

STATES OF JERSEY



DRAFT COMPANIES (AMENDMENT No. 4) (JERSEY) REGULATIONS 200-

**Lodged au Greffe on 20th October 2009
by the Minister for Economic Development**

STATES GREFFE



Jersey

DRAFT COMPANIES (AMENDMENT No. 4) (JERSEY) REGULATIONS 200-

REPORT

Introduction

The Regulations are proposed for two reasons. The first is to respond to the impact on Jersey-based auditors of European Union Directive 2006/43/EC (the “**Statutory Audit Directive**”). The second is to improve the Island’s level of compliance with an international standard issued by the International Organisation of Securities Commissions relating to accounting and auditing matters (commonly referred to as “**IOSCO Principle 16**”).

The principal legislative effect of the Regulations (see Regulation 4) is to insert into the Companies (Jersey) Law 1991 (the “**Companies Law**”) a substitute Part 16 (which provides for matters relating to accounts and audits). (Whilst many aspects of the existing Part 16 are not being changed by the Regulations it was felt that it would be less confusing if the whole of Part 16 was substituted rather than piece meal changes being made to Part 16 by the Regulations.) Where a reference is made in this report to an Article in that substitute Part 16, the expression “proposed Article [X]” is used.

Regulation 1 is an interpretation provision. Regulations 2, 3 and 5 make changes to the Companies Law that are needed as a consequence of the amendments that will be made by Regulation 4. Regulation 6 provides for a transitional period for companies and auditors that will be affected by the proposed auditor oversight regime (see below). Regulations 7 and 8 contain the customary citation and commencement provisions.

Responding to the impact of the Statutory Audit Directive

The Statutory Audit Directive aims to introduce harmonised provisions in all European Union (“**EU**”) Member States relating to auditor eligibility and independent oversight (quality assurance). The Statutory Audit Directive had to be transposed into Member States’ national law by the end of June 2008.

Once certain transitional provisions have expired¹ the Statutory Audit Directive will subject auditors of ‘third country’ (i.e. non-EU) companies with securities admitted to trading on a regulated market (e.g. a stock exchange) in the EU to the auditor registration and oversight provisions in the relevant Member State where the

¹ The transitional period applies in respect of the audits for financial periods starting on or before 1 July 2010.

company's securities are admitted to trading. However, an EU Member State may grant a derogation from this requirement (but will not be obliged to grant such a derogation) where the third country auditor is subject to an EU equivalent system of public oversight, quality assurance, investigations and penalties.

The Regulations will amend the Companies Law so that Jersey can establish an auditor oversight regime that should meet the equivalence requirements of the Statutory Audit Directive. The introduction of such a regime may avoid the need for a Jersey auditor –

- to have to apply for registration in each Member State in which it acts as an auditor to a Jersey company whose securities are admitted to trading on a regulated market (or allow it to benefit from “lighter touch” registration); and
- to be subject to the systems of oversight, quality assurance, investigation and penalties in each Member State in which it is registered,

although it will be up to each Member State to determine the extent to which it recognises the equivalence of third country regimes.

Certainly, the application of full Statutory Audit Directive requirements by more than one Member State would prove to be quite onerous and expensive. For example, a Jersey audit firm auditing Jersey companies with securities admitted to trading on stock exchanges in London, Frankfurt, Dublin and Luxembourg, would be required to register with, and follow rules set by, the competent authorities in four Member States.

To introduce into the Companies Law an auditor oversight regime that will meet the equivalence requirements of the Statutory Audit Directive, the Regulations will, in summary, provide that the auditor of a Jersey company whose securities are admitted to trading on a regulated market in the EU (a “**market traded company**”) will –

- Need to be entered on a Register of Recognized Auditors (the “**Register**”) (and once entered on the Register an auditor will be defined under the Companies Law as a “**recognized auditor**”) [see proposed Article 111];
- Need to meet certain criteria before being entered on the Register [see definition of ‘auditor’ in proposed Article 102 and the provisions of Article 111(2)];
- Have to comply with rules (“**Audit Rules**”) issued by a recognized professional body (e.g. the Institute of Chartered Accountants in England and Wales (“**ICAEW**”)) governing the conduct of the audit of market traded companies [see proposed Article 112(1)(a)]; and
- Be monitored for compliance with those Audit Rules by the recognized professional body that issued them and be liable to disciplinary action where breaches occur [see proposed Article 113M(2)(a)].

In addition, to meet the equivalence requirements of the Statutory Audit Directive, the Regulations will amend the Companies Law to provide that the auditor monitoring work of a recognized professional body will itself be subject to oversight by an independent body [see proposed Article 113M].

The intention is that the Regulations will allow Jersey to ‘piggyback’ on to the United Kingdom’s (“**UK**”) existing auditor oversight regime. To this end, the ICAEW will be

requested to issue the Audit Rules referred to above, monitor the compliance of recognized auditors with them, and, if breaches occur, take disciplinary action when necessary. To meet the equivalence requirements of the Statutory Audit Directive, the Jersey Financial Services Commission (the “**JFSC**”), as the body responsible for maintaining the Register, will also be granted powers under the Companies Law to take action against recognized auditors (see proposed Article 111).

The intention is that the UK’s Professional Oversight Body (“**POB**”) (part of the Financial Reporting Council) will fulfil the role of the independent body overseeing the monitoring work of the ICAEW, as it does in the UK’s auditor oversight regime. The POB would carry out this function, either by a contractual delegation from the JFSC, or through direct appointment by means of a Ministerial Order (see below).

Proposed Articles 113K, 113L, 113M and 113N need to be understood in the context of the structure of the proposed auditor oversight regime. As described above, to meet the equivalence requirements of the Statutory Audit Directive, the intention is that the ICAEW will monitor each recognized auditor’s compliance with Audit Rules governing the conduct of audit work for market traded companies and the POB will be responsible for overseeing the auditor monitoring work of the ICAEW.

However, there is a need to ensure that should, for any reason, either the ICAEW or the POB (or both) be unable at any time in the future to be to undertake their roles in the oversight regime (which is thought unlikely), there is a fall-back position so that Jersey would not fail to meet the equivalence requirements of the Statutory Audit Directive. For this reason, proposed Articles 113K, 113L, 113M and 113N are drafted in such a way that, in the unlikely event that the ICAEW and/or the POB were unable to undertake their roles in the oversight regime the JFSC could take their place. Those proposed Articles will also deal with the possibility that the POB may prefer to undertake its oversight work on the basis of acting, under contract, as the delegate of the JFSC (rather than being designated directly as the oversight body by an Order under proposed Article 113N).

Based on research carried out by the JFSC, it is expected that each of the ‘Big 4’ audit firms in Jersey will need to register as a recognized auditor. Between them, they currently audit approximately 70 market traded companies.

The auditor oversight regime will not impact on the audit arrangements of companies that are not market traded companies.

Working with Guernsey and the Isle of Man

Because the impact of the Statutory Audit Directive affects the auditors in each Crown Dependency similarly, representatives from the JFSC (acting at the request of the Chief Minister’s Department as its agent) have been working closely with colleagues from the States of Guernsey Commerce and Employment Department and the Isle of Man Financial Supervision Commission (which together with the JFSC are referred to herein as the “**CD agencies**”) with a view to implementing a common form of auditor oversight regime.

At an early stage in considering how the Crown Dependencies should respond to the impact of the Statutory Audit Directive, the CD agencies agreed that, on practical and economic grounds, it would preferable, if possible, to use the expertise and infrastructure of the ICAEW and the POB, rather than attempt to set up new agencies in the Crown Dependencies to do the work or to expand the remit (and staff) of existing CD agencies to do the work.

Consequently, representatives from the CD agencies have held discussions with the ICAEW and the POB and have come to a quintpartite agreement that will see the ICAEW and the POB undertaking the same functions for the auditor oversight regime established in each Island. The intention is that each CD will implement similar legislative provisions and bring the legislation into force at the same time. The aim is to bring the oversight regime into effect before the end of this year i.e. well before the end of the existing ‘third country’ transitional provisions. This will enable each Island to demonstrate practical implementation of its auditor oversight regime to the European Commission at the time it formally assesses equivalence of the regimes.

