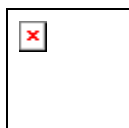


DRAFT BANKRUPTCY (DESASTRE) (AMENDMENT No. 5) (JERSEY) LAW 200-

**Lodged au Greffe on 24th October 2000
by the Finance and Economics Committee**



STATES OF JERSEY

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REPORT

Background

1. The Bankruptcy (Désastre) (Jersey) Law 1990 (“the 1990 Law”) came into effect on 2nd April 1991.
2. In the mid-1990s a Working Party was set up to consider whether, after some years in operation, the 1990 Law was in need of amendment. The Working Party included the Attorney General and Viscount. It reported to the Committee in 1998, following extensive consultation with the Jersey Law Society and consultation with other industry representatives.

The proposed amendments

The Committee proposes that the following amendments now be made to the 1990 Law -

<i>Amending Article(s)</i>	<i>Affected Article(s)</i>	<i>Detail</i>
1	1	Elaborates certain definitions in the Law.
2	2	Clarifies that the Viscount has a discretion to extend or abridge prescribed time limits.
3	3	Transfers from the Court to the Committee the authority to alter the minimum liquidated debt in respect of which a creditor can apply for a declaration <i>en désastre</i> .
4	4	Permits a company dissolved under the 1991 Companies Law to be declared <i>en désastre</i> .
5	10	Provides that where legal proceedings have been commenced against a debtor before a <i>désastre</i> they may only be continued after a declaration by consent of the Viscount or by order of the Court.

<i>Amending Article(s)</i>	<i>Affected Article(s)</i>	<i>Detail</i>
6	11	Restores the position of a joint owner of property, and creditor secured thereon, after any <i>désastre</i> has been recalled (joint ownership being severed as a result of a <i>désastre</i>).
7 and 8	15	Enables the Viscount, on terms, to disclaim as onerous property a Jersey contract lease (a lease of more than nine years).
9	17	Extends and clarifies the circumstances in which prior transactions at an undervalue (five-year reviewable period) can be set aside and the range of orders the Court can make. Generally, transactions entered into in good faith are protected but those with persons connected or associated with a debtor are not.
9	17	Extends and clarifies the circumstances in which prior preferences (one-year reviewable period) can be set aside and the range of orders the Court can make. Generally, transactions entered into in good faith are protected but those with persons connected or associated with a debtor are not.
10	18	Provides that directors of a company <i>en désastre</i> must inform the Viscount of any change address or other relevant circumstances.
11	19	Transfers from the Court to the Committee the authority to alter the financial threshold at which business and accounting records must be kept.

<i>Amending Article(s)</i>	<i>Affected Article(s)</i>	<i>Detail</i>
12	21	Clarifies that a lien on documents giving title to property is (exceptionally) enforceable against the Viscount.
13	24	Limits further the public or private offices a person <i>en désastre</i> may hold and extends the restrictions to persons who are undischarged bankrupts elsewhere.
14	25	Transfers from the Court to the Committee the authority to alter the maximum amount of credit a person <i>en désastre</i> may obtain without informing the intending creditor(s) of the <i>désastre</i> .
15	29	Corrects a typographical error in the 1990 Law.
16	30	Confirms that the time and place of lodging claims in a <i>désastre</i> will be prescribed in Rules made by the Court.
17	31	Clarifies that any person who opposes the admission of a claim in a <i>désastre</i> has a right of appeal to the Court against the Viscount's adjudication.
18	32	Provides that on the sale of immovable property in a <i>désastre</i> the Viscount's costs and disbursements shall be paid first.
18	32	Transfers from the Court to the Committee the authority to alter the maximum sum payable in respect of a preferential claim for wages.
18	32	Removes the priority formerly accorded to certain judgment debts, in a <i>désastre</i> .
<i>Amending Article(s)</i>	<i>Affected Article(s)</i>	<i>Detail</i>
19	36	Removes the requirement for the Viscount to supply the Judicial Greffier with a report and accounts relating to all <i>désastres</i> . However, such documents are to be filed with the Jersey Financial Services Commission in the case of corporate <i>désastres</i> .
20	38	Clarifies references to the 1991 Companies Law.
21	48	Transfers from the Court to the Committee the power to designate countries as qualifying countries for the purposes of the rendering of assistance in insolvency matters.
22	49	Represents a consequential amendment.
23	N/A	Is the Article that provides for the coming into effect of the amending Articles.

