Jersey

COMPANIES (JERSEY) LAW 1991

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COMPANIES (JERSEY) LAW 1991

Arrangement

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Jersey

COMPANIES (JERSEY) LAW 1991[1]

A LAW to provide for the incorporation, regulation and winding up of companies, and for connected purposes[2]

Commencement [see endnotes]

PART 1

PRELIMINARY

1 Interpretation[3]

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

"annual return" means the return to be made by a company under Article 71;

"allotment", in relation to shares, means a transaction by which a person acquires the unconditional right to be included in a company's register of members in respect of the shares;

"arrangement", in Articles 125 and 126, includes a reorganisation of a company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods;[4]

"articles", in relation to a company, means its articles of association as originally framed or as altered;

"capital accounts" means –

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

(b) in relation to a no par value company, its stated capital accounts;[5]

"cause" has the meaning assigned to it by the customary law of Jersey;[6]

"cell" means a cell of a cell company;

"cell company" means a company that is an incorporated cell company or a protected cell company;

"certificate of continuance" means a certificate of continuance issued by the registrar under Article 127O;[7]

"class of members", in respect of a protected cell company, includes –

(a) the members of a cell of the company; and

(b) any class of members of a cell of the company;

"Commission" means the Jersey Financial Services Commission established by the Financial Services Commission (Jersey) Law 1998[8];[9]

"company" means a company registered under this Law, or an existing company;

"contributory" means a person liable to contribute to the assets of a company pursuant to Article 192;

"court" means the Royal Court;[10]

"currency" includes foreign currency and any other means of exchange that may be prescribed;

"delivered", in Articles 200 and 201, includes (in the case of a document which is a notice) given;[11]

"Désastre Law" means the Bankruptcy (Désastre) (Jersey) Law 1990[12];

"director" means a person occupying the position of director, by whatever name called;

"dissolved", in relation to a company, means dissolved under this Law or any other law of Jersey;

"document" includes summons, notice, statement, return, account, order, and other legal process, and registers;

"existing company" means a company registered under the Laws repealed by Article 223;

"external company" means a body corporate which is incorporated outside Jersey and which carries on business in Jersey or which has an address in Jersey which is used regularly for the purposes of its business;

"financial period" means a period for which a profit and loss account of a company is made up in accordance with this Law;

"fixed period of time", in Articles 3H, 144 and 144A, means a period of time which is ascertainable without reference to any event which is –

(a) contingent; or

(b) otherwise uncertain;[13]

"former forenames or surname" does not include –

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

(b) in the case of any person, a former forename or surname which was changed or disused before the person attained the age of 20, or which has been changed or disused for a period of not less than 20 years;[14]

"guarantee company" means a guarantee company as defined in Article 3G;[15]

"guarantor member" means a member of a company (whether or not it is a guarantee company) whose liability in his or her capacity as such a member is limited by guarantee, that is to say limited by the memorandum to the amount which the member thereby undertakes (by way of guarantee and not by reason of holding any share) to contribute to the assets of the company in the event of its being wound up;[16]

"incorporated cell company" means a company to which Article 3I(1) applies;

"incorporated limited partnership" means an incorporated limited partnership as defined in Article 1 of the Incorporated Limited Partnerships (Jersey) Law 2011[17];

"insolvent" means unable to pay debts as they fall due;

"interdict" means a person in respect of whom a curator has been appointed in pursuance of Article 43 of the Mental Health (Jersey) Law 1969[18], or a corresponding provision of the law of a place outside Jersey;

"liabilities" includes any amount reasonably necessary to be retained for the purpose of providing for any liability or loss which is either likely to be incurred or certain to be incurred but uncertain as to amount or as to the date on which it will arise;

"limited company" means a limited company as defined in Article 3C;[19]

"limited life company" means a limited life company as defined in Article 3H;[20]

"limited share" means a share in respect of which liability is limited to the amount unpaid on it;[21]

"memorandum", in relation to a company, means its memorandum of association as originally framed or as altered;

[22]

"Minister" means the Minister for Economic Development;

"net asset value", in relation to the shares of an open-ended investment company, means net asset value as defined in the company's articles;[23]

"no par value company" means a no par value company as defined in Article 3F;[24]

"no par value share" means a share which is not expressed as having nominal value;[25]

"number", in relation to shares, includes amount, where the context admits of the reference to shares being construed to include stock;

"officer", in relation to a body corporate, means a director or liquidator;

"open-ended investment company" means a company –

(a) the sole business of which is to invest in securities or other property of any description; and

(b) the articles of which provide that its shares, or substantially all its shares, are to be redeemed or purchased at the request of the holders at a price or prices not exceeding the net asset value of those shares;[26]

"paid up" includes credited as paid up;

[27]

"par value company" means a par value company as defined in Article 3E;[28]

"par value share" means a share which is expressed as having nominal value;[29]

"personal representative" means the executor or administrator for the time being of a deceased person;

"prescribed" means prescribed by Order made by the Minister;

"printed" includes typewritten and a photocopy of a printed or typewritten document;

"private company" means a private company as defined in Article 3B;[30]

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

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

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

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

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

(iii) the number of persons in Jersey or elsewhere to whom the invitation is so communicated does not exceed 50;[31]

"protected cell company" means a company to which Article 3I(2) applies;

"public company" means a public company as defined in Article 3A;[32]

"published" means –

(a) in respect of a fee payable by virtue of this Law, published by the Commission in accordance with Article 15(5)[33] of the Financial Services Commission (Jersey) Law 1998; and

(b) in any other case, published by the Commission in a manner likely to bring it to the attention of those affected,

and "publish" shall be interpreted accordingly;[34]

[35]

"records" means documents and other records however stored;

"registrar" means the registrar of companies appointed pursuant to Article 196 and "registrar's seal", in relation to the registrar, means a seal prepared under Article 197;

"securities" –

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

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

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

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

(iii) rights to acquire any of the foregoing;[36]

"separate limited partnership" means a separate limited partnership as defined in Article 1 of the Separate Limited Partnerships (Jersey) Law 2011[37];

"share" –

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

(b) in Article 36, also has the meaning assigned to it by paragraph (2A) of that Article,

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

"special resolution" has the meaning given to that expression by Article 90;

"surname", in the case of a peer or a person usually known by a title which differs from his or her surname, means that title;[38]

"treasury share" means a share held as a treasury share under Article 58A(1);

"unlimited share" means a share in respect of which liability is not limited to the amount unpaid on it;[39]

"variation", in Articles 52 and 53, includes abrogation;[40]

"year" means a calendar year.[41]

(2) References in this Law to a body corporate –

(a) include a body corporate incorporated outside Jersey but do not include a corporation sole;

(b) except in Articles 2 and 2A, do not include an association incorporated under the Loi (1862) sur les teneures en fidéicommis et l'incorporation d'associations[42];

(c) do not include a Scottish firm;

(d) do not include a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 1997[43];

(e) do not include an incorporated limited partnership.[44]

2 Meanings of "subsidiary", "wholly-owned subsidiary" and "holding body"[45]

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

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

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

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

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

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

(a) the second body; and

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

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

(4) A holding company is a body corporate that is a holding body.[46]

(5) [47]

2A Further provisions relating to subsidiaries and holding bodies[48]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2B Power of States to amend Part 1[49]

The States may amend this Part by Regulations.

PART 2

COMPANY FORMATION AND REGISTRATION

3 Method of formation of a company[50]

(1) Any 2 or more persons associated for a lawful purpose may apply for the formation of an incorporated public company, with or without limited liability, by signing and delivering to the registrar a memorandum of association that states that the company is to be a public company.

(2) Any person or 2 or more persons associated for a lawful purpose may apply for the formation of an incorporated private company, with or without limited liability, by signing and delivering to the registrar a memorandum of association that states that the company is to be a private company.

(3) The registrar shall not grant an application made under paragraph (2) by more than 30 persons unless the Commission notifies the registrar that, on application made to it and on payment of any published fee, it has satisfied itself that by reason of the nature of the company's intended activities its affairs may properly be regarded as the domestic concern of its members.[51]

(4) The Commission may give its notification under paragraph (3) subject to such conditions as shall be specified in the approval.

(5) Where it does so, paragraphs (3), (4), (5) and (6) of Article 16 shall apply to the notification, with the necessary amendments, as if the approval were a written notice given under Article 16(2).

(6) A person mentioned in paragraph (1) or paragraph (2) must not be a minor or an interdict.

(7) A public or private company may be formed –

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

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

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

(8) A public or private company may be formed as –

(a) a par value company;

(b) a no par value company; or

(c) a guarantee company.

(9) A company shall not have a share capital the shares of which include par value shares and no par value shares.

(10) Paragraph (9) is without prejudice to Article 127YA(4) (which relates to the types of cells a cell company may create).

3A Public companies[52]

A company is a public company if –

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

(b) it is an existing company which became a public company on 30th March 1992 by the operation of Article 16(2) (as then in force), and it has not subsequently become a private company.

3B Private companies[53]

A company is a private company if –

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

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

3C Limited companies[54]

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

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

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

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

(2) A guarantee company is a limited company.

3D Unlimited companies[55]

(1) A company is an unlimited company if –

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

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

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

(2) Nothing in this Law shall be taken as prohibiting a company –

(a) from changing any unlimited shares in the company to limited shares in the company; or

(b) from changing any limited shares in the company to unlimited shares in the company.

3E Par value companies[56]

A company is a par value company if –

(a) it is registered with share capital;

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

(c) either –

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

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

whether or not it also has guarantor members.

3F No par value companies[57]

A company is a no par value company if –

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

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

whether or not it also has guarantor members.

3G Guarantee companies[58]

A company is a guarantee company if –

(a) it consists only of guarantor members; and

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

3H Limited life companies[59]

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

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

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

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

3I Cell companies[60]

(1) A company is an incorporated cell company if its memorandum provides that it is an incorporated cell company.

(2) A company is a protected cell company if its memorandum provides that it is a protected cell company.

(3) A cell company may be –

(a) a public or a private company;

(b) a par value company, a no par value company or a guarantee company; and

(c) a limited company or an unlimited company.

4 Memorandum of association[61]

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

(2) The memorandum shall state –

(a) the name of the company;

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

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

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

(e) the name and address of the registered office or principal office of each subscriber which is a person other than a natural person.[62]

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

(4) If a memorandum is permitted under the Electronic Communications (Jersey) Law 2000[63] to be delivered under paragraph (1) by way of electronic communication, any memorandum so delivered is not required to be printed nor to be signed in the presence of a witness.[64]

4A Memorandum of company with shares[65]

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

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

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

(c) if the company is to be registered with any limited share, the memorandum shall state that the liability of a member arising from

the member's holding of such a share is limited to the amount (if any) unpaid on it;

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

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

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

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

(2) The amount of a par value share may be stated in any unit or part of a unit of any currency.[66]

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

4B Memorandum of company with guarantor members[67]

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

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

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

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

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

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

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

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

4C Memorandum or articles of company of limited duration[68]

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

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

(b) the happening of some other event,

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

5 Articles of association[69]

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

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

(a) be printed;

(b) be divided into paragraphs numbered consecutively.

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

(4) This Article is subject to Article 6.

(5) If articles are permitted under the Electronic Communications (Jersey) Law 2000[70] to be delivered under paragraph (1) by way of electronic communication, any articles so delivered are not required to be printed nor to be signed in the presence of a witness.[71]

6 Standard Table[72]

(1) The Minister may prescribe a set of model articles, to be known as the Standard Table, which is appropriate for a par value company which –

(a) does not have unlimited shares; and

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

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

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

(a) if articles have not been registered; or

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

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

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

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

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

7 Documents to be delivered to registrar

(1) With the memorandum there shall be delivered to the registrar a statement containing the intended address of the company's registered office on incorporation and any other published particulars; and the statement shall be signed by or on behalf of the subscribers of the memorandum.[73]

(2) Where a memorandum is delivered by a person as agent for the subscribers, the statement shall specify that fact and the person's name and address.

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

(a) the director's present forenames and surname;

(b) any former forenames or surname;

(c) the director's business or usual residential address;

(d) the director's nationality;

(e) the director's business occupation (if any); and

(f) the director's date of birth.[74]

(4) If the Standard Table has been prescribed under Article 6, the statement shall specify the extent (if any) to which the company adopts the Table.[75]

8 Registration[76]

(1) If, on an application for the formation of a company, the registrar is of the opinion that the formation of the company would not be in the public interest, the registrar must refer the application to the court.

(2) If an application is referred to the court in accordance with paragraph (1) or if the court calls for an application to be referred to it, the court may –

(a) authorize the registration of the memorandum and any articles of the company; or

(b) if it considers that the formation of the company would not be in the public interest, refuse to authorize the registration of its memorandum and any articles.

(3) Where –

(a) the registrar is satisfied that all the requirements of this Law in respect of the registration of a company have been complied with; and

(b) if the application for the formation of the company has been considered by the court, the registrar has received an Act of the court authorizing the registration,

the registrar shall register the memorandum and any articles of the company delivered to the registrar under Article 5.

9 Effect of registration

(1) On the registration of a company's memorandum the registrar shall issue a certificate that the company is incorporated.[77]

(2) The certificate shall be signed by the registrar and sealed with the registrar's seal.

(3) From the date of incorporation mentioned in the certificate the subscribers of the memorandum, together with such other persons who may from time to time become members of the company, shall be a body corporate having the name contained in the memorandum capable forthwith of exercising all the functions of an incorporated company, but with such liability on the part of its members to contribute to its assets as is provided by this Law or any other enactment in the event of its being wound up.

