STATES OF JERSEY

DRAFT COMPANIES (AMENDMENT No. 11) (JERSEY) LAW 201-

Lodged au Greffe on 1st April 2014
by the Chief Minister

STATES GREFFE

DRAFT COMPANIES (AMENDMENT No. 11) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Chief Minister has made the following statement –

In the view of the Chief Minister, the provisions of the Draft Companies (Amendment No. 11) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Chief Minister

Dated: 28th March 2014

Report

This draft Amendment (the "**draft Law**") to the Companies (Jersey) Law 1991 (the "**Principal Law**") has been prepared in order to confirm and strengthen the competitiveness and standing of the Jersey company, a vehicle used both for local business and as one of the key tools of the international finance industry.

A Green Paper consulted on 34 separate proposals for amendment. Some of the proposals were of a substantive nature and invited detailed responses to specific questions. Other proposals were of a relatively minor nature designed to clarify certain matters or ensure parity with connected legislation.

Following the consultation a summary of the responses received during the consultation period was published on 5th February 2013. This was presented to the States on 11th February 2013 (R.10/2013). In the Summary of Responses a number of matters were identified which required further consultation with interested parties. The outcome of that further consultation was summarized in a supplemental response paper, which was published in December 2013 (R.158/2013) and a closed consultation took place which closed on 31st January 2013. Following the consultation process, the draft Law was prepared.

The provisions

The draft Law would bring in a number of separate changes in respect of which further explanation is given below where the additional information would be of assistance to support the Explanatory Note.

Article 4 of the Draft Law

By virtue of Article 17(2)(a) of the Principal Law, a private company with more than 30 members is to be treated as if it were a public company. Article 17A in its current form provides that, in determining whether a company has more than 30 members, no account is to be taken of members who are (or were) also directors or employees of the company.

This requirement can have a significant impact on groups of companies where directors or employees of companies in the same group are also members of a company. Consequently the amendment extends Article 17A to exclude current and former directors and employees of companies in the same group in calculating whether the company has more than 30 members for the purposes of Article 17(2)(a).

Article 7 of the Draft Law

The draft Law removes the prohibition on commission and discounts. These are widely considered to be unnecessary and unduly restrictive, given that Jersey company law has moved away from the maintenance of capital doctrine towards a solvency-based approach to creditor protection. Article 7(1) of the draft Law achieves this by repealing Articles 35 and 36 of the Principal Law.

Articles 8 and 9 of the Draft Law

Changes have previously been made to permit no par value companies to make payments into their stated capital account. This creates an imbalance as par value companies cannot do this at present. Therefore, Article 8 of the draft Law inserts a new paragraph (1A) into Article 39 of the Principal Law permitting transfers to any other account of the company other than the capital redemption reserve or the nominal capital account. However, there is protection for creditors because no distribution can be made out of a share premium account unless a solvency statement is made. The

restriction on transfers from capital redemption reserves and the share premium account matches that set out in Article 115 of the Principal Law relating to distributions.

A further change is a logical consequence of the previous amendments to the rules of capital maintenance. Previously, there was a requirement for a special resolution to be made before making a transfer by a no par value company into its stated capital account. Article 9 of the draft Law removes this requirement because of the modern focus on the solvency of a company. Logically, to protect creditors, a solvency statement should be required to be made in order for the company to make a distribution, or during reductions or redemptions of capital, rather than during an internal re-organization of a company.

Article 10 of the Draft Law

Article 10 of the draft Law amends Article 49(1) of the Principal Law so as to permit a company maintaining a branch register in any country, territory or place outside Jersey to enter the names of all or any of its members onto that register, not just those who are resident in that particular country, territory or place. This change is being made because certain exchanges require a register of all members to be held within that territory.

Articles 11 and 16 of the Draft Law

The view held by the majority of legal practitioners in the Island is that Articles 55 and 57 of the Principal Law permit a redemption or repurchase of shares *in specie* as well as in cash. It is wished to clarify this view by a clear statement in the Principal Law by the insertion of a new paragraph (12A) into Article 55 as well as making it clear that any payment made to a shareholder upon a reduction of capital pursuant to Article 61 may be made in cash or otherwise.

Articles 12 and 13 of the Draft Law

A Jersey company can be listed on certain stock exchanges by using depository certificates (sometimes called depository receipts). The redemption and repurchase provisions contained in Articles 55 and 57 of the Principal Law do not work adequately for depository certificates and therefore the draft Law seeks to address this.

Therefore the power conferred on a company by Article 57 of the Principal Law to redeem and repurchase its own shares is extended to include depository certificates, provides a mechanism for such and adds a definition of the term 'depository certificate'. Article 13 of the draft Law amends Article 58A of the Principal Law so as to provide that any depository certificates repurchased pursuant to Article 57 may be held as 'treasury shares'.

The draft Law also amends Article 57(4) to extend the maximum expiry date for a resolution authorizing the on-market repurchase of shares from 18 months to 5 years. This would achieve parity with the relevant UK legislation.

Articles 14 and 15 of the Draft Law

Following consultation the Minister for Economic Development proposed that Jersey should follow the UK position, where a reduction in capital for a private company is not subject to the sanction of the court, although it was felt that it would be helpful to retain the option of a court procedure. Further, it was decided to propose that a procedure based on a solvency statement should be available as an alternative to the court's sanction for both public and private companies. The key factors were that both a public company and a private company might have a nominal amount of share capital and the Principal Law already permits distributions to be made providing that a

solvency statement is passed. Accordingly, if a solvency statement is deemed sufficient protection for creditors in respect of distributions, it should also be deemed sufficient protection for reductions of capital where the amount of capital held by a company is often insignificant.

Article 14 of the draft Law, if adopted, would implement this policy by amending paragraph (3) of Article 61 to provide that a reduction of capital shall either be supported by a solvency statement, or be subject to the confirmation to the court. Article 15 of the draft Law inserts 2 new Articles (61A and 61B) into the Principal Law, which set out the solvency statement procedure in more detail.

Article 17 of the Draft Law

Article 73 of the Principal Law excludes partnership entities from being directors of a Jersey company. This prohibition is extended to limited liability partnerships.

Articles 18 and 19 of the Draft Law

Article 74(2) of the Principal Law permits the members of a company to ratify or authorize a breach of a director's duties under Article 74(1). In its current form Article 74(2) requires the unanimous consent of all members of the company, and that the company will be able to discharge its liabilities as they fall due after the act or omission that is the subject of the ratification/authorization.

However, this process is out of step with the equivalent provision contained in section 239 of the UK Companies Act 2006, which permits ratification of a director's negligence, default or breach of duty by ordinary resolution (or such higher threshold as may be specified in the company's articles of association).

Articles 18 and 19 of the draft Law would give effect to this change of policy to follow the UK. The draft provision preserves the current procedure for unanimous ratification contained in Article 74(2), but adds to this a new procedure for ratification by ordinary (or if the articles so require) special resolution. The new procedure puts in place greater safeguards where there is not unanimity to ensure that the director and members connected to the director are not entitled to vote to ratify his acts.

Articles 20 and 27 of the Draft Law

Article 87 of the Principal Law requires every company to hold an annual general meeting ("**AGM**"), although this requirement can be dispensed with by agreement between all the members of the company under Article 87(4). It was noted that very few private companies in fact hold annual general meetings, and that the current dispensing procedure under Article 87(4) was administratively inconvenient.

It is proposed to amend Article 87 so that private companies are no longer required to hold an AGM, unless their articles specifically require them to do so. Article 20 of the draft Law, if adopted, would amend Article 87(2) so that the requirement for an AGM only applies to a public company and a 'relevant private company'. A 'relevant private company' is a private company which is either required to hold an AGM by a provision made in its articles after the coming into force of the draft Law, or in whose case such a provision was made in its articles before the coming into force of the draft Law and confirmed by a special resolution thereafter.