Explanatory Note

This Law will amend the Bankruptcy (Désastre) Law 1990 in various ways-

Article 1 amends Article 1 of the 1990 Law to include necessary additional and amended definitions.

Article 2 amends Article 2 of the 1990 Law to take account of the fact that certain administrative matters are in future to be prescribed by the Committee by Order and not by Rules made by the Royal Court.

Article 3 amends Article 3 of the 1990 Law to take account also of the matters referred to in Article 2 and to extend the matters in respect of which Rules may be made by the Court.

Article 4 amends Article 4 of the 1990 Law to make it possible to declare companies dissolved under the Companies (Jersey) Law 1991 to be “*en désastre*”.

Article 5 amends Article 10 of the 1990 Law to provide that legal proceedings that have already been commenced against a debtor at a time when his property is declared “*en désastre*” may only be continued with the consent of the Viscount.

Article 6 amends Article 11 of the 1990 Law to make it possible for the Royal Court where it recalls a declaration to make an order restoring the position, as far as possible, in respect of a debtor who at the time of the declaration was beneficially entitled to immovable property as joint owner. It also amends “joint tenant” to “joint owner”.

Article 7 amends Article 15 of the 1990 Law to extend the right to disclaim onerous property to include contract leases.

Article 8 amends the 1990 Law to include a new provision, Article 15A, dealing with the procedure to be followed to disclaim a contract lease.

Article 9 amends the 1990 Law to include new Articles 17, 17A and 17B.

New Article 17 deals more effectively with the situation where a debtor has entered into a contract at an undervalue.

New Article 17A includes new provisions dealing more effectively with the situation where a debtor has given a preference.

New Article 17B provides definitions for the purposes of Articles 17 and 17A.

Article 10 amends Article 18 of the 1990 Law to correct a grammatical matter and to place certain obligations on directors or ex-directors of companies “*en désastre*”.

Article 11 amends Article 19 of the 1990 Law to take account of the fact that certain administrative matters will in future be dealt with by the Committee.

Article 12 replaces Article 21 of the 1990 Law to clarify the position in respect of liens on documents of title.

Article 13 replaces Article 24 of the 1990 Law to limit further the public or private offices a person whose property has been declared “*en désastre*” may hold and to extend those restrictions to persons who are indischarged bankrupt in other jurisdictions

Article 14 amends Article 25 of the 1990 Law to take into account the fact that certain administrative matters will in future be dealt with by the Committee.

Article 15 amends Article 29 of the 1990 Law to correct a matter of grammar.

Article 16 amends Article 30 of the 1990 Law to take account of the fact that certain administrative matters will in future be dealt with by the Committee.

Article 17 replaces Article 31 of the 1990 Law to clarify the position and rights of people who lodged statements opposing the admission of a claim.

Article 18 amends Article 32 of the 1990 Law -

- (a) to take account of the fact that certain administrative matters will in future be dealt with by the Committee;
- (b) to provide that the Viscounts fees on the sale of immoveable property of a debtor will be paid first from the proceeds of the sale.

Article 19 amends Article 36 of the 1990 Law to remove the requirement for the Viscount to supply the Judicial Greffier with a report and accounts relating to all “*désastres*” and to replace it with a requirement that the Jersey Financial Services Commission be given a report and account of corporate “*désastres*”.

Article 20 amends Article 38 of the 1990 Law to take account of the fact that “Companies Law” will be defined.

Article 21 amends Article 48 of the 1990 Law to take account of the fact that certain administrative matters will in future be dealt with by the Committee.

Article 22 amends the 1990 Law to include a new Article 49A to permit the Committee to make Orders to deal with the various administrative matters under the Law it will in future be dealing with.

Article 23 provides for the short title and commencement of the Law.