(4) If the memorandum states that the company is a public company or a private company the certificate shall so state and if the memorandum also states that the company is an incorporated cell company or a protected cell company the certificate shall also so state.[78]

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

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

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

(i) the registration of the company,

(ii) all matters precedent to its registration, and

(iii) all matters incidental to its registration; and

(c) if the certificate states that it is a public company or a private company, or that it is an incorporated cell company or a protected cell company, that it is such a company.[79]

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

(a) that the company is incorporated; and

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

(i) the registration of the company,

(ii) all matters precedent to its registration, and

(iii) all matters incidental to its registration.[80]

10 Effect of memorandum and articles

(1) Subject to the provisions of this Law, the memorandum and articles, when registered, bind the company and its members to the same extent as if they respectively had been signed and sealed by the company and by

each member, and contained covenants on the part of the company and each member to observe all the provisions of the memorandum and articles.

(2) Money payable by a member to the company under the memorandum or articles is a debt due from the member to the company.

11 Alteration of memorandum and articles[81]

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

(2) An alteration in the memorandum or articles of a company –

(a) may provide that upon –

(i) the expiration of a period of time, or

(ii) the happening of some other event,

the company is to be wound up and dissolved; or

(b) may amend or delete any such provision.

(3) Notwithstanding anything in the memorandum or articles, a member of a company is not bound by an alteration made in the memorandum or articles after the date on which the member became a member, if and so far as the alteration –

(a) requires the member to take or subscribe for more shares than the number held by the member at the date on which the alteration is made; or

(b) in any way increases the member's liability as at that date to contribute to the company's share capital or otherwise to pay money to the company,

unless the member agrees in writing, either before or after the alteration is made, to be bound by it.

(4) The power conferred by this Article to alter the memorandum or articles shall not be exercisable by an existing company –

(a) so as to shorten a period of time by which the company's existence is limited, or to provide for its winding up and dissolution on the happening of an event other than the expiration of a period of time; or

(b) so as to alter rights attached to a class of shares which could not have been altered under the Laws repealed by Article 223,

unless the alteration is agreed to by all of the members or approved by the court.[82]

12 Copies of memorandum and articles for members

(1) A company shall, on being so required by a member, send to the member a copy of the memorandum and of the articles subject to payment of such sum (if any), not exceeding the published maximum, as the company may require.[83]

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

PART 3

NAMES

13 Requirements as to names

(1) The registrar may refuse to register –

(a) the memorandum; or

(b) a special resolution changing the name of a company,

where the name to be registered is in the registrar's opinion in any way misleading or otherwise undesirable.

(2) The name of a limited company shall end –

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

(b) with the words "avec responsabilité limitée" or the abbreviation "a.r.l".[84]

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

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

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

may, in setting out or using its name for any purpose under this Law, do so in full or in the abbreviated form, as it prefers.[85]

(3A) Despite paragraph (2), the name of a public company that is a limited company may end with the words "public limited company" or the abbreviation "PLC" or "plc".[86]

(3B) A company which is registered with a name ending with the words "public limited company" or the abbreviation "PLC" or "plc" may, in setting out or using its name for any purpose under this Law, do so –

(a) in full or in the abbreviated form; and

(b) in any combination of capital or lower case characters,

as it prefers.[87]

(4) Where the registrar considers that it would be convenient to do so and not misleading, the registrar may in any reference to a company in a document issued under this Law use an abbreviation permitted by this Article or Article 127YS.[88]

14 Change of name

(1) Subject to Article 13, a company may, by special resolution, change its name.

(2) Where a company changes its name under this Article, the registrar shall enter the new name on the register in place of the former name, and shall

issue under Article 9 a certificate of incorporation altered to meet the circumstances of the case; and the change of name has effect from the date on which the altered certificate is issued.[89]

(3) Where, at the time of the passing of the special resolution enabling a company to change its name, the company has its name inscribed in the Public Registry as being the holder of, or having an interest in, immovable property in Jersey, the company shall deliver to the Judicial Greffier a copy of the altered certificate of incorporation within 14 days after it is issued and the Judicial Greffier shall cause the new name to be registered in the Public Registry.

(4) A company which fails to comply with paragraph (3) is guilty of an offence.

(5) A change of name by a company under this Law does not affect any rights or obligations of the company or render defective any legal proceedings by or against it; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

15 Power to require change of name

(1) If, in the opinion of the registrar, the name by which a company is registered is misleading or otherwise undesirable, the registrar may direct the company to change it.

(2) The direction, if not made the subject of an application to the court under paragraph (3), shall be complied with within 3 months from the date of the direction or such longer period as the registrar may allow.

(3) The company may within 21 days from the date of the direction apply to the court to set it aside; and the court may set the direction aside or confirm it.

(4) If the court confirms the direction, it shall specify a period not being less than 28 days within which it shall be complied with and may order the registrar to pay the company such sum (if any) as it thinks fit in respect of the expense to be incurred by the company in complying with the direction.

(5) A company which fails to comply with a direction under this Article is guilty of an offence.

(6) Expenses to be defrayed by the registrar under this Article shall be paid out of money provided by the States.

PART 4

PUBLIC COMPANIES AND PRIVATE COMPANIES[90]

16 Change of status of public company[91]

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

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

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

(4) If –

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

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

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

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

(6) If there is a failure to comply –

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

(b) paragraph (5),

the company is guilty of an offence.

(7) Within 28 days after a company receives a notice of a direction made by the Commission under paragraph (2) in relation to the company –

(a) a member of the company may appeal to the court on the ground that the direction was unreasonable having regard to all the circumstances of the case; and

(b) the company, or a member of the company, may appeal to the court on the ground that a condition imposed by the direction was unreasonable having regard to all the circumstances of the case.[92]

(8) Within 28 days after a company receives a notice of a direction made by the Commission under paragraph (4) in relation to the company, the company, or a member of the company, may appeal to the court on the ground that the direction was unreasonable having regard to all the circumstances of the case.[93]

(9) On hearing an appeal under this Article –

(a) if the appeal is against a direction imposed by the Commission, the court may confirm or reverse the direction made by the Commission; or

(b) if the appeal is against a condition specified in a direction made by the Commission, the court may confirm, vary or revoke the condition and, in any case, add a new condition to the conditions specified in the direction.[94]

(10) On hearing an appeal under this Article the court may make such order as to the costs of the appeal as it thinks fit.[95]

17 Change of status of private company[96]

(1) A private company which has at least 2 members may become a public company by altering its memorandum to state that it is a public company.

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

(a) otherwise than in accordance with a direction under Article 16(2), it enters the name of a person in its register of members so as to increase the number of its members beyond 30, and their number for the time being remains above 30;

(b) it circulates a prospectus relating to its securities; or

(c) its securities are admitted to trade on a regulated market (as that term is defined by Article 102(1).[97]

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

(4) [98]

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

(6) If the court, on the application of a company which has increased the number of its members in the manner described in paragraph (2)(a), or of any other person interested, is satisfied that it is just to relieve the company from all or any of the consequences of the action, it may grant relief on such terms as seem to it expedient.[99]

(7) If, on the application of a private company, the Commission is satisfied that by reason of the nature of the company's activities its affairs may properly be regarded as the domestic concern of its members, the Commission may in its discretion by written notice to the company direct that paragraph (2) shall apply to the company with such modifications as

are specified in the direction, and the Commission may at any time withdraw or amend the terms of any such direction.

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

(9) Within 28 days after a company receives a notice of a direction, or an amendment of the terms of a direction, made by the Commission under paragraph (7) in relation to the company –

(a) a member of the company may appeal to the court on the ground that the direction was unreasonable having regard to all the circumstances of the case; and

(b) the company, or a member of the company, may appeal to the court on the ground that a term imposed by the direction, or an amendment to a term of the direction, was unreasonable having regard to all the circumstances of the case.[100]

(10) On hearing an appeal under this Article –

(a) if the appeal is against a direction imposed by the Commission, the court may confirm or reverse the direction made by the Commission; or

(b) if the appeal is against a term imposed by a direction made by the Commission, the court may confirm, vary or revoke the term and, in any case, add a new term to the terms imposed by the direction.[101]

(11) On hearing an appeal under this Article the Court may make such order as to the costs of the appeal as it thinks fit.[102]

17A Calculation of number of members[103]

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

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

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

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

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

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

17B Notice of change of status[104]

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

17C Alteration of numbers[105]

The Minister may by Order amend Article 3(3), Article 16 and Article 17 so as to increase or reduce –

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

(b) any other number which the Minister may have substituted by an Order under this Article.[106]

PART 5

CORPORATE CAPACITY AND TRANSACTIONS

18 Capacity of company

(1) The doctrine of *ultra vires* in its application to companies is abolished and accordingly the capacity of a company is not limited by anything in its memorandum or articles or by any act of its members.

(2) This Article does not affect the capacity of an existing company in relation to anything done by it before this Article comes into force.

(3) Unless and until otherwise resolved by special resolution the authority of the directors of an existing company shall not include the exercise of any power which the company did not have when this Article came into force.

19 No implied notice of public records

No person is deemed to have notice of any records by reason only that they are made available by the registrar, or by a company, for inspection.

20 Form of contracts

(1) A person acting under the express or implied authority of a company may make, vary or discharge a contract or sign an instrument on behalf of the company in the same manner as if the contract were made, varied or discharged or the instrument signed by a natural person.

(2) Nothing in this Article shall affect any requirement of law that a contract be passed before the court.

21 Transactions entered into prior to corporate existence

(1) Where a transaction purports to be entered into by a company, or by a person as agent for a company, at a time when the company has not been

formed, then, unless otherwise agreed by the parties to the transaction, the transaction has effect as one entered into by the person purporting to act for the company or as agent for it, and the person is personally bound by the transaction and entitled to its benefits.

(2) A company may, within such period as may be specified in the terms of the transaction or if no period is specified, within a reasonable time after it is formed, by act or conduct signifying its intention to be bound thereby, adopt any such transaction and it shall thenceforth be bound by it and entitled to its benefits and the person who entered into the transaction shall cease to be so bound and entitled.

22 Company seals[107]

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

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

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

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

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

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

he or she is guilty of an offence.

23 Official seal for use abroad[108]

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

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

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

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

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

24 Official seal for securities[109]

A company which has a common seal may have –

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

(b) duplicates of such a seal,

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

PART 6

MEMBERSHIP AND SHARES

25 Definition of "member"

(1) The subscribers of a company's memorandum are deemed to have agreed to become members of the company, and on its registration shall be entered as such in its register of members.

(2) Except as provided by Article 127YQ (which relates to the members of protected cell companies), every other person who agrees to become a member of a company, and whose name is entered in its register of members, is a member of the company.[110]

26 Membership of holding company

(1) Except in the cases mentioned in this Article –

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

(b) an allotment or transfer of shares in a company to its subsidiary is void.[111]

(2) Paragraph (1) does not prevent a subsidiary which was, on 30th March 1992 or when it became a subsidiary, a member of its holding company from continuing to be a member, but as long as it is a subsidiary –

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

(b) it shall not acquire further shares in the holding company, except as provided in paragraph (3A).[112]

(3) Paragraphs (1) and (2) apply in relation to a nominee for a body corporate which is a subsidiary as if references to the body corporate included a nominee for it.[113]

(3A) If a body corporate is permitted by virtue of paragraph (2) to continue as a member of its holding company, an allotment to it of fully paid shares in its holding company may be made by way of a capitalization of reserves of the holding company.[114]

(4) Nothing in this Article applies where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless in the latter case the holding company or a subsidiary of it is beneficially interested under the trust and is not so interested only by way of security.

27 Minimum membership for carrying on business

(1) If a public company carries on business without having at least 2 members and does so for more than 6 consecutive months (whether or not those 6 months began before this Article came into force) a person who, for the whole or any part of the period that it so carries on business after those 6 months –

(a) is a member of the company; and

(b) knows that it is carrying on business with only one member,

is liable (jointly and severally with the company) for the payment of the company's debts contracted during the period or that part of it.[115]

(2) Paragraph (1) does not apply to a public company of which all of the issued shares are held by or by a nominee for a holding body.[116]

28 Prohibition of minors and interdicts

A minor or an interdict may not become a member of a company unless his or her rights of membership were transmitted to the person on the death of the holder thereof.[117]

PART 7

PROSPECTUSES

29 Prospectuses

(1) The Minister may by Order prohibit all or any of the following things, namely –

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

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

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

except in such circumstances and subject to such conditions as may be specified in the Order.[118]

(2) Such an Order may provide for the payment of fees for the purposes of the Order.[119]

(3) Any person who fails to comply with any provision of any such Order and, where the offence is committed by a body corporate, every officer of the body corporate which is in default is guilty of an offence.

(6) An invitation to the public to acquire or apply for securities in a company shall, if the securities are not fully paid or if the invitation is first circulated within 6 months after the securities were allotted, be deemed to be a prospectus circulated by the company unless it is shown that the securities were not allotted with a view to their being the subject of such an invitation.

30 Compensation for misleading statements in prospectus

(1) A person who acquires or agrees to acquire a security to which a prospectus relates and suffers a loss in respect of the security as a result of the inclusion in the prospectus of a statement of a material fact which is untrue or misleading, or the omission from it of the statement of a material fact, shall, subject to Article 31, be entitled to compensation –

(a) in the case of securities offered for subscription, from the body corporate issuing the securities and from each person who was a director of it when the prospectus was circulated;

(b) in the case of securities offered otherwise than for subscription, from the person making the offer and, where that person is a body corporate, from each person who was a director of it when the prospectus was circulated;

(c) from each person who is stated in the prospectus as accepting responsibility for the prospectus, or any part of it, but, in that case, only in respect of a statement made in or omitted from that part; and

(d) from each person who has authorized the contents of, or any part of, the prospectus.