Enhancing the Island’s level of compliance with IOSCO Principle 16 relating to accounting and auditing standards

IOSCO Principle 16 states that a jurisdiction should apply accounting and auditing standards that are of a high and internationally acceptable quality. Principle 16 applies to issuers that make “public offerings” of securities and issuers whose securities are “publicly traded”.

To enhance Jersey’s level of compliance with IOSCO Principle 16 it is proposed that the Regulations will amend the Companies Law to –

- provide for statutorily prescribed accounting standards to be adopted by market traded companies (rather than “generally accepted accounting principles”) [see proposed Article 105(2)(a)]; and
- provide a mechanism for enforcing compliance with accounting standards and auditing standards that will apply to market traded companies [see proposed Article 113Q].

In preparing the Regulations, the view was taken that, initially at least, Jersey should aim to comply with IOSCO Principle 16 only in respect of the same constituency of companies as that covered by third country provisions in the Statutory Audit Directive i.e. companies that have securities admitted to trading on an EU regulated market. This limitation in scope will mean that the Regulations will not fully meet the scope of issuers covered by Principle 16, but is proposed for practical reasons and was supported by respondents to the consultation exercise on the Regulations.

Financial and manpower implications

The Regulations will have no implications for the financial or manpower resources of the States.

The costs of running the auditor oversight regime will be borne by those firms that register as recognized auditors.

Explanatory Note

These Regulations will replace Part 16 of the Companies (Jersey) Law 1991, which deals with the accounts and the auditing of the accounts of companies.

The main change to be brought about by the new Part 16 is to require companies with shares traded on European Union stock markets to have their accounts audited by auditors who are bound when auditing such accounts by the relevant rules of certain recognized professional bodies.



Jersey

DRAFT COMPANIES (AMENDMENT No. 4) (JERSEY) REGULATIONS 200-

Arrangement

Regulation

1	Interpretation	5
2	Article 1 amended	5
3	Article 17 amended	5
4	Part 16 substituted	5
5	Schedule 1 amended	5
6	Transitional provisions	5
7	Citation	5
8	Commencement	5



Jersey

DRAFT COMPANIES (AMENDMENT No. 4) (JERSEY) REGULATIONS 200-

Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 108 and 220 of the Companies (Jersey) Law 1991¹, have made the following Regulations –

1 Interpretation

In these Regulations, “the Law” means the Companies (Jersey) Law 1991².

2 Article 1 amended

In Article 1(1) of the Law, the definitions “partnership” and “recognized professional body” are deleted.

3 Article 17 amended

For Article 17(2) of the Law there is substituted the following paragraph –

“(2) A private company shall be subject to this Law as though it were a public company if –

- (a) otherwise than in accordance with a direction under Article 16(2), it enters the name of a person in its register of members so as to increase the number of its members beyond 30, and their number for the time being remains above 30;
- (b) it circulates a prospectus relating to its securities; or
- (c) its securities are admitted to trade on a regulated market (as that term is defined by Article 102(1)).”.

4 Part 16 substituted

For Part 16 of the Law there is substituted the following Part –

“PART 16
ACCOUNTS AND AUDITS

Interpretation - Part 16

102 Interpretation - Part 16

(1) In this Part, unless the context otherwise requires –

‘accounts’ means accounts prepared in accordance with Article 105;

‘auditor’ means –

- (a) in the case of an individual, an individual who is a member of a recognized professional body and is permitted by that body to engage in public practice;
- (b) in the case of a partnership, a partnership that is a qualified partnership and where each of the persons who is responsible to it for examining or reporting on the accounts of a company pursuant to Article 113, is an individual who is a member of a recognized professional body and is permitted by that body to engage in public practice;
- (c) in the case of a body corporate, a body corporate that is controlled by auditors and where each of the persons who is responsible to it for examining or reporting on the accounts of a company pursuant to Article 113, is an individual who is a member of a recognized professional body and is permitted by that body to engage in public practice;
- (d) in respect of a company that is not a market traded company, an individual or firm authorized by the Commission under Article 113D(6) to carry out an audit of the company;

‘controlled by auditors’, in respect of a body corporate, means a body corporate where –

- (a) individuals who are members of a recognized professional body or auditors that fall within paragraph (b) or (c) of the definition ‘auditor’;
- (b) partnerships accepted by a recognized professional body as being qualified for appointment as auditors of companies incorporated in the United Kingdom;
- (c) bodies corporate accepted by a recognized professional body as being qualified for appointment as auditors of companies incorporated in the United Kingdom;
- (d) individuals who hold a qualification to audit accounts under the law of a European Economic Area member state other than the United Kingdom or the Republic of Ireland,

or any combination of persons mentioned in sub-paragraphs (a), (b), (c) and (d) –

- (e) constitute more than half the number of members of the body corporate;
- (f) hold more than half the voting rights of each class of members of the body corporate;
- (g) who are individuals, make up more than half the number of directors of the body corporate; or
- (h) hold more than half of the voting rights in the board of directors, committee or other management body of the body corporate;

‘Directive’ means Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments as for the time being in force;

‘exempt company’ means –

- (a) a company that is an issuer exclusively of debt securities admitted to trading on a regulated market, the denomination per unit of which is at least €50,000 or, in the case of debt securities denominated in another currency, equivalent, at the date of issue, to at least €50,000; or
- (b) an open-ended investment company –
 - (i) that holds a permit as a functionary specified in Group 1 of Part 2 of the Schedule to the Collective Investment Funds (Jersey) Law 1988³,
 - (ii) in relation to which a certificate granted under Article 8B of the Collective Investment Funds (Jersey) Law 1988 is in force, or
 - (iii) that is an unregulated fund within the meaning of the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008⁴;

‘firm’ means an entity, whether or not a legal person, that is not an individual and includes a body corporate, a corporation sole, a partnership, and an unincorporated association;

‘market traded company’ means –

- (a) a company whose transferable securities have been admitted to trading on a regulated market; or
- (b) a company in respect of which transferable securities have been admitted to trading on a regulated market,

but does not include an exempt company;

‘partnership’ includes –

- (a) a firm of a similar character to a partnership formed under the law of a country or territory outside Jersey; and
- (b) a limited liability partnership that is registered under the Limited Liability Partnerships (Jersey) Law 1997⁵ or a firm of a similar character to a limited liability partnership formed under the law of a jurisdiction outside Jersey,

but does not include any such partnership that is a body corporate;

‘professional oversight body’ means a body designated by an Order made under Article 113N;

‘qualified partnership’ means a partnership –

- (a) in which more than half of its partners are any of, or any combination of, the following –
 - (i) individuals who are members of recognized professional bodies,
 - (ii) partnerships that are themselves auditors as defined in paragraph (b) of the definition ‘auditor’,
 - (iii) bodies corporate that are themselves auditors as defined in paragraph (c) of the definition ‘auditor’,
 - (iv) individuals who hold a qualification to audit accounts under the law of a European Economic Area member state other than the United Kingdom or the Republic of Ireland; and
- (b) in which more than half of the voting rights in the partnership and, if it has a management body, in that body are held by persons specified in sub-paragraph (a);

‘recognized auditor’ means a firm or an individual whose name appears on the Register of Recognized Auditors;

‘recognized professional body’ means any of the following bodies –

- (a) the Institute of Chartered Accountants in England and Wales;
- (b) the Institute of Chartered Accountants of Scotland;
- (c) the Association of Chartered Certified Accountants;
- (d) the Institute of Chartered Accountants in Ireland;

‘Register of Recognized Auditors’ means the Register kept by the Commission under an Order made under Article 110(1);

‘regulated market’ has the same meaning as in the Directive (see Article 4.1(14) of the Directive);

‘rules’, in respect of a recognized professional body, means the rules of the body as to –

- (a) the eligibility of persons for appointment as auditors; and
- (b) the conduct of audit work,

that are binding on persons acting as auditors under this Part and, where Article 112(6) applies, includes rules published by the Commission in accordance with that Article;

‘transferable securities’ has the same meaning as in the Directive (see Article 4.1(18) of the Directive).