This approach has been adopted because the articles of many existing private companies will contain an express requirement for an AGM to be held. The provisions outlined above avoid the need for those companies to amend their articles. Only private companies that wish to retain the requirement for an AGM after the coming into force of the draft Law (which will be relatively few) need take any positive action.

Articles 24 and 25 of the Draft Law

The consensus amongst respondents to the Green Paper was that the Principal Law should be clarified by including a mechanism for a written resolution to be passed by such majority as is specified in the company's articles of association, provided that, where the written resolution procedure is being used to pass a special resolution the requisite majority shall not be less than two-thirds of shareholders entitled to vote.

The Chief Minister concluded, following the consultation, that Article 95 should also be amended. The changes include safeguards including the requirement (similar to those found in sections 288 to 300 of the UK Companies Act 2006) that the proposed resolution be circulated to all shareholders at the same time for resolutions passed by majority rather than unanimously. Accordingly, Article 25 of the draft Law inserts new Articles 95ZA to 95ZC into the Principal Law, which contain provisions governing the circulation of written resolutions.

Articles 26 and 47 of the Draft Law

Article 26 of the draft Law would amend Article 96(4) of the Principal Law to ensure that weekends and Bank holidays are left out of account for the purposes of calculating any notice period imposed by a company's articles.

Article 28 of the Draft Law

Article 113 of the Principal Law requires a company to appoint auditors to examine and report on its accounts if (a) it is a public company, (b) its articles so require, or (c) a resolution of the company in general meeting so requires. It was decided to draft amendments to Article 113 so as to relieve public companies of the audit requirement in certain circumstances such as when they are dormant fund companies.

Article 28 of the draft Law amends Article 113 by inserting new paragraphs (1A) to (1F) into Article 113. Paragraph (1A) provides that for prescribed classes of company the audit requirement may be disapplied in respect of a financial period of the company by a resolution passed before the date by which it is required to prepare its accounts. However, to protect shareholders (and particularly those holding non-voting shares) such a resolution can be rescinded, *inter alia*, if the company receives requests for its rescission from members holding not less than 10% by value of the shares, unless such safeguards are not appropriate for the class of company in which case they can be dispensed with by Order.

Article 29 of the Draft Law

Article 113B(4) of the Principal Law provides that an auditor of a company is entitled to require from the company's officers and secretary such information and explanations as the auditor thinks necessary for the performance of his duties. Article 113C makes it an offence for an officer or secretary of the company knowingly or recklessly to make a false or misleading statement to an auditor in response to a request from him.

Article 29 of the draft Law extends Article 113B(4) to other officers. If adopted this provision will apply to former officers of the company, current and former employees who appear to be in possession of relevant information, and any person who holds or is accountable for (or previously held or was accountable for) any of the company's records and who appears to be in possession of relevant information, subject to safeguards.

Article 31 of the Draft Law

The purpose of this Article is to amend the definition of a 'distribution' to exclude any transaction which does not result in a reduction in the net assets of the company. This

removes a perceived risk that the definition might catch certain common commercial transactions (such as the giving of a guarantee by a subsidiary in respect of its parent's indebtedness), thereby rendering them unlawful unless the procedure laid down by Article 115 of the Principal Law (which requires the making of a solvency statement prior to any distribution) has been followed.

Accordingly, Article 31 of the draft Law amends Article 115 so as to provide that the requirement for an ex ante solvency statement does not apply to a distribution which does not reduce the net assets of the company. It also inserts a new paragraph (2A), which defines the phrase 'net assets' and provides that the question whether a distribution reduces the amount of a company's net assets falls to be determined in accordance with the generally accepted accounting principles adopted in the preparation of the company's most recently prepared accounts.

Article 32 of the Draft Law

Article 115 of the Principal Law provides that a company can only make a distribution to its members if the directors authorizing the distribution have made a solvency statement. However, there is currently no mechanism whereby such a distribution, which is technically ultra vires, can be ratified retrospectively where there was an inadvertent mistake. Article 32 of the draft Law seeks to remedy this omission by introducing a court process to ratify such distributions based on factors including; the solvency of the company at the time of the distribution, the solvency of the company at the time that the court hears the application, and that there are no reasons contrary to the interests of justice why such a ratification should not take place.

It is envisaged that, in cases where the solvency of the company is not in doubt, and it is clear that the failure to make a solvency statement was an innocent mistake by the directors, an order under Article 115ZA(1) should generally be made as a matter of course.

To ensure that the procedure is not unduly onerous, paragraph (3) of Article 115ZA expressly provides that no notice of an application under paragraph (1) need be given to any creditor of the company, or any other person, unless the court otherwise directs.

Article 34 of the Draft Law

This amendment addresses a difficulty sometimes encountered that a 'takeover offer' must be made to every shareholder on identical terms (subject only to variations permitted under Article 116(4)). However, the laws of some jurisdictions make it impossible for an offer under Article 116 to be made to shareholders resident in them, or for such shareholders to accept the offer. Article 34 follows the UK Companies Act 2006 which makes specific provision for this situation (in section 878) with new Article 116 (2C), (2D), and (2E).

Articles 35 to 39, 41 and 42 of the Draft Law

Following consultation, Article 35 to 39, 41 and 42 of the draft Law amends various Articles in the Principal Law, in relation to mergers to reduce the period for various parties to apply to court from 28 to 21 days.

In addition, Article 36 of the draft Law amends Article 127FC of the Principal Law so as to make it possible to serve notice of a proposed merger on a company's creditors at the same time as notice is given to members.

Article 39 of the draft Law amends Article 127FJ(3), which deals with the application to the registrar in order to complete a merger. Paragraph (3) is amended so as to make it possible for such an application to be made earlier than the times specified therein with the agreement in writing of all the members and creditors of the merging companies.

Article 45 of the Draft Law

Article 45 of the draft Law inserts into Article 205 of the Principal Law, (which already confers on the registrar powers to strike off for other reasons (e.g. failure to deliver an annual return)) powers for the registrar to strike off a company for the failure to comply with the requirements contained in Article 67 to maintain a registered office in Jersey. The new power may be exercised where a company fails to comply with a notice from the registrar under Article 67(6) or the registrar refuses under Article 67(8) to register a notice given by a company under Article 67(5) or (6). If the notice is not complied with, the registrar may strike off the company under Article 205(7).

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this draft Law.

Human Rights

The notes on the human rights aspects of the draft Law in the Appendix have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

Human Rights Note on the Draft Companies (Amendment No. 11) (Jersey) Law 201-.

These Notes have been prepared in respect of the Draft Companies (Amendment No. 11) (Jersey) Law 201- ("**the draft Law**") by the Law Officers' Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers' opinion, the draft Law is compatible with the European Convention on Human Rights ("ECHR").

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

Article 6 of the ECHR provides that –

> *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."*

Article 6 of the ECHR applies if the civil rights and obligations of the applicant are in issue, there is a dispute as to those civil rights and obligations, and the proceedings are determinative of those civil rights and obligations. Those conditions may be present in the context of the provisions of Articles 25 (new Articles 95ZC(11) and (12)) and 32 of the draft Law.

A key requirement of Article 6 of the ECHR is the need for access to a fair and public hearing within a reasonable time "by an independent and impartial tribunal". The independence in question here is independence from the executive, the parties and the legislature.[1]

It was held in *Albert -v- Belgium*[2] that access to an independent and impartial tribunal may be granted in 2 ways: either the decision-making body itself complies with the requirement of Article 6(1) of the ECHR, or the decision-making body is subject to control by a body which complies with the requirements of Article 6(1) and which has full jurisdiction.