(2) Nothing in this Article shall make a person responsible by reason only of giving advice as to the contents of a prospectus in a professional capacity.

(3) This Article does not affect any liability which any person may incur apart from this Article.

(4) This Article applies only to a prospectus first circulated after the Article comes into force.

31 Exemption from liability to pay compensation

A person shall not be liable under Article 30 if the person satisfies the court –

(a) that the prospectus was circulated without the person's consent;

(b) that, having made such enquiries (if any) as were reasonable, from the circulation of the prospectus until the securities were acquired, the person reasonably believed that the statement was true and not misleading or that the matter omitted was properly omitted;

(c) that, after the circulation of the prospectus and before the securities were acquired the person, on becoming aware of the untrue or misleading statement or of the omission of the statement of a material fact, took reasonable steps to secure that a correction was brought to the notice of persons likely to acquire the securities;

(d) in the case of a loss caused by a statement purporting to be made by a person whose qualifications give authority to a statement made by the person which was included in the prospectus with the person's consent, that when the prospectus was circulated the person reasonably believed that the person purporting to make the statement was competent to do so and had consented to its inclusion in the prospectus; or

(e) that the person suffering the loss acquired or agreed to acquire the securities knowing that the statement was untrue or misleading or that the matter in question was omitted.

32 Recovery of compensation

(1) A person is not debarred from obtaining compensation from a company by reason only of the person holding or having held shares in the company or any right to apply or subscribe for shares in the company or to be included in the company's register of members in respect of shares.

(2) A sum due from a company to a person who has acquired or agreed to acquire shares in the company being a sum due as compensation for loss suffered by the person in respect of the shares, shall (whether or not the company is being wound up and whether the sum is due under Article 30 or otherwise) be treated as a sum due to the person otherwise than in the person's character of a member.

33 Criminal liability in relation to prospectuses

If a prospectus is circulated with a material statement in it which is untrue or misleading or with the omission from it of the statement of a material fact, any person who authorized the circulation of the prospectus is guilty of an offence unless he or she satisfies the court that he or she reasonably believed, when the prospectus was circulated, that the statement was true and not misleading or that the matter omitted was properly omitted.

PART 8

SHARE CAPITAL

34 Nature and numbering of shares

(1) The shares or other interests of a member of a company are, subject to Article 42, transferable in the manner provided by the company's articles.

(2) Each share in a company shall be distinguished by its appropriate number, except that, if and so long as all the issued shares in a company or all the issued shares in it of a particular class –

(a) are fully paid and carry the same rights in all respects; or

(b) are evidenced by certificates issued in accordance with Article 50, each certificate being distinguished by a number recorded in the register of members,

none of those shares need have a distinguishing number.

35 Commissions and discounts barred

(1) Except as permitted by Article 36 –

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

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

in return for the person's subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company.[120]

(2) Paragraph (1) applies whether the shares or money be so applied by being added to the purchase money of property acquired by the company or to the contract price of work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3) Nothing in this Article or Article 36 shall make unlawful a payment made or remuneration given by a company to a broker making the broker's usual charges for services rendered to the company.

(4) A vendor to, or promoter of, or other person who receives payment in money or shares from, a company has, and is deemed always to have had, power to apply any part of the money or shares so received in payment of a commission, the payment of which, if made directly by the company, would have been lawful under this Article and Article 36.

36 Commissions

(1) A company may pay a commission to a person in return for the person subscribing or agreeing to subscribe (whether absolutely or conditionally) for shares in the company, or procuring or agreeing to procure subscriptions (whether absolute or conditional) for shares in the company, if the following conditions are satisfied –

(a) the payment of the commission is authorized by the company's articles;

(b) the commission does not exceed 10% of the price at which the shares are allotted or the amount or rate authorized by the articles, whichever is less; and

(c) in the case of a public company, the amount or rate per cent of commission, and the number of shares which persons have agreed for a commission to subscribe absolutely are disclosed –

(i) where the shares are offered for subscription by a prospectus, in that prospectus, or

(ii) where the shares are not offered for subscription by a prospectus, in a statement signed by every director of the company or by the director's agent authorized in writing and

delivered (before payment of the commission) to the registrar.[121]

(2) If default is made in complying with paragraph (1)(c) as regards delivery to the registrar of the statement, the company and every officer of it who is in default is guilty of an offence.

(2A) In this Article, "shares" include securities which confer (conditionally or unconditionally) on the holders the right to acquire shares in a company.[122]

37 Provision for different amounts to be paid on shares

A company, if so authorized by its articles, may –

(a) make arrangements on the allotment of shares for a difference between the shareholders in the amounts and times of payments of calls or instalments payable on their shares;

(b) accept from a member the whole or a part of the amount remaining unpaid on shares held by the member, although no part of that amount has been called up or become payable; and

(c) pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.[123]

38 Alteration of capital of par value companies[124]

(1) A par value company may, by altering its memorandum –

(a) increase its share capital by creating new shares of such amount and in such currency or currencies as it thinks expedient;

(b) consolidate and divide all or any of its shares (whether issued or not) into shares of larger amount than its existing shares;

(c) convert all or any of its fully paid shares into stock, and reconvert that stock into fully paid shares of any denomination;

(d) subject to paragraph (2), subdivide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum;

(e) subject to Article 38B, convert any of its fully paid shares the nominal value of which is expressed in one currency into fully paid shares of a nominal value of another currency;

(ea) in the case to which paragraph (1A) refers, denominate the nominal value of its issued or unissued shares in units of the currency into which they have been converted; and

(f) cancel shares which, at the date of the passing of the resolution to cancel them, have not been taken or agreed to be taken by any person, and diminish the amount of the company's share capital by the amount of the shares so cancelled.[125]

(1A) Paragraph (1)(ea) refers to the case in which –

(a) the nominal value of the shares concerned is expressed in one currency;

(b) those shares are then converted (whether under subparagraph (e) of that paragraph or otherwise) into shares of a nominal value of another currency; and

(c) they nevertheless remain denominated in the former currency.[126]

(2) In a sub-division under paragraph (1)(d) the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.

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

(5) A cancellation of shares under this Article does not for the purposes of this Law constitute a reduction of share capital.

38A Alteration of capital of no par value companies[127]

A no par value company may, by special resolution, alter its memorandum –

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

(b) to consolidate all or any of its shares (whether issued or not) into fewer shares; or

(c) to divide all or any of its shares (whether issued or not) into more shares.

38B Rate of exchange for currency conversions[128]

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

39 Share premium accounts for par value companies[129]

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

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

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

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

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

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

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

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

(d) in the redemption or purchase of shares under Part 11; and

(e) in the making of a distribution in accordance with Part 17.[130]

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

39A Stated capital accounts for no par value companies[131]

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

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

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

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

(b) the value, as determined by the directors, of the "cause" received by the company, otherwise than in cash, for the issue of shares of that class; and

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

(4) A stated capital account may be applied by the company for any purpose for which a share premium account may be applied by a par value company.[132]

39B Relief from requirements to make transfers to share premium accounts and stated capital accounts[133]

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

(a) to that holding body; or

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

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

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

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

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

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

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

(b) "the base value of the assets transferred" means –

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

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

whichever is less; and

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

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

40 Power to issue fractions of shares[134]

(1) Despite Article 4A(3) (which provides that a person may not subscribe for less than one share), a company registered with shares may issue a fraction of a share if it is authorized to do so by its articles.

(2) If the holder of a fraction of a share acquires a further fraction of a share of the same class, the fractions shall be treated as consolidated.

(3) The rights of a member in respect of the holding of a fraction of a share in a company shall be as provided in the articles of the company.

(4) Except as otherwise provided by this Article and the articles of the company, this Law applies to a fraction of a share in the company as it applies to a whole share in the company.

40A Conversion of shares in par value companies[135]

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

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

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

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

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

(3) The special resolution of the company –

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

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

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

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

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

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

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

40B Conversion of shares in no par value companies[136]

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

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

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

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

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

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

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

(b) has a nominal value specified in the special resolution of the company, being a value not exceeding the amount standing to the credit of the stated capital account for that class divided by the number of shares of that class in issue.

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

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

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

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

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

40C Power of States to amend Part 8[137]

The States may amend this Part by Regulations.

PART 9

REGISTER OF MEMBERS AND CERTIFICATES

41 Register of members

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

(a) the name and address of every member;

(b) where he or she is a member because he or she holds shares in the company –

(i) the number of shares held by the member,

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

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

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

(c) where he or she is a guarantor member –

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

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

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

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

(e) in every case where a person ceases to be a member, the date on which that event occurs.[138]

(2) Where the company has converted any of its shares into stock, the register shall show the amount and class of stock held by each member

instead of the amount of shares and the particulars relating to shares specified in paragraph (1).[139]

(3) If a company fails to comply with this Article, the company and every officer of it who is in default is guilty of an offence.

(4) An entry relating to a former member of the company may be removed from the register after 10 years from the date on which the member ceased to be a member.

(5) Without prejudice to any lesser period of limitation or prescription, liability incurred by a company from the making or deletion of an entry in its register of members, or from failure to make or delete any such entry, is not enforceable more than 10 years after the date on which the entry was made or deleted or the failure first occurred.

42 Transfer and registration

(1) Notwithstanding anything in its articles, a company shall not register a transfer of shares in the company unless –

(a) an instrument of transfer in writing has been delivered to it;

(b) the transfer is exempted from the provisions of this paragraph pursuant to paragraph (6); or

(c) the transfer is made in accordance with an Order made under Article 51A.[140]

(1A) Notwithstanding anything in its articles, a company shall not register an instrument of transfer of shares which is a transaction to which the Taxation (Land Transactions) (Jersey) Law 2009 applies unless there is produced to the company the LTT receipt issued under Article 9 of that Law in respect of the transaction, or a copy of that receipt, certified in the manner prescribed under that Law.[141]

(1B) If a company fails to comply with paragraph (1A), the company and every officer of it who is in default is guilty of an offence.[142]

(2) Paragraphs (1) and (1A) do not prejudice a power of the company to register as a shareholder a person to whom the right to shares in the company has been transmitted by operation of law.[143]

(3) A transfer of the share or other interest of a deceased member of a company made by the deceased member's personal representative, although the personal representative is not a member of the company, is as valid as if the personal representative had been a member at the time of the execution of the instrument of transfer.

(4) On the application of the transferor of a share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

(5) If a company refuses to register a transfer of shares the company shall, within 2 months after the date on which the transfer was lodged with it, give to the transferor and transferee notice of the refusal.

(6) The Minister may by Order provide for exemptions from the provisions of paragraph (1), either as regards specified companies or classes of companies or as regards specified shares or classes of shares.[144]

43 Certification of transfers

(1) For the purpose of this Article –

(a) an instrument of transfer shall be deemed to be certificated if it bears the words "certificate lodged" or words to the like effect;

(b) the certification shall be deemed to be made by a company if –

(i) the person issuing the instrument is a person authorized to issue certificated instruments of transfer on the company's behalf, and

(ii) the certification is signed by a person authorized to certificate transfers on behalf of the company or by an officer or servant of the company or of a body corporate so authorized;

(c) a certification is deemed to be signed by a person if –

(i) it purports to be authenticated by the person's signature or initials (whether handwritten or not), and

(ii) it is not shown that the signature or initials was not or were not placed there by the person or by any other person authorized to use the signature or initials for the purpose of certificating instruments of transfer on behalf of the company.

(2) The certification by a company of an instrument of transfer of any shares or debentures in a company shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on their face show a *prima facie* title to the shares or debentures in the transferor named in the instrument of transfer but not as a representation that the transferor has any title to the shares or debentures.

(3) Where a person acts on the faith of a false certification by a company made negligently the company is under the same liability to the person as if the certification had been made fraudulently.

(4) Where a certification is expressed to be limited to 42 days or any longer period from the date of certification, the company is not, in the absence of fraud, liable in respect of the registration of any transfer of shares or debentures comprised in the certification after the expiration of the period so limited if the instrument of transfer has not, within that period, been lodged with the company for registration.

44 Location of register of members

(1) A company's register of members shall be kept at its registered office or, if it is made up at another place in Jersey, at that place.

(2) A company shall give notice to the registrar of the place where its register of members is kept, and of any change of that place.

(3) The notice need not be given if the register has at all times since it came into existence (or, in the case of a register in existence when this Article comes into force, at all times since then) been kept at the company's registered office.

(4) If a company fails for 14 days to comply with paragraph (2), the company is guilty of an offence.

45 Inspection of register

(1) The register of members shall during business hours be open to the inspection of a member of the company without charge, and of any other person on payment of such sum (if any), not exceeding the published maximum, as the company may require.[145]

(2) A person may –

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

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

require a copy of the register and the company shall, within 10 days after the receipt of the payment and (in the case of a public company) the declaration, cause the copy so required to be available at the place where the register is kept, for collection by that person during business hours.[146]

(3) If inspection under this Article is refused, or if a copy so required is not made available within the proper period, the company is guilty of an offence.

(4) In the case of refusal or default, the court may by order compel an immediate inspection of the register, or direct that the copies required be made available to the person requiring them.