- (2) For the purposes of any Article of this Part where under or pursuant to this Part an officer of an auditor or of a recognized auditor who is in default is guilty of an offence, the expression ‘officer of the auditor in default’ means any officer, director,

partner or member of the auditor or of the recognized auditor who knowingly and wilfully authorizes or permits the default, refusal or contravention mentioned in the Article.

- (3) The Minister may, by Order, amend a definition in this Article.

Accounts

103 Accounting records

- (1) A company must keep accounting records that are sufficient to show and explain its transactions.
- (2) The records must be 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 under this Part comply with the requirements of this Law.

104 Retention of records

- (1) A company's accounting records must –
- (a) be kept at such place as the directors think fit; and
 - (b) be open at all times to inspection by the company's officers and its secretary.
- (2) If accounting records of a public company are kept at a place outside Jersey, returns with respect to the business dealt with in the accounting records so kept must –
- (a) be sent to, and kept in, Jersey; and
 - (b) be open at all times to inspection by the company's officers and its secretary.
- (3) The returns must 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 under this Part comply with the requirements of this Law.
- (4) Except as provided by Article 194 (winding up of company), the accounting records that a company is required by Article 103 to keep must be preserved by it for at least 10 years from the date on which they are made.

105 Accounts

- (1) Except as provided by paragraph (11), the directors of a company must prepare accounts for a period of not more than 18 months –
 - (a) beginning on the date the company was incorporated; or
 - (b) if the company has previously prepared a profit and loss account, beginning at the end of the period covered by the most recent accounts.
- (2) The accounts must be prepared –
 - (a) in the case of a market traded company, in accordance with generally accepted accounting principles prescribed for the purposes of this provision; or
 - (b) in any other case, in accordance with any generally accepted accounting principles.
- (3) The accounts of a company must specify the generally accepted accounting principles that have been adopted in their preparation.
- (4) The accounts of a company that is required by Article 113(1) to appoint an auditor must give a true and fair view of, or be presented fairly in all material respects so as to show –
 - (a) the company's profit or loss for the period covered by the accounts; and
 - (b) the state of its affairs at the end of the period, and must otherwise comply with any other requirements of this Law.
- (5) A company's accounts must be –
 - (a) approved by the directors; and
 - (b) signed on their behalf by one of them.
- (6) The accounts for a financial period of a company must –
 - (a) be prepared, and, if required under this Part, be examined and reported upon by an auditor; and
 - (b) subject to paragraph (8), be laid before a general meeting of the company together with a copy of any auditor's report on them.
- (7) The actions mentioned in paragraph (6) must be taken –
 - (a) in the case of a public company, within 7 months; or
 - (b) in the case of a private company, within 10 months,after the end of the financial period of the company covered by the accounts.
- (8) Paragraph (9) applies if at the end of a financial period of a company, an agreement under Article 87(4) dispensing with the holding of an annual general meeting has effect.
- (9) The company is not obliged to lay the accounts for the financial period or a copy of any auditor's report on them before a general meeting of the company unless a member of the company, not later

than 11 months after the end of the financial period covered by the accounts, by written notice given to the company, requires the company to do so.

- (10) In such a case the general meeting of the company must be held within 28 days after –
- (a) the receipt of the notice by the company; or
 - (b) the approval of the accounts by the directors,
- whichever last occurs.
- (11) For the purposes of this Article, the directors of a holding company need not prepare separate accounts under paragraph (1) if consolidated accounts for the company are prepared, unless required to do so by the members of the company by ordinary resolution.

106 Publication of interim accounts

A company must not publish interim accounts, whether or not audited, unless the accounts have been prepared –

- (a) in the case of a market traded company, in accordance with generally accepted accounting principles prescribed for the purposes of Article 105(2)(a); or
- (b) in any other case, in accordance with any generally accepted accounting principles.

107 Copies of accounts

- (1) This Article applies where a member of a company who has not previously been furnished with a copy of its latest accounts makes a written request to the company to be furnished with a copy of those accounts together with a copy of any auditor's report on them.
- (2) The company must, without charge and within 7 days of the request being made to it, furnish to the person the accounts requested together with any auditor's report on them.

108 Delivery of accounts to registrar

- (1) Where the directors of a public company are required to produce accounts for the company under Article 105(1), the directors must, for each financial period of the company, deliver to the registrar –
 - (a) a copy of the company's accounts for the period signed on behalf of the directors by one of them;
 - (b) a copy of the auditor's report on the accounts; and
 - (c) if any of the documents is not in English, a copy of it in English, certified to be a correct translation.

- (2) The documents must be delivered to the registrar within 7 months after the end of the financial period to which they relate.
- (3) If a public company becomes a private company during a financial period –
 - (a) paragraph (1) applies in relation to the company in respect of that period; but
 - (b) the requirement in the paragraph to deliver accounts is to be taken to have been satisfied if the accounts relate to either all of the financial period (including a period when the company was no longer a public company) or to only the part of the financial period during which the company was a public company.
- (4) Paragraph (5) applies if, not later than one month before the end of the period mentioned in –
 - (a) Article 105(1), 105(7) or 105(9); or
 - (b) paragraph (2) of this Article,
a written application is made to the Commission for an extension of the period.
- (5) The Commission may, by written notice to the company, extend the period if it is satisfied that a special reason for doing so exists.
- (6) If the Commission does so, it must send a copy of the notice to the registrar.
- (7) A company must pay the published fee and any late filing fee on filing documents under this Article.

109 Failure to comply with Article 103, 104, 105, 106, 107 or 108

If a company fails to comply with Article 103, 104, 105, 106, 107 or 108 –

- (a) the company; and
- (b) in the case of a public company, each officer of the company in default,
is guilty of an offence.

Recognized Auditors

110 Commission to maintain Register of Recognized Auditors

- (1) The Minister must make an Order requiring the Commission to keep a register, to be known as the Register of Recognized Auditors, of persons –
 - (a) who under Article 112 are auditors qualified to be recognized auditors; and

(b) who have applied and have been approved by the Commission to have their names entered on the Register of Recognized Auditors.

(2) The Order must require that the entry on the Register of Recognized Auditors in respect of each recognized auditor must contain –

- (a) the name and address of the recognized auditor;
- (b) in the case of an individual, the name of the recognized professional body the recognized auditor is a member of; and
- (c) in the case of a firm, the specified information relating to each of the persons who is responsible to the firm for examining or reporting on the accounts of a market traded company pursuant to Article 113A,

and may require each entry to contain other specified information.

(3) The Order may impose such obligations on –

- (a) recognized professional bodies;
- (b) any professional oversight body;
- (c) persons qualified or approved to be recognized auditors,

as the Minister considers necessary to achieve the objectives for which the Register of Recognized Auditors is established.

(4) The Order may also include –

- (a) provisions requiring that specified entries on the Register of Recognized Auditors be open to inspection at times and places specified or determined in accordance with the Order;
- (b) provisions enabling a person to require a certified copy of specified entries on the Register of Recognized Auditors;
- (c) provisions authorizing the charging of published fees for inspecting the Register of Recognized Auditors and for the provision of certified copies of entries in it,

but may also prescribe circumstances in which entries on the Register of Recognized Auditors shall not be made open for inspection or made available as certified copies.

(5) A person qualified or approved to be an eligible auditor –

- (a) who fails to comply with an obligation imposed under paragraph (3)(c); or
- (b) if the obligation is to provide information, who knowingly or recklessly provides information that is false or misleading in a material particular,

is guilty of an offence.

(6) In this Article ‘specified’ means specified by Order made under this Article.