In the context of Articles 25 (new Articles 95ZC(11) and (12)) and 32 of the draft Law, the primary decision-making body is the Royal Court. In terms of the right to be heard, the Royal Court Rules dictate that the Court will have discretion as to whether to hear a party where an application is made. The Court is obliged under the Human Rights (Jersey) Law 2000 to exercise that discretion in a manner that is compatible with the ECHR, and therefore with the requirements of Article 6. Further, there is a right of appeal to the Court of Appeal against a decision of the Royal Court; this is provided for in civil cases by Article 12(2) of the Court of Appeal (Jersey) Law 1961.

[1] *Campbell and Fell -v- United Kingdom* (1984) 7 EHRR 165 (para. 78) and other cases.
[2] *Albert Le Compte -v- Belgium* Series A No. 58 (1883) 5EHRR, 533.

Explanatory Note

This draft Law amends the Companies (Jersey) Law 1991.

Article 1 defines the Companies (Jersey) Law 1991 as the principal Law.

Article 2 gives power to amend by Order the definition of "prospectus" in Article 1 of the principal Law and moves into the Interpretation Article of the principal Law the definition of a term which will now feature in more than one place in the principal Law.

Article 3 amends Article 17 of the principal Law to alter the circumstances in which a private company is to be regarded as a public company. A company is now to be so regarded if it is a market traded company (rather than if its securities are admitted to trade on a regulated market) so as to exclude exempt companies.

Article 4 alters the way in which the number of members of a company is calculated for the purposes of Articles 16 and 17(2) of the principal Law by excluding a present or former director or employee of a holding company or subsidiary etc.

Article 5 amends Article 17B of the principal Law to make clear that the altered status of a company takes effect from the time when the certificate of incorporation appropriate to the new status is issued.

Article 6 inserts a new Article 17D into the principal Law to give power to remove by Regulations the requirement that (except in certain circumstances) a private company may not have more than 30 members.

Article 7 repeals the provisions about commissions etc. in Articles 35 and 36 of the principal Law.

Articles 8 and *9* amend Articles 39 and 39A of the principal Law to clarify that an amount may be transferred to a share premium account or a stated capital account from another account.

Article 10 amends Article 49 of the principal Law to enable a public company which transacts business in any country, territory or place outside Jersey to cause to be kept there a register of members who are resident there and of all or any of its other members (rather than just of members who are resident there).

Article 11 amends Article 55 of the principal Law to clarify that payment for the redemption of shares in accordance with that Article may be made in cash or otherwise than in cash.

Articles 12 and *13* amend Articles 57 and 57A of the principal Law to allow a company to purchase depositary certificates in respect of its shares.

Articles 14 and *15*, by amending Article 61 of the principal Law and inserting into it new Articles 61A and 61B, make provision for reductions of capital supported by solvency statements.

Article 16 clarifies that in Article 62 of the principal Law references to payments to shareholders include both cash and non-cash payments.

Article 17 amends Article 73 of the principal Law to provide that a limited liability partnership shall not be a director of a company.

Article 18 amends Article 74 of the principal Law to alter the circumstances in which a failure by a director to comply with their duties may be authorized or ratified and *Article 19* inserts a new Article 74ZA supplementing the new provisions in Article 74.

The director and members connected with the director are not to count as a person entitled to vote on a written resolution to authorize or ratify the director's failure.

Article 20 amends Article 87 of the principal Law to restrict the circumstances in which private companies are required to hold an annual general meeting. A private company will be required to hold an annual general meeting only if it makes new provision, or confirms existing provision, in its articles requiring it to do so.

Article 21 amends Article 90 of the principal Law to clarify the majority required for a resolution to be a special resolution. It makes clear that unanimity may be required and that different majorities may be specified for different sorts of resolutions.

Article 22 amends Article 91 of the principal Law to reduce from 95% to 90% the majority required for the calling without due notice of a meeting other than an annual general meeting unless the company's articles provide for a greater majority or unanimity.

Article 23 amends Article 93 of the principal Law to clarify its operation where a body corporate is represented at a company meeting by more than one representative to allow any one of them to act as long as another of them does not disagree (in which case they may not act).

Article 24 amends Article 95 of the principal Law to clarify that a written resolution may be passed by a majority of the company's members and make provision about when written resolutions are taken to be passed.

Article 25 inserts into the principal Law new Articles 95ZA to 95ZC which make provision about the circulation of written resolutions.

Article 26 provides that no account is to be taken of any part of a day that is not a working day in calculating the period specified in Article 96(4) of the principal Law as the maximum which may be required for giving notice of appointment of proxies.

Article 27 amends Article 105 of the principal Law in consequence of the changes made to Article 87.

Article 28 amends Article 113 of the principal Law to allow certain classes of companies to disapply the requirement to appoint an auditor for a particular period if all the company's members agree.

Articles 29 and *30* amend Articles 113B and 113C of the principal Law to extend the range of persons who are required to provide information and explanations to a company's auditor. Former officers and (subject to safeguards) present and former employees and other responsible persons are now covered.

Article 31 clarifies that the restrictions in Article 115 of the principal Law on the making of distributions by a company apply only to distributions reducing the amount of the company's net assets or in respect of shares recognized as a liability.

Article 32 inserts into the principal Law a new Article 115ZA to allow the court in certain circumstances to treat a distribution made in contravention of Article 115 as if it had been made in accordance with that Article. *Article 33* makes a consequential amendment in Article 115A.

Article 34 amends Article 116 of the principal Law to make provision for an offer not to be prevented from being a takeover offer in certain cases involving shareholders whose registered address is not in Jersey.

Article 35 reduces from 28 to 21 days the period after a merger which is specified in Article 127FB(2)(a) of the principal Law as that within which a member of a merging company may make an application for an Order under Article 143 of the principal Law.

Article 36 amends Article 127FC of the principal Law to similarly alter the period within which merging companies must send notice to creditors.

Article 37 reduces from 28 to 21 days the period during which a court must wait before determining an application under Article 127FD of the principal Law.

Article 38 similarly reduces the periods during which a creditor may object to a merger, and apply to the court for a restraining order, under Article 127FE of the principal Law.

Article 39 amends Article 127FJ(3) of the principal Law to allow the members and creditors of a merging company to disapply the time limits on making an application to the registrar of companies to complete the merger and to reduce from 28 to 21 days the period within which, in certain cases, such an application may be made.

Article 40 inserts into the principal Law a new Part 18BA conferring a power to make provision by Regulations for demergers.

Article 41 amends Article 127R of the principal Law to reduce from 30 to 21 days the period of notice required to be given to creditors before an application is made for authorization to seek continuance in another jurisdiction and the period in which an objection may be made to the application. It also allows creditors to disapply the requirement of notice.

Article 42 similarly reduces the period within which a member of a company may object to continuance overseas under Article 127S of the principal Law.

Article 43 alters the way in which Article 135(3) of the principal Law defines "relevant supervisory authority".

Article 44 amends Article 169A of the principal Law to clarify the majority required for a resolution to pass at a creditors' meeting and when a creditors' meeting is competent to act.

Article 45 amends Article 205 of the principal Law to allow the registrar of companies to publish notice of intention to strike a company off the register where it has failed to comply with Article 67.

Article 46 amends Schedule 1 to the principal Law to provide maximum penalties for the offences created by the Law and otherwise consequentially on other provisions of the Law.

Article 47 provides the title of the Law and provides for it to come into force 7 days after it is registered.