BANKRUPTCY (DESASTRE) (AMENDMENT No. 5)
(JERSEY) LAW 200-

A LAW to amend further the Bankruptcy (Désastre) (Jersey) Law 1990, sanctioned by Order of Her Majesty in Council of the

(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 Article 1(1) of the Bankruptcy (Désastre) (Jersey) Law 1990,^[1] as amended^[2] (hereinafter referred to as “the principal Law”) -

(a) after the definition of “the Commission” there shall be inserted the following definitions -

“ ‘Committee’ means the Finance and Economics Committee;

‘Companies Law’ means the Companies (Jersey) Law 1991;”;

(b) in the definition of “company” -

(i) in paragraph (a) for the words “Companies (Jersey) Law 1991” there shall be substituted the words “Companies Law”;

(ii) at the end of the definition there shall be added -

“and references to directors and other officers of a company and to voting power at a general meeting of a company shall have effect with any necessary modifications”;

(c) at the end of the definition of “debtor” there shall be added the following paragraph -

“(c) in relation to a reference to anything done by a debtor before a declaration was made means the person who became the debtor on the declaration being made although the person may not have been insolvent at the time the thing was done;”;

(d) for the definition of “prescribed” there shall be substituted the following definitions -

“ ‘prescribed by the Committee’ means prescribed by the Committee by Order;

‘prescribed by the court’ means prescribed by the court by Rules made under Article 2;”;

(e) in paragraph (a) of the definition of “registrar” for the words “Companies (Jersey) Law 1991” there shall be substituted the words “Companies Law”.

ARTICLE 2

In Article 2 of the principal Law^[3] -

- (a) in paragraph (2) sub-paragraph (c) shall be omitted;
- (b) in paragraph (2)(j) for the words “such matters” there shall be substituted the words “subject to paragraph (1) of Article 49A, such matters”;
- (c) the following paragraphs shall be added at the end -

“(3) The Rules may authorize the Viscount to exercise a discretion including a discretion to extend or abridge the period within which a person is required or authorized to do any act in pursuance of the Rules.

(4) The Rules may authorize the Viscount to grant an extension referred to in paragraph (3) although the application for the extension was not made until after the period prescribed by the Rules or any extension of that period.”.

ARTICLE 3

In Article 3 of the principal Law^[4] -

- (a) in paragraph (1)(a) for the word “prescribed” there shall be substituted the words “prescribed by the Committee”;
- (b) in paragraph (3) for the words “prescribed form” there shall be substituted the words “in the form prescribed by the court”.

ARTICLE 4

For Article 4(1)(d) of the principal Law^[5] there shall be substituted the following sub-paragraph -

- “(d) who, being a company -
 - (i) is registered under the ‘Loi (1861) sur les Sociétés à Responsabilité Limitée’ or the Companies Law; or
 - (ii) has been dissolved pursuant to Article 38 or Article 38A of that ‘Loi’ or pursuant to the Companies Law; or”.

ARTICLE 5

For Article 10 of the principal Law^[6] there shall be substituted the following Article -

“ARTICLE 10

Prohibition on pursuing alternative remedies, etc. after declaration

With effect from the date of the declaration no creditor to whom the debtor is indebted in respect of any debt provable in the ‘désastre’ shall -

- (a) have any remedy against the property or person of the debtor in respect of the debt; or
- (b) commence any action or legal proceedings to recover the debt; or
- (c) except with the consent of the Viscount or by order of the court, continue any action or legal proceedings to recover the debt.”.

ARTICLE 6

For Article 11(4) of the principal Law^[7] there shall be substituted the following paragraphs -

“(4) Where, immediately prior to a declaration, the debtor is beneficially entitled to any immovable property as a joint owner (‘conjointement par ensemble’) the title to the property shall, as from the date of the declaration, be deemed to be converted into an ownership in common in equal shares (‘en indivis en parts égales’) and any hypothecs to which any such immovable property is subject shall with the debts secured thereby, be apportioned equally between such shares.

(5) Where, after a conversion and any apportionment under paragraph (4) has taken place, the court on an application made under paragraph (1) of Article 7 makes an order recalling the declaration, the court may also make such order as the court thinks fit for restoring the position to what it would have been, or as nearly thereto as the court thinks practicable, if the declaration had not been made.”.