111 Registration as a recognized auditor

- (1) Persons who under Article 112 are auditors qualified to be recognized auditors may apply to have their name entered on the Register of Recognized Auditors –
 - (a) by applying to the Commission in the manner published by the Commission; and
 - (b) by paying the published fee.
- (2) The Commission may refuse to enter the name of a person on the Register of Recognized Auditors if the Commission is satisfied that the person is not competent to act as a recognized auditor.
- (3) The Commission may –
 - (a) when entering the name of a person on the Register of Recognized Auditors; or
 - (b) at any subsequent time,make the registration of the person subject to the person complying with such conditions and limitations as the Commission considers appropriate, details of which the Commission must enter on the Register.
- (4) The Commission may amend the conditions and limitations –
 - (a) at any time on the Commission's own volition; or
 - (b) on the application of the recognized auditor.
- (5) The Commission may suspend or revoke the registration of a person as a recognized auditor if –
 - (a) in the opinion of the Commission, the recognized auditor is no longer competent or is not a fit and proper person to act as a recognized auditor;
 - (b) the recognized auditor has breached any condition or limitation imposed under paragraph (3);
 - (c) the recognized auditor is found guilty of an offence under paragraph (16) or (17);
 - (d) the recognized auditor has failed to pay a fee mentioned in paragraph (18) or Article 113M(4);
 - (e) the recognized auditor has breached any of the rules mentioned in Article 112(1) that apply to the auditor;
 - (f) the recognized auditor fails, within a reasonable time, to provide information required by the Commission pursuant to Article 113L or is found guilty of an offence under Article 113L(4); or
 - (g) in the opinion of the Commission, the continued registration of the recognized auditor may adversely affect a company of which the recognized auditor is auditor or any other person.
- (6) The Commission may, under paragraph (5), suspend the registration of a person as a recognized auditor –
 - (a) for a specified period; or

- (b) until, on the application of the recognized auditor, the auditor satisfies the Commission that the suspension may be revoked.
- (7) If a person who is a recognized auditor requests the Commission to suspend or revoke the person's registration as a recognized auditor, the Commission must comply with the request and may publish –
- (a) the name of the person;
 - (b) details of the action it took in respect of the person; and
 - (c) the reason why it took that action.
- (8) The suspension of the registration of a person under paragraph (7) shall be –
- (a) for a specified period; or
 - (b) if no period is specified, until the recognized auditor applies to the Commission for the registration to be restored.
- (9) The Commission must remove the name of a recognized auditor from the Register of Recognized Auditors if the Commission is satisfied that the recognized auditor is no longer an auditor who under Article 112 is an auditor qualified to be a recognized auditor.
- (10) If the Commission –
- (a) refuses to enter the name of a person on the Register of Recognized Auditors on an application made under paragraph (1);
 - (b) makes the registration of a person subject to conditions and limitations under paragraph (3);
 - (c) amends conditions and limitations under paragraph (4)(a);
 - (d) refuses to amend any condition or limitation on an application made under paragraph (4)(b);
 - (e) suspends or revokes the registration of a person as a recognized auditor under paragraph (5);
 - (f) refuses to revoke the suspension of the registration of a person as a recognized auditor on an application under paragraph (6)(b); or
 - (g) removes the name of a recognized auditor from the Register under paragraph (9),
- the Commission must, within 7 days of doing so, serve a notice on the applicant or recognized auditor, as the case may be.
- (11) The notice must –
- (a) specify the action taken by the Commission;
 - (b) set out the reasons why the Commission took the action; and
 - (c) advise the applicant or recognized auditor of the applicant's or auditor's right, under paragraph (12), to appeal to the court against the action taken by the Commission.
- (12) Where the Commission has served a notice on a person under paragraph (10) –

- (a) the person upon whom the notice was served may, within 28 days of the service of the notice or within such longer period as the court may approve, appeal to the court against the action taken by the Commission, as specified in the notice, on the ground that it was unreasonable for the Commission to take the action in all the circumstances of the case; but
 - (b) unless the court orders otherwise, if the person does appeal the action taken by the Commission and specified in the notice is not stayed and shall continue to have effect.
- (13) The court may, on an appeal under paragraph (12), make such order as it considers appropriate.
- (14) Paragraph (15) applies if the Commission –
 - (a) makes the registration of a person subject to conditions and limitations under paragraph (3);
 - (b) amends conditions and limitations under paragraph (4);
 - (c) suspends or revokes the registration of a person as a recognized auditor under paragraph (5); or
 - (d) removes the name of a recognized auditor from the Register of Recognized Auditors under paragraph (9),and the period for making an appeal under paragraph (12) has expired and no appeal was made or, if made, was unsuccessful or withdrawn.
- (15) The Commission may publish –
 - (a) the name of the person or recognized auditor;
 - (b) details of the action it took in respect of the person or recognized auditor; and
 - (c) the reason why it took that action.
- (16) An auditor must inform the Commission of any material change in any information that was supplied by the auditor to the Commission –
 - (a) at the time the auditor applied to become a recognized auditor; or
 - (b) at any subsequent time in compliance with this paragraph,and, if the auditor fails to do so as soon as practicable but in any event within 1 month of the change, the auditor and each officer of the auditor in default is guilty of an offence.
- (17) A person is guilty of an offence if the person knowingly or recklessly provides information for the purpose of paragraph (1)(a), (4)(b) or (6)(b) that is false or misleading in a material particular.
- (18) A recognized auditor must pay any published fee imposed on recognized auditors.

112 Qualification under rules of recognized professional bodies

- (1) An auditor is qualified to be a recognized auditor if the auditor is bound by –
 - (a) rules governing the conduct of the audit of market traded companies issued by a recognized professional body and approved by the Commission; or
 - (b) if no such rules have been issued by a recognized professional body, or, if issued, have not been approved by the Commission, rules governing the conduct of the audit of market traded companies published by the Commission.
- (2) The Minister must make an Order prescribing what any rules approved or published by the Commission under paragraph (1) must provide for before the Commission may approve or publish them.
- (3) The Order may, in particular, require that the rules –
 - (a) are adequate to ensure that an auditor is a fit and proper person;
 - (b) are adequate to prevent a person –
 - (i) who is not an auditor, or
 - (ii) where an auditor is a firm - who is not an officer, director, partner, member or employee of the firm,from being able to exert influence over the way in which an audit of a market traded company is conducted in circumstances in which that influence would be likely to affect the independence or integrity of the audit;
 - (c) are adequate to ensure that –
 - (i) audit work carried out under this Part is carried out properly and with integrity, and
 - (ii) an auditor is not appointed in circumstances in which the auditor has an interest that is likely to conflict with the proper conduct of the audit;
 - (d) cover –
 - (i) the technical standards to be applied in audit work carried out under this Part, and
 - (ii) the manner in which those standards are to be applied in practice;
 - (e) are designed to ensure that an auditor maintains an appropriate level of competence;
 - (f) contain provisions to ensure that an auditor who carries out audit work takes any steps required to enable the performance of the work to be monitored;
 - (g) where they relate to –
 - (i) the grant and withdrawal of eligibility for appointment as auditor, and
 - (ii) the discipline the body exercises,

