the Court may -

- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just.

The provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007<sup>j</sup>.

- (5) On an appeal under this section the Court may -
  - (a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court thinks fit, or
  - (b) confirm the decision, in whole or in part.

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<sup>j</sup> Order of the Royal Court No. IV of 2007.

(6) On an appeal under this section against a decision of the Commission the Court may, on the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

(7) An appeal from a decision of the Court under this section lies to the Court of Appeal on a question of law.

(8) In this section "**the Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of an appeal under this section the Court may appoint one or more assessors to assist it in the determination of any matter before it.

**Application for transfer of registration.**

**97.** (1) An application for removal from the Register of Companies shall be made to the Registrar.

(2) The application shall be in a form prescribed by the Registrar and shall include or be accompanied by -

- (a) a copy of any consent required under section 93,
- (b) a copy of the confirmation mentioned in section 94(2)(b),
- (c) evidence acceptable to the Registrar that the removal of the company from the Register is not prohibited by sections 88, 89, 90, 91 or 92,



- (d) evidence acceptable to the Registrar that on the date of the removal of the company's name from the Register the company will be incorporated under the law of the district, territory or place in question,
- (e) such other information and documents, verified in such manner, as the Registrar may require, and
- (f) a declaration of compliance (migration).

(3) Upon receipt of the documents specified in subsection (2), the Registrar shall give notice of the proposed transfer in such manner and for such period as he thinks fit.

(4) An application for removal from the Register may only be made by a corporate services provider.

**Effect of transfer.**

**98.** Not less than 28 days after the day on which the Registrar gave notice under section 97(3) -

- (a) the statement in the company's memorandum that its registered office is situated in Guernsey shall be deleted,
- (b) the company's name shall be removed from the Register,
- (c) the company shall cease to be a company within the meaning of this Law,

- (d) the Registrar shall file in the Register a notice stating that the company's name has, pursuant to the provisions of this section, been removed from the Register of Companies for the purpose of the company becoming incorporated under the law of the district, territory or place specified in the notice, and
- (e) the Registrar shall publish the fact that the company has been removed from the Register of Companies in such manner and for such period as he thinks fit.

**Cancellation of transfer.**

99. (1) Where a company is removed from the Register of Companies under this Part, the company shall, as soon as possible, file with the Registrar any certificate or other document issued under the law of the district, territory or place in which the company has become incorporated evidencing the fact that the company has become incorporated under the law thereof.

(2) If the Court is satisfied that -

- (a) a company's name has been removed from the Register pursuant to the provisions of this Part, and
- (b) the company has not become incorporated under the law of any district, territory or place outside Guernsey,

the Court may, in its absolute discretion on the application of -

- (i) the company or any of its members, directors or creditors,
- (ii) the Commission, or
- (iii) the Registrar,

make such order as it thinks fit for the restoration of the company's name to the Register.

(3) An order under subsection (2) may be made subject to such terms and conditions and subject to such penalty as the Court thinks fit.

(4) On the making of an order under subsection (2) the removal of the company's name from the Register shall (unless the Court otherwise orders) be void from the outset.

**Power of Court to make orders as to transfer of registration.**

**100.** (1) If the Court is satisfied that the removal of a company from the Register of Companies under section 98 would unfairly prejudice a member or creditor of the company or any other person to whom the company is under any obligation or liability, the Court may, on the application of that person made at any time before the date on which the removal of the company takes place, or within such further time as the Court may in any particular case allow, make such order as it thinks fit in relation to the removal, including, without prejudice to the generality of the foregoing, an order -

- (a) directing that the removal of the company shall not take place, or shall only take place subject to such terms and conditions as the Court thinks fit,

- (b) modifying the proposal for the removal of the company in such manner as may be specified in the order,
- (c) directing the company or its directors to reconsider the proposal for the removal of the company or any part of the proposal.

(2) An order under subsection (1) may be made on such terms and conditions and subject to such penalty as the Court thinks fit.

*General*

**Declaration of compliance (migration).**

**101.** (1) A declaration of compliance (migration) is a declaration, signed by a director, that all the requirements of this Part in respect of registration as a Guernsey company, or the removal of a company from the Register of Companies (as the case may be), have been fulfilled.

(2) The Registrar, when performing his functions under this Part, may rely upon a declaration of compliance in all respects and accordingly is not bound to enquire further as to whether, in relation to an application for registration as a Guernsey company, or an application for the removal of a company from the Register of Companies (as the case may be), the provisions of this Part have been complied with.

(3) A person who without reasonable excuse makes a declaration of compliance under this Part which is false, deceptive or misleading in a material particular is guilty of an offence.

**Documents in a language other than English.**

**102.** Where a document provided to the Registrar or Commission under this Part is not in the English language, a translation of it into the English language must also be provided.

**Registration or transfer not to prejudice continuity of company's existence.**

**103.** (1) Registration as a Guernsey company or removal from the Register of Companies does not -

- (a) create a new legal person,
- (b) notwithstanding the provisions of section 1 (company continues until removed from Register), prejudice or affect the identity or continuity of the legal person constituted by the company.

(2) Upon registration as a Guernsey company or removal from the Register of Companies -

- (a) all property and rights to which the company was entitled immediately before that registration or removal remain its property and rights,
- (b) the company remains subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which it was subject immediately before that registration or removal,
- (c) all actions and other legal proceedings which immediately before that registration or removal could

have been instituted or continued by or against the company may be instituted or continued by or against it after that registration or removal, and

- (d) a conviction, ruling, order or judgment in favour of or against the company before that registration or removal may be enforced by or against it after that registration or removal.

**Terminology used in other jurisdictions.**

**104.** References in this Part to companies, certificates of incorporation, directors, liquidations, members or any other matter concerning a company include references to their equivalents in the law of the territory, district or place outside Guernsey from which or to which a company is migrating.

PART VIII

ARRANGEMENTS AND RECONSTRUCTIONS

**Application of this Part.**

**105.** (1) The provisions of this Part apply where a compromise or arrangement is proposed between a company and -

- (a) its creditors, or any class of them, or
- (b) its members, or any class of them.

(2) In this Part, "**arrangement**" includes a reorganisation of the company's share capital by the consolidation of shares of different classes, or by the division of shares into shares of different classes, or by both of those methods.

**Relationship between this Part and Parts IV to VII.**

**106.** (1) Where a proposed compromise or arrangement would amount to -

- (a) an alteration of a company's memorandum or articles under Part IV,
- (b) a conversion or transfer under Part V,
- (c) an amalgamation under Part VI, or
- (d) a migration under Part VII,

(in this section referred to as the "**administrative procedure**"), the Court may, if it thinks fit, allow the compromise or arrangement to be effected in accordance with the provisions of this Part rather than in accordance with the provisions of those Parts.

(2) Where the Court has failed to -

- (a) order a meeting following an application under section 107, or
- (b) sanction a compromise or arrangement following an application under section 110,

the company may not seek to effect that compromise or arrangement, or a compromise or arrangement which is substantially the same as that compromise or arrangement, by way of an administrative procedure without the leave of the Court.

(3) Where an administrative procedure has commenced but has not yet been completed, the Court may, on an application under section 107 in respect of a compromise or arrangement which would have the same or substantially the same effect as the administrative procedure, make such order in respect of the administrative procedure as it thinks fit.

**Court order for holding of meeting.**

**107.** (1) The Court may, on an application under this section, order a meeting of the creditors or class of creditors, or of the members or class of members (as the case may be), to be summoned in such manner as the Court directs.

- (2) An application under this section may be made by -
- (a) the company,
  - (b) any creditor or member of the company,
  - (c) if the company is being wound up, the liquidator,
  - (d) if the company has an administration order in force, the administrator, or
  - (e) if a cell of a protected cell company has a receivership order in force, the receiver.

**Statement to be circulated or made available.**

**108.** (1) Where a meeting is summoned under section 107 -



- (a) every notice summoning the meeting that is sent to a creditor or member must be accompanied by a statement complying with this section, and
  - (b) every notice summoning the meeting that is given by advertisement must either -
    - (i) include such a statement, or
    - (ii) state where and how creditors or members entitled to attend the meeting may obtain copies of such a statement.
- (2) The statement must -
- (a) explain the effect of the compromise or arrangement, and
  - (b) in particular, state -
    - (i) any material interests of the directors of the company (whether as directors, members, creditors or otherwise), and
    - (ii) the effect on those interests of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons.
- (3) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement must give the like explanation as

respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(4) Where a notice given by advertisement states that copies of an explanatory statement can be obtained by creditors or members entitled to attend the meeting, every such creditor or member is entitled, on making application in the manner indicated by the notice, to be provided by the company with a copy of the statement free of charge.

(5) Subject to subsection (7), a company which fails to comply with this section is guilty of an offence.

(6) For the purposes of subsection (5) the trustee of a deed for securing the issue of debentures of the company is treated as an officer of the company.

(7) A person is not guilty of an offence under this section if he shows that the default was due to the refusal of a director or trustee for debenture holders to supply the necessary particulars of his interests.

**Duty of directors and trustees to provide information.**

**109.** (1) It is the duty of -

- (a) any director of a company, and
- (b) any trustee for its debenture holders,

to give notice to the company of such matters relating to himself as may be necessary for the purposes of section 108.

(2) A person who fails to comply with the provisions of this section is guilty of an offence.

**Court sanction for compromise or arrangement.**

**110.** (1) If a majority in number representing 75% in value of the members or class of members (excluding any shares held as treasury shares), or creditors or class of creditors (as the case may be), present and voting either in person or by proxy at the meeting summoned under section 107, agree a compromise or arrangement, the Court may, on an application under this section, sanction the compromise or arrangement.

(2) In exercising its discretion under this section, the Court may consider whether -

(a) the majority is acting in good faith in the interests of the creditors or class of creditors, or members or class of members (as the case may be) it professes to represent, and

(b) the different interests of creditors or members are such that they should be treated as belonging to a different class of creditors or members.

(3) An application under this section may be made by -

(a) the company,

(b) any creditor or member of the company,

(c) if the company is being wound up, the liquidator,

- (d) if the company has an administration order in force, the administrator, or
  - (e) if a cell of a protected cell company has a receivership order in force, the receiver.
- (4) A compromise or agreement sanctioned by the Court is binding upon -
- (a) all creditors or the class of creditors, or on the members or class of members (as the case may be),
  - (b) the company,
  - (c) in the case of a company in the course of being wound up, the liquidator and contributories of the company,
  - (d) in the case of a company with an administration order in force, the administrator and contributories of the company, and
  - (e) in the case of a cell of a protected cell company with a receivership order in force, the receiver and all contributories of the protected cell company.
- (5) Every company in relation to which an order is made under this section must cause a copy of the order to be delivered to the Registrar within 7 days after its making.

(6) A company which fails to comply with subsection (5) is guilty of an offence and in addition liable to a daily default fine.

**Powers of Court to facilitate reconstruction or merger.**

**111.** (1) This section applies where an application is made to the Court under section 110 to sanction a compromise or arrangement and it is shown that -

- (a) the compromise or arrangement is proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the merger of any 2 or more companies, and
- (b) under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme ("**a transferor company**") is to be transferred to another company ("**the transferee company**").

(2) The Court may, either by order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters -

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company,
- (b) the issuing or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or

arrangement are to be issued or appropriated by that company to or for any person,

- (c) the continuation by or against the transferee company of any legal proceedings extant or pending by or against any transferor company,
- (d) the dissolution, without winding up, of any transferor company,
- (e) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement,
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or merger is fully and effectively carried out.

(3) If an order under this section provides for the transfer of property or liabilities -

- (a) the property is by virtue of the order transferred to, and vests in, the transferee company, and
- (b) the liabilities, by virtue of the order, are transferred to and become liabilities of that company.

(4) The property (if the order so directs) vests freed from any charge that is by virtue of the compromise or arrangement to cease to have effect.

(5) Every company in relation to which an order is made under this section must cause a copy of the order to be delivered to the Registrar within 7 days after its making.

(6) A company which fails to comply with subsection (5) is guilty of an offence and in addition liable to a daily default fine.

(7) In this section -

"**property**" includes property, rights and powers of every description, and

"**transferee company**" includes an overseas company.

**Obligations of company in respect of memorandum and articles.**

**112.** (1) This section applies to any order under -

(a) section 110, or

(b) section 111,

that alters the company's memorandum or articles.

(2) The copy of the order delivered to the Registrar by the company under section 110(5) or 111(5) must be accompanied by a copy of the company's memorandum or articles (as the case may be), as amended.

(3) Every copy of the company's memorandum or articles (as the case may be) issued by the company after the order is made must be accompanied by

a copy of the order, unless the effect of the order has been incorporated into the memorandum or articles (as the case may be) by amendment.

(4) In this section, references to the effect of the order include the effect of the compromise or arrangement to which the order relates.

(5) A company which fails to comply with this section is guilty of an offence.

PART IX  
CORPORATE CAPACITY

*Capacity of company and power of directors to bind it*

**Unrestricted objects.**

**113.** Unless a company's memorandum specifically limits its objects, its objects are unrestricted.

**Corporate capacity.**

**114.** The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything contained in or omitted from -

- (a) the company's memorandum or articles,
- (b) any resolution of the company, or
- (c) any agreement between the company's members.



**Power of directors to bind company.**

**115.** (1) In favour of a person dealing with a company in good faith, the powers of the directors to bind the company, or authorise others to do so, is deemed to be free of any limitation imposed by or deriving from -

- (a) the company's memorandum or articles,
- (b) any resolution of the company, or
- (c) any agreement between the company's members.

(2) For the purpose of this section -

- (a) a person "deals with" a company if he is a party to any transaction or other act to which the company is a party,
- (b) a person dealing with a company -
  - (i) is not bound to enquire as to any limitation on the powers of the directors to bind the company or authorise others to do so,
  - (ii) is presumed to have acted in good faith unless the contrary is proved, and
  - (iii) is not to be regarded as acting in bad faith solely because he knows that an act is beyond the powers of the directors.

(3) Subsections (1) and (2) do not affect any liability incurred by reason of the directors having exceeded their powers.

*Formalities of doing business*

**Company contracts.**

**116.** A contract may be made -

- (a) by a company, and subject to section 36(1), by writing under its common seal, or
- (b) on behalf of a company, by a person acting under its authority, express or implied.

**Execution of documents.**

**117.** A document is executed for and in the name of a company -

- (a) subject to section 36(1), by the affixing of its common seal,
- (b) by signature of a director or secretary of the company, or
- (c) by such other means as may be authorised by its memorandum or articles.

**Company may give power of attorney.**

**118.** (1) A company may, by power of attorney, empower any person, either generally or in respect of any specified matter, to represent it, act in its name and execute documents on its behalf, and such a power -

- (a) is not valid unless signed -
    - (i) by a director of the company, or
    - (ii) in such other manner as may be provided for in the articles, and
  - (b) is, unless it states otherwise, capable of use in any place in Guernsey or elsewhere.
- (2) This section -
- (a) is without prejudice to the provisions of section 34 of the Trusts (Guernsey) Law, 2007<sup>k</sup>, and
  - (b) for the avoidance of doubt, has effect notwithstanding the provisions of the Powers of Attorney and Affidavits (Bailiwick of Guernsey) Law, 1995<sup>l</sup>.

*Pre-incorporation contracts*

**Pre-incorporation contracts.**

**119.** (1) Subject to the provisions of this section, a person who makes a pre-incorporation contract is bound by it and entitled to its benefits.

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<sup>k</sup> Approved by the States of Deliberation on the 25<sup>th</sup> July, 2007.

<sup>l</sup> No. V of 1995.

(2) A pre-incorporation contract may be ratified by a company, by a resolution of the directors, within such period as may be specified in the contract or, if no period is so specified, within a reasonable period after the incorporation of the company on whose behalf it was made.

(3) Where a company ratifies a pre-incorporation contract it must give notice of that fact to the other party to the contract within a period of 28 days from the day on which the contract was ratified.

(4) Where subsections (2) and (3) are complied with, the company is bound by and entitled to the benefits of the contract and the person who made it ceases to be so bound and entitled.

(5) In this section, "**pre-incorporation contract**" means -

- (a) a contract purporting to be made by a company before its incorporation, or
- (b) a contract made by a person on behalf of a company before and in contemplation of its incorporation.

PART X  
MEMBERS

*Members of a company*

**Company shall have at least one member.**

**120.** A company shall have at least one member.

**Members of a company.**

**121.** (1) Upon subscribing to the memorandum, the founder member is deemed to have agreed to become a member of the company and, on its incorporation, becomes a member and must be entered as such in its register of members.

(2) Every other person who agrees to become a member of a company whose name is entered in its register of members (and, in the case of a guarantee member, who gives the undertaking set out in section 7(5)) is a member of the company.

**Cessation of membership of guarantee and unlimited members.**

**122.** (1) A person does not cease to be a guarantee member of a company except -

- (a) by the dissolution of the company,
- (b) by retirement -
  - (i) in accordance with such formalities as may be set out by the company's articles, or
  - (ii) where no such formalities are set out, by notice in writing addressed to the directors (which notice may, in the case of the member's death or legal disability, be given by his heir, executor or other lawful representative), or
- (c) by the cancellation of his interest in the company by virtue of section 489 or otherwise.

(2) A person shall not cease to be an unlimited member of a company except -

(a) by the dissolution of the company,

(b) by retirement -

(i) in accordance with such formalities as may be set out by the company's articles, or

(ii) where no such formalities are set out, by notice in writing addressed to the directors (which notice may, in the case of the member's death or legal disability, be given by his heir, executor or other lawful representative), or

(c) by the cancellation of his interest in the company by virtue of section 489 or otherwise.

(3) This section does not permit a cessation of membership which would breach any requirement mentioned in section 7(3)(a), 8(3)(a) or 9(3)(a).

(4) A cessation of membership does not prejudice any liability a member may have to the company or its creditors under this Law, any other enactment or any other rule of law.

**Register of members.**

**123.** (1) An incorporated cell company shall keep a register of the members of each of its incorporated cells at its registered office.

(2) A company (other than an incorporated cell) shall keep a register of its members at its registered office.

(3) There shall be entered in the register -

- (a) the names and addresses of the members,
- (b) the date on which a person was registered as a member,  
and
- (c) the date on which a person ceased to be a member.

(4) In the case of a company having a share capital, there shall be entered in the register, with the names of the members holding shares, a statement of -

- (a) the shares held by the member, distinguishing each share,
  - (i) by its number (where it has a number), and
  - (ii) where the company has more than one class of shares, by its class, and
- (b) the amount paid or agreed to be considered as paid on the shares.

(5) Where shares have been issued otherwise than for cash, the amounts referred to in subsection (4)(b) shall distinguish between cash and consideration otherwise than cash.

(6) In the case of a company having guarantee members there shall be entered in the register, with the names of each of those members, a statement of the guaranteed amount.

(7) In the case of a protected cell company, the register shall distinguish between members of its cells and members of the core.

(8) A company which fails to comply with this section is guilty of an offence.

**Index of members.**

**124.** (1) An incorporated cell company having an incorporated cell with more than 50 members shall keep an index of the names of the members of the incorporated cell, unless the register of members of the incorporated cell is in such form as to constitute in itself an index.

(2) A company (other than an incorporated cell) with more than 50 members shall keep an index of the names of the members of the company, unless the register of members is in such a form as to constitute in itself an index.

(3) The company shall make any necessary alteration in the index within 14 days of the day on which any alteration is made in the register of members.

(4) The index shall be such as to enable the account in the register of members of each member to be readily found.



(5) The index shall be kept with the register of members.

(6) A company in relation to which there is a failure to comply with this section is guilty of an offence.

**Removal of entries relating to former members.**

**125.** An entry relating to a former member of a company may be removed from the register after the expiration of 10 years after the date on which he ceased to be a member.

**Treatment of treasury shares in the register.**

**126.** Where a company holds shares as treasury shares, the company must be entered in the register as the member holding those shares.

*Inspection of register and index of members*

**Rights to inspect and require copies.**

**127.** (1) The register and index of members must be open, during ordinary business hours, to the inspection -

- (a) of any member or director of the company to which it relates without charge, and
- (b) of any other person on payment of such fee as may be prescribed by the Department or such lesser fee as the company may stipulate.

(2) A person may require a copy of the company's register of members, or of any part of it, on payment of such fee as may be prescribed by the Department or such lesser fee as the company may stipulate.

(3) A person seeking to exercise any of the rights conferred by this section shall make a request to the company to that effect.

(4) A request under subsection (3) shall contain the following information -

- (a) in the case of an individual, his name and address,
- (b) in the case of an organisation, the name and address of an individual responsible for making the request on behalf of the organisation,
- (c) the purposes for which the information is to be used,
- (d) whether the information will be disclosed to any other person, and if so -
  - (i) where that person is an individual, his name and address,
  - (ii) where that person is an organisation, the name and address of an individual responsible for receiving the information on its behalf, and
  - (iii) the purpose for which the information is to be used by that person.

**Response to request for inspection or copy.**

**128.** (1) Where a company receives a request under section 127, it must within 5 working days either -

(a) comply with the request, or

(b) apply to the Court.

(2) If it applies to the Court, it must notify the person making the request.

(3) If on an application under this section the Court is satisfied that the inspection or copy is not sought for a proper purpose -

(a) it shall direct the company not to comply with the request, and

(b) it may further order that the company's costs on the application be paid in whole or in part by the person who made the request, even if he is not a party to the application.

(4) If the Court makes such a direction and it appears to the Court that the company is or may be subject to other requests made for a similar purpose (whether made by the same person or different persons), it may direct that the company is not to comply with any such request; and the order must contain such provision as appears to the Court appropriate to identify the requests to which it applies.

(5) If on an application under this section the Court does not direct the company not to comply with the request -

- (a) the company must comply with the request immediately upon the Court giving its decision or, as the case may be, the proceedings being finally disposed of, and
- (b) the Court may order that the company pay the costs of the person who made the request if he is a party to the application.

(6) Where a company fails to comply with subsection (1) or (5) it is guilty of an offence and the Court may by order compel an immediate inspection or, as the case may be, direct that the copy be sent to the person requesting it.

**Offences in connection with request for or disclosure of information.**

**129.** (1) It is an offence for a person knowingly or recklessly to make in a request under section 127 a statement that is misleading, false or deceptive in a material particular.

(2) It is an offence for a person in possession of information obtained by exercise of either of the rights conferred by section 127 -

- (a) to do anything that results in the information being disclosed to another person, or
- (b) to fail to do anything with the result that the information is disclosed to another person,

knowing or having reason to suspect that that person may use the information for a purpose that is not a proper purpose.

**Exception for redeemable and non-voting shares.**

**130.** The provisions of this Part in relation to the inspection of the register and index and requiring of a copy of the register or any part of it do not apply in relation to members in respect of any -

- (a) redeemable shares, or
- (b) non-voting shares,

held by them.

PART XI  
DIRECTORS

*Directors*

**Director.**

**131.** In this Law "**director**" includes an alternate director and any person occupying the position of director, by whatever name called.

**Shadow director.**

**132.** (1) In this Law "**shadow director**", in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act.

(2) A person is not to be regarded as a shadow director by reason only that the directors act on advice given by him in a professional capacity.

(3) For the purposes of sections 160 and 162 to 166, a shadow director is treated as a director.

**Board of directors.**

133. In this Law "board" and "board of directors", in relation to a company, mean -

- (a) directors of the company who number not less than the quorum required by the memorandum or articles acting together as a board of directors, or
- (b) if the company only has one director, that director.

**Management of a company.**

134. (1) The business and affairs of a company must be managed by, or under the direction or supervision of, the board of the company.

(2) The board of a company has all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.

(3) Subsections (1) and (2) are subject to any modifications, exceptions or limitations contained in this Law or in the company's memorandum or articles.

*Requirement to have director*

**Company must have at least one director.**

135. A company must have at least one director.

**Directors of incorporated cell companies.**

**136.** (1) Each director of an incorporated cell company shall also be a director of each of its incorporated cells, and no person may be a director of an incorporated cell unless he is also a director of its incorporated cell company.

(2) Subsection (1) is subject to -

- (a) any exercise of the powers of an administrator under section 379(6) or (7),
- (b) any direction given during a liquidation under section 478.

*Appointment of director*

**Eligibility to be a director.**

**137.** (1) A minor shall not be appointed or hold office as a director.

(2) The following persons shall not be appointed or hold office as a director -

- (a) a person who is subject to a disqualification order under Part XXV,
- (b) a person subject to a disqualification order under section 67A of the 1994 Law, or

- (c) a person who is disqualified, by reason of misconduct or unfitness, from acting as a director under the law of a district, territory or place outside Guernsey,

subject to the terms of that order or disqualification.

- (3) An appointment made in contravention of this section is void.

(4) Nothing in this section affects the liability of a person under any provision of this Law if he -

- (a) purports to act as director, or
- (b) acts as shadow director,

although he could not, by virtue of this section, be validly appointed or hold office as a director.

**Director's consent and declaration of eligibility.**

**138.** (1) A person must not be appointed as director unless he has in writing -

- (a) consented to being a director, and
- (b) declared that he is not ineligible under section 137 to be a director.

(2) A person who without reasonable excuse makes a declaration under subsection (1)(b) which is false, deceptive or misleading in a material particular is guilty of an offence.



**Appointment of first and subsequent directors.**

**139.** (1) The persons named in the statement of the proposed first directors in the application for incorporation under section 17 hold office as directors from the date of incorporation until ceasing to hold office in accordance with the provisions of this Part.

(2) All subsequent directors must, unless the memorandum or articles otherwise provide, be appointed by ordinary resolution.

**Appointment of directors to be voted on individually.**

**140.** (1) Subject to the memorandum or articles, the members of a company may vote on a resolution to appoint a director only if -

- (a) the resolution is for the appointment of one director, or
- (b) 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.

(2) A resolution moved in contravention of subsection (1) is void even though the moving of it was not objected to at the time.

(3) No provision for the automatic reappointment of retiring directors in default of another appointment has effect on the passing of a resolution in contravention of subsection (1).

**Validity of acts of directors.**

**141.** (1) The acts of a person acting as a director are valid notwithstanding that it is afterwards discovered that -

- (a) there was a defect in his appointment,
- (b) he was not eligible to be a director,
- (c) he had ceased to hold office, or
- (d) he was not entitled to vote on the matter in question.

(2) This section applies even if the resolution for the person's appointment as director is void under section 140.

*Directors ceasing to hold office*

**Directors ceasing to hold office.**

**142.** (1) A person ceases to be a director if he -

- (a) resigns in accordance with subsection (2),
- (b) is removed in accordance with the memorandum or articles,
- (c) becomes ineligible to be a director in accordance with section 137,
- (d) dies, or

(e) otherwise vacates office in accordance with the memorandum or articles.

(2) A director may resign by sending written notice of resignation to the company, which notice is effective when received or at a later time specified in the notice.

(3) Notwithstanding the vacation of office, a person who held office as a director remains liable, whether under the provisions of this Law which impose liabilities on directors or otherwise, in respect of acts and omissions and decisions made while that person was a director.

*Register of directors*

**Register of directors.**

**143.** (1) A company shall keep a register of directors at its registered office.

(2) The register of directors of an incorporated cell company is deemed to constitute also the register of directors of each of its incorporated cells.

(3) Where, in accordance with sections 379(6) or (7) or 478, the directors of an incorporated cell are different from the directors of its incorporated cell company, the register shall set out those differences.

(4) Where a director is an individual, the following particulars must be entered in the register -

(a) his name and any former name,

- (b) his address, which may be either -
  - (i) his usual residential address, or
  - (ii) his service address (which may be stated as "the company's registered office"),
- (c) his nationality,
- (d) his business occupation (if any), and
- (e) his date of birth.

(5) Where a director is not an individual, the following particulars must be entered in the register -

- (a) its corporate or firm name and any former such name it has had within the preceding 5 years,
- (b) its registered office (or, if it has no registered office, its principal office),
- (c) its legal form and the law by which it is governed, and
- (d) if applicable, the register in which it is entered and its registration number in that register.

(6) It is not necessary for the register to contain particulars of a former name in the following cases -

- (a) in the case of a peer or an individual normally known by a British title, where the name is one by which the person was known before the adoption of or succession to the title,
- (b) in the case of any person, where the former name -
  - (i) was changed or disused before the person attained the age of 18 years, or
  - (ii) has been changed or disused for 20 years or more.

(7) In this section, "name" and "former name" have the meaning given by section 528.

(8) A company which fails to comply with this section is guilty of an offence.

**Rights to inspect and require copies.**

**144.** (1) The register of directors must be open, during ordinary business hours, to the inspection of -

- (a) any member or director without charge,
- (b) any other person on payment of such fee as may be prescribed by the Department or such lesser fee as the company may stipulate.

(2) A person may require a copy of the register, or any part of it, on payment of such fee as may be prescribed by the Department or such lesser fee as the company may stipulate; and the company shall cause any copy so requested to be sent to the person within 5 working days of the receipt of the request.

(3) A company which fails to comply with this section is guilty of an offence and the Court may by order compel an immediate inspection or, as the case may be, direct that a copy be sent to the person requesting it.

**Duty to notify Registrar of changes.**

**145.** (1) A company must, within the period of 14 days from the occurrence of -

- (a) any change in its directors, or
- (b) any change in the particulars contained in its register of directors,

give notice to the Registrar of the change and of the date on which it occurred.

(2) Notice of a person having become a director of the company must -

- (a) contain a statement of the particulars of the new director that are required to be included in the company's register of directors, and
- (b) be accompanied by the consent and declaration required by section 138.

- (3) A company which fails to comply with this section is -
- (a) guilty of an offence, and
  - (b) liable to a civil penalty.

*Use of service address by director*

**Validity of service address.**

146. Where a director's address entered in the register of directors is a service address, service of any summons, notice, document or other matter at that address is deemed as effective as if it were service at the director's usual residential address.

**Record of usual residential address.**

147. (1) Where a director's address entered in the register of directors is a service address, the company (or, in the case of an incorporated cell, its incorporated cell company) shall keep a record of the director's usual residential address.

(2) A company which fails to comply with this section is guilty of an offence.

**Duty to notify Registrar of change in usual residential address.**

148. (1) Where a person becomes a director of a company and his address entered in the register of directors is a service address, the company (or, in the case of an incorporated cell, its incorporated cell company) must, within the period of 14 days after the day the person becomes a director, give notice to the Registrar of the directors usual residential address.

(2) Where a director's address entered in the register of directors is a service address, the company (or in the case of an incorporated cell, its incorporated cell company) must, within the period of 14 days from any change in its record of the director's usual residential address, give notice to the Registrar of the change and of the date on which it occurred.

(3) A company which fails to comply with this section is guilty of an offence.

**Disclosure of usual residential address by company.**

**149.** (1) Where a director's address entered in the register of directors is a service address, a person may request the company (or, in the case of an incorporated cell, its incorporated cell company) to disclose the director's usual residential address to him in accordance with the provisions of this section.

(2) A request under subsection (1) shall contain the following information -

- (a) in the case of an individual, his name and address,
- (b) in the case of an organisation, the name and address of an individual responsible for making the request on behalf of the organisation,
- (c) the purposes for which the information is to be used, and
- (d) whether the information will be disclosed to any other person, and if so -



- (i) where that person is an individual, his name and address,
- (ii) where that person is an organisation, the name and address of an individual responsible for receiving the information on its behalf, and
- (iii) the purpose for which the information is to be used by that person.

**Application to Court for disclosure of usual residential address.**

**150.** (1) If a company (or, in the case of an incorporated cell, its incorporated cell company) does not comply with a request made under section 149 within 2 weeks, the person who made the request ("**the applicant**") may make an application to the Court.

(2) The applicant must notify the company (or incorporated cell company, as the case may be) if he makes an application.

(3) If on an application under this section the Court is satisfied that the request is made for a proper purpose, it may direct the company (or incorporated cell company as the case may be) to comply with the request.

(4) If on an application under this section the Court is satisfied that the request is not made for a proper purpose, it may direct the company (or incorporated cell company as the case may be) not to comply with the request.

(5) If the Court gives a direction under subsection (4) and it appears to the Court that the company (or incorporated cell company as the case may be) is or may be subject to other requests made for a similar purpose (whether made

by the same person or different persons) it may direct that the company (or incorporated cell company as the case may be) is not to comply with any such request, and the order must contain such provision as appears to the Court appropriate to identify the requests to which it applies.

(6) In considering whether a request is made for a proper purpose, the Court may consider how effective the service address is in effecting service in respect of proceedings taking place outside Guernsey.

(7) The Court may make such order as to costs as it thinks fit on an application under this section.

(8) A company (or incorporated cell company as the case may be) which fails to comply with subsection (3) is guilty of an offence and the Court may by order compel the company (or incorporated cell company as the case may be) to comply with the request.

**Disclosure of usual residential address by Registrar.**

**151.** (1) Where a director's address entered in the register of directors is a service address, the Registrar shall disclose the director's usual residential address to the following persons upon request by those persons -

- (a) Her Majesty's Procureur, Her Majesty's Sheriff or Her Majesty's Sergeant,
- (b) the Commission,
- (c) the Administrator of Income Tax,
- (d) a police officer,

- (e) a customs officer, or
  - (f) such other persons as may be prescribed by the Department.
- (2) A request under subsection (1) shall -
- (a) be in writing,
  - (b) state that disclosure is required by that person for the proper exercise of his functions, and
  - (c) shall be signed by the person seeking disclosure or by any person appointed by him for that purpose.

**Offences in connection with request for or disclosure of information.**

**152.** (1) It is an offence for a person without reasonable excuse to make in a request under section 149 a statement that is false, deceptive or misleading in a material particular.

(2) It is an offence for a person in possession of information obtained by exercise of the rights conferred by section 149 -

- (a) to do anything that results in the information being disclosed to another person, or
- (b) to fail to do anything with the result that the information is disclosed to another person,

knowing or having reason to suspect that that person may use the information for a purpose that is not a proper purpose.

*Meetings of directors*

**Participation in meetings.**

**153.** (1) Subject to any provision to the contrary in a company's memorandum or articles, if a director is, by any means, in communication with one or more other directors so that each director participating in the communication can hear or read what is said or communicated by each of the others, each director so participating is deemed to be present at a meeting with the other directors so participating.

(2) A meeting of directors conducted pursuant to subsection (1) shall be deemed to be held in the place in which the chairman of the meeting is present.

**Minutes of directors' meetings.**

**154.** (1) A company must cause minutes of all proceedings at meetings of its directors to be recorded.

(2) Where the records are not kept in Guernsey, a copy of them must be kept -

(a) at the company's registered office, or

(b) at such other place in Guernsey as the directors think fit.

(3) The records (or, where the records are not kept in Guernsey, the copies) must be kept for at least 6 years from the date of the meeting.

(4) A company which fails to comply with this section is guilty of an offence.

(5) The duty imposed upon an incorporated cell under this section lies with its incorporated cell company.

**Minutes as evidence.**

**155.** (1) Minutes recorded in accordance with section 154, if purporting to be authenticated by the chairman of the meeting or by the chairman of the next directors' meeting, are evidence of the proceedings at the meeting.

(2) Where minutes have been made in accordance with section 154 of the proceedings of a meeting of directors, then, unless the contrary is proved-

- (a) the meeting is deemed duly held and convened,
- (b) all proceedings at the meeting are deemed to have duly taken place, and
- (c) all appointments at the meeting are deemed valid.

**Rights to inspect and require copies.**

**156.** (1) The minutes of directors' meetings must be open, during ordinary business hours, to the inspection of any director without charge.

(2) A director may require a copy of any minutes of directors' meetings, or any part of them, without charge and the company shall cause any copy

so requested to be sent to the director within 5 working days after the date of receipt of the request.

(3) A company which fails to comply with this section is guilty of an offence and the Court may by order compel an immediate inspection or, as the case may be, direct that a copy be sent to the director requesting it.

*Directors' liabilities*

**Exempting directors from liabilities.**

**157.** (1) Any provision that purports to exempt a director of a company (to any extent) from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void.

(2) Any provision by which a company directly or indirectly provides an indemnity (to any extent) for a director of the company, or an associated company, against any liability attaching to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company of which he is a director is void, except as is permitted by section 158 or 159.

(3) This section applies to any provision, whether contained in a company's memorandum or articles or in any contract with the company or otherwise.

(4) Nothing in this section prevents a company's memorandum or articles from making such provision as was, before the commencement of this Law, lawful for dealing with conflicts of interest.

**Provision of insurance for directors.**

**158.** Section 157(2) does not prevent a company from purchasing and maintaining for a director of the company, or an associated company, insurance against any such liability as is mentioned in that subsection.

**Provision of qualifying third party indemnities for directors.**

**159.** (1) Section 157(2) does not apply to qualifying third party indemnity provision.

(2) Third party indemnity provision means provision for indemnity against liability incurred by a director to a person other than the company or an associated company; and such provision is qualifying third party indemnity provision if the requirements of subsection (3) are met.

(3) The provision must not provide any indemnity against -

(a) any liability of the director to pay -

(i) a fine imposed in criminal proceedings,

(ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising), or

(b) any liability incurred by the director -

(i) in defending criminal proceedings in which he is convicted,

- (ii) in defending civil proceedings brought by the company, or an associated company, in which judgment is given against him, or
- (iii) in connection with an application for relief under section 522 in which the Court refuses to grant him relief.

(4) The references in subsection (3)(b) to a conviction, judgment or refusal of relief are to the final decision in the proceedings.

(5) For this purpose -

(a) a conviction, judgment or refusal of relief becomes final

-

- (i) if not appealed against, at the end of the period for bringing an appeal,
- (ii) if appealed against, at the time when the appeal (or any further appeal) is disposed of, and

(b) an appeal is disposed of -

- (i) if it is determined and the period for bringing any further appeal has ended, or
- (ii) if it is abandoned or otherwise ceases to have effect.



**Ratification of acts of directors.**

**160.** (1) This section applies to the ratification by a company of 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.

(2) The decision of the company to ratify such conduct -

(a) must be taken by the members, and

(b) may be taken by ordinary resolution, subject to anything in the company's memorandum or articles requiring a higher majority (or unanimity).

(3) Subject to subsection (7), where the resolution is proposed as a written resolution, members with a personal interest, direct or indirect, in the ratification are not eligible members.

(4) Subject to subsection (7), where the resolution is proposed at a meeting, it is passed only if the necessary majority is obtained disregarding votes in favour of the resolution by members with a personal interest, direct or indirect, in the ratification; but this does not prevent such members from attending, being counted towards the quorum and taking part in the proceedings at any meeting at which the decision is considered.

(5) Subsections (3) and (4) do not apply in respect of ratification of conduct by a director which exceeds his powers.

(6) For the purposes of this section -

(a) "conduct" includes acts and omissions, and

(b) "director" includes a former director.

(7) Nothing in this section affects -

(a) the validity of a decision taken by unanimous resolution, or

(b) any power of the directors to agree not to sue, or to settle or release a claim made by them on behalf of the company.

(8) This section does not affect any other enactment or rule of law as to the requirements for valid ratification or any rule of law as to acts that are incapable of being ratified by the company.

*Duties of directors in companies without secretaries*

**Duties of directors in companies without secretaries.**

**161.** Where a company has no secretary, and without prejudice to the responsibility of any other person or to any other responsibilities they may hold, the directors are the persons primarily responsible for carrying out the duties listed in section 171.

*Transactions involving self-interest*

**Disclosure of interest.**

**162.** (1) A director of a company must, immediately after becoming aware of the fact that he is interested in a transaction or proposed transaction with the company, disclose to the board of directors -

- (a) if the monetary value of the director's interest is quantifiable, the nature and monetary value of that interest, or
  - (b) if the monetary value of the director's interest is not quantifiable, the nature and extent of that interest.
- (2) Subsection (1) does not apply if -
- (a) the transaction or proposed transaction is between the director and the company, and
  - (b) the transaction or proposed transaction is or is to be entered into in the ordinary course of the company's business and on usual terms and conditions.
- (3) A general disclosure to the board to the effect that a director has an interest (as director, officer, employee, member or otherwise) in a party and is to be regarded as interested in any transaction which may after the date of the disclosure be entered into with that party is sufficient disclosure of interest in relation to that transaction.
- (4) A failure by a director to comply with subsection (1) does not *subject to the provisions of section 163<sup>m</sup>* affect the validity of a transaction entered into by the company or the director.