ARTICLE 7

For Article 15(1) and (2) of the principal Law^[8] there shall be substituted the following paragraphs -

“(1) For the purpose of this Article ‘onerous property’ means -

- (a) moveable property;
- (b) a contract lease;
- (c) other immoveable property if it is situated outside the Island,

which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act, and includes an unprofitable contract.

(2) The Viscount may, within six months of the declaration, and by giving the notice prescribed by the court, disclaim any onerous property of the debtor vested in the Viscount, and may do so notwithstanding that he has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in respect of it.”.

ARTICLE 8

After Article 15 of the principal Law^[9] there shall be inserted the following Article -

“ARTICLE 15A

Disclaimer of contract leases

(1) The disclaimer of a contract lease does not take effect unless a copy of its disclaimer has been served (so far as the Viscount is aware of their addresses) on every person claiming under the debtor as a hypothecary creditor or under lessee and either -

- (a) no application under Article 16 is made with respect to the contract lease before the end of the period of 14 days beginning with the day on which the last notice under this paragraph was served; or
- (b) where such an application has been made, the court directs that the disclaimer is to have effect.

(2) Where the court gives a direction under clause (b) of paragraph (1) it may also, instead of or in addition to any order it makes under Article 16 make such orders with respect to fixtures, tenant’s improvements and other matters arising out of the lease as it thinks fit.”.

ARTICLE 9

For Article 17 of the principal Law^[10] there shall be substituted the following Articles -

“ARTICLE 17

Transactions at an undervalue

(1) If a debtor in respect of whose property a declaration has been made, has at a relevant time entered into a transaction with a person at an undervalue the court may, on the application of the Viscount, make such an order as the court thinks fit for restoring the position to what it would have been if that debtor had not entered into the transaction.

(2) The court shall not make an order under paragraph (1) if it is satisfied-

- (a) that the debtor entered into the transaction in good faith; and
- (b) where the debtor is a company or a person otherwise carrying on a business, that the debtor entered into the transaction for the purpose of carrying on its or his business; and
- (c) that at the time the debtor entered into the transaction there were reasonable grounds for believing that the transaction would be of benefit to the debtor.

(3) Without prejudice to the generality of paragraph (1) but subject to paragraph (5), an order made under paragraph (1) may do all or any of the following, namely -

- (a) require property transferred as part of the transaction to be vested in the Viscount;
- (b) require property to be vested in the Viscount if it represents in a person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;
- (c) release or discharge (in whole or in part) security given by the debtor;
- (d) require a person to pay in respect of a benefit received by him from the debtor such sum to the Viscount as the court directs;
- (e) provide for a surety or guarantor whose obligation to a person was released or discharged (in whole or in part) under the transaction to be under such new or revived obligation to that person as the court thinks appropriate;
- (f) provide -
 - (i) for security to be provided for the discharge of an obligation imposed by or arising under the order;
 - (ii) for the obligation to be secured on any property; and
 - (iii) for the security to have the same priority as the security released or discharged (in whole or in part) under the transaction;
- (g) provide for the extent to which a person -
 - (i) whose property is vested by the order in the Viscount; or
 - (ii) on whom an obligation is imposed by the order,

is to be able to prove in the 'désastre' of the debtor for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by, the transaction.

(4) Except to the extent provided by paragraph (5), an order made under paragraph (1) may affect the property of, or impose an obligation on, any person whether or not he is the person with whom the debtor in question entered into the transaction.

(5) An order made under paragraph (1) shall not -

- (a) prejudice an interest in property which was acquired from a person other than the debtor and was

acquired in good faith and for value, or prejudice any interest deriving from such an interest; or

- (b) require a person who received a benefit from the transaction in good faith and for value, to pay a sum to the Viscount, except where the person was a party to the transaction.

(6) In considering for the purpose of this Article whether a person has acted in good faith the court may take into consideration -

- (a) whether the person was aware -
 - (i) that the debtor had entered into a transaction at an undervalue; and
 - (ii) that the debtor was insolvent or would as a likely result of entering into the transaction become insolvent; and
- (b) whether the person was an associate of or was connected with, either the debtor or the person with whom the debtor had entered into the transaction.