- are fair and reasonable and include adequate provision for appeals;
- (h) contain provisions designed to ensure an auditor must take reasonable steps to be able to meet claims arising out of audit work carried out under this Part;
 - (i) contain provisions designed to ensure that the Commission or a professional oversight body can conduct investigations in relation to an auditor and has the right to take appropriate action.
- (4) The Commission must not approve the rules of a recognized professional body unless it has satisfied itself that the body –
- (a) has adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules;
 - (b) has effective arrangements for the investigation of complaints against auditors, and against itself in respect of matters arising out of its functions under the rules;
 - (c) promotes and maintain high standards of integrity in the conduct of audit work;
 - (d) will cooperate, by the sharing of information or otherwise, with the Minister, the Commission and any other authority, body or person having responsibility for the qualification, supervision or regulation of auditors, whether in Jersey or elsewhere; and
 - (e) will carry out a quality assurance review of each recognized auditor at least once in any period of 3 years.
- (5) An Order made under paragraph (2) may, in particular, provide for the Commission to withdraw its approval of the rules of a recognized professional body if at any time it is satisfied that the body –
- (a) has failed to comply with any obligation placed on it by an Order made under Article 110(3);
 - (b) has ceased to have or is not using any of the arrangements or resources mentioned in paragraph (4)(a);
 - (c) has ceased to have or is not using any of the arrangements mentioned in paragraph (4)(b);
 - (d) has not promoted or has not maintained the standards mentioned in paragraph (4)(c);
 - (e) has failed to cooperate in the manner mentioned in paragraph (4)(d);
 - (f) has failed to meet the requirements of paragraph (4)(e); or
 - (g) has failed to give notification or supply information when required to do so under Article 113K.
- (6) The rules published by the Commission under paragraph (1)(b) shall be the rules of the recognized professional body that are applicable to the eligibility of a member of the body to be appointed to be a statutory auditor under section 1212(1) of the

Companies Act 2006 of the United Kingdom, amended as necessary to make them –

- (a) applicable to Jersey and the auditing of the accounts of market traded companies in accordance with this Part; and
- (b) comply with any additional relevant requirement of an Order made under paragraph (2).

Appointment of auditors and their functions

113 Appointment and removal of auditors

- (1) A company must appoint an auditor to examine and report in accordance with this Law upon its accounts if –
 - (a) it is a public company;
 - (b) its articles so require; or
 - (c) a resolution of the company in general meeting so requires.
- (2) If the company is a market traded company –
 - (a) the auditor appointed under paragraph (1) must be a recognized auditor; and
 - (b) an audit of the company's accounts by any other person is of no effect for the purposes of this Part.
- (3) Except as provided by paragraphs (5) and (6), a company that is required by this Article to appoint an auditor must at each annual general meeting appoint an auditor to hold office from the conclusion of that meeting to the conclusion of the next annual general meeting.
- (4) The directors or (failing the directors) the company in general meeting may, at any time before the first annual general meeting, appoint an auditor to hold office to the conclusion of that meeting.
- (5) If a company that is required by this Article to appoint an auditor dispenses with the holding of an annual general meeting under Article 87(4) any auditor then in office shall continue to act and be taken to have been re-appointed for each succeeding financial period until –
 - (a) the conclusion of the next annual general meeting; or
 - (b) the company in general meeting resolves that the appointment of the auditor be brought to an end.
- (6) If –
 - (a) a company that has dispensed with the holding of an annual general meeting becomes bound to appoint an auditor; and
 - (b) there is no auditor in office,the directors must appoint an auditor to continue to act until the conclusion of the next annual general meeting.

- (7) The directors or the company in general meeting may fill any casual vacancy in the office of auditor and fix the auditor's remuneration.
- (8) A company may by resolution at any time remove an auditor despite anything in any agreement between it and the auditor.
- (9) Nothing in this Article is to be taken as depriving a person removed under it of compensation or damages payable to the person in respect of the termination of the person's appointment as auditor.
- (10) A company that fails to comply with paragraph (1) and each officer of the company in default is guilty of an offence.

113A Auditor's report

- (1) The auditor of a company that is required to appoint an auditor under Article 113 must make a report to the company's members on the accounts of the company examined by the auditor.
- (2) The report must state whether, in the opinion of the auditor, the accounts –
 - (a) have been properly prepared in accordance with this Law; and
 - (b) give a true and fair view or, alternatively, are presented fairly in all material respects.
- (3) The report must –
 - (a) state the name of the auditor; and
 - (b) be signed and dated.
- (4) If –
 - (a) the auditor is an individual, the report must be signed by the auditor; or
 - (b) the auditor is a firm, the report must be signed in his or her name by the individual in the firm who is responsible to it for examining and reporting on the accounts, for and on behalf of the auditor.
- (5) The fact that an individual signs an audit report does not make the individual liable to any civil liability to which the individual would not otherwise be liable.

113B Auditor's duties and powers

- (1) This Article applies to companies that are required to appoint an auditor under Article 113.
- (2) The auditor of a company must, in preparing an audit report, carry out such investigations as will enable the auditor to form an opinion as to –
 - (a) whether proper accounting records have been kept by the company;

- (b) whether proper returns adequate for the audit have been received from branches not visited by the auditor; and
- (c) whether the company's accounts are in agreement with its accounting records and returns.

(3) If the auditor is of the opinion –

- (a) that proper accounting records have not been kept by the company;
- (b) that proper returns adequate for the audit have not been received from branches not visited by the auditor; or
- (c) that the company's accounts are not in agreement with its accounting records and returns,

the auditor must, in each such case, state that fact in the report produced by the auditor.

(4) The auditor of the company –

- (a) has a right of access to the company's records at all times; and
- (b) is entitled to require from the company's officers and the secretary such information and explanations as the auditor thinks necessary for the performance of the auditor's duties.

(5) The auditor of a company is entitled –

- (a) to receive notice of, and to attend, any meeting of members of the company; and
- (b) at any such meeting, to be heard on any part of the business of the meeting that concerns the auditor.

(6) The auditor of a company must mention in an audit report any failure to obtain from the company any information or explanation that, to the best of the auditor's knowledge and belief, was necessary for the audit.

(7) An auditor of a company may resign from office by depositing at the company's registered office –

- (a) a written notice of resignation; and
- (b) a statement under paragraph (9).

(8) The notice operates to bring the auditor's term of office to an end –

- (a) on the date on which the notice is deposited; but
- (b) if a later date is specified in the notice, on that later date.

(9) When, for any reason, an auditor of a company ceases to hold office the auditor must deposit at the company's registered office –

- (a) a statement to the effect that there are no circumstances connected with the auditor's ceasing to hold office that the auditor considers should be brought to the notice of the members or creditors of the company; or
- (b) if there are such circumstances, a statement setting out those circumstances.

- (10) A company that receives a statement mentioned in paragraph (9)(b) must, within 14 days of receiving the statement, send a copy of it –
 - (a) to each member of the company; and
 - (b) to each person entitled to receive notice of a general meeting of the company.
- (11) A recognized auditor of a market traded company must –
 - (a) maintain the working papers relating to the audit of the company in English; and
 - (b) make those working papers available to the Commission, to a recognized professional body or to a professional oversight body, upon demand.
- (12) An auditor who fails to comply with paragraph (9) and each officer of the auditor in default is guilty of an offence.
- (13) A company that fails to comply with paragraph (10) and each officer of the company in default is guilty of an offence.
- (14) A recognized auditor who fails to comply with paragraph (11) and each officer of the auditor in default is guilty of an offence.

113C False statements to auditors

- (1) This Article applies to companies that are required to appoint an auditor under Article 113.
- (2) An officer of a company or its secretary is guilty of an offence if –
 - (a) knowingly or recklessly, the officer or secretary makes to the auditor of the company, either in writing or orally, a statement that conveys or purports to convey any information or explanation that the auditor requires, or is entitled to require, as auditor of the company; and
 - (b) the statement is false or misleading in a material particular.