DRAFT COMPANIES (AMENDMENT No. 11) (JERSEY) LAW 201-

Arrangement

Article

Jersey

DRAFT COMPANIES (AMENDMENT No. 11) (JERSEY) LAW 201-

A LAW to amend further the Companies (Jersey) Law 1991.

Adopted by the States	*[date to be inserted]*
Sanctioned by Order of Her Majesty in Council	*[date to be inserted]*
Registered by the Royal Court	*[date to be inserted]*

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

1 Interpretation

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

2 Article 1 amended

In Article 1 of the principal Law –

(a) in paragraph (1), after the definition "net asset value" there shall be inserted the following definition –

> " 'nominal capital account', in relation to a company, means a share capital account of the company to which are credited amounts up to the nominal value of the shares issued by the company;"; and

(b) after paragraph (2) there shall be added the following paragraph –

> "(3) The Minister may by Order amend the definition of 'prospectus' in paragraph (1).".

3 Article 17 amended

For Article 17(2)(c) of the principal Law there shall be substituted the following sub-paragraph –

> "(c) it is a market traded company within the meaning of Part 16.".

4 Article 17A amended

In Article 17A(1) of the principal Law –

(a) in sub-paragraph (a), after the word "company" there shall be inserted the words ", a subsidiary of the company, the holding company of the company or a subsidiary of the holding company"; and

(b) in sub-paragraph (b) –

(i) after the word "company" there shall be inserted the words "or any other body corporate within sub-paragraph (a)",

(ii) in clause (i), after the word "member" there shall be inserted the words "of the company or of any other such body corporate", and

(iii) in clause (ii), after the words "continued to be" there shall be inserted the word "such".

5 Article 17B amended

In Article 17B of the principal Law –

(a) in the heading, for the word "Notice" there shall be substituted the words "Effective date";

(b) for the words "changes its status in accordance with Article 16 or Article 17(1)" there shall be substituted the words "alters its memorandum as mentioned in Article 16 or 17(1)"; and

(c) after the words "altered status" there shall be added the words "; and the altered status has effect from the date on which the certificate of incorporation which is appropriate to the altered status is issued".

6 Article 17D inserted

After Article 17C of the principal Law there shall be inserted the following Article –

"17D Power to abolish 30-member limit

The States may by Regulations amend any provision of Articles 3(3) and 16 to 17C that limits the number of persons who may apply to form a private company or the number of members that a private company may have or treats a company as a public company if the number of its members exceeds a particular number.".

7 Articles 35 and 36 repealed and new Article 35 inserted

(1) Articles 35 and 36 of the principal Law shall be repealed.

(2) After Article 34 of the principal Law there shall be inserted the following Article –

"35 Rule of law relating to issue of shares at discount etc. abolished

(1) This Article applies to the issue of shares at a discount and the application of shares or capital money in payment of a commission, discount or allowance.

(2) The repeal of the former Articles 35 and 36 by Article 7(1) of the Companies (Amendment No. 11) (Jersey) Law 201-[2] shall not cause anything to which this Article applies to be rendered unlawful by reason of any rule of law which had ceased to have effect by virtue of, or had been modified by, the former Articles 35 and 36.

(3) In this Article, 'the former Articles 35 and 36' means Articles 35 and 36 of this Law, as those Articles were in force immediately before they were repealed by Article 7(1) of the Companies (Amendment No. 11) (Jersey) Law 201-.".

8 Article 39 amended

After Article 39(1) of the principal Law there shall be inserted the following paragraph –

"(1A) An amount may be transferred by the company to a share premium account from any other account of the company other than the capital redemption reserve or the nominal capital account.".

9 Article 39A amended

In Article 39A of the principal Law –

(a) in paragraph (3) –

(i) at the end of sub-paragraph (a) there shall be added the word "and",

(ii) for the word "; and" at the end of sub-paragraph (b) there shall be substituted a full-stop, and

(iii) sub-paragraph (c) shall be deleted; and

(b) after paragraph (3) there shall be inserted the following paragraph –

"(3A) An amount may be transferred by the company to a stated capital account from any other account of the company.".

10 Article 49 amended

For Article 49(1) of the principal Law there shall be substituted the following paragraph –

"(1) A public company which transacts business in any country, territory or place outside Jersey may cause to be kept there a register of –

(a) members who are resident in that country, territory or place; and

(b) all or any of its other members.".

11 Article 55 amended

In Article 55 of the principal Law, after paragraph (12) there shall be inserted the following paragraph –

"(12A) A payment for the redemption of shares in accordance with this Article may be made in cash or otherwise than in cash (or partly in cash and partly otherwise than in cash).".

12 Article 57 amended

In Article 57 of the principal Law –

(a) in paragraph (1), after the word "shares)" there shall be added the words "including by the purchase of depositary certificates in respect of such shares";

(b) in paragraph (2), the words "of its own shares" shall be deleted;

(c) in paragraph (3) –

(i) after the words "the shares" there shall be inserted the words "or depositary certificates in respect of shares", and

(ii) for the words "they shall" there shall be substituted the words "the shares shall";

(d) in paragraph (4) –

(i) for the words "the shares" shall be substituted the word "shares", and

(ii) for the words "18 months" there shall be substituted the words "5 years";

(e) after paragraph (4) there shall be inserted the following paragraph –

"(4ZA) If depositary certificates in respect of shares are to be purchased, the resolution authorizing the purchase shall specify –

(a) the maximum number of depositary certificates to be purchased;

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

(c) a date, not being later than 5 years after the passing of the resolution, on which the authority to purchase is to expire.";

(f) in paragraph (4A), for the words "paragraph (4)(b)" there shall be substituted the words "paragraphs (4)(b) and (4ZA)(b)";

(g) in paragraph (5), for the words "and (4)" there shall be substituted the words ", (4) and (4ZA)";

(h) after paragraph (5) there shall be inserted the following paragraph –

"(5A) If depositary certificates in respect of shares are purchased under this Article the shares shall (unless they are, immediately after the purchase of the depositary certificates, held as treasury shares) be treated as cancelled on purchase.";

(i) in paragraph (6), after the words "own shares" there shall be inserted the words "(including by the purchase of depositary certificates)";

(j) in paragraph (7), for the words "under this Article purchase its shares" there shall be substituted the words "make a purchase under this Article"; and

(k) after paragraph (7) there shall be added the following paragraph –

"(8) In this Article and Article 58A 'depositary certificate' means an instrument (whatever it is called and whether it is held in paper or electronic form) which confers on a person a right or rights (other than an option or a security interest) in respect of a share or shares held by another person.".

13 Article 58A amended

In Article 58A(1) of the principal Law, after the word "Part" there shall be inserted the words "(including by the purchase of depositary certificates)".

14 Article 61 amended

In Article 61 of the principal Law –

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

"(1) A company may reduce its capital accounts in any way.

(1A) A reduction of capital shall be sanctioned by a special resolution of the company.";

(b) for paragraph (3) there shall be substituted the following paragraph –

"(3) Subject to paragraphs (4) and (5), every reduction of capital shall either –

(a) be supported by a solvency statement (see Articles 61A and 61B); or

(b) be subject to confirmation by the court (see Articles 62 to 64).";

(c) in paragraph (4) –

(i) for the word "A" there shall be substituted the words "Paragraph (3) does not apply to a", and

(ii) the words "shall not be subject to confirmation by the court" shall be deleted;

(d) in paragraph (5) –

(i) for the word "A" there shall be substituted the words "Paragraph (3) does not apply to a", and

(ii) the words "shall not be subject to confirmation by the court" shall be deleted; and

(e) after paragraph (5) there shall be inserted the following paragraph –

"(6) A reduction of capital supported by a solvency statement shall be treated for all purposes in the same way as one that has been confirmed by an order of the court.".