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<sup>m</sup> Words inserted by the Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2008.

(5) A director who fails to comply with this section is guilty of an offence.

**Avoidance of transactions.**<sup>n</sup>

**163.** (1) *A transaction entered into by a company in which a director is interested is voidable by the company at any time within 3 months after the date the transaction is disclosed to the board of directors unless -*

(a) *the director's interest was -*

(i) *disclosed to the board in accordance with section 162 prior to the company entering into the transaction, or*

(ii) *not required to be disclosed by virtue of section 162(2),*

(b) *the transaction is ratified in accordance with section 160, or*

(c) *the company received fair value for the transaction.*

(2) *For the purposes of subsection (1)(c) -*

(a) *a determination as to whether a company receives fair value for a transaction shall be made on the basis of the information known to the company and the interested*

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<sup>n</sup> Sections 163 and 164 substituted by the Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2008.

*director at the time that the transaction was entered into,*

*(b) if a transaction is entered into by the company in the ordinary course of its business and on usual terms and conditions, the company is presumed to receive fair value under the transaction,*

*(c) a person seeking to uphold a transaction and who knew or ought to have known of the director's interest at the time the transaction is entered into has the burden of establishing fair value, and*

*(d) in any other case, the company has the burden of establishing that it did not receive fair value.*

*(3) The fact that a transaction is not avoidable pursuant to this section is without prejudice to any remedy the company may have against the director.*

**Effect on third parties.**

**164.** *The avoidance of a transaction under section 163 does not affect the right, title or interest of a person in property which he has acquired -*

*(a) in good faith,*

*(b) for valuable consideration, and*

*(c) without knowledge of the director's failure to disclose his interest.*

**Disapplication of these provisions in certain cases.**

**165.** Nothing in sections 162 and 163 applies in relation to -

- (a) remuneration or other benefit given to a director,
- (b) insurance purchased or maintained for a director in accordance with section 158, or
- (c) qualifying third party indemnity provision provided for a director in accordance with section 159.

**Interested director may vote.**

**166.** Subject to the company's memorandum and articles, a director who is interested in a transaction entered into, or to be entered into, by the company, may -

- (a) vote on a matter relating to the transaction,
- (b) attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purpose of a quorum,
- (c) sign a document relating to the transaction on behalf of the company, and
- (d) do any other thing in his capacity as a director in relation to the transaction,

as if the director were not interested in the transaction.

**Meaning of interested.**

**167.** (1) Subject to subsection (2), a director of a company is interested in a transaction to which the company is a party if the director -

- (a) is a party to, or may derive a material benefit from, the transaction,
- (b) has a material financial interest in another party to the transaction,
- (c) is a director, officer, employee or member of another party (other than a party which is an associated company) who may derive a material financial benefit from the transaction,
- (d) is the parent, child or spouse of another party who may derive a material financial benefit from the transaction,  
or
- (e) is otherwise directly or indirectly materially interested in the transaction.

(2) A director is not interested in a transaction to which the company is a party if the transaction comprises only the giving by the company of security to a third party which has no connection with the director, at the request of the third party, in respect of a debt or obligation of the company for which the director or another person has personally assumed responsibility in whole or in part under a guarantee, indemnity or security.

(3) For the purposes of this section, a subsidiary within the meaning of section 531 includes a body corporate which would be a subsidiary but for the fact that it is an overseas company.

PART XII  
SECRETARIES

*Secretaries*

**Company may have secretary.**

- 168.** (1) A company may, but need not, have a secretary.
- (2) A director of a company may also be its secretary.

**Secretary of incorporated cell companies.**

**169.** The secretary of an incorporated cell company shall also be a secretary of each of its incorporated cells, and no person may be a secretary of an incorporated cell unless he is also a secretary of its incorporated cell company.

**Eligibility to be secretary.**

- 170.** (1) A minor shall not be appointed or hold office as a secretary.
- (2) The following persons shall not be appointed or hold office as a secretary -
- (a) a person who is subject to a disqualification order under Part XXV,
  - (b) a person subject to a disqualification order under section 67A of the 1994 Law, or



- (c) a person who is disqualified from acting as a director, by reason of misconduct or unfitness, under the law of a district, territory or place outside Guernsey,

subject to the terms of the order or disqualification.

- (3) An appointment made in contravention of this section is void.

(4) Nothing in this section affects the liability of a person under any provision of this Law if he purports to act as a secretary although he could not, by virtue of this section, be validly appointed or hold office as a secretary.

**Duties of secretaries.**

**171.** Where a company has a secretary, and without prejudice to the responsibility of any other person or to any other responsibilities he may hold, the secretary shall take reasonable steps to ensure -

- (a) that all registers and indexes are maintained in accordance with the provisions of this Law,
- (b) that all notices and documents required to be filed or served upon the Registrar or other persons are duly so filed or served,
- (c) that all resolutions, records (other than records of beneficial owners) and minutes of the company are properly kept,

- (d) that copies of the memorandum and articles are kept fully up to date, and
- (e) that the board of directors is aware of any obligations imposed by -
  - (i) the memorandum and articles, and
  - (ii) the rules of any stock exchange the company is listed on.

**Acts done by person in dual capacity.**

**172.** A provision requiring or authorising a thing to be done by or to a director and the secretary of a company is satisfied by its being done by or to the same person acting both as director and secretary.

*Register of secretaries*

**Register of secretaries.**

**173.** (1) Where a company has a secretary, it shall keep a register of secretaries at its registered office.

(2) The register of secretaries of an incorporated cell company is deemed to constitute also the register of secretaries of each of its incorporated cells.

(3) Where a secretary is an individual, the following particulars must be entered in the register -

- (a) his name and any former name, and

- (b) his service address (which may be stated as "the company's registered office").

(4) Where a secretary is not an individual, the following particulars must be entered in the register -

- (a) its corporate or firm name and any former such name it has had within the preceding 5 years,
- (b) its registered office (or, if it has no registered office, its principal office),
- (c) its legal form and the law by which it is governed, and
- (d) if applicable, the register in which it is entered and its registration number in that register.

(5) It is not necessary for the register to contain particulars of a former name in the following cases -

- (a) in the case of a peer or an individual normally known by a British title, where the name is one by which the person was known before the adoption of or succession to the title,
- (b) in the case of any person, where the former name -
  - (i) was changed or disused before the person attained the age of 18 years, or

- (ii) has been changed or disused for 20 years or more.

(6) In this section, "name" and "former name" have the meaning given in section 528.

(7) A company which fails to comply with this section is guilty of an offence.

**Right to inspect and require copies.**

**174.** (1) Where a company has a secretary, the register of secretaries must be open, during ordinary business hours, to the inspection of -

- (a) any member or director without charge, or
- (b) any other person on payment of such fee as may be prescribed by the Department or such lesser fee as the company may stipulate.

(2) A person may require a copy of the register, or any part of it, on payment of such fee as may be prescribed by the Department or such lesser fee as the company may stipulate; and the company shall cause any copy so requested to be sent to the person within 5 working days after the date of the receipt of the request.

(3) A company which fails to comply with this section is guilty of an offence and the Court may by order compel an immediate inspection or, as the case may be, direct that a copy be sent to the person requesting it.

PART XIII

RESOLUTIONS AND MEETINGS

*Resolutions*

**Types of resolution.**

**175.** (1) A resolution of the members (or class of members) of a company shall be either -

- (a) an ordinary resolution,
- (b) a special resolution,
- (c) a waiver resolution, or
- (d) a unanimous resolution.

(2) Subject to subsection (3), a resolution may be passed either -

- (a) at a general meeting, or
- (b) as a written resolution.

(3) A resolution to remove an auditor under section 268 may not be passed as a written resolution.

**Ordinary resolutions.**

**176.** (1) An ordinary resolution of the members (or of a class of members) of a company means a resolution passed by a simple majority.

(2) A written resolution is passed by a simple majority if it is passed by members representing a simple majority of the total voting rights of eligible members.

(3) A resolution passed at a meeting on a show of hands is passed by a simple majority if it is passed by a simple majority of -

(a) the members who, being entitled to do so, vote in person on the resolution, and

(b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.

(4) A resolution passed on a poll taken at a meeting is passed by a simple majority if it is passed by members representing a simple majority of the total voting rights of members who, being entitled to do so, vote in person or by proxy on the resolution.

(5) Anything that may be done by ordinary resolution may also be done by special resolution.

(6) 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.

**Ordinary resolutions required by articles to have a different proportion of votes.**

**177.** Section 176 does not preclude a company's memorandum or articles from providing that certain ordinary resolutions are to be passed by a different proportion of votes than a simple majority.

**Special resolutions.**

**178.** (1) A special resolution of the members (or of a class of members) of a company means a resolution passed by a majority of not less than 75%.

(2) A written resolution is passed by a majority of not less than 75% if it is passed by members representing not less than 75% of the total voting rights of eligible members.

(3) A written resolution is not passed as a special resolution unless it was proposed as such; and, once so proposed, it may only be passed as such.

(4) A resolution passed at a meeting on a show of hands is passed by a majority of not less than 75% if it is passed by not less than 75% of -

- (a) the members who, being entitled to do so, vote in person on the resolution, and
- (b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.

(5) A resolution passed on a poll taken at a meeting is passed by a majority of not less than 75% if it is passed by members representing not less than 75% of the total voting rights of the members who, being entitled to do so, vote in person or by proxy on the resolution.

(6) Where a resolution is passed at a meeting -

- (a) the resolution is not a special resolution unless notice of the meeting included the text of the resolution and

specified the intention to propose the resolution as a special resolution, and

- (b) if the notice of the meeting so specified, the resolution may only be passed as a special resolution.

(7) A copy of every special resolution of a company shall be delivered by the company to the Registrar within 30 days of it being passed.

(8) Failure to comply with subsection (7) does not render a special resolution void.

(9) A company which fails to comply with subsection (7) is -

- (a) guilty of an offence, and
- (b) liable to a civil penalty.

**Waiver resolutions.**

**179.** (1) A waiver resolution of the members of a company means a resolution passed by a majority of not less than 90%.

(2) A written resolution is passed by a majority of not less than 90% if it is passed by members representing not less than 90% of the total voting rights of eligible members.

(3) A written resolution is not passed as a waiver resolution unless it is proposed as such; and once so proposed it may only be passed as such.



(4) A resolution passed at a meeting on a show of hands is passed by a majority of not less than 90% if it is passed by not less than 90% of -

- (a) the members who, being entitled to do so, vote in person on the resolution, and
- (b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.

(5) A resolution passed on a poll taken at a meeting is passed by a majority of not less than 90% if it is passed by members representing not less than 90% of the total voting rights of the members who (being entitled to do so) vote in person or by proxy on the resolution.

(6) Where a resolution is passed at a meeting -

- (a) the resolution is not a waiver resolution unless notice of the meeting included the text of the resolution and specified the intention to propose the resolution as a waiver resolution, and
- (b) if the notice of the meeting so specified, the resolution may only be passed as a waiver resolution.

(7) A copy of every waiver resolution of a company shall be delivered by the company to the Registrar within 30 days of it being passed.

(8) Failure to comply with subsection (7) does not render a waiver resolution void.

- (9) A company which fails to comply with subsection (7) is -
  - (a) guilty of an offence, and
  - (b) liable to a civil penalty.

**Unanimous resolutions.**

**180.** (1) A unanimous resolution of the members of a company means a resolution agreed to by every member of the company.

(2) A written resolution is not passed as a unanimous resolution unless it is proposed as such; and once it is so proposed it may only be passed as such.

- (3) Where a resolution is passed at a meeting -
  - (a) the resolution is not a unanimous resolution unless notice of the meeting included the text of the resolution and specified the intention to propose the resolution as a unanimous resolution, and
  - (b) if the notice of the meeting so specified, the resolution may only be passed as a unanimous resolution.

(4) A copy of every unanimous resolution of a company shall be delivered by the company to the Registrar within 30 days of it being passed.

(5) Failure to comply with subsection (4) does not render a unanimous resolution void.

- (6) A company which fails to comply with subsection (4) is -

- (a) guilty of an offence, and
- (b) liable to a civil penalty.

*Written resolutions*

**Written resolutions.**

**181.** (1) A resolution may be proposed as a written resolution -

- (a) by the directors of a company under section 182, or
- (b) by the members of a company under section 183.

(2) Subject to any contrary intention, references in enactments passed or made before or after this Law comes into force to -

- (a) a resolution of a company in general meeting, or
- (b) a resolution of a meeting of a class of members of the company,

have effect as if they included references to a written resolution of the members, or of a class of members of a company, as the case may be.

(3) The members eligible to vote on a written resolution are those who would have been entitled to vote on the circulation date of the resolution and "eligible members" shall be construed accordingly.

(4) If persons entitled to vote on a written resolution change during the course of the day that is the circulation date of the resolution, the eligible members are the persons entitled to vote on the resolution at the time that the first copy of the resolution is sent or submitted to a member for his agreement.

(5) The circulation date of a written resolution is the date on which copies of it are sent to members in accordance with this Part (or, if copies are sent to members on different days, the first of those days).

**Circulation of written resolution proposed by directors.**

**182.** (1) This section applies to a resolution proposed as a written resolution by the directors of the company.

(2) The company must send a copy of the resolution, at the same time so far as reasonably practicable, to all eligible members.

(3) The copy of the resolution must be accompanied by a statement informing the member -

(a) how to signify agreement to the resolution under section 187, and

(b) as to the date by which the resolution must be passed if it is not to lapse under section 188.

(4) A company which fails to comply with this section is guilty of an offence.

(5) Failure to comply with this section does not render a written resolution void.

**Members' power to require circulation of written resolution.**

**183.** (1) The members of a company may require the company to circulate a resolution that may properly be moved and is proposed to be moved as a written resolution.

(2) Any resolution may properly be moved as a written resolution unless -

(a) it would, if passed, be ineffective (whether by reason of inconsistency with any enactment or the company's memorandum or articles or otherwise),

(b) it is defamatory of any person, or

(c) it is frivolous or vexatious.

(3) Where the members require a company to circulate a resolution they may require the company to circulate with it a statement of not more than 1,000 words on the subject matter of the resolution.

(4) A company is required to circulate the resolution and any accompanying statement once it has received requests that it do so from members representing not less than the requisite percentage of the total voting rights of all members entitled to vote on the resolution.

(5) The "**requisite percentage**" under subsection (4) is 5% or such lower percentage as is specified for this purpose in the company's articles.

**Circulation of written resolution proposed by members.**

**184.** (1) The company must send a copy of the resolution and (subject to section 186) any accompanying statement, at the same time so far as reasonably practicable, to all eligible members.

(2) The company must send the copies (or, if copies are sent to members on different days, the first of those copies) not more than 21 days after the date on which it becomes subject to the requirement under section 183 to circulate the resolution.

(3) The copy of the resolution must be accompanied by written guidance as to -

(a) how to signify agreement to the resolution under section 187, and

(b) the date by which the resolution must be passed if it is not to lapse under section 188.

(4) A company which fails to comply with this section is guilty of an offence.

(5) Failure to comply with this section does not render a written resolution void.

**Expenses of circulation.**

**185.** (1) The expenses of a company in complying with section 183 must be paid by the members who requested the circulation of the resolution unless the company resolves otherwise.

(2) Unless the company has previously so resolved, it is not bound to comply with section 183 unless there is deposited with or tendered to it a sum reasonably sufficient to meet its expenses in doing so.

**Application not to circulate members' statement.**

**186.** (1) A company is not required to circulate a members' statement under section 184 if, on an application by the company or another person who claims to be aggrieved, the Court is satisfied that the rights conferred by section 183 and that section are being abused.

(2) The Court may order the members who requested the circulation of the statement to pay the whole or part of the company's costs on such an application, even if they are not parties to the application.

**Procedure for signifying assent to written resolution.**

**187.** (1) A member signifies his agreement to a proposed written resolution when the company receives from him (or from someone acting on his behalf) an authenticated document -

- (a) identifying the resolution to which it relates, and
- (b) indicating his agreement to the resolution.

(2) A member's agreement to a written resolution, once signified, may not be revoked.

(3) A written resolution is passed when the requisite majority of eligible members have signified their agreement to it.

**Period for agreeing to written resolution.**

**188.** (1) A proposed written resolution lapses if it is not passed before the end of -

- (a) the period specified for this purpose in the company's memorandum or articles, or
- (b) if none is specified, the period of 28 days beginning with the circulation date.

(2) The agreement of a member to a written resolution is ineffective if signified after the expiry of that period.

**Publication of written resolution on website.**

**189.** (1) Notice of -

- (a) a written resolution, or
- (b) a statement relating to a written resolution,

is not validly given by a company by means of a website unless it is given in accordance with this section and Schedule 3.

(2) The notice must be available on the website throughout the period beginning with the circulation date and ending on the date on which the resolution lapses under section 188.



**Relationship between this Part and company's articles.**

**190.** A provision of the articles of a company is void in so far as it would have the effect that a resolution that is required by or otherwise provided for in an enactment could not be proposed and passed as a written resolution.

*Voting*

**General rules.**

- 191.** (1) On a vote on a written resolution -
- (a) in the case of a company having a share capital, every member has one vote in respect of each share, and
  - (b) in any other case, every member has one vote.
- (2) On a vote on a resolution on a show of hands at a meeting -
- (a) every member present in person has one vote, and
  - (b) every proxy present who has been duly appointed by a member entitled to vote on the resolution has one vote.
- (3) On a vote on a resolution taken on a poll taken at a meeting -
- (a) in the case of a company having a share capital, every member has one vote in respect of each share, and
  - (b) in any other case, every member has one vote.

(4) The provisions of this section have effect subject to any provision of the company's memorandum or articles which may, in particular, provide for the issue of shares which -

- (a) do not entitle the holder to voting rights, or
- (b) entitle the holder to restricted voting rights.

**Restrictions on voting by proxies are void.**

**192.** (1) Where a member entitled to vote on a resolution has appointed one proxy only, and the company's articles provide that the proxy has fewer votes in a vote on a resolution on a show of hands taken at a meeting than the member would have if he were present in person -

- (a) the provision about how many votes the proxy has on a show of hands is void, and
- (b) the proxy has the same number of votes on a show of hands as the member who appointed him would have if he were present at the meeting.

(2) Where a member entitled to vote on a resolution has appointed more than one proxy, subsection (1) applies as if the references to the proxy were references to the proxies taken together.

**Restrictions on voting on polls or written resolutions are void.**

**193.** In relation to a resolution required or authorised by an enactment, if a company's articles provide that a member has a different number of votes in relation to a resolution when it is passed as a written resolution and when it is passed on a poll taken at a meeting -

- (a) the provision about how many votes a member has in relation to the resolution passed on a poll is void, and
- (b) a member has the same number of votes in relation to the resolution when it is passed on a poll as he has when it is passed as a written resolution.

**Votes of joint holders of shares.**

**194.** (1) In the case of joint holders of shares of a company, only the vote of the senior holder who votes (and any proxies duly authorised by him) may be counted by the company.

(2) For the purposes of this section, the senior holder of a share is determined by the order in which the names of the joint holders appear in the register of members.

(3) Subsections (1) and (2) have effect subject to any provision of the company's articles.

**Guardians and attorneys.**

**195.** Guardians in the names of their wards and attorneys in the names of their principals may vote.

**Vote splitting.**

**196.** On a written resolution or on a poll taken at a general meeting, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

**Second vote of chairman at meeting.**

**197.** Subject to any provision of the company's memorandum or articles, in the case of an equality of votes at a general meeting, the chairman has a second or casting vote.

**Effect of provision in company's articles as to admissibility of votes.**

**198.** (1) This section applies where -

- (a) a person votes on a resolution of a company,
- (b) that person was not entitled to vote as he did, and
- (c) 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.

(2) The person is deemed to have been entitled to vote as he did if

-

- (a) no objection to his entitlement to vote is made in accordance with the procedure, or
- (b) at least one objection to his entitlement to vote is made in accordance with the procedure, and each such objection is rejected in accordance with it.

*Calling and holding meetings*

**Requirement to hold annual general meeting.**

**199.** (1) Subject to sections 200 and 201, every company shall hold a general meeting of its members -

- (a) firstly, within a period of 18 months beginning on the date on which it was incorporated,
- (b) thereafter, at least once in every calendar year.

(2) Subject to section 201, no more than 15 months may elapse between one annual general meeting and the next.

(3) If default is made in holding a meeting in accordance with subsection (1) or (2), the company is guilty of an offence.

(4) If default is made in holding a meeting in accordance with subsection (1) or (2), any member may, not less than 14 days after the last date upon which the meeting ought to have been held, apply to the Court under this subsection.

(5) Upon hearing an application under subsection (4), the Court may direct that -

- (a) the company be wound up, or
- (b) a meeting be held,

or make such other order as it thinks fit.

(6) The Court may order that the costs of an application under subsection (4) be paid by any person who, in the opinion of the Court, is responsible for the default.

(7) The provisions of Part XXIII shall, subject to the provisions of subsections (4), (5) and (6), apply to the winding up of a company pursuant to this section.

(8) This section does not apply to companies which are in the course of being compulsorily wound up under Part XXIII.

**Incorporated cell exempt from requirement to hold annual general meeting.**

200. Subject to the other provisions of this Law, an incorporated cell is not required to hold annual general meetings under section 199 unless it is so required by

-

- (a) its memorandum or articles, or
- (b) a special resolution.

**Waiver of requirement to hold annual general meeting.**

201. (1) The members of a company may waive the requirement to have a general meeting under section 199 by the passing of a waiver resolution.

(2) The resolution may be for a particular year or years or for an indefinite period.

(3) The effect of the resolution shall be rescinded if the company has received requests to do so from -

- (a) members who hold more than 10% of such of the capital of the company as carries the right of voting at general meetings of the company (excluding any capital held as treasury shares), or
- (b) in the case of a company not having shareholders, or having shareholders and other types of members, members who represent more than 10% of the total voting rights of all the members having a right to vote at general meetings.

(4) The rescission of the resolution only has effect in a particular calendar year (or in the period referred to in section 199(1)(a), as the case may be) if the requests from the requisite percentage of members under subsection (3) are received by the company not later than 3 months before the end of that year (or that period, as the case may be).

**Directors' power to call general meetings.**

202. The directors of a company may call a general meeting of the company.

**Members' power to require directors to call general meeting.**

203. (1) Notwithstanding anything to the contrary in the company's memorandum or articles, the members may require the directors to call a general meeting.

(2) The directors are required to call a general meeting once the company has received requests to do so from -

- (a) members who hold more than 10% of such of the capital of the company as carries the right of voting at general meetings of the company (excluding any capital held as treasury shares), or
  - (b) in the case of a company not having shareholders, or having shareholders and other types of members, members who represent more than 10% of the total voting rights of all the members having a right to vote at general meetings.
- (3) A request under this section -
- (a) must state the general nature of the business to be dealt with at the meeting, and
  - (b) may include the text of a resolution that may properly be moved and is intended to be moved at the meeting.
- (4) A resolution may properly be moved at a meeting unless -
- (a) it would, if passed, be ineffective (whether by reason of inconsistency with any enactment or the company's memorandum or articles or otherwise),
  - (b) it is defamatory of any person, or
  - (c) it is frivolous or vexatious.
- (5) The provisions of this section are without prejudice to -



- (a) the power to rescind the waiver of the requirement to hold a general meeting under section 201,
- (b) any powers the directors have to convene a general meeting without a members' requisition.

**Directors' duty to call meetings required by members.**

**204.** (1) Directors required under section 203 to call a general meeting of the company must call a meeting -

- (a) within 21 days after the date on which they become subject to the requirement, and
- (b) to be held on a date not more than 28 days after the date of the notice convening the meeting.

(2) If the requests received by the company identify a resolution intended to be moved at the meeting, the notice of the meeting must include notice of the resolution.

(3) The business that may be dealt with at the meeting includes a resolution of which notice is given in accordance with this section.

(4) If the resolution is to be proposed as a special resolution, the directors are treated as not having duly called the meeting if they do not give the required notice of the resolution in accordance with section 178.

**Power of members to call meeting at company's expense.**

**205.** (1) If the directors -

- (a) are required under section 203 to call a meeting, and
- (b) do not do so in accordance with section 204,

the members who requested the meeting (or any of them representing more than one half of the total voting rights of the members who requested the meeting) may themselves call a general meeting.

(2) Where the requests received by the company included the text of a resolution intended to be moved at the meeting, the notice of the meeting must include notice of the resolution.

(3) The meeting must be called for a date not more than 3 months after the date on which the directors become subject to the requirement to call a meeting.

(4) The meeting must be called in the same manner, as nearly as possible, as that in which meetings are required to be called by the directors of the company.

(5) The business which may be dealt with at the meeting includes a resolution of which notice is given in accordance with this section.

(6) Any reasonable expenses incurred by the members requesting the meeting by reason of the failure of the directors to call a meeting must be reimbursed by the company.

(7) Any sum so reimbursed shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

**Court's power to order meeting.**

206. (1) This section applies if for any reason it is impracticable -
- (a) to call a meeting of a company in any manner in which meetings of that company may be called, or
  - (b) to conduct the meeting in the manner prescribed by the company's memorandum or articles or this Law.
- (2) The Court may, either of its own motion or on the application-
- (a) of a director of the company, or
  - (b) of a member of the company who would be entitled to vote at the meeting,

order a meeting to be called, held and conducted in any manner the Court thinks fit.

(3) Where such an order is made, the Court may give such ancillary or consequential directions as it thinks expedient.

(4) Such directions may include a direction that one member of the company present at the meeting be deemed to constitute a quorum.

(5) A meeting called, held and conducted in accordance with an order under this section is deemed for all purposes to be a meeting of the company duly called, held and conducted.

*Notice of meetings*

**Notice required for a general meeting.**

**207.** (1) A general meeting of a company (other than an adjourned meeting) must be called by notice of at least 10 days or such longer period as the company's articles may provide.

(2) A general meeting may be called by shorter notice than otherwise required if all the members entitled to attend and vote so agree.

**Publication of notice of meeting on website.**

**208.** (1) Notice of a meeting is not validly given by a company by means of a website unless it is given in accordance with this section and Schedule 3.

(2) The notice must be available on the website throughout the period beginning with the date of the notification required by paragraph 9 of Schedule 3 and ending with the conclusion of the meeting.

**Persons entitled to receive notice of meetings.**

**209.** (1) Notice of a general meeting of a company must be sent to -

(a) every member, and

(b) every director.

(2) In subsection (1), the reference to members includes any person who is entitled to a share in consequence of the death or bankruptcy of a member, if the company has been notified of their entitlement.

(3) This section has effect subject to -

(a) any enactment, and

(b) any provision of the company's memorandum or articles.

**Contents of notices of meetings.**

**210.** (1) Notice of a general meeting of a company must -

(a) state the time and date of the meeting,

(b) state the place of the meeting,

(c) contain any information which may be required by the memorandum or articles, in accordance with section 176(6), in respect of an ordinary resolution which is to be proposed at the meeting,

(d) contain the information required under section 178(6)(a) in respect of a resolution which is to be proposed as a special resolution at the meeting,

(e) contain the information required under section 179(6)(a) in respect of a resolution which is to be proposed as a waiver resolution at the meeting, and

- (f) contain the information required under section 180(3)(a) in respect of a resolution which is to be proposed as a unanimous resolution at the meeting.

(2) Subject to any provision of the company's memorandum or articles, notice of a general meeting must state the general nature of the business to be dealt with at the meeting.

**Resolution requiring special notice.**

**211.** (1) Where by any provision of this Law or any other enactment special notice is required of a resolution, the resolution is not effective unless notice of the intention to move it has been given to the company at least 28 days before the date of the meeting at which it is moved.

(2) The company must, where practicable, give its members notice of any such resolution in the same manner and at the same time as it gives notice of the meeting.

(3) Where that is not practicable, the company must give its members notice at least 14 days before the meeting -

- (a) by notice in La Gazette Officielle, or
- (b) in any other manner allowed by the company's articles.

(4) If, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice is deemed to have been properly given, though not given within the time required.

*Procedure at meetings*

**Location of meeting.**

**212.** Subject to the provisions of a company's articles, a general meeting may be held at any place in Guernsey or elsewhere.

**Quorum at meeting.**

**213.** (1) In the case of a company having only one member, one qualifying person present at a meeting is a quorum.

(2) In any other case, subject to the provisions of the company's articles, two qualifying persons -

- (a) holding 5% of the issued share capital (excluding any share capital represented by treasury shares) between them where the company is limited by shares, or
- (b) holding 5% of the total voting rights of the company where the company does not have shareholders, or has shareholders and other types of members,

present at a meeting are a quorum unless each is a qualifying person because he is appointed as proxy of a member in relation to the meeting and they are proxies of the same member; and, for the avoidance of doubt, one qualifying person may be a quorum if the articles so provide.

(3) For the purposes of this section, a "qualifying person" means-

- (a) a person who is a member of the company, or

- (b) a person appointed as proxy of a member in relation to the meeting.

**Chairman of meeting.**

214. (1) A member, or proxy of a member, may be elected to be chairman of a meeting by a resolution passed at the meeting.

(2) Subsection (1) is subject to any provision of the company's articles that states who may or may not be chairman.

**Declaration by chairman on show of hands.**

215. (1) On a vote on a resolution at a meeting on a show of hands, a declaration by the chairman that the resolution -

- (a) has or has not been passed, or
- (b) has been passed with a particular majority,

is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(2) An entry in respect of such a declaration in minutes of the meeting recorded in accordance with section 228 is also conclusive evidence of that fact without such proof.

(3) This section does not have effect if a poll is demanded in respect of the resolution (and is not subsequently withdrawn).



**Right to demand a poll.**

**216.** (1) A provision of a company's articles is void in so far as it would have the effect of excluding the right to demand a poll at a general meeting on any question other than -

- (a) the election of the chairman of the meeting, or
- (b) the adjournment of the meeting.

(2) A provision of the company's articles is void in so far as it would have the effect of making ineffective a demand for a poll on a question which is made -

- (a) by not less than 5 members having the right to vote on the resolution, or
- (b) by a member or members representing not less than 10% of the total voting rights of all the members having the right to vote on the resolution.

**Participation in meeting.**

**217.** (1) Subject to any provision to the contrary in a company's articles, if a member is, by any means, in communication with one or more other members so that each member participating in the communication can hear or read what is said or communicated by each of the others, each member so participating is deemed to be present at a meeting with the other members so participating.

(2) A meeting of members conducted pursuant to subsection (1) shall be deemed to be held in the place in which the chairman of the meeting is present.

**Adjournments.**

**218.** (1) A meeting may adjourn from time to time.

(2) At any such adjourned meeting, any resolution for which notice has been given in accordance with the articles and this Law, whether before or after the original meeting, may be passed.

(3) The adjourned meeting has the same powers as the original meeting.

(4) Any resolution passed at the adjourned meeting shall be deemed to be passed when it is actually passed and not on the date of the former meeting.

**Membership details available at meeting.**

**219.** Subject to any provision of the articles, a list of the names and addresses of all members (other than the company itself where it holds its own shares as treasury shares) showing the number of shares (or, in the case of a company without a share capital, the total voting rights) respectively held by them shall be available for inspection throughout the meeting.

**Matters raised at meeting.**

**220.** Subject to section 221, the members may raise any matter relating to the formation of the company or arising out of the directors' report, regardless of whether notice has been given.

**Resolutions at meeting.**

**221.** No resolution for which notice has not been properly given may be passed at a meeting.

*Proxies*

**Right to appoint proxies.**

222. (1) A member of a company is entitled to appoint another person as his proxy to exercise all or any of his rights to attend and to speak and vote at a meeting of the company.

(2) In the case of a company having a share capital, a member may appoint more than one proxy in relation to a meeting, provided that each proxy is appointed to exercise the rights attached to a different share or shares held by him.

**Notice of meeting to contain statement of rights.**

223. (1) In every notice calling a meeting of a company there must appear a statement informing the member of -

- (a) his rights under section 222, and
- (b) any more extensive rights conferred by the company's articles to appoint more than one proxy.

(2) Failure to comply with this section does not affect the validity of the meeting or anything done at the meeting.

(3) Where a company fails to comply with this section it is guilty of an offence.

**Notice required of appointment of proxy etc.**

224. (1) This section applies to -

- (a) the appointment of a proxy, and
- (b) any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy.

(2) Any provision of the company's articles is void in so far as it would have the effect of requiring any such appointment or document to be received by the company or another person earlier than the following time -

- (a) in the case of a meeting or adjourned meeting, 48 hours before the time for holding the meeting or adjourned meeting,
- (b) in the case of a poll taken more than 48 hours after it was demanded, 24 hours before the time appointed for the taking of the poll,
- (c) in the case of a poll taken not more than 48 hours after it was demanded, the time at which it was demanded.

(3) In calculating the periods mentioned in subsection (2) no account shall be taken of any part of a day that is not a working day.

**Right of proxy to demand a poll.**

**225.** (1) The appointment of a proxy to vote on a matter at a meeting of a company authorises the proxy to demand, or join with others in demanding, a poll on that matter.

(2) In applying the provisions of section 216(2), a demand by a proxy counts -

- (a) for the purposes of paragraph (a) of that subsection, as a demand by the member,
- (b) for the purposes of paragraph (b) of that subsection, as a demand by a member representing the voting rights that the proxy is authorised to exercise.

**Notice required of termination of proxy's authority.**

226. (1) This section applies to notice that the authority of a person to act as proxy is terminated ("**notice of termination**").

(2) The termination of the authority of a person to act as proxy does not affect -

- (a) whether he counts in deciding whether there is a quorum at a meeting,
- (b) the validity of anything he does as chairman of a meeting, or
- (c) the validity of a poll demanded by him at a meeting,

unless the company receives notice of the termination before the commencement of the meeting.

(3) The termination of the authority of a person to act as proxy does not affect the validity of a vote given by that person unless the company receives notice of the termination -

- (a) before the commencement of the meeting or adjourned meeting at which the vote is given, or
- (b) in the case of a poll taken more than 48 hours after it is demanded, before the time appointed for taking the poll.

(4) If the company's articles require or permit members to give notice of termination to a person other than the company, the references above to the company receiving notice have effect as if they were or (as the case may be) included a reference to that person.

(5) Subsections (2) and (3) have effect subject to any provision of the company's articles which has the effect of requiring notice of termination to be received by the company or another person at a time earlier than that specified in those subsections: but this is subject to subsection (6).

(6) Any provision of the company's articles is void in so far as it would have the effect of requiring notice of termination to be received by the company or another person earlier than the following time -

- (a) in the case of a meeting or adjourned meeting, 48 hours before the time for holding the meeting or adjourned meeting,
- (b) in the case of a poll taken more than 48 hours after it was demanded, 24 hours before the time appointed for the taking of the poll,

- (c) in the case of a poll taken not more than 48 hours after it was demanded, the time at which it was demanded.

(7) In calculating the periods mentioned in subsection (3)(b) and (6) no account shall be taken of any part of a day that is not a working day.

**Saving for more extensive rights conferred by articles.**

227. Nothing in sections 222 to 226 prevents a company's articles from conferring more extensive rights on members or proxies than are conferred by those sections.

*Records of resolutions and meetings*

**Records of resolutions and meetings etc.**

228. (1) Every company must keep records comprising -
- (a) copies of all resolutions of members passed otherwise than at general meetings,
  - (b) minutes of all proceedings of general meetings, and
  - (c) details provided to the company in accordance with section 230.
- (2) The records must be kept for at least 6 years after the date of the resolution, meeting or decision (as appropriate).
- (3) Where a company fails to comply with this section it is guilty of an offence.

(4) The duty imposed upon an incorporated cell under this section lies with its incorporated cell company.

**Records as evidence of resolutions etc.**

**229.** (1) This section applies to the records kept in accordance with section 228.

(2) Where there is a record of a written resolution, the requirements of this Law in respect of the passing of the resolution are deemed to be complied with unless the contrary is proved.

(3) The minutes of proceedings of a general meeting, if purporting to be signed by the chairman of that meeting or by the chairman of the next general meeting, are evidence of the proceedings at the meeting.

(4) Where there is a record of proceedings of a general meeting of a company, then, unless the contrary is proved -

- (a) the meeting is deemed duly held and convened,
- (b) all proceedings at the meeting are deemed to have duly taken place, and
- (c) all appointments at the meeting are deemed valid.

**Records of decisions by sole member.**

**230.** (1) This section applies to a company that has only one member.

(2) Where the member takes any decision that -



- (a) may be taken by the company in general meeting, and
- (b) has effect as if agreed by the company in general meeting,

he must (unless that decision is taken by way of a written resolution) provide the company with details of that decision.

(3) Where a person fails to comply with this section he is guilty of an offence.

(4) Failure to comply with this section does not affect the validity of any decision referred to in subsection (2).

**Rights to inspect and require copies.**

**231.** (1) The records referred to in section 228 must be open, during ordinary business hours, to the inspection of any member or director of the company without charge.

(2) Any -

- (a) member, on payment of such fee as may be prescribed by the Department or such lesser fee as the company may stipulate, or
- (b) director,

may require a copy of any of the records referred to in section 228.

(3) Where a company fails to comply with this section it is guilty of an offence and the Court may by order compel an immediate inspection or, as the case may be, direct that the copy be sent to the person requesting it.

*Application to class meetings*

**Application to class meetings: shareholders.**

**232.** (1) Subject to subsection (2), the provisions of this Part, other than sections -

(a) 199 to 201, and

(b) 203 to 206,

apply (with necessary modifications) in relation to a meeting of holders of a class of shares as they apply in relation to a general meeting.

(2) The following provisions do not apply in relation to a meeting in connection with the variation of rights attached to a class of shares (a "**variation of class rights meeting**") -

(a) section 213, and

(b) section 216.

(3) The quorum for a variation of class rights meeting is -

(a) for a meeting other than an adjourned meeting, two persons present holding at least one-third of the voting rights of the class in question,

(b) for an adjourned meeting, one person present holding shares of the class in question,

(c) where the class has only one member, that member.

(4) For the purposes of subsection (3), where a person is present by proxy or proxies, he is treated as holding only the shares in respect of which the proxies are authorised to exercise voting rights.

(5) At a variation of class rights meeting, any holder of shares of the class in question present may demand a poll.

(6) For the purposes of this section -

(a) any alteration of a provision contained in a company's articles for the variation of the rights attached to a class of shares, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights, and

(b) references to the variation of rights attached to a class of shares include references to their abrogation.

**Application to class meetings: members who are not shareholders.**

**233.** (1) Subject to subsection (2), the provisions of this Part, other than sections -

(a) 199 to 201, and

- (b) 203 to 206,

apply (with necessary modifications) in relation to a meeting of a class of members who are not shareholders as they apply in relation to a general meeting.

(2) The following provisions do not apply in relation to a meeting in connection with the variation of rights of a class of members who are not shareholders (a "**variation of class rights meeting**") -

- (a) section 213, and

- (b) section 216.

(3) The quorum for a variation of class rights meeting is -

- (a) for a meeting other than an adjourned meeting, two members present (in person or by proxy) who together represent at least one-third of the voting rights of the class,

- (b) for an adjourned meeting, one member of the class present (in person or by proxy),

- (c) where the class has only one member, that member.

(4) At a variation of class rights meeting, any member present (in person or by proxy) may demand a poll.

(5) For the purposes of this section -

- (a) any alteration of a provision contained in a company's articles for the variation of the rights of class of members, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights, and
- (b) references to the variation of rights attached to a class of members include references to their abrogation.

PART XIV

ANNUAL VALIDATION

**Duty to submit annual validation.**

**234.** (1) In each calendar year before the 31<sup>st</sup> January, every company incorporated before 1<sup>st</sup> December in the previous calendar year shall -

- (a) complete an annual validation containing information current on the 31<sup>st</sup> December in that previous year,
- (b) deliver to the Registrar -
  - (i) the validation,
  - (ii) a declaration of compliance (annual validation),
  - (iii) where necessary, such information as will allow the Registrar to confirm the fee payable, and
  - (iv) where necessary, its consent to allow the Registrar to seek further information from the

Administrator of Income Tax in order to confirm the fee payable, and

- (c) file a copy of the validation in a register kept by the company for that purpose.

(2) The duty imposed upon an incorporated cell under subsection (1) lies with its incorporated cell company.