113D Ineligibility to act as auditor

- (1) A person who is not a recognized auditor must not –
 - (a) accept an appointment to be, or act as, the auditor of a market traded company for the purpose of this Part; or
 - (b) attempt to persuade others that the person is a recognized auditor.
- (2) A person who is not an auditor must not –
 - (a) accept an appointment to be or act as the auditor of any other company for the purposes of this Part; or
 - (b) attempt to persuade others that the person is an auditor.
- (3) If, during the term of office of the auditor of a company, the auditor becomes ineligible for appointment as the auditor of the company, the auditor must immediately –
 - (a) resign from office; and

- (b) in accordance with Article 113B(7), (8)(a) and (9), give written notice to the company that the auditor has resigned by reason of becoming ineligible for appointment.
- (4) A person is guilty of an offence if the person –
 - (a) accepts an appointment to be, or acts as, the auditor of a company in contravention of paragraph (1)(a) or paragraph (2)(a);
 - (b) attempts to persuade others that the person is a recognized auditor or an auditor in contravention of paragraph (1)(b) or paragraph (2)(b); or
 - (c) fails to give notice mentioned in paragraph (3)(b).
 - (5) In proceedings against a person for an offence under paragraph (4) it is a defence for the person to show that the person did not know and had no reason to believe that the person was, or had become, ineligible for appointment as the auditor of the company.
 - (6) The Commission may, in respect of a company that is not a market traded company, on the application of an individual or a firm that is not an auditor, authorize the individual or firm to carry out an audit of the company for the purposes of this Part.
 - (7) An individual or a firm that knowingly or recklessly provides information in respect of an application under paragraph (6) that is false or misleading in a material particular is guilty of an offence.
 - (8) The Commission may, when authorizing an individual or a firm under paragraph (6) or at any subsequent time, make the authorization subject to the individual or firm complying with such conditions and limitations as the Commission considers appropriate, including, in particular, in the case of a firm, a condition or limitation that would set out who, in the firm, may be responsible to the firm for examining and reporting on the accounts of a company pursuant to Article 113.
 - (9) The Commission may amend the conditions and limitations –
 - (a) at any time on its own volition; or
 - (b) on the application of the individual or firm authorized by the Commission.
 - (10) The Commission may suspend or revoke the authorization of an individual or a firm under paragraph (6) if –
 - (a) in the opinion of the Commission, the individual or firm is not competent or is not a fit and proper individual or firm to carry out an audit of the company for the purposes of this Part; or
 - (b) the individual or firm has breached any condition or limitation imposed under paragraph (8).
 - (11) The Commission may, under paragraph (10), suspend the authorization of an individual or a firm –
 - (a) for a specified period; or

- (b) until, on the application of the individual or firm, the individual or firm satisfies the Commission that the suspension may be revoked.
- (12) If an individual or a firm who is authorized under paragraph (6) requests the Commission to suspend or revoke the authorization of the individual or firm, the Commission must comply with the request and may publish –
- (a) the name of the individual or firm;
 - (b) details of the action it took in respect of the individual or firm; and
 - (c) the reason why it took that action.
- (13) The suspension of the authorization of an individual or a firm under paragraph (12) shall be –
- (a) for a specified period; or
 - (b) if no period is specified, until the individual or firm applies to the Commission for the authorization to be restored.
- (14) If the Commission –
- (a) refuses to authorize an individual or a firm under paragraph (6);
 - (b) makes the authorization of an individual or a firm subject to conditions and limitations under paragraph (8);
 - (c) amends conditions and limitations of the authorization of an individual or a firm under paragraph (9)(a);
 - (d) refuses to amend any condition or limitation of the authorization of an individual or a firm on an application made under paragraph (9)(b);
 - (e) suspends or revokes the authorization of an individual or a firm under Article (10); or
 - (f) refuses to revoke the suspension of the authorization of an individual or a firm on an application under paragraph (11)(b),
- the Commission must, within 7 days of doing so, serve a notice on the individual or firm.
- (15) The notice must –
- (a) specify the action taken by the Commission;
 - (b) set out the reasons why the Commission took the action; and
 - (c) advise the individual or firm of the right the individual or firm has, under paragraph (16), to appeal to the court against the action taken by the Commission.
- (16) Where the Commission has served a notice on an individual or a firm under paragraph (15) –
- (a) the individual or firm upon whom the notice was served may, within 28 days of the service of the notice or within such longer period as the court may approve, appeal to the court against the action taken by the Commission, as

specified in the notice, on the ground that it was unreasonable for the Commission to take the action in all the circumstances of the case; but

- (b) unless the court orders otherwise, if the individual or firm does appeal, the action taken by the Commission and specified in the notice is not stayed and shall continue to have effect.

(17) The court may, on an appeal under paragraph (16), make such order as it considers appropriate.

(18) Paragraph (19) applies if the Commission –

- (a) makes the authorization of an individual or a firm subject to conditions and limitations under paragraph (8);
- (b) amends conditions and limitations of the authorization of an individual or a firm under paragraph (9); or
- (c) suspends or revokes the authorization of an individual or a firm under paragraph (10),

and the period for making an appeal under paragraph (16) has expired and no appeal was made or, if made, was unsuccessful or withdrawn.

(19) The Commission may publish –

- (a) the name of the individual or firm;
- (b) details of the action it took in respect of the individual or firm; and
- (c) the reason why it took that action.

113E Independence requirement

- (1) The Minister may, by Order, prescribe circumstances where an auditor must not act as the auditor of a company for the purposes of this Part.
- (2) The prescribed circumstances must relate to an actual or possible lack of independence on the part of the auditor.

113F Effect of lack of independence

- (1) If, during an auditor's term of office as auditor of a company, the auditor becomes prohibited from acting by virtue of an Order made under Article 113E(1), the auditor must immediately –
 - (a) resign from office; and
 - (b) in accordance with Article 113B(7), (8)(a) and (9), give written notice to the company that the auditor has resigned by reason of lack of independence.
- (2) If an auditor –
 - (a) fails to resign from office when required to do so under paragraph(1)(a); or

(b) fails to give the notice required to be given under paragraph (1)(b),

the auditor and each officer of the auditor in default is guilty of an offence.

- (3) In proceedings against an auditor or an officer for an offence mentioned in paragraph (2) it is a defence for the auditor or officer to show that the auditor or officer did not know and had no reason to believe that the auditor was or had become, prohibited from acting as an auditor of the company by virtue of an Order made under Article 113E(1).

113G Effect of appointment of a partnership

- (1) This Article applies where a partnership constituted under the law of Jersey or of a jurisdiction in which a partnership is not a legal person, is by virtue of this Part appointed as the auditor of a company.
- (2) Unless a contrary intention appears, the appointment is an appointment of the partnership as such and not of the partners.
- (3) If the partnership ceases, the appointment is to be treated as extending to –
- (a) any appropriate partnership that succeeds to the practice of the partnership; or
 - (b) any other appropriate person who succeeds to the practice having previously carried it on in partnership.
- (4) For the purposes of paragraph (3) –
- (a) a partnership is to be regarded as succeeding to the practice of another partnership only if the members of the successor partnership are substantially the same as those of the former partnership; and
 - (b) a partnership or other person is to be regarded as succeeding to the practice of a partnership only if the partnership or person succeeds to the whole or substantially the whole of the business of the former partnership.
- (5) If the partnership ceases and the appointment is not treated under paragraph (3) as extending to any partnership or other person, the appointment may, with the consent of the company in respect of which the partnership is auditor, given at a general meeting of the company, be treated as extending to an appropriate partnership, or other appropriate person, who succeeds to –
- (a) the business of the former partnership; or
 - (b) such part of that business as is agreed by the company in general meeting is to be treated as comprising the appointment.
- (6) For the purposes of this Article, a partnership or other person is ‘appropriate’ if the partnership or person –

- (a) is an auditor or, as the case may require, a recognized auditor; and
- (b) is not prohibited by virtue of an Order made under Article 113E(1) from acting as auditor of the company.

Regulations and exemptions

113H Power to amend Part 16

The States may amend this Part by Regulations.

113I Power to make Regulations in respect of recognized auditors

- (1) The States may by Regulations require a recognized auditor to keep and make available to the public specified information, including information regarding –
 - (a) the auditor's ownership and governance;
 - (b) the auditor's internal controls with respect to the quality and independence of the auditor's audit work;
 - (c) the auditor's turnover; and
 - (d) the companies for whom the auditor has acted as a recognized auditor.
- (2) Regulations under this Article may –
 - (a) impose such obligations as the States thinks fit on recognized auditors;
 - (b) require the information to be made available to the public in a specified manner.
- (3) Such Regulations may further provide for the imposition of fines in respect of offences under the Regulations.
- (4) In this Article 'specified' means specified by Regulations under this Article.