(7) For the purposes of this Article a debtor enters into a transaction with a person at an undervalue if -

- (a) he makes a gift to that person;
- (b) he enters into a transaction with that person -
 - (i) by way of a marriage settlement; or
 - (ii) on terms for which there is no 'cause'; or
 - (iii) for a 'cause' the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the 'cause' provided by the debtor.

(8) Subject to paragraph (9), the time at which a debtor entered into a transaction at an undervalue is a relevant time for the purpose of paragraph (1) if the transaction was entered into during the period of five years immediately preceding the making of the declaration.

(9) Subject to paragraph (10), the time referred to in paragraph (8) is not a relevant time unless -

- (a) at the time the transaction was entered into the debtor was insolvent; or
- (b) the debtor became insolvent as a result of the transaction.

(10) If the transaction at an undervalue was entered into with -

- (a) a person connected with the debtor where the debtor is a company; or
- (b) an associate of the debtor in any other case,

paragraph (9) does not apply and the time referred to in paragraph (8) is a relevant time unless it is proved that -

- (c) at the time the transaction was entered into the debtor was not insolvent; or
- (d) if at the time the transaction was entered into the debtor was not insolvent, the debtor did not become insolvent as a result of the transaction.

(11) Nothing in this Article shall derogate from the provisions of Article 52 of the 'Loi (1880) sur la propriété foncière.'

(12) For the purposes of this Article 'cause' has the meaning assigned to it by the customary law of the Island.

Giving of preferences

(1) If a debtor in respect of whose property a declaration has been made, has at a relevant time given a preference to a person the court may, on the application of the Viscount, make such an order as the court thinks fit for restoring the position to what it would have been had the preference not been given.

(2) Without prejudice to the generality of paragraph (1) but subject to paragraph (4), an order made under paragraph (1), may do all or any of the following, namely -

- (a) require property transferred in connection with the giving of the preference to be vested in the Viscount;
- (b) require property to be vested in the Viscount if it represents in any person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;
- (c) release or discharge (in whole or in part) security given by the debtor;
- (d) require a person to pay in respect of a benefit received by him from the debtor such sum to the Viscount as the court directs;
- (e) provide for a surety or guarantor whose obligation to a person was released or discharged (in whole or in part) by the giving of the preference to be under such new or revived obligation to that person as the court thinks appropriate;
- (f) provide -
 - (i) for security to be provided for the discharge of any obligation imposed by or arising under the order;
 - (ii) for such an obligation to be secured on any property; and
 - (iii) for the security to have the same priority as the security released or discharged (in whole or in part) by the giving of the preference; and
- (g) provide for the extent to which a person -
 - (i) whose property is vested by the order in the Viscount; or
 - (ii) on whom obligations are imposed by the order,is to be able to prove in the 'désastre' of the debtor for debts or other liabilities which arose from, or were released or discharged (in whole or in part) under or by the giving of the preference.

(3) Except as provided by paragraph (4), an order made under paragraph (1) may affect the property of, or impose an obligation on, any person whether or not he is the person to whom the preference was given.

(4) An order made under paragraph (1) shall not -

- (a) prejudice an interest in property which was acquired from a person other than the debtor and was acquired in good faith and for value, or prejudice any interest deriving from such an interest; or
- (b) require a person who received a benefit from the preference in good faith and for value, to pay a sum to the Viscount, except where the payment is in respect of a preference given to that person at a time when he was a creditor of the debtor.

(5) In considering for the purpose of this Article whether a person has acted in good faith the court may take into consideration -

- (a) whether the person had notice -
 - (i) of the circumstances which amounted to the giving of the preference by the debtor; and

- (ii) of the fact that the debtor was insolvent or would as a likely result of giving the preference become insolvent; and
- (b) whether the person was an associate of or was connected with, either the debtor or the person to whom the debtor gave the preference.
- (6) For the purposes of this Article a debtor gives a preference to a person if -
 - (a) the person is a creditor of the debtor or a surety or guarantor for a debt or other liability of the debtor; and
 - (b) the debtor -
 - (i) does anything; or
 - (ii) suffers anything to be done,

which has the effect of putting the person into a position which, in the event of a declaration being made in respect of that debtor's property, will be better than the position he would have been in if that thing had not been done.