**Content of annual validation.**

**235.** (1) The annual validation shall be in such form as the Registrar directs and shall state -

- (a) the address of the company's registered office,
- (b) the particulars of its directors required to be entered in its register of directors under section 143,
- (c) where the company is obliged to keep a record of the directors' usual residential addresses in accordance with section 147, that it was current as at the 31<sup>st</sup> December of the year to which the annual validation relates and that any change in that record has been notified to the Registrar in accordance with section 148,
- (d) the particulars of its resident agent required to be entered in its record of resident agent under section 485,

- (e) the category or categories of its principal business activities by reference to a system of classifying business activities prepared by the Registrar,
  - (f) whether the company is exempt from audit in its current financial year,
  - (g) where the company is an incorporated cell company, the name and registration number of each of its incorporated cells,
  - (h) that the company's register of members kept in accordance with section 123 was current as at the 31<sup>st</sup> December of the year to which the annual validation relates, and
  - (i) that the information contained in the validation was current as at the 31<sup>st</sup> December of the year to which it relates.
- (2) Where the company has a share capital, the annual validation shall state -
- (a) the number of issued shares,
  - (b) the aggregate value of those shares (whether on account of the nominal value of the shares or by way of premium),

- (c) the amount paid up and the amount (if any) unpaid on those shares (whether on account of the nominal value of the shares or by way of premium),
- (d) the number of shares redeemed by the company in the calendar year to which the validation relates together with the total redemption price, and
- (e) the number of shares held as treasury shares,

and, where the company has more than one class of share, the validation shall also state the above matters in respect of each class of share.

(3) Where shares have been issued otherwise than for cash, the amounts referred to in subsection (2)(b) shall distinguish between cash and consideration otherwise than cash.

(4) Where the company has guarantee members, the annual validation shall state the number of guarantee members it has and the aggregate guaranteed amount of all its guarantee members.

**Declaration of compliance (annual validation).**

**236.** (1) A declaration of compliance (annual validation) is a declaration, signed by a director or secretary of the company, that all the requirements of this Law in respect of the annual validation have been fulfilled.

(2) The Registrar, when performing his functions under this Law, may rely upon the declaration in all respects and accordingly is not bound to enquire further as to whether, in relation to the annual validation, the provisions of this Law have been complied with.



(3) A person who without reasonable excuse makes a declaration which is false, deceptive or misleading in a material particular is guilty of an offence.

**Failure to submit annual validation.**

**237.** (1) A company which fails to comply with section 234 or 235 is -

- (a) guilty of an offence and in addition liable to a daily default fine, and
- (b) liable to a civil penalty.

(2) A company which fails to comply with section 234 or 235 is liable to be struck off the Register of Companies in accordance with Part XX.

(3) An annual validation and declaration of compliance (annual validation) which has been delivered to the Registrar which does not comply with all the requirements of this Part shall be treated as if it has not been delivered to the Registrar.

PART XV

ACCOUNTS AND REPORTS

*Accounting records*

**Accounting records.**

**238.** Every company shall keep accounting records which are sufficient to show and explain its transactions and are such as to -

- (a) disclose with reasonable accuracy, at any time, the

financial position of the company at that time, and

- (b) enable the directors to ensure that any accounts prepared by the company are prepared properly and in accordance with any relevant enactment for the time being in force.

**Retention of accounting records.**

**239.** (1) A company's accounting records shall be kept -

- (a) at the company's registered office, or
- (b) at such other place as its directors think fit.

(2) If accounting records are kept at a place outside Guernsey, returns in respect of the business dealt with in the accounting records shall be sent to and kept at a place in Guernsey and those returns shall be such as to -

- (a) disclose with reasonable accuracy the financial position of the business in question at intervals of not more than 6 months, and
- (b) enable the directors to ensure that any accounts prepared by the company are prepared properly and in accordance with any relevant enactment for the time being in force.

(3) Accounting records (and, where returns are sent, returns) shall be kept by the company for a period of at least 6 years after the date on which they are made.

**Inspection of accounting records and returns.**

240. Accounting records (and, where returns are sent, returns) shall at all reasonable times be open to inspection by any director, secretary or officer of the company at the place at which they are kept.

**Application to incorporated cells.**

241. The duties imposed upon an incorporated cell under sections 238 to 240 lie with its incorporated cell company.

**Offences in connection with accounting records.**

242. (1) A company which fails to comply with sections 238 to 241 is guilty of an offence.

(2) An officer of a company who fails to take all reasonable steps for securing compliance by the company with section 239(3) is (without prejudice to the provisions of section 515) guilty of an offence.

*Accounts*

**Preparation of individual accounts.**

243. (1) Subject to section 244, the directors of every company shall prepare accounts of that company for each of the company's financial years ("**individual accounts**").

(2) The accounts shall include -

(a) a profit and loss account, and

(b) a balance sheet.

- (3) The accounts shall -
  - (a) give (and state that they give) a true and fair view,
  - (b) be in accordance (and state that they are in accordance) with generally accepted accounting principles and state which principles have been adopted, and
  - (c) comply (and state that they comply) with any relevant enactment for the time being in force.
- (4) The accounts shall be approved by the board of directors and signed on their behalf by at least one of them.

**Preparation of consolidated accounts.**

**244.** (1) The directors of a holding company may, if they think fit, prepare consolidated accounts for that company and all or any of its subsidiaries whether or not they are companies incorporated under this Law ("**consolidated accounts**").

- (2) The consolidated accounts shall include -
  - (a) a profit and loss account, and
  - (b) a balance sheet.
- (3) The consolidated accounts shall -
  - (a) give (and state that they give) a true and fair view,

- (b) be in accordance (and state that they are in accordance) with generally accepted accounting principles and state which principles have been adopted, and
- (c) comply (and state that they comply) with any relevant enactment for the time being in force.

(4) The consolidated accounts shall be approved by the board of directors of the holding company and signed on their behalf by at least one director.

(5) If the directors of a holding company prepare consolidated accounts for a financial year, then they are not required to prepare individual accounts for that company in accordance with section 243 for that financial year.

(6) The members of a company may, by ordinary resolution, require the preparation of individual accounts in respect of that company and, if they do, the directors must prepare accounts for that company in accordance with section 243.

(7) An incorporated cell company may prepare consolidated accounts for itself and all or any of its incorporated cells as if it were a holding company and its incorporated cells were its subsidiaries, and in that case -

- (a) the consolidated accounts shall be approved by the board of directors of the incorporated cell company and signed on their behalf by at least one director, and
- (b) the provisions of this section shall apply accordingly.

**Meaning of "accounts" and "financial year".**

245. In this Law -

"accounts" means either individual accounts prepared in accordance with section 243 or consolidated accounts prepared in accordance with section 244,

"financial year" means -

- (a) firstly, the period beginning on the date on which a company was incorporated and ending within 18 months of that date,
- (b) thereafter, the period beginning on the day after its previous financial year ended and ending within 18 months of that date.

**Preparation of accounts of incorporated cells.**

246. The functions of the directors of an incorporated cell under sections 243 and 244 lie with the directors of its incorporated cell company.

**Offences in connection with accounts.**

247. A company in respect of which there is a failure to comply with section 243 or 244 is guilty of an offence.

*Directors' report*

**Duty to prepare directors' report.**

248. (1) The directors of every company shall prepare a directors' report for each of the company's financial years.

(2) The directors' report must state the principal activities (if any) of the company in the course of the financial year and may be in summary form.

(3) The directors of associated companies may, if they think fit, combine their directors' reports, and if the combined report states the principal activities of all associated companies, the requirements of this section are satisfied.

**Directors' report where company is audited.**

**249.** (1) This section applies to a company unless it is exempt from audit in accordance with section 256 for the financial year in question.

(2) The directors' report must contain a statement to the effect that, in the case of each of the persons who are directors at the time the report is approved -

(a) so far as the director is aware, there is no relevant audit information of which the company's auditor is unaware, and

(b) he has taken all the steps he ought to have taken as a director to make himself aware of any relevant audit information and to establish that the company's auditor is aware of that information.

(3) A director is regarded as having taken all the steps that he ought to have taken as a director in order to do the things mentioned in subsection (2)(b) if he has -

(a) made such enquiries of his fellow directors and of the company's auditors for that purpose, and

- (b) taken such other steps (if any) for that purpose,

as are required by his duty as a director of the company to exercise reasonable care, skill and diligence.

(4) Where a director's report containing the statement required by this section is approved but the statement is false, every director of the company who

-

- (a) knew that the statement was false or was reckless as to whether it was false, and

- (b) failed to take reasonable steps to prevent the report from being approved,

is guilty of an offence.

(5) In this section "**relevant audit information**" means information needed by the company's auditor in connection with preparing his report.

**Directors' report where company is not audited.**

**250.** Where a company is exempt from audit in accordance with section 256, its directors' report must state that its accounts are exempt from the requirement to be audited and have not been audited.

*Rights to accounts and reports*

**Delivery of accounts and reports to members and officers.**

**251.** (1) Every company must send a copy of -



- (a) its accounts,
- (b) its directors' report, and
- (c) its auditor's report (where one is required under Part XVI),

to each member of the company within 12 months after the end of the financial year to which they relate.

(2) Every company must send a copy of the most recent -

- (a) accounts,
- (b) directors' report, and
- (c) auditor's report (where one is required under Part XVI),

to a member or officer of the company within 7 days after the date on which the member makes such a request, provided that he has not previously made such a request within that financial year.

(3) The duty imposed upon an incorporated cell under this section lies with its incorporated cell company.

(4) A company which fails to comply with this section is guilty of an offence.

(5) If subsection (1) is not complied with, any member may, not less than 14 days after the date mentioned in that subsection, apply to the Court under this subsection.

(6) Upon hearing an application under subsection (5), the Court may -

- (a) direct that the company be wound up,
- (b) direct that the accounts or reports (as the case may be) be sent, or
- (c) make such other order as it thinks fit.

(7) The Court may order that the costs of an application under subsection (5) be paid by any person who, in the opinion of the Court, is responsible for the default.

(8) The provisions of Part XXIII shall, subject to the provisions of subsections (5), (6) and (7), apply in relation to the winding up of a company pursuant to this section.

**Laying of accounts and reports before general meeting.**

**252.** If a company holds a general meeting under section 199, it shall lay before that meeting copies of its most recent -

- (a) accounts,
- (b) directors' report, and

- (c) auditor's report (where one is required under Part XVI).

**Application to incorporated cell companies.**

253. The duties imposed upon an incorporated cell under section 251 lie with its incorporated cell company.

**Application to protected cell companies.**

254. The memorandum or articles of a protected cell company may provide that -

- (a) a member of a cell of a protected cell company who is not a member of its core may be provided only with so much of its accounts, directors' report and auditor's report as relate to the cell,
- (b) a member of the core of a protected cell company who is not a member of a cell may be provided only with so much of its accounts, directors' report and auditor's report as relate to the core.

PART XVI

AUDIT

*Requirement for and exemption from audit*

**Requirement for audit.**

255. A company's accounts for a financial year must be audited in accordance with the provisions of this Part unless the company is exempt from audit under the provisions of section 256.

**Exemption from audit.**

256. (1) The members of a company may pass a waiver resolution exempting the company from the requirement under section 255 to have its accounts for a financial year audited.

(2) A resolution under subsection (1) must be passed -

- (a) in the financial year before the financial year to which it relates, or
- (b) if the financial year is the company's first financial year, in that financial year.

(3) The effect of the resolution under subsection (1) shall be rescinded if the company has received requests to do so from -

- (a) members holding more than 10% in value of the company's share capital or any class of it (excluding any shares held as treasury shares), or
- (b) if the company does not have a share capital, more than 10% in number of the members of the company.

(4) The rescission of the resolution under subsection (1) shall only have effect in a particular financial year if the requests from the requisite percentage of members under subsection (3) are received by the company not later than 3 months after the beginning of that financial year.

(5) The passing of a resolution under subsection (1) only has effect in respect of its obligations under this Law and does not prejudice any other

obligation of a company to have its accounts audited.

(6) The Department may make regulations preventing certain types, classes or descriptions of company from being exempt from audit<sup>0</sup>.

*Appointment of auditor*

**Appointment of auditor.**

**257.** (1) An auditor must be appointed for each financial year of a company, unless -

- (a) the company is exempt from audit for that financial year, or
- (b) the directors reasonably resolve otherwise on the ground that audited accounts are unlikely to be required.

(2) For each financial year for which an auditor is appointed (other than the company's first financial year), the appointment must be made within 28 days after -

- (a) the end of the time allowed for sending out copies of the company's annual accounts and reports for the previous financial year, or
- (b) if earlier, the day on which copies of the company's annual accounts and reports for the previous financial

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<sup>0</sup> See the Companies (Audit Exemption) Regulations, 2008.

year are sent out,

and this period is the "**period for appointing auditors**".

(3) The directors may appoint an auditor of the company -

(a) at any time before the company's first period for appointing auditors,

(b) following a period during which the company (being exempt from audit) did not have any auditor, at any time before the company's next period for appointing auditors, or

(c) to fill a casual vacancy in the office of auditor.

(4) The members may appoint an auditor of the company by ordinary resolution -

(a) during a period for appointing auditors,

(b) if the company should have appointed an auditor during a period for appointing auditors but failed to do so, or

(c) where the directors have power to appoint under subsection (3) but have failed to make an appointment.

(5) If an auditor is not appointed within 28 days after the day on which the members could have so appointed him under subsection (4), the Court may, on the application of a member or creditor of the company, appoint an auditor of the

company for that financial year.

**Term of office of auditor.**

258. (1) An auditor of a company holds office in accordance with the terms of his appointment, subject to the requirements that -

- (a) he does not take office until any previous auditor ceases to hold office, and
- (b) he ceases to hold office at the end of the next period for appointing auditors unless re-appointed.

(2) Where no auditor has been appointed by the end of the next period for appointing auditors, any auditor in office immediately before that time is deemed to be re-appointed at that time, unless -

- (a) he was appointed by the directors,
- (b) the company's articles require actual re-appointment,
- (c) the members have resolved that he should not be re-appointed,
- (d) the company is exempt from audit for the financial year,  
or
- (e) the directors have resolved that no auditor should be appointed for the financial year in question.

(3) This section is without prejudice to the provisions of this Part

as to removal and resignation of auditors.

(4) No account shall be taken of any loss of opportunity of deemed re-appointment under this section in ascertaining the amount of compensation or damages payable to an auditor on his ceasing to hold office for any reason.

**Remuneration of auditor.**

**259.** The remuneration of an auditor appointed by -

- (a) the members, shall be determined by -
  - (i) the members by ordinary resolution, or
  - (ii) the directors, if the members by ordinary resolution so resolve,
- (b) the directors, shall be determined by the directors,
- (c) the Court, shall be determined by the Court.

**Qualification for appointment as auditor.**

**260.** (1) An individual is not qualified for appointment as an auditor unless he is -

- (a) a member of an appropriate body, or
- (b) for the time being authorised by the Department to audit the accounts of companies as having similar qualifications obtained outside the United Kingdom,



and in this section such an individual is termed a "**qualified individual**".

(2) A partnership is not qualified for appointment as auditor unless

-

(a) control of the partnership rests with qualified individuals, and

(b) every partner who is not a qualified individual satisfies any applicable requirement of an appropriate body to observe and uphold the ethical standards thereof.

(3) A body corporate is not qualified for appointment as auditor

unless -

(a) control of the body corporate rests with qualified individuals, and

(b) every director who is not a qualified individual satisfies any applicable requirement of an appropriate body to observe and uphold the ethical standards thereof.

(4) An officer or servant of a company, or a partner or employee of an officer or servant of a company, is not qualified for appointment by that company as an auditor.

(5) Subsections (1) to (4) are without prejudice to any other relevant enactment for the time being in force, and in this section the words "qualified" and "disqualified" are to be construed accordingly.

(6) An auditor who becomes disqualified during his term of office shall -

- (a) forthwith cease to act as auditor, and
- (b) notify the company accordingly in writing.

(7) A person who -

- (a) acts as auditor of a company when he knows that he is disqualified, or
- (b) fails without reasonable cause to give a notification in accordance with subsection (6)(b),

is guilty of an offence.

(8) In this section -

**"appropriate body"** means -

- (a) the Institute of Chartered Accountants in England and Wales,
- (b) the Institute of Chartered Accountants in Ireland,
- (c) the Institute of Chartered Accountants of Scotland,
- (d) the Association of Chartered Certified Accountants, or

- (e) such other body as may be prescribed by the Department,

"**control**" means entitlement to exercise a majority of the votes cast -

- (a) in the case of a partnership, at any meeting of the partners or other management body, and
- (b) in the case of a body corporate, at any meeting of the members or directors or other management body.

**Appointment etc. of auditor of incorporated cells.**

**261.** (1) The functions imposed upon the directors of an incorporated cell in respect of the appointment and remuneration of its auditors lie with the directors of its incorporated cell company.

(2) An incorporated cell may, with the agreement of the directors of its incorporated cell company, elect -

- (a) in its memorandum or articles, or
- (b) by way of a special resolution,

that the functions of the members of an incorporated cell in respect of the appointment and remuneration of its auditors shall lie with and be exercised by the directors of its incorporated cell company.

**Auditor's report.**

262. (1) A company's auditor must make a report to the company's members on all accounts of the company of which copies are, during his tenure of office, to be sent out to members under section 251.

(2) The auditor's report shall state whether in the auditor's opinion, the accounts -

(a) give a true and fair view,

(b) are in accordance with generally accepted accounting principles, and

(c) comply with any relevant enactment for the time being in force.

(3) The auditor's report must state the name of the auditor and be signed and dated.

*Functions of auditors*

**Duties of auditor.**

263. (1) A company's auditor, in preparing his report, must carry out such investigations as will enable him to form an opinion as to -

(a) whether proper accounting records have been kept by the company, and

(b) whether the company's accounts are in agreement with the accounting records.

- (2) If the auditor is of the opinion -
  - (a) that proper accounting records have not been kept by the company, or
  - (b) that the company's accounts are not in agreement with the accounting records,

the auditor shall state that fact in his report.

(3) If the auditor fails to obtain all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit, he shall state that fact in his report.

**Auditor's general right to information.**

- 264.** (1) An auditor of a company -
- (a) has a right of access at all times to the company's books, accounts and vouchers (in whatever form they are held), and
  - (b) may require any of the following persons to provide him with such information or explanations as he thinks necessary for the performance of his duties as auditor.
- (2) Those persons are -
- (a) any officer or employee of the company,

- (b) any person holding or accountable for any of the company's books, accounts or vouchers,
- (c) any associated company which is not an overseas company,
- (d) any officer, employee or auditor of any such associated company or any person holding or accountable for any books, accounts or vouchers of any such associated company, and
- (e) any person who fell within any of paragraphs (a) to (d) at a time to which the information or explanations required by the auditor relate.

(3) A statement made by a person in response to a requirement under this section may not be used in evidence against him in criminal proceedings except proceedings for an offence under section 266.

(4) Nothing in this section compels a person to disclose information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

**Auditor's right to information from overseas associated companies.**

**265.** (1) Where a company has an associated company which is an overseas company, the auditor of the company may require the company to obtain from any of the following persons such information or explanations as he may reasonably require for the purposes of his duties as auditor.

(2) Those persons are -

- (a) the associated company,
- (b) any officer, employee or auditor of the associated company,
- (c) any person holding or accountable for any of the associated company's books, accounts or vouchers, and
- (d) any person who fell within paragraph (b) or (c) at a time to which the information or explanations relate.

(3) If so required, the company must take all such steps as are reasonably open to it to obtain the information or explanations from the person concerned.

(4) A statement made by a person in response to a requirement under this section may not be used in evidence against him in criminal proceedings except proceedings for an offence under section 266.

(5) Nothing in this section compels a person to disclose information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

(6) For the purposes of this section, a subsidiary within the meaning of section 531 includes a body corporate which would be a subsidiary but for the fact that it is an overseas company.

**Offences in connection with auditor's right to information.**

**266.** (1) A person who knowingly or recklessly makes to an auditor of a

company a statement (oral or written) that -

- (a) conveys or purports to convey any information or explanations which the auditor requires, or is entitled to require, under section 264, and
- (b) is misleading, false or deceptive in a material particular,

is guilty of an offence.

(2) A person who fails to comply with a requirement under section 264 without delay is guilty of an offence unless it was not reasonably practicable for him to provide the required information or explanations.

(3) A company that fails to comply with section 265 is guilty of an offence.

(4) Nothing in this section affects any right of an auditor to apply for an injunction to enforce any of his rights under section 264 or 265.

**Auditor's rights in relation to resolutions and meetings.**

**267.** (1) In relation to a written resolution proposed to be agreed to by a company, the company's auditor is entitled to receive such communications relating to the resolution as, by virtue of any provision of Part XIII, are required to be supplied to a member of the company.

(2) A company's auditor is entitled -

- (a) to receive all notices of, and other communications relating to, any general meeting which a member of the



company is entitled to receive,

- (b) to attend any general meeting of the company, and
- (c) to be heard at any general meeting which he attends on any part of the business of the meeting which concerns him as auditor.

(3) Where the auditor is not an individual, the right to attend or be heard at a meeting is exercisable by an individual authorised by the auditor in writing to act as its representative at the meeting.

*Removal of auditor*

**Resolution removing auditor from office.**

**268.** (1) The members of a company may remove an auditor from office at any time.

(2) This power is exercisable only -

- (a) by ordinary resolution at a general meeting, and
- (b) in accordance with section 269.

(3) Nothing in this section is to be taken as depriving the auditor removed of compensation or damages payable to him in respect of the termination -

- (a) of his appointment as auditor, or
- (b) of any appointment terminating with that as auditor.

(4) An auditor may not be removed from office before the expiration of his term of office except by resolution under this section.

**Special notice required for resolution removing auditor from office.**

269. (1) Special notice is required for a resolution at a general meeting of a company removing an auditor from office.

(2) On receipt of notice of such an intended resolution the company must immediately send a copy of it to the person proposed to be removed.

(3) The auditor proposed to be removed may make in respect of the intended resolution representations in writing to the company (not exceeding a reasonable length) and request their notification to members of the company.

(4) The company must (unless the representations are received too late for it to do so) -

(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made, and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.

(5) If a copy of any such representations is not sent out as required because they were received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations be read out at the meeting.

(6) Copies of the representations need not be sent out and the representations need not be read at the meeting if, on the application either of the company or of any other person claiming to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused.

(7) The Court may order the company's costs on an application under subsection (6) to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

**Rights of auditor who has been removed from office.**

**270.** (1) An auditor who has been removed by resolution under section 268 has, notwithstanding his removal, the rights conferred by section 267(2) in relation to any general meeting of the company -

- (a) at which his term of office would otherwise have expired, or
- (b) at which it is proposed to fill the vacancy caused by his removal.

(2) In such a case the references in that section to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a former auditor.

*Resignation of auditor*

**Resignation of auditor.**

**271.** (1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office.

(2) The notice is not effective unless it is accompanied by the statement required under -

(a) section 273(1), or

(b) section 273(2).

(3) An effective notice of resignation operates to bring the auditor's term of office to an end as of the date on which the notice is deposited or on such later date as may be specified in it.

**Rights of resigning auditor.**

**272.** (1) This section applies where an auditor's notice of resignation is accompanied by a statement of the circumstances connected with his resignation under section 273(1).

(2) The auditor may deposit with the notice a signed requisition calling on the directors of the company forthwith duly to convene a general meeting of the company for the purposes of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.

(3) The auditor may request that the company circulates to its members -

(a) before the meeting convened on his requisition, or

(b) before any general meeting at which his term of office would otherwise have expired or at which it is proposed

to fill the vacancy caused by his resignation,

a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.

(4) The company must (unless the statement is received too late for it to comply) -

(a) in any notice of the meeting given to the members of the company, state the fact of the statement having been made, and

(b) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.

(5) The directors must within 21 days after the date of the deposit of a requisition under this section proceed duly to convene a meeting for a day not more than 28 days after the date on which the notice convening the meeting is given.

(6) A company which fails to comply with subsection (5) is guilty of an offence.

(7) If a copy of the statement mentioned above is not sent out as required because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the statement be read out at the meeting.

(8) Copies of a statement need not be sent out and the statement need not be read out at the meeting if, on the application either of the company or of

any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused.

(9) The Court may order the company's costs on an application under subsection (8) to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(10) An auditor who has resigned has, notwithstanding his resignation, the rights conferred by section 267(2) in relation to any such general meeting of the company as is mentioned in subsection (3)(a) or (b) above; and in such a case the references in that section to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a former auditor.

*Statement by auditor on ceasing to hold office*

**Statement by auditor to be deposited with company.**

**273.** (1) Where an auditor of a company ceases for any reason to hold office, he must deposit at the company's registered office a statement of the circumstances connected with his ceasing to hold office, unless he considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company.

(2) If an auditor considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company, he must deposit at the company's registered office a statement to that effect.

(3) A statement required by this section must be deposited -

(a) in the case of resignation, along with the notice of

resignation,

- (b) in the case of failure to seek re-appointment, not less than 14 days before the end of the time allowed for next appointing an auditor, and
- (c) in any other case, within 14 days after the date on which he ceases to hold office.

**Company's duties in relation to statement.**

**274.** (1) This section applies where a statement is deposited under section 273(1).

(2) The company must within 14 days after the date of the deposit of the statement either -

- (a) send a copy of it to every member and officer of the company, or
- (b) apply to the Court.

(3) If the company applies to the Court, it must notify the auditor of the application.

(4) If the Court is satisfied that the auditor is abusing the rights conferred by section 273 -

- (a) it shall direct that copies of the statement need not be sent out, and

- (b) it may further order the company's costs on the application to be paid in whole or in part by the auditor, even if he is not a party to the application,

and the company must within 14 days after the date of the Court's decision send to the persons mentioned in subsection (2)(a) a statement setting out the effect of the order.

(5) If no such direction is made the company must send copies of the statement to the persons mentioned in subsection (2)(a) within 14 days after the date of the Court's decision or, as the case may be, the date of the discontinuance of the proceedings.

(6) A company which fails to comply with this section is guilty of an offence.

(7) In proceedings for such an offence it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

## PART XVII

### CAPITAL AND SHARES

#### *Shares*

#### **Legal nature of shares.**

**275.** The shares of any shareholder in a company are personal estate.

#### **Rights and powers attaching to shares.**

**276.** (1) A share in a company confers on the shareholder -



- (a) the right to vote on resolutions of the company,
- (b) the right to an equal share in dividends authorised by the board of directors, and
- (c) the right to an equal share in the distribution of the surplus assets of the company.

(2) The rights specified in subsection (1) may be varied by the memorandum and articles of the company or in accordance with the terms on which the share is issued.

**Types of share.**

**277.** (1) Subject to the memorandum and articles, different classes of share may be issued in a company.

(2) Without prejudice to the generality of subsection (1), shares may be issued which -

- (a) are redeemable,
- (b) confer preferential rights to distribution of capital or income,
- (c) do not entitle the holder to voting rights,
- (d) entitle the holder to restricted voting rights.

**Shares of no par value.**

278. (1) A company may issue shares which have no nominal or par value ("**shares of no par value**") if it is authorised to do so by its memorandum or articles.

(2) A company with power to issue shares of no par value may, but need not, also have power to issue shares with a nominal or par value.

(3) The consideration for which and the terms upon which a company may issue shares of no par value shall be determined in accordance with the provisions of the company's memorandum or articles.

**Currency of shares.**

279. Shares may be denominated in any currency and different classes of shares may be denominated in different currencies (or no currency, in the case of shares of no par value).

**Fractional shares.**

280. A company may, if so authorised by its memorandum or articles, issue fractions of a share, which shall, except to the extent that the company's memorandum or articles provide otherwise, carry the corresponding proportion of rights, liabilities and other attributes of whole shares of the same class; and in this Law the word "share" includes fractions of a share so issued, and cognate expressions shall be construed accordingly.

**Low value shares.**

281. The value of a share may be expressed as an amount which is less than the smallest unit of legal tender of the currency (or any of the currencies) in which the company's share capital is expressed.

**Numbering of shares.**

282. (1) Each share in a company shall, subject to subsection (2), be distinguished by its particular number.

(2) If at any time -

- (a) all the issued shares in a company are fully paid up and rank *pari passu* for all purposes, or
- (b) all the issued shares of a particular class in a company are fully paid up and rank *pari passu* for all purposes,

none of those shares need thereafter have a distinguishing number so long as they remain fully paid up and rank *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

**No conversion into stock.**

283. A company's shares may no longer be converted into stock.

**Different amounts may be paid on shares.**

284. A company may, if so authorised by its memorandum or articles -

- (a) make arrangements, on the issue of shares, to distinguish between shareholders as to the amounts and times of payment of calls on their shares,
- (b) accept from any shareholder the whole or any part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up, or

- (c) pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

**Share certificates.**

**285.** A company may, but need not, issue share certificates.

*Share capital*

**Reserve liability of company.**

**286.** A company may by special resolution determine that any portion of its share capital which has not been called up shall not be capable of being called up except in the event and for the purposes of the company being wound up and, if a company so resolves, that portion may not be called up except in that event and for those purposes.

**Power of company to alter share capital.**

**287.** (1) A company may, if so authorised by its memorandum or articles, by ordinary resolution alter its memorandum so as to -

- (a) consolidate and divide all or any of its share capital into shares of larger amounts than its existing shares,
- (b) subject to subsection (2), subdivide all or any of its shares into shares of a smaller amount than is fixed by the memorandum,
- (c) cancel shares which, at the date of the passing of the resolution, have not been taken up or agreed to be taken

up by any person, and diminish the amount of its share capital by the amount of the shares so cancelled,

- (d) convert all or any of its shares the nominal amount of which is expressed in a particular currency or former currency into shares of a nominal amount of a different currency, the conversion being effected at the rate of exchange (calculated to not less than 3 significant figures) current on the date of the resolution or on such other day as may be specified therein,
- (e) where its share capital is expressed in a particular currency or former currency, denominate or redenominate it, whether by expressing its amount in units or subdivisions of that currency or former currency, or otherwise.

(2) In any subdivision under subsection (1)(b), the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as that proportion in the case of the share from which the reduced share was derived.

(3) A cancellation of shares under this section does not for the purposes of this Law constitute a reduction of share capital.

(4) A copy of every resolution under this section shall be delivered by the company to the Registrar within 30 days after the date on which it was passed.

(5) Failure to comply with subsection (4) does not render the resolution void.

- (6) A company which fails to comply with subsection (4) is -
  - (a) guilty of an offence, and
  - (b) liable to a civil penalty.

**Share certificates and reduction of share capital.**

**288.** (1) Where, whether by operation of law or pursuant to a resolution under section 287(1)(d) or (e) -

- (a) any of a company's shares, the nominal amount of which is expressed in a particular currency or former currency, are converted into shares of a nominal amount of a different currency, or
- (b) a company's share capital, being expressed in a particular currency or former currency, is denominated or redenominated, whether by expression in units or subdivisions of that currency or former currency or otherwise,

then, notwithstanding any provision to the contrary in the company's memorandum or articles, subsection (2) applies.

- (2) Where this subsection applies -
  - (a) the company is not obliged to issue new share certificates showing the different nominal amounts of the shares in question,

- (b) the existing share certificates, notwithstanding the conversion, denomination or redenomination, continue to be valid, and
- (c) any reduction of the nominal amounts of the individual shares or of the amount of the company's share capital which is attributable solely to the conversion, denomination or redenomination does not constitute a reduction of share capital provided that -
  - (i) the reduction does not extinguish or reduce the liability on any share in respect of capital which is not paid up (and for the purposes hereof a rounding down in accordance with the *lex monetae* or in accordance with the provisions of section 287(1)(d) of the amount not paid up on any share shall be deemed not to be an extinction or reduction of any such liability), and
  - (ii) the reduction does not reduce the net assets of the company.

*Transfer of shares*

**Transfer of shares.**

**289.** (1) The shares of any shareholder in a company are transferable in the manner provided by the company's memorandum or articles.

(2) The provisions of this section are subject to the Uncertificated Securities (Enabling Provisions) (Guernsey) Law, 2005<sup>P</sup> and any Ordinance or regulation made under that Law.

**Transfer of shares of deceased shareholders.**

**290.** Any transfer of the shares of a deceased shareholder made by his heir, executor or other lawful representative is, provided that all other formalities prescribed for the validity of such transfers are observed, valid notwithstanding that the transferor's name is not entered in the register of members.

*Issue of shares*

**Exercise by directors of powers to issue shares etc.**

**291.** (1) The directors of a company must not exercise any power of the company -

- (a) to issue shares in the company, or
- (b) to grant rights to subscribe for, or to convert any security into, shares in the company,

except in accordance with section 292 or section 293.

(2) Subsection (1) does not apply -

- (a) to the issue of shares in pursuance of an employees' share scheme, or

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<sup>P</sup> Order in Council No. VI of 2005.



(b) to the grant of a right to subscribe for, or to convert any security into, shares so issued.

(3) If this section applies in relation to the grant of a right to subscribe for, or to convert any security into, shares, it does not apply in relation to the issue of shares pursuant to that right.

(4) A director who fails to comply with, or permits or authorises a contravention of, this section, is guilty of an offence.

(5) Nothing in this section affects the validity of an issue or other transaction.

**General power to issue shares: authorisation by company.**

**292.** (1) The directors may exercise a power of a company -

(a) to issue shares in the company, or

(b) to grant rights to subscribe for, or to convert any security into, shares in the company,

if they are authorised to do so by the company's memorandum or articles or by resolution of the company.

(2) Authorisation may be given for a particular exercise of the power or for its exercise generally, and may be unconditional or subject to conditions.

(3) Authorisation must -

- (a) state the maximum amount of shares that may be issued under it, and
  - (b) specify the date on which it will expire, which must not be more than 5 years after -
    - (i) in the case of authorisation contained in the company's memorandum or articles at the time of its original incorporation, the date of that incorporation,
    - (ii) in any other case, the date on which the resolution is passed by virtue of which the authorisation is given.
- (4) Authorisation may -
- (a) be renewed or further renewed by resolution of the company for a further period not exceeding 5 years, and
  - (b) be revoked or varied at any time by resolution of the company.
- (5) A resolution renewing authorisation must -
- (a) state (or restate) the maximum amount of shares that may be issued under the authorisation or, as the case may be, the amount remaining to be issued under it, and

- (b) specify the date on which the renewed authorisation will expire.

(6) In relation to rights to subscribe for or to convert any security into shares in the company, references in this section to the maximum amount of shares that may be issued under the authorisation are to the maximum amount of shares that may be issued pursuant to the rights.

(7) The directors may issue shares, or grant rights to subscribe for or to convert any security into shares, after authorisation has expired if -

- (a) the shares are issued, or the rights are granted, in pursuance of an offer or agreement made by the company before the authorisation expired, and
- (b) the authorisation allowed the company to make an offer or agreement which would or might require shares to be issued, or rights to be granted, after the authorisation had expired.

(8) A resolution of a company to give, vary, revoke or renew authorisation under this section may be an ordinary resolution, even though it amends the company's articles.

**Additional power to issues shares: companies with one class of share.**

**293.** Where a company limited by shares has only one class of shares, the directors may exercise any power of the company -

- (a) to issue shares of that class, or

- (b) to grant rights to subscribe for or to convert any security into such shares,

except to the extent that they are prohibited from doing so by the company's memorandum, articles or any resolution of the company.

**Consideration for issue of shares.**

**294.** (1) The consideration for which a share is issued may take any form including, without limitation, cash, promissory notes, contracts for future services, real or personal property, or other securities of the company.

(2) The consideration received or due for an issue of shares, net of the expenses of issue or the commission paid or discount allowed on issue, shall be transferred to an account to be called the "share capital account" and where consideration is other than cash, the fair value of the consideration shall be credited to the share capital account.

(3) For the avoidance of doubt -

- (a) there is no requirement to maintain a share premium account, and
- (b) it is not unlawful to issue shares at a discount or pay a commission in respect of the issue of shares.

**Consideration to be decided by board of directors.**

**295.** (1) Before a company issues shares under section 292 or 293, the board of directors must -

- (a) decide the consideration for which the shares will be issued and the terms on which they will be issued, and
  - (b) resolve that, in its opinion, the consideration for and terms of the issue are fair and reasonable to the company and to all existing members.
- (2) The board of directors must approve a certificate -
- (a) stating the consideration for, and the terms of, the issue,
  - (b) describing the consideration in sufficient detail to identify it, and
  - (c) stating that, in their opinion, the consideration and terms of issue are fair and reasonable to the company and to all existing members,

and the certificate must be signed on their behalf by at least one of them.

- (3) Nothing in this section applies to the issue of shares in a company on -
- (a) the conversion of any security into shares, or
  - (b) the exercise of any right to subscribe for shares.

**Consideration other than cash.**

**296.** (1) This section applies, in addition to section 295, where shares are issued otherwise than for cash.

(2) For the purposes of this section, shares that are or are to be credited as paid up, whether wholly or partly, as part of an arrangement that involves the transfer of property or the provision of services and an exchange of cash or cheques or other negotiable instruments, whether simultaneously or not, must be treated as paid up other than in cash to the value of the property or services.

(3) Before a company issues shares under section 292 or 293, the board of directors must -

- (a) determine the reasonable present cash value of the consideration for issue, and
- (b) resolve that, in its opinion, the present cash value of the consideration to be provided for the issue of shares is not less than the amount to be credited for the issue of the shares.

(4) The certificate referred to in section 295(2) must -

- (a) state the reasonable present cash value of the consideration and the basis for assessing it, and
- (b) state that, in the opinion of the board, the present cash value of the consideration to be provided for the issue of the shares is not less than the amount to be credited for the issue of the shares.

(5) Before shares that have already been issued are credited as fully or partly paid up, the board must -

- (a) determine the reasonable cash value of the consideration, and
- (b) resolve that, in its opinion, the present cash value of the consideration is -
  - (i) fair and reasonable to the company and to all existing members, and
  - (ii) not less than the amount to be credited in respect of the shares.

(6) The board of directors must, in respect of a decision under subsection (5), approve a certificate -

- (a) describing the consideration in sufficient detail to identify it, and
- (b) stating -
  - (i) the present cash value of the consideration and the basis for assessing it,
  - (ii) that the present cash value of the consideration is fair and reasonable to the company and to all existing members, and

- (iii) that the present cash value of the consideration is not less than the amount to be credited in respect of the shares.

and the certificate must be signed on their behalf by at least one of them.

(7) Nothing in this section applies to the issue of shares in a company on -

- (a) the conversion of any security into shares, or
- (b) the exercise of any right to subscribe for shares.

**Exemption to sections 295 and 296.**

**297.** Sections 295 and 296 do not apply to -

- (a) the issue of shares that are fully paid up from the reserves of the company to all shareholders of the same class in proportion to the number of shares held by each shareholder,
- (b) the consolidation and division of the shares or any class of shares in the company in proportion to those shares or the shares in that class,
- (c) the subdivision of the shares or any class of shares in the company in proportion to those shares or the shares in that class,



- (d) the issue of shares consequent upon the conversion of shares expressed in a particular currency or former currency into a different currency.

**Consideration in relation to issue of rights to subscribe for, or conversion of securities into, shares.**

**298.** (1) Before a company grants rights to subscribe for, or to convert any security into, shares in a company, the board of directors must -

- (a) decide the consideration for which the rights or securities and, in either case, the shares will be issued and the terms on which they will be issued, and
- (b) resolve that, in its opinion, the consideration for and terms of the issue of the rights or securities and, in either case, the shares are fair and reasonable to the company and to all existing members.

(2) The board of directors must approve a certificate -

- (a) stating the consideration for, and terms of, the issue of the rights or securities and, in either case, the shares,
- (b) describing the consideration in sufficient detail to identify it, and
- (c) stating that, in their opinion, the consideration for and terms of issue of the rights or securities and, in either case, the shares are fair and reasonable to the company and to all existing members,

and the certificate must be signed on their behalf by at least one of them.

**Consideration other than cash.**

**299.** (1) This section applies, in addition to section 298, where a company grants rights to subscribe for, or to convert any security into, shares in a company and where the shares are to be issued otherwise than for cash.

(2) For the purposes of this section, shares that are to be credited as paid up, whether wholly or partly, as part of an arrangement that involves the transfer of property or the provision of services and an exchange of cash or cheques or other negotiable instruments, whether simultaneously or not, must be treated as paid up other than in cash to the value of the property or services.

