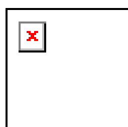
DRAFT COMPANIES (AMENDMENT No. 6) (JERSEY) LAW 200-

Lodged au Greffe on 20th February 2001
by the Finance and Economics Committee



STATES OF JERSEY

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180 2001 P.29

Price code: F

REPORT

Introduction

The Companies (Amendment No. 6) (Jersey) Law 200- is the first major overhaul of company legislation in Jersey since the enactment of the Companies (Jersey) Law 1991.

Background

Jersey, like other finance centres, has developed substantial business as an international company registration and administration centre. There are currently in the region of 33,000 "live" companies registered with the Registrar of Companies, most of which are owned by non-resident individuals, trusts or companies conducting business or holding assets outside of the Island. Conventional trading companies are a minority.

Given the importance of registration and administration activities, and the international use (and potential for abuse) of Jersey companies, it is important that Jersey has a modern law supporting a competitive industry. The Commission believes that Jersey's companies legislation should be well structured and in an accessible form, provide maximum freedom for participants to perform their proper functions, but also recognize the case for high standards and for ensuring appropriate protection for all interested parties, including creditors and minority shareholders.

The purpose of the Law

The Law will -

- take account of changes in international standards over the past 10 years;
- enhance Jersey's attractiveness as a financial centre by offering greater flexibility; and
- address practical difficulties in the application of the Companies (Jersey) Law 1991, as amended, that have arisen since its enactment.

The Law also consolidates a number of Orders issued under the Companies (Jersey) Law 1991, as amended, which will be subsequently revoked.

The main provisions of the Law

I. *Types of companies*

The Law provides a wider range of formation options. Companies might -

- be formed with a share capital and/or with guarantor members, the latter group holding no shares and with liability limited to the amount that they have guaranteed;
- issue shares expressed as having a nominal value (par value), or having no such value (no par value); and
- include members holding limited shares, their liability being limited to any amount unpaid on those shares, and/or members holding unlimited shares, their liability to the company being completely unlimited.

The Law also allows a private company (though not a public company) to be incorporated with a single member.

II. *Mergers*

The Law permits two or more Jersey companies, neither having unlimited shares nor guarantor members, to merge and continue as a single company, with the agreement of both sets of shareholders.

Under existing legislation, one company may already transfer the whole of its undertaking or property to another. These merger provisions, however, greatly simplify this process and dispense with the requirement for the liquidation of one or more of the merging companies.

To protect third party interests, notice of such mergers will also be provided to the creditors of the companies involved, who can apply to the Royal Court to restrain such a merger.

III. *Continuance*

If it is authorized to do so by the laws of the jurisdiction in which it is incorporated, a foreign incorporated company will, under the Law, be able to apply to the Commission to continue as a company incorporated in Jersey under the Companies (Jersey) Law 1991, as amended.

Inter alia, the Commission will satisfy itself that such a company is authorized to make an application under its own domestic legislation, and, that when it becomes incorporated in Jersey, it will cease to be incorporated overseas.

IV. *Financial assistance*

The Law clarifies the circumstances in which a company may offer financial support to others to assist them in acquiring its shares, and, where a Jersey company is a subsidiary of another company, removes the requirement for its parent to pass a special resolution to approve the provision of such assistance.

V. *Disqualification of persons from the management of companies*

The disqualification period for company directors is brought into line with the Bankruptcy (Désastre) (Jersey) Law 1990, at a maximum of 15 years (rather than just five years). The Law also allows the Royal Court to disqualify any person from being a director of, or taking part in the management of, any company anywhere in the world.

VI. *Domestic and international co-operation*

Under the Law, the Commission will be able to require the Registrar of Companies to disclose to it information held privately on directors and secretaries at each company's registered office. The Commission will also be permitted to furnish a copy of any report of an inspector conducted under the Companies (Jersey) Law 1991, as amended, to an overseas authority that discharges functions corresponding to those of the Registrar of Companies.

Conclusion

The Companies (Amendment No. 6) (Jersey) Law 200- aims to keep Jersey's companies legislation at the forefront of international standards, providing improved flexibility to participants whilst continuing to ensure appropriate protection for interested parties.

Explanatory Note

This draft Law revises the Companies (Jersey) Law 1991. It includes the following proposals:

Kinds of companies

The Companies (Jersey) Law 1991 ("the principal Law") enables the formation of incorporated companies. The capital of such a company must be divided into shares that are expressed as having nominal value. The liability of the shareholders - its members - is limited to the amounts unpaid on their shares.

At present, a company may be formed as a public company (which may raise capital by the issue of a prospectus to the public) or as a private company. All companies must be incorporated with at least two members and, as a general rule, a company with more than 30 shareholders is treated as a public company.

One of the principal effects of the draft Law is to provide in the following ways for a wider range of options for persons who wish to form companies in the Island -

(a) A company could be formed with members who hold shares, or with members whose liability is limited to the amounts they guarantee.

A company could be formed either with shares that are expressed as having nominal value ("par value shares") or with shares that are not expressed as having such a value ("no par value shares").

A company could not have both kinds of shares, but it could have guarantor members as well as shareholders, and it could consist entirely of guarantor members.

Thus any company (whether public or private) could be incorporated as -

(i) a "par value company" - that is, a company having par value shares, whether or not it also has guarantor members,

(ii) a "no par value company" - a company having no par value shares, whether or not it also has guarantor members, or

(iii) a "guarantee company" - a company consisting only of guarantor members.

(b) A company could issue a limited share, in respect of which the liability of the holder would be limited to the amount owing on the share. It could also issue an unlimited share in respect of which the liability of the holder would be unlimited.

(c) A private company (though not a public company) could be incorporated with a single member.

Mergers

Two or more companies would be able to merge and continue as a single company, if their shareholders so agree.

The facility to merge will be subject to safeguards for minority shareholders and creditors. It will not be available to a company if it has any members who hold unlimited shares or are guarantor members (though these restrictions do not apply to mergers of wholly-owned subsidiaries).

Continuance

If it is authorized to do so by the laws of the place in which it is incorporated, an overseas body corporate could apply to the Commission for a certificate to continue as a company incorporated in the Island under the principal Law. The Commission must be satisfied (*inter alia*) that the company is authorized to make the application under the laws of the country in which it is incorporated and that on the issue of the certificate, it will cease to be incorporated in that country. If the application is granted, the foreign body corporate will then become a company under Jersey's Law.

Other changes

The draft Law contains various other proposals for the revision of the principal Law. These relate mainly to the concepts of

holding and subsidiary companies; company seals; overseas branch registers; share certificates; the redemption of shares; the disqualification of persons for the management of companies; the qualifications of auditors; restrictions on distributions; disclosure of inspectors' reports to overseas regulatory authorities; the recognition of foreign corporations; and restrictions, where a person is required under the principal Law to provide information to an inspector of a company, on the use of that information in criminal proceedings against that person. They also include amendments that are consequential on the proposals already described.

The amending Law is set out in the following way:

Article 1 identifies Companies (Jersey) Law 1991 as the Law that is being amended.

Article 2 inserts new and revised definitions in the principal Law, in consequence of the proposed changes to the substantive provisions in that Law.

Article 3 revises the meaning of the words "holding company", "subsidiary" and "wholly-owned subsidiary". These follow the statute law of the United Kingdom (as amended by section 144 of the Companies Act 1989).

Article 4 replaces the existing provisions in the principal Law relating to the formation of a new company and the contents of its memorandum and articles of association.

The new clauses provide for the various kinds of company already described, sole membership of private companies, limited and unlimited liability, and the appropriate requirements for the memorandum and articles of association with a company with any of these features.

Article 5 requires (*inter alia*) that when the memorandum of a public company is delivered to the registrar for incorporation, the statement accompanying it must include the name, address, nationality, occupation and date of birth of each director.

This requirement is at present contained in Article 2(d) of the Companies (General Provisions) (Jersey) Order 1992, which will be consequentially revoked.

The effect of *Article 6* is to provide that a certificate of incorporation (or, in the case of a company incorporated before the commencement of the principal Law, its Act of Incorporation) is conclusive evidence that the requirements of the principal Law (or the former Laws) as to the registration of a company have been complied with.

Article 7 makes minor drafting changes.

Article 8 provides that the name of a company with limited liability must continue to indicate that fact, but allows it to do so (as in the United Kingdom) by using the words of limitation either in full or in the abbreviated forms specified in the Article.

Article 9 is a consequential amendment.

Article 10 replaces Part IV of the Law, which contains provisions dealing with public and private companies. The new Part reflects the changes earlier described. It also deals with circumstances in which a public company with more than 30 members can obtain a dispensation to become and remain a private company.

Article 11 follows the current law of the United Kingdom by providing that a company need not have a common seal, and provides for duplicates of common seals.

It also continues to provide for a company to have an official seal for use abroad and an official seal for documents relating to securities.

Article 12 follows an amendment of the law of the United Kingdom removing a requirement that a subsidiary must dispose of shares held by it in its holding company.

Article 13: Under Article 27 of the principal Law, if a company carries on business for more than six months without at least two members, a sole member may become personally liable for its debts contracted during that period.

The effect of the amendment (which is consequential on the introduction of single member private companies) is to provide that Article 27 does not apply to private companies, or to public companies whose issued shares are all held by or by a nominee of any other body corporate.

*Article 14 (*and *Articles 16, 19, 21, 25, 26, 32, 42, 53, 54, 55, 57, 58, 59, 61, 62, 63, 64, 65, 66, 68, 72 and 73)* are largely consequential on the introduction of no par value shares and guarantor membership. Their main effect is to restrict existing Articles (where appropriate) to particular kinds of companies or to substitute for references to shareholdings in the principal Law (where appropriate) references to membership rights, which will not necessarily arise from shareholding or from shares having nominal value.

The effect of *Article 15* is to empower the Committee to control the procuring anywhere by a Jersey company of the circulation of a prospectus within or outside the Island.

Article 17: Article 36 of the principal Law permits, conditionally, the payment by a company of commissions to persons who subscribe or procure subscriptions for its shares.

The effect of this amendment is to extend that provision to subscription for securities conferring rights to acquire shares.

Article 18 effects a drafting change.

Article 20 inserts a new Article 38A in the principal Law, to provide for the alteration of the share capital of a no par value company.

It also replaces Article 38(3) of the principal Law by a new Article 38B to provide that the conversion of the currency in which the nominal amount of fully paid shares is expressed shall be effected at a specified time that is within 40 days before the conversion takes place. The present time limit is 30 days.

It also replaces Article 39 of the principal Law (which requires the transfer of share premiums to a company's share premium account). The effect of the changes is as follows:

(a) Article 39 will be confined to par value companies.

(b) A share premium account may be expressed in any currencies.

It also inserts in the principal Law a new Article 39A requiring a no par value company to maintain a stated capital account for each class of its shares. The company is required to transfer to the stated capital account the value received by the company for shares of that class. It is also to transfer into the account any amounts that it resolves to transfer into it from any profit and loss account or capital or revenue reserve. A stated capital account may be applied in the redemption or purchase of shares under Part XI of the principal Law (*q.v.*).

The provisions of the Companies (Application of Share Premiums) (Jersey) Order 1992 (which will be consequentially revoked) are brought into a new Article 39B, and are widened to include appropriate provision for no par value companies.

Article 22 inserts new Articles 40A and 40B in the principal Law. These provide for the conversion of a company's capital structure from par value shares to no par value shares, or from no par value shares to par value shares.

In each case, this may be done by altering the memorandum by a special resolution of the company. If there is more than one class of shares, the provisions of Article 52 of the principal Law must also be complied with. These provisions relate to the variation of class rights.

The power to change the company's share structure under new Article 40A or Article 40B may only be exercised by converting all of its shares in issue.

On a conversion of par value shares to no par value shares, a company must transfer the amounts paid up on the shares, and the balances of its share premium accounts and capital redemption reserves, to the appropriate stated capital account.

On a change of its capital structure to par value shares, a company must convert the shares into fully paid up shares that give the holder, as nearly as possible, the rights that he had before the conversion, and that also have a nominal value not exceeding the amount in the stated capital account for that class divided by the number of shares of that class.

The company must transfer to the appropriate share capital account from the appropriate stated capital account an amount equal to the total nominal value of the converted shares of the class to which it relates. To the extent that there is a surplus, it is to be transferred to the appropriate share premium account.

Article 23 consequentially amends Article 41 of the principal Law (which relates to registers of members of companies) to

take into account the new kinds of company for which this draft Law provides.

Article 24 removes, in the case of a subsidiary of a public company, the requirement that a person who wishes to obtain a copy of the register must submit a declaration undertaking not to use it except for members' meetings, offers to acquire shares or other purposes for the time being prescribed by the Committee.

Article 27 incorporates in the principal Law (with minor changes) the provisions of the Companies (Overseas Branch Registers) (Jersey) Order 1992, which will be consequentially revoked.

Article 28: Article 50 of the principal Law requires a company to prepare share certificates within two months after allotment or transfer (unless the conditions of allotment provide otherwise, or the company is entitled to refuse to register the transfer).

Article 28 of this draft Law incorporates in the principal Law the exemption from this requirement for open-ended investment companies whose articles do not require certificates to be issued. The exemption is at present contained in the Companies (Share Certificates) (Exemption) (Jersey) Order 1992, which will be consequentially revoked.

It also empowers the Committee to provide by Order that Article 51 of the principal Law (by virtue of which a share certificate is *prima facie* evidence of title) shall not apply, or shall apply with modifications, to certificates for shares to which the Order relates.

Article 29 amends Article 51 of the principal Law (by reason of which share certificates are *prima facie* evidence of title) to provide that, instead of being sealed, they may be signed either by two directors or by a director and the secretary.

Article 30 revises Article 52 of the principal Law (relating to the variation of class rights) to provide for holders of no par value shares and guarantor members.

If no provision for variation is made in the memorandum or articles, such rights may be varied only if -

(a) in the case of a no par value company, the holders of two-thirds in number of the issued shares of the class agree; or

(b) in the case of a class of guarantor members, those whose liability is in the aggregate at least two-thirds of the total liability of the members of that class agree,

or the variation is sanctioned by special resolution at a separate meeting of the class.

The new Article also provides that a variation reducing the liability of any class of members to contribute to the company or increasing their benefits is to be treated as a variation of the rights of other classes. For that purpose, members of the first class are not to be regarded as members of any other class to which they also belong.

Article 31 makes consequential amendments to Article 53 of the principal Law (relating to members' rights to object to variations of class rights).

The right to seek to have a variation cancelled by the Court will be exercisable -

(a) in the case of par value shares, by the holders of not less than one-tenth in nominal value of the issued shares of the class concerned;

(b) in the case of no par value shares, by the holders of not less than one-tenth in number of the issued shares of the class; and

(c) in the case of guarantor members, by those whose liability is not less than one-tenth of the total liability of the members of the class.

Article 33 revises Article 55 of the principal Law (which relates to the power of a company to issue redeemable shares). The effect is to introduce corresponding provisions in respect of no par value shares and, in the solvency test, to substitute the concept of "realisable value" for "value" of assets.

Article 34 repeals Article 56 of the principal Law, which prohibits the redemption of shares from a share premium account or from unrealised profits unless the company remains solvent. Payments in redemption will be subject only to the remedies in a winding up provided by Article 181 of the principal Law.

Article 35 revises Article 57 of the principal Law (which authorizes companies to purchase their own shares).

The amendments have the following effect:

(a) Article 57 will only apply to limited shares.

(b) The provisions of the Companies (Purchase of Own Shares) (Jersey) Order 1992 are incorporated into it.

(c) The following provisions of Article 57 will not in any event apply to open-ended investment companies, namely those requiring a special resolution; those requiring that shares to be purchased otherwise than on a stock exchange must not carry the right to vote on the purchase; and those requiring that a resolution authorizing a purchase on a stock exchange must specify the maximum number of shares to be bought, the maximum and minimum prices and the date by which the authority to purchase is to expire.

Article 36 revises Article 58 of the principal Law, which restricts the circumstances in which a company may give financial assistance for the purchase of its shares.

Article 37 consequentially amends Article 59 of the principal Law.

Article 38 amends Article 60 of the principal Law to enable the surrender of shares to a company instead of forfeiture, in the event of a failure to pay money due on them.

Article 39 amends Article 61of the principal Law to provide -

(a) for the reduction of the capital accounts of any company;

(b) that a reduction of unlimited shares is not subject to confirmation by the court; and

(c) that a reduction of a share capital account (of a par value company) or a stated capital account (of a no par value company) is not subject to confirmation by the court if it does not reduce liability on shares that are not paid up or the net assets of the company, and the amount of the reduction is transferred to a capital redemption reserve for unissued shares to be allotted as fully paid bonus shares.

Article 40 amends Article 62 of the principal Law (relating to applications to the court for orders confirming reductions of capital) in consequence of the new provisions for par value and no par value shares and unlimited shares.