15 Articles 61A and 61B inserted

After Article 61 of the principal Law there shall be inserted the following Articles –

"61A Solvency statement

(1) A reduction of capital is supported by a solvency statement if the directors of the company authorizing the reduction make a solvency statement not more than 15 days before the special resolution sanctioning the reduction is passed.

(2) A 'solvency statement' is a statement that the directors making it have formed the opinion –

(a) that, as at the date of the statement, the company is able to discharge its liabilities as they fall due; and

(b) that, having regard to –

(i) the prospects of the company and the intentions of the directors with respect to the management of the company's business, and

(ii) the amount and character of the financial resources that will in their view be available to the company,

the company will be able to –

(A) continue to carry on business, and

(B) discharge its liabilities as they fall due,

until the expiry of the period of 12 months immediately following the date of the statement or until the company is dissolved under Article 150, whichever first occurs.

(3) A director who makes a solvency statement without having reasonable grounds for the opinion expressed in it is guilty of an offence.

61B Registration of solvency statement and minute of reduction

(1) Where a reduction of capital is supported by a solvency statement, the company shall, within 15 days after the special resolution is passed, deliver to the registrar –

(a) a copy of the solvency statement; and

(b) a minute 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 solvency statement and minute under paragraph (3), 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.

(3) The registrar shall register the solvency statement and minute, and thereupon the resolution for reducing the capital shall take effect.

(4) The registrar shall certify the registration of the solvency statement and minute and the certificate –

(a) shall be signed by the registrar and sealed with the registrar's seal; and

(b) is conclusive evidence that all the requirements of this Law with respect to the reduction of share capital have been complied with, and the company's share capital is as stated in the minute.

(5) The minute when registered is deemed to be substituted for the corresponding part of the company's memorandum.".

16 Article 62 amended

In Article 62(2)(b) and (6) of the principal Law, after the word "payment" there shall be inserted the words "(whether in cash or otherwise)".

17 Article 73 amended

In Article 73 of the principal law, after paragraph (4B) there shall be added the following paragraph –

"(4C) A limited liability partnership shall not be a director of a company.".

18 Article 74 amended

After Article 74(2) of the principal Law there shall be added the following paragraphs –

"(3) Furthermore, no act or omission of a director shall be treated as a breach of paragraph (1) if –

(a) a resolution, or (if the articles so require) special resolution, authorizing or ratifying the act or omission is passed otherwise than by all of the members of the company and in accordance with paragraphs (4) and (5); and

(b) after the act or omission the company will be able to discharge its liabilities as they fall due.

(4) Where the resolution authorizing or ratifying the act or omission is proposed as a written resolution, neither the director (if a member of the company) nor any member connected with the director shall be treated for the purposes of Article 95(1B) and (1C) as a member entitled to vote on the resolution.

(5) Where the resolution authorizing or ratifying the act or omission is proposed at a meeting, it is passed only if the necessary majority is obtained disregarding votes in favour of the resolution by the director (if a member of the company) and any member connected with him; but this does not prevent the director or any such member from attending, being counted towards the quorum or taking part in the proceedings at any meeting at which the decision is considered.

(6) The Minister may by Order disapply paragraphs (3) to (5) in relation to any class of company.".

19 Article 74ZA inserted

After Article 74 of the principal Law there shall be inserted the following Article –

"74ZA Persons connected with director for purposes of Article 74

(1) The following persons (and only those persons) are connected with the director for the purposes of Article 74(4) and (5) –

(a) members of the director's family (see paragraph (2));

(b) a foundation incorporated under the Foundations (Jersey) Law 2009[3] under which the director or a person who, by virtue of sub-paragraph (a), is connected with the director is a beneficiary;

(c) any other body corporate with which the director is connected (as defined in paragraph (3));

(d) a person acting in his capacity as trustee of a trust –

(i) the beneficiaries of which include the director or a person who by virtue of sub-paragraph (a), (b) or (c) is connected with him, or

(ii) the terms of which confer a power on the trustees that may be exercised for the benefit of the director or any such person,

other than a trust for the purposes of an employees' share scheme or a pension scheme;

(e) a person acting in the capacity of a partner –

(i) of the director, or

(ii) of a person who, by virtue of sub-paragraph (a), (b), (c) or (d), is connected with the director; and

(f) a firm that is a legal person under the law by which it is governed (including a limited liability partnership, a separate

limited partnership and an incorporated limited partnership) and in which –

(i) the director is a partner,

(ii) a partner is a person who, by virtue of sub-paragraph (a), (b), (c) or (d) is connected with the director, or

(iii) a partner is a firm in which the director is a partner or in which there is a partner who, by virtue of sub-paragraph (a), (b), (c) or (d), is connected with the director.

(2) The members of the director's family are –

(a) the director's spouse or civil partner;

(b) any other person (whether of a different sex or the same sex) with whom the director lives as partner in an enduring family relationship, other than a grandparent or grandchild, sister, brother, aunt or uncle, or nephew or niece;

(c) the director's children or step-children;

(d) any children or step-children of a person within paragraph (b) (and who are not children or step-children of the director) who live with the director and have not attained the age of 18; and

(e) the director's parents.

(3) A director is connected with a body corporate (other than a foundation incorporated under the Foundations (Jersey) Law 2009[4] or an incorporated limited partnership) if, but only if, the director and the persons connected with the director together –

(a) have an interest in shares comprised in the equity share capital of that body corporate of a nominal value equal to at least 20% of that share capital; or

(b) are entitled to exercise or control the exercise of more than 20% of the voting power at any general meeting of that body.

(4) For the purposes of paragraph (3)(a) –

(a) the reference to an interest in shares includes any interest of any kind whatsoever in shares;

(b) any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject shall be disregarded;

(c) it is immaterial that the shares in which there is an interest are not identifiable;

(d) persons having a joint interest in shares are deemed each to have that interest;

(e) a person is taken to have an interest in shares if the person enters into a contract to acquire them;

(f) a person is taken to have an interest in shares if –

(i) the person has a right to call for the delivery of the shares to, or to the order of, the person, or

(ii) the person has a right to acquire an interest in shares or is under an obligation to take an interest in shares,

whether the right or obligation is conditional or absolute (but not if it is a right or obligation to subscribe for shares);

(g) a person is taken to have an interest in shares if, not being the registered holder, the person is entitled –

(i) to exercise any right conferred by the holding of the shares, or

(ii) to control the exercise of any such right;

(h) a person is taken to have an interest in shares if a body corporate is interested in them and –

(i) the body corporate or its directors are accustomed to act in accordance with the person's directions or instructions, or

(ii) the person is entitled to exercise or control the exercise of more than one-half of the voting power at general meetings of the body corporate;

(i) a person is taken to have an interest in shares if the person is a beneficiary under a foundation incorporated under the Foundations (Jersey) Law 2009[5] which is interested in them; and

(j) where an interest in shares is comprised in property held on trust, every beneficiary of the trust is taken to have an interest in the shares unless –

(i) it is an interest in reversion or remainder and a person is entitled to receive income from the trust property comprising shares for that person's or another's life, or

(ii) the person holds the shares as a bare trustee or as a custodian trustee.

(5) A person ceases to have an interest in shares by virtue of paragraph (4)(e) or (f) –

(a) on the shares being delivered on the person's order to another person –

(i) in fulfilment of a contract for their acquisition by the other person, or

(ii) in satisfaction of a right of the other person to call for their delivery;

(b) on a failure to deliver the shares in accordance with the terms of such a contract or the terms on which such a right falls to be satisfied; or

(c) on the lapse of the person's right to call for delivery of the shares or to acquire an interest in the shares or of the person's obligation to take an interest in the shares.