(3) Before a company grants rights to subscribe for, or to convert any security into, shares in a company, the board of directors must -

- (a) determine the reasonable present cash value of the consideration for the issue, and
- (b) resolve that, in its opinion, the present cash value of the consideration to be provided is not less than the amount to be credited for the issue of the shares.

(4) The certificate referred to in section 298(2) must -

- (a) state the reasonable present cash value of the consideration for issue and the basis for assessing it, and

- (b) state that, in the opinion of the board, the present cash value of the consideration to be provided is not less than the amount to be credited for the issue of the shares.

**Time of issue of shares.**

**300.** A share is issued when the name of the holder is entered on the register of members in respect of that share.

*Distributions and dividends*

**Meaning of distribution.**

**301.** In this Law "**distribution**", in relation to a distribution by a company to a member, means -

- (a) the direct or indirect transfer of money or property, other than the company's own shares, to or for the benefit of the member, or
- (b) the incurring of a debt to or for the benefit of the member,

in respect of the member's interests, and whether by means of a purchase of property, the redemption or other acquisition of shares, a distribution of indebtedness, or by some other means.

**Meaning of dividend.**

**302.** (1) In this Law "**dividend**" means every distribution of a company's assets to its members, except distributions by way of -

- (a) an issue of shares as fully or partly paid bonus shares,
- (b) a redemption or acquisition of any of the company's own shares or financial assistance for an acquisition of the company's own shares,
- (c) a reduction of share capital,
- (d) a distribution of assets to members during and for the purposes of its winding up,
- (e) a distribution of assets to members during and for the purposes of an administration order,
- (f) a distribution of assets to members of a cell of a protected cell company during and for the purposes of a receivership order, or
- (g) a distribution of assets to members of a cell of a protected cell company during and for the purposes of the termination of the cell.

(2) For the avoidance of doubt, a dividend may be in the form of money or other property.

**Procedure for making a distribution other than dividend.**

**303.** (1) This section applies to distributions other than dividends.

(2) The board of directors of a company may authorise a distribution if -

- (a) it is satisfied on reasonable grounds that the company will, immediately after the distribution, satisfy the solvency test, and
- (b) it satisfies any other requirement in its memorandum and articles.

(3) If, after a distribution is authorised and before it is made, the board ceases to be satisfied on reasonable grounds that the company will, immediately after the distribution is made, satisfy the solvency test, any distribution made by the company is deemed not to have been authorised.

- (4) The board of directors must approve a certificate stating -
  - (a) that in their opinion the company will, immediately after the distribution, satisfy the solvency test, and
  - (b) the grounds for that opinion,

and the certificate must be signed on their behalf by at least one of them.

- (5) In applying the solvency test for the purposes of this section -
  - (a) "**debts**" includes fixed preferential returns on shares ranking ahead of those in respect of which a distribution is made (except where that fixed preferential return is expressed in the memorandum or articles as being subject to the power of the directors to make

distributions), but does not include debts arising by reason of the authorisation, and

- (b) "**liabilities**" includes the amount that would be required, if the company were to be dissolved after the distribution, to repay all fixed preferential amounts payable by the company to members, at that time or on earlier redemption (except where such fixed preferential amounts are expressed in the memorandum or articles as being subject to the power of directors to make distributions) but, subject to paragraph (a), does not include dividends payable in the future.

**Procedure for paying a dividend.**

**304.** (1) A company may pay a dividend if -

- (a) the board of directors is satisfied on reasonable grounds that the company will, immediately after payment, satisfy the solvency test, and
- (b) it satisfies any other requirement in its memorandum and articles.

(2) The dividend may -

- (a) be of such amount,
- (b) be paid at such time, and
- (c) be paid to such members,

as the board thinks fit.

(3) If, after a dividend is authorised and before it is paid, the board ceases to be satisfied on reasonable grounds that the company will, immediately after payment, satisfy the solvency test, any dividend paid by the company is deemed not to have been authorised.

(4) The board must not authorise a dividend -

(a) in respect of some but not all the shares in a class, or

(b) that is of a greater value per share in respect of some shares of a class than it is in respect of other shares of that class,

unless the amount of the dividend in respect of a share of that class is in proportion to the amount paid to the company in satisfaction of the liability of the shareholder under the memorandum and articles of the company or under the terms of issue of the share.

(5) Notwithstanding subsection (4), a member may waive his entitlement to receive a dividend by notice in writing to the company signed by or on behalf of the member.

(6) The board of directors must approve a certificate stating -

(a) that in their opinion the company will, immediately after payment of the dividend, satisfy the solvency test, and

- (b) the grounds for that opinion,

and the certificate must be signed on their behalf by at least one of them.

- (7) In applying the solvency test for the purposes of this section -
  - (a) "**debts**" includes fixed preferential returns on shares ranking ahead of those in respect of which a dividend is paid (except where that fixed preferential return is expressed in the memorandum or articles as being subject to the power of the directors to pay dividends), but does not include debts arising by reason of the authorisation, and
  - (b) "**liabilities**" includes the amount that would be required, if the company were to be dissolved after the payment of the dividend, to repay all fixed preferential amounts payable by the company to members, at that time or on earlier redemption (except where such fixed preferential amounts are expressed in the memorandum or articles as being subject to the power of directors to pay dividends) but, subject to paragraph (a), does not include dividends payable in the future.

**Prohibition of unauthorised distributions.**

**305.** No distribution of a company's assets to its members is lawful unless it is authorised under this Law, another enactment or any rule of law.



**Shares in lieu of dividends.**

**306.** Subject to the memorandum or articles of the company, the board of directors may issue shares to any shareholders who have agreed to accept the issue of shares, wholly or partly, in lieu of a proposed dividend or proposed future dividends if

-

- (a) the right to receive shares, wholly or partly, in lieu of the proposed dividend or proposed future dividends has been offered to all shareholders of the same class on the same terms,
- (b) in the case where all shareholders elected to receive the shares in lieu of the proposed dividend or proposed future dividends, relative voting or distribution rights, or both, would be maintained,
- (c) the shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it,
- (d) the shares issued to each shareholder are issued on the same terms and subject to the same rights as the shares issued to all shareholders in that class who agree to receive the shares, and
- (e) the provisions of section 295 are complied with by the board.

**Member discounts not a distribution.**

307. (1) The board of directors may resolve that the company offer members discounts in respect of some or all of the goods sold or services provided by the company.

(2) The board may approve a discount scheme under subsection (1) only if it has previously resolved that the proposed discounts are -

- (a) fair and reasonable to the company and to all members, and
- (b) to be available to all members or all members of the same class on the same terms.

(3) A discount scheme may not be approved or continued by the board unless it is satisfied on reasonable grounds that the company satisfies the solvency test.

(4) Subject to subsection (5), a discount accepted by a member under a discount scheme approved under this section is not a distribution for the purposes of this Law.

(5) Where -

- (a) a discount is accepted by a member under a scheme approved or continued by the board, and
- (b) at the time the scheme was approved or the discount was offered, the company did not satisfy the solvency test,

the provisions of section 309 apply in relation to the discount with such modifications as may be necessary as if the discount were a distribution that is deemed not to have been authorised.

**Reduction of member liability a distribution.**

**308.** (1) If a company proposes to alter its memorandum or articles, or to acquire shares issued by it, or to redeem shares, in a manner which would cancel or reduce the liability of a shareholder to the company in relation to a share held by him prior to that alteration, acquisition or redemption, the proposed cancellation or reduction of liability is to be treated -

(a) for the purposes of section 303 as a distribution, and

(b) for the purposes of section 304(4) and (5) as a dividend.

(2) If a company has altered its memorandum or articles, or acquired shares, or redeemed shares, in a manner which cancels or reduces the liability of a shareholder to the company in relation to a share held prior to that alteration, acquisition or redemption, that cancellation or reduction of liability is to be treated for the purposes of section 309 as a distribution of the amount by which that liability was reduced.

(3) If the liability of a shareholder of an amalgamating body corporate in relation to a share held before the amalgamation is -

(a) greater than the liability of that shareholder to the amalgamated body corporate in relation to a share or shares into which that share is converted, or

- (b) cancelled by the cancellation of that share in the amalgamation,

the reduction of liability effected by the amalgamation is to be treated for the purposes of section 309(1) and (5) as a distribution by the amalgamated body corporate to that shareholder, whether or not that shareholder becomes a shareholder of the amalgamated body corporate, of the amount by which that liability was reduced.

**Recovery of distributions.**

**309.** (1) A distribution made to a member at a time when the company did not, immediately after the distribution, satisfy the solvency test may be recovered by the company from the member except to the extent that -

- (a) the member received the distribution in good faith and without knowledge of the company's failure to satisfy the solvency test,
  - (b) the member has altered his position in reliance on the validity of the distribution, and
  - (c) it would be unfair to require payment in full or at all.
- (2) If, in relation to a distribution made to members -
- (a) the procedure set out in section 303, section 304, sections 310 to 325 or sections 329 to 335 has not been followed, or

- (b) reasonable grounds for believing that the company would satisfy the solvency test did not exist at the time the certificate was signed,

a director who -

- (i) failed to take reasonable steps to ensure the procedure was followed, or
- (ii) voted to approve the certificate (as the case may be),

is personally liable to the company to repay to the company so much of the distribution as is not able to be recovered from members.

(3) If a distribution is deemed not to have been authorised, a director who -

- (a) ceased after authorisation but before the making of the distribution to be satisfied on reasonable grounds for believing that the company would satisfy the solvency test immediately after the distribution is made, and
- (b) failed to take reasonable steps to prevent the distribution being made,

is personally liable to the company to repay to the company so much of the distribution as is not able to be recovered from members.

(4) If, by virtue of section 307(5), a distribution is deemed not to have been authorised, a director who failed to take reasonable steps to prevent the distribution being made is personally liable to the company to repay to the company so much of the distribution as is not able to be recovered from members.

(5) If, in an action brought against a director or member under this section, the Court is satisfied that the company could, by making a distribution of a lesser amount, have satisfied the solvency test, the Court may -

- (a) permit the member to retain, or
- (b) relieve the director from liability in respect of,

an amount equal to the value of any distribution that could properly have been made.

(6) In applying the solvency test for the purposes of this section -

- (a) "**debts**" includes fixed preferential returns on shares ranking ahead of those in respect of which a distribution is made (except where that fixed preferential return is expressed in the memorandum or articles as being subject to the power of the directors to make distributions), but does not include debts arising by reason of the authorisation, and
- (b) "**liabilities**" includes the amount that would be required, if the company were to be dissolved after the distribution, to repay all fixed preferential amounts payable by the company to members, at that time or on earlier redemption (except where such fixed preferential

amounts are expressed in the memorandum or articles as being subject to the power of directors to make distributions) but, subject to paragraph (a), does not include dividends payable in the future.

*Redeemable shares and acquisition of own shares*

**Power to issue redeemable shares.**

**310.** A company may, if so authorised by its memorandum or articles -

- (a) subject to the provisions of this section and section 325, issue shares which are, or at the option of the company or the shareholder are, liable to be redeemed ("**redeemable shares**"), and
- (b) subject to the provisions of sections 342 to 348, convert all or any class of its shares into redeemable shares.

**Terms and manner of redemption.**

**311.** (1) The redemption of shares by a company shall, subject to the provisions of this section, be effected on such terms and in such manner as may be provided for by -

- (a) the company's memorandum or articles, or
- (b) the terms of the issue of those shares.

(2) A company may not redeem its shares if, as a result of the redemption, the company would have no members.

(3) A company may not redeem a share unless it is fully paid.

(4) For the avoidance of doubt, there is no requirement for shares to be redeemed out of a particular account or source.

**Power of company to acquire its own shares.**

**312.** A company may, if so authorised by its memorandum or articles, acquire its own shares (including any redeemable shares).

**Terms and manner of acquisition.**

**313.** (1) The acquisition by a company of its own shares shall, subject to the provisions of this section, be effected on such terms and in such manner as may be provided for by -

(a) the company's memorandum or articles, or

(b) the terms of the issue of those shares.

(2) A company may not acquire a share if, as a result of the acquisition, the company would have no members.

(3) The company must obtain the consent of the shareholders whose shares are being acquired to that acquisition.

(4) The contract for the acquisition of shares must be authorised in accordance with either section 314 or 315.

(5) For the avoidance of doubt, there is no requirement for shares to be acquired out of a particular account or source.



**Authority for acquisition.**

**314.** (1) A company may only acquire its own shares, other than under a market acquisition under section 315, in pursuance of a contract authorised in advance in accordance with this section.

(2) The terms of the proposed contract shall be authorised by a special resolution of the company before the contract is entered into, and the following subsections apply in respect of that authority and to resolutions conferring it.

(3) Subject to subsection (4), the authority may be varied, revoked or renewed by special resolution of the company.

(4) The authority conferred by the resolution shall specify a date on which the authority is to expire.

**Authority for market acquisition.**

**315.** (1) A company shall not make a market acquisition of its own shares unless -

- (a) the acquisition has first been authorised by ordinary resolution, or
- (b) such purchases are authorised by the company's memorandum or articles.

(2) That authority may -

- (a) be general for that purpose or limited to the acquisition of shares of any particular class or description, and

(b) be unconditional or subject to conditions.

(3) That authority shall -

(a) specify the maximum number of shares authorised to be acquired,

(b) determine both the maximum and minimum prices which may be paid for the shares, and

(c) specify a date on which it is to expire.

(4) That authority may be varied, revoked or renewed by ordinary resolution, but this is subject to subsection (3) and, in a resolution to confer or renew authority, the date on which the authority is to expire shall not be later than 18 months after that on which the resolution is passed.

(5) A company may under this section make an acquisition of its own shares after the expiry of the time limit imposed to comply with subsection (3)(c) if the contract of acquisition was concluded before the authority expired and the terms of the authority permitted the company to make a contract of acquisition which would or might be executed wholly or partly after its expiration.

(6) A resolution to confer or vary authority under this section may determine either or both the maximum and minimum prices for acquisition by -

(a) specifying a particular sum, or

- (b) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion.

**Meaning of "market acquisition".**

**316.** (1) In section 315 "**market acquisition**" means an acquisition of shares made on a recognised investment exchange provided that the acquisition is subject to a marketing arrangement.

(2) For the purposes of subsection (1), shares are subject to a "**marketing arrangement**" if -

- (a) they are listed under Part VI of the Financial Services and Markets Act 2000<sup>q</sup>, or
- (b) the company has been afforded facilities for dealings in those shares to take place on that exchange without prior permission for individual transactions from the authority governing that exchange and without limit as to the time during which those facilities are to be available.

(3) In this section "**recognised investment exchange**" has the meaning given by section 44(1) of the Protection of Investors (Bailiwick of Guernsey) Law, 1987<sup>r</sup>.

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<sup>q</sup> An Act of Parliament (2000 c. 8).

<sup>r</sup> 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; and by No's XV and XXXII of 2003. Also amended by Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; Ordinances X and XX of

**Assignment or release of company's right to acquire own shares.**

**317.** (1) The rights of a company under a contract approved under section 314, or under a contract for an acquisition authorised under section 315, are not capable of being assigned.

(2) An agreement by a company to release its rights under a contract approved under section 314 is void unless the terms of the release agreement are approved in advance by a special resolution of the company before the agreement is entered into, and subsections (3) and (4) of section 314 apply to an approval for a proposed release agreement as they apply to an authority mentioned in those subsections.

**Certain payments connected with acquisition of shares also treated as distributions.**

- 318.** (1) A payment made by a company in consideration of -
- (a) acquiring any right in respect of the acquisition of its own shares in pursuance of a contract approved under section 314,
  - (b) the variation of a contract approved under section 314,  
or
  - (c) the release of any of the company's obligations in respect of the acquisition of any of its own shares under a contract approved under section 314 or under a contract for an acquisition authorised under section 315,

1998; and the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

shall also be treated as a distribution.

(2) If the requirements of section 303 are not satisfied in relation to a contract -

- (a) in a case within subsection (1)(a), no acquisition by the company of its own shares in pursuance of that contract is lawful under this Part,
- (b) in a case within subsection (1)(b), no such acquisition following the variation is lawful under this Part, and
- (c) in a case within subsection (1)(c), the purported release is void.

**Shares redeemed or acquired to be cancelled.**

**319.** Subject to the provisions of sections 326 to 328, shares redeemed or acquired under sections 310 to 325 shall be treated as cancelled on redemption or acquisition and the amount of the company's share capital shall be diminished accordingly.

**Application of procedure for making distributions to redemptions and acquisitions.**

**320.** (1) For the avoidance of doubt -

- (a) the redemption of shares by a company, and
- (b) the acquisition of shares by a company,

are distributions and accordingly the provisions of sections 303 and 309 apply.

- (2) This section is subject to section 321.

**Exemption for open-ended investment companies.**

321. (1) Sections 303 and 309 do not apply to open-ended investment companies in respect of the redemption of shares by them.

(2) An open-ended investment company shall not redeem its shares unless it satisfies the solvency test.

- (3) In applying the solvency test for the purposes of this section -

(a) "**debts**" includes fixed preferential returns on shares ranking ahead of those in respect of which a distribution is made (except where that fixed preferential return is expressed in the memorandum or articles as being subject to the power of the directors to make distributions), but does not include debts arising by reason of the authorisation, and

(b) "**liabilities**" includes the amount that would be required, if the company were to be dissolved after the distribution, to repay all fixed preferential amounts payable by the company to members, at that time or on earlier redemption (except where such fixed preferential amounts are expressed in the memorandum or articles as being subject to the power of directors to make distributions) but, subject to paragraph (a), does not include dividends payable in the future.

**Effect of failure to redeem or acquire shares.**

322. (1) A company is not liable in damages in respect of any failure on its part to redeem or acquire shares it is obliged to redeem or acquire.

(2) Subsection (1) is without prejudice to any right of a shareholder other than his right to sue the company for damages in respect of its failure.

**Effect of intervening insolvency on redemption or acquisition of shares.**

323. (1) This section applies where, after shares are agreed to be redeemed or acquired, but before they are so redeemed or acquired, the winding up of the company commences.

(2) If the shares were meant to be redeemed or acquired after the commencement of the winding up, the obligation to so redeem or acquire may not be enforced by the shareholders against the company.

(3) Subject to subsections (4) and (5), if the shares were meant to be redeemed or acquired before the commencement of the winding up, the obligation to so redeem or acquire may be enforced by the shareholders against the company.

(4) Subsection (3) does not apply and the obligation cannot be enforced if, during the period beginning with the date on which the redemption or acquisition was to have taken place and ending with the date of the commencement of the winding up, the company could not lawfully have made that redemption or acquisition.

(5) There shall be paid in priority to any amount which the company is liable under subsection (3) to pay in respect of any shares -

- (a) all other debts and liabilities of the company (other than any due in respect of members' interests),
- (b) if other shares carry rights (whether as to capital or income) which are preferred to the rights as to capital attaching to the first mentioned shares, any amount due in satisfaction of those preferred rights,

but, subject to that, any such amount shall be paid in priority to any amounts due in respect of member's interests.

**Power of the Department to make regulations.**

**324.** The Department may make regulations in respect of -

- (a) the circumstances and the manner in which a company may acquire its own shares,
- (b) the authority required for an acquisition by a company of its own shares,
- (c) the authority required for the release by a company of its rights under a contract for the acquisition of its own shares or a contract under which the company may, subject to any conditions, become entitled or obliged to acquire its own shares, and
- (d) generally for the implementation of sections 310 to 325.

**Interpretation.**

**325.** In sections 310 to this section, unless the context otherwise requires -



**"contingent purchase contract"** means a contract entered into by a company relating to any of its shares -

- (a) which does not amount to a contract to purchase those shares, but
- (b) under which the company may, subject to any conditions, become entitled or obliged to purchase these shares, and

**"contract"** includes a contingent purchase contract.

*Treasury shares*

**Nature and treatment of treasury shares.**

**326.** (1) 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 memorandum or articles, or
- (b) subject to any provision to the contrary in its memorandum or articles, an ordinary resolution.

(2) Where the company holds its shares as treasury shares the shares shall not be cancelled under section 319.

(3) Where a company holds shares as treasury shares, and for the duration of the period for which they are so held -

- (a) the rights in respect of those shares shall not be exercised by or against the company,
  - (b) the obligations in respect of those shares shall not be enforced by or against the company, and
  - (c) any purported such exercise or enforcement is void.
- (4) Without prejudice to the generality of subsection (3), the company shall not -
- (a) exercise any voting rights attaching to those shares,
  - (b) subject to subsection (5), make or receive any distribution or dividend in respect of those shares.
- (5) Nothing in this section is to be taken as preventing -
- (a) an issue of shares as fully paid bonus shares in respect of treasury shares, or
  - (b) the payment of any amount payable on the redemption of the treasury shares (if they are redeemable shares).
- (6) Any shares issued as fully paid bonus shares in respect of the treasury shares shall be treated, for the purposes of this Law, as if they were acquired by the company at the time they were issued in circumstances in which subsection (1) applied.
- (7) Where a company holds shares as treasury shares, it may -

- (a) continue to hold them in accordance with this section,
- (b) cancel them in accordance with section 328,
- (c) sell them, or
- (d) transfer them to an employees' share scheme.

**Maximum holding of treasury shares.**

**327.** The number of shares of any class held as treasury shares must not at any time exceed 10% (or such other percentage as may be prescribed by the Department) of the total number of issued shares of that class at that time.

**Cancellation of treasury shares.**

**328.** Where shares held as treasury shares are cancelled, the amount of the company's share capital shall be diminished accordingly.

*Financial assistance for acquisition of own shares*

**Financial assistance permitted.**

**329.** (1) Where a person is acquiring or is proposing to acquire shares in a company, the company and any of its subsidiaries may give financial assistance directly or indirectly for the purpose of or in connection with that acquisition before or at the same time as the acquisition takes place.

(2) Where a person has acquired shares in a company and any liability has been incurred (by that or any other person) for the purpose of or in connection with that acquisition, the company and any of its subsidiaries may give

financial assistance directly or indirectly for the purpose of or in connection with reducing or discharging the liability so incurred.

(3) In this section -

- (a) a reference to a person incurring a liability includes his changing his financial position by making an agreement or arrangement (whether enforceable or unenforceable, and whether made on his own account or with any other person) or by any other means, and
- (b) a reference to a company giving financial assistance for the purpose of or in connection with reducing or discharging a liability incurred by a person for the purpose of or in connection with the acquisition of shares includes its giving such assistance for the purpose of or in connection with wholly or partly restoring his financial position to what it was before the acquisition took place.

**Meaning of "financial assistance".**

**330.** For the purposes of this Law "**financial assistance**" means -

- (a) financial assistance given by way of gift,
- (b) financial assistance given by way of guarantee, security or indemnity, other than an indemnity in respect of the indemnifier's own neglect or default, or by way of release or waiver,

- (c) financial assistance given by way of a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time when, in accordance with the agreement, any obligation of another party to the agreement remains unfulfilled, or by way of the novation of, or the assignment of rights arising under, a loan or such other agreement, or
- (d) any other financial assistance given by a company the net assets of which are thereby reduced to a material extent or which has no net assets.

**Application of procedure for making distributions to financial assistance.**

331. For the avoidance of doubt, financial assistance under section 329 is a distribution and accordingly the provisions of sections 303 and 309 apply.

**Validity of financial assistance which breaches procedure for making distributions.**

332. (1) In favour of a person dealing with a company in good faith, no financial assistance of the company under section 329 is invalidated by reason of a failure to comply with section 303.

(2) For the purposes of this section, a person deals with a company if he is a party to any transaction or other act to which the company is a party.

(3) A party to a transaction with a company is not bound to enquire as to whether the transaction is in accordance with the provisions of section 303.

(4) Notwithstanding the provisions of this section, it remains the duty of a company's directors to observe any limitation on their powers imposed by or deriving from the provisions of section 303.

**Power of the Department to make regulations.**

333. The Department may make regulations in respect of -

- (a) the circumstances and the manner in which a company may give financial assistance for the acquisition of its own shares or shares in its holding company,
- (b) the transactions, agreements or arrangements which are or are not to be treated as giving financial assistance for the acquisition of its own shares or shares in its holding company<sup>s</sup>,
- (c) generally for the implementation of sections 329 to 335.

**Application to overseas parents of Guernsey subsidiaries.**

334. In sections 329 to 335 "company" includes an overseas company in cases where the financial assistance is given by a subsidiary which is registered as a company in the Register of Companies.

**Interpretation.**

335. In sections 329 to this section, unless the context otherwise requires, "shares" includes stock, debentures, debenture stock, bonds and any other security or capital interest of or in a company, whether constituting a charge on the company's assets or not.

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<sup>s</sup> See the Companies (Financial Assistance) Regulations, 2008.

PART XVIII  
TAKEOVERS

**Application of this Part.**

**336.** This Part applies where a scheme or contract involves the transfer of shares or any class of shares in a company (the "**transferor**") to any person (the "**transferee**").

**Right of transferee to acquire shares.**

**337.** (1) If, within 4 months after the date of making an offer in respect of such a scheme or contract as is mentioned in 336, the offer is approved by shareholders comprising 90% in value of the shares affected (excluding any shares held as treasury shares), the transferee may, within 2 months after the expiration of those 4 months, give notice to any dissenting shareholder that it desires to acquire his shares (a "**notice to acquire**").

(2) Subject to section 339, where a notice to acquire is given, the transferee is entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee.

**Compulsory acquisition of shares by transferee.**

**338.** (1) Subject to section 339, the transferee shall, on the expiration of one month from the date of the notice to acquire -

- (a) send a copy of the notice to the transferor, and

- (b) pay or transfer to the transferor the consideration required under the notice in respect of the shares he is entitled to acquire,

and the transferor shall thereupon register the transferee as the holder of those shares.

(2) Any sums received by the transferor under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by the transferor on trust for the shareholders entitled to the shares in respect of which the said sum or other consideration was respectively received.

**Application to Court by dissenting shareholder to prevent acquisition of shares.**

**339.** (1) A dissenting shareholder may, within 1 month after the date of a notice to acquire, apply to the Court to cancel that notice.

(2) The Court, on an application under subsection (1), may cancel the notice or make such order as it thinks fit,

**Meaning of "dissenting shareholder".**

**340.** In this Part, "**dissenting shareholder**" includes -

- (a) a shareholder who has not assented to the scheme or contract, and
- (b) any shareholder who has failed or refused to transfer his shares to the transferee in accordance with the scheme or contract.



PROTECTION OF MEMBERS

*Restraint of excess powers*

**Restraint of excess powers.**

**341.** (1) Any member of a company may apply to the Court for an order restraining the doing of an act -

- (a) which would, but for section 114, be beyond the company's capacity, or
- (b) which is beyond the powers of the directors by virtue of any limitation mentioned in section 115,

but no such application shall be made in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.

- (2) This section is without prejudice to any other remedy.

*Variation of class rights*

**Variation of class rights: shareholders.**

**342.** (1) This section is concerned with the variation of the rights of a class of shareholders.

(2) Without prejudice to any other restrictions on their variation, rights of a class of shareholders may only be varied -

- (a) in accordance with any provision in the company's articles for the variation of those rights, or

- (b) where the company's articles contain no such provision, if the holders of shares of that class consent to the variation in accordance with this section.

(3) The consent required for the purposes of this section on the part of the shareholders of that class is -

- (a) consent in writing from the holders of at least 75% in value of the issued shares of that class (excluding any shares held as treasury shares), or
- (b) a special resolution passed at a separate general meeting of the shareholders of that class sanctioning the variation.

(4) Any amendment of a provision contained in a company's articles for the variation of the rights of a class of shareholders, and any insertion of any such provision into the articles, is itself to be treated as a variation of those rights.

(5) In this section and (except where the context otherwise requires) in any provision in a company's articles for the variation of the rights of a class of shareholders, references to the variation of those rights include references to their abrogation.

**Variation of class rights: members other than shareholders.**

**343.** (1) This section is concerned with the variation of the rights of a class of members who are not shareholders.

(2) Without prejudice to any other restrictions on their variation, rights of a class of members may only be varied -

- (a) in accordance with any provision in the company's articles for the variation of those rights, or
- (b) where the company's articles contain no such provision, if the members of that class consent to the variation in accordance with this section.

(3) The consent required for the purposes of this section on the part of the members of a class is -

- (a) consent in writing from at least 75% of the members of the class, or
- (b) a special resolution passed at a separate general meeting of the members of that class sanctioning the variation.

(4) Any amendment of a provision contained in a company's articles for the variation of the rights of a class of members, and any insertion of any such provision into the articles, is itself to be treated as a variation of those rights.

(5) In this section and (except where the context otherwise requires) in any provision in a company's articles for the variation of the rights of a class of members, references to the variation of those rights include references to their abrogation.

**Variation of class rights: saving for Court's powers under other provisions.**

**344.** Nothing in section 342 or 343 affects the power of the Court under -

- (a) Part VIII, or
- (b) sections 349 to 352.

**Right to object to variation: shareholders.**

**345.** (1) This section applies where the rights of a class of shareholders are varied under section 342(2)(b).

(2) The holders of not less than 15% of the issued shares of the class in question (being persons who did not consent to or vote in favour of the resolution for the variation) may apply to the Court to have the variation cancelled and for this purpose any shares held as treasury shares are to be disregarded.

(3) If such an application is made, the variation has no effect unless and until it is confirmed by the Court.

(4) An application to the Court -

- (a) must be made within 21 days after the date on which the consent was given or the resolution was passed (as the case may be), and
- (b) may be made on behalf of the members entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(5) The Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application -

- (a) may, if satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the members of the class represented by the applicant, disallow the variation, and
  - (b) shall, if not so satisfied, confirm it.
- (6) The decision of the Court on any such application is final.
- (7) References in this section to the variation of the rights of a class of members include references to their abrogation.

**Rights to object to variation: members other than shareholders.**

**346.** (1) This section applies where the rights of any class of members of a company are varied under section 343(2)(b).

(2) Members amounting to not less than 15% of the members of the class in question (being persons who did not consent to or vote in favour of the resolution for the variation) may apply to the Court to have the variation cancelled.

(3) If such an application is made, the variation has no effect unless and until it is confirmed by the Court.

(4) An application to the Court -

- (a) must be made within 21 days after the date on which the consent was given or the resolution was passed (as the case may be), and

- (b) may be made on behalf of the members entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(5) The Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application -

- (a) may, if satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the members of the class represented by the applicant, disallow the variation, and

- (b) shall, if not so satisfied, confirm it.

(6) The decision of the Court on any such application is final.

(7) References in this section to the variation of rights of a class of members include references to their abrogation.

**Copy of Court's order to be delivered to Registrar.**

**347.** (1) Where the Court makes an order under section 345 or 346, the company must deliver a copy of the order to the Registrar within 14 days after the date of the making of the order or such longer period as the Court may allow.

(2) A company which fails to comply with this section is guilty of an offence and, in addition, liable to a daily default fine.

**Meaning of class of shareholders.**

**348.** (1) For the purposes of this Law, shareholders are of one class if the rights attached to their shares are in all respects uniform.

(2) For this purpose the rights attached to shares are not regarded as different from the rights attached to other shares by reason only that they do not carry the same rights to dividends in the 12 months immediately following the date of their issue.

*Unfair prejudice*

**Applications in respect of unfair prejudice.**

**349.** (1) A member of a company may apply to the Court for an order under section 350 on the ground that -

- (a) the affairs of the company are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or
- (b) an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.

(2) A member of an incorporated cell may apply to the Court under this section in respect of that cell's incorporated cell company, and the provisions of sections 349 to 352 apply to such an application as if the applicant were a member of that incorporated cell company.

(3) The provisions of sections 349 to 352 apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law as it applies to a member, and references to member shall be construed accordingly.

(4) The Court shall not hear an application under this section unless satisfied that the company has been notified of the date and time of the hearing.

(5) The provisions of sections 349 to 352 are without prejudice to any other remedy.

**Power of Court to grant relief for unfair prejudice.**

**350.** (1) If the Court is satisfied that an application under section 349 is well founded it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(2) Without prejudice to the generality of subsection (1), an order of the Court may -

(a) regulate the conduct of the company's affairs in the future,

(b) require the company -

(i) to refrain from doing or continuing to do an act complained of by the applicant, or

(ii) to do any act which the applicant has complained it has omitted to do,



- (c) authorise civil proceedings to be brought in the name and on behalf of the company by such persons and on such terms as the Court may direct,
- (d) provide for the purchase of shares of any member of the company by other members of the company or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly,
- (e) require the company not to make any, or any specified, alterations in its memorandum or articles without the leave of the Court,

and the Court may make such consequential alterations to the company's memorandum or articles and any of its resolutions as the Court thinks fit.

(3) Any alteration to a company's memorandum or articles or any of its resolutions made by or by virtue of an order of the Court under this section are of the same effect as if duly made in accordance with the provisions of this Law.

**Copy of order affecting memorandum, articles or resolutions to be delivered to**

**Registrar.**

**351.** (1) Where an order of the Court under section 350 -

- (a) alters the company's memorandum or articles or any of its resolutions, or

- (b) gives leave for the company to make any, or any specified, alteration to its memorandum or articles or any of its resolutions,

the company must deliver a copy of the order to the Registrar within 14 days after the date of the making of the order or such longer period as the Court may allow.

(2) A company which fails to comply with this section is guilty of an offence and, in addition, liable to a daily default fine.

**Supplementary provisions where company's memorandum, articles or resolutions altered.**

**352.** (1) Where an order of the Court under section 350 alters the memorandum or articles or any resolution of a company, the copy of the order delivered to the Registrar by the company under section 351 must be accompanied by a copy of the company's memorandum, articles or resolution (as the case may be) as so altered.

(2) Every copy of a company's memorandum or articles or any of its resolutions (as the case may be) issued by the company after the order is made must be accompanied by a copy of the order, unless the effect of the order has been incorporated into the memorandum, articles or resolution (as the case may be) by alteration.

(3) A company which fails to comply with this section is guilty of an offence.

*Striking off defunct companies*

**Striking defunct company off the Register of Companies.**

353. (1) This section applies where -

- (a) the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, or
- (b) the Registrar has reasonable cause to believe, in the case of a company which is being wound up -
  - (i) that no liquidator is acting, or
  - (ii) that the affairs of the company are fully wound up.

(2) Where this section applies in relation to a company, the Registrar may give notice stating -

- (a) the paragraph of subsection (1) by virtue of which this section applies, and
- (b) that, at the expiration of a period of 2 months beginning with the date of the notice, the company will be struck off the Register of Companies and the company will be dissolved, unless cause is previously shown to the contrary.

(3) A notice given under subsection (2) shall be published in such manner and for such period as the Registrar thinks fit.

(4) A notice given under subsection (2) shall be sent, by recorded delivery service or in such other manner as may be determined by the Registrar -

(a) when this section applies by virtue of subsection (1)(b)(ii), to the liquidator at his last known place of business,

(b) in any other case, to the company at its registered office,

and the Registrar may, if he thinks fit, send it to any officer or founder member of the company.

(5) At the expiration of the period mentioned in subsection (2)(b) the Registrar shall, unless cause to the contrary has been shown, strike the company off the Register of Companies and, upon such striking off, the company shall be dissolved.

(6) The Registrar shall publish notice of the striking off in such manner and for such period as he thinks fit.

**Striking off incorporated cells of defunct incorporated cell company.**

**354.** Where section 353(1) applies to an incorporated cell company, the other provisions of that section shall also apply to its incorporated cells, and accordingly its incorporated cells shall be struck off the Register of Companies if their incorporated cell company is struck off.

*Striking off defaulting companies*

**Striking defaulting company off the Register of Companies.**

355. (1) This section applies where -

- (a) a company fails to deliver to the Registrar an annual validation in accordance with the requirements of section 235 before the end of January in any year,
- (b) the Registrar receives a notice under section 32 together with a declaration of compliance (ineffective office) from a corporate services provider in respect of a company,
- (c) the Registrar has the opinion set out in section 519 in respect of a company, or
- (d) a company fails to comply with section 484.

(2) Where this section applies in relation to a company, the Registrar may give notice stating -

- (a) the paragraph of subsection (1) by virtue of which this section applies, and
- (b) that, at the expiration of a period of 2 months beginning with the date of the notice, the company will be struck off the Register of Companies and the company will be dissolved, unless cause is previously shown to the contrary.

(3) A notice given under subsection (2) shall be published in such manner and for such period as the Registrar thinks fit.

(4) A notice given under subsection (2) shall be sent, by recorded delivery service or in such other manner as may be determined by the Registrar, to the company at its registered office and the Registrar may, if he thinks fit, send it to any officer or founder member of the company.

(5) At the expiration of the period mentioned in subsection (2)(b) the Registrar shall, unless cause to the contrary has been shown, strike the company off the Register of Companies and, upon such striking off, the company shall be dissolved.

(6) The Registrar shall publish notice of the striking off in such manner and for such period as he thinks fit, and such notice may include the names of the directors of the company struck off.

(7) Where this section applies in relation to a company by virtue of subsection (1)(a), the company shall not be considered to have shown cause to the contrary within the meaning of this section unless it -

- (a) delivers its annual validation to the Registrar, and
- (b) pays to him -
  - (i) the appropriate penalty for each calendar month or part of a calendar month between the date by which it should have delivered its annual

validation and the date when it in fact did so,  
and

- (ii) any other sums payable under any other enactment by companies delivering annual validations.

(8) In subsection (7) "**appropriate penalty**" means such penalty as may be prescribed by the Registrar.

**Striking off incorporated cells of defaulting incorporated cell company.**

**356.** Where section 355(1) applies to an incorporated cell company, the other provisions of that section shall also apply to its incorporated cells and accordingly its incorporated cells shall be struck off the Register of Companies if their incorporated cell company is struck off.

*Voluntary striking off*

**Striking off on application by company.**

**357.** (1) On an application by a company, the Registrar may strike the company off the Register of Companies.

- (2) The application must -
  - (a) be made by the board of directors,
  - (b) be accompanied by a declaration of compliance (voluntary striking off) under section 365, and

- (c) contain such information as may be required by the Registrar.

(3) The Registrar must give notice stating that, at the expiration of a period of 2 months beginning with the date of the notice, the company will be struck off the Register of Companies and the company will be dissolved, unless cause is previously shown to the contrary.

(4) A notice given under subsection (3) shall be published in such manner and for such period as the Registrar thinks fit.

(5) At the expiration of the period mentioned in subsection (3) the Registrar shall, unless cause to the contrary has been shown, strike the company off the Register of Companies and, upon such striking off, the company shall be dissolved.

**Circumstances in which application not to be made: activities of company.**

**358.** (1) An application under section 357 must not be made if, at any time in the 3 months preceding the date of the application, the company has -

- (a) changed its name,
- (b) traded or otherwise carried on business,
- (c) made a disposal for value of property or rights that, immediately before ceasing to trade or otherwise carry on business, it held for the purpose of disposal for gain in the normal course of trading or otherwise carrying on business, or



- (d) engaged in any other activity, except one which is necessary or expedient for the purpose of -
  - (i) making an application under that section or deciding whether to do so,
  - (ii) concluding the affairs of the company, or
  - (iii) complying with the requirement of any enactment.

(2) An application under section 357 must not be made if the company is a party to any proceedings.

(3) For the purposes of this section, a company is not to be treated as trading or otherwise carrying on business by virtue only of the fact that it makes a payment in respect of a liability incurred in the course of trading or otherwise carrying on business.

**Circumstances in which applications not to be made: proceedings connected with solvency not concluded.**

**359.** An application under section 357 must not be made if -

- (a) the company has been declared to be insolvent pursuant to the provisions of the Law entitled "Loi ayant rapport aux Débiteurs et à la Renonciation" of 1929<sup>t</sup>,

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<sup>t</sup> Ordres en Conseil Vol. VIII, p. 310.