Article 41 amends Article 64 of the principal Law (which relates to the registration of an Act of the court confirming a reduction of capital and the approved minute showing the details) in consequence of the new provisions for par value and no par value companies.

Article 43 replaces Article 71 of the principal Law (which relates to annual returns) to provide for returns for no par value and guarantee companies and for unlimited shares.

Article 43 also amends Article 71 to require that companies which are public companies or subsidiaries of public companies on 1st January in each year - instead of the date on which the return is actually filed - are to provide in their annual returns the information about their directors that is already required by Article 71.

It also amends the basis on which late filing fees will be calculated. At present, Article 71 prescribes a fee not exceeding four times the filing fee if a return is not delivered by the end of February. It also provides that if the return is not delivered by the end of June, the company is guilty of an offence and is liable to an additional fine not exceeding one-half of the filing fee for every day on which the default continues.

The amended Article will instead provide as follows -

(a) the Committee may by Order prescribe the times at which fees become payable;

(b) it may by Order set late fees not exceeding five times the filing fee for private companies and ten times the fee for public companies;

(c) it may by Order set different fees depending on the lateness of returns; and

(d) it will in every case be an offence (for which the company and every officer in default will be liable) not to file a return on time.

Article 44 repeals Article 73(3), which is spent.

Article 45 is a consequential amendment.

Article 46 inserts a new Article 74A in the principal Law. This requires the sole member of a private company, if he is also a director, to ensure that the terms of any contracts that he makes with the company are recorded in writing.

If he fails to do so, the company and every officer in default will be guilty of an offence.

The new Article will not apply to contracts made in the ordinary course of the company's business.

Article 47 requires disclosure of a director's interest to be made at the first meeting of directors at which the transaction to which it relates is considered after he becomes aware of the conflict. The disclosure must be recorded in the minutes.

If the director does not make the disclosure at that meeting, he must do so in writing to the secretary as soon as possible. The secretary must then inform the other directors and table the notice of disclosure at their next meeting; and all disclosures must be recorded in the minutes.

Article 48 replaces Articles 78 and 79 of the principal Law, relating to the disqualification of persons from being directors or participating in the management of Jersey companies.

The effect of the changes are as follows:

(a) The power of the court to prohibit a person from doing so without the leave of the court is extended to include participation in the management, in Jersey, of foreign bodies corporate.

(b) The grounds on which an order may be made are widened to include the case in which the court considers that the person's conduct in relation to any body corporate (wherever it is incorporated or carries on business) makes him unfit to participate in the Island in the management of a company or an overseas body corporate.

(c) The period for which an order may be made is increased from five to 15 years, in the discretion of the court.

Article 49 revises the list of recognized professional bodies for company secretaries.

Article 50 allows the Commission, in writing, to require the registrar of companies to disclose to it information on a register of directors and secretaries.

Article 51 is consequential on the amendment of Article 1.

Article 52: Article 87 of the principal Law governs annual general meetings, in the case of private companies, in the following way:

(a) A private company that holds its first annual general meeting within 18 months after its incorporation need not hold its next annual general meeting until the second year after the year in which it is incorporated.

(b) Subject to (a), the company must hold an annual general meeting in every year.

(c) Not more than 22 months may elapse between the annual general meetings.

(d) If the members agree unanimously, the company need not hold an annual general meeting while that agreement remains in effect.

Article 52 also corrects a procedural anomaly.

Article 56 replaces Article 92 of the principal Law, which contains general provisions relating to meetings and voting, in consequence of the new provisions for sole members, no par value companies and guarantor members.

Article 60 requires a sole member of a company to record his decision. This will have the same effect as a resolution passed at a general meeting.

Article 67 restricts the discretion of the Commission to extend the time in which directors of a public company must deliver accounts to the registrar to the case in which an application for the extension has been made not later than one month before they are due.

Article 69 revises the qualifications for company auditors.

One effect of the change is to permit a partnership (including a limited liability partnership or a Scottish firm) to act as an auditor if at least 75 per cent of the partners belong to professional institutions of which individual auditors must be members, and each partner who undertakes or supervises the audit is himself a member of one of those institutions. The amendment also incorporates into the principal Law itself the provisions of the Companies (Qualifications of Auditor) (Jersey) Order 1996, which will be consequentially revoked.

Article 70 revises Article 114 of the principal Law (which restricts distributions) in the following ways -

(a) before a company may make a distribution out of its unrealised profits, the directors must reasonably believe that after it is made the realisable value of its assets will not be less than the aggregate of its liabilities and capital accounts;

(b) the definition of "distribution" is narrowed by excluding the reduction of capital by the redemption or purchase of any shares; and

(c) the definition of "capitalization" is widened to include the transfer of profits (in the case of a no par value company) to a stated capital account.

The requirement in (a) above will be in lieu of the present requirements in Article 114(3)(b) of the principal Law.

Article 70 of the amending Law also makes minor consequential changes to Article 114.

Article 71 contains a consequential amendment.

Article 74 makes a consequential amendment.

Article 75 contains consequential amendments.

Article 76 of this amending Law inserts in the principal Law two new Parts, providing for mergers of companies and the continuance in the Island of overseas bodies corporate.

New Part XVIIIB (new Articles 127A to 127G) relates to mergers.

New Article 127A provides that two or more companies that do not have unlimited shares or guarantor members may agree in writing to merge, and specifies matters with which the agreement must deal.

New Article 127B requires the directors of merging companies to submit the merger agreement to meetings of their members, for their approval by special resolution.

New Article 127C provides an alternative procedure for a holding company that wishes to merge with its wholly-owned subsidiaries, or for two or more wholly-owned subsidiaries of the same holding company that wish to merge with each other.

New Article 127D requires notice of mergers to be given to the creditors of the companies involved, and enables those creditors to apply to the court to restrain a merger.

New Article 127E enables a member of a company that is party to a merger agreement to apply to the court for an order under Article 143 of the principal Law (which provides *inter alia* for the relief for members of companies whose affairs are conducted in a manner that is or may be unfairly prejudicial to their interests).

New Article 127F specifies the documents that the merged company is to deliver to the registrar after a merger has been approved and any objections by creditors or members have been dealt with.

New Article 127G provides for the completion of a merger by the registration of the merged company and the issue to it of a certificate of incorporation.

New Part XVIIIC (new Articles 127H to 127N) relates to the continuance of overseas bodies corporate in the Island.

New Article 127H enables an overseas body corporate, on payment of the prescribed fee, to apply to the Commission for a certificate to continue as a company incorporated in the Island under the principal Law. It also specifies the documents and other information that must be submitted with the application.

New Article 127I prescribes requirements for the articles of a body corporate that applies to continue as a company incorporated in the Island.

Article 127J requires the Commission to obtain from the applicant security for its expenses in considering the application. Those expenses will be recoverable in addition to the application fee.

New Article 127K provides for the consideration of the applicant's proposed name as a continued company.

New Article 127L enables the Commission, in its discretion, to approve an application.

New Article 127M provides that when an application is approved, the registrar will issue a provisional certificate of continuance to the applicant. It will thereupon become a company to which the principal Law applies as if it had been incorporated in the Island.

New Article 127N requires the registrar to issue a final certificate of continuance when he is satisfied that the company has ceased to be incorporated overseas. A final certificate of continuance will be conclusive evidence of compliance with the requirements of the Law as to continuance, and as to whether a continued company is a public or private company.

New Article 127O empowers the Committee to prescribe information to be provided on applications for continuance and for the issue of final certificates of continuance.

Article 77 removes the fetter in Article 128(1) of the principal Law on the powers of the Committee and the Commission to approve inspectors of companies.

It also increases from £5,000 to £10,000 the amount of security for the costs of investigating the affairs of a company that the court may require an applicant for the appointment of inspectors to provide.

The effect of *Article 78* is to provide that when a person is required to answer questions put to him under Article 130 of the principal Law by an inspector, he will be guilty of an offence if he makes a false statement. However, his answers may only be used in evidence in criminal proceedings in which he is charged with making such a statement or proceedings for contempt of court under Article 134 of the principal Law.

Article 79 amends Article 135 of the principal Law to permit the Committee or the Commission to furnish a copy of the report of an inspector of a company to an overseas authority that discharges functions corresponding to those of the Commission in relation to bodies corporate.

Article 80 contains a drafting change.

Articles 81 and *82* are consequential.

Article 83 effects a drafting change.

Articles 84 and *85* are consequential.

Article 86 widens the registrar's powers to dissolve companies who do not comply with the requirements for filing returns.

Article 87 inserts a new Article 213A in the principal Law, to give effect in the Island to the provisions of the Foreign Corporations Act 1991 of the United Kingdom.

Article 88 revises Article 216 of the principal Law (relating to parties to criminal offences) to follow current policy.

Article 89 revises the First Schedule to the principal Law (relating to penalties) in consequence of the other changes made by

this amending Law.

Article 90 revokes other enactments consequentially.

Article 91 and the Schedule amend other enactments consequentially.

Article 92 specifies the name by which the amending Law may be cited, and provides for that it will come into force on the seventh day after it is registered in the Royal Court.

COMPANIES (AMENDMENT No. 6) (JERSEY) LAW 200-

A LAW to amend further the Companies (Jersey) Law 1991, sanctioned by Order of Her Majesty in Council of the

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(Registered on the day of 200-)

STATES OF JERSEY

The day of 200-

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

ARTICLE 1

In this Law, "the principal Law" means the Companies (Jersey) Law 1991,[1] as amended.[2]

ARTICLE 2

(1) In Article 1(1) of the principal Law,[3] the definitions "distributable profits" and "equity share capital" shall be deleted.

(2) In Article 1(1) of the principal Law,[4] for the definitions "limited life company", "private company", "prospectus", "public company", "securities" and "share" respectively there shall be substituted the following definitions -

" 'limited life company' means a limited life company as defined in Article 3H;";

" 'private company' means a private company as defined in Article 3B;";

" 'prospectus' means an invitation to the public to become a member of a company or to acquire or apply for any securities, for which purposes -

(a) an invitation is made to the public where it is not addressed exclusively to a restricted circle of persons; and

(b) an invitation shall not be considered to be addressed to a restricted circle of persons unless -

(i) the invitation is addressed to an identifiable category of persons to whom it is directly communicated by the inviter or his agent,

(ii) the members of that category are the only persons who may accept the offer and they are in possession of sufficient information to be able to make a reasonable evaluation of the invitation, and

(iii) the number of persons in the Island or elsewhere to whom the invitation is so communicated does not exceed 50;";

" 'public company' means a public company as defined in Article 3A;";

" 'securities' -

(a) in Article 51A, has the meaning assigned to it by paragraph (4) of that Article; and

(b) except as provided in sub-paragraph (a) of this definition, means -

(i) shares in or debentures of a body corporate,

(ii) interests in any such shares or debentures, or

(iii) rights to acquire any of the foregoing;”;

“ ‘share’ -

(a) means a share in the share capital of a body corporate and, unless a distinction between shares and stock is expressed or implied, also means stock; and

(b) in Article 36, also has the meaning assigned to it by paragraph (1A) of that Article,

except that in paragraph (1) of Article 116, it means a share (as defined in sub-paragraph (a) of this definition) to which paragraph (2) of Article 116 refers;”.

(3) In Article 1(1) of the principal Law,[5] there shall be inserted in their appropriate alphabetical order the following definitions -

“ ‘arrangement’, in Articles 125 and 126, includes a reorganisation of a 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;”;

“ ‘capital accounts’ means -

(a) in relation to a par value company, its share capital account and any share premium accounts and capital redemption reserves; and

(b) in relation to a no par value company, its stated capital accounts and any capital redemption reserves;”;

“ ‘cause’ has the meaning assigned to it by the customary law of the Island;”;

“ ‘certificate of continuance’ means a provisional certificate of continuance issued by the registrar under Article 127M or a final certificate of continuance issued by the registrar under Article 127N;”;

“ ‘delivered’, in Articles 200 and 201, includes (in the case of a document which is a notice) given;”;

“ ‘fixed period of time’, in Articles 3H, 144 and 144A, means a period of time which is ascertainable without reference to any event that is -

(a) contingent; or

(b) otherwise uncertain;”;

“ ‘former forenames or surname’ does not include -

(a) in the case of a peer or a person usually known by a British title which differs from his surname, the name by which he was known before the adoption of the title or his succession to it; or

(b) in the case of any person, a former forename or surname which was changed or disused before he attained the age of 20, or which has been changed or disused for a period of not less than 20 years;”;

“ ‘guarantee company’ means a guarantee company as defined in Article 3G;”;

“ ‘guarantor member’ means a member of a company (whether or not it is a guarantee company) whose liability in his capacity as such a member is limited by guarantee, that is to say limited by the memorandum to the amount which he thereby undertakes (by way of guarantee and not by reason of

holding any share) to contribute to the assets of the company in the event of its being wound up;";

" 'limited company' means a limited company as defined in Article 3C;";

" 'limited share' means a share in respect of which liability is limited to the amount unpaid on it;";

" 'merged company' means a company in respect of which a certificate of incorporation is issued under Article 9, pursuant to paragraph (1) of Article 127G;";

" 'net asset value', in relation to the shares of an open-ended investment company, means net asset value as defined in the company's articles;";

" 'no par value company' means a no par value company as defined in Article 3F;";

" 'no par value share' means a share which is not expressed as having nominal value;";

" 'open-ended investment company' means a company -

(a) the sole business of which is to invest in securities or other property of any description, with the aim of spreading investment risk;

(b) the articles of which provide that its shares, or substantially all its shares, are to be redeemed or purchased at the request of the holders at a price or prices not exceeding the net asset value of those shares; and

(c) which holds a permit as a functionary of Group 1 of Part II of the Schedule to the Collective Investment Funds (Jersey) Law 1988;[6]";

" 'partnership', in Articles 113A, 113B, 113C and 113D, includes-

(a) a Scottish firm; and

(b) a limited liability partnership which is registered under the Limited Liability Partnerships (Jersey) Law 1997;[7]";

" 'par value company' means a par value company as defined in Article 3E;";

" 'par value share' means a share which is expressed as having nominal value;";

" 'recognized professional body', in Articles 113, 113A, 113B and 113D, means -

(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; or

(d) the Institute of Chartered Accountants in Ireland;";

" 'surname', in the case of a peer or a person usually known by a title which differs from his surname, means that title;";

" 'unlimited share' means a share in respect of which liability is not limited to the amount unpaid on it;";

" 'variation', in Articles 52 and 53, includes abrogation;".

(4) For sub-paragraphs (b) and (c) of Article 1(2)[8] there shall be substituted the following sub-paragraphs -

"(b) except in Articles 2 and 2A, do not include an association incorporated under the 'Loi (1862) sur les

teneures en fidéicommis et l'incorporation d'associations';[9]

(c) do not include a Scottish firm.".

(5) Article 1(2A) of the principal Law[8] shall be repealed.

ARTICLE 3

For Article 2 of the principal Law[10] there shall be substituted the following Articles -

"ARTICLE 2

Meanings of 'subsidiary', 'wholly-owned subsidiary' and 'holding body'

(1) A body corporate is a subsidiary of another body corporate if the second body -

(a) holds a majority of the voting rights in the first body;

(b) is a member of the first body and has the right to appoint or remove a majority of the board of directors of the first body; or

(c) is a member of the first body and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the first body,

or if the first body is a subsidiary of a body corporate which is itself a subsidiary of the second body.

(2) A body corporate is a wholly-owned subsidiary of another body corporate if the first body has no members except -

(a) the second body; and

(b) wholly-owned subsidiaries of or persons acting on behalf of the second body or the second body's wholly-owned subsidiaries.

(3) A body corporate is the holding body of another body corporate if the second body is a subsidiary of the first body.

(4) A holding company is a holding body which is a company.

(5) The Committee may by Order modify the provisions of this Article and Article 2A and, without prejudice to the generality of the foregoing, any such Order may amend the meaning of 'subsidiary', 'wholly-owned subsidiary', 'holding body' and 'holding company' for the purposes of all or any provisions of this Law.

ARTICLE 2A

Further provisions relating to subsidiaries and holding bodies

(1) The provisions of this Article explain expressions used in Article 2 and otherwise supplement that Article.

(2) In sub-paragraphs (a) and (c) of paragraph (1) of Article 2, the references to the voting rights in a body corporate are to the rights conferred on shareholders in respect of their shares, or (in the case of a body not having a share capital) on members, to vote at general meetings of the body on all or substantially all matters.

(3) In sub-paragraph (b) of paragraph (1) of Article 2, the reference to the right to appoint or remove a majority of a board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all or substantially all matters; and for the purposes of that provision -

(a) a body corporate shall be treated as having the right to appoint to a directorship if -

(i) a person’s appointment to it follows necessarily from his appointment as director of the body, or

(ii) the directorship is held by the body itself; and

(b) a right to appoint or remove which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.

(4) Rights which are exercisable only in certain circumstances shall be taken into account only -

(a) when the circumstances have arisen, and for so long as they continue to obtain; or

(b) when the circumstances are within the control of the person having the rights,

and rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.