46 Declaration

(1) The declaration required under Article 45(2) or Article 71(3) shall be made in writing under oath and shall state the name and address of the applicant and contain an undertaking by the applicant that no information contained in the copy of the register made available to the applicant will be used by the applicant, or by any person who acquires any such information on behalf of the applicant, or directly or indirectly from the applicant or any such person, save for the following purposes –

(a) to call a meeting of members;

(b) to influence the voting by members of the company at any such meeting;

(c) an offer to acquire all the shares, or all the shares of any class in the company other than shares in which the applicant has directly or indirectly a beneficial interest; or

(d) any other purpose which may be prescribed.[147]

(2) Where the applicant is a body corporate the declaration shall be made by a director of the body corporate and the address given shall be its address for service and where the applicant is an individual the declaration shall state the applicant's residential address.

(3) If any such information is used in a manner inconsistent with the terms of a declaration under paragraph (1) the person who made the declaration is guilty of an offence.

47 Rectification of share register

(1) If –

(a) the name of a person, the number of shares held, the class of shares held, or the amount paid up on the shares, or the class of members to which the person belongs is, without sufficient reason, entered in or omitted from a company's register of members; or

(b) there is a failure or unnecessary delay in entering on the register the fact of a person having ceased to be a member,

the person aggrieved, or a member of the company, or the company, may apply to the court for rectification of the register.[148]

(2) The court may refuse the application or may order rectification of the register and payment by the company of any damages sustained by a party aggrieved.

(3) On an application under paragraph (1) the court may decide any question necessary or expedient to be decided with respect to the rectification of the register.

(4) Where an order is made under this Article, the company in relation to which the order is made shall cause the relevant Act of the court to be delivered to the registrar for registration within 14 days after the making of the order; and in the event of failure to comply with this paragraph the company is guilty of an offence.

48 Trusts not to be entered on register

(1) No notice of a trust, express, implied or constructive, shall be receivable by the registrar or entered on the register of members.

(2) The register of members is *prima facie* evidence of any matters which are by this Law directed or authorized to be inserted in it.

49 Overseas branch registers[149]

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

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

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

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

(b) of any change in its situation; and

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

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

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

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

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

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

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

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

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

(b) to its register of members.

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

(9) The Minister may by Order –

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

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

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

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

50 Share certificates[150]

(1) Subject to this Article and Article 51A, every company shall –

(a) within 2 months after the allotment of any of its shares; and

(b) within 2 months after the date on which a transfer of any of its shares is lodged with the company,

complete and have ready for delivery the certificates of all shares allotted or transferred unless the conditions of allotment of the shares otherwise provide.[151]

(2) Paragraph (1) does not apply –

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

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

(c) to an open-ended investment company whose articles do not require a certificate to be delivered on every occasion when shares of the company are allotted or transferred.[152]

(3) The Minister may by Order do all or any of the following things –

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

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

(c) prohibit the issue of certificates in respect of any such shares.[153]

(5) In the event of failure to comply with paragraph (1), the company and every officer of it who is in default is guilty of an offence.

(6) If a company to which a notice has been given by a person entitled to have the certificates delivered to the person requiring it to make good a failure to comply with paragraph (1) fails to make good the failure within 10 days after the service of the notice, the court may, on the application of that person, make an order directing the company and any officer of it to make good the failure within a time specified in the order; and the order may provide that all costs of and incidental to the application shall be borne by the company or by an officer of it responsible for the failure.

51 Certificate to be evidence of title

(1) A certificate sealed by the company, or signed either by two of its directors or by one of its directors and its secretary, specifying any shares held by a member is *prima facie* evidence of the member's title to the shares.[154]

(2) Paragraph (1) applies notwithstanding any subsequent change of the currency in which the nominal amount of the shares to which the certificate relates is expressed.[155]

51A Uncertificated securities[156]

(1) Notwithstanding any other provision in this Law, the Minister may by Order provide in accordance with this Article for title to securities or to any specified class or description of securities to be evidenced and transferred without a written instrument.

(2) An Order under this Article may provide for any of the following matters –

(a) procedures for recording and transferring title to securities, and with respect to the keeping of the register of members in relation to such securities;

(b) the regulation of those procedures and the persons responsible for or involved in their operation;

(c) provision with respect to the rights and obligations of persons in relation to securities dealt with under such procedures;

(d) the giving of effect to –

(i) the transmission of title to securities by operation of law,

(ii) any restriction on the transfer of title to securities arising by virtue of the provisions of any enactment, instrument, court order or agreement, and

(iii) any power conferred on a person, by any provision to which clause (ii) refers, to deal with securities on behalf of the person entitled;

(e) in relation to the persons responsible for or involved in the operation of the procedures to which sub-paragraph (a) refers, provision as to –

(i) the consequences of their insolvency, bankruptcy or incapacity, and

(ii) the transfer by or from them to other persons of their functions in relation to those procedures, and

(f) for any of the purposes in sub-paragraphs (a) to (e) –

(i) the modification or exclusion of any provisions of any enactment or rule of law,

(ii) the application (with such modifications, if any, as the Minister may think appropriate) of any provisions of this Law creating criminal offences,

(iii) the application (with such modifications, if any, as the Minister may think appropriate) of any other provisions of any enactment (not being provisions creating criminal offences),

(iv) the requiring of the payment of fees of such amounts as are specified in the Order or are determined in accordance with the Order, or the enabling of persons specified in the Order to require payment of such fees, and

(v) the empowering of the Minister to delegate to any person willing to discharge them any of the Minister's functions under the Order.

(3) An Order made under this Article shall contain such safeguards as appear to the Minister to be appropriate for the protection of investors.

(4) In this Article –

(a) "securities" means –

(i) shares, stock, debentures, debenture stock, loan stock and bonds,

(ii) warrants entitling the holders to subscribe for any securities specified in clause (i),

(iii) units in a collective investment fund within the meaning of the Collective Investment Funds (Jersey) Law 1988[157], and

(iv) other securities of any description;

(b) references to title to securities include any legal, equitable or other interest in securities; and

(c) references to a transfer of title include a transfer by way of security.

PART 10

CLASS RIGHTS

52 Variation of class rights[158]

(1) The provisions of this Article –

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

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

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

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

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

(a) in the case of any class of par value shares, the holders of not less than 2/3rds in nominal value of the issued shares of that class;

(b) in the case of any class of no par shares, the holders of not less than 2/3rds in number of the issued shares of that class; or

(c) in the case of any class of guarantor members, those whose liability as such members is in the aggregate not less than 2/3rds of the total liability of all the members of that class,

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

(4) A variation which –

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

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

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

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

(5) No member –

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

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

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

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

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

(a) in the memorandum or articles; or

(b) in the terms of admission to membership,

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

53 Members' right to object to variation[159]

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

(a) in the case of any class of par value shares, the holders of not less than 1/10th in nominal value of the issued shares of that class;

(b) in the case of any class of no par value shares, the holders of not less than 1/10th in number of the issued shares of that class; or

(c) in the case of any class of guarantor members, those whose liability as such members is in the aggregate not less than 1/10th of the total liability of all the members of that class,

may apply to the court to have the variation cancelled.[160]

(2) If an application is made under paragraph (1), the variation to which it relates shall not have effect unless and until it is confirmed by the court.[161]

(2A) The application –

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

(b) may be made, on behalf of the members who are entitled to make it, by one or more of them as they appoint in writing.[162]

(3) Notice signed by or on behalf of the applicants that an application to the court has been made under this Article shall be given by or on behalf of the applicants to the registrar within 7 days after it is made.

(4) The court after being satisfied that paragraph (3) has been complied with, and after hearing the applicant and any other persons who appear to the court to be interested in the application, may, if satisfied having regard to all the circumstances, that the variation would unfairly prejudice the members of the class, disallow the variation and shall, if not so satisfied, confirm it.[163]

(5) The company shall, within 14 days after the making of an order by the court under this Article deliver the relevant Act of the court to the registrar; and if default is made in complying with this provision, the company is guilty of an offence.

54 Registration of particulars of special rights

(1) If a public company admits a member or allots shares with rights which are not stated in its memorandum or articles, or in a resolution or agreement of which a copy is required by Article 100 to be delivered to the registrar, the company shall deliver to the registrar within one month after admitting the member or allotting those shares a statement containing particulars of those rights.[164]

(2) Paragraph (1) does not apply if the rights are in all respects uniform with the rights of existing members, and for that purpose they are not different by reason only that during the period of 12 months immediately following the admission of the member or the allotment of the shares, he or she does not have the same rights to dividends as members previously admitted.[165]

(3) Where the rights of members of a public company are varied otherwise than by an amendment of the company's memorandum or articles or by a resolution or agreement subject to Article 100, the company shall within one month from the date on which the variation is made deliver to the registrar a statement containing particulars of the variation.[166]

(4) Where a public company, otherwise than by an amendment, resolution or agreement mentioned in paragraph (3), assigns a name or other designation, or a new name or other designation, to a class of rights of membership, it shall within one month from doing so deliver to the registrar a notice giving particulars of the name or designation so assigned.[167]

(5) If a company fails to comply with this Article, the company and every officer of it who is in default is guilty of an offence.

PART 11

REDEMPTION AND PURCHASE OF SHARES

T55 [168]

55 Power to issue redeemable shares[169]

(1) Except as otherwise provided by this Article, a company may, if authorized to do so by its articles –

(a) issue; or

(b) convert existing non-redeemable limited shares, whether issued or not, into,

limited shares that are to be redeemed, or are liable to be redeemed, either in accordance with their terms or at the option of the company or of the shareholder.

(2) A company shall not issue redeemable limited shares at a time when there are no issued shares of the company that are not redeemable.

(3) A company shall not convert existing issued non-redeemable limited shares into redeemable shares if as a result there are no issued shares of the company that are not redeemable.

(4) The redeemable limited shares of a par value company that is not an open-ended investment company shall be capable of being redeemed from any source, but only if they are fully paid up.[170]

(5) The redeemable limited shares of a no par value company that is not an open-ended investment company shall be capable of being redeemed from any source, but only if they are fully paid up.[171]

(6) [172]

(7) [173]

(8) The redeemable limited shares of a par value company or a no par value company (not being in either case an open-ended investment company) are not capable of being redeemed unless all the directors of the company who authorize the redemption make a statement in the form specified by paragraph (9).

(9) The statement shall state that the directors of the company authorizing the redemption have formed the opinion –

(a) that, immediately following the date on which the payment is proposed to be made, the company will be able to discharge its liabilities as they fall due; and

(b) that, having regard to –

(i) the prospects of the company and to 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 on which the payment is proposed to be made or until the company is dissolved under Article 150, whichever first occurs.[174]

(10) A director who makes a statement under paragraph (8) without having reasonable grounds for the opinion expressed in the statement is guilty of an offence.

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

(12) The redeemable limited shares of an open-ended investment company (whether it is a par value company or a no par value company) shall not be capable of being redeemed unless –

(a) they are fully paid up;

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

(c) the directors of the company authorizing the redemption have reasonable grounds for believing that, immediately following the date on which the payment is proposed to be made, the company will be able to discharge its liabilities as they fall due.[175]

(13) [176]

(14) [177]

(15) [178]

(16) A company may, by special resolution, apply a capital redemption reserve in issuing shares to be allotted as fully paid bonus shares.[179]

(17) Upon the redemption of limited shares of a par value company under this Article, the amount of the company's issued share capital shall be diminished by the nominal value of those shares but the redemption shall not be taken as reducing the authorized share capital of the company.

(18) Where pursuant to this Article a par value company is about to redeem limited shares (other than shares it intends to hold as treasury shares under Article 58A(2)(d)), it may issue shares up to the nominal amount of the shares to be redeemed as if those shares had never been issued.[180]

(19) Limited preference shares issued by a company before Article 223 came into force that could but for the repeal of Article 5 of the Companies (Supplementary Provisions) (Jersey) Law 1968[181] have been redeemed under that Article shall be subject to redemption either in accordance with that Article or in accordance with this Law.

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

(21) Any shares redeemed under this Article (other than shares that are, immediately after being purchased or redeemed, held as treasury shares) are treated as cancelled on redemption.[182]

57 Power of company to purchase its own limited shares[183]

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

(2) A purchase under this Article, other than a purchase of its own shares by a company which is a wholly-owned subsidiary of another company, shall be sanctioned by a special resolution of the company.

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

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

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

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

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

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

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

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

(a) by specifying particular sums; or

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

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

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

(7) A company may not under this Article purchase its shares if as a result of the purchase there would no longer be a member of the company holding shares other than redeemable shares or treasury shares.[184]

58 Rule of law relating to financial assistance abolished[185]

(1) This Article applies to any thing which would have been unlawful by reason of any rule of law, if that rule had not ceased to have effect by virtue of, or had not been modified by, the former Article 58.

(2) The repeal of the former Article 58 by Regulation 5 of the Companies (Amendment No. 2) (Jersey) Regulations 2008 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 Article 58.

(3) A transaction that was –

(a) authorized by a company before the repeal of the former Article 58 by Regulation 5 of the Companies (Amendment No. 2) (Jersey) Regulations 2008;

(b) a transaction of the kind to which paragraph (1) of the former Article 58 applied;

(c) lawful under paragraph (2) or (3) of the former Article 58; and

(d) taken under the Law, as in force immediately before the repeal, to not be a distribution for the purposes of Part 17,

shall not be a distribution for the purposes of Part 17.

(4) [186]

(5) [187]

(6) In this Article, "the former Article 58" means Article 58 of this Law, as that Article was in force immediately before it was repealed by Regulation 5 of the Companies (Amendment No. 2) (Jersey) Regulations 2008.

58A Treasury shares[188]

(1) A company may hold as treasury shares any of the limited shares that it has redeemed or purchased under this Part, to the extent that –

(a) it is not prohibited, by its memorandum or articles of association, from holding shares as treasury shares; and

(b) it is authorized by a resolution of the company to hold the shares as treasury shares.