113J Exemption from liability for damages

- (1) A person within paragraph (2) is not liable in damages for anything done or omitted in the discharge or purported discharge of functions to which this paragraph applies.
- (2) The persons within this paragraph are –
 - (a) a recognized professional body;
 - (b) an officer or employee of a recognized professional body;
 - (c) a member of the governing body or a member of a committee of a recognized professional body;
 - (d) a professional oversight body;
 - (e) an officer or employee of a professional oversight body; and

- (f) a member of the governing body or a member of a committee of a professional oversight body.
- (3) Paragraph (1) applies to the functions of a recognized professional body so far as relating to, or to matters arising out of, any of the following –
 - (a) the rules, practices, powers and arrangements of the body;
 - (b) the obligations to promote and maintain high standards of integrity in the conduct of audit work;
 - (c) the obligations imposed on the body by or by virtue of this Part.
- (4) Paragraph (1) does not apply –
 - (a) if the act or omission is shown to have been in bad faith; or
 - (b) so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000⁶ (acts of public authorities incompatible with Convention rights).

Information

113K Matters to be notified to the Commission

- (1) The Commission may require a recognized professional body –
 - (a) to notify the Commission immediately of the occurrence of such events as the Commission may specify in writing and to give it such information in respect of those events as is so specified;
 - (b) to give the Commission, at such times or in respect of such periods as the Commission may specify in writing, such information as is so specified.
- (2) The notices and information required to be given must be such as the Commission may reasonably require for the exercise of the Commission's functions under this Part.
- (3) The Commission may require information given under this Article to be given in a specified form or verified in a specified manner.
- (4) Any notice or information required to be given under this Article must be given in writing unless the Commission specifies or approves some other manner.

113L The Commission may require recognized auditors to give information

- (1) The Commission may, by written notice, require a recognized auditor to give the Commission such information as it may reasonably require for the exercise of its functions under this Part.

- (2) The Commission may require information given under this Article to be given in a specified form or verified in a specified manner.
- (3) Any information required to be given under this Article must be given in writing unless the Commission specifies or approves some other manner.
- (4) A recognized auditor who –
 - (a) fails, within a reasonable time, to comply with a requirement made by the Commission under this Article; or
 - (b) in purported compliance with such a requirement, knowingly or recklessly provides information that is false or misleading in a material particular,and each officer of the auditor in default is guilty of an offence.

Enforcement

113M Commission to ensure compliance

- (1) The Commission must ensure that an audit of a market traded company carried out under this Part by an auditor who is a recognized auditor is carried out in accordance with the rules mentioned in Article 112(1) that are applicable to the auditor when auditing a market traded company under this Part.
- (2) Accordingly –
 - (a) where the rules mentioned in paragraph (1) are the rules of a recognized professional body, the Commission or an agent of the Commission must ensure that the recognized professional body or a delegate thereof approved by the Commission monitors and enforces compliance with those rules and otherwise carries out its obligations under this Part; and
 - (b) where the rules mentioned in paragraph (1) are rules published under Article 112(1)(b) by the Commission, the Commission must monitor and enforce compliance with those rules.
- (3) The Commission or an agent of the Commission may, for the purposes of this Article, in the case of any audit of a market traded company, check directly that the audit has been carried out in accordance with the rules mentioned in Article 112(1).
- (4) The Commission may publish fees that it may charge recognized auditors –
 - (a) for exercising the powers and carrying out the Commission's duties under Articles 113K and 113L and this Article; or
 - (b) where any of the Commission's powers or duties under Articles 113K and 113L and this Article are exercised or carried out by an agent of the Commission, to reimburse the

Commission for any costs incurred by it by virtue of that arrangement.

113N Delegation of the Commission's powers and duties

- (1) The Minister may, on the recommendation of the Commission, make an Order under this Article that enables the powers and duties of the Commission under Articles 113K, 113L and 113M, to the extent specified in the Order, to be exercised or carried out by a body designated by the Order.
- (2) That body may be either –
 - (a) a body corporate established by the Order; or
 - (b) a body (whether a body corporate or an unincorporated association) that is already in existence either in Jersey or elsewhere.
- (3) The Order has the effect of transferring to the body designated by it all the powers and duties of the Commission under Articles 113K, 113L and 113M subject to such exceptions and reservations as may be specified in the Order.
- (4) The Order may confer on the body designated by it such other powers and duties supplementary or incidental to those transferred as appear to the Minister to be appropriate.
- (5) During the time the powers and duties of the Commission are transferred by an Order made under this Article to a body designated in the Order –
 - (a) in the case of any transferred powers of the Commission, the Commission cannot exercise them concurrently with the body; and
 - (b) in the case of any transferred duties of the Commission, the obligation to carry them out rests with the body and not with the Commission.
- (6) The Minister must not make an Order under this Article transferring powers or duties of the Commission to an existing body unless it appears to the Minister that –
 - (a) the body is able and willing to exercise the powers or to carry out the duties that would be transferred by the Order; and
 - (b) the body has arrangements in place relating to the exercise of the powers or to the carrying out of the duties that are such as to be likely to ensure that the conditions in paragraph (7) are met.
- (7) The conditions are –
 - (a) that the powers and duties in question will be exercised or carried out effectively; and
 - (b) where the Order is to contain any requirements or other provisions specified under paragraph (8), that those powers

and duties will be exercised or carried out in accordance with any such requirements or provisions.

- (8) The Order may contain such requirements or other provisions relating to the exercise of the powers or the carrying out of the duties by the designated body as appear to the Minister to be appropriate.
- (9) Those provisions may include provisions providing for the designated body to publish and charge fees for exercising the powers or carrying out the duties delegated to it under the Order.

1130 Enforcement of rules

- (1) A recognized professional body may, to secure the enforcement of its rules mentioned in Article 112(1), apply to the court –
 - (a) for an order enabling the body to enforce disciplinary action it has decided to take against a person who is or was a recognized auditor bound by the rules; or
 - (b) for an order making a recognized auditor who is bound by the rules subject to such supervision, restraint or conditions when carrying out an audit of a market traded company under this Part as may be specified in the order.
- (2) The court may make the order applied for and any ancillary order that it considers necessary, appropriate or desirable.
- (3) Where it appears to the Commission or a professional oversight body, that a recognized professional body –
 - (a) has failed to secure the enforcement of its rules mentioned in Article 112(1); or
 - (b) has otherwise failed to comply with any of its obligations under this Part,the Commission or the professional oversight body may apply to the court to secure the enforcement of the rules or compliance with any of its obligations.
- (4) On such an application, the court may order the recognized professional body to take such steps as the court directs to secure –
 - (a) the enforcement of the body's rules; or
 - (b) compliance with any of its obligations under this Part.
- (5) The Commission may, to secure the enforcement of rules published by it under Article 112(1)(b), apply to the court –
 - (a) for an order enabling the Commission to enforce disciplinary action it has decided to take against a person who is or was a recognized auditor bound by the rules; or
 - (b) for an order making a recognized auditor who is bound by the rules subject to such supervision, restraint or conditions when carrying out an audit of a market traded company under this Part as may be specified in the order.

- (6) The court may make the order applied for and any ancillary order that it considers necessary, appropriate or desirable.

113P Confidentiality

- (1) This Article applies to information (in whatever form) that relates to –

- (a) the private affairs of an individual; or
- (b) any particular business,

and that is provided to a body or person to which this Article applies in connection with the exercise of its functions under this Part.

- (2) This Article applies to –

- (a) a recognized professional body;
- (b) the Commission;
- (c) a professional oversight body; and
- (d) the registrar.

- (3) Except as provided by paragraphs (4), (6) and (7), the information must not be disclosed –

- (a) during the lifetime of the individual; or
- (b) so long as the business continues to be carried on,

without the consent of the individual or the person for the time being carrying on the business.

- (4) The information may be disclosed to a person or body mentioned in paragraph (5) to enable the person or body to carry out the functions of the person or body.