(6) For the purposes of paragraph (4)(g) a person is taken to be entitled to exercise or control the exercise of a right conferred by the holding of shares if the person –

(a) has a right (whether subject to conditions or not) the exercise of which would make the person so entitled; or

(b) is under an obligation (whether or not so subject) the fulfilment of which would make the person so entitled.

(7) A person is not by virtue of paragraph (4)(g) taken to be interested in shares by reason only that the person –

(a) has been appointed a proxy to exercise any of the rights attached to the shares; or

(b) has been appointed by a body corporate to act as its representative at any meeting of the company or of any class of its members.

(8) For the purposes of paragraph (4)(h), where –

(a) a person is entitled to exercise, or control the exercise, of more than one-half of the voting power at general meetings of a body corporate; and

(b) the body corporate is entitled to exercise, or control the exercise, of any of the voting power at general meetings of another body corporate,

the voting power mentioned in sub-paragraph (b) is taken to be exercisable by the person.

(9) The reference in paragraph (3)(b) to voting power the exercise of which is controlled by the director or a person connected with the director includes voting power the exercise of which is controlled by a body corporate controlled by the director or person.

(10) Shares in a company held as treasury shares, and any voting rights attached to such shares, are disregarded for the purposes of paragraph (3).

(11) The Minister may by Order amend this Article.".

20 Article 87 amended

In Article 87 of the principal Law –

(a) in paragraph (2), for the words "Every company" there shall be substituted the words "Every public company and every relevant private company";

(b) after paragraph (2) there shall be inserted the following paragraphs –

"(2A) In this Article 'relevant private company' means a private company –

(a) which is required to hold annual general meetings by provision made in its articles after the coming into force of the Companies (Amendment No. 11) (Jersey) Law 201-[6]; or

(b) in whose case a requirement for the holding of annual general meetings was imposed by provision made in its articles before the coming into force of that Law and confirmed by a special resolution passed after the coming into force of that Law and remaining in effect.

(2B) Any requirement for the holding of annual general meetings imposed by provision made in the articles of a private company before the coming into force of the Companies (Amendment No. 11) (Jersey) Law 201- is of no effect unless confirmed by special resolution passed after the coming into force of that Law and remaining in effect.";

(c) in paragraph (3), before the word "private" there shall be inserted the word "relevant"; and

(d) in paragraph (4), after the word "a" there shall be inserted the words "public company or relevant private".

21 Article 90 amended

In Article 90 of the principal Law –

(a) in paragraph (1A), for the words "do specify a greater majority than two-thirds, that greater majority" there shall be substituted the words "specify a greater majority than two-thirds (or unanimity), that greater majority (or unanimity)"; and

(b) after paragraph (1A) there shall be inserted the following paragraph –

"(1B) Where the articles make different provision in relation to different descriptions of special resolutions, the reference in paragraph (1A) to the majority specified by the articles (or unanimity) is to the majority specified by the articles in relation to special resolutions of the description of the special resolution concerned (or unanimity, if that is what is so specified).".

22 Article 91 amended

In Article 91(3)(b) of the principal Law –

(a) for the words "95 per cent" there shall be substituted the words "90 per cent"; and

(b) after the words "that right" there shall be added the words ", or, if the articles require a greater majority of such persons (or unanimity), by that greater majority (or unanimity)".

23 Article 93 amended

In Article 93 of the principal Law –

(a) in paragraph (1) –

(i) after the word "person" there shall be inserted the words "or persons", and

(ii) after the word "representative" there shall be inserted the words "or representatives";

(b) in paragraph (2), for the words "A person so authorized" there shall be substituted the words "Where the body corporate authorizes only one person, the person"; and

(c) after paragraph (2) there shall be added the following paragraphs –

"(3) Where the body corporate authorizes more than one person, any one of them is entitled to exercise the same powers on behalf of the body corporate which they represent as that body corporate could exercise if it were an individual member or creditor of the company.

(4) Where the body corporate authorizes more than one person and more than one of them purport to exercise a power under paragraph (3) –

(a) if they purport to exercise the power in the same way, the power is treated as exercised in that way; and

(b) if they do not purport to exercise the power in the same way, the power is treated as not exercised.".

24 Article 95 amended

In Article 95 of the principal Law –

(a) for paragraph (1B) there shall be substituted the following paragraphs –

"(1B) Anything which may be done at a meeting of a company or at a meeting of any class of its members may be done by a resolution in writing passed by all the members of the company 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.

(1C) In the case of a resolution which is –

(a) proposed as a written resolution by the directors of a company; or

(b) required to be circulated by a company by Article 95ZB,

if the company's articles provide that anything which 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 passed by a specified majority of the members 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, paragraph (1B) has effect as if the reference to all the members were to that majority of the members.

(1D) The majority specified by the articles of a company in relation to a special resolution may not be less than two-thirds.";

(b) for paragraph (3) there shall be substituted the following paragraphs –

"(3) A resolution under this Article may be sent or submitted to members in hard copy or electronic form or in such other manner as the company's articles may provide.

(3A) A resolution under this Article shall be deemed to be passed when all the members have, or (where paragraph (1C) applies) the specified majority of the members has, signified agreement to the resolution.

(3B) A member signifies agreement to a resolution under this Article when the company receives from the member (or from someone acting on the member's behalf) a document (sent or submitted in hard copy or electronic form or in such other manner as the company's articles may provide) which –

(a) identifies the resolution to which it relates; and

(b) indicates agreement to the resolution.

(3C) A member's agreement to a written resolution, once signified, may not be revoked."; and

(c) in paragraph (6), after the word "Article" there shall be inserted the words "or Articles 95ZA to 95ZC".

25 Articles 95ZA to 95ZC inserted

After Article 95 of the principal Law there shall be inserted the following Articles –

"95ZA Circulation of written resolutions proposed by directors

(1) This Article applies to any resolution proposed as a written resolution by the directors of a company, other than one passed by all the members of the company 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) The company must send or submit a copy of the resolution to every eligible member.

(3) The company must do so –

(a) by sending copies at the same time (so far as reasonably practicable) to all eligible members; or

(b) if it is possible to do so without undue delay, by submitting the same copy to each eligible member in turn (or different copies to each of a number of eligible members in turn),

or by sending copies to some members in accordance with sub-paragraph (a) and submitting a copy or copies to other members in accordance with sub-paragraph (b).

(4) The copy of the resolution must be accompanied by a statement informing the member –

(a) how to signify agreement to the resolution; and

(b) as to the date by which the resolution must be passed if it is not to lapse.

(5) If the company fails to comply with paragraph (2), (3) or (4), the company and every officer of it in default commits an offence.

(6) A resolution to which this Article applies lapses if it is not passed before the end of –

(a) the period specified for this purpose in the articles; or

(b) if none is specified, the period of 28 days beginning with the circulation date.

(7) The agreement of a member to such a resolution is ineffective if signified after the end of that period.

(8) For the purposes of this Article an 'eligible member' is a member who, at the circulation date, would be entitled to vote on the resolution if it were proposed at a meeting.

(9) In this Article the 'circulation date' means the date on which copies of the resolution are sent or submitted to members in accordance with this Article (or, if copies are sent or submitted to members on different days, the first of those days).

(10) The validity of a resolution, if passed, is not affected by a failure to comply with this Article.

95ZB Members' power to require circulation of written resolution

(1) The members of a company may require the company to circulate a resolution that may properly be proposed and is to be proposed as a written resolution.