(2) A company that holds shares as treasury shares may –

(a) cancel the shares;

(b) sell the shares;

(c) transfer the shares for the purposes of or under an employees' share scheme; or

(d) hold the shares without cancelling, selling or transferring them.

(3) While shares are held by a company as treasury shares –

(a) the company shall not, for the purposes of Articles 71, 89 and 92(2) be treated as being a member or as holding shares in the company;

(b) the company shall not exercise any voting rights attaching to the shares;

(c) if a provision of this Law (other than Article 58B) requires –

(i) a proportion of votes attaching to shares held in the company to be obtained, or

(ii) a proportion of the holders of shares of the company, (which may include persons representing by proxy other holders of shares of the company) to consent or not to consent,

in order for a resolution to be passed or an action or decision to be taken or not to be taken by any person, the shares held as treasury shares shall not for the purposes of that provision be taken into account in determining –

(A) the total number of shares held in the company, or

(B) whether such a proportion has been attained;

(d) the company shall not make or receive any dividend, or any other distribution (whether in cash or otherwise) of the company's assets (including any distribution of assets to members on a winding up), in respect of those shares;

(e) the rights in respect of the shares shall not be exercised by or against the company;

(f) the obligations in respect of the shares shall not be enforceable by or against the company; and

(g) any purported exercise or enforcement of a right, obligation or requirement referred to in sub-paragraph (b) to (f) is void.

(4) Nothing in paragraph (3) shall prevent –

(a) an allotment of shares as fully paid bonus shares in respect of treasury shares; or

(b) the payment of any amount payable on the redemption of redeemable shares that are held as treasury shares.

(5) Article 55(17) (including that Article as applied by Article 57(6)) –

(a) shall not apply in relation to any shares that are, immediately after being purchased or redeemed, held as treasury shares;

(b) shall, on and from the day on which any shares held as treasury shares are cancelled under paragraph (2)(a), apply to such shares as if references in Article 55(14), (15) and (17) to a redemption of shares were references to the cancellation of the shares under this Article.[189]

(6) If under paragraph (2)(a) a par value company is about to cancel limited shares, it may issue shares up to the nominal amount of the shares to be cancelled as if those shares had never been issued.

(7) Any shares allotted as fully paid bonus shares in respect of shares held as treasury shares by a company shall be treated for the purposes of this Law as if they were purchased by the company at the time they were allotted.

(8) If shares are held by a company as treasury shares –

(a) the register kept under Article 41 shall include an entry relating to the number of shares held as treasury shares; and

(b) the annual return provided under Article 71 shall include an entry relating to the number of shares held as treasury shares on 1st January in the year of the return.

(9) For the purposes of this Article, an employees' share scheme is a scheme for encouraging or facilitating the holding of shares or debentures in a company by or for the benefit of –

(a) the *bona fide* employees or former employees of the company, the company's subsidiary or holding company or a subsidiary of the company's holding company; or

(b) the wives, husbands, widows, widowers or minor children or minor step-children of such employees or former employees.

58B Limits on number and nominal value of shares to be held as treasury shares[190]

(1) A company may hold as treasury shares so many shares in the company that it has redeemed or purchased under this Part as it thinks fit –

(a) if another person holds at least one non-redeemable share in the company; or

(b) where the articles of the company specify that –

(i) more than one non-redeemable share in the company, or

(ii) a specified proportion of non-redeemable shares in the company,

is required to be held by one or more persons other than the company if the company is to hold shares as treasury shares, if that number or proportion of shares in the company are held by one or more other persons.

(2) If –

(a) a company holds shares as treasury shares;

(b) the articles of the company do not specify that –

(i) more than one non-redeemable share in the company, or

(ii) a specified proportion of non-redeemable shares in the company,

is required to be held by one or more persons other than the company if the company is to hold shares as treasury shares; and

(c) on any day there ceases to be any person who holds at least one non-redeemable share in the company,

the company shall, within 12 months after the day, dispose of to another person or persons at least one non-redeemable share in the company.

(3) If –

(a) a company holds shares as treasury shares;

(b) the articles of the company specify that –

(i) more than one non-redeemable share in the company, or

(ii) a specified proportion of non-redeemable shares in the company,

is required to be held by one or more persons other than the company if the company is to hold shares as treasury shares; and

(c) on any day there ceases to be any person who holds at least that number, or proportion, of non-redeemable shares in the company,

the company shall, within 12 months after the day, dispose of to another person or persons that number, or proportion, of non-redeemable shares in the company.

(4) If a company fails to comply with paragraph (2) or (3) it is guilty of an offence.

58C Redemption, purchase or cancellation under Part 11 not a reduction of capital[191]

The redemption, purchase or cancellation by a company under this Part of its shares is not for the purposes of Part 12 a reduction of capital.

59 Power of States to amend Part 11[192]

The States may amend this Part by Regulations.

PART 12

REDUCTION OF CAPITAL

60 Forfeiture of shares[193]

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

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

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

61 Reduction of capital accounts[194]

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

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

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

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

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

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

(3) Except as provided in paragraphs (4) and (5), every reduction of capital shall be subject to confirmation by the court.[195]

(4) A reduction of capital by extinguishing or reducing a capital account maintained in respect of unlimited shares shall not be subject to confirmation by the court.[196]

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

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

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

and the amount of the reduction is credited to a capital redemption reserve that may be applied only in paying up unissued shares that are to be allotted to members as fully paid bonus shares.[197]

62 Application to Court for order of confirmation

(1) Where a company has passed a resolution for reducing a capital account, it may apply to the court for an order confirming the reduction.[198]

(2) If the proposed reduction of share capital involves either –

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

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

and in any other case if the court so directs, paragraphs (3), (4), and (5) have effect, but subject throughout to paragraph (6).[199]

(3) Every creditor of the company who at the date fixed by the court is entitled to a debt or claim which if that date were the commencement of the winding up of the company, would be admissible in proof against the company is entitled to object to the reduction of capital.

(4) The court shall settle a list of creditors entitled to object, and for that purpose –

(a) shall ascertain, as far as possible, without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims; and

(b) may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction of capital.

(5) If a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the court may dispense with the consent of that creditor, on the company securing

payment of the creditor's debt or claim by appropriating (as the court may direct) the following amount –

(a) if the company admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;

(b) if the company does not admit, and is not willing to provide for, the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the court after an enquiry and adjudication.

(6) If a proposed reduction of capital involves either the diminution of a liability in respect of unpaid capital or the payment to a shareholder of paid up capital, the court may, if having regard to any special circumstances of the case it thinks proper to do so, direct that paragraphs (3) to (5) shall not apply as regards any class or any classes of creditors.[200]

63 Court order confirming reduction

(1) The court, if satisfied with respect to every creditor of the company who under Article 62 is entitled to object to the reduction of capital that either –

(a) the creditor's consent to the reduction has been obtained; or

(b) the creditor's debt or claim has been discharged or has determined, or has been secured,

may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) Where the court so orders, it may also make an order requiring the company to publish (as the court directs) the reasons for reduction of capital or such other information in regard to it as the court thinks expedient with a view to giving proper information to the public and (if the court thinks fit) the causes which led to the reduction.

64 Registration of Act and minute of reduction

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

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

(b) a minute, approved by the court, showing in respect of the company the information specified in paragraph (2).[201]

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

(a) the amounts of the capital accounts;

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

(c) in the case of a par value company the amount (if any), at the date of the registration of the Act and minute under paragraph (2A),

which will remain paid up on each share which has been issued; and

(d) in the case of a no par value company, the amount (if any) remaining unpaid on issued shares.[202]

(2A) The registrar shall register the Act and minute, and thereupon the resolution for reducing the capital as confirmed by the Act shall take effect. [203]

(3) The registrar shall certify the registration of the Act and minute and the certificate –

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

(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.

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

65 Liability of members on reduced shares

(1) Where a par value company's share capital is reduced, a member of the company (past or present) is not liable in respect of any share to a call or contribution exceeding in amount the difference (if any) between the amount of the share as fixed by the minute and the amount paid on the share or the reduced amount (if any) which is deemed to have been paid on it.[204]

(2) Paragraphs (3) and (4) apply if –

(a) a creditor, entitled in respect of a debt or claim to object to the reduction of share capital, by reason of the creditor's ignorance of the proceedings for reduction of share capital, or of their nature and effect with respect to the creditor's claim, is not entered on the list of creditors; and

(b) after the reduction of capital, the company is unable to pay the amount of the creditor's debt or claim.

(3) Every person who was a member of the company at the date of the registration of the Act and minute is then liable to contribute for the payment of the debt or claim in question an amount not exceeding that which the person would have been liable to contribute if the company had commenced to be wound up on the day before that date.

(4) If the company is wound up under this Law, or a declaration is made under the Désastre Law, the court, on the application of the creditor in question and proof of ignorance referred to in paragraph (2)(a) may settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

(5) Nothing in this Article affects the rights of the contributories among themselves.

66 Penalty for concealing name of creditor, etc.

If an officer of the company –

(a) wilfully conceals the name of a creditor entitled to object to the reduction of capital;

(b) wilfully misrepresents the nature or amount of the debt or claim of a creditor; or

(c) aids, abets or is privy to any such concealment or misrepresentation,

the officer is guilty of an offence.

66A Power of States to amend Part 12[205]

The States may amend this Part by Regulations.

PART 13

ADMINISTRATION

67 Registered office[206]

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

(2) A company does not comply with the requirement in paragraph (1) unless the occupier of the premises that are the registered office authorizes for the time being their use for that purpose.

(3) The registrar may, by notice in writing served on the applicants for the incorporation of a company, refuse to incorporate it if he or she is not satisfied that the occupier of the premises that are to be the registered office of the company authorizes their use for that purpose.

(4) On incorporation, the company's registered office shall be that specified in the statement sent to the registrar under Article 7.

(5) The company may change its registered office from time to time by giving notice to the registrar.

(6) If the registrar, by notice in writing served on the company, informs it that the registrar is no longer satisfied that the occupier of the premises that are the company's registered office authorizes their use for that purpose, the company shall within 14 days change its registered office by giving notice to the registrar.

(7) Subject to paragraph (8), a change of registered office under paragraph (5) or (6) shall take effect upon the notice being registered by the registrar, but until the end of the period of 14 days beginning with the date on which it is registered a person may validly serve any document on the company at its previous registered office.

(8) The registrar may, by notice in writing served on a company, refuse to register a notice given by the company under paragraph (5) or (6) if he or

she is not satisfied that the occupier of the premises that are to be the registered office of the company authorizes their use for that purpose.

(9) If default is made in compliance with any requirement of or made under this Article, the company and every officer of it who is in default are each guilty of an offence.

67A Relief from breach of duty in unavoidable circumstances[207]

Where a company unavoidably ceases to perform any duty to keep at its registered office or make available for public inspection there any document, in circumstances in which it was not practicable to give prior notice to the registrar of a change in its registered office, but –

(a) resumes performance of that duty at other premises as soon as practicable; and

(b) gives notice under Article 67(5) to the registrar of the change of its registered office within 14 days of doing so, and that the change is made for the purposes of this Article,

and the registrar registers the notice, the company shall not be treated as having failed to comply with that duty.

67B Review of registrar's decision[208]

(1) Within 28 days after the applicants for the incorporation of a company receive notice under Article 67(3) that the registrar refuses to incorporate the company, the applicants may appeal to the court on the ground that the registrar's decision was unreasonable having regard to all the circumstances of the case.

(2) Within 28 days after a company receives notice under Article 67(6) that the registrar is no longer satisfied that the occupier of the premises that are the company's registered office authorizes their use for that purpose, the company may appeal to the court on the ground that the registrar's decision was unreasonable having regard to all the circumstances of the case.

(3) Within 28 days after a company receives notice under Article 67(8) that the registrar refuses to register a notice of change of registered office given by the company under paragraph (5) or (6) of that Article, the company may appeal to the court on the ground that the registrar's decision was unreasonable having regard to all the circumstances of the case.

(4) On hearing the appeal, the court –

(a) may confirm or reverse the decision of the registrar; and

(b) may make such order as to the costs of the appeal as it thinks fit.

67C Evidence of authorization[209]

The Minister may prescribe information that is to be provided to the registrar to show that an occupier of premises authorizes the use of the premises as a company's registered office.

68 [210]

69 Company's name to appear in its correspondence, etc.

(1) The name of a company shall appear in legible characters in all its –

(a) business letters, statements of account, invoices and order forms;

(b) notices and other official publications; and

(c) negotiable instruments and letters of credit purporting to be signed by or on behalf of the company.

(2) If a company fails to comply with paragraph (1) it is guilty of an offence.

70 Particulars in correspondence, etc.

(1) The address of the registered office of a company shall appear in legible characters in all its business letters and order forms.

(2) If there is on the stationery used for any such letters, or on the company's order forms, a reference to the amount of share capital, the reference shall be to paid up share capital.

(3) If a company fails to comply with paragraph (1) or (2) it is guilty of an offence.

71 Annual return[211]

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The return must contain such other information and be verified in such manner as may be specified in a notice published by the Commission.[212]

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

(5) A company on filing a return required by this Article must pay the published fee and any late filing fee.[213]

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

72 Service of documents

A document may be served on a company –

(a) by leaving it at, or sending it by post to, the registered office of the company;

(b) in accordance with Article 67(4); or

(c) in the case of an existing company if no office is registered, by sending it by post –

(i) in the case of a public company which is in compliance with the requirements of Article 83 to any person who is shown on the register kept in accordance with that Article as a director or secretary of the company at the address entered in that register,

(ii) in any other case to any person shown as a member of the company in the register of members or in the latest annual return delivered to the registrar under Article 71 at the person's address entered in that register or, as the case may be, in that return, and

(iii) where no annual return has been delivered to the registrar in compliance with Article 71 to any person whose name appears as a subscriber in the company's memorandum at the person's address shown in the memorandum.