(7) The court shall not make an order under this Article in respect of a preference given to a person unless the debtor when giving the preference was influenced in deciding to give the preference by a desire to put the person into a position which, in the event of a declaration being made in respect of the debtor's property, would be better than the position the person would be in if the preference had not been given.

(8) A debtor who gave a preference to a person who was at the time the preference was given an associate of or was connected with the debtor (otherwise than by reason only of being the person's employee) is presumed, unless the contrary is shown, to have been influenced in deciding to give the preference by the desire mentioned in paragraph (7).

(9) Subject to paragraph (10), the time at which a debtor gives a preference is a relevant time for the purpose of paragraph (1) if the preference was given during the period of one year immediately preceding the making of the declaration.

- (10) Subject of paragraph (11), the time referred to in paragraph (9) is not a relevant time unless -
 - (a) at the time the preference was given the debtor was insolvent; or
 - (b) the debtor became insolvent as a result of giving the preference.

- (11) If the preference was given to -
 - (a) a person connected with the debtor where the debtor is a company; or
 - (b) an associate of the debtor in any other case,

paragraph (10) does not apply and the time referred to in paragraph (9) is a relevant time unless it is proved that -

- (c) at the time the preference was given the debtor was not insolvent; or
- (d) if at the time the preference was given the debtor was not insolvent, the debtor did not become insolvent as a result of the preference being given.

(12) Nothing in this Article shall derogate from the provisions of Article 52 of the 'Loi (1880) sur la propriété foncière'.

ARTICLE 17B

Certain definitions in respect of Articles 17 and 17A

- (1) For the purposes of Articles 17 and 17A a person is connected with a company if -
 - (a) he is a director of the company; or
 - (b) he is an associate of a director of the company; or
 - (c) he is an associate of the company.
- (2) For the purposes of Articles 17 and 17A and of this Article -
 - (a) a person is an associate of an individual if that person is the individual's husband or wife, or is a relative, or the husband or wife of a relative, of the individual or of the individual's husband or wife;
 - (b) a person is an associate of any person with whom he is in partnership, and of the husband or wife or a relative of any individual with whom he is in partnership;
 - (c) a person is an associate of any person whom he employs or by whom he is employed;
 - (d) a person in his capacity as a trustee of a trust is an associate of another person if the beneficiaries of the trust include, or the terms of the trust confer a power that may be exercised for the benefit of, that other person or an associate of that other person;
 - (e) a company is an associate of another company -
 - (i) if the same person has control of both companies, or a person has control of one company and people who are his associates, or he and people who are his associates, have control of the other company; or
 - (ii) if each company is controlled by a group of two or more people and the groups either consist of the same people or could be regarded as consisting of the same people by treating (in one or more cases) a member of either group as replaced by a person of whom he is an associate;
 - (f) a company is an associate of another person if that person has control of the company or if that person and people who are his associates together have control of the company;
 - (g) a provision that a person is an associate of another person is to be taken to mean that they are associates of each other.
- (3) For the purposes of this Article a person is a relative of an individual if he is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, treating -
 - (a) any relationship of the half blood as a relationship of the whole blood and the stepchild or adopted child of a person as his child; and
 - (b) an illegitimate child as the legitimate child of his mother and reputed father.
- (4) References in this Article to a husband or wife include a former husband or wife and a reputed husband or wife.
- (5) For the purposes of this Article a director or other officer of a company is to be treated as employed by the company.
- (6) For the purposes of this Article a person is to be taken as having control of a company if -
 - (a) the directors of the company or of another company which has control of it (or any of them) are accustomed to act in accordance with his directions or instructions; or
 - (b) he is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of the company or of another company which has control of it,

and where two or more people together satisfy either of the above conditions, they are to be taken as having control of the company.”.

ARTICLE 10

In Article 18 of the principal Law^[11] -

(a) for sub-paragraph (d) of paragraph (1) there shall be substituted the following sub-paragraph -

“(d) supply such information regarding his expenditure and sources of income after the declaration as the Viscount may require;” and

(b) for paragraph (2) there shall be substituted the following paragraphs -

“(2) Where the debtor is a company any person who is a director of the company or at the time of the declaration was a director of the company shall notify the Viscount immediately in writing of any change of his address, employment or name.