- (b) a Commissioner or Committee of Creditors has been appointed under that Law to supervise or secure the company's estate,
- (c) the company's affairs have been declared to be in a state of *désastre* at a meeting of arresting creditors held before a Commissioner,
- (d) an interim vesting order has been made against the company in respect of any of its real property in the Bailiwick,
- (e) otherwise than for the sole purpose of solvent amalgamation, solvent reconstruction or solvent winding up -
  - (i) a liquidator of the company (provisional or otherwise) has been appointed to act, or
  - (ii) the company has passed a special resolution requiring that it be voluntarily wound up,
- (f) possession or control has been taken of any of the company's property or affairs by or on behalf of creditors or the holders of debentures issued by it,
- (g) an application has been made to the Court under Part XXIII for the company's compulsory winding up,

- (h) in the case of a protected cell company, a receivership order has been applied for or is in force in respect of any of its cells, or
- (i) an administration order has been applied for or is in force in respect of the company or, in the case of a protected cell company, in respect of any of its cells.

**Copy of application to be given to members, employees, etc.**

**360.** (1) A person who makes an application under section 357 on behalf of a company must secure that, within 7 days after the day on which the application is made, a copy of it is given to every person who at any time on that day is -

- (a) a member of the company,
- (b) an employee of the company,
- (c) a creditor of the company,
- (d) a director of the company, or
- (e) a manager or trustee of any pension fund established for the benefit of employees of the company.

(2) Subsection (1) does not require a copy of the application to be given to a director who is a party to the application.

(3) A person who fails to comply with the provisions of this section is guilty of an offence.

(4) A person who fails to comply with the provisions of this section with the intention of concealing the making of the application from the person concerned is guilty of an offence.

(5) In proceedings for an offence under subsection (3) it is a defence for the accused to prove that he took all reasonable steps to perform the duty.

**Copy of application to be given to new members, employees, etc.**

361. (1) This section applies in relation to any time after the day on which a company makes an application under section 357 and before the day on which the application is finally dealt with or withdrawn.

(2) A person who is a director of the company at the end of a day on which a person (other than himself) becomes -

- (a) a member of the company,
- (b) an employee of the company,
- (c) a creditor of the company,
- (d) a director of the company, or
- (e) a manager or trustee of any pension fund established for the benefit of employees of the company,

must secure that a copy of the application is given to that person within 7 days after that day.

(3) A person who fails to comply with the provisions of this section is guilty of an offence.

(4) A person who fails to comply with the provisions of this section with the intention of concealing the making of the application from the person concerned is guilty of an offence.

(5) In proceedings for an offence under subsection (3) it is a defence for the accused to prove that he took all reasonable steps to perform the duty.

**Copy of application of supervised company to be given to the Commission.**

**362.** (1) A person who makes an application under section 357 on behalf of a supervised company must secure that, within 7 days after the day on which the application is made, a copy of it is given to the Commission.

(2) A person who fails to comply with the provisions of this section is guilty of an offence.

**Circumstances in which application must be withdrawn.**

**363.** (1) This section applies where a company which has made an application under section 357 falls within any of the circumstances mentioned in section 358 or 359 which would prohibit the making of such an application at any time before its application is determined or withdrawn.

(2) A person who, at the end of a day on which subsection (1) applies is a director of the company, must secure that the company's application is withdrawn forthwith.

(3) A person who fails to comply with the duty imposed upon him by this section is guilty of an offence.

(4) In proceedings for an offence under this section it is a defence for the accused to prove -

(a) that at the time of the failure he was not aware of the fact that the company had made an application under section 357, or

(b) that he took all reasonable steps to perform the duty.

**Withdrawal of application.**

**364.** An application under section 357 is withdrawn by notice to the Registrar.

**Declaration of compliance (voluntary striking off).**

**365.** (1) A declaration of compliance (voluntary striking off) is a declaration, signed by a director, that all the requirements of this Law in respect of an application for the striking off of a company have been fulfilled.

(2) The Registrar, when performing his functions under this Law, may rely upon the declaration in all respects and accordingly is not bound to enquire further as to whether, in relation to any application for striking off, the provisions of this Law have been complied with.

(3) A director who without reasonable excuse makes a declaration which is false, deceptive or misleading in a material particular is guilty of an offence.

*Provisions applying to all strikings off*

**Companies party to proceedings.**

366. If it is shown to the Registrar that a company is party to proceedings, this is cause to the contrary within the meaning of section 353(5), 355(5) and 357(5), and accordingly he shall not strike the company off.

**No striking off incorporated cell company until position of its incorporated cells resolved.**

367. The Registrar shall not strike off an incorporated cell company unless each of its incorporated cells has ceased to exist as an incorporated cell of that incorporated cell company.

**No prejudice to liabilities or powers to wind up.**

368. Notwithstanding the striking off of a company pursuant to the provisions of this Part -

- (a) the liability, if any, of every officer and member of the company continues and may be enforced accordingly, and
- (b) the power of the Court to wind up the company is not affected.

**Property of struck off company.**

369. Where a company is dissolved under the provisions of this Part all property and rights then vested in it or held on trust for it (but not property held by it on trust for another person) shall, unless Her Majesty's Receiver-General directs otherwise, become *bona vacantia* belonging to the Crown.

**Application for restoration to Register of Companies.**

370. (1) The following persons -
- (a) a company which has been struck off under this Part,
  - (b) any director, member or creditor thereof,
  - (c) any liquidator, administrator or (in the case of a protected cell company) receiver of a cell thereof,
  - (d) the Commission in respect of a supervised company or a company engaged in financial services business, or
  - (e) any other person appearing to the Court to have a sufficient interest in making the application,

may apply to the Court for an order restoring the company to the Register of Companies.

(2) An application for restoration of an incorporated cell company may also include an application for restoration of any of its incorporated cells.

(3) An application under this section must be made before the expiry of 10 years beginning on the date on which the company was struck off.

(4) An application cannot be made under this section if the company was struck off for the reason set out in section 519.

(5) Notice of an application under this section shall be served on -



- (a) the Registrar,
- (b) the Commission in respect of a supervised company or a company engaged in financial services business (except where the Commission is the applicant),
- (c) Her Majesty's Procureur,
- (d) Her Majesty's Receiver-General, and
- (e) any liquidator, administrator or (in the case of a protected cell company) receiver of a cell of the company (except where he is the applicant).

(6) The Registrar shall publish notice of the application in such manner and for such period as he thinks fit.

**Restoration to the Register of Companies.**

**371.** (1) Before making an order for the restoration of a company, the Court shall give an opportunity to make representations to -

- (a) the Registrar,
- (b) the Commission in respect of a supervised company or a company engaged in financial services business,
- (c) Her Majesty's Procureur and Her Majesty's Receiver-General, and

(d) such other persons, if any, as the Court thinks fit, including (without limitation) -

(i) any member, creditor or director of the company, and

(ii) any liquidator, administrator or (in the case of a protected cell company) receiver of a cell of the company.

(2) The Court may, if satisfied -

(a) that the company was, at the time of its striking off, carrying on business or in operation, or

(b) otherwise that it would be just and equitable for the company to be restored to the Register of Companies,

order the company to be restored to the Register of Companies.

(3) In deciding whether or not to restore a company to the Register of Companies, and without prejudice to any other matter it may have regard to, the Court shall have regard to -

(a) whether or not the company would satisfy the solvency test if it is restored, unless the application for restoration is made by a creditor,

- (b) whether the persons who were directors at the time the company was struck off consent to being directors if the company is restored,
- (c) the circumstances in which the company was struck off,
- (d) whether there were persistent or gross violations of this Law or the 1994 Law in respect of the company,
- (e) whether the company was used for fraudulent purposes,
- (f) whether restoration to the Register of Companies would jeopardize the reputation of the Bailiwick as a financial centre, and
- (g) whether it would be just and equitable to restore the company to the Register of Companies.

(4) The restoration of a company's name pursuant to an order under this section is, unless the Court otherwise directs, and without prejudice to any other term of the order, conditional upon the payment by the applicant to the Registrar of -

- (a) all sums which would have been payable by the company if it had not been dissolved and had each year delivered its annual validation in accordance with section 234, and
- (b) such additional amount as may be prescribed by the Registrar.

(5) The restoration of a company's name pursuant to an order under this section is, unless the Court otherwise directs, and without prejudice to any other term of the order, conditional upon the payment by the applicant to Her Majesty's Procureur of -

- (a) any costs incurred by Her Majesty's Receiver-General in administering any property belonging to the company, and
- (b) any costs incurred by Her Majesty's Procureur in connection with the striking off or the application for restoration.

(6) An incorporated cell may only be restored to the Register of Companies if its incorporated cell company is still on the Register as an incorporated cell company.

(7) Upon the restoration of the company's name in accordance with an order under this section, the company shall be deemed to have continued in existence.

(8) An order under this section may contain such directions and make such provision as the Court thinks fit for placing the company and all other persons in the same position as nearly as may be as if the company had not been dissolved.

(9) An order under this section may contain such directions and make such provisions as to costs as the Court thinks fit, including directions -

- (a) requiring any person responsible for the company being struck off to pay the costs of the application for restoration, and
- (b) requiring any person responsible for the company being struck off to reimburse the applicant for any payments made under subsection (4) or (5),

notwithstanding that that person is not a party to the application for restoration.

(10) The Registrar may, subject to such terms and conditions as he thinks fit, restore a struck-off company to the Register of Companies (whether of his own motion or at the request of the company or any director, member or creditor thereof) if he is satisfied that -

- (a) the company was struck off in error or in circumstances in which, under the provisions of this Part, it should not have been struck off,
- (b) an application to the Court under section 370 for the restoration of the company would be successful but is not necessary for the fair disposal of the matter, and
- (c) the restoration of the company to the Register under this subsection would not prejudice any creditor or third party.

(11) Where the Registrar restores a company to the Register under subsection (10), and except to the extent that the Registrar directs otherwise, the

provisions of this Law apply in respect of the company as if it had been restored to the Register pursuant to an order of the Court under this section.

(12) Subsection (10) is without prejudice to the other provisions of this section and the provisions of section 370 (application for restoration to Register) and section 502 (rectification of Register).

**Property of restored company.**

**372.** (1) If a company's name is restored to the Register of Companies before the expiration of 6 years beginning on the date of its dissolution, the company is entitled, subject to any order of the Court, to have returned to it -

- (a) any property which vested in the Crown upon dissolution, or
- (b) if any such property has been disposed of, its value at the time of disposal.

(2) The Court may extend the period of 6 years set out in subsection (1) if it regards it as equitable to do so having regard to the degree of prejudice the company would otherwise suffer.

**Meaning of creditor.**

**373.** In this Part "**creditor**" includes a contingent or prospective creditor.

PART XXI  
ADMINISTRATION

**Administration orders.**

**374.** (1) Subject to the provisions of this section, if the Court -

- (a) is satisfied that a company (or a cell of a protected cell company) does not satisfy or is likely to become unable to satisfy the solvency test, and
- (b) considers that the making of an order under this section may achieve one or more of the purposes set out in subsection (3),

the Court may make an order under this section (an "**administration order**") in relation to that company (or that cell, as the case may be).

(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 company (or cell, as the case may be) shall be managed by a person (the "**administrator**") appointed for the purpose by the Court.

(3) The purposes for the achievement of which an administration order may be made are -

- (a) the survival of the company (or cell, as the case may be), and the whole or any part of its undertaking, as a going concern, or
- (b) a more advantageous realisation of the company's (or cell's, as the case may be) assets than would be effected on a winding up,

and the order shall specify the purpose for which it is made.

(4) Subject to section 390, an administration order may be made notwithstanding that -

- (a) an order for the company's winding up has been made by the Court, or
- (b) the company has passed a resolution for voluntary winding up,

and, if an administration order is so made, then -

- (i) the order for the company's winding up shall be discharged or suspended, or
- (ii) the resolution for voluntary winding up shall cease to have effect or shall be suspended (as the case may be),

on such terms and conditions as the Court thinks fit.

(5) Where an administration order is made, the administrator shall, within 7 days after the day of his appointment, send a copy of the order to the Registrar.

**Application for administration order.**

**375.** (1) An application for an administration order may be made by -

- (a) the company,
- (b) the directors of the company,



- (c) any member of the company,
- (d) any creditor of the company, including any contingent or prospective creditor,
- (e) the Commission, in respect of supervised companies and companies engaged in financial services business,
- (f) in the case of a company in respect of which the Court has made an order for winding up or which has passed a resolution for voluntary winding up, the liquidator,
- (g) in the case of an incorporated cell company, an incorporated cell of the incorporated cell company,
- (h) in the case of an incorporated cell, its incorporated cell company,
- (i) in the case of a cell of a protected cell company, the protected cell company,

or by all or any of those parties, together or separately.

(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 order or any other order it thinks fit.

(3) An interim order under subsection (2) may, without limitation, restrict the performance of any functions of the directors or of the company, 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 company (or cell of a protected cell company) shall, unless the Court orders otherwise, be served on -

- (a) the company,
- (b) the Commission, in respect of supervised companies and companies engaged in financial services business,
- (c) in the case of an incorporated cell company, each incorporated cell of the incorporated cell company,
- (d) in the case of an incorporated cell, its incorporated cell company,
- (e) such other persons, if any, as the Court may direct, including (without limitation) any creditor,

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 delivered to the Registrar at least 2 clear days before the day of the making of the

application or, if that is not reasonably practicable, then as soon as reasonably practicable thereafter.

(6) The Registrar shall give notice of the application for an administration order in such manner and for such period as he thinks fit.

**Effect of application for administration order.**

**376.** (1) Subject to section 390, during the period between the presentation of an application for an administration order and ending with the making of such an order or the dismissal of the application -

- (a) no resolution may be passed or order made for the company's winding up,
- (b) no proceedings may be commenced or continued against the company except with the leave of the Court and subject to such terms and conditions as the Court may impose (but, for the avoidance of doubt and without limitation, rights of set-off and secured interests, including security interests (within the meaning of the Security Interests (Guernsey) Law, 1993)<sup>u</sup> and rights of enforcement thereof, are unaffected by the provisions of this paragraph).

(2) Nothing in subsection (1) requires the leave of the Court for the presentation of an application for the company's winding up.

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<sup>u</sup> Order in Council No. III of 1993.

**Effect of administration order.**

377. (1) On the making of an administration order any application for the company's winding up shall be dismissed.

(2) During the period for which an administration order is in force

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(a) no resolution may be passed or order made for the company's winding up, and

(b) no proceedings may be commenced or continued against the company except with the consent of the administrator or the leave of the Court and subject (where the Court gives leave) to such terms and conditions as the Court may impose (but, for the avoidance of doubt and without limitation, rights of set-off and secured interests, including security interests (within the meaning of the Security Interests (Guernsey) Law, 1993) and rights of enforcement thereof, are unaffected by the provisions of this paragraph).

(3) This section is subject to section 390 in the case of the administration of the cell of a protected cell company.

**Details of administration to appear in company's correspondence.**

378. (1) All correspondence of a company (or cell of a protected cell company) subject to an administration order shall contain the administrator's name and a statement that the affairs, business and property of the company are being managed by the administrator, unless this is readily ascertainable -

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

(2) Where a company (or cell of a protected cell company) subject to an administration order has a website, the administrator's name and a statement that the affairs, business and property of the company are being managed by the administrator shall appear on a reasonably prominent location on that website.

(3) A company which fails to comply with this section is guilty of an offence.

**General powers of administrator.**

**379.** (1) The administrator may do all such things as may be necessary or expedient for the management of the affairs, business and property of the company (or cell, as the case may be).

(2) Without prejudice to subsection (1), and unless the Court orders otherwise, the administrator has the powers specified in Schedule 1.

(3) The administrator 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 administrator is deemed to act as the company's agent (or the protected cell company's agent in the case of a cell), 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 administrator in good faith is not concerned to enquire whether the administrator is acting within his powers.

(6) The administrator has power -

- (a) to remove any director of the company (or protected cell company in the case of a cell) 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 company (or cell, as the case may be).

(7) In the case of the administration of an incorporated cell company, the administrator also has power -

- (a) to remove any director of any of its incorporated cells and to appoint any person to be a director of them, whether to fill a vacancy or otherwise,
- (b) to call any meeting of members or creditors of any of its incorporated cells.

**General duties of administrator.**

**380.** (1) The administrator shall, on his appointment, take into his custody or under his control all the property to which the company (or cell, as the case may be) is or appears to be entitled.

(2) The administrator shall manage the affairs, business and property of the company (or cell, as the case may be) in accordance with any directions given by the Court.

**Co-operation with and by administrator.**

**381.** (1) Any function conferred on the company or its officers, whether by this Law or by the memorandum or articles or otherwise, which could be performed in such a way as to interfere with the performance by the administrator of his functions may not be performed except with the consent of the administrator, which may be given either generally or in relation to particular cases.

(2) Any function conferred on an incorporated cell or its officers, whether by this Law or by the memorandum or articles or otherwise, which could be performed during the administration of its incorporated cell company in such a way as to interfere with the performance by the administrator of his functions may not be performed except with the consent of the administrator, which may be given either generally or in relation to particular cases.

(3) Any function conferred on an incorporated cell company or its officers, whether by this Law or by the memorandum or articles or otherwise, which could be performed during the administration of any of its incorporated cells in such a way as to interfere with the performance by the administrator of his functions may not be performed except with the consent of the administrator, which may be given either generally or in relation to particular cases.

(4) Any function conferred on a protected cell company or its officers, whether by this Law or by the memorandum or articles or otherwise, which could be performed during the administration of any of its cells in such a way as to interfere with the performance by the administrator of his functions may not be performed except with the consent of the administrator, which may be given either generally or in relation to particular cases.

(5) The administrator of an incorporated cell company shall co-operate, in the management of the affairs, business and property of the incorporated cells of the incorporated cell company, with -

- (a) those incorporated cells, and
- (b) their directors and officers,

to the extent that such co-operation will not interfere with the performance of his functions as administrator.

(6) The administrator of an incorporated cell shall co-operate, in the management of the affairs, business and property of the incorporated cell company, with -

- (a) the incorporated cell company, and
- (b) its directors and officers,

to the extent that such co-operation will not interfere with the performance of his functions as administrator.



**Discharge or variation of administration order.**

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

(2) The administrator shall apply to the Court for the administration order to be discharged or varied if it appears to him that -

- (a) the purpose or each of the purposes specified in 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) 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.

(4) Where an administration order is discharged or varied under this section the administrator shall -

- (a) within 7 days after the day of the order, send a copy of the order effecting the discharge or variation to the Registrar, and

- (b) within such time as the Court may direct, send a copy thereof to such other persons as the Court may direct.

**Remuneration and swearing in of administrator.**

383. (1) The administrator's remuneration, and any costs, charges and expenses properly incurred in the administration, are payable from the company's assets (or cellular assets attributable to the cell in respect of which the administrator was appointed, as the case may be) in priority to all other claims.

- (2) The administrator's fees shall be fixed by the Court.

(3) An administrator 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.**

384. (1) The administrator -

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

(2) Where there is a vacancy in the office of administrator the Court may, on the application of any interested party, appoint a replacement.

**Release of administrator.**

385. (1) A person who has ceased to be the administrator of a company (or cell, as the case may be) has his release with effect from -

- (a) in the case of a person who has died, the time at which notice is given to the Court that he has ceased to hold office,
- (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 administrator, except to the extent that he has incurred personal liability by virtue of section 379(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 422.

**Information to be given by administrator.**

386. (1) Where an administration order is made, the administrator shall -

- (a) forthwith send to the company notice of the order,
- (b) in the case of a cell of a protected cell company, forthwith send to the protected cell company notice of the order,

- (c) forthwith send a copy of the order to the Registrar,
- (d) within 28 days after the day of the making of the order-
  - (i) unless the Court orders otherwise, send notice of the order to all creditors of the company (or cell, as the case may be), so far as he is aware of their addresses,
  - (ii) where the order is in respect of an incorporated cell company, send notice of the order to its incorporated cells,
  - (iii) where the notice is in respect of an incorporated cell, send notice of the order to its incorporated cell company, and
  - (iv) in the case of a supervised company or a company engaged in financial services business, send notice of the order to the Commission, and
- (e) within such time as the Court may direct, send a copy of the order to such other persons as the Court may direct.

(2) The Registrar shall give notice of the administration order in such manner and for such period as he thinks fit.

**Statement of affairs to be submitted to administrator.**

**387.** (1) Where an administration order is made, the administrator may require all or any of the persons mentioned in subsection (3) to make out and submit to him a statement (a "**statement of affairs**") in such form as he may require as to the affairs of the company (or cell, as the case may be).

(2) The statement of affairs shall be verified by affidavit of the persons required to submit it (or in such other manner as the administrator may require) and shall show -

- (a) particulars of the company's (or cell's, as the case may be) assets, debts and liabilities,
- (b) the names and addresses of its creditors,
- (c) any securities held by any of its creditors,
- (d) the dates when those securities were respectively given, and
- (e) such further or other information as the administrator may require.

(3) The persons referred to in subsection (1) are -

- (a) those who are or have been officers of the company,
- (b) those who have taken part in the company's formation at any time within the period of one year before the date of the administration order ("**the preceding year**"),

(c) those who are in the company's employment or have been in its employment within the preceding year, and are in the administrator's opinion capable of giving the information required,

(d) those who are or have within the preceding year been officers of or in the employment of a company which is, or within the preceding year was, an officer of the company.

(4) In subsection (3) -

(a) "**employment**" includes employment under a contract for services, and

(b) in the case of a cell of a protected cell company, references to company include references to the protected cell company.

(5) Where any persons are required under this section to submit a statement of affairs to the administrator, they shall do so (subject to the next subsection) within a period of 21 days after the day on which written notice of the requirement is given to them by the administrator.

(6) The administrator, if he thinks fit, may -

(a) at any time release a person from an obligation imposed on him under subsection (1) or (2), or

- (b) either when giving notice under subsection (5) or subsequently, extend the period mentioned in that subsection,

and where the administrator has refused to exercise a power conferred by this subsection, the Court, if it thinks fit, may exercise it.

(7) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he is guilty of an offence and, in addition, liable to a daily default fine.

(8) Nothing in this section compels the production or divulgence by an advocate or other legal adviser of an item subject to legal professional privilege (within the meaning of section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>v</sup>), but an advocate or other legal adviser may be required to give the name and address of any client.

(9) A requirement imposed by an administrator under this section has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise, and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

**Protection of interests of creditors and members.**

**388.** (1) At any time when an administration order is in force, a creditor or member of the company (or cell, as the case may be) or, in the case of a supervised company or a company engaged in financial services business, the Commission, may apply to the Court for an order under this section on the ground -

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<sup>v</sup> Order in Council No. XXIII of 2003.

- (a) that the company's (or cell's, as the case may be) affairs, business and property are being or have been managed by the administrator in a manner which is unfairly prejudicial to the interests of its creditors or members generally, or of some part of its creditors or members (including, except where the applicant is the Commission, at least the applicant himself),
- (b) that any actual or proposed act or omission of the administrator 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 administrator of the company's (or cell's, as the case may be) affairs, business and property,
  - (b) require the administrator 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,
  - (c) require the summoning of a meeting of members for the purpose of considering such matters as the Court may direct,
  - (d) discharge the administration order and make such consequential provision as the Court thinks fit.
- (4) Where the administration order is discharged the administrator shall -
- (a) within 7 days after the day of the discharge, send a copy of the order effecting the discharge to the Registrar, and
  - (b) 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).

**Administration of incorporated cell company not to prejudice its incorporated cells.**

**389.** The administration of an incorporated cell company shall be carried on in such a way as to not prejudice the affairs, business and property of any of its incorporated cells and accordingly, during the administration, the incorporated cell company shall continue to carry on business to the extent necessary for the continuance of business of its incorporated cells.

**Cells of protected cell companies: administration subject to liquidation.**

**390.** (1) An administration order in respect of a cell of a protected cell company -

- (a) may not be made if -
  - (i) a liquidator has been appointed to act in respect of the protected cell company,
  - (ii) an application has been made for the winding up of the protected cell company, or
  - (iii) the protected cell company has passed a resolution for voluntary winding up,
- (b) shall cease to have effect upon the appointment of a liquidator to act in respect of the protected cell company, but without prejudice to prior acts.

(2) No resolution for the voluntary winding up of a protected cell company any cell of which is subject to an administration order shall be effective without the leave of the Court.

(3) For the avoidance of doubt, notwithstanding any restriction or limitation placed on administration orders in respect of the cells of a protected cell company, a protected cell company may be subject to an administration order in the same manner as any other company.

PART XXII  
VOLUNTARY WINDING UP

**Cases in which company may be wound up voluntarily.**

**391.** (1) A company may be wound up voluntarily -

(a) in either of the following cases -

(i) the period (if any) fixed by the memorandum or articles for the duration of the company expires, or

(ii) the event (if any) occurs on the occurrence of which the memorandum or articles provide that the company shall be dissolved,

provided that in each case the company passes an ordinary resolution that it be wound up voluntarily, or

(b) if the company passes a special resolution that it be wound up voluntarily.

(2) A copy of every ordinary resolution that a company be wound up voluntarily shall be delivered by the company to the Registrar within 30 days after the day of it being passed.

(3) Failure to comply with subsection (2) does not render the resolution void.

(4) A company which fails to comply with subsection (2) is -

(a) guilty of an offence, and

(b) liable to a civil penalty.

**Notice of voluntary winding up.**

**392.** The Registrar shall give notice of the fact that a company has passed-

(a) a special resolution for voluntary winding up, or

(b) an ordinary resolution for voluntary winding up,

in such manner and for such period as he thinks fit.

**Commencement of voluntary winding up.**

**393.** A voluntary winding up commences upon the passing of the resolution for voluntary winding up.

**Consequences of resolution to wind up.**

**394.** (1) From the commencement of a voluntary winding up, the company shall cease to carry on business except in so far as may be expedient for the beneficial winding up of the company.

(2) Subject to subsection (1), the company's corporate state and powers, notwithstanding anything to the contrary in its memorandum or articles, continue until dissolution.

(3) A company which contravenes subsection (1) is guilty of an offence.

**Appointment of liquidator.**

**395.** (1) In a voluntary winding up, the company shall, by ordinary resolution -

- (a) appoint a liquidator to wind up the company's affairs and to realise and distribute its assets, and
- (b) fix his remuneration.

(2) Upon the appointment of a liquidator, all powers of the directors cease, except to the extent that the company by ordinary resolution or the liquidator sanctions their continuance.

(3) A person who purports to exercise any powers of a director at a time when, pursuant to subsection (2), those powers have ceased is guilty of an offence.

**Power to fill vacancy in office of liquidator.**

**396.** (1) Where, in the course of a voluntary winding up, a vacancy occurs by death or resignation in the office of liquidator -

- (a) the Court, or

- (b) subject to the provisions of any arrangement made with its creditors, the company by ordinary resolution,

may fill the vacancy.

(2) For the purposes of subsection (1)(b) a general meeting may be convened by the continuing liquidators, if any, or by any member of the company.

**General provisions as to liquidator.**

**397.** (1) The liquidator shall -

- (a) realise the company's assets and discharge the company's liabilities, and
- (b) having done so, distribute any surplus amongst the members according to their respective entitlements in accordance with section 419.

(2) Where several liquidators are appointed, every power hereby given may be exercised -

- (a) by one or more of them, as may be determined at the time of their appointment, or
- (b) in default of such determination, by any number not less than 2.

(3) A liquidator may exercise all powers which may be given to him by the Court.

**Appointment of liquidator by the Court.**

**398.** If for whatever reason no liquidator is appointed in accordance with section 395 or 396, the Court may, on the application of any member or creditor, appoint a liquidator.

**Calling of general meetings by liquidators.**

**399.** (1) On the expiration of one year beginning on the date of commencement of a voluntary winding up, and on the expiration of each succeeding year, the liquidator shall, if the winding up is not complete, summon a general meeting of the company.

(2) The liquidator shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(3) The liquidator may summon a general meeting of the company at any other time.

**Final meeting prior to dissolution.**

**400.** (1) As soon as the company's affairs are fully wound up, the liquidator shall -

- (a) prepare an account of the winding up, giving details of the conduct of the liquidation and the disposal of the company's property, and stating whether or not any state of affairs described in section 422(1), 433(1) or 434(2) has come to his attention, and

- (b) call a general meeting of the company at which the account shall be presented and an explanation shall be given of it.

(2) After such a meeting the liquidator shall give notice to the Registrar of the holding of the meeting and of its date.

(3) The Registrar shall publish the fact of this final meeting and that the company is to be dissolved in such manner and for such period as he thinks fit.

(4) On the expiration of 3 months beginning on the date of delivery of such notice, the company is dissolved.

**Delegation of company's powers to creditors.**

**401.** (1) A company which is being or which is to be voluntarily wound up may, by special resolution, delegate to its creditors or to any committee thereof the power -

- (a) to appoint a liquidator and to fill any vacancy in the office of liquidator,
- (b) to enter into any arrangement regarding the powers to be exercised by the liquidator and the manner in which they are to be exercised,

and any act done by the creditors in pursuance of any such delegated power shall have effect as if done by the company.



(2) Any arrangement entered into between a company which is being or which is to be voluntarily wound up and its creditors is, subject to the right of appeal conferred by subsection (3), binding if sanctioned by a special resolution of the company and by 75% in number and value of the creditors.

(3) A creditor or shareholder of a company which has entered into an arrangement described in subsection (2) may, within 21 days beginning on the date of the completion of the arrangement, apply to the Court for an order that the arrangement be set aside; and thereupon the Court may make such order as it thinks fit for the setting aside, amendment, variation or confirmation of the arrangement.

**Power to apply to Court for directions.**

402. A member of a company which is being or which is to be voluntarily wound up may apply to the Court for directions concerning any aspect of the winding up; and upon such an application the Court may make such order as it thinks fit.

**Removal of liquidator.**

403. In a voluntary winding up, a liquidator by whoever appointed may be removed from office by the Court; and in that case the Court may appoint a replacement.

**Expenses of voluntary winding up.**

404. All costs, charges and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator, are payable from the company's assets in priority to all other claims.

**Court may order compulsory winding up.**

405. The Court may, notwithstanding the passing of a resolution under section 391 for the voluntary winding up of a company, entertain an application under section 408 for an order for the compulsory winding up of the company.

PART XXIII  
COMPULSORY WINDING UP

**Circumstances in which Court may wind company up.**

**406.** A company may be wound up by the Court if -

- (a) the company has by special resolution resolved that the company be wound up by the Court,
- (b) the company does not commence business within one year beginning on the date of its incorporation,
- (c) the company suspends business for a whole year,
- (d) the company has no members (other than the company itself where it holds its own shares as treasury shares),
- (e) the company is unable to pay its debts within the meaning given in section 407,
- (f) the company has failed to comply with a direction of the Registrar under section 28(2) to change its name,
- (g) subject to sections 200 and 201, the company has failed to hold a general meeting of its members in accordance with section 199(1) or (2), in which case the provisions of this Part shall apply in relation to the winding up of the company subject to the modifications set out in section 199(4), (5) and (6),

- (h) the company has failed to send its members a copy of its accounts or reports in accordance with section 251(1), in which case the provisions of this Part shall apply in relation to the winding up of the company subject to the modifications set out in section 251(5), (6) and (7), or
- (i) the Court is of the opinion that it is just and equitable that the company should be wound up.

**Meaning of "unable to pay debts".**

**407.** For the purposes of section 406(e) and without prejudice to the provisions of section 527, a company shall be deemed to be unable to pay its debts if -

- (a) a creditor to whom the company owes a sum exceeding £750 which is then due serves on the company through the office of Her Majesty's Sergeant at the company's registered office a written demand for payment, and
- (b) the company, for a period of 21 days immediately following the date of service, neglects to pay the sum or to secure payment to the reasonable satisfaction of the creditor,

or if it is proved to the satisfaction of the Court that the company fails to satisfy the solvency test.

**Application for compulsory winding up.**

**408.** (1) An application for the compulsory winding up of a company may be made to the Court by the company, by any director, member or creditor thereof or by any other interested party.

(2) An order made by the Court on an application under subsection (1) operates for the benefit of all the company's creditors in the same way as if the application had been presented by them.

**Commission may be heard on winding up application.**

**409.** (1) An application for an order for the compulsory winding up of a company referred to in subsection (2) shall not be heard unless a copy of the application is served on the Commission not less than 7 days (or such other period as the Court may, in its absolute discretion, direct) before the day of the hearing of the application.

(2) The companies mentioned in subsection (1) are -

- (a) supervised companies,
- (b) companies engaged in a financial services business, or
- (c) companies of any other class or description prescribed by the Commission for the purposes of this section.

(3) At the hearing of the application the Commission may make representations to the Court which the Court shall take into account in deciding whether or not, and in what manner, to exercise its powers under this Part.

**Ground on which Department or Commission may make winding up**

**application.**

**410.** (1) A company may be wound up by the Court if the Court is of the opinion that it is desirable that the company should be wound up for the protection of the public or of the reputation of the Bailiwick.

(2) An application under subsection (1) for the compulsory winding up of a company may be made to the Court only by the Department or by the Commission.

(3) An order made by the Court on an application under subsection (1) operates for the benefit of all the company's creditors in the same way as if the application had been presented by them.

(4) This section is in addition to and not in derogation from the other provisions of this Part and any other provision of law relating to winding up.

**Power to restrain proceedings and appoint provisional liquidator.**

**411.** On the making of an application for the compulsory winding up of a company or at any time thereafter, any creditor of the company may apply to the Court for an order -

- (a) restraining, on such terms and conditions as the Court thinks fit, any action or proceeding pending against the company,
- (b) appointing a provisional liquidator to ascertain the company's assets and liabilities, manage its affairs and do all acts authorised by the Court.

**Powers of Court on hearing application.**

412. On hearing an application for the compulsory winding up of a company, the Court may grant the application on such terms and conditions as it thinks fit, dismiss the application, or make such other order as it thinks fit.

**Appointment of liquidator in compulsory winding up.**

413. (1) On the making of a compulsory winding up order the Court shall, subject to the provisions of subsection (2), appoint a liquidator nominated by the applicant or, where no person has been nominated, make such appointment as it thinks fit.

(2) The Court may, before appointing a person to the office of liquidator, satisfy itself as to whether he is qualified to be appointed.

(3) The Court may, whether before or after appointing a person to the office of liquidator -

- (a) require such security as it thinks fit from him, and
- (b) order that monies received by him be paid into an account specified by the Court.

(4) A liquidator appointed by the Court shall be sworn and has power -

- (a) to bring or defend civil actions in the name of and on behalf of the company,
- (b) to carry on the business of the company to the extent expedient for the beneficial winding up of the company,

- (c) to make calls of capital,
- (d) to sign all receipts and other documents in the name of and on behalf of the company, and to do any other act relating to the winding up, and for these purposes to use the company seal whenever necessary, and
- (e) to do any act authorised by the Court.

**Consequences of appointment of liquidator and compulsory winding up order.**

**414.** (1) Upon the appointment of a liquidator in a compulsory winding up, all powers of the directors cease, except to the extent that the liquidator or the Court sanctions their continuance.

(2) A person who purports to exercise any powers of a director at a time when, pursuant to subsection (1), those powers have ceased is guilty of an offence.

(3) On the making of a compulsory winding up order, the company shall cease to carry on business except in so far as may be expedient for the beneficial winding up of the company.

(4) Subject to subsection (3), the company's corporate state and powers shall, notwithstanding anything to the contrary in its memorandum and articles, continue until dissolution.

(5) The liquidator shall, within 7 days after the day of being appointed, send a copy of the compulsory winding up order to the Registrar.

(6) A company which contravenes subsection (3) is guilty of an offence.

**Notice of compulsory winding up.**

**415.** The Registrar shall give notice of the fact that the company is being compulsorily wound up in such manner and for such period as he thinks fit.

**Resignation, removal or death of liquidator.**

**416.** In a compulsory winding up -

- (a) a liquidator may resign from office or may be removed from office by the Court, and
- (b) where a vacancy occurs in the office of liquidator by reason of resignation, removal or death, the Court may fill the vacancy.

**Examination of liquidator's accounts by Commissioner.**

**417.** (1) In a compulsory winding up, when the liquidator has realised the company's assets he shall apply to the Court for the appointment of a Commissioner of the Court to examine his accounts and to distribute the funds derived from the company's assets.

(2) The Commissioner shall, subject to subsection (4) -

- (a) arrange a creditors' meeting for the purpose of examining and verifying the financial statements and creditors' claims and preferences, and
- (b) fix a date for the distribution of the company's assets.



(3) If a claim is disputed, the Commissioner shall refer the decision on the claim to the Court; but otherwise the liquidator may, subject to subsection (4), distribute such part of the company's assets as he thinks fit in relation to any claim.

(4) A notice shall, on 2 occasions falling in successive weeks, be placed in La Gazette Officielle stating the day of the meeting or, as the case may be, the distribution (which day shall not in either case be less than 14 days after the day of the second notice).

(5) If any state of affairs described in section 422(1), 433(1) or 434(2) comes to the attention of the liquidator, he shall state this in his accounts.

**Expenses of compulsory winding up.**

**418.** All costs, charges and expenses properly incurred in the compulsory winding up of a company, including the remuneration of the liquidator, are payable from the company's assets in priority to all other claims.

PART XXIV

PROVISIONS OF GENERAL APPLICATION IN WINDING UP

**Distribution of company's property.**

- 419.** (1) Subject to the provisions of -
- (a) this Law and any rule of law as to preferential payments,
  - (b) any agreement between the company and any creditor thereof as to the subordination of the debts due to that

creditor to the debts due to the company's other creditors, and

- (c) any agreement between the company and any creditor thereof as to set-off,

the company's assets in a winding up shall be realised and shall be applied in satisfaction of the company's debts and liabilities *pari passu*.

(2) Any surplus shall thereafter be distributed (unless the memorandum or articles provide otherwise) among the members according to their respective rights and interests in the company.

**Company not to undertake business once wound up.**

**420.** (1) In a compulsory winding up, the liquidator shall, within a period of 15 days beginning on the day of final distribution of the company's assets, apply to the Court for an order declaring the company to be dissolved.

(2) Immediately upon the dissolution of a company (whether by means of a voluntary winding up, a compulsory winding up or otherwise) the company may not undertake business or contract debts or obligations.

(3) Any member of a company who causes or permits the company to contravene subsection (2) is personally liable in respect of any debt or obligation undertaken.

**No share transfers after commencement of winding up.**

**421.** Any transfer of a company's shares made after the commencement of a winding up, other than a transfer made to or with the sanction of the liquidator, is void.

**Remedy against delinquent officers.**

422. (1) Where in the course of the winding up of a company it appears that any person described in subsection (2) -

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

the liquidator or any creditor or member of the company may apply to the Court for an order under this section.

(2) The persons mentioned in subsection (1) are -

- (a) any past or present officer of the company,
- (b) any other person who, directly or indirectly, is or has been in any way concerned in or has participated in the promotion, formation or management of the company.

(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 company's assets,
- (c) to pay interest upon such amount, at such rate and from such date,

as the Court thinks fit in respect of the default, whether by way of indemnity or compensation or otherwise.

**Liquidator's remuneration.**

423. The liquidator's fees shall, subject to section 395(1)(b), be fixed by the Court.

**Preferences in or prior to winding up.**

424. (1) The liquidator of a company may apply to the Court for an order under this section if the company has given a preference to any person at any time after the commencement of a period of 6 months immediately preceding the relevant date.

- (2) For the purposes of this section -
  - (a) a company gives a preference to a person if -
    - (i) that person is one of the company's creditors or is a surety or guarantor for any of the company's debts or other liabilities, and
    - (ii) the company does anything, or permits anything to be done, which improves that person's position in the company's liquidation,

- (b) the relevant date is the earlier of -
  - (i) the date of any application for the compulsory winding up of the company under section 408, or
  - (ii) the date of the passing by the company of any resolution mentioned in section 391 for the voluntary winding up of the company.

(3) If on an application under subsection (1) the Court is of opinion that -

- (a) the company was at the time of giving the preference, or became as a result of giving the preference, unable to pay its debts within the meaning of section 407, and
- (b) the company was influenced in deciding to give a preference by a desire to produce the effect mentioned in subsection (2)(a)(ii),

the Court may make such order as it thinks fit for restoring the position to what it would have been if the company had not given the preference.