(5) Rights held by a person in a fiduciary capacity shall be treated as not held by him.

(6) Rights held by a person as nominee for another shall be treated as held by the other; and rights shall be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.

(7) Rights attached to shares held by way of security shall be treated as held by the person providing the security -

(a) where, apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with his instructions; and

(b) where the shares are held in connexion with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.

(8) Rights shall be treated as held by a body corporate if they are held by any of its subsidiaries; and nothing in paragraph (6) or (7) shall be construed as requiring rights held by a body corporate to be treated as held by any of its subsidiaries.

(9) For the purposes of paragraph (7), rights shall be treated as being exercisable in accordance with the instructions or in the interests of a body corporate if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of -

(a) any subsidiary or holding body of the first body; or

(b) any subsidiary of a holding body of the first body.

(10) The voting rights in a body corporate shall be reduced by any rights held by the body itself.

(11) References in any of paragraphs (5) to (10) to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of those paragraphs, but do not include rights which by virtue of any such provision are to be treated as not held by him.”.

ARTICLE 4

For Articles 3, 4, 5, and 6 of the principal Law[11] there shall be substituted the following Articles -

“ARTICLE 3

Method of formation

(1) Any two or more persons associated for a lawful purpose (none of whom is a minor or an interdict) may, by signing and delivering to the registrar a memorandum of association which states that the company is to be

a public company, apply for the formation of an incorporated public company with or without limited liability.

(2) Any one or more persons associated for a lawful purpose (not being more than 30 in number, and none of whom is a minor or an interdict) may, by signing and delivering to the registrar a memorandum of association which states that the company is to be a private company, apply for the formation of an incorporated private company with or without limited liability.

(3) A public company or a private company may be formed -

(a) having the liability of all or any of its members limited by shares, that is to say limited by the memorandum to the amounts (if any) unpaid on the shares respectively held by them;

(b) having the liability of all or any of its members limited by guarantee, that is to say limited by the memorandum to such amounts as those members thereby respectively undertake (by way of guarantee and not by reason of holding any share) to contribute to the assets of the company in the event of its being wound up; or

(c) having, in respect of the liability of all or any of its members, no limit.

(4) A public company or a private company may be formed as -

(a) a par value company;

(b) a no par value company; or

(c) a guarantee company,

but shall not have a share capital the shares of which include par value shares and no par value shares.

ARTICLE 3A

Public companies

A company is a public company if -

(a) its memorandum states that it is a public company; or

(b) it is an existing company which became a public company on the thirtieth day of March 1992 by the operation of paragraph (2) of Article 16 (as then in force), and it has not subsequently become a private company.

ARTICLE 3B

Private companies

A company is a private company if -

(a) its memorandum states that it is a private company; or

(b) it is a company which, immediately before the commencement of this Article was a private company, and it has not subsequently become a public company.

ARTICLE 3C

Limited companies

(1) A par value company or a no par value company is a limited company if -

(a) any person is a member of the company by reason of holding a limited share; or

(b) any person is a guarantor member of the company,

whether or not it also has members whose liability is unlimited.

(2) A guarantee company is a limited company.

ARTICLE 3D

Unlimited companies

A company is an unlimited company if -

(a) it is a par value company or a no par value company;

(b) no person is a member of the company by reason of holding a limited share; and

(c) no person is a guarantor member of the company.

ARTICLE 3E

Par value companies

A company is a par value company if -

(a) it is registered with share capital;

(b) its shares are expressed as having nominal value; and

(c) either -

(i) its memorandum states that it is a par value company, or

(ii) it is a company which was registered under this Law before the commencement of this Article,

whether or not it also has guarantor members.

ARTICLE 3F

No par value companies

A company is a no par value company if -

(a) it is registered with shares which are not expressed as having nominal value; and

(b) its memorandum states that it is a no par value company,

whether or not it also has guarantor members.

ARTICLE 3G

Guarantee companies

A company is a guarantee company if -

(a) it consists only of guarantor members; and

(b) its memorandum states that it is a guarantee company.

ARTICLE 3H

Limited life companies

(1) A company (whether it is a par value company, a no par value company or a guarantee company) is a limited life company if its memorandum includes or its articles include a provision that the company shall be wound up and dissolved upon -

(a) the bankruptcy, death, expulsion, insanity, resignation or retirement of any member of the company; or

(b) the happening of some other event that is not the expiration of a fixed period of time.

(2) A limited life company may include in its memorandum or articles a provision for its winding up and dissolution on the expiration of a fixed period of time.

ARTICLE 4

Memorandum of association

(1) The memorandum of a company shall be in the English or French language, and shall be printed.

(2) The memorandum shall state -

(a) the name of the company;

(b) whether it is a public company or a private company;

(c) whether it is a par value company, a no par value company or a guarantee company;

(d) the full name and the address of each subscriber who is a natural person; and

(e) the corporate name and the address of the registered or principal office of each subscriber which is a body corporate.

(3) The memorandum shall be signed by or on behalf of each subscriber, in the presence of at least one witness who shall attest the signature and insert his own name and address.

ARTICLE 4A

Memorandum of company with shares

(1) Where a company is to be registered with shares -

(a) if it is a par value company, the memorandum shall state the amount of share capital with which it is to be registered, and the amounts (being fixed amounts) into which the shares of each class are divided;

(b) if it is a no par value company, the memorandum shall state the limit (if any) on the number of shares of each class that the company is to be authorized to issue;

(c) if the company is to be registered with any limited share, the memorandum shall state that the liability of a member arising from his holding of such a share is limited to the amount (if any) unpaid on it;

(d) if the company is to be registered with any unlimited share, the memorandum shall state that the liability of a member arising from his holding of such a share is unlimited; and

(e) in every case, against the name of each person who subscribes for shares, the memorandum shall state separately -

(i) the number of limited shares (if any) of each class which he takes, and

(ii) the number of unlimited shares (if any) of each class which he takes.

(2) The amount of a par value share may be stated in any currency.

(3) If a company is to be registered with shares, no person may subscribe for less than one share.

ARTICLE 4B

Memorandum of company with guarantor members

(1) Where a company is to be registered with a memorandum which provides for guarantor members, the memorandum shall state that each guarantor member undertakes to contribute to the assets of the company, if it should be wound up while he is a member or within 12 months after he ceases to be a member, such amount as may be required for the purposes specified in paragraph (2) but does not exceed a maximum amount to be specified in the memorandum in relation to that member.

(2) The purposes to which paragraph (1) refers are -

(a) payment of the debts and liabilities of the company contracted before he ceases to be a member;

(b) payment of the costs, charges and expenses of winding up; and

(c) adjustment of the rights of the contributories among themselves.

(3) Where a company is to be registered with a memorandum that provides for guarantor members the memorandum shall also state, against the name of each person who subscribes as a guarantor member -

(a) that he does so as such a member; and

(b) the maximum amount so specified in relation to him.

ARTICLE 4C

Memorandum or articles of company of limited duration

Where a company is to be wound up and dissolved upon -

(a) the expiration of a period of time; or

(b) the happening of some other event,

that period or event shall be specified in the memorandum or articles of the company.

ARTICLE 5

Articles of association

(1) There shall be delivered to the registrar, with the memorandum for a company which is to be formed, articles specifying regulations for the company.

(2) The articles shall be in the English or French language, and shall -

(a) be printed;

(b) be divided into paragraphs numbered consecutively.

(3) The articles shall be signed by or on behalf of each subscriber of the memorandum, in the presence of at least one witness who shall attest the signature and insert his own name and address.

(4) This Article is subject to Article 6.

ARTICLE 6

Standard Table

(1) The Committee may prescribe a set of model articles, to be known as the Standard Table, that is

appropriate for a par value company which -

(a) does not have unlimited shares; and

(b) has a memorandum which does not provide for guarantor members.

(1A) Any company (whether or not it is one to which paragraph (1) refers) may adopt the whole or any part of the Standard Table for its articles to the extent that it is appropriate to do so.

(2) Where a company to which paragraph (1) refers is registered after the Standard Table has been prescribed, the Table (so far as it is applicable, and in force at the date of the company's registration) shall -

(a) if articles have not been registered; or

(b) if articles have been registered, to the extent that they do not modify or exclude the Table,

constitute the company's articles as if articles in the form of the Table had been duly registered.

(3) If the Standard Table is altered in consequence of an Order under this Article, the alteration shall not -

(a) affect a company registered before the alteration takes effect; or

(b) have the effect of altering, as respects that company, any portion of the Table.".

ARTICLE 5

After Article 7(2) of the principal Law[12] there shall be added the following paragraphs -

"(3) Where the company is a public company, the statement shall specify the following particulars with respect to each director -

(a) his present forenames and surname;

(b) any former forenames or surname;

(c) his business or usual residential address;

(d) his nationality;

(e) his business occupation (if any); and

(f) his date of birth.

(4) If the Standard Table has been prescribed under Article 6, the statement shall specify the extent (if any) to which the company adopts the Table.".

ARTICLE 6

(1) For Article 9(1) of the principal Law[13] there shall be substituted the following paragraph -

"(1) On the registration -

(a) of a company's memorandum; or

(b) of a company under paragraph (1) of Article 127G,

the registrar shall issue a certificate that the company is incorporated.".

(2) For Article 9(5) of the principal Law[14] there shall be substituted the following paragraphs -

"(5) A certificate of incorporation issued under this Law is conclusive evidence of the following matters -

(a) that the company is incorporated under this Law;

(b) that the requirements of this Law have been complied with in respect of -

(i) the registration of the company,

(ii) all matters precedent to its registration, and

(iii) all matters incidental to its registration; and

(c) if the certificate states that it is a public company or a private company, that it is such a company.

(6) The Act of Incorporation of an existing company, issued by the Court and ordering the registration of its memorandum and articles of association in accordance with the Laws repealed by Article 223, is conclusive evidence of the following matters -

(a) that the company is incorporated; and

(b) that the requirements of those Laws have been complied with in respect of -

(i) the registration of the company,

(ii) all matters precedent to its registration, and

(iii) all matters incidental to its registration.".

ARTICLE 7

In Article 11(4) of the principal Law[15] -

(a) for the words "The power to alter the memorandum or articles conferred by this Article" there shall be substituted the words "The power conferred by this Article to alter the memorandum or articles";

(b) for the words "cannot be" there shall be substituted the words "could not have been".

ARTICLE 8

For Article 13(2) of the principal Law[16] there shall be substituted the following paragraphs -

"(2) The name of a limited company shall end -

(a) with the word 'Limited' or the abbreviation 'Ltd'; or

(b) with the words 'avec responsabilité limitée' or the abbreviation 'a.r.l.'.

(3) A company which is registered with a name ending -

(a) with the word 'Limited' or the abbreviation 'Ltd'; or

(b) with the words 'avec responsabilité limitée' or the abbreviation 'a.r.l',

may in setting out or using its name for any purpose under this Law do so in full or in the abbreviated form, as it prefers.".

ARTICLE 9

After the words "and shall issue" in Article 14(2) of the principal Law[17] there shall be inserted the words "under Article 9".

ARTICLE 10

For Part IV of the principal Law[18] there shall be substituted the following Part -

"*PART IV*

PUBLIC COMPANIES AND PRIVATE COMPANIES

ARTICLE 16

Change of status of public company

(1) A public company which has not more than 30 members may become a private company by altering its memorandum to state that it is a private company.

(2) If, on the application of a public company which has more than 30 members, the Commission is satisfied that by reason of the nature of the company's activities its affairs may properly be regarded as the domestic concern of its members, the Commission may in its discretion by written notice to the company direct that notwithstanding that it has more than 30 members it may, subject to such conditions as may be specified in the direction, become a private company by altering its memorandum to state that it is a private company.

(3) The Commission may at any time by written notice withdraw or amend the terms of any such condition.

(4) If -

(a) a company which is a private company in consequence of a direction under paragraph (2) fails to comply with a condition of the direction; or

(b) at any time while such a company continues to have more than 30 members, the Commission ceases to be satisfied that its affairs may properly be regarded as the domestic concern of its members,

the Commission may in its discretion, by written notice to the company, direct that as from a date specified in the notice (being not sooner than 28 days after the company is served with the notice) the company shall as long as it has more than 30 members be subject to this Law as though it were a public company.

(5) The company shall within 14 days after the receipt of a notice under any of paragraphs (2), (3) and (4) deliver a copy of the notice to the registrar.

(6) If there is a failure to comply -

(a) with a condition of a direction under paragraph (2); or

(b) paragraph (5),

the company is guilty of an offence.

ARTICLE 17

Change of status of private company

(1) A private company which has at least two members may become a public company by altering its memorandum to state that it is a public company.

(2) If -

(a) a private company enters the name of any 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; or

(b) a private company circulates a prospectus relating to its own securities,

the company shall be subject to this Law as though it were a public company.

(3) If a private company enters the name of any person in its register of members so as to increase the number of its members beyond 30, it shall within 14 days give written notice of that fact to the registrar.

(4) If there is a contravention of sub-paragraph (b) of paragraph (2) then, without derogation from the consequences under that paragraph, the company and every officer of it who is in default is guilty of an offence.

(5) If there is a contravention of paragraph (3) then, without derogation from the consequences under that paragraph, the company is guilty of an offence.

(6) If the court, on the application of a company which has increased the number of its members in the manner described in sub-paragraph (a) of paragraph) (2), or of any other person interested, is satisfied that it is just to relieve the company from all or any of the consequences of the breach, it may grant relief on such terms as seem to it expedient.

(7) If, on the application of a private company, the Commission is satisfied that by reason of the nature of the company's activities its affairs may properly be regarded as the domestic concern of its members, the Commission may in its discretion by written notice to the company direct that paragraph (2) shall apply to the company with such modifications as are specified in the direction, and the Commission may at any time withdraw or amend the terms of any such direction.

(8) The company shall within 14 days after the making of an order under paragraph (6) or the receipt of a direction under paragraph (7) deliver the relevant Act of the court or a copy of the direction, as the case may be, to the registrar, and if there is failure to comply with this paragraph the company is guilty of an offence.

ARTICLE 17A

Calculation of number of members

(1) In determining for the purposes of Article 16 and paragraph (2) of Article 17 the number of members of a company, no account shall be taken of a member -

(a) who is a director or is in the employment of the company; or

(b) who, having been a director or in the employment of the company -

(i) was at the same time a member, and

(ii) has continued to be a member since ceasing to be a director or in its employment.

(2) Where two or more persons hold one or more shares in a company jointly, they shall be treated as a single member for the purposes of this Part.

ARTICLE 17B

Notice of change of status

Where a company changes its status in accordance with Article 16 or paragraph (1) of Article 17 the registrar shall, upon delivery to him of a copy of the special resolution altering the memorandum, issue under Article 9 a certificate of incorporation which is appropriate to the altered status.

ARTICLE 17C

Alteration of numbers

The Committee may by Order amend paragraph (2) of Article 3, Article 16 and sub-paragraph (a) of paragraph (2) of Article 17 so as to increase or reduce -

(a) the number of 30 persons to which those provisions refer; or

(b) any other number that the Committee may have substituted by an Order under this Article.”.

ARTICLE 11

For Articles 22, 23 and 24 of the principal Law[19] there shall be substituted the following Articles -

“ARTICLE 22

Company seals

(1) A company which has a common seal shall have its name engraved in legible characters on that seal.

(1A) A company having a common seal which does not comply with paragraph (1) is guilty of an offence.

(1B) A company which has a common seal may have duplicate common seals.

(2) If an officer of a company or a person on its behalf uses or authorizes the use of any seal -

(a) which purports to be a seal of the company; and

(b) on which its name is not engraved in legible characters,

he is guilty of an offence.

ARTICLE 23

Official seal for use abroad

(1) A company which has a common seal and engages in business outside the Island may, if authorized by its articles, have for use in any country, territory or place outside the Island an official seal, which shall be a facsimile of the common seal of the company with the addition on its face either of the words ‘Branch Seal’ or the name of the country, territory or place where it is to be used.

(1A) A company which has an official seal for use outside the Island may have duplicates of that seal.

(2) A document to which an official seal for use outside the Island is duly affixed binds the company as if it had been sealed with the company’s common seal.

(3) A company may, in writing under its common seal, authorize an agent appointed for the purpose to affix an official seal for use outside the Island to a document to which the company is party.

(4) As between the company and the person dealing with the agent, the agent’s authority continues until that person has actual notice of the termination of the authority.

ARTICLE 24

Official seal for securities

A company which has a common seal may have -

(a) an official seal which is a facsimile of its common seal, with the additional word ‘Securities’ on its face; and

(b) duplicates of such a seal,

for use for sealing securities issued by the company, and for sealing documents creating or evidencing securities so issued.”.

ARTICLE 12

For paragraphs (1), (2) and (3) of Article 26 of the principal Law[20] there shall be substituted the following paragraphs -

"(1) Except in the cases mentioned in this Article -

(a) a body corporate cannot be a member of a company which is its holding company; and

(b) an allotment or transfer of shares in a company to its subsidiary is void.