(2A) If a person without reasonable excuse fails to comply with a requirement of paragraph (1) or (2) he commits an offence and is liable to a fine or imprisonment for a term not exceeding six months, or to both.”.

ARTICLE 11

In Article 19(2)(a) of the principal Law^[12] for the words “prescribed amount” there shall be substituted the words “amount prescribed by the Committee.”.

ARTICLE 12

For Article 21 of the principal Law^[13] there shall be substituted the following Article -

“ARTICLE 21

Unenforceability of liens on records

(1) Subject to paragraph (2), a lien or other right to retain possession of any records of the debtor shall be unenforceable to the extent that its enforcement would deny possession of those records to the Viscount.

(2) Paragraph (1) does not apply to a lien on documents which give a title to property and are held as such.”.

ARTICLE 13

For Article 24 of the principal Law¹³ there shall be substituted the following Article -

“ARTICLE 24

Debtors, etc. prohibited from acting in certain capacities

(1) In this Article -

‘person to whom this Article applies’ means -

(a) a debtor during the course of the ‘désastre’;

(b) a person who is or has the status of an undischarged bankrupt (by whatever name called) under the laws of any other jurisdiction;

‘private office’ means the office of curator, director of a company, ‘electeur’, liquidator of a company, trustee, ‘tuteur’, executor or administrator of a deceased person’s estate;

‘public office’ means the office of Connétable, Centenier, Vingtenier, Constable’s Officer, ‘Procureur du

Bien Public', member of the Assessment Committee constituted under the Parish Rate (Administration) (Jersey) Law 1946.

(2) A person to whom this Article applies shall not hold a public or private office.

(3) A person who at the time of becoming a person to whom this Article applies is the holder of a public or private office shall resign from the office forthwith.

(4) Subject to paragraph (5), a person to whom this Article applies is not qualified to sit on a jury.

(5) If a person who is sitting on a jury becomes a person to whom this Article applies the person is qualified to continue to sit on that jury until his services on the jury are no longer required.

(6) A person who -

(a) contravenes paragraph (2); or

(b) fails to comply with paragraph (3); or

(c) sits on a jury when he is not qualified to do so by virtue of paragraph (4),

commits an offence and is liable to a fine or imprisonment for a term not exceeding six months, or to both.”.

ARTICLE 14

In Article 25(1) of the principal Law^[14] for the word “prescribed” there shall be substituted the words “prescribed by the Committee”.

ARTICLE 15

In Article 29(1) of the principal Law^[15] for the words “certain debts” there shall be substituted the word “debts”.

ARTICLE 16

In Article 30(1) of the principal Law^[16] for the words “at the prescribed time and in the prescribed manner” there shall be substituted the words “at the time and in the manner prescribed by the court”.

ARTICLE 17

For Article 31 of the principal Law¹⁶ there shall be substituted the following Article -

“ARTICLE 31

Proofs of debts to be examined and admitted or rejected

(1) The Viscount may admit or reject proof of a debt in whole or in part.

(2) Before admitting or rejecting proof of a debt the Viscount shall examine the proof and any statement opposing the admission of the debt.

(3) Before admitting or rejecting proof of a debt the Viscount may require further evidence in support of, or in opposition to, its admission.

(4) The Viscount may reject in whole or part any claim for interest on a debt if he considers the rate of interest to be extortionate.

(5) If the Viscount rejects proof of a debt in whole or in part he shall serve notice of rejection in the manner prescribed by the court on the person who provided the proof.

(6) If the Viscount rejects a statement opposing admission of a debt in whole or in part he shall serve notice of rejection in the manner prescribed by the court on the person who provided that statement.

(7) If a person upon whom notice has been served in accordance with paragraph (5) or (6) is dissatisfied with the decision of the Viscount and wants the decision reviewed by the court he must, within the time prescribed by the court, request the Viscount to apply to the court for a date to be fixed for the court to review the decision.

(8) The Viscount shall comply with a request made in accordance with paragraph (7).”.