(4) Without prejudice to the generality of subsection (3), but subject to subsection (5), an order under this section may -

- (a) require any property transferred in connection with the giving of the preference to be vested in the company,

- (b) require any property to be so vested if it represents in any person's hands the application of either the proceeds of sale of property so transferred or money so transferred,
- (c) release or discharge (in whole or in part) any security given by the company,
- (d) require any person to pay, in respect of benefits received by him from the company, such sums to the liquidator as the Court may direct,
- (e) provide for any surety or guarantor whose obligations to any person were released, reduced or discharged by the giving of the preference to be under such new or revived obligations to that person as the Court thinks fit,
- (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order,
- (g) provide for the extent to which any person whose property is vested by the order in the company, or on whom obligations are imposed by the order, is to be able to claim in the liquidation for debts or other liabilities which arose from, or were released, reduced or discharged by, the giving of the preference.

(5) An order under this section may affect the property of or impose obligations on any person, whether or not he is the person to whom the preference was given, but shall not -

- (a) prejudice any interest in property acquired from a person other than the company in good faith, for value and without notice of the existence of circumstances enabling an order under this section to be applied for,
- (b) prejudice an interest deriving from such an interest, or
- (c) require a person to pay a sum to the liquidator in respect of a benefit received by that person at a time when he was not a creditor of the company, and received by him in good faith, for value and without notice of the existence of circumstances enabling an order under this section to be applied for.

(6) In the application of this section to any case where the person given a preference is connected with the company -

- (a) the reference in subsection (1) to 6 months is to be read as a reference to 2 years, and
- (b) the company is presumed, unless the contrary is shown, to have been influenced in deciding to give the preference by such desire as is mentioned in subsection (3)(b).

(7) For the purposes of subsection (6) a person is "connected" with the company at any time if the company knew or ought to have known at that time that -

- (a) that person had any significant direct or indirect proprietary, financial or other interest in or connection with the company (other than as a creditor, surety or guarantor), or
- (b) another person had any such interest in or connection with both that person and the company.

(8) The fact that something is done or permitted pursuant to a court order does not, without more, prevent it from being a preference.

(9) This section is without prejudice to any other remedy.

**Company to be notified of winding up application.**

425. The Court shall not hear an application for the winding up of a company under this Law unless satisfied that the company has been notified of the date, time and place of the application.

**Liquidator may seek directions.**

426. The liquidator of a company may seek the Court's directions in relation to any matter arising in relation to the winding up of the company and upon such an application the Court may make such order as it thinks fit.

PART XXV

DISQUALIFICATION ORDERS



**Disqualification orders.**

427. (1) A disqualification order is an order made by the Court prohibiting a person from -

- (a) being a director, secretary or other officer of any company or any specified company,
- (b) being a shadow director of any company or any specified company,
- (c) participating in, or being in any way concerned in, directly or indirectly, the management, formation or promotion of any company or any specified company,
- (d) participating in, or being in any way concerned in, directly or indirectly, the management, formation or promotion of any overseas company,
- (e) being an administrator of any company or any specified company,
- (f) being a receiver of a cell of any protected cell company or any specified protected cell company,
- (g) being a liquidator of any company or any specified company.

(2) The Court can make a disqualification order of its own motion or upon an application made by -

- (a) the Department,
- (b) the Commission,
- (c) Her Majesty's Procureur,
- (d) the Registrar,
- (e) any company of which the person in question is or has been a director, shadow director, secretary, officer or is participating or has participated directly or indirectly in the management, formation or promotion thereof,
- (f) any liquidator, administrator, member or creditor of such a company as is mentioned in paragraph (e),
- (g) any receiver of a cell of a protected cell company which is such a company as is mentioned in paragraph (e), or
- (h) any other interested party, with the leave of the Court.

(3) The order may be made during proceedings initiated for that purpose or in the course of any other proceedings.

(4) A disqualification order may, in the Court's absolute discretion, be granted by consent.

(5) A disqualification order may contain such incidental and ancillary terms and conditions as the Court thinks fit.

(6) The Court shall direct that a copy of the order be served upon the Registrar.

(7) For the purposes of this Part, the Court is constituted by the Bailiff sitting unaccompanied by the Jurats.

**Ground for making a disqualification order.**

**428.** (1) The Court may make a disqualification order where it considers that, by reason of a person's conduct in relation to a company or otherwise, that person is unfit to be concerned in the management of a company.

(2) In determining whether a person is unfit, regard shall be had to

-

(a) his probity, competence, experience and soundness of judgement for fulfilling the responsibilities of a director, secretary or officer of a company,

(b) the diligence with which he has fulfilled his responsibilities,

(c) whether the interests of members or creditors or potential members or creditors of any company or any specified company are or are likely to be in any way threatened by his being a director, secretary or officer of a company,

(d) his educational and professional qualifications, his membership of any professional or other relevant

bodies and any evidence of his continuing professional education or development,

- (e) the rules, standards and guidelines of any relevant professional, governing, regulatory or supervisory authority,
- (f) his knowledge and understanding of the legal and professional obligations of directors, secretaries or officers of a company, and
- (g) such other matters as the Court thinks fit.

(3) Without prejudice to the generality of the foregoing, the Court may also have regard to -

- (a) the previous conduct and activities in business or financial matters of the person in question,
- (b) any convictions he has for an offence in connection with the promotion, formation, management, liquidation or striking off of a company,
- (c) any convictions he has for any offence and in particular any offence involving fraud or dishonesty,
- (d) whether he has been held liable to make contributions to a company's assets under section 433, 434 or 435,

- (e) whether he has been persistently in default in relation to any provisions of this Law requiring any validation, return, account or other document to be filed with, delivered or sent, or any notice of any matter to be given, to the Registrar,
- (f) his conduct in connection with any company that has gone into insolvent liquidation,
- (g) any misfeasance or breach of any fiduciary or other duty by him in relation to a company,
- (h) whether he has been disqualified, by reason of misconduct or unfitness, from being concerned with the management of an overseas company under the law of any district, territory or place outside Guernsey, and
- (i) where he acted as a resident agent, any breach of his duties as a resident agent.

**Duration of disqualification order.**

**429.** (1) A disqualification order shall have effect for such period not exceeding 15 years as shall be specified therein.

(2) Where a disqualification order is made against a person already subject to such an order, the periods specified in those orders shall run concurrently unless the Court orders them to run consecutively.

**Revocation of disqualification orders.**

**430.** (1) A person subject to a disqualification order may apply to the

Court for a revocation of the order on the ground that he is no longer unfit to be concerned in the management of a company, and the Court may grant the application if satisfied that -

- (a) it would not be contrary to the public interest to do so, and
- (b) the applicant is no longer unfit to be concerned in the management of a company.

(2) An application under this section for the revocation of a disqualification order shall not be heard unless the person upon whose application the disqualification order was made has been served with notice of the application to revoke not less than 28 days (or such other period as the Court may in its absolute discretion direct) before the date of the hearing; and, without prejudice to the foregoing, the Court may -

- (a) direct that notice of the application to revoke shall also be served on such other persons as the Court thinks fit, and
- (b) for that purpose adjourn the hearing of the application.

(3) The revocation of a disqualification order may, with the consent of the parties and in the Court's absolute discretion, be granted by consent.

**Consequences of breaking a disqualification order.**

**431.** (1) A person who contravenes any provision of a disqualification order -

- (a) is guilty of an offence, and
- (b) is personally liable for any debts and liabilities of the company in relation to which the contravention was committed which were incurred at any time when he was acting in contravention of the disqualification order.

(2) A person's liability pursuant to subsection (1)(b) is joint and several with that of the company and of any other person so liable in relation to that company.

## PART XXVI

### FRAUDULENT AND WRONGFUL TRADING

#### **Offence of fraudulent trading.**

**432.** If any business of a company is carried on with intent to defraud creditors (whether of the company or of any other person), or for any fraudulent purpose, every person who is knowingly a party to the carrying on of the business in that manner is guilty of an offence.

#### **Civil liability for fraudulent trading.**

- 433.** (1) If in the course of -
- (a) the winding up of a company, or
  - (b) the winding up of the business of or attributable to the cell of a protected cell company in accordance with a receivership order or administration order,

it appears that any business of the company or cell (as the case may be) has been carried on with intent to defraud creditors (whether of the company, of the cell or of any other person), or for any fraudulent purpose, subsection (2) has effect.

- (2) The Court, on the application of -
  - (a) the liquidator, administrator, or any creditor or member of the company, or
  - (b) the administrator, receiver, or any creditor or member of the cell of the protected cell company,

may declare that any persons who were knowingly parties to the carrying on of the business in the manner mentioned above shall be liable to make such contributions to the company's or cell's (as the case may be) assets as the Court thinks proper.

**Civil liability of directors for wrongful trading.**

**434.** (1) Subject to subsection (3), if in the course of the winding up of a company it appears that subsection (2) applies to a person, the Court, on the application of the liquidator or any creditor or member of the company, may declare that that person shall be liable to make such contribution to the company's assets as the Court thinks proper.

- (2) This subsection applies in relation to a person if -
  - (a) the company has gone into insolvent liquidation,
  - (b) at some time before the commencement of the winding up of the company, that person knew or ought to have



concluded that there was no reasonable prospect of the company avoiding going into insolvent liquidation, and

(c) that person was a director of the company at that time.

(3) The Court shall not make a declaration under this section in respect of any person if it is satisfied that, after the condition specified in subsection (2)(b) was first fulfilled in relation to him, he took every step with a view to minimising the potential loss to the company's creditors that (assuming him to have known that there was no reasonable prospect of the company avoiding going into insolvent liquidation) he ought to have taken.

(4) For the purposes of subsections (2) and (3), the facts which a director of a company ought to know, the conclusions which he ought to reach and the steps which he ought to take are those which would be known, reached or taken by a reasonably diligent person having both -

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company, and

(b) the general knowledge, skill and experience of that director.

(5) The reference in subsection (4) to the functions carried out in relation to a company by a director of the company includes any function which he does not carry out but which has been entrusted to him.

(6) For the purposes of this section a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

(7) In this section, director includes a shadow director.

(8) This section is without prejudice to section 433.

**Civil liability of directors for wrongful trading: cells of protected cell company.**

**435.** (1) Subject to subsection (3), if in the course of the winding up of the business of or attributable to a cell of a protected cell company in accordance with a receivership order or administration order, it appears that subsection (2) applies to a person, the Court, on the application of the administrator, receiver, or any creditor or member of the cell, may declare that that person shall be liable to make such contribution to the cell's assets as the Court thinks proper.

(2) This subsection applies in relation to a person if -

(a) the cell has gone into insolvent liquidation,

(b) at some time before the commencement of the winding up, that person knew or ought to have concluded that there was no reasonable prospect of the cell avoiding insolvent liquidation, and

(c) that person was a director of the protected cell company at that time.

(3) The Court shall not make a declaration under this section in respect of any person if it is satisfied that, after the condition specified in subsection

(2)(b) was first fulfilled in relation to him, he took every step with a view to minimising the potential loss to the cell's creditors that (assuming him to have known that there was no reasonable prospect of the cell avoiding going into insolvent liquidation) he ought to have taken.

(4) For the purposes of subsections (2) and (3), the facts which a director of a protected cell company ought to know, the conclusions which he ought to reach and the steps which he ought to take are those which would be known, reached or taken by a reasonably diligent person having both -

- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the protected cell company, and
- (b) the general knowledge, skill and experience of that director.

(5) The reference in subsection (4) to the functions carried out in relation to a protected cell company by a director of the company includes any function which he does not carry out but which has been entrusted to him.

(6) For the purposes of this section a cell goes into insolvent liquidation if the cellular assets attributable to the cell (and, where the company has entered into a recourse agreement, the assets liable under that agreement) are insufficient to discharge the claims of creditors in respect of that cell and the expenses of the receivership order or administration order (as the case may be).

(7) In this section, director includes a shadow director.

- (8) This section is without prejudice to section 433.

**Proceedings under sections 433, 434 or 435.**

436. (1) On the hearing of an application under section 433, 434 or 435, the applicant may himself give evidence or call witnesses.

(2) Where under section 433, 434 or 435 the Court makes a declaration, it may give such further directions as it thinks proper for giving effect thereto; and in particular the Court may -

(a) provide for the liability of any person under the declaration to be a charge on -

(i) any debt or obligation due from the company or cell to him,

(ii) any mortgage, charge, hypothèque, lien or other security on assets of the company or cell held by or vested in him,

(iii) any interest in any mortgage charge, hypothèque, lien or other security on assets of the company or cell held by or vested in him,

or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf, and

(b) make such further orders as may be necessary for enforcing any charge imposed under this subsection.

- (3) For the purposes of subsection (2)(a) "**assignee**" -
- (a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage, charge, hypothèque, lien or other security was created, issued or transferred or the interest created, but
  - (b) does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4) Where the Court makes a declaration under section 433, 434 or 435 in relation to a person who is a creditor of the company or cell of the protected cell company (as the case may be), it may direct that the whole or any part of any debt owed by the company or cell to that person and any interest thereon shall rank in priority after all other debts owed by the company or cell and after any interest on those debts.

(5) Sections 433, 434 or 435 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the declaration under the section is to be made.

## PART XXVII

### PROTECTED CELL COMPANIES

#### *Formation*

**Companies which can be protected cell companies.**

**437.** (1) A company cannot be incorporated as a protected cell company, and an existing company cannot be converted into a protected cell company, unless -

- (a) the company is declared (or when incorporated will be declared) by the Commission to be an authorised collective investment scheme under section 8 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987,
- (b) the company is (or when incorporated will be) a closed-ended investment company,
- (c) the company is (or when incorporated will be) a licensee within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002<sup>W</sup>,
- (d) the company and its affairs are (or when incorporated will be) administered by a licensed person with a place of business in Guernsey, provided that the company is not (or when incorporated will not be) -
  - (i) a licence holder within the meaning of the Insurance Managers and Insurance

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<sup>W</sup> Order in Council No. XXI of 2002; amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

Intermediaries (Bailiwick of Guernsey) Law, 2002<sup>x</sup>,

- (ii) a licensed institution within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994<sup>y</sup>,
  - (iii) a licensed fiduciary within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law, 2000<sup>z</sup>, or
  - (iv) a company licensed to carry on controlled investment business within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, or
- (e) the company is of any other class or description prescribed by the Commission.

(2) For the purposes of subsection (1)(d) a licensed person means a person who -

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<sup>x</sup> Order in Council No. XXII of 2002; amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

<sup>y</sup> Order in Council No. XIII of 1994; amended by No's. XVII and XXI of 2002; No. XVI of 2003; and the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

<sup>z</sup> Order in Council No. I of 2001; amended by No. XIV of 2003; and by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

- (a) is a licence holder within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002 or the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,
- (b) is a licensed institution within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
- (c) holds a full fiduciary licence within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law, 2000,
- (d) carries on a controlled investment business within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 and holds a licence under section 4 of that Law, or
- (e) is a company which is of any other class or description prescribed by the Commission.

**Consent of Commission required.**

**438.** (1) The following cannot be done except under the authority of and in accordance with the terms and conditions of the written consent of the Commission

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- (a) the incorporation of a company as a protected cell company,



- (b) the conversion of an existing company into a protected cell company, and
  - (c) the conversion of an existing protected cell company into a non-cellular company.
- (2) The Commission may, from time to time and in such manner as it thinks fit -
  - (a) vary or revoke any term or condition subject to which a consent under subsection (1) was granted, and
  - (b) impose any new term or condition in relation to any such consent.
- (3) An application for the consent of the Commission under subsection (1) -
  - (a) shall be made to the Commission in such form, and shall be accompanied by such documents and information, verified in such manner, as the Commission may require, whether in relation to any particular application or otherwise, and
  - (b) shall be accompanied by such fee as may be prescribed by the Commission.
- (4) A person who contravenes, or who causes or permits any contravention of, any term or condition of a consent of the Commission is guilty of an offence.

**Determination of applications to and other decisions of Commission.**

439. (1) In deciding whether to -
- (a) grant any application for consent made under section 438,
  - (b) impose any term or condition upon that consent,
  - (c) vary or revoke any term or condition of that consent, or
  - (d) impose any new term or condition on that consent,

the Commission must have regard to the protection of the public interest, including the need to -

- (i) protect the public, in Guernsey and elsewhere, against the effects of dishonesty, incompetence or malpractice,
- (ii) counter financial crime and the financing of terrorism in Guernsey and elsewhere,
- (iii) protect and enhance the reputation of the Bailiwick as a financial centre,

and the Commission shall consider those matters, both in determining the extent to which any person would in its opinion be a fit and proper person to be concerned in the business of the company, and also more generally.

- (2) If the Commission -
- (a) refuses an application for consent,
  - (b) imposes terms or conditions upon that consent,
  - (c) varies or revokes any term or condition of that consent,  
or
  - (d) imposes any new term or condition on that consent,

it shall give the applicant a written notice of its decision and the reasons for it and of that person's right under section 440 to appeal.

(3) Nothing in subsection (2) requires the Commission to disclose information the disclosure of which would be prejudicial to -

- (a) a criminal or regulatory investigation, whether in Guernsey or elsewhere,
- (b) co-operation or relations with any investigatory, regulatory or prosecuting authority, or
- (c) a third party,

but, if the Commission decides pursuant to this subsection to withhold information which it considers relevant to the decision taken, the Commission must so inform the applicant by written notice and, in the event of an appeal under section 440, subsection (2) of that section shall apply.

**Appeals from determinations and other decisions of Commission.**

440. (1) An applicant may appeal to the Court against -
- (a) the refusal of an application for consent,
  - (b) the imposition of terms or conditions upon that consent,
  - (c) the variation or revocation of any term or condition of that consent,
  - (d) the imposition of any new term or condition on that consent, or
  - (e) the withholding of information pursuant to section 439(3),

by a summons served on the Chairman of the Commission.

The summons must state the grounds and material facts on which the appellant relies and must be served within 28 days after the date of the written notice referred to in section 439.

(2) On an appeal under subsection (1)(e), the Court may examine any information the disclosure of which the Commission considers would be prejudicial as set out in section 439(3); but that information shall not be disclosed to the appellant or any person representing him unless the Court determines that the prejudice occasioned to the appellant by its non-disclosure would be disproportionate to any legitimate objective of preventing prejudice as set out in that section.

(3) The grounds of an appeal under this section are that -

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(4) The Commission may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the application the Court may -

- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just.

The provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007<sup>aa</sup>.

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<sup>aa</sup> Order of the Royal Court No. IV of 2007.

- (5) On an appeal under this section the Court may -
- (a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court thinks fit, or
  - (b) confirm the decision, in whole or in part.

(6) On an appeal under this section against a decision of the Commission the Court may, on the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

(7) An appeal from a decision of the Court under this section lies to the Court of Appeal on a question of law.

(8) In this section "**the Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of an appeal under this section the Court may appoint one or more assessors to assist it in the determination of any matter before it.

*Status*

**Status of protected cell companies.**

- 441.** (1) A protected cell company is a single legal person.
- (2) The creation by a protected cell company of a cell does not create, in respect of that cell, a legal person separate from the company.

**Creation of cells.**

442. A protected cell company may create one or more cells for the purpose of segregating and protecting cellular and core assets in the manner provided by this Part.

**Demarcation of the core.**

443. The core is the protected cell company excluding its cells.

**Cell shares and cell share capital.**

444. (1) A protected cell company may, in respect of any of its cells, create and issue shares ("**cell shares**") the proceeds of the issue of which ("**cell share capital**") shall be comprised in the cellular assets attributable to the cell in respect of which the cell shares were issued.

(2) The proceeds of the issue of shares other than cell shares created and issued by a protected cell company shall be comprised in the company's core assets.

(3) A protected cell company may pay a dividend (a "**cellular dividend**") in respect of cell shares.

(4) The provisions of this Law, subject to the provisions of this Part, and unless the context requires otherwise, apply in relation to -

- (a) cell shares as they apply to shares which are not cell shares, and
- (b) cell share capital as they apply to share capital which is not cell share capital.

*Assets and liabilities*

**Cellular and core assets.**

445. (1) The assets of a protected cell company are either cellular assets or core assets.

(2) It is the duty of the directors of a protected cell company-

(a) to keep cellular assets separate and separately identifiable from core assets, and

(b) to keep cellular assets attributable to each cell separate and separately identifiable from cellular assets attributable to other cells.

(3) The cellular assets of a protected cell company comprise the assets of the company attributable to the cells of the company.

(4) The assets attributable to a cell of a protected cell company comprise -

(a) assets represented by the proceeds of cell share capital and reserves attributable to the cell, and

(b) all other assets attributable to the cell.

(5) The core assets of a protected cell company comprise the assets of the company attributable to the core of the company.



(6) The assets attributable to the core of a protected cell company comprise -

- (a) assets represented by the proceeds of core share capital and reserves attributable to the core, and
- (b) all other assets attributable to the core.

(7) For the purposes of subsections (4) and (6), the expression "**reserves**" includes retained earnings, capital reserves and share premiums.

(8) Notwithstanding the provisions of subsection (2), the directors of a protected cell company may cause or permit cellular assets and core assets to be held -

- (a) by or through a nominee, or
- (b) by a company the shares and capital interests of which may be cellular assets or core assets, or a combination of both.

(9) The duty imposed by subsection (2) is not breached by reason only that the directors of a protected cell company cause or permit cellular assets or core assets, or a combination of both, to be collectively invested, or collectively managed by an investment manager, provided that the assets in question remain separately identifiable in accordance with subsection (2).

**Protected assets.**

**446.** In this Part "**protected assets**" means -

- (a) any cellular assets attributable to any cell of the protected cell company in respect of a liability not attributable to that cell, and
- (b) any core assets in respect of a liability attributable to a cell.

**Recourse agreements.**

**447.** (1) A "**recourse agreement**" is a written agreement between a protected cell company and a third party which provides that, pursuant to an arrangement effected by the protected cell company (within the meaning of section 458), protected assets may, notwithstanding the provisions of this Part, be subject to a liability owed to that third party.

(2) Before entering into a recourse agreement, each director of the protected cell company who authorises it must make a declaration that he believes, on reasonable grounds -

- (a) that no creditor of the company will be unfairly prejudiced by the recourse agreement, and
- (b) that (unless the memorandum or articles provide to the contrary) -
  - (i) where the protected assets are assets attributable to a cell, the members of that cell, or
  - (ii) where the protected assets are core assets, the members of the core,

have passed a resolution approving the recourse agreement.

(3) A director who without reasonable excuse makes a declaration under subsection (2) which is false, deceptive or misleading in a material particular is guilty of an offence.

(4) Any member or creditor of the protected cell company may, subject to such reasonable restrictions as the protected cell company may impose, inspect or request a copy of the directors' declaration.

(5) If a company fails to allow an inspection or refuses a request for a copy under subsection (4) it is guilty of an offence.

**Position of creditors.**

**448.** (1) Subject to the terms of any recourse agreement, the rights of creditors of a protected cell company correspond with the liabilities provided for in sections 451 and 452.

(2) Subject to the terms of any recourse agreement, no such creditor has any rights other than the rights referred to in this section and in sections 449, 450, 451 and 452.

(3) There is implied (except in so far as the same is expressly excluded in writing) in every transaction entered into by a protected cell company the following terms -

(a) that no party shall seek, whether in any proceedings or by any other means whatsoever or wheresoever, to make or attempt to make liable any protected assets,

- (b) that if any party succeeds by any means whatsoever or wheresoever in making liable any protected assets, that party shall be liable to the company to pay a sum equal to the value of the benefit thereby obtained by him, and
- (c) that if any party succeeds in seizing or attaching by any means or otherwise levying execution against any protected assets, that party shall hold those assets or their proceeds on trust for the company and shall keep those assets or proceeds separate and identifiable as such trust property.

(4) All sums recovered by a protected cell company as a result of any such trust as is described in subsection (3)(c) shall be credited against any concurrent liability imposed pursuant to the implied term set out in subsection (3)(b).

(5) Any asset or sum recovered by a protected cell company pursuant to the implied term set out in subsection (3)(b) or (3)(c) or by any other means whatsoever or wheresoever in the events referred to in those subsections shall, after the deduction or payment of any costs of recovery, be applied by the company so as to compensate the cell affected or (as the case may be) the core.

(6) In the event of any protected assets being taken in execution in respect of a liability to which they are not attributable, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to the cell affected or (as the case may be) the core, the company shall -

- (a) cause or procure an independent expert, acting as expert and not as arbitrator, to certify the value of the assets

lost to the cell affected or (as the case may be) the core,  
and

- (b) transfer or pay, from the cellular or core assets to which the liability was attributable, to the cell affected or (as the case may be) the core, assets or sums sufficient to restore to the cell affected or (as the case may be) the core, the value of the assets lost.

- (7) This section has extra-territorial application.

**Recourse to cellular assets by creditors.**

**449.** Without prejudice to the provisions of sections 448 and 451, and subject to the terms of any recourse agreement, cellular assets attributable to a cell of a protected cell company -

- (a) are only available to the creditors of the company who are creditors in respect of that cell and who are thereby entitled, in conformity with the provisions of this Part, to have recourse to the cellular assets attributable to that cell,
- (b) are absolutely protected from the creditors of the company who are not creditors in respect of that cell and who accordingly are not entitled to have recourse to the cellular assets attributable to that cell.

**Recourse to core assets by creditors.**

**450.** Without prejudice to the provisions of sections 448 and 452, and subject to the terms of any recourse agreement, core assets of a protected cell

company -

- (a) are only available to the creditors of the company who are creditors in respect of the core and who are thereby entitled, in conformity with the provisions of this Part, to have recourse to the core assets,
- (b) are absolutely protected from the creditors of the company who are not creditors in respect of the core and who accordingly are not entitled to have recourse to the core assets.

**Liability of cellular assets.**

**451.** (1) Subject to the provisions of subsection (2), and to the terms of any recourse agreement, where any liability arises which is attributable to a particular cell of a protected cell company -

- (a) the cellular assets attributable to that cell are liable, and
- (b) the liability is not a liability of any protected assets.

(2) In the case of loss or damage which is suffered by a particular cell of a protected cell company and which is caused by fraud perpetrated by or upon the core or another cell, the loss or damage is the liability solely of the company's core assets or (as the case may be) that other cell's assets, without prejudice to any liability of any person other than the company.

(3) Any liability not attributable to a particular cell of a protected cell company is the liability solely of the company's core assets.

(4) Notwithstanding the above provisions of this section the liabilities under subsection (1)(a) of the cellular assets attributable to a particular cell of a protected cell company shall abate rateably until the value of the aggregate liabilities equals the value of those assets: but the provisions of this subsection do not apply in any situation where there is a recourse agreement or where any of the liabilities of the company's cellular assets arises from fraud such as is referred to in subsection (2).

(5) This section has extra-territorial application.

**Liability of core assets.**

**452.** (1) Subject to the provisions of subsection (2), and to the terms of any recourse agreement, where any liability arises which is attributable to the core of a protected cell company -

(a) the core assets are liable, and

(b) the liability is not a liability of any protected assets.

(2) In the case of loss or damage which is suffered by the core of a protected cell company and which is caused by fraud perpetrated by or upon a cell, the loss or damage is the liability solely of the cellular assets of that cell, without prejudice to any liability of any person other than the company.

(3) This section has extra-territorial effect.

**Disputes as to liability attributable to cells.**

**453.** (1) In the event of any dispute as to -

(a) whether any right is in respect of a particular cell,

- (b) whether any creditor is a creditor in respect of a particular cell,
- (c) whether any liability is attributable to a particular cell,
- (d) the amount to which any liability is limited,

the Court, on the application of the protected cell company, and without prejudice to any other right or remedy of any person, may issue a declaration in respect of the matter in dispute.

(2) The Court, on hearing an application for a declaration under subsection (1) -

- (a) may direct that any person shall be heard on the application,
- (b) may make an interim declaration, or adjourn the hearing, conditionally or unconditionally,
- (c) may make the declaration subject to such terms and conditions as it thinks fit,
- (d) may direct that the declaration is binding upon such persons as may be specified.

**Attribution of core assets and liabilities.**

**454.** (1) Liabilities of a protected cell company not otherwise attributable to any of its cells shall be discharged from the company's core assets.



(2) Income, receipts and other property or rights of or acquired by a protected cell company not otherwise attributable to any cell shall be applied to and comprised in the company's core assets.

*Dealings with and arrangements within protected cell companies*

**Company to inform persons they are dealing with protected cell company.**

455. (1) A protected cell company shall -
- (a) inform any person with whom it transacts that it is a protected cell company, and
  - (b) for the purposes of that transaction, identify or specify the cell in respect of which that person is transacting, unless that transaction is not a transaction in respect of a particular cell, in which case it shall specify that the transaction is in respect of the core.
- (2) If, in contravention of subsection (1), a protected cell company -
- (a) fails to inform a person that he is transacting with a protected cell company, and that person is otherwise unaware that, and has no reasonable grounds to believe that, he is transacting with a protected cell company, or
  - (b) fails to identify or specify the cell (or core as the case may be) in respect of which a person is transacting, and that person is otherwise unaware of, and has no

reasonable basis of knowing, which cell (or the core as the case may be) he is transacting with,

then, in either such case -

- (i) the directors (notwithstanding any provision to the contrary in the company's memorandum or articles or in any contract with the company or otherwise) incur personal liability to that person in respect of the transaction, and
- (ii) the directors have a right of indemnity against the core assets of the company, unless they were fraudulent, reckless or negligent, or acted in bad faith.

(3) Where, pursuant to the provisions of 522, the Court relieves a director of all or part of his personal liability under subsection (2)(i), the Court may order that the liability in question shall instead be met from such of the cellular or core assets of the protected cell company as may be specified in the order.

**Provisions in relation to liquidation of protected cell company.**

**456.** (1) Notwithstanding any statutory provision or rule of law to the contrary, in the liquidation of a protected cell company, the liquidator -

- (a) is bound to deal with the company's assets in accordance with the requirements set out in paragraphs (a) and (b) of section 445(2),

- (b) in discharge of the claims of creditors of the protected cell company, shall apply the company's assets to those entitled to have recourse thereto in conformity with the provisions of this Part.

(2) Any provision of an enactment or rule of law which provides that a company's assets in a winding up shall be realised and applied in satisfaction of the company's debts and liabilities *pari passu* shall be modified and shall apply in relation to protected cell companies subject to the provisions of this Part.

**Transfer of cellular assets from protected cell company.**

**457.** (1) It is lawful, subject to the provisions of subsection (3), for the cellular assets attributable to any cell of a protected cell company, but not the core assets of a protected cell company, to be transferred to another person, wherever resident or incorporated, and whether or not a protected cell company.

(2) A transfer pursuant to subsection (1) of cellular assets attributable to a cell of a protected cell company does not of itself entitle creditors of that company to have recourse to the assets of the person to whom the cellular assets were transferred.

(3) No transfer of the cellular assets attributable to a cell of a protected cell company may be made except under the authority of, and in accordance with the terms and conditions of, an order of the Court under this section (a "**cell transfer order**").

(4) The Court shall not make a cell transfer order in relation to a cell of a protected cell company -

- (a) unless it is satisfied -

- (i) that the creditors of the company entitled to have recourse to the cellular assets attributable to the cell consent to the transfer, or
    - (ii) that those creditors would not be unfairly prejudiced by the transfer, and
  - (b) without hearing the representations of the Commission thereon.
- (5) The Court, on hearing an application for a cell transfer order-
- (a) may make an interim order or adjourn the hearing, conditionally or unconditionally,
  - (b) may dispense with any of the requirements of subsection (4)(a).
- (6) The Court may attach such conditions as it thinks fit to a cell transfer order, including conditions as to the discharging of claims of creditors entitled to have recourse to the cellular assets attributable to the cell in relation to which the order is sought.
- (7) The Court may make a cell transfer order in relation to a cell of a protected cell company notwithstanding that -
- (a) a liquidator has been appointed to act in respect of the company or the company has passed a resolution for voluntary winding up,

- (b) a receivership order has been made in respect of the cell or any other cell of the company,
- (c) an administration order has been made in respect of the cell, the company or any other cell thereof.

(8) The provisions of this section are without prejudice to any power of a protected cell company lawfully to make payments or transfers from the cellular assets attributable to any cell of the company to a person entitled, in conformity with the provisions of this Part, to have recourse to those cellular assets.

(9) For the avoidance of doubt, a protected cell company does not require a cell transfer order to invest, and change investment of, cellular assets or otherwise to make payments or transfers from cellular assets in the ordinary course of the company's business.

**Arrangements between cells affecting cellular assets, etc.**

**458.** (1) For the avoidance of doubt, a protected cell company may, in the ordinary course of its business or the business attributable to any of its cells, effect an arrangement within the meaning of subsection (2).

(2) An "**arrangement**" is a dealing with, or a transfer, disposition or attribution of, the cellular or core assets of a protected cell company which has effect -

- (a) as between any of the company's cells,
- (b) as between the core and any of its cells,

- (c) as between the company and the core, or
- (d) as between the company and any of its cells,

but an arrangement does not include a transaction between the company and another person.

(3) The Court, on the application of any person mentioned in subsection (4), and on such terms and conditions as it thinks fit, may make, and subsequently vary, rescind, replace or confirm, an order in respect of -

- (a) the execution, administration or enforcement of an arrangement, or
- (b) any cellular or core assets of a protected cell company subject to, or affected by, an arrangement, including (without limitation) an order as to their attribution, transfer, disposition, tracing, vesting, preservation, application, recovery or delivery.

(4) An application for an order under subsection (3) may be made by -

- (a) the protected cell company,
- (b) a director, liquidator or administrator of the company,
- (c) the receiver or administrator of any cell of the company affected by the arrangement,

- (d) a manager of the business of the company,
- (e) a manager of the business of or attributable to any cell of the company affected by the arrangement, or
- (f) with leave of the Court, any other person who has, directly or indirectly, some interest in, or who is otherwise affected by, the arrangement.

(5) A protected cell company shall, in respect of an arrangement, make such adjustments to its accounting records, including those of or attributable to its cells, as may be necessary or expedient.

(6) For the avoidance of doubt -

- (a) the adjustments referred to in subsection (5) may include the transfer, disposition or attribution of assets, rights and liabilities of the protected cell company -
  - (i) as between any of the company's cells,
  - (ii) as between the core and any of its cells,
  - (iii) as between the company and the core, or
  - (iv) as between the company and any of its cells

but without prejudice to the singular legal personality of the company provided by section 441, and

- (b) the effecting of an arrangement does not require a cell transfer order.
- (7) An order under subsection (3) may be made *ex parte*.
- (8) This section has extra-territorial application.

*Receivership orders*

**Receivership orders in relation to cells.**

**459.** (1) Subject to the provisions of this section, if in relation to a protected cell company the Court is satisfied -

- (a) that the cellular assets attributable to a particular cell of the company (and, where the company has entered into a recourse agreement, the assets liable under that agreement) are or are likely to be insufficient to discharge the claims of creditors in respect of that cell,
- (b) that the making of an administration order in respect of that cell would not be appropriate, and
- (c) that the making of an order under this section would achieve the purposes set out in subsection (3),

the Court may make an order under this section (a "**receivership order**") in respect of that cell.

(2) A receivership order may be made in respect of one or more cells.



(3) A receivership order is an order directing that the business and cellular assets of or attributable to a cell shall be managed by a person specified in the order ("**the receiver**") for the purposes of -

- (a) the orderly winding up of the business of or attributable to the cell, and
- (b) the distribution of the cellular assets attributable to the cell (and, where the company has entered into a recourse agreement, the assets liable under that agreement) to those entitled to have recourse thereto.

(4) A receivership order -

- (a) may not be made if -
  - (i) a liquidator has been appointed to act in respect of the protected cell company, or
  - (ii) the protected cell company has passed a resolution for voluntary winding up,
- (b) may be made in respect of a cell subject to an administration order,
- (c) shall cease to be of effect upon the appointment of a liquidator to act in respect of the protected cell company, but without prejudice to prior acts.

(5) No resolution for the voluntary winding up of a protected cell company any cell of which is subject to a receivership order shall be effective without leave of the Court.

**Applications for receivership orders.**

**460.** (1) An application for a receivership order in respect of a cell of a protected cell company may be made by -

- (a) the company,
- (b) the directors of the company,
- (c) any creditor of the company in respect of that cell,
- (d) any holder of cell shares in respect of that cell,
- (e) the administrator of that cell, or
- (f) the Commission.

(2) The Court, on hearing an application -

- (a) for a receivership order, or
- (b) for leave, pursuant to section 459(5), for a resolution for voluntary winding up,

may make an interim order or adjourn the hearing, conditionally or unconditionally.

(3) Notice of an application to the Court for a receivership order in respect of a cell of a protected cell company shall be served upon -

- (a) the company,
- (b) the administrator (if any) of the cell,
- (c) the Commission, and
- (d) 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.

**Functions of receiver and effect of receivership order.**

**461.** (1) The receiver of a cell -

- (a) may do all such things as may be necessary for the purposes set out in section 459(3), and
- (b) has all the functions of the directors in respect of the business and cellular assets of or attributable to the cell.

(2) The receiver may at any time apply to Court -

- (a) for directions as to the extent or exercise of any function or power,
- (b) for the receivership order to be discharged or varied, or

- (c) for an order as to any matter arising in the course of his receivership.

(3) In exercising his functions and powers the receiver is deemed to act as the agent of the protected cell company and does not incur personal liability except to the extent that he is fraudulent, reckless or grossly negligent, or acts in bad faith.

(4) Any person dealing with the receiver in good faith is not concerned to enquire whether the receiver is acting within his powers.

(5) Where an application has been made for, and during the period of operation of, a receivership order, no proceedings may be commenced or continued against the protected cell company in relation to the cell in respect of which the receivership order was applied for or made except with the consent of the receiver or the leave of the Court and subject (where the Court gives leave) to such terms and conditions as the Court may impose (but, for the avoidance of doubt and without limitation, rights of set-off and secured interests, including security interests (within the meaning of the Security Interests (Guernsey) Law, 1993) and rights of enforcement thereof, are unaffected by the provisions of this subsection).

- (6) During the period of operation of a receivership order -
  - (a) the functions of the directors shall cease in respect of the business and cellular assets of or attributable to the cell in respect of which the order was made, and
  - (b) where the company has entered into a recourse agreement affecting the cell, the receiver of the cell shall be deemed a director of the protected cell

company in respect of the assets liable under that agreement.

**Discharge and variation of receivership orders.**

462. (1) The Court shall not discharge a receivership order unless it appears to the Court that the purpose for which the order was made has been achieved or substantially achieved or is incapable of achievement.

(2) The Court, on hearing an application for the discharge or variation of a receivership order, may make any interim order or adjourn the hearing, conditionally or unconditionally.

(3) Upon the Court discharging a receivership order in respect of a cell of a protected cell company on the ground that the purpose for which the order was made has been achieved or substantially achieved, the Court may direct that any payment made by the receiver to any creditor of the company in respect of that cell shall be deemed full satisfaction of the liabilities of the company to that creditor in respect of that cell; and the creditor's claims against the company in respect of that cell are thereby deemed extinguished.

(4) Nothing in subsection (3) operates so as to affect or extinguish any right or remedy of a creditor against any other person, including any surety of the protected cell company.

(5) Subject to the provisions of -

- (a) this Part and any rule of law as to preferential payments,
- (b) any agreement between the protected cell company and any creditor thereof as to the subordination of the debts

due to that creditor to the debts due to the company's other creditors, and

- (c) any agreement between the protected cell company and any creditor thereof as to set-off,

the company's cellular assets attributable to any cell of the company in relation to which a receivership order has been made shall, in the winding up of the business of or attributable to that cell pursuant to the provisions of this Part, be realised and applied in satisfaction of the company's liabilities attributable to that cell *pari passu*.

(6) Any surplus shall thereafter be distributed (unless the memorandum or articles provide otherwise) -

- (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,

in each case according to their respective rights and interests in or against the company.

(7) The Court may, upon discharging a receivership order in respect of a cell of a protected cell company, direct that the cell shall be dissolved on such date as the Court may specify.

(8) Immediately upon the dissolution of a cell of a protected cell company, the company may not undertake business or incur liabilities in respect of that cell.

(9) Where a receivership order is discharged or varied under this section the receiver shall -

- (a) within 7 days after the day of the order effecting the discharge or variation, send a copy of the order to the Registrar, and
- (b) within such time as the Court may direct, send a copy thereof to such other persons as the Court may direct.

**Remuneration of receiver.**

**463.** The remuneration of a receiver and any expenses properly incurred by him are payable, in priority to all other claims, from the cellular assets attributable to the cell in respect of which the receiver was appointed.