- (5) The persons and bodies are –

- (a) a recognized professional body;
- (b) the Commission;
- (c) a professional oversight body;
- (d) the registrar;
- (e) any other authority, body or person having responsibility for the qualification, supervision or regulation of auditors, whether situated in Jersey or elsewhere;
- (f) an organization that, in a jurisdiction outside Jersey, carries out in that jurisdiction any function that is the same as, or similar to, a function that is carried out in Jersey by the Commission,

and includes, in each case, an officer or agent of the person or body.

- (6) This Article does not prohibit the disclosure of information –

- (a) when it is to assist a recognized professional body, the Commission or a professional oversight body to carry out its duties under this Part;
 - (b) that is to be used to assist an inspector appointed under Part 19;
 - (c) to a company, that relates to an audit of the company's accounts;
 - (d) to the public, that relates to the powers and duties of the Commission or a professional oversight body pursuant to Article 113M and that does not enable an audited company or an auditor to be identified;
 - (e) that may or is to be used for the purposes of criminal proceedings;
 - (f) that is a summary or collection of information that does not enable any person to whom the information relates to be identified;
 - (g) that may be published under Article 111(7), 111(15), 113D(12) or 113D(19).
- (7) This Article does not prohibit the disclosure of information that is or has been available to the public from any other source.
- (8) Nothing in this Article authorizes the making of a disclosure in contravention of the Data Protection (Jersey) Law 2005⁷.
- (9) A person who discloses information in contravention of this Article is guilty of an offence, unless the person –
- (a) did not know, and had no reason to suspect, that the information had been provided as mentioned in paragraph (1); or
 - (b) took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

113Q Application of Part 19 to market traded companies

- (1) In Part 19, references to the affairs of a company shall be taken, where the company is a market traded company, to include reference to –
- (a) the company's compliance with the accounting principles applicable to the company under this Part; and
 - (b) any aspect of its accounts or their auditing that raises or appears to raise important issues affecting the public interest.
- (2) If a report mentioned in Article 135(1) is in respect of any aspect of the affairs of a market traded company mentioned in paragraph (1)(a) or (b), the Minister or Commission may, in addition to the persons mentioned in Article 135(2), forward a copy of the report to any of the following –
- (a) any relevant recognized professional body;
 - (b) a professional oversight body;

- (c) the registrar.
- (3) For the purposes of, or as a consequence of, an investigation of a market traded company being carried out or that has been carried out under Part 19, the Commission or the Minister may direct a company –
- (a) to have its accounts re-audited; or
- (b) to restate its accounts in respect of a specified period by a specified date and, if further directed to do so, to have them audited.
- (4) If a company fails to comply with a direction given under paragraph (3) the company and each officer of the company in default is guilty of an offence.
- (5) Where this Article applies –
- (a) Article 128(2) shall be taken to include the Minister and the Commission; but
- (b) Article 128(3) shall not apply to an application made by the Minister or by the Commission.”.

5 Schedule 1 amended

In the table in Schedule 1 to the Law, for the items that appear in respect of the Articles that form Part 16 of the Law, the following items are substituted –

“109	Company failing to comply with Article 103 (keeping accounting records), 104 (retaining accounting records), 105 (preparing and laying accounts), Article 106 (publishing interim accounts), Article 107 (supplying copies of accounts to members) or 108 (delivering copy of accounts to registrar)	Level 4	For contravention of Article 107 or 108, Level 2
109	Liquidator or other officer of public company failing to comply with Article 103, 104, 105, 106, 107 or 108	2 years or a fine; or both	
110(5)(a)	Failure to comply with an obligation imposed by an Order made under the Article	Level 4	Level 2
110(5)(b)	Knowingly or recklessly provides information that is false or misleading in a material particular	2 years or a fine; or both	
111(16)	Failure by recognized auditor or any officer in default to inform	Level 4	Level 2

	Commission of change in provided information		
111(17)	Person providing false or misleading information	2 years or a fine; or both	
113(10)	Company failing to appoint auditor when required to do so	A fine	
113(10)	Officer failing to appoint auditor when company required to do so	2 years or a fine; or both	
113B(12)	Auditor ceasing to hold office failing to deposit statement as required by Article 113B(9)	A fine	
113B(12)	Failure by officer of auditor ceasing to hold office to deposit statement as required by Article 113B(9)	A fine	
113B(13)	Company failing to send notice of auditor's resignation to members and to other persons entitled to receive notice of general meetings	A fine	
113B(13)	Failure by officers of company to send notice of auditor's resignation to members and to other persons entitled to receive notice of general meetings	A fine	
113B(14)	Recognized auditor failing to keep working papers of audit of market traded company in the English language or failing to produce them on demand	A fine	
113B(14)	Officer of recognized auditor failing to keep working papers of audit of market traded company in the English language or failing to produce them on demand	A fine	
113C(2)	Company officer or secretary making false or misleading statement to auditors	5 years or a fine; or both	
113D(4)	Person accepting an appointment to be, or acting as, an auditor of a market traded company or attempting to persuade others that the person	2 years or a fine; or both	

	is a recognized auditor, when not a recognized auditor		
113D(4)	Person accepting an appointment to be, or acting as, an auditor of a company or attempting to persuade others that the person is an auditor, when not an auditor	2 years or a fine; or both	
113D(4)	Person failing to give company notice of ineligibility	2 years or a fine; or both	
113D(7)	Person providing false or misleading information	2 years or a fine; or both	
113F(2)	Auditor or officer in default if auditor acting when prohibited or failing to give notice	2 years or a fine; or both	
113L(4)(a)	Recognized auditor or officer in default failing to comply with a requirement of the Commission to provide information	Level 4	
113L(4)(b)	Recognized auditor or officer in default providing false or misleading information to the Commission	2 years or a fine; or both	
113P(9)	Unauthorized disclosure of information	2 years or a fine; or both	
113Q(4)	Company failing to comply with a direction to have its accounts re-audited or to restate them (and failing, if further directed to do so, to have those restated accounts audited)	A fine	
113Q(4)	Officer of company that fails to comply with a direction to have the company's accounts re-audited or to restate them (and failing, if further directed to do so, to have those restated accounts audited)	2 years or a fine; or both"	

6 Transitional provisions

(1) In this Regulation –

- (a) “commencement day” means the day when Regulation 5 was brought into force;

- (b) words and expressions that are used in this Regulation and that are defined in Article 102 of the Law have the same meanings in this Regulation as they are given by that Article.
- (2) An auditor –
- (a) who under Article 112 of the Law is qualified to be a recognized auditor; and
- (b) who, within 3 months after the commencement day, makes an application under Article 111(1) of the Law,
- shall be taken to be and to have been a recognized auditor from the commencement day until the application is finally determined by the Commission or, on appeal, by the court or is withdrawn.
- (3) An auditor –
- (a) who is not qualified under Article 112 of the Law to be a recognized auditor; and
- (b) who was the auditor of a market traded company on the commencement day,
- shall be taken to be a recognized auditor in respect of the auditing of the company for a period of one year from the commencement day and for any additional period, not exceeding one year, as the Commission may, in any particular case, approve.
- (4) Where –
- (a) immediately before the commencement day, a person was authorized under Article 113(2) or 113B(2) to audit a company; and
- (b) on the commencement day the company was not a market traded company,
- the person shall be taken to have been authorized under Article 113D(6) to audit the company.

7 Citation

These Regulations may be cited as the Companies (Amendment No. 4) (Jersey) Regulations 200-.

8 Commencement

- (1) Regulation 4 shall come into force on such day as the States may by Act appoint.
- (2) Regulations 2, 3, 5 and 6 shall come into force on the same day as Regulation 4.
- (3) Regulations 1, 7 and this Regulation shall come into force 7 days after these Regulations are made.

-
- ¹ *chapter 13.125*
 - ² *chapter 13.125*
 - ³ *chapter 13.100*
 - ⁴ *chapter 13.100.95*
 - ⁵ *chapter 13.475*
 - ⁶ *chapter 15.350*
 - ⁷ *chapter 15.240*