ARTICLE 18

In Article 32 of the principal Law^[17] -

- (a) in the proviso to paragraph (1)(b) for the words “such sum as shall be prescribed” there shall be substituted the words “any sum prescribed by the Committee”;
- (b) in paragraph (1)(c) clause (iii) shall be omitted;
- (c) in paragraph (4) for the words “Hypothecary creditors” there shall be substituted the words “Subject to paragraph (4A), hypothecary creditors”;
- (d) there shall be inserted after paragraph (4) the following paragraph -

“(4A) If the Viscount sells a corporeal hereditament that is subject to a judicial or conventional hypothec the proceeds of sale shall be applied first in payment of the costs, disbursements and other charges necessarily incurred by the Viscount in connection with the sale and the Viscount’s fees in connection with the sale.”;

- (e) in paragraph 7 for the words “paragraphs (4) and (5)” there shall be substituted the words “paragraphs (4), (4A) and (5)”.

ARTICLE 19

In Article 36 of the principal Law^[18] -

- (a) in the heading to the Article the words “and Judicial Greffier” shall be omitted;
- (b) in sub-paragraph (a) of paragraph (1) the words “and Judicial Greffier” shall be omitted;
- (c) paragraph (2) shall be omitted and the following paragraph shall be substituted -

“(2) Where the debtor is a company registered under the ‘Loi (1861) sur les Sociétés à Responsabilité Limitée’ or the Companies Law the Viscount shall notify the Commission and the registrar in writing of the date of payment of the final dividend.”.

ARTICLE 20

Article 38(2) of the principal Law^[19] is amended by omitting the words “Companies (Jersey) Law 1991” and substituting the following words “Companies Law”.

ARTICLE 21

In Article 48 of the principal Law^[20] -

- (a) there shall be substituted for paragraph (1) the following paragraph -

“(1) The court shall assist the courts of any relevant country or territory in all matters relating to the insolvency of any person to the extent it thinks fit.”;

- (b) in paragraph (2) for the word “prescribed” there shall be substituted the word “relevant”;

(c) the following paragraph shall be added at the end -

“(4) In this Article “relevant country or territory” means a country or territory prescribed by the Committee.”.

ARTICLE 22

The following Article shall be inserted after Article 49 of the principal Law^[21] -

“ARTICLE 49A

Orders

(1) The Committee may make Orders prescribing any matter which is to be prescribed by the Committee by any provision of this Law.

(2) The Subordinate Legislation (Jersey) Law 1960 shall apply to Orders made under this Law.”.

ARTICLE 23

(1) This Law may be cited as the Bankruptcy (Désastre) (Amendment No. 5) (Jersey) Law 200-.

(2) This Law shall come into force on such day or days as the States may by Act appoint and different days may be appointed for different purposes and different provisions of the Law.

[1] Volume 1990-1991, page 45.

[2] Volume 1990-1991, page 1092, Volume 1996-1997, page 550 and Volume 1998, page 264.

[3] Volume 1990-1991, page 47.

[4] Volume 1990-1991, page 49, Volume 1994-1995, page 399 and Volume 1998, pages 264 and 594.

[5] Volume 1990-1991, pages 49 and 1092 and Volume 1996-1997, page 551.

[6] Volume 1990-1991, page 55.

[7] Volume 1990-1991, page 56.

[8] Volume 1990-1991, page 59.

[9] Volume 1990-1991, page 60.

[10] Volume 1990-1991, page 62.

[11] Volume 1990-1991, page 64.

[12] Volume 1990-1991, page 66.

[13] Volume 1990-1991, page 69.

[14] Volume 1990-1991, page 70.

[15] Volume 1990-1991, page 75.

[16] Volume 1990-1991, page 76.

[17] Volume 1990-1991, page 77 and Volume 1996-1997, pages 339 and 607.

[18] Volume 1990-1991, pages 80 and 1093 and Volume 1996-1997, page 551.

[19] Volume 1990-1991, pages 82 and 1093.

[20] Volume 1990-1991, page 87, Volume 1996-1997, page 641 and Volume 1998, page 264.

[21] Volume 1990-1991, page 88.