(2) Paragraph (1) does not prevent a subsidiary which was, on the thirtieth day of March 1992 or when it became a subsidiary, a member of its holding company from continuing to be a member, but as long as it is a subsidiary -

(a) it has no right to vote at a meeting of the holding company or of a class of its members; and

(b) it shall not acquire further shares in the holding company, except as provided in paragraph (3A).

(3) Paragraphs (1) and (2) apply in relation to a nominee for a body corporate which is a subsidiary as if references to the body corporate included a nominee for it.

(3A) If a body corporate is permitted by virtue of paragraph (2) to continue as a member of its holding company, an allotment to it of fully paid shares in its holding company may be made by way of a capitalization of reserves of the holding company.".

ARTICLE 13

(1) In Article 27(1) of the principal Law,[21] after the words "If a" there shall be inserted the word "public".

(2) For Article 27(2) of the principal Law[22] there shall be substituted the following paragraph -

"(2) Paragraph (1) does not apply to a public company of which all of the issued shares are held by or by a nominee for a holding body.".

ARTICLE 14

In Article 28 of the principal Law,[23] for the words "the shares" there shall be substituted the words "his rights of membership".

ARTICLE 15

(1) For Article 29(1) of the principal Law[23] there shall be substituted the following paragraph -

"(1) The Committee may by Order prohibit all or any of the following things, namely -

(a) the circulation by any person of a prospectus in the Island;

(b) the circulation by a company of a prospectus outside the Island; and

(c) the procuring (whether in or outside the Island) by a company of the circulation of a prospectus outside the Island,

except in such circumstances and subject to such conditions as may be specified in the Order.".

(2) In Article 29(2) of the principal Law,[23] after the word "Such" there shall be inserted the word "an".

(3) Paragraphs (4) and (5) of Article 29 of the principal Law[24] shall be repealed.

ARTICLE 16

For Article 35(1) of the principal Law[25] there shall be substituted the following paragraph -

"(1) Except as permitted by Article 36 -

(a) a par value company shall not issue shares at a discount; and

(b) a company shall not apply its shares or capital money either directly or indirectly in payment of a commission, discount or allowance to a person,

in return for his subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company.".

ARTICLE 17

(1) In Article 36(1) of the principal Law,[26] for the words "in consideration of" there shall be substituted the words "in return for".

(2) After Article 36(1) of the principal Law[27] there shall be inserted the following paragraph -

"(1A) In this Article, 'shares' include securities which confer (conditionally or unconditionally) on the holders the right to acquire shares in a company.".

ARTICLE 18

In Article 37 of the principal Law[27] -

(a) after the word "calls" in paragraph (a) there shall be inserted the words "or instalments payable";

(b) for the semicolon in paragraph (b) there shall be substituted the words "or become payable; and".

ARTICLE 19

(1) In the heading to Article 38 of the principal Law,[28] for the words "**share capital**" there shall be substituted the words "**capital of par value companies**".

(2) In Article 38(1) of the principal Law[28] -

(a) after the word "A" there shall be inserted the words "par value";

(b) in sub-paragraph (e) -

(i) for the words "paragraph (3)" there shall be substituted the words "Article 38B",

(ii) for the word "amount", in both places where it occurs, there shall be substituted the word "value";

(c) in sub-paragraph (ea), for the word "amount" there shall be substituted the word "value".

(3) In Article 38(1A) of the principal Law,[28] for the word "amount" in both places where it occurs there shall be substituted the word "value".

(4) Article 38(3) of the principal Law[29] shall be repealed.

ARTICLE 20

For Article 39 of the principal Law[30] there shall be substituted the following Articles -

"ARTICLE 38A

Alteration of capital of no par value companies

(1) A no par value company may, by altering its memorandum -

(a) increase or reduce the number of shares which it is authorized to issue; or

(b) consolidate and divide all or any of its shares (whether issued or not) into fewer shares.

(2) The powers conferred by this Article shall be exercised by the company by special resolution.

ARTICLE 38B

Rate of exchange for currency conversions

A conversion under sub-paragraph (e) of paragraph (1) of Article 38 shall be effected at the rate of exchange current at a time to be specified in the resolution, being a time within 40 days before the conversion takes effect.

ARTICLE 39

Share premium accounts for par value companies

(1) If a par value company allots shares at a premium (whether for cash or otherwise) -

(a) where the premiums arise as a result of the issue of a class of limited shares, a sum equal to the aggregate amount or value of those premiums shall be transferred, as and when the premiums are paid up, to a share premium account for that class; and

(b) where the premiums arise as a result of the issue of a class of unlimited shares, a sum equal to the aggregate amount or value of those premiums shall be transferred, as and when those premiums are paid up, to a separate share premium account for that class.

(2) A share premium account may be expressed in any currency.

(3) A share premium account may be applied by the company for any of the following purposes -

(a) in paying up unissued shares to be allotted to members as fully paid bonus shares;

(b) in writing off the company's preliminary expenses;

(c) in writing off the expenses of and any commission paid on any issue of shares of the company; and

(d) in the redemption or purchase of shares under Part XI.

(4) Subject to this Article, the provisions of this Law relating to the reduction of a par value company's share capital apply as if each of its share premium accounts were part of its paid up share capital.

ARTICLE 39A

Stated capital accounts for no par value companies

(1) Every no par value company shall maintain a separate account, to be called a stated capital account, for each class of issued share.

(2) A stated capital account may be expressed in any currency.

(3) There shall be transferred to the stated capital account for the class of share concerned -

(a) the amount of cash received by the company for the issue of shares of that class; and

(b) the value, as determined by the directors, of the 'cause' received by the company, otherwise than in

cash, for the issue of shares of that class; and

(c) every amount which the company, by special resolution, resolves to transfer into the account from a profit and loss account or from any capital or revenue reserve.

ARTICLE 39B

Relief from requirements to make transfers to share premium accounts and stated capital accounts

(1) This Article applies where a company ('the issuing company') is a wholly-owned subsidiary of any body corporate and allots shares -

(a) to that holding body; or

(b) to any other body corporate which is a wholly-owned subsidiary of that holding body,

in return for the transfer to the issuing company of assets, other than cash, of any body corporate ('the transferor') which is either the holding body itself or a subsidiary of the holding body.

(2) Notwithstanding paragraph (1) of Article 39, if the issuing company is a par value company, it need not transfer to a share premium account any amount in excess of the minimum premium value.

(3) Notwithstanding sub-paragraphs (a) and (b) of paragraph (3) of Article 39A, if the issuing company is a no par value company, it need not transfer to a stated capital account any amount in excess of the base value of that for which the shares are allotted.

(4) For the purpose of paragraph (2), 'minimum premium value' means the amount (if any) by which the base value of that for which the shares are allotted exceeds the aggregate nominal value of those shares.

(5) For the purposes of paragraphs (3) and (4) -

(a) 'the base value of that for which the shares are allotted' means the amount by which the base value of the assets transferred exceeds the base value of the liabilities (if any) of the transferor assumed by the issuing company as part of the terms of transfer of the assets,

(b) 'the base value of the assets transferred' means -

(i) the cost of those assets to the transferor, or

(ii) the amount at which those assets are stated in the transferor's accounting records immediately before the transfer,

whichever is less; and

(c) the base value of the liabilities assumed is the amount at which they are stated in the transferor's accounting records immediately before the transfer.

(6) The Committee may by Order make additional provision for relieving companies from the provisions of Articles 39 and 39A".

ARTICLE 21

In Article 40(1) of the principal Law,[31] for the words "sub-paragraph (b) of paragraph (1) of Article 4, a company" there shall be substituted the words "paragraph (3) of Article 4A a par value company".

ARTICLE 22

After Article 40 of the principal Law,[31] but before Part IX of the principal Law, there shall be inserted the following Articles -

"ARTICLE 40A

Conversion of shares in par value companies

(1) A par value company may convert its shares into no par value shares by altering its memorandum in accordance with this Article.

(2) The power conferred by paragraph (1) -

(a) may only be exercised by converting all of the company's shares into no par value shares;

(b) may only be exercised by a special resolution of the company and, if there is more than one class of issued shares, with the approval of a special resolution passed at a separate meeting of the holders of each class of shares; and

(c) may be exercised whether or not the issued shares of the company are fully paid.

(3) The special resolution of the company -

(a) shall specify the number of no par value shares into which each class of issued shares is to be divided;

(b) may specify any number of additional no par value shares which the company may issue; and

(c) shall make such other alterations to the memorandum and articles as may be requisite in the circumstances.

(4) Upon converting the shares under this Article, the company -

(a) shall transfer, from the share capital account for each class of shares to the stated capital account for that class, the total amount that has been paid up on the shares of that class; and

(b) shall transfer any amount standing to the credit of a share premium account or capital redemption reserve to the stated capital account for the class of share which would have fallen to be issued if that amount had been applied in paying up unissued shares allotted to members as fully paid bonus shares.

(5) On the conversion of a company's shares under this Article, any amount which is unpaid on any share immediately before the conversion remains payable when called or due.

ARTICLE 40B

Conversion of shares in no par value companies

(1) A no par value company may convert its shares into par value shares by altering its memorandum in accordance with this Article.

(2) The power conferred by paragraph (1) -

(a) may only be exercised by converting all of the company's shares into par value shares;

(b) may only be exercised by a special resolution of the company and, if there is more than one class of issued shares, with the approval of a special resolution passed at a separate meeting of the holders of each class of shares; and

(c) may be exercised whether or not the issued shares of the company are fully paid.

(3) For the purpose of a conversion of shares under this Article, each share of a class shall be converted into a share which -

(a) confers upon the holder, as nearly as possible, the same rights as were conferred by it before the conversion; and

(b) has a nominal value specified in the special resolution of the company, being a value not exceeding the

amount standing to the credit of the stated capital account for that class divided by the number of shares of that class in issue.

(4) The special resolution of the company shall make such alterations to the memorandum and articles as may be requisite in the circumstances.

(5) Upon converting its shares under this Article, the company -

(a) shall, to the extent that the amount standing to the credit of the stated capital account for each class of shares equals the total nominal amount of the shares of the class into which those shares are converted, transfer the amount to the share capital account; and

(b) shall, to the extent (if any) that the amount exceeds that total nominal amount, transfer it to the share premium account for that class.

(6) On the conversion of a company's shares under this Article, any amount which is unpaid on any share immediately before the conversion remains payable when called or due.".

ARTICLE 23

(1) For Article 41(1) of the principal Law[32] there shall be substituted the following paragraph -

"(1) Every company shall keep a register of its members, and enter in it the following information -

(a) the name and address of every member;

(b) where he is a member because he holds shares in the company -

(i) the number of shares held by him,

(ii) if the shares are numbered, their numbers,

(iii) if the company has more than one class of shares, the class or classes held by him, and

(iv) in the case of shares which are not fully paid, the amount remaining unpaid on each share;

(c) where he is a guarantor member -

(i) the fact that he is a member in that capacity,

(ii) the amount that he has undertaken by reason of his membership in that capacity to contribute to the assets of the company if it is wound up, and

(iii) if the company has more than one class of guarantor members, the class to which he belongs;

(d) in every case, the date on which he was registered as a member; and

(e) in every case where a person ceases to be a member, the date on which that event occurs.".

(2) In Article 41(2) of the principal Law[33] the words "sub-paragraph (a) of" shall be deleted.

ARTICLE 24

For Article 45(2) of the principal Law[34] there shall be substituted the following paragraph -

"(2) A person may -

(a) in the case of any company, on payment of such sum (if any), not exceeding the prescribed maximum, as the company may require; and

(b) in the case of a public company, on submission to the company of a declaration under Article 46,

require a copy of the register and the company shall, within 10 days after the receipt of the payment and (in the case of a public company) the declaration, cause the copy so required to be available at the place where the register is kept for collection by that person during business hours.".

ARTICLE 25

In Article 46(1) of the principal Law,[35] for the word "shareholders" in both places where it occurs there shall be substituted the word "members".

ARTICLE 26

In Article 47(1)(a) of the principal Law,[36] after the words "held by him" there shall be inserted the words ", or the class of members to which he belongs".

ARTICLE 27

For Article 49 of the principal Law[37] there shall be substituted the following Article -

"ARTICLE 49

Overseas branch registers

(1) A public company which transacts business in any country, territory or place outside the Island may cause to be kept there a register of members who are resident in that country, territory or place.

(2) A register to which paragraph (1) refers shall be known as an overseas branch register.

(3) A company shall give notice to the registrar, in such form as he may require and within 14 days after the event -

(a) of the situation of the office at which the company begins to keep an overseas branch register;

(b) of any change in its situation; and

(c) if the keeping of the register is discontinued, of its discontinuance.

(4) A company which keeps an overseas branch register -

(a) shall cause to be kept, at the place where its register of members is kept, a duplicate of the overseas branch register;

(b) shall cause to be transmitted to its registered office a copy of every entry in the overseas branch register, as soon as may be after it is made; and

(c) shall cause every entry in the overseas branch register to be duly entered in the duplicate, as soon as may be after it is made in the overseas branch register.

(5) An overseas branch register and its duplicate shall be parts of the company's register of members for the purposes of this Law, and shall be kept in the same manner as the register of members is to be kept under this Law.

(6) The shares to which an overseas branch register relates shall be distinguished from those to which the register of members relates and, while an overseas branch register is kept, no transaction in respect of any shares to which it relates shall be registered or otherwise entered in any other register except its duplicate.

(7) If a company discontinues the keeping of an overseas branch register, it shall thereupon cause all entries in it to be transferred -

(a) to any other overseas branch register that is kept by it in the same country, territory or place; or

(b) to its register of members.

(8) Subject to the provisions of this Law, a company may by its articles provide as it thinks fit for the keeping of an overseas branch register.

(9) The Committee may by Order -

(a) extend the provisions of this Article to private companies, with such modifications (if any) as it may specify in the Order;

(b) modify the provisions of this Article in respect of any kind of company; or

(c) prescribe other conditions relating to the keeping of overseas branch registers.

(10) In the event of a failure to comply with any of paragraphs (3), (4), (5), (6) and (7), or with any Order made under paragraph (9), the company is guilty of an offence.".

ARTICLE 28

(1) For paragraphs (2), (3) and (4) of Article 50 of the principal Law[38] there shall be substituted the following paragraphs -

"(2) Paragraph (1) does not apply -

(a) to an allotment or transfer of shares to a nominee of a stock exchange on which those shares are or are to be listed;

(b) to a transfer of shares which the company is for any reason entitled to refuse to register and does not register; or

(c) to an open-ended investment company whose articles do not require a certificate to be delivered on every occasion when shares of the company are allotted or transferred.

(3) The Committee may by Order do all or any of the following things -

(a) provide for exemptions from the provisions of paragraph (1);

(b) provide that Article 51 shall not apply, or shall only apply subject to modifications specified in the Order, to certificates relating to shares to which any such exemptions apply; and

(c) prohibit the issue of certificates in respect of any such shares.".

ARTICLE 29

In Article 51(1) of the principal Law[39] after the words "by the company" there shall be inserted the words ", or signed either by two of its directors or by one of its directors and its secretary,".

ARTICLE 30

For Article 52 of the principal Law[40] there shall be substituted the following Article -

"ARTICLE 52

Variation of class rights

(1) The provisions of this Article -

(a) are concerned with the variation of the rights of any class of members of a company;

(b) are subject to the provisions of paragraph (3) of Article 11; and

(c) do not apply in respect of a conversion of shares in accordance with Article 40A or 40B.

(2) If provision for the variation of the rights of any class of members is made in the memorandum or articles, or by the terms of admission to membership, those rights may only be varied in accordance with those provisions.

(3) If no such provision is made, the rights may be varied if but only if the following persons consent in writing, namely -

(a) in the case of any class of par value shares, the holders of not less than two-thirds in nominal value of the issued shares of that class;

(b) in the case of any class of no par shares, the holders of not less than two-thirds in number of the issued shares of that class; or

(c) in the case of any class of guarantor members, those whose liability as such members is in the aggregate not less than two-thirds of the total liability of all the members of that class,

or (in any case) the variation is sanctioned by a special resolution passed at a separate meeting of the class of members concerned.

(4) A variation which -

(a) reduces the liability of any class of members to contribute to the share capital of a company;

(b) reduces the liability of any class of members otherwise to pay money to a company; or

(c) increases the benefits to which any class of members is or may become entitled,

is for the purposes of this Article a variation of the rights of each other class of members of the company.

(5) No member -

(a) whose liability is to be so reduced or whose entitlement to benefits is to be so increased; and

(b) who is also a member of any other class,

shall for the purposes of paragraph (3) be treated as a member of that other class.

(6) An alteration of a provision in either the memorandum or articles for the variation of the rights of any class of members of a company, or the insertion of such a provision in the memorandum or articles, is itself a variation of those rights.

(7) Unless the context otherwise requires, in any provision contained -

(a) in the memorandum or articles; or

(b) in the terms of admission to membership,

for the variation of the rights of any class of members, references to the variation of those rights include references to their abrogation.".