**Information to be given by receiver.**

**464.** (1) Where a receivership order has been made, the receiver shall-

- (a) forthwith send to the protected cell company notice of the order,
- (b) within 7 days after the day of the making of the order, send a copy of the order to the Registrar,
- (c) within 28 days after the day of the making of the order-
  - (i) unless the Court orders otherwise, send notice of the order to all creditors of the cell (so far as he is aware of their addresses),

- (ii) send notice of the order to the Commission, and
  - (d) within such time as the Court may direct, send a copy of the order to such other persons as the Court may direct.
- (2) The Registrar shall give notice of the receivership order in such manner and for such period as he thinks fit.

*General*

**Liability to criminal penalties.**

**465.** (1) Where a protected cell company is liable to any criminal penalty, whether under this Law or otherwise, due to the act or default of a cell or an officer acting in relation to a cell, then without prejudice to any liability of that officer, the penalty -

- (a) may only be met by the company from the cellular assets attributable to the cell, and
- (b) is not enforceable in any way against any other assets of the company, whether cellular or core.

(2) Where a protected cell company is liable to any criminal penalty, whether under this Law or otherwise, due to the act or default of the core or an officer acting in relation to the core, then without prejudice to any liability of that officer, the penalty -

- (a) may only be met by the company from core assets, and



- (b) is not enforceable in any way against any cellular assets.

**Power of the Commission to make regulations.**

466. The Commission may make regulations in respect of protected cell companies, which may include, without limitation, provision in respect of -

- (a) the conduct of the business of protected cell companies,
- (b) the manner in which protected cell companies may carry on, or hold themselves out as carrying on, business,
- (c) the form and content of the accounts of protected cell companies,
- (d) the winding up, administration or receivership of protected cell companies, and
- (e) the implementation generally of this Part.

**Interpretation of this Part.**

467. In this Part, unless the context requires otherwise -

"**cell shares**" means shares created and issued by a protected cell company in respect of one of its cells pursuant to the provisions of section 444, the proceeds of the issue of which (the "**cell share capital**") shall be comprised in the cellular assets attributable to that cell,

"**cell share capital**" means the proceeds of issue of cell shares,

**"cell transfer order"** means an order of the Court under section 457(3) sanctioning the transfer of the cellular assets attributable to any cell of a protected cell company to another person,

**"cellular assets"** of a protected cell company means the assets of the company attributable to the company's cells pursuant to section 445(4),

**"cellular dividend"** means a dividend payable by a protected cell company in respect of cell shares pursuant to the provisions of section 444(3),

**"creditors"** includes present, future and contingent creditors and, in relation to a protected cell company which is an authorised collective investment scheme within the meaning of section 44(1) of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, also includes any investor (within the meaning of that section),

**"core assets"** of a protected cell company comprise the assets of the company which are not cellular assets,

**"protected assets"** means -

- (a) any cellular assets attributable to any cell of a protected cell company, in respect of a liability not attributable to that cell, and
- (b) any core assets, in respect of a liability attributable to a cell,

**"receiver"** means a person appointed as such by a receivership order,

**"receivership order"** means an order of the Court under section 459 in relation to a cell of a protected cell company, and

**"recourse agreement"** means a written agreement between a protected cell company and a third party which provides that, pursuant to an arrangement effected by the protected cell company (within the meaning of section 458), protected assets may, notwithstanding the provisions of this Part, be subject to a liability owed to that third party.

## PART XXVIII

### INCORPORATED CELL COMPANIES

#### *Formation*

#### **Companies which can be incorporated cell companies.**

**468.** (1) A company cannot be incorporated as an incorporated cell company, and an existing company cannot be converted into an incorporated cell company, unless -

- (a) the company is declared (or when incorporated will be declared) by the Commission to be an authorised collective investment scheme under section 8 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987,
- (b) the company is (or when incorporated will be) a closed-ended investment company,

- (c) the company is (or when incorporated will be) a licensee within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002,
- (d) the company and its affairs are (or when incorporated will be) administered by a licensed person with a place of business in Guernsey, provided that the company is not (or when incorporated will not be) -
  - (i) a licence holder within the meaning of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,
  - (ii) a licensed institution within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
  - (iii) a licensed fiduciary within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law, 2000, or
  - (iv) a company licensed to carry on controlled investment business within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, or
- (e) the company is of any other class or description prescribed by the Commission.

(2) For the purposes of subsection (1)(d) a licensed person means a person who -

- (a) is a licence holder within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002 or the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,
- (b) is a licensed institution within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
- (c) holds a full fiduciary licence within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law, 2000,
- (d) carries on a controlled investment business within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 and holds a licence under section 4 of that Law, or
- (e) is a company of any other class or description prescribed by the Commission.

**Consent of Commission required.**

**469.** (1) The following cannot be done except under the authority of and in accordance with the terms and conditions of the written consent of the Commission

-

- (a) the incorporation of a company as an incorporated cell company,
  - (b) the conversion of an existing company into an incorporated cell company, and
  - (c) the subsumption of the incorporated cells of an incorporated cell company into their incorporated cell company and the conversion of the incorporated cell company into a non-cellular company.
- (2) The Commission may, from time to time and in such manner as it thinks fit -
- (a) vary or revoke any term or condition subject to which a consent under subsection (1) was granted, and
  - (b) impose any new term or condition in relation to any such consent.
- (3) An application for the consent of the Commission under subsection (1) -
- (a) shall be made to the Commission in such form, and shall be accompanied by such documents and information, verified in such manner, as the Commission may require, whether in relation to any particular application or otherwise, and

- (b) shall be accompanied by such fee as may be prescribed by the Commission.

(4) A person who contravenes, or who causes or permits any contravention of, any term or condition of a consent of the Commission, is guilty of an offence.

**Determination of applications to and other decisions of Commission.**

**470.** (1) In deciding whether to -

- (a) grant any application for consent made under section 469,
- (b) impose any term or condition upon that consent,
- (c) vary or revoke any term or condition of that consent, or
- (d) impose any new term or condition on that consent,

the Commission must have regard to the protection of the public interest, including the need to -

- (i) protect the public, in Guernsey and elsewhere, against the effects of dishonesty, incompetence or malpractice,
- (ii) counter financial crime and the financing of terrorism in Guernsey and elsewhere,

- (iii) protect and enhance the reputation of the Bailiwick as a financial centre,

and the Commission shall consider those matters, both in determining the extent to which any person would in its opinion be a fit and proper person to be concerned in the business of the company, and also more generally.

(2) If the Commission -

- (a) refuses an application for consent,
- (b) imposes terms or conditions upon that consent,
- (c) varies or revokes any term or condition of that consent,  
or
- (d) imposes any new term or condition on that consent,

it shall give the applicant a written notice of its decision and the reasons for it and of that person's right under section 471 to appeal.

(3) Nothing in subsection (2) requires the Commission to disclose information the disclosure of which would be prejudicial to -

- (a) a criminal or regulatory investigation, whether in Guernsey or elsewhere,
- (b) co-operation or relations with any investigatory, regulatory or prosecuting authority, or



- (c) a third party,

but, if the Commission decides pursuant to this subsection to withhold information which it considers relevant to the decision taken, the Commission must so inform the applicant by written notice and, in the event of an appeal under section 471, subsection (2) of that section shall apply.

**Appeals from determinations and other decisions of Commission.**

**471.** (1) An applicant may appeal to the Court against -

- (a) the refusal of an application for consent,
- (b) the imposition of terms or conditions upon that consent,
- (c) the variation or revocation of any term or condition of that consent,
- (d) the imposition of any new term or condition on that consent, or
- (e) the withholding of information pursuant to section 470(3),

by a summons served on the Chairman of the Commission.

The summons must state the grounds and material facts on which the appellant relies and must be served within 28 days after the date of the written notice referred to in section 470.

(2) On an appeal under subsection (1)(e), the Court may examine any information the disclosure of which the Commission considers would be prejudicial as set out in section 470(3); but that information shall not be disclosed to the appellant or any person representing him unless the Court determines that the prejudice occasioned to the appellant by its non-disclosure would be disproportionate to any legitimate objective of preventing prejudice as set out in that section.

(3) The grounds of an appeal under this section are that -

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(4) The Commission may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the application the Court may -

- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Court may direct), or

- (b) make such other order as the Court considers just.

The provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007<sup>bb</sup>.

- (5) On an appeal under this section the Court may -

- (a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court thinks fit, or

- (b) confirm the decision, in whole or in part.

(6) On an appeal under this section against a decision of the Commission the Court may, on the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

(7) An appeal from a decision of the Court under this section lies to the Court of Appeal on a question of law.

(8) In this section "**the Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of an appeal under this section the Court may appoint one or more assessors to assist it in the determination of any matter before it.

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<sup>bb</sup> Order of the Royal Court No. IV of 2007.

**Incorporation of incorporated cell.**

**472.** (1) An incorporated cell of an incorporated cell company cannot be incorporated unless the incorporated cell company has passed a special resolution authorising an application for the incorporated cell's incorporation.

(2) The special resolution may authorise an application for the incorporation of one or more specified incorporated cells.

(3) The special resolution must specify, in respect of each incorporated cell which is proposed to be incorporated -

(a) the proposed memorandum, excluding details relating to the founder member, and

(b) the proposed articles.

(4) An application for incorporation must be made in accordance with the terms and conditions of that special resolution.

(5) An application for the incorporation must be made within 3 months commencing on the date on which the special resolution authorising it was passed.

*Status*

**Status of incorporated cell company.**

**473.** An incorporated cell company is a single legal person.

**Status of incorporated cell.**

474. (1) An incorporated cell is a single legal person separate from its incorporated cell company.

(2) Notwithstanding the provisions of any enactment, an incorporated cell is not a subsidiary of its incorporated cell company.

(3) An incorporated cell may not itself be an incorporated cell company or a protected cell company.

(4) An incorporated cell may not be a member of its incorporated cell company.

(5) Unless the contrary intention appears in its memorandum or articles, an incorporated cell may be a member of any other incorporated cell of its incorporated cell company.

(6) An incorporated cell shall have the same registered office as its incorporated cell company.

*Separate nature of incorporated cell company and its incorporated cells*

**Separation of assets and liabilities.**

475. (1) It is the duty of the directors of an incorporated cell company and its incorporated cells -

- (a) to keep the assets and liabilities of the incorporated cell company separate and separately identifiable from the assets and liabilities of its incorporated cells, and

- (b) to keep the assets and liabilities of each incorporated cell separate and separately identifiable from the assets and liabilities of the other incorporated cells of the incorporated cell company.

(2) The duty imposed by subsection (1) is not breached by reason only that the directors cause or permit assets of the incorporated cell company or any of its incorporated cells to be collectively invested, or collectively managed by an investment manager, provided that the assets in question remain separately identifiable in accordance with subsection (1).

**Transactions.**

**476.** (1) An incorporated cell company has no power, by virtue of its position as an incorporated cell company, to enter into transactions on behalf of any of its incorporated cells.

(2) An incorporated cell has no power, by virtue of its position as an incorporated cell, to enter into transactions on behalf of -

- (a) its incorporated cell company, or
- (b) other incorporated cells of its incorporated cell company.

(3) The directors and officers of an incorporated cell company and its incorporated cells must ensure that, in respect of every transaction that the incorporated cell company or incorporated cell enters into, it is stated whether the transaction is being entered into by the incorporated cell company or by an incorporated cell and, if it is by an incorporated cell, which incorporated cell.

*Winding up*

**Winding up of incorporated cell company not to prejudice its incorporated cells.**

477. The winding up of an incorporated cell company shall be carried out in such a way as not to prejudice the affairs, business and property of any of its incorporated cells, and accordingly, during the winding up, the incorporated cell company shall continue to carry on business to the extent necessary for the continuance of business of its incorporated cells.

**Directors of incorporated cell during winding up of its incorporated cell company.**

478. (1) The appointment of a liquidator in respect of an incorporated cell company does not affect the position of the directors of its incorporated cells, subject to any direction to the contrary given by -

- (a) the liquidator,
- (b) a resolution of the incorporated cell, or
- (c) the Court,

in the course of a winding up.

(2) The Commission may make an application to the Court for a direction of the Court under subsection (1).

**No dissolution of incorporated cell company until position of its incorporated cells resolved.**

479. An incorporated cell company that is being wound up shall not be dissolved until each of its incorporated cells has ceased to exist as an incorporated

cell of that incorporated cell company, and the Court may stay such dissolution on such terms and conditions as it thinks fit.

*General*

**Expulsion of incorporated cell from its incorporated cell company.**

**480.** (1) An application to the Court to expel an incorporated cell from its incorporated cell company, on a ground set out in subsection (2), may be made by -

- (a) the Commission,
  - (b) the incorporated cell company,
  - (c) the administrator of the incorporated cell company, or
  - (d) the liquidator of the incorporated cell company.
- (2) The grounds referred to in subsection (1) are -
- (a) that the affairs of the incorporated cell are being or have been conducted in a manner which is unfairly prejudicial to its incorporated cell company or any incorporated cell of that company, or to the members of that company or its incorporated cells,
  - (b) that the incorporated cell is being or has been used for fraudulent purposes,
  - (c) that a failure to expel the incorporated cell would jeopardize the reputation of the Bailiwick as a financial



centre, or

- (d) that it would be just and equitable to expel the incorporated cell.

(3) The Court may make such order, subject to such terms and conditions, as it thinks fit upon an application under this section, including an order requiring the incorporated cell to convert into a company.

**Applications for directions.**

**481.** (1) A director of an incorporated cell company or incorporated cell may apply to the Court for directions as to how he should or might act in any of the affairs of the incorporated cell company or incorporated cell, and upon such an application the Court may make such order as it thinks fit.

(2) An application under subsection (1) may be made *ex parte*.

(3) The Court hearing an application under this section may direct that the whole or any part of the application shall be heard *in camera*, and an application for a direction under this subsection shall be heard *in camera* unless the Court directs otherwise.

**Power of the Commission to make regulations.**

**482.** The Commission may make regulations in respect of incorporated cell companies, which may include, without limitation, provision in respect of -

- (a) the conduct of the business of incorporated cell companies,

- (b) the manner in which incorporated cell companies may carry on, or hold themselves out as carrying on, business,
- (c) the form and content of the accounts of incorporated cell companies,
- (d) the winding up, administration or receivership of incorporated cell companies, and
- (e) the implementation generally of this Part.

PART XXIX  
BENEFICIAL OWNERSHIP

**Companies to which this Part applies.**

**483.** This Part applies to all companies other than companies which are -

- (a) listed on a stock exchange recognised by the Registrar for the purposes of this section<sup>cc</sup>,
- (b) open-ended investment companies,
- (c) closed-ended investment companies, or
- (d) of any other class or description prescribed by the Department for the purposes of this section<sup>dd</sup>.

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**cc** See the Companies (Recognised Stock Exchanges) Regulations, 2008.

**dd** See the Companies (Beneficial Ownership) Regulations, 2008.

**Obligation for companies to have a resident agent.**

**484.** (1) Every company to which this Part applies shall have a resident agent who is either -

- (a) an individual, resident in Guernsey, who is a director of the company, or
- (b) a corporate services provider.

(2) If a company has more than one director who satisfies subsection (1)(a), then some or all of them may be resident agents, and if this is the case, their functions and liabilities shall be joint and several.

(3) The resident agent of an incorporated cell company is also deemed to be the resident agent of each of its incorporated cells.

(4) A company which fails to comply with this section is guilty of an offence.

(5) A company which fails to comply with this section is liable to be struck off the Register of Companies in accordance with Part XX.

**Record of resident agent.**

**485.** (1) A company shall keep a record of its resident agent, which shall comprise -

- (a) in the case of a resident agent who is a director, his name,

(b) in the case of a resident agent who is a corporate services provider -

(i) its corporate or firm name, and

(ii) its address.

(2) The record of resident agent of an incorporated cell company is also deemed to constitute the record of resident agent of each of its incorporated cells.

(3) A company must, within 14 days after the date of the occurrence of -

(a) any change in its resident agent, or

(b) any change in the details contained in its record of resident agent,

give notice to the Registrar of the change and of the date on which it occurred.

(4) In this section "name" has the meaning given by section 528.

(5) A company which fails to comply with this section is guilty of an offence.

(6) A company which fails to comply with subsection (3) is liable to a civil penalty.

**Duties of resident agent.**

**486.** The resident agent of a company shall take reasonable steps to ascertain the identity of the persons who are the beneficial owners of members' interests in that company.

**Record of beneficial owners.**

**487.** (1) Where a resident agent has ascertained, in accordance with section 486, that a member of a company is not a beneficial owner of that member's interest, he shall keep a record of the required details of the beneficial owner in respect of that member in the "**record of beneficial owners**".

(2) The record of beneficial owners shall be kept at the company's registered office.

(3) In this Part, "**required details**" means, in respect of an individual -

- (a) his name,
- (b) his usual residential address,
- (c) his nationality, and
- (d) his date of birth.

(4) In this Part, "**required details**" means, in respect of a company or overseas company -

- (a) its corporate or firm name,

- (b) its registered office (or, if it has no registered office, its principal office),
- (c) its legal form and the law by which it is governed,
- (d) if applicable, the register in which it is entered and its registration number in that register.

(5) In this Part, "**required details**" means, in respect of a class of beneficial owners of such a size that it is not reasonably practicable to identify each member of the class, information sufficient to identify and describe the class of individuals who are beneficial owners.

**Notice to members to disclose beneficial ownership.**

**488.** (1) A resident agent of a company may give notice to a member of that company requiring that member to disclose -

- (a) whether they are holding their interest in that company for their own benefit or the benefit of another person, and
- (b) if for the benefit of another person, the required details in respect of that person.

(2) A member who receives a notice under subsection (1) must comply with that notice within such reasonable time as may be specified in the notice.

(3) A member who without reasonable excuse -

- (a) fails to comply with subsection (2), or

- (b) makes a statement in response to a notice under this section which is false, deceptive or misleading in a material particular,

is guilty of an offence.

**Suspension or cancellation of interests for failure to disclose beneficial ownership.**

**489.** (1) If, in the opinion of the resident agent of a company, a member has -

- (a) failed, without reasonable excuse, to comply with section 488(2), or
- (b) made a statement in response to a notice under that section which is false, deceptive or misleading in a material particular,

the resident agent shall give notice of this to the company.

- (2) On receipt of a notice under subsection (1), the company may-
  - (a) place such restrictions as it thinks fit on rights attaching to the member's interest in the company, including, without limitation -
    - (i) any right to transfer the interest,
    - (ii) any voting rights,

(iii) any right to further shares in respect of shares already held, and

(iv) any right to payment due to the member's interest, whether in respect of capital or otherwise, or

(b) cancel the member's interest in the company.

(3) Any restriction under subsection (2)(a) is removed if the company is struck off or upon the commencement of the company's winding up.

(4) A member may apply to the Court to set aside any restriction or cancellation under subsection (2).

(5) The Court shall not hear an application under subsection (4) unless satisfied that the company has been notified of the date and time of the hearing.

(6) The Court may make such order on such terms and conditions as it thinks fit on an application under subsection (4).

**Disclosure of beneficial ownership information by resident agent.**

**490.** (1) The resident agent shall, on receipt of a certificate described in subsection (2), disclose to (as the case may be) -

(a) Her Majesty's Procureur,

(b) the Commission,



- (c) a police officer, or
- (d) a customs officer,

any information required by that person which the resident agent is required to hold by virtue of his obligations under this Part and any other information he holds in respect of the beneficial ownership of a company.

(2) The certificate referred to in subsection (1) is a certificate signed by -

- (a) Her Majesty's Procureur,
- (b) the Director General of the Commission,
- (c) the Chief Officer of Police, or
- (d) the Chief Officer of Customs,

(as the case may be) or any person appointed by any of them for that purpose.

(3) The certificate shall state -

- (a) what information is required,
- (b) that the information is required for the purpose of -
  - (i) any criminal or regulatory investigation which is being or may be carried out, whether in Guernsey or elsewhere,

- (ii) any criminal or regulatory proceedings which have been or may be initiated, whether in Guernsey or elsewhere,
  - (iii) the initiation or bringing to an end of any such investigation or proceedings, or
  - (iv) facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end, and
- (c) that the person signing it has satisfied himself that the making of the disclosure is proportionate to what is sought to be achieved by it.

(4) Nothing in this section prejudices any power to disclose information which exists apart from this section.

(5) The information that may be disclosed by virtue of this section includes information obtained before this Law came into force.

(6) A resident agent who without reasonable excuse -

- (a) fails to comply with this section, or
- (b) makes a statement, in response to a certificate under this section, which is false, deceptive or misleading in a material particular,

is guilty of an offence.

**Tipping off.**

**491.** (1) A resident agent is guilty of an offence if he knows or suspects that a certificate has been issued, or is proposed to be issued, under section 490 in respect of a company for which he is a resident agent, and he discloses to any person information or any other matter which may prejudice -

- (a) any criminal or regulatory investigation which is being or may be carried out, whether in Guernsey or elsewhere, or
- (b) any criminal or regulatory proceedings which have been or may be initiated, whether in Guernsey or elsewhere,

which are connected with the issue of that certificate.

(2) Nothing in subsection (1) makes it an offence for an advocate or other legal adviser to disclose any information or other matter -

- (a) to, or to a representative of, a client of his in connection with the giving by him of legal advice to the client, or
- (b) to any person -
  - (i) in contemplation of or in connection with legal proceedings, and
  - (ii) for the purpose of those proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(4) In proceedings against a person for an offence under this section, it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in subsection (1).

**Privileged information.**

**492.** (1) Nothing in this Part compels the production or divulgence by an advocate or other legal adviser of an item subject to legal professional privilege (within the meaning of section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003), but an advocate or other legal adviser may be required to give the name and address of any client.

(2) A requirement imposed by or under this Part has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise, and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

**Provisions in articles concerning beneficial ownership.**

**493.** (1) The operation of this Part does not limit or otherwise restrict any provision in a company's articles that relieves the company from recognising any interests other than the interests of the members of the company.

(2) Without prejudice to the generality of the subsection (1), the operation of this Part does not limit or otherwise restrict any provision in a company's articles that relieves the company from recognising -

- (a) any trust, express, implied or constructive, in respect of shares, or
- (b) any beneficial owner of shares.

**Limited repeals.**

**494.** The following provisions of the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959<sup>ee</sup> are repealed to the extent that they apply to incorporations of companies in the Island of Guernsey -

- (a) section 3,
- (b) in section 4, subsections (1), (2), (3), (5), (6), (7), and (8).

PART XXX

OFFICE OF THE REGISTRAR OF COMPANIES

*Establishment of Registrar and Registers*

**Establishment of Office of Registrar.**

**495.** (1) The Department shall establish an office to be known as the Office of the Registrar of Companies ("**the Office of the Registrar**").

(2) The holder of that office shall be known as the Registrar of Companies ("**the Registrar**").

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<sup>ee</sup> Recueil d'Ordonnances Tome XII, p. 105; amended by Tome XV, p. 197; Tome XVI, p. 473; Tome XX, p. 412; Tome XXV, p. 80; and No. IV of 2003. Also amended by Order in Council No. XII of 1995 and by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

- (3) The Registrar shall be appointed by the Department.
- (4) An appointment of the Registrar under this section -
  - (a) may be periodic or for a fixed term,
  - (b) is subject to such terms and conditions as the Department may from time to time think fit, and
  - (c) may be varied or terminated at any time by the Department, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment.
- (5) The Registrar shall, subject to the terms and conditions of his appointment, exercise the functions assigned or transferred to him by or under this Law and any other enactment.
- (6) For the purposes of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>ff</sup> -
  - (a) the Office of the Registrar is a public office, and
  - (b) the Registrar is an office holder.
- (7) The provisions of Schedule 2 have effect in respect of the Office of the Registrar.

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<sup>ff</sup>

Order in Council No. XXI of 1991.

**Register of Companies.**

496. The Registrar shall keep and maintain a register of companies, to be called the Register of Companies, for the purposes of this Law.

**Register of Disqualification Orders.**

497. (1) The Registrar shall keep and maintain a register of disqualification orders, to be called the Register of Disqualification Orders, for the purposes of this Law.

(2) The Register of Disqualification Orders shall be open to inspection by the public during normal business hours without payment of a fee.

**Registers may be in electronic form.**

498. Any register kept, or other information held, by the Registrar may be in electronic form.

*Functions of the Registrar*

**Functions of Registrar.**

499. (1) The functions of the Registrar are -
- (a) to administer the Office of the Registrar, the Register of Companies and the Register of Disqualification Orders,
  - (b) to advise the Department on new corporate structures and developments which would -
    - (i) promote and enhance the Register of Companies and the law relating to companies, and

- (ii) encourage business growth in Guernsey,
- (c) to communicate with -
  - (i) any authority appearing to the Registrar to exercise, in a place outside Guernsey, functions corresponding to his, and
  - (ii) such other persons as he thinks fit,

for the purposes of assisting them and promoting and enhancing the Register of Companies and the law relating to companies,
- (d) to advise the Department generally in relation to the registration, regulation, governance and administration of companies and the law, practice and procedures relating thereto,
- (e) to make to the Department such recommendations as he thinks fit for improving -
  - (i) his effectiveness,
  - (ii) the adequacy and effectiveness of the functions conferred on him by this Law or any other enactment, and



- (iii) the adequacy and effectiveness of the provisions of this Law or any other enactment relating to him, and
- (f) to exercise, subject to the terms and conditions of his appointment, such other functions as may be assigned or transferred to him by or under this Law or any other enactment.

(2) Subsection (1)(c) does not authorise the Registrar to disclose confidential information (and see section 503).

**Ancillary powers of Registrar.**

**500.** (1) The Registrar, having regard to the provisions of section 499, has power to do anything that appears to him to be necessary or expedient for the purpose of exercising his functions including, without limitation, power -

- (a) to request the production of and otherwise obtain such documents, accounts and information from such persons and within such periods and at such times and intervals as he thinks fit,
- (b) subject to any provision to the contrary in this Law or any other enactment, to publish information, guidance, reports and other documents,
- (c) to appoint any person or body to advise him in relation to the exercise of any of his functions, and

- (d) to request advice from Her Majesty's Procureur in relation to the exercise of any of his functions.

(2) For the purposes of exercising his functions the Registrar may, having regard to the provisions of section 499 -

- (a) acquire, lease, use, dispose of, exchange or otherwise deal with any movable or immovable property and any interest in it, and
- (b) enter into any contract, including any contract of purchase, sale, insurance, hire or bailment, or make any arrangement with any person.

(3) The Registrar may sue and be sued as Registrar.

**Fees payable to the Registrar.**

**501.** (1) The Registrar may make regulations which prescribe -

- (a) the fees payable (whether generally or in any particular case) in respect of the exercise of his functions,
- (b) the interest payable in the event of default in the due payment of fees, and
- (c) the persons by whom such fees and interest are to be payable.

(2) The Registrar may refuse to exercise his functions in any particular case if the fees payable have not been paid.

**Rectification of the Register of Companies.**

**502.** (1) The Registrar may, in his absolute discretion and on such terms and conditions as he thinks fit -

- (a) on an application by or on behalf of a company's members, directors or creditors, or
- (b) of his own motion,

rectify any error or formal defect in the Register of Companies.

(2) Where the Registrar rectifies the Register of Companies in respect of a company, he shall give notice of that rectification to the company.

(3) Except where the Registrar directs otherwise, the effect of rectification of the Register of Companies is that the error or defect in question shall be deemed never to have been made.

**Disclosure and publication of confidential information.**

**503.** Any confidential information held by the Registrar shall not be disclosed or published by him except in accordance with the provisions of this Law, any other enactment or any rule of law.

**Disclosure and publication of non-confidential information.**

**504.** Any information held by the Registrar, other than confidential information, may be disclosed or published by him -

- (a) in accordance with the provisions of this Law, any other enactment or any rule of law, or

- (b) if no such provision is made, in such manner, subject to such conditions and for such purposes as he thinks fit.

**General power of Registrar to reject applications etc.**

**505.** Notwithstanding that the Registrar is not bound to enquire further as to whether the provisions of this Law or any other enactment have been complied with, the Registrar may reject any application, annual validation or other matter submitted to him, on such terms and conditions as he thinks fit, if it appears to him that the provisions of this Law or any other enactment in respect of that application, annual validation or other matter have not been complied with.

**Reports.**

**506.** (1) The Registrar shall, whenever directed by the Department, submit to the Department a report on the exercise of his functions in such form and in respect of such period as the Department may specify.

(2) The Department -

- (a) shall submit the Registrar's report made under subsection (1) to the States, and
- (b) may at the same time or at any other time submit their own report to the States on the exercise by the Registrar of his functions.

**Financial and accounting provisions.**

**507.** (1) All fees, civil penalties and similar sums received by the Registrar in the exercise of his functions shall be paid by him to the Department for the general revenue account of the States.

(2) Subsection (1) does not apply if and to the extent that, in accordance with agreed financial procedures, the Department directs otherwise.

(3) The Registrar shall -

(a) keep proper accounts and proper records in relation to those accounts, and

(b) submit to the Department, whenever the Department may direct but not less than once in any 12 month period, a statement of account giving a true and fair view of the state of affairs of the Office of the Registrar.

(4) Without prejudice to the preceding provisions of this section, the Registrar shall, whenever directed by the Department, submit to the Department, in respect of such period as the Department may specify, audited accounts of the Office of the Registrar together with the auditor's report thereon prepared by an auditor appointed by the Registrar with the approval of the Department.

**Power of Registrar to apply for directions.**

**508.** (1) The Registrar may, if he believes it would assist him in the proper and lawful exercise of his functions, apply to the Court for directions, or for a determination of any question of fact, law or procedure, in such manner as may be prescribed by order of the Court, and on such an application the Court may make such order as it thinks fit.

(2) Notwithstanding any other provision of this Law, where the Registrar makes an application under subsection (1) in respect of a matter, he may

delay the doing of any thing required by this Law in respect of that matter, pending the outcome of that application.

(3) An appeal from an order of the Court under this section lies, with leave of the Court or the Court of Appeal, to the Court of Appeal on a question of law.

(4) Section 21 of the Court of Appeal (Guernsey) Law, 1961<sup>gg</sup> (powers of a single judge) applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

*Offences*

**False or misleading information.**

- 509.** (1) If a person to whom subsection (2) applies -
- (a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
  - (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
  - (c) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to

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<sup>gg</sup> Ordres en Conseil Vol. XVIII, p. 315.

be false, deceptive or misleading in a material particular, or

- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

he is guilty of an offence.

(2) This subsection applies to a person who -

- (a) makes any statement or provides any information or document to the Registrar, or to any officer, servant or agent of the Registrar, when acting in the exercise of his functions, or
- (b) otherwise than as mentioned in paragraph (a) makes any statement or provides any information or document to the Registrar in circumstances in which he knows or could reasonably be expected to know that the statement, information or document would or might be used by the Registrar for the purpose of exercising his functions.

*General*

**Exclusion of liability.**

**510.** No liability is incurred by -

- (a) the Registrar,
- (b) any person to whom the Registrar has, under paragraph 3 of Schedule 2, delegated any function,
- (c) any person appointed as Deputy Registrar under paragraph 4 of Schedule 2, or
- (d) any officer or servant of the Registrar,

in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of their functions under this Law, unless the thing was done or omitted to be done in bad faith.

**General right to apply to Court to set aside action of Registrar.**

**511.** (1) Without prejudice to any specific right of appeal in any enactment, a person who is directly affected by any action, direction, decision or determination of the Registrar (including an order directing payment of a civil penalty) in respect of a company (including an inchoate company) can apply to the Court to set aside or modify that action, direction, decision or determination.

(2) An application under subsection (1) shall be made in such manner as may be prescribed by order of the Court.

(3) On such an application the Court may make such order on such terms and conditions as it thinks fit, and without limitation -

- (a) in relation to an application in respect of a civil penalty, the order may increase the amount of the civil penalty for which the company is liable,



(b) in relation to an application in respect of a striking off under section 519, the execution of the order may be stayed subject to the payment of any outstanding criminal penalties, fees or civil penalties by the company or such other person as it thinks fit.

(4) Subject to any direction given by the Court -

(a) the applicant shall give notice of the application to the Registrar,

(b) where the applicant is not the company in respect of which the application is made, the applicant shall give notice of the application to the company (or, where the company is inchoate, to the person who appears to the applicant to be responsible for the company), and

(c) the application shall be made within 21 days after the day of the action, direction, decision or determination of the Registrar.

(5) An appeal from an order of the Court under this section lies, with leave of the Court or the Court of Appeal, to the Court of Appeal on a question of law.

(6) Section 21 of the Court of Appeal (Guernsey) Law, 1961 (powers of a single judge) applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

**Electronic communications to the Registrar.**

**512.** (1) Any document (other than a summons) to be given to or served on the Registrar under or for the purposes of this Law may be in such electronic form and may be submitted by such electronic means as may be permitted by the Registrar, and without limitation this section applies to any, and to anything accompanying any, application, annual validation, statement, consent, declaration or signature.

(2) This section is without prejudice to -

- (a) the Electronic Transactions (Guernsey) Law, 2000<sup>hh</sup>,  
and
- (b) the provisions of any regulations of the Registrar in relation to the practice and procedure of the Office of Registrar.

PART XXXI

CRIMINAL AND CIVIL PENALTIES

**Criminal penalties for offences under this Law.**

**513.** (1) A company or person guilty of an offence -

- (a) under section 34(3), 35(5), 36(5), 37(6), 41(2), 64(7), 65(5), 109(2), 110(6), 111(6), 112(5), 123(8), 124(6), 128(6), 143(8), 144(3), 145(3), 147(2), 148(3), 150(8), 154(4), 156(3), 162(5), 173(7), 174(3), 199(3), 223(3), 228(3), 230(3), 231(3), 251(4), 266(2), 266(3), 352(3)

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**hh**

Order in Council No. VIII of 2000.

or 447(5) is liable on summary conviction to a fine not exceeding level 2 on the uniform scale,

(b) under section 19(3), 22(5), 22(7), 26(3), 33(3), 58(3), 74(3), 101(3), 108(5), 138(2), 178(9), 179(9), 180(6), 182(4), 184(4), 236(3), 237(1), 242(1), 242(2), 247, 272(6), 274(6), 287(6), 291(4), 347(2), 351(2), 360(3), 361(3), 362(2), 363(3), 365(3), 378(3), 387(7), 391(4), 394(3), 395(3), 414(2), 414(6), 438(4), 447(3), 469(4), 484(4), 485(5), 488(3) or 490(6) is liable on summary conviction to a fine not exceeding level 5 on the uniform scale,

(c) under section 28(3), 129(1), 129(2), 152(1), 152(2), 249(4), 260(7), 266(1), 360(4), 361(4), 431(1), 491(1), 509(1) or 539(1) is liable -

(i) on summary conviction, to a fine not exceeding level 5 on the uniform scale, imprisonment for a term not exceeding 3 months or both,

(ii) on conviction on indictment, to a fine, imprisonment for a term not exceeding 2 years or both,

(d) under section 432, is liable -

(i) on summary conviction, to a fine not exceeding level 5 on the uniform scale, imprisonment for a term not exceeding 12 months or both,

- (ii) on conviction on indictment, to a fine, imprisonment for a term not exceeding 10 years or both.

(2) The imposition by this Law of a criminal penalty in respect of any act or omission is without prejudice to any other remedy or liability (civil or criminal) in respect thereof (except as provided for by section 518).

**Daily default.**

**514.** (1) Where a person is liable under the provisions of this Law to a daily default fine in respect of any offence, he is liable, for each day of continued contravention, to a daily default fine not exceeding 10% of the maximum fine.

(2) In this section the "**maximum fine**" means the amount on the uniform scale which a fine cannot exceed on summary conviction of the offence.

**Criminal liability of officers, etc.**

**515.** (1) Where an offence under this Law is committed by a company and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) any officer of the company,
- (b) any shadow director of the company, or
- (c) any person purporting to act in such a capacity,

he as well as the company is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a company are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were an officer.

(3) Where an offence under this Law is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in such a capacity,

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where an offence under this Law is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of the body and not in the name of any of its members.

(5) A fine imposed on an unincorporated body on its conviction of an offence under this Law shall be paid from the funds of the body.

**Civil penalties.**

**516.** (1) This section applies to companies which are liable to a civil penalty.

(2) If the Registrar is satisfied that a company is liable to a civil penalty he may make an order directing it to pay the civil penalty.

(3) The Registrar may, if he thinks fit, make regulations concerning civil penalties, including provision for -

(a) the amount of the civil penalty, and

(b) the imposition and amount of additional daily penalties.

(4) Where regulations make provision for the imposition of additional daily penalties, an order of the Registrar under subsection (2) directing a company to pay a civil penalty may provide that an additional daily penalty shall accrue after the date of the imposition of the original penalty without further notice.

(5) In default of payment of a civil penalty, the Registrar may proceed to enforce payment as if the amount due were a civil debt.

**Appeal against civil penalties.**

**517.** A company aggrieved by an order made by the Registrar under section 516(2) may apply to set it aside or modify it in accordance with section 511.

**Relationship of civil penalties with prosecutions.**

**518.** (1) A company is not liable to a civil penalty if a prosecution in respect of the matter has been commenced.

(2) If the prosecution commences after the civil penalty has been paid, the Registrar shall repay the civil penalty to the company.

**Striking off for persistent or gross contraventions.**

**519.** A company in respect of which, in the opinion of the Registrar, there have been persistent or gross contraventions of this Law or the 1994 Law is liable to be struck off the Register of Companies in accordance with Part XX.

PART XXXII

GENERAL

*Exclusions and relief from liability*

**Exclusion of liability: States.**

**520.** No liability is incurred by -

- (a) the States or any department thereof, or
- (b) any member, officer or servant of the States,

in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of their functions under this Law, unless the thing was done or omitted to be done in bad faith.

**Exclusion of liability: Commission.**

**521.** No liability is incurred by -

- (a) the Commission, or
- (b) any member, officer or servant of the Commission,

in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of their functions under this Law, unless the thing was done or omitted to be done in bad faith.

**Relief from liability for officers and auditors.**

**522.** (1) If in proceedings for negligence, default, breach of duty or breach of trust against -

- (a) an officer of a company, or
- (b) a person appointed by a company as auditor (whether he is or is not an officer of the company),

it appears to the Court that the officer or person is or may be liable but that -

- (i) he acted honestly and reasonably, and
- (ii) having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused,

the Court may relieve him, either wholly or in part, from his liability on such terms and conditions as it thinks fit.

(2) If any such officer or person has reason to apprehend that a claim will or might be made against him in respect of negligence, default, breach of duty or breach of trust -

- (a) he may apply to the Court for relief, and



- (b) the Court has the same power to relieve him as it has under subsection (1).

*Service and electronic communications*

**Service of documents.**

**523.** (1) Any document to be given or served under or for the purposes of this Law may be given or served -

- (a) on an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode,
- (b) on a company, by being left at, or sent by post or transmitted to, its registered office,
- (c) on an overseas company, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in the Bailiwick or, if there is no such place, its registered or principal office or last known registered or principal office elsewhere,
- (d) on an unincorporated body, by being given to or served on any partner, member, manager or officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in the Bailiwick or, if there is no such place, its principal or last known principal place of business elsewhere,

(e) on the Registrar, by being left at, or sent by post or, subject to section 512, transmitted to, the principal offices of the Registrar in Guernsey.

(2) In subsection (1) -

(a) the expression "**by post**" means by registered post, recorded delivery service or ordinary letter post, and

(b) the expression "**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication; in which event the document shall be regarded as served when it is received.

(3) If a person notifies the Registrar of an address for service within the Bailiwick for the purposes of this Law, any document to be given to or served on him may be given or served by being left at, or sent by post or transmitted to, that address.

(4) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served -

(a) by being published by the Registrar in such manner and for such period as he thinks fit, or

(b) by being published in La Gazette Officielle (or, where service is required to be effected in Alderney, in the

Alderney Official Gazette) on two occasions falling in successive weeks,

and a document served under this subsection is sufficient if addressed to the person for whom it is intended.

(5) Subsections (1) to (4) are without prejudice to any other lawful method of service.

(6) Notwithstanding the provisions of subsections (1) to (5) and any other enactment or rule of law in relation to the service of documents, no document to be given to or served on the Registrar under or for the purposes of this Law shall be deemed to have been given or served until it is received.