PART 14

DIRECTORS AND SECRETARY

73 Directors[214]

(1) A private company must have at least one director.

(2) A public company must have at least 2 directors.

(3) A person may not be a director of a company if the person –

(a) has not attained the age of 18 years;

(b) is an interdict; or

(c) is disqualified for being a director under this or any other enactment.

(4) A body corporate shall not be a director of a company unless –

(a) the body corporate is a company that is permitted under the terms of its registration under the Financial Services (Jersey) Law 1998[215] to act as, or fulfil the requirements of, a director; and

(b) the body corporate has no director that is a body corporate.[216]

(4A) An incorporated limited partnership shall not be a director of a company.[217]

(4B) A separate limited partnership shall not be a director of a company.[218]

(5) [219]

74 Duties of directors

(1) A director, in exercising the director's powers and discharging the director's duties, shall –

(a) act honestly and in good faith with a view to the best interests of the company; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) Without prejudice to the operation of any rule of law empowering the members, or any of them, to authorize or ratify a breach of this Article, no act or omission of a director shall be treated as a breach of paragraph (1) if –

(a) all of the members of the company authorize or ratify the act or omission; and

(b) after the act or omission the company will be able to discharge its liabilities as they fall due.[220]

74A Contracts with sole members who are also directors[221]

(1) If a private company which –

(a) is a limited company; and

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

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

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

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

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

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

75 Duty of directors to disclose interests

(1) A director of a company who has, directly or indirectly, an interest in a transaction entered into or proposed to be entered into by the company or by a subsidiary of the company which to a material extent conflicts or may conflict with the interests of the company and of which the director is aware, shall disclose to the company the nature and extent of the director's interest.

(2) The disclosure shall be made –

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

(b) if for any reason the director fails to comply with sub-paragraph (a), as soon as practical after that meeting, by notice in writing delivered to the secretary.[222]

(2A) The secretary, where the disclosure is made to him or her –

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

(b) shall in any event table the notice of the disclosure at the next meeting of the directors after it is made.[223]

(2B) Any disclosure at a meeting of the directors shall be recorded in the minutes of the meeting.[224]

(3) A disclosure to the company by a director in accordance with paragraph (2) that he or she is to be regarded as interested in a transaction with a specific person is sufficient disclosure of his or her interest in any such transaction entered into after the disclosure is made. [225]

(4) Nothing in this Article prejudices the operation of any rule of law restricting directors of a company from having an interest in transactions with a company.

76 Consequences of failure to comply with Article 75

(1) Subject to paragraphs (2) and (3), where a director fails to disclose an interest of the director under Article 75 the company or a member of the company may apply to the court for an order setting aside the transaction concerned and directing that the director account to the company for any profit or gain realised, and the court may so order or make such other order as it thinks fit.

(2) A transaction is not voidable, and a director is not accountable, under paragraph (1) where, notwithstanding a failure to comply with Article 75 –

(a) the transaction is confirmed by special resolution; and

(b) the nature and extent of the director's interest in the transaction were disclosed in reasonable detail in the notice calling the meeting at which the resolution is passed.

(3) Without prejudice to its power to order that a director account for any profit or gain realised, the court shall not set aside a transaction unless it is satisfied that –

(a) the interests of third parties who have acted in good faith thereunder would not thereby be unfairly prejudiced; and

(b) the transaction was not reasonable and fair in the interests of the company at the time it was entered into.

77 Indemnity of officers and former officers

(1) Subject to paragraphs (2) and (3), any provision, whether contained in the articles of, or in a contract with, a company or otherwise, whereby the company or any of its subsidiaries or any other person, for some benefit conferred or detriment suffered directly or indirectly by the company, agrees to exempt any person from, or indemnify any person against, any liability which by law would otherwise attach to the person by reason of the fact that the person is or was an officer of the company shall be void.

(2) Paragraph (1) does not apply to a provision for exempting a person from or indemnifying the person against –

(a) any liabilities incurred in defending any proceedings (whether civil or criminal) –

(i) in which judgment is given in the person's favour or the person is acquitted,

(ii) which are discontinued otherwise than for some benefit conferred by the person or on the person's behalf or some detriment suffered by the person, or

(iii) which are settled on terms which include such benefit or detriment and, in the opinion of a majority of the directors of the company (excluding any director who conferred such benefit or on whose behalf such benefit was conferred or who suffered such detriment), the person was substantially successful on the merits in the person's resistance to the proceedings;

(b) any liability incurred otherwise than to the company if the person acted in good faith with a view to the best interests of the company;

(c) any liability incurred in connection with an application made under Article 212 in which relief is granted to the person by the court; or

(d) any liability against which the company normally maintains insurance for persons other than directors.

(3) Nothing in this Article shall deprive a person of any exemption or indemnity to which the person was lawfully entitled in respect of anything done or omitted by the person before the coming into force of this Article.

(4) This Article does not prevent a company from purchasing and maintaining for any such officer insurance against any such liability.

78 Disqualification orders[226]

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

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

(b) be a member of the council of a foundation incorporated under the Foundations (Jersey) Law 2009[227] or in any other way directly or

indirectly be concerned or take part in the management of such a foundation; or

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

the Minister, the Commission, or the Attorney General may apply to the court for an order to that effect against the person.

(2) The court may, on such an application, make the order applied for if it is satisfied that the person's conduct in relation to a body corporate makes the person unfit to be concerned in the management of a body corporate.

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

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

79 Personal responsibility for liabilities where person acts while disqualified[228]

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

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

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

80 Validity of acts of director

The acts of a director are valid notwithstanding any defect that may afterwards be found in the director's appointment or qualification.

81 Secretary

(1) Every company shall have a secretary.

(2) A sole director shall not also be a secretary.

(3) Anything required or authorized to be done by or to the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to an assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by or to an officer of the company authorized generally or specially in that behalf by the directors.

(4) No company shall have as secretary to the company a body corporate the sole director of which is a sole director of the company.

82 Qualifications of secretary

(1) It is the duty of the directors of a public company to take all reasonable steps to secure that the secretary (or each joint secretary) of the company is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company and who –

(a) on the coming into force of this Article was the secretary or assistant or deputy secretary of the company;

(b) is a member of any of the professional bodies specified in paragraph (2);

(c) is an advocate or solicitor of the Royal Court; or

(d) is a person who, by virtue of holding or having held any other position or being a member of any other body, appears to the directors to be capable of discharging those functions.

(2) The professional bodies referred to in paragraph (1)(b) are –

(a) the Institute of Chartered Accountants in England and Wales;

(b) the Institute of Chartered Accountants of Scotland;

(c) the Association of Chartered Certified Accountants;

(d) the Institute of Chartered Accountants in Ireland;

(e) the Institute of Chartered Secretaries and Administrators;

(f) the Chartered Institute of Management Accountants; and

(g) the Chartered Institute of Public Finance and Accountancy.[229]

(3) The Minister may by Order amend paragraph (2) by adding, deleting or substituting any body.[230]

83 Register of directors and secretaries

(1) Every company shall keep at its registered office a register of its directors and secretary; and the register shall with respect to the particulars to be contained in it comply with Articles 84 and 85.

(2) The register shall during business hours (subject to such reasonable restrictions as the company may by its articles or in general meeting impose, but so that not less than 2 hours in each business day be allowed for inspection) be open to the inspection of the registrar and of a member or director of the company without charge and, in the case of a public company or a company which is a subsidiary of a public company, of any other person on payment of such sum (if any), not exceeding the published maximum, as the company may require.[231]

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

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

(b) for the purpose of enabling any provision of this Law or any obligation owed to the company by an officer or secretary of the company to be enforced.[232]

(4) If an inspection required under this Article is refused, or if there is a failure to comply with paragraph (1), the company and every officer of it who is in default is guilty of an offence.

(5) In the case of a refusal of inspection of the register, the court may by order compel an immediate inspection of it.

84 Particulars of directors

Subject to the provisions of this Article, the register kept by a company under Article 83 shall contain the following particulars with respect to each director –

(a) the director's present forenames and surname;

(b) any former forenames or surname;

(c) the director's business or usual residential address;

(d) the director's nationality;

(e) the director's business occupation (if any);

(f) the director's date of birth; and

(g) the date on which the person became a director and, where appropriate, the date on which the person ceased to be a director.

85 Particulars of secretaries

The register to be kept by a company under Article 83 shall contain the following particulars with regard to the secretary, or, where there are joint secretaries, with respect to each of them –

(a) in the case of an individual, the person's present forenames and surname, any former forenames or surname and the person's usual residential address;

(b) in the case of a body corporate or a Scottish firm, its corporate or firm name, the place where it is incorporated and its registered or principal office; and

(c) in either case, the date on which the person or it became the secretary and, where appropriate, the date on which the person or it ceased to be the secretary.

85A Power of States to amend Part 14[233]

The States may amend this Part by Regulations.

PART 15

MEETINGS

86 Participation in meetings

(1) Subject to the articles of a company, if a member is by any means in communication with one or more other members so that each member participating in the communication can hear what is said by any other of them, each member so participating in the communication is deemed to be present at a meeting with the other members so participating.

(2) Paragraph (1) applies to the participation in such communication by directors or by members of a committee of directors as it applies to the participation of members of a company.

87 Annual general meeting

(1) Paragraphs (2) and (3) shall have effect subject to paragraphs (4) to (7).

(2) Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notice calling it; but so long as a company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

(3) In the case of a public company, not more than 18 months, and in the case of a private company, not more than 22 months shall elapse between the date of one annual general meeting and the date of the next.

(4) If all members of a company agree in writing that an annual general meeting shall be dispensed with, then so long as the agreement has effect, it shall not be necessary for that company to hold an annual general meeting.[234]

(5) In any year in which an annual general meeting would be required to be held but for such an agreement and in which no such meeting has been held, any member of the company may by written notice to the company given not later than 3 months before the end of the year require the holding of an annual general meeting in that year.

(6) Notwithstanding anything contained in any such agreement, it shall cease to have effect –

(a) if any person who becomes a member of the company while the agreement is in force does not within 2 months of becoming a member accede to the agreement; or

(b) if any member of the company gives written notice to the company determining the agreement.[235]

(7) If such an agreement ceases later than 18 months after the incorporation of the company to have effect, whether pursuant to paragraph (6) or otherwise, and an annual general meeting has not previously been held in the year in which the cessation takes place, the directors shall forthwith

call an annual general meeting to be held within 3 months after the agreement ceases to have effect.[236]

(8) If a public company fails to comply with paragraph (2) or (3), it and every director of it in default is guilty of an offence.

88 Commission's power to call meeting in default

(1) If default is made in holding a meeting in accordance with Article 87, the Commission may, on the application of any officer, secretary or member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the Commission thinks expedient, including directions modifying or supplementing, in relation to the calling, holding and conduct of the meeting, the operation of the company's articles.[237]

(2) The directions that may be given under paragraph (1) include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(3) If default is made in complying with directions given under paragraph (1), the company and any officer or secretary of it who is in default is guilty of an offence.

(4) A general meeting held under this Article shall, subject to any directions of the Commission, be deemed to be an annual general meeting of the company; but, where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held, unless at that meeting the company resolves that it shall be so treated.[238]

(5) Where a company so resolves, a copy of the resolution shall, within 21 days after it is passed, be forwarded to the registrar and recorded by the registrar; and if default is made in complying with this paragraph, the company is guilty of an offence.

89 Requisition of meetings

(1) The directors of a company shall, notwithstanding anything in the company's articles, on a members' requisition forthwith proceed to call a general meeting or, as the case may be, a meeting of any class of members to be held as soon as practicable but in any case not later than 2 months after the date of the deposit of the requisition.[239]

(2) A members' requisition is a requisition of members of the company holding at the date of the deposit of the requisition not less than one-tenth of the total voting rights of the members of the company who have the right to vote at the meeting requisitioned.[240]

(3) The requisition shall state the objects of the meeting, and shall be signed by or on behalf of the requisitionists and deposited at the registered office of the company, and may consist of several documents in similar form each signed by or on behalf of one or more requisitionists.

(4) If the directors do not within 21 days from the date of the deposit of the requisition proceed duly to call a meeting to be held within 2 months of that date, the requisitionists, or any of them representing more than one half of the total voting rights of all of them, may themselves call a meeting, but a meeting so called shall not be held after 3 months from that date.

(5) A meeting called under this Article by requisitionists shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by directors.

(6) Reasonable expenses incurred by the requisitionists by reason of the failure of the directors to call a meeting shall be repaid to the requisitionists by the company, and sums so repaid shall be retained by the company out of sums due or to become due from the company by way of fees or other remunerations in respect of their services to the directors who were in default.

(7) In the case of a meeting at which a resolution is to be proposed as a special resolution the directors are deemed not to have duly called the meeting if they do not give the notice required for special resolutions by Article 90.

90 Definition of special resolution

(1) A resolution is a special resolution when it has been passed by the majority specified in paragraph (1A) of the members who (being entitled to do so) vote in person, or by proxy, at a general meeting of the company or at a separate meeting of a class of members of the company of which in either case not less than 14 days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given.[241]

(1A) The majority to which paragraph (1) refers is –

(a) two-thirds, if the articles of the company do not specify a greater majority; or

(b) if the articles do specify a greater majority than two-thirds, that greater majority.[242]

(2) If it is so agreed by a majority in number of the members having the right to attend and vote at such a meeting upon the resolution, being a majority together holding not less than 95% of the total voting rights of the members who have that right, a resolution may be proposed and passed as a special resolution at a meeting of which less than 14 days' notice has been given.[243]

(3) At a meeting at which a special resolution is proposed, a declaration by the chairman that the resolution is carried is, unless a poll is demanded, conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(4) In computing the majority on a poll demanded on the question that a special resolution be passed, reference is to be had to the number of votes cast for and against the resolution.