ARTICLE 31

(1) In the heading to Article 53 of the principal Law,[41] for the word "**Shareholders'**" there shall be substituted the word "**Members'**".

(2) For paragraphs (1) and (2) of Article 53 of the principal Law[41] there shall be substituted the following paragraphs -

"(1) If the rights of any class of member of a company are varied in accordance with the memorandum or articles, or otherwise in accordance with Article 52, any members of that class who did not consent to or vote in favour of the resolution for variation, being -

(a) in the case of any class of par value shares, the holders of not less than one-tenth in nominal value of the issued shares of that class;

(b) in the case of any class of no par value shares, the holders of not less than one-tenth in number of the issued shares of that class; or

(c) in the case of any class of guarantor members, those whose liability as such members is in the aggregate not less than one-tenth of the total liability of all the members of that class,

may apply to the court to have the variation cancelled.

(2) If an application is made under paragraph (1), the variation to which it relates shall not have effect unless and until it is confirmed by the court.

(2A) The application -

(a) must be made within 28 days after the date on which the consent was given or the resolution was passed; and

(b) may be made, on behalf of the members who are entitled to make it, by one or more of them as they appoint in writing.".

(3) In Article 53(4) of the principal Law,[42] for the word "shareholders" there shall be substituted the word "members".

ARTICLE 32

(1) For paragraphs (1) and (2) of Article 54 of the principal Law[43] there shall be substituted the following paragraphs -

"(1) If a public company admits a member or allots shares with rights which are not stated in its memorandum or articles, or in a resolution or agreement of which a copy is required by Article 100 to be delivered to the registrar, the company shall deliver to the registrar within one month after admitting the member or allotting those shares a statement containing particulars of those rights.

(2) Paragraph (1) does not apply if the rights are in all respects uniform with the rights of existing members, and for that purpose they are not different by reason only that during the period of 12 months immediately following the admission of the member or the allotment of the shares, he does not have the same rights to dividends as members previously admitted.".

(2) In Article 54(3) of the principal Law,[44] for the words "attached to shares" there shall be substituted the words "of members".

(3) In Article 54(4) of the principal Law,[44] for the words "of its shares" there shall be substituted the words "of rights of membership".

ARTICLE 33

(1) In Article 55(1) of the principal Law[45] -

(a) for the words "Articles 56 to 58" there shall be substituted the words "Articles 57 and 58";

(b) before the words "shares" in both places where it occurs there shall be inserted the word "limited".

(2) For paragraphs (2) and (3) of Article 55 of the principal Law[45] there shall be substituted the following paragraphs -

"(2) No redeemable limited shares may be issued at a time when there are no issued shares of the company which are not redeemable, and no existing issued non-redeemable limited shares shall be converted into redeemable shares if as a result there are no issued shares of the company which are not redeemable.

(3) The redeemable limited shares of a par value company (not being an open-ended investment company) may be redeemed only when they are fully paid up and only from the following sources -

(a) in the case of a payment of the nominal value of the shares on redemption -

(i) out of its realised capital and revenue profits less its realised capital and revenue losses,

(ii) out of its realised revenue profits less its revenue losses, whether realised or unrealised, or

(iii) out of the proceeds of a fresh issue of shares made for the purposes of the redemption,

or out of any combination of those sources; and

(b) in the case of a payment of any premium on redemption -

(i) out of the share premium account for shares of the class concerned,

(ii) out of the sources mentioned in sub-paragraph (a), or

(iii) if so authorized by a special resolution of the company, out of its unrealised capital or revenue profits less its capital or revenue losses, whether realised or unrealised,

or out of any combination of those sources.

(3A) The redeemable limited shares of a no par value company (not being an open-ended investment company) may be redeemed only when they are fully paid up and only out of a stated capital account or out of a source mentioned in sub-paragraph (a) or clause (iii) of sub-paragraph (b) of paragraph (3).

(3B) The redeemable limited shares of a par value company or a no par value company (not being in either case an open-ended investment company) may be redeemed only if the directors who authorize the payment on redemption reasonably believe that, immediately after the payment is made -

(a) the company will be able to discharge its liabilities as they fall due; and

(b) the realisable value of the company's assets will not be less than the aggregate of its liabilities and the amounts standing to the credit of its capital accounts.

(3C) The redeemable limited shares of an open-ended investment company (whether it is a par value company or a no par value company) may be redeemed from any source but only -

(a) if they are fully paid up;

(b) if they are so redeemed at a price not exceeding their net asset value; and

(c) if the directors who authorize the payment on redemption reasonably believe that, immediately after the payment is made -

(i) the company will be able to discharge its liabilities as they fall due, and

(ii) the realisable value of the company's assets will not be less than the amount of its liabilities.".

(3) In Article 55(4) of the principal Law,[46] after the words "paragraph (3)" there shall be inserted the words "or paragraph (3A)'.

(4) For Article 55(5) of the principal Law[46] there shall be substituted the following paragraph -

"(5) If limited shares are redeemed wholly out of a par value company's profits, there shall be transferred out of profits out of which the company may make a distribution under Article 114 to a capital redemption reserve a sum equal to the nominal value of the shares redeemed.".

(5) In Article 55(6) of the principal Law,[47] for the words "If shares" there shall be substituted the words "If limited shares of a par value company".

(6) In Article 55(7) of the principal Law,[48] the words ", except as provided by this Article," shall be deleted.

(7) In Article 55(8) of the principal Law,[48] for the words "redemption of shares" there shall be substituted the words "redemption of limited shares of a par value company".

(8) In Article 55(9) of the principal Law,[48] for the words "a company is about to redeem shares" there shall be substituted the words "a par value company is about to redeem limited shares".

(9) In Article 55(10) of the principal Law,[48] for the words "preference shares" there shall be substituted the words "limited preference shares".

(10) For Article 55(11) of the principal Law[48] there shall be substituted the following paragraph -

"(11) Any capital redemption reserve fund established by a company before Article 223 came into force for the purposes of Article 5 of the Companies (Supplementary Provisions) (Jersey) Law 1968[49] shall be treated as if it had been established as a capital redemption reserve for the purposes of this Article, and any reference in any existing enactment or in the articles of any company or in any other instrument to a company's capital redemption reserve fund shall be construed as a reference to a capital redemption reserve for the purposes of this Article.".

ARTICLE 34

Article 56 of the principal Law[50] shall be repealed.

ARTICLE 35

For Article 57 of the principal Law[51] there shall be substituted the following Article -

"ARTICLE 57

Power of company to purchase its own limited shares

(1) A company may purchase its own limited shares (including any redeemable shares).

(2) A purchase under this Article, other than -

(a) a purchase of its own shares by a company which is a wholly-owned subsidiary of another company; or

(b) a purchase of unlimited shares,

shall be sanctioned by a special resolution of the company.

(3) However, if the shares are to be purchased otherwise than on a stock exchange -

(a) they may only be purchased in pursuance of a contract approved in advance by a resolution of the company; and

(b) they shall not carry the right to vote on the resolution sanctioning the purchase or approving that contract.

(4) If the shares are to be purchased on a stock exchange, the resolution authorizing the purchase shall specify -

(a) the maximum number of shares to be purchased;

(b) the maximum and minimum prices which may be paid; and

(c) a date, not being later than 18 months after the passing of the resolution, on which the authority to purchase is to expire.

(4A) For the purposes of sub-paragraph (b) of paragraph (4), maximum and minimum prices shall be determined -

(a) by specifying particular sums; or

(b) by specifying a basis or formula by which those amounts can be calculated without reference to any person's discretion or opinion.

(5) Paragraphs (2), (3) and (4) do not apply to an open-ended investment company.

(6) Article 55 applies to the purchase by a company under this Article of its own shares as it applies to the redemption of redeemable shares.

(7) A company may not under this Article purchase its shares if as a result of the purchase there would no longer be a member of the company holding shares other than redeemable shares.".

ARTICLE 36

(1) For the heading to Article 58 of the principal Law[52] there shall be substituted the following heading -

"**Financial assistance by company for purchase of its shares**".

(2) For Article 58(1) of the principal Law[52] there shall be substituted the following paragraph -

"(1) Except as provided in this Article -

(a) where a person is acquiring or proposing to acquire shares in a company, it is not lawful for the company or any of its subsidiaries which is a Jersey company to give financial assistance directly or indirectly for the purpose of that acquisition before or at the same time as the acquisition takes place; and

(b) where a person has acquired shares in a company and any liability has been incurred (by that person or any other person) for the purpose of that acquisition, it is not lawful for the company or any of its subsidiaries which is a Jersey company to give financial assistance directly or indirectly for the purpose of reducing or discharging the liability so incurred.".

(3) In Article 58(3) of the principal Law[53] -

(a) for sub-paragraph (a) there shall be substituted the following sub-paragraph -

"(a) the giving of assistance is sanctioned by a prior resolution of the company proposing to give it; and";

(b) in sub-paragraph (b), before the words "value of the company's assets" there shall be inserted the word "realisable";

(c) for clauses (i), (ii), (iii) and (iv) of sub-paragraph (b) there shall be substituted the following clauses -

"(i) its liabilities, and

(ii) any amounts standing to the credit of its capital accounts."

ARTICLE 37

For Article 59 of the principal Law[54] there shall be substituted the following Article -

"Power of States to extend or modify Part XI

The States may by Regulations extend or modify the provisions of Articles 55, 57 and 58 with respect to any of the following matters -

(a) the circumstances and manner in which a company may redeem or purchase its own shares; and

(b) the authority required for a redemption or purchase by a company of its own shares.".

ARTICLE 38

For Article 60 of the principal Law[55] there shall be substituted the following Article -

"ARTICLE 60

Forfeiture of shares

If it is authorized by its articles, a company may -

(a) cause any of its shares which have been issued otherwise than as fully paid to be forfeited for failure to pay any sum due and payable on them; or

(b) accept their surrender instead of causing them to be so forfeited.".

ARTICLE 39

For Article 61 of the principal Law[56] there shall be substituted the following Article -

"ARTICLE 61

Reduction of capital accounts

(1) A company may by special resolution reduce its capital accounts in any way.

(2) In particular, and without prejudice to the generality of paragraph (1), the company -

(a) may extinguish or reduce the liability on any of its shares in respect of share capital not paid up; and

(b) may, with or without extinguishing or reducing liability on any of its shares -

(i) reduce any capital account by an amount which is lost or is unrepresented by available assets, or

(ii) pay off any amount standing to the credit of a capital account which is in excess of the company's wants.

(3) Except as provided in paragraphs (4) and (5), every reduction of capital shall be subject to confirmation by the court.

(4) A reduction of capital by extinguishing or reducing a capital account established in respect of an issue of unlimited shares shall not be subject to confirmation by the court.

(5) A reduction of capital by reducing a share capital account or stated capital account which is in either case established in respect of limited shares shall not be subject to confirmation by the court if -

(a) the reduction does not extinguish or reduce the liability on any share in respect of capital that is not paid up; and

(b) the reduction does not reduce the net assets of the company,

and the amount of the reduction is credited to a capital redemption reserve which may be applied only in paying up unissued shares which are to be allotted to members as fully paid bonus shares.".

ARTICLE 40

(1) In Article 62(1) of the principal Law,[57] for the words "share capital" there shall be substituted the words "a capital account".

(2) In Article 62(2) of the principal Law,[57] for sub-paragraphs (a) and (b) there shall be substituted the following sub-paragraphs -

"(a) a diminution of liability in respect of any amount unpaid on a share; or

(b) the payment to a shareholder of any paid up capital,".

(3) In Article 62(6) of the principal Law,[58] the word "share" shall be deleted in each place where it occurs.

ARTICLE 41

For paragraphs (1) and (2) of Article 64 of the principal Law[59] there shall be substituted the following paragraphs -

"(1) Where the court confirms the reduction of a company's capital account, the company shall deliver to the registrar -

(a) the Act of the court confirming the reduction; and

(b) a minute, approved by the court, showing in respect of the company the information specified in paragraph (2).

(2) The information to which paragraph (1) refers is -

(a) the amounts of the capital accounts;

(b) the number of shares into which the share capital is to be divided, and, in the case of a par value company, the amount of each share;

(c) in the case of a par value company the amount (if any), at the date of the registration of the Act and minute under paragraph (2A), which will remain paid up on each share which has been issued; and

(d) in the case of a no par value company, the amount (if any) remaining unpaid on issued shares.

(2A) The registrar shall register the Act and minute, and thereupon the resolution for reducing the capital as confirmed by the Act shall take effect.".

ARTICLE 42

In Article 65(1) of the principal Law,[60] before the word "company's" there shall be inserted the words "par value".

ARTICLE 43

For Article 71 of the principal Law[61] there shall be substituted the following Article -

"ARTICLE 71

Annual return

(1) Every company (other than a company in a creditors' winding up or which is the subject of a declaration under the Désastre Law) shall, before the end of February in every year after the year in which it is incorporated, deliver to the registrar a return stating the following information -

(a) in the case of a par value company, in respect of each class of shares, either -

(i) the name and address of each member who on 1st January in the year of the return held not less than one per cent in nominal value of all the issued shares of that class and the number of shares so held by him, together with the number of the members who on that date each held less than one per cent in nominal value of all the issued shares of that class and together also with the total number of shares comprised in those holdings, or

(ii) the name and address of every member who on 1st January in the year of the return held any shares of that class, and the number of shares of that class so held by him;

(b) in the case of a no par value company, in respect of each class of shares, either -

(i) the name and address of each member who on 1st January in the year of the return held not less than one per cent in number of all the issued shares of that class and the number of shares so held by him, together with the number of the members who on that date each held less than one per cent in number of all the issued shares of that class and together also with the total number of shares comprised in those holdings, or

(ii) the name and address of every member who on 1st January in the year of the return held any shares of that class, and the number of shares of that class so held by him;

(c) in the case of a company which includes guarantor members, the name and address of each person who was such a member on 1st January in the year of the return;

(d) in the case of a company which includes persons who are members by reason of holding unlimited shares -

(i) the name and address of each person who was such a member on 1st January in the year of the return, and

(ii) the number of those shares so held by him; and

(e) in the case of a company which on 1st January in the year of the return is either a public company or a subsidiary of a public company, the particulars required by Article 84 to be kept in the register of the directors and secretary of the company to which the return relates, in respect of the persons who are at that date its directors.

(2) Where the company has converted any of its shares into stock, the return shall give the corresponding information in relation to that stock, stating the amount of stock instead of the nominal value or number of shares (as the case may be).

(3) The return -

(a) shall contain such other information as may be prescribed;

(b) shall be verified by a declaration in such manner as may be prescribed; and

(c) shall be accompanied by such filing fee as may be prescribed.

(4) The registrar shall not provide to any person a copy of a return made under this Article by a public company unless that person has delivered to the registrar a declaration under Article 46 in respect of the return.

(5) The Committee may by Order -

(a) prescribe fees which shall be payable by companies for the filing of returns required by this Article;

(b) prescribe, in addition, late filing fees which shall be payable by companies which do not file returns within the time required by this Article (being in the case of private companies not more than five times the fee prescribed under sub-paragraph (a) and in the case of public companies not more than ten times the fee prescribed under that sub-paragraph); and

(c) in so providing, specify different late filing fees according to the times that have elapsed since returns were due.

(6) If a company fails to comply with this Article, it is guilty of an offence.".

ARTICLE 44

Article 73(3) of the principal Law[62] shall be repealed.

ARTICLE 45

In Article 74(2)(b) of the principal Law,[63] before the words "value of the company's assets" there shall be inserted the word "realisable".

ARTICLE 46

After Article 74 of the principal Law[63] there shall be inserted the following Article -

"ARTICLE 74A

Contracts with sole members who are also directors

(1) If a private company which -

(a) is a limited company; and

(b) has only one member, who is also a director of the company,

enters into a contract with him that is not in writing, the company shall ensure that the terms of the contract are either set out in a written memorandum or recorded in the minutes of the first meeting of the directors of the company following the making of the contract.

(2) If a company fails to comply with paragraph (1), it and every officer of it in default are guilty of an offence.

(3) Failure to comply with paragraph (1) shall not affect the validity of the contract.

(4) Subject to paragraph (3), nothing in paragraph (1) shall be construed as excluding the operation of any other enactment or rule of law applying to contracts between a company and a director of that company.

(5) Paragraph (1) of this Article does not apply to contracts entered into in the ordinary course of the company's business.".

ARTICLE 47

For paragraphs (2) and (3) of Article 75 of the principal Law[64] there shall be substituted the following paragraphs -

"(2) The disclosure shall be made -

(a) at the first meeting of the directors at which the transaction is considered after the director concerned becomes aware of the circumstances giving rise to his duty to make it; or

(b) if for any reason he fails to comply with sub-paragraph (a), as soon as practical after that meeting, by notice in writing delivered to the secretary.