(2) For the purposes of paragraph (1) a resolution may properly be proposed as a written resolution unless –

(a) it would, if passed, be ineffective (whether by reason of inconsistency with any provision of, or made under, any Law or the company's constitution or otherwise);

(b) it is defamatory of any person; or

(c) it is frivolous or vexatious.

(3) Where the members require a company to circulate a resolution they may require the company to circulate it with a statement of not more than 1,000 words on the subject matter of the resolution.

(4) A company is required to circulate a resolution and any accompanying statement once it has received requests that it do so from members representing not less than the requisite percentage of the total voting rights of all members entitled to vote on the resolution.

(5) The 'requisite percentage' is 10% or such lower percentage as is specified for this purpose in the company's articles.

(6) A request –

(a) may be made in hard copy form or electronic form or in such other manner as the company's articles may provide;

(b) must identify the resolution and any accompanying statement; and

(c) must be authenticated by the person or persons making it.

95ZC Circulation of written resolution and statement

(1) A company that is required under Article 95ZB to circulate a resolution must send or submit to every eligible member –

(a) a copy of the resolution; and

(b) a copy of any accompanying statement.

(2) The company must do so –

(a) by sending copies at the same time (so far as reasonably practicable) to all eligible members; or

(b) if it is possible to do so without undue delay, by submitting the same copy to each eligible member in turn (or different copies to each of a number of eligible members in turn),

or by sending copies to some members in accordance with sub-paragraph (a) and submitting a copy or copies to other members in accordance with sub-paragraph (b).

(3) The company must send or submit the copies (or, if copies are sent or submitted to members on different days, the first of those copies) not more than 21 days after it becomes subject to the requirement under Article 95ZB to circulate the resolution.

(4) A copy of the resolution must be accompanied by a statement informing the member –

(a) how to signify agreement to the resolution; and

(b) as to the date by which the resolution must be passed if it is not to lapse.

(5) If the company fails to comply with paragraph (2), (3) or (4), the company and every officer of it in default commits an offence.

(6) A resolution which is required to be circulated by the company by Article 95ZB lapses if it is not passed before the end of –

(a) the period specified for this purpose in the articles; or

(b) if none is specified, the period of 28 days beginning with the circulation date.

(7) The agreement of a member to such a resolution is ineffective if signified after the end of that period.

(8) The validity of a resolution, if passed, is not affected by a failure to comply with this Article.

(9) The expenses of the company in complying with this Article must be paid by the members who requested the circulation of the resolution unless the company resolves otherwise.

(10) Unless the company has previously so resolved, it is not bound to comply with this Article unless there is deposited with or tendered to it a sum reasonably sufficient to meet its expenses in doing so.

(11) The company is not required to circulate a copy of a statement if, on an application by the company or any other person, the court is satisfied that the rights conferred by Article 95ZB and this Article are being abused.

(12) The court may order the members who requested the circulation of the statement to pay the whole or part of the company's costs on an application under paragraph (11) even if they are not parties to the application.".

26 Article 96 amended

In Article 96 of the principal Law –

(a) in paragraph (4), for the words "more than" there shall be substituted the words "before the beginning of the period commencing"; and

(b) after paragraph (4) there shall be inserted the following paragraphs –

"(4A) In calculating the period mentioned in paragraph (4) no account shall be taken of any part of a day that is not a working day.

(4B) For the purposes of paragraph (4A) 'working day' means a weekday (within the meaning of Part 1 of the Schedule to the Public Holidays and Bank Holidays (Jersey) Act 2010[7]) other than –

(a) a day specified in that Schedule as a day which is to be observed as a public holiday; or

(b) a day noted in that Schedule as a day which is by custom observed as a general holiday.".

27 Article 105 amended

For Article 105(8) of the principal Law there shall be substituted the following paragraph –

"(8) Paragraph (9) applies if, at the end of a financial period of a company –

(a) the company is a private company that is not a relevant private company within the meaning given by Article 87(2A); or

(b) an agreement under Article 87(4) dispensing with the holding of an annual general meeting has effect in the case of the company.".

28 Article 113 amended

After Article 113(1) of the principal Law there shall be inserted the following paragraphs –

"(1A) A company of a class specified in an Order made by the Minister may disapply the requirement imposed by paragraph (1) in relation to a financial period of the company by a resolution passed before the date by which the actions mentioned in Article 105(6) are required by Article 105(7) to be taken in relation to the accounts of the company for that financial period.

(1B) A resolution under paragraph (1A) must be passed by all members of the company entitled to vote in general meeting.

(1C) A resolution under paragraph (1A) is rescinded once the company has received requests for its rescission from –

(a) members holding not less than 10 per cent in nominal value of the issued share capital (or any class of such share capital) of the company, or (if the company is a no par value company) not less than 10 per cent of the number of the company's issued shares (or any class of issued shares), excluding any shares held as treasury shares; or

(b) if the company does not have share capital, members whose liability as members is in the aggregate not less than 10 per cent of the total liability of all members of the company (or any class of members).

(1D) The rescission by paragraph (1C) of a resolution under paragraph (1A) in relation to a financial period has effect only if the requests required by paragraph (1C) have been received before the end of the period of 3 months beginning with the date on which the resolution was passed.

(1E) Where a resolution under paragraph (1A) in relation to a financial period is rescinded, the actions mentioned in Article 105(6) in relation to the accounts of the company for that financial period must be taken by –

(a) the date by which they are required to be taken by Article 105(7); or

(b) the date 3 months after that on which the resolution is rescinded,

whichever is later.

(1F) The Minister may by Order modify or disapply any one or more of paragraphs (1B) to (1E) in relation to any class of company.".

29 Article 113B amended

In Article 113B of the principal Law –

(a) in paragraph (4), for the words "the company's officers and the secretary" there shall be substituted the words "any relevant person"; and

(b) after paragraph (4) there shall be inserted the following paragraphs –

"(4A) Each of the following is a 'relevant person' for the purposes of this Article and Article 113C –

(a) any person who is, or at any relevant time was, an officer or the secretary of the company;

(b) any person who is, or at any relevant time was, an employee of the company and who appears to possess information which the auditor thinks necessary for the performance of the auditor's duties; and

(c) any person who holds or is accountable for, or who at any relevant time held or was accountable for, any of the company's records and who appears to possess such information.

(4B) Any information or explanation provided by a person in response to a requirement under paragraph (4)(b) may not be used in evidence against the person in criminal proceedings except proceedings for an offence under Article 113C(2).

(4C) Nothing in paragraph (4)(b) compels a person to provide any information or explanation which the person would be entitled to refuse to provide in proceedings in court on the ground of legal professional privilege.".

30 Article 113C amended

In Article 113C(2) of the principal Law –

(a) for the words "An officer of a company or its secretary" there shall be substituted the words "A relevant person"; and

(b) for the words "officer or secretary" there shall be substituted the words "relevant person".

31 Article 115 amended

In Article 115 of the principal Law –

(a) in paragraph (2), after the word "Article" there shall be added the words "if the distribution –

(a) reduces the net assets of the company; or

(b) is in respect of shares which (in accordance with the generally accepted accounting principles adopted in the preparation of the most recent accounts of the company prepared under Article 105 or, if none have been, proposed to be adopted in the preparation of the first accounts of the company so prepared) are required to be recognized as a liability in the accounts of the company";

(b) after paragraph (2) there shall be inserted the following paragraph –

"(2A) In paragraph (2) 'the net assets of the company' means the aggregate of the company's assets less the aggregate of its liabilities; and any question as to whether a distribution reduces the amount of the net assets of the company for the purposes of that paragraph is to be determined in accordance with the generally

accepted accounting principles adopted in the preparation of the most recent accounts of the company prepared under Article 105 or, if none have been, proposed to be adopted in the preparation of the first accounts of the company so prepared."; and

(c) paragraph (8) shall be deleted.