(5) For the purposes of this Article, notice of a meeting shall be deemed to be duly given and the meeting duly held, when the notice is given and the meeting held in the manner provided by this Law or the company's articles.

(6) References in this Law to a special resolution are, unless otherwise expressly provided, references to a special resolution passed at a general meeting of the company.

91 Notice of meetings

(1) A provision of a company's articles is void insofar as it provides for the calling of a meeting of the company or of any class of members of the company (other than an adjourned meeting) by a shorter notice than 14 days' notice in writing.[244]

(2) Save insofar as the articles of a company make other provision in that behalf (not being a provision avoided by paragraph (1)), any such meeting of the company (other than an adjourned meeting) may be called by 14 days' notice in writing.[245]

(3) Notwithstanding that a meeting is called by shorter notice than that specified in paragraph (2) or in the company's articles (as the case may be), it is deemed to have been duly called if it so agreed –

(a) in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and

(b) otherwise, by a majority in number of the persons who have the right to attend and vote at the meeting, being a majority together holding not less than 95 per cent of the total voting rights of the members who have that right.[246]

92 General provisions as to meetings and votes[247]

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

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

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

(b) at a meeting of the company, 2 members present personally shall be a quorum;

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

(i) in the case of a class of par value shares, the quorum shall be persons holding or representing by proxy not less than 1/3rd in nominal value of the issued shares of that class,

(ii) in the case of a class of no par value shares, the quorum shall be persons holding or representing by proxy not less than 1/3rd in number of the issued shares of that class, and

(iii) in the case of a class of guarantor members, the quorum shall be persons whose liability as such members, or representing by proxy persons whose liability as such members, is in the aggregate not less than 1/3rd of the total liability of all members of that class,

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

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

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

(f) on a poll –

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

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

93 Representation of body corporate at meetings

(1) A body corporate, whether or not a company within the meaning of this Law, may by resolution of its directors or other governing body authorize such person as it thinks fit to act as its representative at any meeting of a company, or of any class of members of a company, or of creditors of a company which it is entitled to attend.[248]

(2) A person so authorized is entitled to exercise the same powers on behalf of the body corporate which the person represents as that body corporate could exercise if it were an individual member or creditor of the company.

94 Power of court to order meetings

(1) If for any reason it is impracticable to call a meeting of a company, or of any class of members of a company, in a manner in which those meetings may be called, or to conduct the meeting in the manner specified in the articles or this Law, the court may, either of its own motion or on the application –

(a) of a director of the company; or

(b) of a member of the company who would be entitled to vote at the meeting,

order a meeting to be called, held and conducted in any manner the court thinks fit.[249]

(2) Where such an order is made, the court may give such ancillary or consequential directions as it thinks expedient; and these may include a direction that one member of the company present in person or by proxy be deemed to constitute a meeting.

95 Resolutions in writing

(1) This Article does not apply to a resolution removing an auditor but otherwise applies to any resolution, including a special resolution.[250]

(1A) This Article does not apply to a resolution if the memorandum or articles of the company concerned prohibit the passing of a resolution in writing in the manner permitted by this Article.[251]

(1B) Subject to paragraphs (1) and (1A) and in so far as the memorandum or articles of a company do not make other provision in that behalf, anything 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 signed by or on behalf of each member who, at the date when the resolution is deemed to be passed, would be entitled to vote on the resolution if it were proposed at a meeting. [252]

(2) A resolution in writing may consist of several instruments in the same form each signed by or on behalf of one or more members.

(3) A resolution under this Article shall be deemed to be passed when the instrument, or the last of several instruments, is last signed or on such later date as is specified in the resolution.

(4) Any document attached to a resolution in writing under this Article shall be deemed to have been laid before a meeting of the members signing the resolution.

(5) Articles 98 and 100 apply to a resolution in writing under this Article as if it had been passed at a meeting.

(6) Nothing in this Article affects or limits any provision in the memorandum or articles of a company or any rule of law relating to the effectiveness of the assent of members, or any class of members, of a company given to any document, act or matter otherwise than at a meeting of them.[253]

95A Recording of decisions by sole member[254]

(1) If –

(a) a private company has only one member;

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

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

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

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

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

96 Proxies

(1) A member of a company entitled to attend and vote at a meeting of it is entitled to appoint another person (whether a member or not) as the member's proxy to attend and vote instead of the member; and in the case of a private company a proxy appointed to attend and vote instead of a member has also the same right as the member to speak at the meeting; but, unless the articles otherwise provide, a proxy is not entitled to vote except on a poll.

(2) In every notice calling a meeting of the company there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, one or more proxies to attend and vote instead of the member, and that a proxy need not also be a member.

(3) In the event of failure to comply with paragraph (2) as respects any meeting, every officer of the company who is in default is guilty of an offence.

(4) A provision contained in a company's articles is void in so far as it would have the effect of requiring the instrument appointing a proxy, or any other document necessary to show the validity of, or otherwise relating to, the appointment of a proxy, to be received by the company or any other person more than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective.

(5) If for the purpose of a meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to some only of the members entitled to be given notice of the meeting and to vote at it by proxy, then every officer of the company who knowingly and wilfully authorizes or permits their issue in that manner is guilty of an offence; but an officer is not so liable by reason only of the issue to a member at the member's request in writing of a form of appointment naming the proxy, or a list of persons willing to act as proxy, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

(6) This Article applies to meetings of any class of members as it applies to general meetings.[255]

97 Demand for poll

(1) A provision contained in a company's articles is void in so far as it would have the effect either –

(a) of excluding the right to demand a poll at a general meeting, or at a meeting of any class of members, on a question other than the

election of the chairman of the meeting or the adjournment of the meeting; or

(b) of making ineffective a demand for a poll on any such question which is made either –

(i) by not less than 5 members having the right to vote on the question, or

(ii) by a member or members representing not less than 1/10th of the total voting rights of all the members having the right to vote on the question.[256]

(2) The instrument appointing a proxy to vote at such a meeting is deemed also to confer authority to demand or join in demanding a poll; and for the purposes of paragraph (1) a demand by a person as proxy for a member is the same as a demand by the member.

(3) On a poll taken at such a meeting, a member entitled to more than one vote need not, if the member votes, (in person or by proxy) use all the member's votes or cast all the votes the member uses in the same way.

98 Minutes

(1) Every company shall cause minutes of all proceedings at general meetings, meetings of any class of its members, meetings of its directors and of committees of directors to be entered in books kept for that purpose, and the names of the directors present at each such meeting shall be recorded in the minutes.[257]

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings took place, or by the chairman of the next succeeding meeting, is evidence of the proceedings.

(3) Where minutes have been made in accordance with this Article then, until the contrary is proved, the meeting is deemed duly held and convened, and all proceedings which took place at the meeting to have duly taken place.

(4) If a company fails to comply with paragraph (1), the company and every officer of it who is in default is guilty of an offence.

99 Inspection of minute books

(1) The books containing the minutes of a general meeting or of a meeting of any class of members held after this Article comes into force shall be kept at the company's registered office, and shall during business hours be open to the inspection of a member without charge.[258]

(2) A member may require, on submission to the company of a written request and on payment of such sum (if any), not exceeding the published maximum, as the company may require, a copy of any such minutes and the company shall, within 7 days after the receipt of the request and the payment, cause the copy so required to be made available at the registered office of the company for collection during business hours.[259]

(3) If an inspection required under this Article is refused or if a copy required under this Article is not sent within the proper time, the company is guilty of an offence.

(4) In the case of a refusal or default, the court may make an order compelling an immediate inspection of the books in respect of all proceedings of general meetings, or meetings of any class of members or directing that the copies required be furnished to the persons requiring them.[260]

100 Filing of resolutions

(1) A printed copy of every resolution or agreement to which this Article applies shall, within 21 days after it is passed or made, be forwarded to the registrar and recorded by the registrar.

(2) A printed copy of every such resolution or agreement for the time being in force shall be embodied in or annexed to every copy of the memorandum or articles issued after the passing of the resolution or the making of the agreement; and a printed copy of every such resolution or agreement shall be forwarded to a member at the member's request on payment of such sum (if any), not exceeding the published maximum, as the company may require.[261]

(3) This Article applies to –

(a) special resolutions; and

(b) resolutions or agreements which have been agreed to by all the members of a company but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions and;

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

which are passed, agreed to or entered into after this Article comes into force.[262]

(4) If a copy of a resolution or agreement is not delivered to the registrar as required by paragraph (1) there shall be payable by the company when the copy is delivered any late filing fee.[263]

(5) If a company fails to comply with paragraph (2), it is guilty of an offence.

(6) Save as otherwise provided by this Law, a resolution or agreement to which this Article applies has effect notwithstanding that a copy is not delivered to the registrar as required by paragraph (1).

101 Resolution passed at adjourned meeting

Where a resolution is passed at an adjourned meeting of –

(a) a company;

(b) any class of members of a company; or

(c) the directors or a committee of directors of a company,

the resolution is for all purposes to be treated as having been passed on the date on which it was in fact passed, and is not to be deemed passed on any earlier date.[264]

PART 16[265]

ACCOUNTS AND AUDITS

Interpretation – Part 16

102 Interpretation – Part 16[266]

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

"accounts" means accounts prepared in accordance with Article 105;

"auditor" means –

(a) in the case of an individual, an individual who is a member of a recognized professional body and is permitted by that body to engage in public practice;

(b) in the case of a partnership, a partnership that is a qualified partnership and where each of the persons who is responsible to it for examining or reporting on the accounts of a company pursuant to Article 113, is an individual who is a member of a recognized professional body and is permitted by that body to engage in public practice;

(c) in the case of a body corporate, a body corporate that is controlled by auditors and where each of the persons who is responsible to it for examining or reporting on the accounts of a company pursuant to Article 113, is an individual who is a member of a recognized professional body and is permitted by that body to engage in public practice;

(d) in respect of a company that is not a market traded company, an individual or firm authorized by the Commission under Article 113D(6) to carry out an audit of the company;

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

(a) individuals who are members of a recognized professional body or auditors that fall within paragraph (b) or (c) of the definition "auditor";

(b) partnerships accepted by a recognized professional body as being qualified for appointment as auditors of companies incorporated in the United Kingdom;

(c) bodies corporate accepted by a recognized professional body as being qualified for appointment as auditors of companies incorporated in the United Kingdom;

(d) individuals who hold a qualification to audit accounts under the law of a European Economic Area member state other than the United Kingdom or the Republic of Ireland,

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

(e) constitute more than half the number of members of the body corporate;

(f) hold more than half the voting rights of each class of members of the body corporate;

(g) who are individuals, make up more than half the number of directors of the body corporate; or

(h) hold more than half of the voting rights in the board of directors, committee or other management body of the body corporate;

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

"exempt company" means –

(a) a company that is an issuer exclusively of debt securities admitted to trading on a regulated market, the denomination per unit of which is at least €50,000 or, in the case of debt securities denominated in another currency, equivalent, at the date of issue, to at least €50,000; or

(b) an open-ended investment company –

(i) that holds a permit as a functionary specified in Group 1 of Part 2 of the Schedule to the Collective Investment Funds (Jersey) Law 1988[267],

(ii) in relation to which a certificate granted under Article 8B of the Collective Investment Funds (Jersey) Law 1988 is in force, or

(iii) that is an unregulated fund within the meaning of the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008[268];

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

"market traded company" means –

(a) a company whose transferable securities have been admitted to trading on a regulated market; or

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

but does not include an exempt company;

"partnership" includes –

(a) a firm of a similar character to a partnership formed under the law of a country or territory outside Jersey; and

(b) a limited liability partnership that is registered under the Limited Liability Partnerships (Jersey) Law 1997[269] or a firm of a similar character to a limited liability partnership formed under the law of a jurisdiction outside Jersey,

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

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

"qualified partnership" means a partnership –

(a) in which more than half of its partners are any of, or any combination of, the following –

(i) individuals who are members of recognized professional bodies,

(ii) partnerships that are themselves auditors as defined in paragraph (b) of the definition "auditor",

(iii) bodies corporate that are themselves auditors as defined in paragraph (c) of the definition "auditor",

(iv) individuals who hold a qualification to audit accounts under the law of a European Economic Area member state other than the United Kingdom or the Republic of Ireland; and

(b) in which more than half of the voting rights in the partnership and, if it has a management body, in that body are held by persons specified in sub-paragraph (a);

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

"recognized professional body" means any of the following bodies –

(a) the Institute of Chartered Accountants in England and Wales;

(b) the Institute of Chartered Accountants of Scotland;

(c) the Association of Chartered Certified Accountants;

(d) the Institute of Chartered Accountants in Ireland;

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

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

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

(a) the eligibility of persons for appointment as auditors; and

(b) the conduct of audit work,

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

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

(1A) In this Part, unless the context otherwise requires, 'partnership' does not include an incorporated limited partnership or a separate limited partnership.[270]

(2) For the purposes of any Article of this Part where under or pursuant to this Part an officer of an auditor or of a recognized auditor who is in default is guilty of an offence, the expression "officer of the auditor in default" means any officer, director, partner or member of the auditor or of the recognized auditor who knowingly and wilfully authorizes or permits the default, refusal or contravention mentioned in the Article.