(2A) The secretary, where the disclosure is made to him -

(a) shall inform the directors that it has been made; and

(b) shall in any event table the notice of the disclosure at the next meeting of the directors after it is made.

(2B) Any disclosure at a meeting of the directors shall be recorded in the minutes of the meeting.

(3) A disclosure to the company by a director in accordance with paragraph (2) that he is to be regarded as interested in a transaction with a specific person is sufficient disclosure of his interest in any such transaction entered into after the disclosure is made.".

ARTICLE 48

For Articles 78 and 79 of the principal Law[65] there shall be substituted the following Articles -

"ARTICLE 78

Disqualification orders

(1) Where it appears to the Committee or the Commission, or to the Attorney General, that it is expedient in the public interest that a person should not without the leave of the court -

(a) be a director of or in any way whether directly or indirectly be concerned or take part in the management of a company; or

(b) in the Island in any way whether directly or indirectly be concerned or take part in the management of a body incorporated outside the Island,

the Committee or the Commission, or the Attorney General (as the case may be), may apply to the court for an order to that effect against that person.

(2) Where the court, on such an application, is satisfied that the person's conduct in relation to any body corporate (wherever it is incorporated and wherever it carries on business) makes him unfit -

(a) to be concerned in the management of a company; or

(b) to be concerned in the management, in the Island, of a body incorporated outside the Island,

it may make the order.

(3) An order under paragraph (2) shall be for such period, not exceeding 15 years, as the court thinks fit.

(4) A person who acts in contravention of an order made under this Article is guilty of an offence.

ARTICLE 79

Personal responsibility for liabilities where person acts while disqualified

(1) A person who acts in contravention of an order made under Article 78 is personally responsible for such liabilities of the company or other body corporate as are incurred at a time when that person was, in contravention of the order, involved in its management.

(2) Where a person is personally responsible under paragraph (1) for liabilities of a company or other body corporate, he is jointly and severally liable in respect of those liabilities with it and with any other person who, whether under this Article or otherwise, is so liable.

(3) For the purposes of this Article, a person is involved in the management of a company or other body corporate if he is a director of it, or if he is concerned whether directly or indirectly or takes part in its management.".

ARTICLE 49

(1) For Article 82(2)(c) of the principal Law[66] there shall be substituted the following sub-paragraph -

"(c) the Association of Chartered Certified Accountants;".

(2) In Article 82(3) of the principal Law,[66] after the words "paragraph (2)" there shall be added the words "by adding, deleting or substituting any body".

ARTICLE 50

For Article 83(3) of the principal Law[66] there shall be substituted the following paragraph -

"(3) The registrar shall not disclose or make use of any information obtained by him as a result of the exercise of the right conferred upon him by paragraph (2) except -

(a) to the Commission on being required in writing by it to do so; or

(b) for the purpose of enabling any provision of this Law or any obligation owed to the company by an officer or secretary of the company to be enforced.".

ARTICLE 51

Article 84(2) of the principal Law[67] shall be repealed.

ARTICLE 52

In Article 87(7) of the principal Law,[68] after the words "If such an agreement ceases" there shall be inserted the words "later than 18 months after the incorporation of the company".

ARTICLE 53

(1) In Article 89(1) of the principal Law,[69] for the words "the holders of a class of shares" there shall be substituted the words "any class of members".

(2) For Article 89(2) of the principal Law[69] there shall be substituted the following paragraph -

"(2) A members' requisition is a requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of the total voting rights of the members of the company who have the right to vote at the meeting requisitioned.".

ARTICLE 54

(1) In Article 90(1) of the principal Law,[70] for the words "the holders of a class of shares in" there shall be substituted the words "a class of members of".

(2) In Article 90(2) of the principal Law,[71] for the words "in nominal value of the shares giving that right" there shall be substituted the words "of the total voting rights of the members who have that right".

ARTICLE 55

(1) In Article 91(1) of the principal Law,[72] for the words "the holders of any class of shares in" there shall be substituted the words "any class of members of".

(2) For Article 91(3)(b) of the principal Law[73] there shall be substituted the following sub-paragraph -

"(b) otherwise, by a majority in number of the persons who have the right to attend and vote at the meeting, being a majority together holding not less than 95 per cent of the total voting rights of the members who have that right.".

ARTICLE 56

For Article 92 of the principal Law[73] there shall be substituted the following Article -

"ARTICLE 92

General provisions as to meetings and votes

(1) Notwithstanding anything to the contrary in the memorandum or articles of a private company with only one member, or in the terms of admission to membership of such a company, he shall be the quorum at any meeting of the company, or of any class of member, when he is present personally or by his proxy.

(2) Subject to paragraph (1), in so far as the memorandum or articles of a company or the terms of admission to membership of the company do not make other provision in that behalf, the following provisions shall apply to any meeting of the company or of any class of members of the company -

(a) notice of a meeting shall be given, to every member entitled to receive it, by delivering or posting it to his registered address;

(b) at a meeting of the company, two members present personally shall be a quorum;

(c) at a meeting (other than an adjourned meeting) of any class of members -

(i) in the case of a class of par value shares, the quorum shall be persons holding or representing by proxy not less than one-third in nominal value of the issued shares of that class,

(ii) in the case of a class of no par value shares, the quorum shall be persons holding or representing by proxy not less than one-third in number of the issued shares of that class, and

(iii) in the case of a class of guarantor members, the quorum shall be persons whose liability as such members, or representing by proxy persons whose liability as such members, is in the aggregate not less than one-third of the total liability of all members of that class,

and where any such meeting has been adjourned, the quorum on its resumption shall be one person of the class or his proxy;

(d) any member, or director of the company, elected by the members present at a meeting may be chairman of that meeting;

(e) on a show of hands, every member present in person at a meeting has one vote; and

(f) on a poll -

(i) every member has one vote for every share held by him and, in the case of stock, one vote for each share from which the holding of stock arose, and

(ii) every member who does not have a share has one vote.".

ARTICLE 57

In Article 93(1) of the principal Law,[74] for the words "the holders of a class of shares" there shall be substituted the words "any class of members".

ARTICLE 58

In Article 94(1) of the principal Law,[74] for the words “the holders of a class of shares in” there shall be substituted the words “any class of members of”.

ARTICLE 59

(1) For Article 95(1) of the principal Law[75] there shall be substituted the following paragraphs -

“(1) This Article does not apply to a resolution removing an auditor but otherwise applies to any resolution, including a special resolution.

(1A) This Article does not apply to a resolution if the memorandum or articles of the company concerned prohibit the passing of a resolution in writing in the manner permitted by this Article.

(1B) Subject to paragraphs (1) and (1A) and in so far as the memorandum or articles of a company do not make other provision in that behalf, anything that may be done at a meeting of the company or at a meeting of any class of its members may be done by a resolution in writing signed by or on behalf of each member who, at the date when the resolution is deemed to be passed, would be entitled to vote on the resolution if it were proposed at a meeting.”.

(2) In Article 95(6) of the principal Law,[76] after the words “affects or limits” there shall be inserted the words “any provision in the memorandum or articles of a company or”.

ARTICLE 60

After Article 95 of the principal Law[77] there shall be inserted the following Article -

“ARTICLE 95A

Recording of decisions by sole member

(1) If -

(a) a private company has only one member;

(b) he takes a decision which may be taken by the company in general meeting and has effect as if agreed by the company in general meeting; and

(c) the decision is not taken by way of a resolution in writing,

he shall provide the company with a record in writing of the decision.

(2) If the member fails to comply with paragraph (1), he is guilty of an offence.

(3) Failure to comply with paragraph (1) shall not affect the validity of the decision.”.

ARTICLE 61

In Article 96(6) of the principal Law,[78] for the words “the holders of any class of shares” there shall be substituted the words “any class of members”.

ARTICLE 62

In Article 97(1)(a) of the principal Law,[78] for the words “the holders of any class of shares” there shall be substituted the words “any class of members”.

ARTICLE 63

In Article 98(1) of the principal Law,[79] for the words “the holders of any class of its shares” there shall be substituted the words “any class of its members”.

ARTICLE 64

(1) In Article 99(1) of the principal Law,[80] for the words “the holders of a class of shares” there shall be substituted the words “any class of members”.

(2) In Article 99(4) of the principal Law,[81] for the words “the holders of a class of shares” there shall be substituted the words “any class of members”.

ARTICLE 65

In Article 100(3) of the principal Law[82] -

(a) after the word “resolutions;” in sub-paragraph (b) there shall be added the word “and”;

(b) for sub-paragraph (c) there shall be substituted the following sub-paragraph -

“(c) resolutions or agreements which have been agreed to by all the members of any class but which, if not so agreed to, would not have been effective for their purpose unless they had been passed or agreed to by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all of the members of any class though not agreed to by all those members,”.

ARTICLE 66

For Article 101(b) of the principal Law[83] there shall be substituted the following paragraph -

“(b) any class of members of a company; or”.

ARTICLE 67

For Article 106(3) of the principal Law[84] there shall be substituted the following paragraphs -

“(3) Where for special reasons the Commission thinks fit it may, on an application made not later than one month before the expiry of the period otherwise allowed, by notice in writing to a company extend a period mentioned in paragraph (1), (4) or (5) of Article 104 or in paragraph (2) of this Article by such a period as is specified in the notice.

(4) The Commission shall also give a copy of the notice to the registrar.

(5) The Committee may by Order -

(a) prescribe fees which shall be payable by companies for the filing of documents required by this Article;

(b) prescribe, in addition, late filing fees which shall be payable by companies which do not file such documents within the time required by this Article (being not more than ten times the fee prescribed under sub-paragraph (a)); and

(c) in so providing, specify different late filing fees according to the times that have elapsed since such documents were due.”.

ARTICLE 68

In Article 111(4) of the principal Law,[85] for the word “shareholders” there shall be substituted the word “members”.

ARTICLE 69

For Article 113 of the principal Law[86] there shall be substituted the following Articles -

"ARTICLE 113

Qualifications of individual for appointment as auditor

(1) An individual is qualified for appointment under Article 109 as auditor of a company if -

(a) he is a member of a recognized professional body; and

(b) he is eligible for appointment as auditor under that body's rules.

(2) An individual is also qualified for appointment under Article 109 as auditor of a company if he is authorized by the Commission to be so appointed.

ARTICLE 113A

Qualifications of partnership for appointment as auditor

(1) A partnership is qualified for appointment under Article 109 as auditor of a company if all of the partners are so qualified.

(2) A partnership is also qualified for appointment under Article 109 as auditor of a company if -

(a) at least 75 per cent of the partners are -

(i) individuals who are members of recognized professional bodies, or are authorized under paragraph (2) of Article 113,

(ii) partnerships which are themselves qualified for appointment under Article 109, or

(iii) bodies corporate which are so qualified;

(b) at least 75 percent 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); and

(c) each of the partners who examines or reports on the accounts of the company pursuant to Article 104, or who supervises the examination of or report on such accounts, is an individual who is a member of a recognized professional body or is authorized under paragraph (2) of Article 113.

ARTICLE 113B

Qualifications of body corporate for appointment as auditor

(1) A body corporate is qualified for appointment under Article 109 as auditor of a company if -

(a) each of the persons who are responsible to it for examining or reporting on the accounts of the company pursuant to Article 104, or for supervising the examination of or report on such accounts, is an individual who is a member of a recognized professional body or is authorized under paragraph (2) of Article 113 and

(b) the body corporate is controlled by persons or partnerships specified in paragraph (3).

(2) A body corporate is also qualified for appointment under Article 109 as auditor of a company if it is authorized by the Commission to be so appointed.

(3) Paragraph (1) refers to -

(a) individuals who are members of recognized professional bodies, or are authorized under paragraph (2) of Article 113;

(b) partnerships which are qualified for appointment under Article 109 as auditors of companies, or are accepted by a recognized professional body as being qualified for appointment as auditors of companies incorporated in the United Kingdom; and

(c) bodies corporate which are themselves qualified for appointment under Article 109 as auditors of companies, or are accepted by a recognized professional body as being qualified for appointment as auditors of companies incorporated in the United Kingdom.

(4) For the purposes of paragraph (1), a body corporate is controlled by persons or partnerships specified in paragraph (3) if -

(a) they constitute in number at least 75 per cent of the members of the body corporate;

(b) they hold at least 75 per cent of the voting rights of each class of members;

(c) at least 75 per cent of the directors are individuals specified in sub-paragraph (3); or

(d) at least 75 per cent of the voting rights in the board of directories, committee or other management body of the body corporate are held by persons or partnerships specified in paragraph (3).

ARTICLE 113C

Disqualification for appointment as auditor

(1) This Article applies notwithstanding Articles 113, 113A and 113B.

(2) A person is disqualified for appointment under Article 109 as auditor of a company if he is-

(a) an officer, secretary or servant of the company;

(b) a partner or employee of an officer, secretary or servant of the company;

(c) a person against whom an order under Article 78 is in force; or

(d) a person who, on any ground described in sub-paragraph (a), (b) or (c), is disqualified for appointment under Article 109 as auditor of any other body corporate which is -

(i) a subsidiary or holding body of the company, or

(ii) a subsidiary of the company's holding body,

or who would be so disqualified if that other body corporate were a company.

(3) A partnership is disqualified for appointment under Article 109 as auditor of a company if any of the partners is -

(a) a person who is disqualified under paragraph (2) for such an appointment; or

(b) the company whose accounts are to be audited under Article 109, or a holding body or subsidiary of that company, or a subsidiary of any such holding body.

(4) A body corporate is disqualified for appointment under Article 109 as auditor of a company if -

(a) any of the individuals specified in sub-paragraph (a) of paragraph (1) of Article 113B in relation to that company, or any of its shareholders or directors, is a person who is disqualified under paragraph (2) of this Article for such an appointment; or

(b) the company whose accounts are to be audited under Article 109, or a holding body or subsidiary of that company, or a subsidiary of any such holding body, holds shares in the body corporate.

(5) If a person or partnership -

(a) has been appointed under Article 109 as auditor of a company; and

(b) during his term of office becomes, to his or its knowledge, disqualified for the appointment,

that person or partnership shall thereupon vacate the office and give notice to the company that by reason of that disqualification he or it has done so.

ARTICLE 113D

Power of Committee to amend qualifications

Notwithstanding Articles 113, 113A, 113B and 113C, the Committee may by Order -

(a) amend the definition of "recognized professional body" in paragraph (1) of Article 1 by adding, deleting or substituting any body;

(b) provide that any partnership or body corporate of a class described in the Order shall, on such conditions as are specified in the Order, be qualified for appointment under Article 109 as auditor of a company; or

(c) amend sub-paragraph (a), (b) or (c) of paragraph (2) of Article 113C by adding, deleting or substituting persons who are disqualified for such an appointment, or by varying the circumstances in which persons described in that paragraph are disqualified for such an appointment.

ARTICLE 113E

Criminal liability of unqualified auditor

(1) Any person who, knowing that he is not qualified by or under this Law for appointment under Article 109, acts for the purposes of that Article as an auditor of a company is guilty of an offence.

(2) Any person who without reasonable excuse fails to give notice in accordance with paragraph (5) of Article 113C is guilty of an offence.".

ARTICLE 70

(1) In Article 114(2)(b)(ii) of the principal Law,[87] there shall be inserted before the word "value" the word "realisable".

(2) In Article 114(3) of the principal Law,[88] for sub-paragraph (b) there shall be substituted the following sub-paragraph -

"(b) the realisable value of the company's assets will not be less than the aggregate of its liabilities and the amount standing to the credit of its capital accounts.".

(3) In Article 114(3A) of the principal Law[89] -

(a) for the words "a company" there shall be substituted the words "an open-ended investment company";

(b) in sub-paragraph (b) there shall be inserted before the word "value" the word "realisable".

(4) In Article 114(4) of the principal Law[90] -

(a) for clauses (ii) and (iii) of sub-paragraph (a) there shall be substituted the following clauses -

"(ii) the redemption or purchase of any of the company's shares,

(iii) the reduction of capital by extinguishing or reducing the liability of any of the members on any of the company's shares in respect of capital not paid up or by paying off any amount standing to the credit of

any capital account, and”;

(b) for clause (ii) of sub-paragraph (e) there shall be substituted the following clause -

“(ii) transferring profits to a capital redemption reserve or a stated capital account.”.

(5) Article 114(7) of the principal Law[91] shall be repealed.

ARTICLE 71

In the heading to Part XVIII of the principal Law,[92] for the words “AMALGAMATIONS AND ARRANGEMENTS” there shall be substituted the word “TAKEOVERS”.

ARTICLE 72

For paragraphs (1) and (2) of Article 117 of the principal Law[93] there shall be substituted the following paragraphs -

“(1) If, in a case in which a takeover offer does not relate to shares of different classes, the offeror has by virtue of acceptances of the offer acquired or contracted to acquire -

(a) in the case of a par value company, not less than nine-tenths in value of the shares to which the offer relates; or

(b) in the case of a no par value company, not less than nine-tenths in number of the shares to which the offer relates,

he may give notice, to the holder of any shares to which the offer relates which the offeror has not acquired or contracted to acquire, that he desires to acquire those shares.