32 Article 115ZA inserted

After Article 115 of the principal Law there shall be inserted the following Article –

"115ZA Order treating distribution as made in accordance with Article 115

(1) Where a distribution has been made by a company in contravention of Article 115 and the company makes an application to the court, the court shall make an order that the distribution is to be treated for all purposes as if it had been made in accordance with that Article if the court –

(a) considers that all of the conditions specified in paragraph (2) are met; and

(b) does not consider that it would be contrary to the interests of justice to do so.

(2) The conditions referred to in paragraph (1)(a) are that –

(a) immediately after the distribution was made the company was able to discharge its liabilities as they fell due;

(b) at the time when the application is determined by the court the company is able to discharge its liabilities as they fall due; and

(c) where the distribution was made less than 12 months before the date on which application is determined, the company will be able to carry on business, and discharge its liabilities as they fall due, until the end of the period of 12 months beginning with the date on which the distribution was made.

(3) No notice of an application under paragraph (1) need be given to any creditor of the company, or any other person, unless the court otherwise directs.".

33 Article 115A amended

In Article 115A of the principal Law, after the words "Article 115" there shall be inserted the words "(and is not treated as if it had been made in accordance with that Article by virtue of an order under Article 115ZA)".

34 Article 116 amended

After Article 116(2B) of the principal Law there shall be inserted the following paragraphs –

"(2C) An offer is not prevented from being a takeover offer by reason of not being made to shareholders whose registered address is not in Jersey if –

(a) the offer was not made to those shareholders in order not to contravene the law of a country or territory outside Jersey; and

(b) either –

(i) the offer is published in the Jersey Gazette, or

(ii) a document containing the terms of the offer can be inspected, or a copy of it obtained, at a place in Jersey or on a website, and a notice is published in the Jersey Gazette specifying the address of that place or website.

(2D) Where an offer is made to acquire shares in a company and there are persons for whom, by reason of the law of a country or territory outside Jersey, it is impossible to accept the offer, or more difficult to do so, that does not prevent the offer from being a takeover offer.

(2E) It is not to be inferred –

(a) that an offer which is not made to every holder of shares, or every holder of shares of any class or classes, in the company cannot be a takeover offer unless the requirements of paragraph (2C) are met; or

(b) that an offer which is impossible, or more difficult, for certain persons to accept cannot be a takeover offer unless the reason for the impossibility or difficulty is the one mentioned in paragraph (2D).".

35 Article 127FB amended

In Article 127FB(2)(a) of the principal Law, for the words "28 days" there shall be substituted the words "21 days".

36 Article 127FC amended

In Article 127FC of the principal Law –

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

"(1) During the period beginning with the date on which the first notice is given under Article 127F(1) in relation to a merger and ending 21 days after the merger is approved under Article 127F(3), each merging company shall send written notice to each of its creditors who, after its directors have made reasonable enquiries, is known to the directors to have a claim against the company exceeding £5,000.

(1A) No later than 21 days after a merger is approved under Article 127FA(6), each merging company shall send written notice to each of its creditors who, after its directors have made

reasonable enquiries, is known to the directors to have a claim against the company exceeding £5,000."; and

(b) in paragraph (6)(a), for the words "28 days" there shall be substituted the words "21 days".

37 Article 127FD amended

In Article 127FD(4) of the principal Law, for the words "28 days" there shall be substituted the words "21 days".

38 Article 127FE amended

In Article 127FE(2)(a) and (b) of the principal Law, for the words "28 days" there shall be substituted the words "21 days".

39 Article 127FJ amended

In Article 127FJ(3) of the principal Law –

(a) for the words "The application" there shall be substituted the words "Except where all the members of the companies and all the known creditors of the companies otherwise agree in writing, the application"; and

(b) in sub-paragraph (c)(i) and (ii), for the words "28 days" there shall be substituted the words "21 days".

40 Part 18BA inserted

After Article 127GA of the principal Law there shall be inserted the following Part –

"PART 18BA

DEMERGERS

127GB Demergers

(1) The States may by Regulations make provision for enabling the undertaking, property and liabilities of a company to be divided among 2 or more companies.

(2) Regulations made under paragraph (1) may create offences and prescribe penalties.

(3) Regulations made under paragraph (1) may –

(a) provide for the Chief Minister to exercise a discretion in respect of matters prescribed by the Regulations;

(b) permit the Commission to publish fees that may be imposed by the Regulations; and

(c) permit the Commission and the registrar to publish material in respect of matters prescribed by the Regulations.".

41 Article 127R amended

In Article 127R of the principal Law –

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

"(1) Before a company makes an application under Article 127T to the Commission for authorization to seek continuance in another jurisdiction, the company shall, unless all its known creditors otherwise agree in writing, give notice to them in accordance with paragraph (2).

(1A) The notice shall be given at least 21 days before the making of the application."; and

(b) in paragraphs (2)(d) and (3), for the words "30 days" there shall be substituted the words "21 days".

42 Article 127S amended

In Article 127S(2) of the principal Law, for the words "30 days" there shall be substituted the words "21 days".

43 Article 135 amended

In Article 135(3) of the principal Law, for the words "supervisory functions corresponding to those of the Commission in respect of bodies corporate." there shall be substituted the words "any function that is the same as, or similar to, a function of the Commission.".

44 Article 169A amended

In Article 169A of the principal Law –

(a) in paragraph (4) –

(i) for the words "at least" there shall be substituted the words "in excess of", and

(ii) after the words "the resolution" there shall be inserted the words "(either in person or by proxy)"; and

(b) for paragraph (5) there shall be substituted the following paragraph –

"(5) A creditors' meeting is not competent to act unless there is present (either in person or by proxy) at least one creditor entitled to vote.".

45 Article 205 amended

In Article 205 of the principal Law –

(a) after paragraph (1) there shall be inserted the following paragraph –

"(1A) Where –

(a) a company fails to comply with a notice under Article 67(6); or

(b) the registrar refuses under Article 67(8) to register a notice given by a company under Article 67(5) or (6),

the registrar may publish in the Jersey Gazette a notice under paragraph (6) and (unless it is not reasonably practicable to do so) send the notice to the company."; and

(b) in paragraph (6), after "(1)," there shall be inserted "(1A),".

46 Schedule 1 amended

In the table in Schedule 1 to the principal Law –

(a) the entry relating to Article 36(2) shall be deleted;

(b) after the entry relating to Article 58B(4) there shall be inserted the following entries in the first, second and third columns –

"61A(3)	Director making solvency statement without reasonable grounds for the opinion expressed	2 years or a fine; or both";	

(c) after the entry relating to Article 88(5) there shall be inserted the following entries in the first, second and third columns –

"95ZA(5)	Company and officer in default failing to comply with Article 95ZA(2) to (4) (circulation of written resolutions proposed by directors etc)	Level 3";	

(d) after that entry there shall be inserted the following entries in the first, second and third columns –

"95ZC(5)	Company and officer in default failing to comply with Article 95ZC(2) to (4) (circulation of written resolutions required under Article 95ZB etc)	Level 3";	

(e) in the entry relating to Article 113C(2), in the second column, for the words "Company officer or secretary" there shall be substituted the words "Relevant person".

47 Citation and commencement

(1) This Law may be cited as the Companies (Amendment No. 11) (Jersey) Law 201-.

(2) This Law comes into force 7 days after it is registered.

[1] *chapter 13.125*
[2] *P.41/2014*
[3] *chapter 13.265*
[4] *chapter 13.265*
[5] *chapter 13.265*
[6] *P.41/2014*
[7] *chapter 15.560.20*