(7) If a person upon whom a document is to be served under this Law is a minor or person under legal disability, the document shall be served on his guardian; and if there is no guardian, the party wishing to effect service may apply to the Court for the appointment of a person to act as guardian for the purposes of this Law.

(8) A document sent by post is, unless the contrary is shown, deemed for the purposes of this Law to have been received -

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any day which is not a working day.

(9) Service of a document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(10) In this section "**document**" does not include a summons.

(11) The provisions of this section are subject to any contrary provision in this Law.

**Electronic communications.**

**524.** (1) Schedule 3, which makes provision for the use of electronic communications -

- (a) by a company to its members or their proxies, or
- (b) to a company,

has effect.

(2) This section is without prejudice to the Electronic Transactions (Guernsey) Law, 2000<sup>ii</sup>.

*Interpretation*

**Meaning of "hard copy".**

**525.** A document is sent or supplied in hard copy form if it is sent or supplied in a paper copy or similar form capable of being read.

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<sup>ii</sup> Order in Council No. VIII of 2000.

**Meaning of "sent in electronic form" and related expressions.**

526. (1) A document is sent in electronic form if it is in electronic form and -

(a) is sent by electronic means, which means that it is sent and received at its destination by means of electronic equipment for the processing (which expression includes, without limitation, digital compression) or storage of data, and entirely transmitted and received by wire, by radio, by optical means or by other electromagnetic means, or

(b) is sent by other means.

(2) A document authorised or required to be sent in electronic form must be sent in a form, and by a means, that the sender reasonably considers will enable the recipient -

(a) to read it, and

(b) to retain a copy of it.

(3) For the purposes of this section, a document can be read only if

-

(a) it can be read with the naked eye, or

(b) to the extent that it consists of images, it can be seen with the naked eye.

**Meaning of "solvency test".**

527. (1) For the purposes of this Law a company satisfies the solvency test if -

- (a) the company is able to pay its debts as they become due,
- (b) the value of the company's assets is greater than the value of its liabilities, and
- (c) in the case of a supervised company, the company satisfies any other requirements as to solvency imposed in relation to it by or under -
  - (i) the Protection of Investors (Bailiwick of Guernsey) Law, 1987,
  - (ii) the Insurance Business (Bailiwick of Guernsey) Law, 2002,
  - (iii) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,
  - (iv) the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
  - (v) the Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law, 2000, and

- (vi) any other enactment prescribed by the Commission for the purposes of this section.

(2) Without prejudice to sections 303 and 304, in determining whether the value of a company's assets is greater than the value of its liabilities, the directors -

- (a) must have regard to -
  - (i) the most recent accounts of the company, and
  - (ii) all other circumstances that the directors know or ought to know affect, or may affect, the value of the company's assets and the value of the company's liabilities, and
- (b) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

(3) This section also applies to amalgamations as if references to the company were references to the amalgamated body corporate and in determining whether the value of the amalgamated body corporate's assets will be greater than the value of its liabilities, the directors of each amalgamating body corporate -

- (a) must have regard to -
  - (i) accounts prepared as if the amalgamation had become effective, and

(ii) all other circumstances that the directors know or ought to know would affect, or may affect, the value of the amalgamated body corporate's assets and the value of its liabilities,

(b) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

(4) This section applies to cells and cores of protected cell companies as if references to companies were references to cells or cores (as the case may be) of protected cell companies.

**Meaning of "name" and "former name".**

**528.** (1) For the purposes of sections 143, 173 and 485, "**name**" means a person's forename and surname, except in the case of -

(a) a peer, or

(b) an individual usually known by a title,

in which case the title may be stated instead of his forename and surname or in addition to either or both of them.

(2) For the purposes of sections 143 and 173 a "**former name**" means a name by which the individual was formerly known and, where a person is or was formerly known by more than one such name, each of them must be stated.

**Meaning of "associated companies".**

**529.** (1) For the purposes of this Law, companies are associated if -



- (a) one is a subsidiary of the other,
  - (b) both are subsidiaries of the same company,
  - (c) one is an incorporated cell company and the other is its incorporated cell, or
  - (d) both are incorporated cells of the same incorporated cell company.
- (2) References to an "associated company" have a corresponding meaning.

**Meaning of "supervised company".**

**530.** For the purposes of this Law, a "**supervised company**" is a company which -

- (a) holds or formerly held a licence under section 4 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 or an authorisation under section 8 of that Law,
- (b) is or was a closed-ended investment company,
- (c) is a licensee or former licensee within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002 or the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,
- (d) is a licensed institution or former licensed institution within the meaning of the Banking Supervision

(Bailiwick of Guernsey) Law, 1994,

- (e) is a licensed fiduciary or former licensed fiduciary within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law, 2000, or
- (f) is a company of any other class or description prescribed by the Commission for the purposes of this section.

**Meaning of "holding company", "subsidiary" and "wholly-owned subsidiary".**

**531.** (1) For the purposes of this Law a company is, subject to the provisions of subsection (3), a subsidiary of another if, but only if -

- (a) that other -
  - (i) is a member of it and controls the composition of its board of directors,
  - (ii) holds more than half in value of its equity share capital in the case of a company limited by shares, or
  - (iii) holds more than half of the total voting rights in the case of a company which is not a company limited by shares, or
- (b) the first mentioned company is a subsidiary of any company which is that other's subsidiary.

(2) For the purposes of subsection (1) the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company has some power, exercisable without the consent or concurrence of any other person, to appoint or remove the holders of all or a majority of the directorships; and that other company shall be deemed to have a power to appoint a person to any directorship in respect of which any of the following conditions is satisfied -

- (a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power,
- (b) that a person's appointment thereto follows necessarily from his appointment as a director of that other company,
- (c) that the directorship is held by that other company itself or by a subsidiary of it.

(3) In determining whether a company is a subsidiary of another -

- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it,
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable -
  - (i) by any person as a nominee for that other

(except where that other is concerned only in a fiduciary capacity),

- (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other,

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded,

- (d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

- (4) For the purposes of this Law -

- (a) a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary, and

- (b) a company shall be deemed to be the wholly-owned

subsidiary of another if it has no members apart from that other and that other's wholly-owned subsidiaries and its or their nominees.

(5) For the purposes of this section "**equity share capital**" in relation to a company, means its share capital -

- (a) excluding any part thereof which, as respects neither dividends nor capital, carries a right to participate beyond a specified amount in a distribution,
- (b) excluding any shares held as treasury shares.

(6) Except as set out in sections 167 and 265 and in the definition of "employees' share scheme" in section 532, a body corporate is not to be regarded as a subsidiary if it is an overseas company.

(7) Except as set out in section 334, a body corporate is not to be regarded as a holding company if it is an overseas company.

**Interpretation.**

**532.** (1) In this Law, unless the context otherwise requires, the following expressions shall be construed as follows -

"**accounts**" means either individual accounts prepared in accordance with section 243 or consolidated accounts prepared in accordance with section 244,

"**administration order**" means an administration order made by the Court in respect of a company (or a cell of a protected cell company) under section 374,

**"administrator"** means a person appointed by the Court to manage the affairs, business and property of a company (or a cell of a protected cell company) under an administration order,

**"Administrator of Income Tax"** means the Administrator within the meaning of the Income Tax (Guernsey) Law, 1975<sup>jj</sup>,

**"amalgamation"** means an amalgamation of two or more bodies corporate pursuant to the provisions of Part VI, and related expressions shall be construed accordingly,

**"articles"** means a company's articles of incorporation as lawfully amended from time to time,

**"associated company"** : see section 529,

**"board"** and **"board of directors"**: see section 133,

**"body corporate"** means -

- (a) a company, or

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<sup>jj</sup> Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118, 200, 333 and 565; Vol. XXVIII, pp. 184, 278, 353 and 409; Vol. XXIX, p. 214; Vol. XXXI, pp. 406 and 473; Vol. XXXII, p. 307; No. IV of 1991; No. VI of 1992; No's. IV and VIII of 1993; No. XXV of 1994; No's. III and VII of 1995; No. V of 1996; No's. IV and XXII of 1997; No's. II and VI of 1999; No. IV of 2000; No's. VI and XVII of 2001; No. VII of 2002; No's. IV, XVIII and XXVI of 2003; No's. XII and XVI of 2004; No's. V, VI and XVII of 2005; No's. II and VII of 2006; the Income Tax (Guernsey) (Amendment) Law, 2007; and (with effect from the 1<sup>st</sup> January 2008, the Income Tax (Zero 10) (Guernsey) Law, 2007. Also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

- (b) an overseas company,

"**cell**" means a cell created by a protected cell company for the purpose of segregating and protecting cellular and core assets in the manner provided by Part XXVII,

"**cell company**" means a company which is either a protected cell company or an incorporated cell company,

"**circulation date**" : see section 181(5),

"**civil penalty**" : see section 516,

"**closed-ended investment company**" means a collective investment scheme within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 under which –

- (a) the property in question belongs beneficially to, and is managed by or on behalf of, a body corporate having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds, and
- (b) the investors are not entitled under the terms of the scheme –
  - (i) to have their units redeemed or repurchased by, or out of funds provided by, the body, or

(ii) to sell their units on an investment exchange,

at a price related to the value of the property to which they relate,

**"Commission"** means the Guernsey Financial Services Commission,

**"company"** : see sections 1 and 2(3),

**"confidential information"** means -

(a) a director's usual residential address,

(b) beneficial ownership details within the meaning of Part XXIX,

**"contravention"** includes failure to comply, and related expressions shall be construed accordingly,

**"core"** means a protected cell company excluding its cells,

**"corporate services provider"** means a person who holds a full fiduciary licence within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000,

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



"**customs officer**" means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law<sup>kk</sup>, 1972,

"**daily default**" : see section 514,

"**department**" of the States means any department, council or committee of the States, howsoever called,

"**the Department**" means the States of Guernsey Commerce and Employment Department,

"**director**" : see section 131,

"**distribution**" : see section 301,

"**dividend**" : see section 302,

"**documents**" means information recorded in any form (including without limitation, in electronic form) and, in relation to information recorded otherwise than in legible form, references to its production, howsoever expressed, include references to the production of the information in hard copy,

"**electronic means**" : see section 526,

"**eligible members**" : see section 181(3),

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<sup>kk</sup> Ordres en Conseil Vol. XXIII, p. 573; Vol. XXIV, p. 87; Vol. XXXI, p. 278; No. XIII of 1991; No. X of 2004; and the Excise Duties (Budget) Ordinance, 2005 (No. XXXII). Also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

"**employees' share scheme**" is a scheme for encouraging or facilitating the holding of shares or debentures in a company by or for the benefit of-

- (a) the *bona fide* employees or former employees of the company or any associated company,
- (b) the wives, husbands, widows, widowers or children or step-children under the age of 18 of such employees or former employees, or
- (c) such other persons or classes of persons as may be prescribed by the Department,

and, for the purposes of this definition, the expression "associated company" shall be construed as if a subsidiary within the meaning of section 531 included a body corporate which would be a subsidiary but for the fact that it is an overseas company,

"**enactment**" includes a Law, an Ordinance and any subordinate legislation,

"**financial services business**" means financial services business as defined in Schedule 1 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>II</sup>,

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<sup>II</sup> Order in Council No. VIII of 1999; amended by Order in Council No. II of 2005; Ordinance XXVIII of 1999; Ordinance XII of 2002; Ordinance XXXIII of 2003; certain sections of the Law are modified in their application to external confiscation orders by Ordinance XXXIII of 1999; and Schedule 1 was substituted by G.S.I. No. 27 of 2002 and numbered as schedule 1 by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.

**"financial year"** means -

- (a) firstly, the period beginning on the date on which a company was incorporated and ending within 18 months of that date,
- (b) thereafter, the period beginning on the day after its previous financial year ended and ending within 18 months of that date,

**"founder member"** means a person who subscribes his name to a company's memorandum,

**"functions"** includes duties and powers,

**"guarantee member"** : see section 7,

**"guaranteed amount"** : see section 7,

**"Guernsey"** includes Herm and Jethou,

**"hard copy"** : see section 525,

**"Her Majesty's Procureur"** includes Her Majesty's Comptroller,

**"holding company"** : see section 531,

**"incorporated cell "** means a company incorporated as, or converted into, an incorporated cell in accordance with the provisions of Part XXVIII,

**"incorporated cell company"** means a company incorporated as, or converted into, an incorporated cell company in accordance with the provisions of Part XXVIII,

**"liability"** includes duty, debt and obligation,

**"limited company"** : see sections 6 and 7,

**"member's interests"** means -

- (a) in the case of members who are shareholders, their shares,
- (b) in the case of members who are guarantee members, their interests in the company by virtue of being guarantee members,
- (c) in the case of members who are unlimited members, their interests in the company by virtue of being unlimited members,

**"memorandum"** means a company's memorandum of incorporation as lawfully amended from time to time,

**"mixed liability company"** : see section 9,

**"non-cellular company"** means a company which is neither a cell company nor an incorporated cell,

"**officer**", in relation to a company, includes a director, liquidator, manager, secretary, receiver and administrator thereof,

"**open-ended investment company**" means a collective investment scheme within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 under which –

(a) the property in question belongs beneficially to, and is managed by or on behalf of, a body corporate having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds, and

(b) the investors are entitled under the terms of the scheme–

(i) to have their units redeemed or repurchased by, or out of funds provided by, the body, or

(ii) to sell their units on an investment exchange,

at a price related to the value of the property to which they relate,

"**overseas company**" means a body of persons registered or incorporated under the law of any district, territory or place outside Guernsey,

**"police officer"** means a member of the salaried police force of the Island of Guernsey and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,

**"prescribed by the Commission"** means prescribed by regulations made by the Commission under section 534,

**"prescribed by the Department"** means prescribed by regulations made by the Department under section 535,

**"prescribed by the Registrar"** means prescribed by regulations made by the Registrar under section 536,

**"protected cell company"** means a company incorporated as, or converted into, a protected cell company in accordance with the provisions of Part XXVII,

**"publish"** means make available to the public,

**"redeemable shares"** means shares which are, or at the option of the company or the shareholder are, liable to be redeemed,

**"Register of Companies"** : see section 496,

**"register of directors"** : see section 143,

**"Register of Disqualification Orders"** : see section 497,

**"register of members"** : see section 123,

**"register of secretaries"** : see section 173,

**"Registrar"** means the Registrar of Companies (see section 495),

**"resident agent"** : see section 484,

**"security"** means any mortgage, charge, hypothèque, lien or other security, and "secured interests" shall be construed accordingly,

**"sent in electronic form"** : see section 526,

**"sent by electronic means"** : see section 526,

**"servant"** includes a person employed under a contract of service or apprenticeship (whether written or oral, express or implied) and a person engaged on a consultancy or secondment basis,

**"shadow director"** : see section 132,

**"shareholder"** : see section 6(2)(a),

**"solvency test"** : see section 527,

**"special notice"** : see section 211,

**"States"** means the States of Guernsey,

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

"**subsidiary**" : see section 531,

"**supervised company**" : see section 530,

"**the 1994 Law**" means the Companies (Guernsey) Law, 1994<sup>mm</sup>,

"**transaction**" means anything (including, without limitation, any agreement, arrangement, dealing, disposition, circumstance, event or relationship) whereby any liability arises or is imposed; and related expressions shall be construed accordingly,

"**uniform scale**" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>nn</sup>,

"**unlimited liability company**" : see section 8,

"**unlimited members**" : see section 8,

"**working day**" means a day which is not a Saturday, a Sunday, Christmas Day or Good Friday or a day appointed as a public holiday by Ordinance of the States under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>oo</sup>.

(2) Any reference in this Law to an enactment is a reference

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<sup>mm</sup> Order in Council No. XXXIII of 1994; amended by No. XIV of 1996; No. I of 2001; No. II of 2002; the Companies (Guernsey) (Amendment) Law, 2005; and by Ordinance No. XXXIII of 2003; the Companies (Fees and Penalties) Ordinance, 2006; and the Incorporated Cell Companies Ordinance, 2006.

<sup>nn</sup> Ordres en Conseil Vol. XXXI, p. 278.

<sup>oo</sup> Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; and No. XI of 1993.



thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(3) Any reference in this Law to a thing done under or for the purposes of this Law includes a reference to a thing done under or for the purposes of any Ordinance or Regulations made under this Law; and a reference to a thing done under this Law includes a reference to a thing done for the purposes of this Law (and vice versa).

*Ordinances and regulations*

**Power of States to amend by Ordinance.**

533. (1) The States may by Ordinance amend this Law.
- (2) Without limitation, an Ordinance under subsection (1) may -
- (a) make provision for a codification of the duties that a director owes to a company,
  - (b) make provision in respect of overseas companies which are administered from Guernsey or have an address in Guernsey,
  - (c) make provision in respect of audit and the regulation of auditors as set out in the Eighth Company Law Directive on Audit (2006/43/EC) including, without limitation, provision for -
    - (i) the eligibility, recognition, approval, registration and supervision of auditors,

- (ii) the training, assessment and qualifications required to be an approved auditor,
  - (iii) the recognition of supervisory and professional bodies for auditors,
  - (iv) the recognition and approval of professional rules for auditors, and
  - (v) restrictions on eligibility to carry out audits on any class or description of company,
- (d) make provision in respect of takeovers as set out in the European Directive on Takeover Bids (2004/25/EC) including, without limitation, provision for -
- (i) the creation, recognition or establishment of an appropriate supervisory body to exercise functions in respect of takeovers or other transactions that affect the ownership of any type, class or description of company,
  - (ii) the conferring of functions and powers on that supervisory body,
  - (iii) the creation or recognition of rules to be applied by the supervisory body in connection with the regulation of takeover bids or other transactions that affect the ownership of any type, class or

description of company, and

- (iv) the creation and enforcement of sanctions or penalties in respect of the contravention of those rules, and
- (e) make provision (notwithstanding section 283) for the conversion of shares to stock and vice versa.

(3) The provisions of subsection (2)(c) and (d) are without prejudice to the provisions of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994<sup>PP</sup>.

(4) An Ordinance under this Law -

- (a) may, for the avoidance of doubt,
  - (i) create new offences, and
  - (ii) repeal, replace, amend, extend, adapt, modify or disapply any rule of common or customary law,
- (b) may be amended or repealed by a subsequent Ordinance hereunder, and
- (c) may contain such consequential, incidental, supplementary or transitional provision as may appear to be necessary or expedient including, without

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<sup>PP</sup> Order in Council No. III of 1994.

limitation, provision amending any enactment.

**Regulations made by the Commission.**

534. (1) This section governs the making of regulations by the Commission under this Law.

(2) The Commission must consult with the Department before making the regulations.

(3) The regulations -

(a) may be amended or repealed by subsequent regulations hereunder,

(b) may contain such consequential, incidental, supplemental or transitional provision as may appear to the Commission to be necessary or expedient including provision amending any enactment.

**Regulations made by the Department.**

535. (1) This section governs the making of regulations by the Department under this Law.

(2) The regulations -

(a) may be amended or repealed by subsequent regulations hereunder,

(b) may contain such consequential, incidental, supplemental or transitional provision as may appear to

the Department to be necessary or expedient including provision amending any enactment.

**Regulations made by the Registrar.**

**536.** (1) This section governs the making of regulations by the Registrar under this Law.

(2) Without prejudice to any other power conferred on him to make regulations or his functions under section 499, the Registrar may make such regulations as he thinks fit in relation to the practice and procedure of the Office of Registrar.

(3) The Registrar must consult with and obtain the approval of the Department before making the regulations.

(4) The regulations -

(a) may be amended or repealed by subsequent regulations hereunder,

(b) may contain such consequential, incidental, supplemental or transitional provision as may appear to the Registrar to be necessary or expedient including provision amending any enactment.

**Regulations to be laid before States.**

**537.** Any regulations made under this Law shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

**General power in respect of Ordinances and regulations.**

**538.** Any power to make Ordinances or regulations under this Law may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised -
  - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
  - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
  - (iii) any such provision either unconditionally or subject to any prescribed conditions.

*Miscellaneous*

**False or misleading information to the Commission.**

**539.** (1) If a person to whom subsection (2) applies -

- (a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (c) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

he is guilty of an offence.

(2) This subsection applies to a person who -

- (a) makes any statement or provides any information or document to the Commission, or to any officer, servant or agent of the Commission, when acting in the exercise of their respective functions under this Law, or
- (b) otherwise than as mentioned in paragraph (a) makes any statement or provides any information or document to

the Commission, or to any officer, servant or agent of the Commission, in circumstances in which he knows or could reasonably be expected to know that the statement, information or document would or might be used by them for the purpose of exercising their respective functions under this Law.

**Modification of this Law in its application to States trading companies.**

**540.** (1) Sections 139 and 140 of this Law do not apply to States trading companies within the meaning of the States Trading Companies (Bailiwick of Guernsey) Law, 2001<sup>qq</sup>.

(2) A breach of section 5 of the States Trading Companies (Bailiwick of Guernsey) Ordinance, 2001<sup>rr</sup> cannot be ratified under section 160 of this Law.

*General*

**Savings and transitional provisions.**

**541.** Schedule 4 (which makes savings and transitional provisions) has effect.

**Power to make regulations concerning savings and transitional provisions.**

**542.** (1) The Department may make regulations containing such savings and transitional provisions as it thinks fit in connection with the commencement of any provision of this Law<sup>ss</sup>.

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<sup>qq</sup> Order in Council No. XII of 2001.

<sup>rr</sup> Ordinance No. XXIII of 2001.

<sup>ss</sup> See the Companies (Transitional Provisions) Regulations, 2008.



(2) Regulations under this section may, without limitation, make such adaptations and modifications of provisions already in force as the Department thinks fit in connection with the commencement of any other provisions of this Law not yet in force.

(3) Savings and transitional provisions made under this section are additional and without prejudice to those made by or under any other provision of this Law.

**Consequential amendments and repeals.**

543. Schedule 5 (which makes consequential amendments and repeals) has effect.

**Citation.**

544. This Law may be cited as the Companies (Guernsey) Law, 2008.

**Commencement.**

545. This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions<sup>tt</sup>.

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<sup>tt</sup> Under the Companies (Guernsey) Law, 2008 (Commencement) Ordinance, 2008, the Law came into force on the 1<sup>st</sup> July, 2008, except for Part XXX ("Office of the Registrar of Companies"), section 513 ("criminal penalties for offences under the Law"), but only to the extent that it relates to section 509(1), and section 541 ("savings and transitional provisions"), but only to the extent that it brings into effect paragraphs 2 and 4 of Schedule 4, which came into force on the 12<sup>th</sup> June, 2008.

SCHEDULE 1  
POWERS OF ADMINISTRATOR

Section 379

In the application of this Schedule to a company -

- (a) the word "he" and related expressions refer to the administrator, and
- (b) in the case of a cell of a protected cell company, the word "company" includes a cell of a protected cell company or, where necessary, the protected cell company itself.

1. Power to take possession of, collect and get in the property of the company 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 company by public auction or private contract.

3. Power to raise or borrow money and grant security for that purpose over the property of the company.

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 company, or where the administration relates to the cell of

a protected cell company, in the name and on behalf of the company in so far as the matter relates to the affairs, business and property of the cell.

6. Power to refer to arbitration any question affecting the company.
7. Power to effect and maintain insurances in respect of the business and property of the company.
8. Power to use the company's seal where the company has a seal.
9. Power to do all acts and to execute in the name and on behalf of the company 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 company.
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 company.
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 company.
15. Power to establish subsidiaries of the company.

16. Power to transfer to subsidiaries of the company the whole or any part of the business and property of the company.

17. Power to grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company.

18. Power to make any arrangement or compromise on behalf of the company.

19. Power to call up any uncalled capital of the company.

20. Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company, 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 winding up of the company.

22. Power to change the address of the company's registered office except where the administration is in respect of the cell of a protected cell company.

23. Power to do all other things incidental to the exercise of the foregoing powers.

SCHEDULE 2  
OFFICE OF THE REGISTRAR

Section 495(7)

**Salary or fees of Registrar.**

1. The Registrar shall be paid such salary or fees, emoluments and other allowances as the Department may determine.

**Appointment of staff.**

2. (1) The Registrar may -
- (a) subject to the approval of the Department, appoint such officers and servants, and
  - (b) appoint and instruct such other persons,

on such terms and conditions (whether as to remuneration, expenses, pensions or otherwise) as he thinks necessary for the exercise of his functions.

(2) The Registrar may, subject to the approval of the Department, establish and maintain such schemes or make such other arrangements as he thinks fit for the payment of pensions and other benefits in respect of his officers and servants.

**Delegation of functions.**

3. (1) The Registrar may, by an instrument in writing, either generally or otherwise as specified in the instrument, arrange for any of his functions to be exercised in his name by any person named or described in the instrument, other than this power of delegation.

(2) A function exercised by a delegate pursuant to an arrangement made under this paragraph is for all purposes exercised by the Registrar; and every decision taken or other thing done by a delegate pursuant to such an arrangement has the same effect as if taken or done by the Registrar.

(3) An arrangement made under this paragraph for the exercise of a function by a delegate -

(a) may be varied or terminated at any time by the Registrar, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement,

(b) does not prevent the exercise of the function by the Registrar while the arrangement subsists.

(4) The provisions of this paragraph and of paragraph 4 are without prejudice to the provisions of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>uu</sup>.

**Appointment of Deputy Registrar.**

4. (1) Without prejudice to the generality of paragraph 3, the Department may, subject to such terms and conditions as it thinks fit, appoint any person as Deputy Registrar with authority to exercise the Registrar's functions during any period during which the Registrar is unavailable.

(2) A function exercised by a Deputy Registrar pursuant to an appointment under this paragraph is for all purposes exercised by the Registrar; and

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<sup>uu</sup> Order in Council No. XXI of 1991.

every decision taken or other thing done by a Deputy Registrar pursuant to such an appointment has the same effect as if taken or done by the Registrar.

- (3) An appointment under this paragraph of a Deputy Registrar -
  - (a) may be varied or terminated at any time by the Department, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment,
  - (b) does not prevent the exercise of the function by the Registrar while the appointment subsists.

**Disclosure of interests.**

5. (1) The Registrar shall, if he has any direct or indirect personal interest in the outcome of any matter of which he is seized under this Law or any other enactment, disclose the nature of his interest to the Department.

(2) For the purposes of this paragraph, a general notice given by the Registrar to the effect that he is a member, director or officer of a body corporate, and is to be regarded as interested in any matter concerning that body corporate, is a sufficient disclosure in relation to any such matter.

**Official seal.**

6. (1) The Registrar may have an official seal for the authentication of documents required for the purpose of exercising his functions.

- (2) Any document -
  - (a) sealed with the official seal of the Registrar, and

- (b) signed by the Registrar or by any person to whom, pursuant to paragraph 3, he has delegated authority to affix his official seal,

is deemed to be duly executed by or on behalf of the Registrar and is effective in law to bind him.

**Proof of documents.**

7. (1) In any legal proceedings the provisions of subparagraph (2) apply in relation to any document purporting to be -

- (a) issued by or on behalf of the Registrar, or
  - (b) signed by the Registrar, by any of his officers or servants or by any person to whom, pursuant to paragraph 3, he has delegated authority to sign documents of that description.
- (2) The document -
- (a) may be received in evidence,
  - (b) unless the contrary is proved, is deemed -
    - (i) to be the document which it purports to be, and
    - (ii) to have been issued by or on behalf of the Registrar or, as the case may be, to have been signed by the person by whom it purports to



have been signed, without proof of his identity,  
signature or official capacity, and

- (c) is evidence of the matters stated therein.

SCHEDULE 3

ELECTRONIC COMMUNICATIONS BY COMPANY TO MEMBERS

Section 524

*General*

**Application of this Schedule.**

1. This Schedule applies where a document, other than a summons, is sent -

- (a) by a company to its members or their proxies, or
- (b) to a company.

**Agreement to communication in electronic form.**

2. (1) A document can only be sent in any particular electronic form if the recipient has so agreed, either generally or in any particular case.

For the meaning of "sent in electronic form" see section 526.

(2) The agreement of a member may be deemed by virtue of provision made by the articles or a resolution of the company.

**Address for communication in electronic form.**

3. Where paragraph 2 applies, the document may only be sent -

- (a) by electronic means, to an address specified for that purpose by the recipient (generally or in any particular case), or
- (b) by other means, to an address to which it could be sent

if it were a document in hard copy.

For the meaning of "sent by electronic means" see section 526.

**Relationship between this Schedule and articles.**

4. This Schedule is subject to any provision to the contrary in the company's articles.

**Other agreed forms of communication.**

5. A document sent otherwise than in hard copy form or electronic form is validly sent if it is sent in a manner that has been agreed by the recipient.

*Communications by a company to its members*

**Means of communication.**

6. A company may send documents -
- (a) subject to paragraphs 2 and 3, in electronic form, or
  - (b) subject to the following paragraphs of this Schedule and sections 189 and 208, by means of a website.

**Member must agree to communication by means of website.**

7. (1) Documents can only be sent by means of a website if the member has so agreed, either generally or in any particular case.

(2) The agreement of a member under subparagraph (1) may be deemed by virtue of provision made by the articles or a resolution of the company.

**Availability of document on website.**

8. (1) A document authorised or required to be sent by means of a website must be made available in a form, and by a means, that the company reasonably considers will enable the recipient -

(a) to read it, and

(b) to retain a copy of it.

(2) For this purpose a document can be read only if -

(a) it can be read with the naked eye, or

(b) to the extent that it consists of images, it can be seen with the naked eye.

**Notification of availability of document on website.**

9. (1) The company must notify the intended recipient of -

(a) the presence of the document on the website,

(b) the address of the website,

(c) the place on the website where it may be accessed, and

(d) how to access the document.

(2) Where the document is a notice of a company meeting, the notification must –

(a) state that it concerns a notice of a company meeting, and

- (b) specify the place, date and time of the meeting.
- (3) The document is taken to be sent -
- (a) on the date on which the notification required by this paragraph is sent, or
  - (b) if later, the date on which the document first appears on the website after that notification is sent.

**Period of availability on website.**

**10.** (1) The company must make the document available on the website throughout -

- (a) the period specified by the applicable provision of this Law, or
- (b) if no such period is specified, the period of 28 days beginning with the day on which the notification required under paragraph 9 is sent to the person in question.

(2) For the purposes of this section, a failure to make a document available on a website throughout the period shall be disregarded if -

- (a) it is made available on the website for part of the period, and
- (b) the failure to make it available throughout that period is

wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

SCHEDULE 4  
SAVINGS AND TRANSITIONAL PROVISIONS

Section 541

**Existing companies and records.**

1. The repeal by this Law of the enactments under Schedule 5 does not affect -

- (a) the incorporation of any company registered or deemed to be registered under those enactments,
- (b) the validity of any public record kept by Her Majesty's Greffier thereunder, or
- (c) the validity of any record kept by a company thereunder.

**Register of Companies.**

2. (1) Her Majesty's Greffier shall transfer to the Registrar the register kept by him and called the "Register of Companies incorporated with Limited Liability" which forms part of the public records of the Island and which was formerly kept pursuant to Article III of the Law entitled "Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée" of 1908<sup>vv</sup> (in this paragraph referred to as "**the old register**").

(2) The old register shall be treated for all purposes as part of the Register of Companies kept by the Registrar under Part XXX.

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<sup>vv</sup> Ordres en Conseil Vol. X, p.298.

(3) Her Majesty's Greffier shall transfer to the Registrar all documents and information in his custody which formed part of the old register at one time but which no longer form part of the old register.

**Saving for existing minor directors.**

3. Section 137(1) does not apply to any minor appointed or holding office as a director before its coming into force.

**Company director disqualification.**

4. (1) Her Majesty's Greffier shall transfer to the Registrar the register of company director disqualification orders kept by him under section 67E of the 1994 Law (in this paragraph referred to as "**the old register**").

(2) The old register shall be treated for all purposes as part of the Register of Disqualification Orders kept by the Registrar under section 497 of this Law.

(3) A disqualification order made under the 1994 Law shall be treated for all purposes as if it were a disqualification order made under section 427 of this Law.

**Transactions etc. of protected cell companies before provision for core protection and secured interests under 2006 Ordinance.**

5. The provisions of Part XXVII which re-enact the amendments made to the Protected Cell Companies Ordinance, 1997<sup>ww</sup> by sections 1, 4 and 5 of the

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<sup>ww</sup> Ordinance No. V of 1997; amended by No. XV of 1998; No. XXI of 2005; and No. XVII of 2006.



Protected Cell Companies (Amendment) Ordinance, 2006<sup>xx</sup> (which provided that non-cellular assets are not to be used to satisfy cellular liabilities, that receivership orders are subject to secured interests, and that administration orders are subject to secured interests) do not have any effect upon transactions or securities entered into or liabilities incurred before the coming into force of the Protected Cell Companies (Amendment) Ordinance, 2006, and the provisions of the Protected Cell Companies Ordinance, 1997 as it was in force immediately before those amendments, shall apply accordingly in their stead.

**Memorandum and articles of association.**

6. Any memorandum of association or articles of association within the meaning of the 1994 Law of a company incorporated before the coming into force of this Law which are lawful under the 1994 Law shall be treated as if they were a memorandum of incorporation or articles of incorporation (as the case may be) under this Law.

**Reconversion of stock into shares.**

7. (1) A company having a share capital that has converted paid-up shares into stock (before the repeal by this Law of the power to do so) may reconvert that stock into paid-up shares of any value.

(2) A company may exercise the power conferred by this paragraph only if its members have passed an ordinary resolution authorising it to do so.

(3) A resolution under subparagraph (2) may authorise a company to exercise the power conferred by this paragraph -

(a) on more than one occasion, or

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<sup>xx</sup> Ordinance No. XVII of 2006.

- (b) at a specified time or in specified circumstances.

**Savings for acquisition of own shares.**

8. The validity of the acquisition by a company of its own shares prior to the coming into force of this Law is not affected by anything in this Law.

**Savings for financial assistance for acquisition of own shares.**

9. The validity of the giving of financial assistance by a company or any of its subsidiaries prior to the coming into force of this Law is not affected by anything in this Law.

**Current winding up proceedings.**

10. Proceedings in relation to the winding up of a company instituted before the commencement of this Law may continue as if this Law had not been enacted.

**Past and current striking off.**

11. The provisions of section 369 apply in relation to a company struck off the Register of Companies -

- (a) under section 3 of the Law entitled "Loi supplémentaire à la Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée" of 1936,
- (b) under section 24 of the Companies (Guernsey) Law, 1990<sup>yy</sup>, or

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<sup>yy</sup> Order in Council No. XXVII of 1990.

- (c) under section 76 of the 1994 Law,

as those provisions apply in relation to a company struck off the Register under section 355 of this Law.

**Beneficial ownership.**

12. (1) The beneficial ownership provisions of this Law do not apply to a company which was incorporated before the commencement of this Law until the expiry of 6 months after the date of commencement of this Law.

(2) A company incorporated before the commencement of this Law shall, within 6 months after the date of commencement of this Law, send a statement of its first resident agent to the Registrar comprising the details required by section 485.

(3) In this paragraph the "**beneficial ownership provisions**" means -

- (a) Part XXIX,
- (b) section 235(1)(d), and
- (c) section 355(1)(d).

**General savings.**

13. (1) Anything done under or for the purposes of any enactment repealed by this Law ("**the repealed enactments**") before the commencement of this Law shall, to the extent that the same is required or authorised to be done under or for the purposes of this Law, have effect as if done under or for the purposes of the equivalent provision of this Law.

(2) Anything in the process of being done under or for the purposes of the repealed enactments before the commencement of this Law may, to the extent that the same is required or authorised to be done under or for the purposes of this Law, be continued to be done under or for the purposes of the equivalent provision of this Law.

(3) Any reference howsoever expressed in any enactment or subordinate legislation to a repealed enactment which is re-enacted (with or without modification) by or under this Law shall (unless the contrary intention appears) be construed as a reference to the provision as re-enacted.

(4) In so far as any subordinate legislation made or other thing done (or having effect as if made or done) under or for the purposes of a repealed enactment could be made or done under or for the purposes of this Law, it shall (unless the contrary intention appears) have effect as if made or done under or for the purposes of this Law.

SCHEDULE 5  
CONSEQUENTIAL AMENDMENTS AND REPEALS

Section 543

**Qualification for appointment as auditor of limited partnership.**

1. (1) For section 17 of the Limited Partnerships (Guernsey) Law, 1995<sup>zz</sup> (qualification for appointment as auditor of a limited partnership) substitute the following section -

**"Qualification for appointment as auditor.**

17. Section 260 of the Companies (Guernsey) Law, 2008 (qualification for appointment as auditor) applies to limited partnerships as it applies to companies under that Law."

- (2) In the Limited Partnerships (Guernsey) Law, 1995 -
- (a) in section 40(1) (penalties for offences committed under that Law) repeal "17(5)",
  - (b) in section 41(1) (interpretation) in the definition of "qualified" and "disqualified" repeal "(3)", and
  - (c) in section 43 (power to make regulations) repeal paragraph (e).

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<sup>zz</sup> Order in Council No. XII of 1995; amended by No. V of 1996; No. IV of 2001; No. X of 2006; and by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

**Incorporation of companies by advocates no longer exempted activity.**

2. In section 3(1)(r) of the Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law, 2000<sup>aaa</sup> (list of exempted activities) the words "the incorporation of companies by an advocate and" are repealed.

**Licensing criteria for fiduciaries.**

3. In Schedule 1 to the Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law, 2000, after paragraph 3(2)(f) (fiduciaries to be fit and proper persons) insert the following -

"(g) his record of compliance with any provision contained in or made under the Companies (Guernsey) Law, 2008 in acting as a corporate services provider or a resident agent within the meaning of that Law."

**Company law repeals.**

4. (1) The following enactments are repealed -

*Laws*

- (a) the Companies (Guernsey) Law, 1994,
- (b) the Companies (Amendment) (Guernsey) Law, 1996,
- (c) the Companies (Enabling Provisions) (Guernsey), Law, 1996,

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<sup>aaa</sup> Order in Council No. I of 2001.

- (d) the Companies (Amendment) (Guernsey) Law, 2001,
- (e) the Companies (Amendment) Guernsey Law, 2005,

*Ordinances*

- (f) the Companies (Guernsey) Law, 1994 (Commencement and Miscellaneous Provisions) Ordinance, 1995,
- (g) the Companies (Guernsey) Law, 1994 (Commencement) (No. 2) Ordinance, 1995,
- (h) the Companies (Amendment) (Guernsey) Law, 1996 (Commencement) Ordinance, 1997,
- (i) the Amalgamation of Companies Ordinance, 1997,
- (j) the Guarantee Companies Ordinance, 1997,
- (k) the Migration of Companies Ordinance, 1997,
- (l) the Protected Cell Companies Ordinance, 1997,
- (m) the Companies (Purchase of Own Shares) Ordinance, 1998,
- (n) the Companies (Financial Assistance for Acquisition of Own Shares) Ordinance, 1998,
- (o) the Protected Cell Companies (Amendment) Ordinance,

- 1998,
- (p) the Companies (Shares of No Par Value) Ordinance, 2002,
  - (q) the Protected Cell Companies (Amendment) Ordinance, 2005,
  - (r) the Protected Cell Companies (Amendment) Ordinance, 2006,
  - (s) the Incorporated Cell Companies Ordinance, 2006,
  - (t) the Companies (Fees and Penalties) Ordinance, 2006,
  - (u) the Companies (Purchase of Own Shares) (Treasury Shares) Ordinance, 2006,
  - (v) the Amalgamation of Companies (Amendment) Ordinance, 2008,
  - (w) the Incorporated Cell Companies (Amendment) Ordinance, 2008,
  - (x) the Migration of Companies (Amendment) Ordinance, 2008,
  - (y) the Protected Cell Companies (Amendment) Ordinance, 2008,



*Regulations*

- (z) the Companies (Compulsory Winding-up) (Notification to Commission) Regulations, 1999,
- (aa) the Amalgamation of Companies (Supervised Companies) Regulations, 1999,
- (bb) the Companies (Shares of No Par Value) (Modification of Legislation) Regulations, 2002,
- (cc) the Protected Cell Companies (Prescribed Companies) Regulations, 2005.

(2) This Law also makes the limited repeals to the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959 set out in section 494.