(2) If, in a case in which a takeover offer relates to shares of different classes, the offeror has by virtue of acceptances of the offer acquired or contracted to acquire -

(a) in the case of a par value company, not less than nine-tenths in value of the shares to which the offer relates; or

(b) in the case of a no par value company, not less than nine-tenths in number of the shares to which the offer relates,

he may give notice, to the holder of any shares of that class which the offeror has not acquired or contracted to acquire, that he desires to acquire those shares.”.

ARTICLE 73

For paragraphs (1) and (2) of Article 119 of the principal Law[94] there shall be substituted the following paragraphs -

“(1) If a takeover offer relates to all the shares in a company and at any time before the end of the period within which the offer can be accepted -

(a) the offeror has by virtue of acceptances of the offer acquired or contracted to acquire some (but not all) of the shares to which the offer relates; and

(b) those shares (with or without any other shares in the company which he has acquired or contracted to acquire) amount, in the case of a par value company, to not less than nine-tenths in value of all the shares in the company or, in the case of a no par value company, to not less than nine-tenths in number of all the shares in the company,

the holder of any shares to which the offer relates who has not accepted the offer may by a written communication

addressed to the offeror require him to acquire those shares.

(2) If a takeover offer relates to shares of any class or classes and at any time before the end of the period within which the offer can be accepted -

(a) the offeror has by virtue of acceptances of the offer acquired or contracted to acquire some (but not all) of the shares of any class to which the offer relates; and

(b) those shares (with or without any other shares of that class which he has acquired or contracted to acquire) amount, in the case of a par value company, to not less than nine-tenths in value of all the shares in the company or, in the case of a no par value company, to not less than nine-tenths in number of all the shares in the company,

the holder of any shares of that class who has not accepted the offer may by a written communication addressed to the offeror require him to acquire those shares.".

ARTICLE 74

After Article 124 of the principal Law[95] there shall be inserted the following heading -

"*PART XVIIIA*

COMPROMISES AND ARRANGEMENTS".

ARTICLE 75

(1) For Article 125(2) of the principal Law[95] there shall be substituted the following paragraph -

"(2) If a majority in number of the creditors or class of creditors, or members or class of members, present and voting either in person or by proxy at the meeting, being -

(a) in the case of any class of par value shares, the holders of not less than three-quarters in nominal value of the issued shares of that class;

(b) in the case of any class of no par value shares, the holders of not less than three-quarters in number of the issued shares of that class; or

(c) in the case of any class of guarantor members, those whose liability as such members is in the aggregate not less than three-quarters of the total liability of all the members of that class,

agree to a compromise or arrangement, the compromise or arrangement, if sanctioned by the court, is binding on all creditors or the class of creditors or on the members or class of members, and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.".

(2) Article 125(5) of the principal Law[96] shall be repealed.

ARTICLE 76

After Article 127 of the principal Law,[97] but before Part XIX of the principal Law, there shall be inserted the following Parts -

"*PART XVIIIB*

MERGERS

ARTICLE 127A

Mergers

(1) Two or more companies may merge and continue as one company, in accordance with this Part, if none

of them has unlimited shares or guarantor members.

(2) Each company proposing to merge shall, in order to do so, enter into an agreement in writing with each company with which it proposes to merge.

(3) The agreement shall state the terms and means of effecting the merger and, in particular, the following information -

(a) the memorandum and articles of the merged company, including the provisions that would be required by Part II to be included in the memorandum of the merged company if it were being incorporated under this Law otherwise than by merger;

(b) the name and address of each proposed director of the merged company;

(c) the manner in which the securities of each merging company are to be converted into securities of the merged company;

(d) if any securities of a merging company are not to be converted into securities of the merged company, what the holders are to receive instead and the manner in which and the time at which they are to receive it; and

(e) details of any arrangements which are necessary to complete the merger and to provide (in addition to the provisions of the articles) for the management of the merged company.

(4) If shares of one merging company are held by or on behalf of another merging company -

(a) the merging agreement shall provide for the cancellation of those shares, without any repayment of capital, when the agreement becomes effective; and

(b) no provision may be made in the merging agreement for the conversion of those shares into securities of the merged company.

(5) A merger agreement may provide that, at any time before the issue of a certificate of merger, the agreement may be terminated by the directors of any merging company notwithstanding that it has been approved by all or any of the merging companies.

ARTICLE 127B

Approval of merger agreement

(1) The directors of each merging company shall submit the merger agreement for approval by a special resolution of that company and, where there is more than one class of members, for approval by a special resolution of a separate meeting of each class.

(2) Notice of each meeting -

(a) shall be accompanied by a copy or summary of the merger agreement; and

(b) shall state that any member of the company who objects to the merger may, within 30 days after the merger agreement has been approved in accordance with paragraph (1), apply to the court for an order under Article 143 on the ground that the merger would unfairly prejudice his interests.

(3) On a resolution to approve a merger -

(a) each member of a merging company shall be entitled to vote;

(b) on a show of hands, every person present in person at the meeting shall have one vote; and

(c) the right to demand a poll and the right to vote on a poll shall be determined in accordance with Article 97 and sub-paragraph (f) of paragraph (2) of Article 92 respectively,

subject to any provision to the contrary in the memorandum or articles of the merging company.

(4) A merger is approved when the members of each merging company have approved the merger agreement by a special resolution passed at each meeting to which it is to be submitted in accordance with paragraph (1).

ARTICLE 127C

Merger of subsidiaries

(1) A holding company and one or more of its wholly-owned subsidiaries may merge and continue as one company, without complying with Articles 127A and 127B but otherwise in accordance with this Part, if -

(a) none of the companies has unlimited shares or guarantor members;

(b) the merger is approved by a special resolution of each merging company and, where it has more than one class of members, by a special resolution of a separate meeting of each class;

(c) each resolution provides that -

(i) the shares of each merging subsidiary shall be cancelled without any repayment of capital, and

(ii) except as otherwise provided in the special resolutions, the memorandum and articles of the merged company shall be the same as the memorandum and articles of the merging holding company; and

(d) no securities are issued and no assets are distributed by the merged company in connexion with the merger.

(2) Two or more wholly-owned subsidiaries of the same holding company may merge and continue as one company without complying with Articles 127A and 127B, but otherwise in accordance with this Part, if -

(a) the merger is approved by a special resolution of each merging subsidiary; and

(b) the resolutions provide that -

(i) the shares of all but one of the merging subsidiaries shall be cancelled without any repayment of capital,

(ii) the memorandum and articles of the merged company shall be the same as those of the merging subsidiary whose shares are not cancelled, except as may be provided in the special resolution of that subsidiary, and

(iii) the issued share capital or, as the case may be, the stated capital of the merging subsidiary or subsidiaries whose shares are cancelled shall be added to the issued share capital or stated capital of the merging subsidiary whose shares are not cancelled.

ARTICLE 127D

Notice to creditors

(1) Subject to paragraph (5) of Article 127A, within 28 days after a merger has been approved under Article 127B or 127C each merging company shall give notice to its creditors in accordance with paragraph (2).

(2) The notice -

(a) shall state that the company intends to merge, in accordance with this Part, with one or more specified companies;

(b) shall be sent in writing to each creditor who, to the knowledge of the company, has a claim against it exceeding £5000;

(c) shall be sent in writing to such other creditors as the court may direct;

(d) shall also be published once in a newspaper circulating in the Island or in such other manner as the court may on application direct; and

(e) shall state that any creditor of the company who objects to the merger may within 30 days of the date of the advertisement give notice of his objection to the company.

(3) A creditor who gives notice in accordance with sub-paragraph (e) of paragraph (2) and whose claim against the company has not been discharged may, within 30 days after the date of the notice, apply to the court for an order restraining the merger.

(4) On the application the court, if satisfied that the interests of the applicant would be unfairly prejudiced by the merger, may make an order (subject to such terms, if any, as it may think fit) restraining the merger.

(5) The Committee may by Order alter the amount specified in sub-paragraph (b) of paragraph (2).

ARTICLE 127E

Objections by members

(1) If a company is a party to a merger agreement, any member of the company who objects to the merger (other than a member who consented to or voted in favour of it) may apply to the court for an order under Article 143 on the ground that the merger would unfairly prejudice his interests.

(2) No such application may be made after the expiration of the period of 30 days following the approval of the merger under Article 127B or 127C.

ARTICLE 127F

Documents to be delivered to registrar

(1) Subject to paragraph (5) of Article 127A -

(a) after the expiration of 30 days from the approval of a merger; or

(b) if any application is made to the court under paragraph (3) of Article 127D or under Article 127E, after that application has been disposed of otherwise than by an order restraining the merger,

the merged company shall deliver to the registrar -

(i) a copy of the merger agreement,

(ii) a copy of the memorandum and articles of the merged company, and

(iii) a declaration in accordance with paragraph (2), made on behalf of each merging company and signed by each director of that company.

(2) Each declaration shall state that the directors of the company by whom it is made each believe on reasonable grounds -

(a) that each merging company is able to discharge its liabilities as they fall due;

(b) that immediately after the merger, the merged company will be able to discharge its liabilities as they fall due and that the realisable value of its assets will be not less than the aggregate of its liabilities and the amounts standing to the credit of its capital accounts;

(c) that there are no creditors (of any of the merging companies) whose interests will be unfairly prejudiced by the merger;

(d) that the merger has been approved in accordance with this Part;

(e) that notice has been given to creditors in accordance with Article 127D; and

(f) that the making of the declaration has been authorized by the directors of the company on whose behalf it is made.

ARTICLE 127G

Completion of merger

(1) Upon the delivery to the registrar in accordance with Article 127F of the documents to which that Article refers the registrar shall, if those documents comply with that Article, register the merged company and issue to it a certificate of incorporation under Article 9.

(2) Upon the issue of the certificate of incorporation -

(a) the merging companies are merged and continue as one company as provided in the merger agreement or, in the case of a merger under Article 127C, the resolutions approving the merger;

(b) all property and rights to which each merging company was entitled immediately before the certificate of incorporation is issued become the property and rights of the merged company;

(c) the merged company becomes subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which each of the merging companies was subject immediately before the certificate of incorporation is issued; and

(d) all actions and other legal proceedings which, immediately before the certificate of incorporation is issued, were pending by or against any of the merging companies may be continued by or against the merged company,

and the merging companies cease to be companies incorporated under this Law.

(3) The registrar shall record that a company has, by virtue of paragraph (2), ceased to be a company incorporated under this Law.

PART XVIIIC

CONTINUANCE

ARTICLE 127H

Application for continuance in Island of foreign body corporate

(1) A body corporate incorporated outside the Island may, if so authorized by the laws under which it is incorporated, apply to the Commission under this Part for the issue to it of a certificate that it continues as a company incorporated under this Law.

(2) The application shall be accompanied by -

(a) a copy (certified, in a manner approved by the Commission, to be a true copy) of the memorandum and articles, or of the law or other instrument constituting or defining the constitution of the body corporate;

(b) articles of continuance which comply with Article 127I;

(c) evidence, satisfactory to the Commission, of the following matters -

(i) that the body corporate is authorized, by the laws of the jurisdiction under which it is incorporated, to make the application,

(ii) where the constitution of the body corporate or the law of that jurisdiction requires that any

approval be given for the application, that it has been given,

(iii) that if a certificate of continuance is issued under this Law pursuant to the application, the body corporate will thereupon cease to be incorporated under the jurisdiction in which it is incorporated at the time at which the application is made, and

(iv) that if a certificate of continuance is so issued, the interests of the members and the creditors of the body corporate will not be unfairly prejudiced;

(d) the name under which it is proposed to continue the body corporate;

(e) in relation to every director, the particulars specified in sub-paragraphs (a) to (f) (inclusive) of paragraph (1) of Article 84;

(f) in relation to the secretary, the particulars specified in Article 85 and his qualifications;

(g) such other information as the registrar would require on an application to register the body corporate as a company under this Law;

(h) such other information as the Commission may require in respect of the application; and

(i) the prescribed fee.

(3) If an instrument which is submitted in accordance with sub-paragraph (a) of paragraph (2) is not in the English or French language, the application shall also be accompanied by a translation of the instrument into English or French.

(4) Every translation to which paragraph (3) refers shall be certified, in a manner approved by the Commission, to be a correct translation.

ARTICLE 127I

Articles of continuance

(1) Articles of continuance shall state those amendments to be made to the memorandum or articles of the body corporate, or to the instrument constituting or defining its constitution, which are necessary to conform to the laws of the Island.

(2) If any other amendments which are to be made to the memorandum or articles, or to the instrument -

(a) have been approved by its members in the manner required by this Law for amendments to the memorandum or articles of a company; and

(b) would be permitted under the laws of the Island if the body corporate were a company,

the articles of continuance shall also state those amendments.

ARTICLE 127J

Security for expenses

(1) On receiving an application under Article 127H, the Commission shall estimate the likely amount of its expenses in dealing with the application.

(2) The Commission shall then require the applicant to give it security for that amount, to the satisfaction of the Commission, and shall not consider the application further until the security has been given.

(3) If the Commission, in the course of considering the application, subsequently forms the view that its expenses will be of a higher amount -

(a) it may require the applicant to give it security for that higher amount, to its satisfaction; and

(b) it may refuse to consider the application further until that security has been given.

(4) On determining the application, the Commission shall ascertain the actual amount of its expenses, and inform the applicant.

(5) The expenses shall be a debt due and payable by the applicant to the Commission.

(6) Without prejudice to any other mode of recovery, the Commission may recover the expenses by realising the security if they are not paid by the applicant on demand.

ARTICLE 127K

Proposed name

(1) After receiving an application under Article 127H, the Commission shall inform the registrar of the name in which the applicant proposes to continue as a body corporate.

(2) The registrar shall then inform the Commission whether that name is in his opinion in any way misleading or otherwise undesirable.

(3) If the applicant proposes that it shall continue as a limited company, its name must in any event comply with paragraph (2) of Article 13.

ARTICLE 127L

Determination of application for continuance

(1) If the Commission, on an application under Article 127H-

(a) is satisfied that the application complies with Articles 127H and 127I;

(b) is informed by the registrar that the proposed name of the applicant is in his opinion not in any way misleading or otherwise undesirable, and is also satisfied that the name complies with paragraph (2) of Article 13; and

(c) is satisfied that all other approvals and consents required by the law of the Island for the issue of a certificate of continuance to the applicant have been given,

and the applicant has paid the prescribed fee for the application and the expenses due to the Commission under Article 127J, the Commission may in its absolute and unfettered discretion grant the application.

(2) On granting the application, the Commission shall -

(a) inform the registrar; and

(b) forward to him the documents which accompanied the application.

ARTICLE 127M

Issue of provisional certificate of continuance

(1) When the registrar -

(a) is informed under Article 127L by the Commission that it has granted an application for a certificate of continuance; and

(b) receives from the Commission the documents which accompanied the application,

he shall register the application and those documents.

(2) On registration, the registrar shall issue to the applicant a provisional certificate of continuance that is signed by him and sealed with his seal.

(3) When the registrar issues a provisional certificate of continuance, he shall also send a copy of it to the appropriate official or public body in the jurisdiction to which clause (i) of sub-paragraph (c) of paragraph (2) of Article 127H refers.

(4) Upon the issue of the provisional certificate of continuance by the registrar -

(a) the body corporate becomes a company to which this Law applies as if it had been incorporated under the Law; and

(b) the memorandum and articles, or the instrument constituting or defining the constitution of the body corporate, as amended in accordance with its articles of continuance, become the memorandum and articles of the continued company.

(5) When a body corporate is continued as a company under this Law -

(a) all property and rights to which the body corporate was entitled immediately before the provisional certificate of continuance is issued are the property and rights of the company;

(b) the company is subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which the body corporate was subject immediately before the provisional certificate of continuance is issued; and

(c) all actions and other legal proceedings which, immediately before the issue of the provisional certificate of continuance, were pending by or against the body corporate may be continued by or against the company.

ARTICLE 127N

Final certificate of continuance

(1) If the registrar is satisfied, on the application of a company which is continued under this Law, that upon the issue of the provisional certificate of continuance of the company it thereupon ceased to be incorporated in the jurisdiction in which it was incorporated at the time at which the application for continuance was made, he shall on the surrender to him of the provisional certificate of continuance issue to the company a final certificate of continuance that is signed by him and sealed with his seal.

(2) When the registrar issues a final certificate of continuance, he shall also send a copy of it to the appropriate official or public body in the jurisdiction to which clause (i) of sub-paragraph (c) of paragraph (2) of Article 127H refers.

(3) A final certificate of continuance is conclusive evidence of the following matters -

(a) that the company is incorporated under this Law;

(b) that the requirements of this Law have been complied with in respect of -

(i) the continuance of the company under this Law,

(ii) all matters precedent to its continuance as such a company, and

(iii) all matters incidental to its continuance as such a company; and

(c) if the certificate states that it is a public company or a private company, that it is such a company.

ARTICLE 127O

Power to make Orders relating to continuance

The Committee may by Order prescribe information to be provided on applications under Articles 127H and 127N for certificates of continuance".

ARTICLE 77

(1) In the heading to Article 128 of the principal Law,[98] the words "**by Committee**" shall be deleted.

(2) In Article 128(2) of the principal Law,[98] the words ", on being satisfied that there is good reason to do so," shall be deleted.

(3) In Article 128(3) of the principal Law,[99] for the amount "£5,000" there shall be substituted the amount "£10,000".

ARTICLE 78

For Article 130(3) of the principal Law[100] there shall be substituted the following paragraphs -

"(3) A person who, being required under paragraph (1) to answer any question which is put to him by an inspector -

(a) knowingly or recklessly makes a statement which is false, misleading or deceptive in a material particular; or

(b) knowingly or recklessly withholds any information the omission of which makes the information which is furnished misleading or deceptive in a material particular,

is guilty of an offence.

(4) An answer given by a person to a question put to him in exercise of the powers conferred by this Article may not be used in evidence against him in any criminal proceedings except -

(a) proceedings in which he is charged with knowingly or recklessly making a false statement in the course of being examined on oath under paragraph (2);

(b) proceedings under paragraph (3); or

(c) proceedings for contempt of court under paragraph (2) of Article 134.".

ARTICLE 79

(1) For Article 135(2)(b)(v) of the principal Law[101] there shall be substituted the following clauses -

"(v) a relevant supervisory authority, or

(vi) any person whose financial interests appear to the Committee or the Commission to be affected by the matters dealt with in the report, whether as a creditor of the company or as a body corporate, or otherwise; and".

(2) After Article 135(2) of the principal Law[102] there shall be added the following paragraph -

"(3) In this Article, 'relevant supervisory authority' means an authority discharging in a country or territory outside the Island supervisory functions corresponding to those of the Commission in respect of bodies corporate."

ARTICLE 80

In Article 139 of the principal Law,[103] the words "or to the Committee" shall be deleted.

ARTICLE 81

(1) In Article 143(1) of the principal Law,[104] after the word “Article” there shall be inserted the word “127E,”.

(2) For Article 143(2)(d) of the principal Law[104] there shall be substituted the following sub-paragraph -

“(d) provide for the purchase of the rights of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company’s capital accounts accordingly.”.

ARTICLE 82

Article 176(9) of the principal Law[105] shall be repealed.

ARTICLE 83

In Article 196(1) of the principal Law,[106] for the words “there shall be appointed” there shall be substituted the words “the Commission shall appoint”.

ARTICLE 84

Article 200(2) of the principal Law[107] shall be repealed.

ARTICLE 85

In Article 202(6)(c) of the principal Law,[108] for the number “(3)” there shall be substituted the number “(4)”.

ARTICLE 86

For Article 205 of the principal Law[109] there shall be substituted the following Article -

“ARTICLE 205

Registrar’s powers to strike companies off register

(1) If the registrar has reason to believe that a company is not carrying on business or is not in operation -

(a) he may send to it a letter inquiring whether it is carrying on business or is in operation; and

(b) if he receives an answer to the effect that the company is not carrying on business or is not in operation, or if he does not within one month after sending the letter receive an answer, he may publish in the Jersey Gazette and send to the company a notice under paragraph (6).

(2) Where a company does not deliver a return to the registrar in accordance with Article 71, before 30th June in the year in which that return is due, the registrar may send to the company a notice under paragraph (6).

(3) Where in the case of a company (other than a limited life company) -

(a) its memorandum specifies or its articles specify a period of time for the duration of the company;

(b) that period has expired; and

(c) a notice in accordance with either of paragraphs (1) and (2) of Article 144A has not been delivered to the registrar,

he may publish in the Jersey Gazette and send to the company a notice under paragraph (6).

(4) If, where a company is being wound up in a creditors’ winding up, the registrar has reason to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to

be made by the liquidator have not been made for a period of six consecutive months, the registrar shall publish in the Jersey Gazette and send to the company or the liquidator (if any) a notice under paragraph (6).

(5) If the registrar has reason to believe that a company which is being wound up summarily has, for a period of six months failed to comply with paragraph (4) of Article 150, he shall publish in the Jersey Gazette and send to the company or the liquidator (if any) a notice under paragraph (6).

(6) A notice to which paragraph (1), (2), (3), (4) or (5) refers shall state that at the end of the period of three months following the date of the notice, the name of the company will be struck off the register and the company will be dissolved unless -

(a) where the notice relates to non-compliance with a requirement of this Law, that requirement is complied with; or

(b) in any other case, reason is shown by the company or a member, creditor or liquidator of the company why the company's name should not be struck off the registrar and the company should not be dissolved.

(7) If the conditions in sub-paragraph (a) or (b) (as the case may be) of paragraph (6) have not been satisfied before the end of the period mentioned in the notice, the registrar may strike the company's name off the register.

(8) On the striking of the company's name off the register under paragraph (7), the company shall by operation of this Article be dissolved; but the liability (if any) of every director and member of the company shall nevertheless continue and may be enforced as if the company had not been dissolved.

(9) On striking a company's name off the register under paragraph (7), the registrar shall publish notice of that fact in the Jersey Gazette.

(10) A notice to be sent under this Article to a company or a liquidator may be sent by post, and in the case of a liquidator may be addressed to him at his last known place of business.".

ARTICLE 87

After Article 213 of the principal Law[110] there shall be inserted the following Article -

"ARTICLE 213A

Recognition of status of foreign corporations

(1) If at any time -

(a) any question arises whether a body which purports to have corporate status under or, as the case may be, which appears to have lost corporate status under the laws of a territory which is not at that time a recognised State should or should not be regarded as having legal personality as a body corporate under the law of the Island; and

(b) it appears that the laws of that territory are at that time applied by a settled court system in that territory,

that question and any other material question relating to the body shall be determined (and account shall be taken of those laws) as if that territory were a recognised State.

(2) For the purposes of paragraph (1) -

(a) 'a recognised State' is a territory which is recognised by Her Majesty's Government in the United Kingdom as a State;

(b) the laws of a territory which is so recognised shall be taken to include the laws of any part of the territory which are acknowledged by the federal or other central government of the territory as a whole; and

(c) a material question is a question (whether as to capacity, constitution or otherwise) which, in the case of

a body corporate, falls to be determined by reference to the laws of the territory under which the body is incorporated.

(3) Any registration or other thing done at a time before the coming into force of this section shall be regarded as valid if it would have been valid at that time, had paragraphs (1) and (2) then been in force.".

ARTICLE 88

For Article 216 of the principal Law[111] there shall be substituted the following Article -

"ARTICLE 216

Accessories and abettors

Any person who aids, abets, counsels or procures the commission of an offence under this Law shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.".

ARTICLE 89

In the First Schedule to the principal Law[112] -

(a) for the items relating to Article 17(4) and 17(5) there shall be substituted the following items -

"16(5)	Company failing to comply with condition of direction, or to deliver to registrar copy of notice of direction of Commission or of withdrawal or amendment of condition	Level 3	Level 2
17(4)	Private company issuing a prospectus	2 years or a fine; or both	
17(5)	Private company failing to give written notice to registrar of increase of membership beyond 30	Level 3	Level 2
17(8)	Private company failing to deliver to registrar Act of the court relieving company from consequences of increasing the number of its members beyond 30	Level 3	Level 2
17(8)	Company failing to deliver to registrar copy of direction by Commission modifying Article 17(2) in its application to the company	Level 3	Level 2';

(b) for the reference to Article 22(1) there shall be substituted a reference to Article 22(1A);

(c) in the item relating to Article 22(2), after the words "engraved on it" there shall be inserted the words "in legible characters";

(d) for the item relating to Article 29(3) there shall be substituted the following item-

"29(3)	Failure to comply with Order of Committee prohibiting the circulation of a prospectus in the Island, the circulation of a prospectus outside the Island by a company, or the procuring by a company (whether in or outside the Island) of the circulation of a prospectus outside the Island	2 years or a fine; or both";	

(e) after the item relating to Article 47(4) there shall be inserted the following item -

"49(10)	Company failing to comply with requirements in respect of overseas branch registers	Level 3	Level 2";

(f) for the word "shareholders" in the item relating to Article 53(5) there shall be substituted the word "members";

(g) for the words "shares carrying special rights" in the item relating to Article 54(5) there shall be substituted the words "special rights of members";

(h) after the item relating to Article 70(3) there shall be inserted the following items -

"71(6)	Company failing to comply with requirements for annual returns	Level 3	Level 2
74A(2)	Company failing to record contracts with sole member who is a director	Level 3	";

(i) after the item relating to Article 88(5) there shall be inserted the following item -

"95A(2)	Sole member failing to provide company with written record of decision	Level 3	";

(j) for the word "officer" in the second item relating to Article 107 there shall be substituted the words "Liquidator or other officer";

(k) for the item relating to Article 113(6) there shall be substituted the following items -

"113E(1)	Person acting as company auditor knowing he is not qualified;	2 years or a fine; or both;
113E(2)	Person failing to give notice of disqualification	2 years or a fine; or both;"

(l) after the item relating to Article 127(4) there shall be inserted the following item -

"130(3)	Person giving false, misleading or deceptive information to an inspector	2 years or a fine; or both".

ARTICLE 90

The following enactments shall be revoked -

(a) Paragraph (d) of Article 2 of the Companies (General Provisions) (Jersey) Order 1992;[113]

(b) the Companies (Application of Share Premiums) (Jersey) Order 1992;[114]

(c) the Companies (Share Certificates) (Exemption) (Jersey) Order 1992;[115]

(d) the Companies (Purchase of Own Shares) (Jersey) Order 1992;[116]

(e) the Companies (Overseas Branch Registers) (Jersey) Order 1992;[117]

(f) the Companies (Application of Share Premiums) (Amendment) (Jersey) Order 1994;[118]

(g) the Companies (Qualifications of Auditor) (Jersey) Order 1996;[119]

(h) the Companies (Qualifications of Auditor) (Amendment) (Jersey) Order 1998.[120]

ARTICLE 91

The enactments specified in the first column of the Schedule to this Law shall be amended in the manner shown in the second column of that Schedule.

ARTICLE 92

This Law may be cited as the Companies (Amendment No. 6) (Jersey) Law 200- and shall come into force on the seventh day following its registration.

SCHEDULE

(Article 91)

Consequential amendments to other enactments

(1)	(2)
Short title	*Extent of amendment*
1. Borrowing (Control) (Jersey) Law 1947[121]	The long title shall be amended by inserting after the words “the issue of securities,” the words “the admission of members of bodies corporate and the continuance on the Island of bodies incorporated abroad,”. Article 2 shall be amended - (a) by inserting after the word “transactions” in paragraph (1) the words “and acts”; (b) by inserting after sub-paragraph (c) of paragraph (1) the following paragraphs - “(ca) the admission of any person to membership, otherwise than by reason of the issue or transfer of shares, of a body incorporated in the Island; (cb) the issue to a body incorporated outside the Island of a certificate of continuance under Article 127M or Article 127N of the Companies (Jersey) Law 1991.”.

[1] Volume 1990-1991, page 875.

[2] Volume 1992-1993, page 63, Volume 1994-1995, page 351, Volume 1996-1997, pages 552 and 683, Volume 1998, pages 499 and 594, Volume 1999, pages 107 and 525, Volume 2000, page 746 and R & Os 8326 and 8941.

[3] Volume 1990-1991, page 887, Volume 1996-1997, page 683 and Volume 1998, pages 269 and 499.

[4] Volume 1990-1991, pages 888 and 889, Volume 1996-1997, page 683 and Volume 1998, pages 269 and 499.

[5] Volume 1990-1991, page 887, Volume 1996-1997, page 683 and Volume 1998, pages 269 and 499.

[6] Volume 1988-1989, page 164.

[7] Volume 1996-1997, page 503, Volume 1998, page 277, Volume 1999, page 527 and R & O 9232.

[8] Volume 1990-1991, page 890.

[9] Tomes I-III, page 258, Volume 1963-1965, page 33, Volume 1992-1993, page 99 and Volume 1996-1997, page 681.

[10] Volume 1990-1991, page 890.

[11] Volume 1990-1991, pages 893 to 895 and Volume 1996-1997, page 684.

[12] Volume 1990-1991, page 895.

[13] Volume 1990-1991, page 896.

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[15] Volume 1990-1991, page 897.

[16] Volume 1990-1991, page 899.

[17] Volume 1990-1991, page 899.

[18] Volume 1990-1991, page 901, Volume 1992-1993, page 63 and Volume 1998, page 269.

[19] Volume 1990-1991, pages 905 and 906.

[20] Volume 1990-1991, pages 906 and 907.

[21] Volume 1990-1991, page 907.

[22] Volume 1990-1991, page 908.

[23] Volume 1990-1991, page 908.

[24] Volume 1990-1991, page 909.

[25] Volume 1990-1991, page 913.

[26] Volume 1990-1991, page 914.

[27] Volume 1990-1991, page 915.

[28] Volume 1990-1991, page 916 and Volume 1999, pages 107 and 108.

[29] Volume 1990-1991, page 917.

[30] Volume 1990-1991, page 917.

[31] Volume 1990-1991, page 918.

[32] Volume 1990-1991, page 918.

[33] Volume 1990-1991, page 919.

[34] Volume 1990-1991, page 923.

[35] Volume 1990-1991, page 924.

[36] Volume 1990-1991, page 925.

[37] Volume 1990-1991, page 926.

[38] Volume 1990-1991, pages 926 and 927.

[39] Volume 1990-1991, page 927 and Volume 1999, page 108.

[40] Volume 1990-1991, page 928.

[41] Volume 1990-1991, page 929.

[42] Volume 1990-1991, page 929.

[43] Volume 1990-1991, page 930.

[44] Volume 1990-1991, page 930.

[45] Volume 1990-1991, page 931.

[46] Volume 1990-1991, page 932.

[47] Volume 1990-1991, page 932.

[48] Volume 1990-1991, page 933.

[49] Volume 1968-1969, page 112.

[50] Volume 1990-1991, page 933.

[51] Volume 1990-1991, page 934.

[52] Volume 1990-1991, page 935.

[53] Volume 1990-1991, page 936.

[54] Volume 1990-1991, page 937.

[55] Volume 1990-1991, page 938.

[56] Volume 1990-1991, page 938 and Volume 1999, page 108.

[57] Volume 1990-1991, page 939.

[58] Volume 1990-1991, page 940.

[59] Volume 1990-1991, page 941.

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[62] Volume 1990-1991, page 949.

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[70] Volume 1990-1991, page 963.

[71] Volume 1990-1991, page 963.

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[74] Volume 1990-1991, page 966.

[75] Volume 1990-1991, page 967.

[76] Volume 1990-1991, page 967.

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[78] Volume 1990-1991, page 969.

[79] Volume 1990-1991, page 970.

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[83] Volume 1990-1991, page 973.

[84] Volume 1990-1991, page 976 and Volume 1998, page 269.

[85] Volume 1990-1991, page 980.

[86] Volume 1990-1991, page 982, Volume 1998, page 269 and R & O 8941.

[87] Volume 1990-1991, page 984.

[88] Volume 1990-1991, page 985.

[89] Volume 1990-1991, page 985 and Volume 1992-1993, page 63.

[90] Volume 1990-1991, page 985.

[91] Volume 1990-1991, page 987 and Volume 1992-1993, page 64.

[92] Volume 1990-1991, page 987.

[93] Volume 1990-1991, page 989.

[94] Volume 1990-1991, page 993.

[95] Volume 1990-1991, page 1001.

[96] Volume 1990-1991, page 1001.

[97] Volume 1990-1991, page 1005.

[98] Volume 1990-1991, page 1005.

[99] Volume 1990-1991, page 1006 and Volume 1998, page 269.

[100] Volume 1990-1991, page 1007.

[101] Volume 1990-1991, page 1010 and Volume 1998, page 269.

[102] Volume 1990-1991, page 1010 and Volume 1998, page 269.

[103] Volume 1990-1991, page 1013 and Volume 1998, page 271.

[104] Volume 1990-1991, page 1015.

[105] Volume 1990-1991, page 1039.

[106] Volume 1990-1991, page 1054.

[107] Volume 1990-1991, page 1056.

[108] Volume 1990-1991, page 1058 and Volume 1996-1997, page 693.

[109] Volume 1990-1991, page 1060.

[110] Volume 1990-1991, page 1065.

[111] Volume 1990-1991, page 1066.

[112] Volume 1990-1991, page 1070, Volume 1996-1997, page 699 and Volume 1998, page 272.

[113] R & O 8324.

[114] R & O 8327.

[115] R & O 8328.

[116] R & O 8333.

[117] R & O 8362.

[118] R & O 8716.

[119] R & O 8941.

[120] R & O 9263.

[121] Tome VII, pages 386 and 388, Volume 1996-1997, page 548 and Volume 1998, page 254.