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

Accounts

103 Accounting records[271]

(1) A company must keep accounting records that are sufficient to show and explain its transactions.

(2) The records must be such as to –

(a) disclose with reasonable accuracy, at any time, the financial position of the company at that time; and

(b) enable the directors to ensure that any accounts prepared by the company under this Part comply with the requirements of this Law.

104 Retention of records[272]

(1) A company's accounting records must –

(a) be kept at such place as the directors think fit; and

(b) be open at all times to inspection by the company's officers and its secretary.

(2) If accounting records of a public company are kept at a place outside Jersey, returns with respect to the business dealt with in the accounting records so kept must –

(a) be sent to, and kept in, Jersey; and

(b) be open at all times to inspection by the company's officers and its secretary.

(3) The returns must be such as to –

(a) disclose with reasonable accuracy the financial position of the business in question at intervals of not more than 6 months; and

(b) enable the directors to ensure that any accounts prepared by the company under this Part comply with the requirements of this Law.

(4) Except as provided by Article 194 (winding up of company), the accounting records that a company is required by Article 103 to keep

must be preserved by it for at least 10 years from the date on which they are made.

105 Accounts[273]

(1) Except as provided by paragraph (11), the directors of a company must prepare accounts for a period of not more than 18 months –

(a) beginning on the date the company was incorporated; or

(b) if the company has previously prepared a profit and loss account, beginning at the end of the period covered by the most recent accounts.

(2) The accounts must be prepared –

(a) in the case of a market traded company, in accordance with generally accepted accounting principles prescribed for the purposes of this provision; or

(b) in any other case, in accordance with any generally accepted accounting principles.

(3) The accounts of a company must specify the generally accepted accounting principles that have been adopted in their preparation.

(4) The accounts of a company that is required by Article 113(1) to appoint an auditor must give a true and fair view of, or be presented fairly in all material respects so as to show –

(a) the company's profit or loss for the period covered by the accounts; and

(b) the state of its affairs at the end of the period,

and must otherwise comply with any other requirements of this Law.

(5) A company's accounts must be –

(a) approved by the directors; and

(b) signed on their behalf by one of them.

(6) The accounts for a financial period of a company must –

(a) be prepared, and, if required under this Part, be examined and reported upon by an auditor; and

(b) subject to paragraph (8), be laid before a general meeting of the company together with a copy of any auditor's report on them.

(7) The actions mentioned in paragraph (6) must be taken –

(a) in the case of a public company, within 7 months; or

(b) in the case of a private company, within 10 months,

after the end of the financial period of the company covered by the accounts.

(8) Paragraph (9) applies if at the end of a financial period of a company, an agreement under Article 87(4) dispensing with the holding of an annual general meeting has effect.

(9) The company is not obliged to lay the accounts for the financial period or a copy of any auditor's report on them before a general meeting of the company unless a member of the company, not later than 11 months after the end of the financial period covered by the accounts, by written notice given to the company, requires the company to do so.

(10) In such a case the general meeting of the company must be held within 28 days after –

(a) the receipt of the notice by the company; or

(b) the approval of the accounts by the directors,

whichever last occurs.

(11) For the purposes of this Article, the directors of a holding company need not prepare separate accounts under paragraph (1) if consolidated accounts for the company are prepared, unless required to do so by the members of the company by ordinary resolution.

106 Publication of interim accounts[274]

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

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

(b) in any other case, in accordance with any generally accepted accounting principles.

107 Copies of accounts[275]

(1) This Article applies where a member of a company who has not previously been furnished with a copy of its latest accounts makes a written request to the company to be furnished with a copy of those accounts together with a copy of any auditor's report on them.

(2) The company must, without charge and within 7 days of the request being made to it, furnish to the person the accounts requested together with any auditor's report on them.

108 Delivery of accounts to registrar[276]

(1) Where the directors of a public company are required to produce accounts for the company under Article 105(1), the directors must, for each financial period of the company, deliver to the registrar –

(a) a copy of the company's accounts for the period signed on behalf of the directors by one of them;

(b) a copy of the auditor's report on the accounts; and

(c) if any of the documents is not in English, a copy of it in English, certified to be a correct translation.

(2) The documents must be delivered to the registrar within 7 months after the end of the financial period to which they relate.

(3) If a public company becomes a private company during a financial period –

(a) paragraph (1) applies in relation to the company in respect of that period; but

(b) the requirement in the paragraph to deliver accounts is to be taken to have been satisfied if the accounts relate to either all of the financial period (including a period when the company was no longer a public company) or to only the part of the financial period during which the company was a public company.

(4) Paragraph (5) applies if, not later than one month before the end of the period mentioned in –

(a) Article 105(1), 105(7) or 105(9); or

(b) paragraph (2) of this Article,

a written application is made to the Commission for an extension of the period.

(5) The Commission may, by written notice to the company, extend the period if it is satisfied that a special reason for doing so exists.

(6) If the Commission does so, it must send a copy of the notice to the registrar.

(7) A company must pay the published fee and any late filing fee on filing documents under this Article.

109 Failure to comply with Article 103, 104, 105, 106, 107 or 108[277]

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

(a) the company; and

(b) in the case of a public company, each officer of the company in default,

is guilty of an offence.

Recognized Auditors

110 Commission to maintain Register of Recognized Auditors[278]

(1) The Minister must make an Order requiring the Commission to keep a register, to be known as the Register of Recognized Auditors, of persons –

(a) who under Article 112 are auditors qualified to be recognized auditors; and

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

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

(a) the name and address of the recognized auditor;

(b) in the case of an individual, the name of the recognized professional body the recognized auditor is a member of; and

(c) in the case of a firm, the specified information relating to each of the persons who is responsible to the firm for examining or reporting on the accounts of a market traded company pursuant to Article 113A,

and may require each entry to contain other specified information.

(3) The Order may impose such obligations on –

(a) recognized professional bodies;

(b) any professional oversight body;

(c) persons qualified or approved to be recognized auditors,

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

(4) The Order may also include –

(a) provisions requiring that specified entries on the Register of Recognized Auditors be open to inspection at times and places specified or determined in accordance with the Order;

(b) provisions enabling a person to require a certified copy of specified entries on the Register of Recognized Auditors;

(c) provisions authorizing the charging of published fees for inspecting the Register of Recognized Auditors and for the provision of certified copies of entries in it,

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

(5) A person qualified or approved to be a recognized auditor –

(a) who fails to comply with an obligation imposed under paragraph (3)(c); or

(b) if the obligation is to provide information, who knowingly or recklessly provides information that is false or misleading in a material particular,

is guilty of an offence.[279]

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

111 Registration as a recognized auditor[280]

(1) Persons who under Article 112 are auditors qualified to be recognized auditors may apply to have their name entered on the Register of Recognized Auditors –

(a) by applying to the Commission in the manner published by the Commission; and

(b) by paying the published fee.

(2) The Commission may refuse to enter the name of a person on the Register of Recognized Auditors if the Commission is satisfied that the person is not competent to act as a recognized auditor.

(3) The Commission may –

(a) when entering the name of a person on the Register of Recognized Auditors; or

(b) at any subsequent time,

make the registration of the person subject to the person complying with such conditions and limitations as the Commission considers appropriate, details of which the Commission must enter on the Register.

(4) The Commission may amend the conditions and limitations –

(a) at any time on the Commission's own volition; or

(b) on the application of the recognized auditor.

(5) The Commission may suspend or revoke the registration of a person as a recognized auditor if –

(a) in the opinion of the Commission, the recognized auditor is no longer competent or is not a fit and proper person to act as a recognized auditor;

(b) the recognized auditor has breached any condition or limitation imposed under paragraph (3);

(c) the recognized auditor is found guilty of an offence under paragraph (16) or (17);

(d) the recognized auditor has failed to pay a fee mentioned in paragraph (18) or Article 113M(4);

(e) the recognized auditor has breached any of the rules mentioned in Article 112(1) that apply to the auditor;

(f) the recognized auditor fails, within a reasonable time, to provide information required by the Commission pursuant to Article 113L or is found guilty of an offence under Article 113L(4); or

(g) in the opinion of the Commission, the continued registration of the recognized auditor may adversely affect a company of which the recognized auditor is auditor or any other person.

(6) The Commission may, under paragraph (5), suspend the registration of a person as a recognized auditor –

(a) for a specified period; or

(b) until, on the application of the recognized auditor, the auditor satisfies the Commission that the suspension may be revoked.

(7) If a person who is a recognized auditor requests the Commission to suspend or revoke the person's registration as a recognized auditor, the Commission must comply with the request and may publish –

(a) the name of the person;

(b) details of the action it took in respect of the person; and

(c) the reason why it took that action.

(8) The suspension of the registration of a person under paragraph (7) shall be –

(a) for a specified period; or

(b) if no period is specified, until the recognized auditor applies to the Commission for the registration to be restored.

(9) The Commission must remove the name of a recognized auditor from the Register of Recognized Auditors if the Commission is satisfied that the recognized auditor is no longer an auditor who under Article 112 is an auditor qualified to be a recognized auditor.

(10) If the Commission –

(a) refuses to enter the name of a person on the Register of Recognized Auditors on an application made under paragraph (1);

(b) makes the registration of a person subject to conditions and limitations under paragraph (3);

(c) amends conditions and limitations under paragraph (4)(a);

(d) refuses to amend any condition or limitation on an application made under paragraph (4)(b);

(e) suspends or revokes the registration of a person as a recognized auditor under paragraph (5);

(f) refuses to revoke the suspension of the registration of a person as a recognized auditor on an application under paragraph (6)(b); or

(g) removes the name of a recognized auditor from the Register under paragraph (9),

the Commission must, within 7 days of doing so, serve a notice on the applicant or recognized auditor, as the case may be.

(11) The notice must –

(a) specify the action taken by the Commission;

(b) set out the reasons why the Commission took the action; and

(c) advise the applicant or recognized auditor of the applicant's or auditor's right, under paragraph (12), to appeal to the court against the action taken by the Commission.

(12) Where the Commission has served a notice on a person under paragraph (10) –

(a) the person upon whom the notice was served may, within 28 days of the service of the notice or within such longer period as the court may approve, appeal to the court against the action taken by the Commission, as specified in the notice, on the ground that it was unreasonable for the Commission to take the action in all the circumstances of the case; but

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

(13) The court may, on an appeal under paragraph (12), make such order as it considers appropriate.

(14) Paragraph (15) applies if the Commission –

(a) makes the registration of a person subject to conditions and limitations under paragraph (3);

(b) amends conditions and limitations under paragraph (4);

(c) suspends or revokes the registration of a person as a recognized auditor under paragraph (5); or

(d) removes the name of a recognized auditor from the Register of Recognized Auditors under paragraph (9),

and the period for making an appeal under paragraph (12) has expired and no appeal was made or, if made, was unsuccessful or withdrawn.

(15) The Commission may publish –

(a) the name of the person or recognized auditor;

(b) details of the action it took in respect of the person or recognized auditor; and

(c) the reason why it took that action.

(16) An auditor must inform the Commission of any material change in any information that was supplied by the auditor to the Commission –

(a) at the time the auditor applied to become a recognized auditor; or

(b) at any subsequent time in compliance with this paragraph,

and, if the auditor fails to do so as soon as practicable but in any event within 1 month of the change, the auditor and each officer of the auditor in default is guilty of an offence.

(17) A person is guilty of an offence if the person knowingly or recklessly provides information for the purpose of paragraph (1)(a), (4)(b) or (6)(b) that is false or misleading in a material particular.

(18) A recognized auditor must pay any published fee imposed on recognized auditors.

112 Qualification under rules of recognized professional bodies[281]

(1) An auditor is qualified to be a recognized auditor if the auditor is bound by –

(a) rules governing the conduct of the audit of market traded companies issued by a recognized professional body and approved by the Commission; or

(b) if no such rules have been issued by a recognized professional body, or, if issued, have not been approved by the Commission,

rules governing the conduct of the audit of market traded companies published by the Commission.

(2) The Minister must make an Order prescribing what any rules approved or published by the Commission under paragraph (1) must provide for before the Commission may approve or publish them.

(3) The Order may, in particular, require that the rules –

(a) are adequate to ensure that an auditor is a fit and proper person;

(b) are adequate to prevent a person –

(i) who is not an auditor, or

(ii) where an auditor is a firm – who is not an officer, director, partner, member or employee of the firm,

from being able to exert influence over the way in which an audit of a market traded company is conducted in circumstances in which that influence would be likely to affect the independence or integrity of the audit;

(c) are adequate to ensure that –

(i) audit work carried out under this Part is carried out properly and with integrity, and

(ii) an auditor is not appointed in circumstances in which the auditor has an interest that is likely to conflict with the proper conduct of the audit;

(d) cover –

(i) the technical standards to be applied in audit work carried out under this Part, and

(ii) the manner in which those standards are to be applied in practice;

(e) are designed to ensure that an auditor maintains an appropriate level of competence;

(f) contain provisions to ensure that an auditor who carries out audit work takes any steps required to enable the performance of the work to be monitored;

(g) where they relate to –

(i) the grant and withdrawal of eligibility for appointment as auditor, and

(ii) the discipline the body exercises,

are fair and reasonable and include adequate provision for appeals;

(h) contain provisions designed to ensure an auditor must take reasonable steps to be able to meet claims arising out of audit work carried out under this Part;

(i) contain provisions designed to ensure that the Commission or a professional oversight body can conduct investigations in relation to an auditor and has the right to take appropriate action.

(4) The Commission must not approve the rules of a recognized professional body unless it has satisfied itself that the body –

(a) has adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules;

(b) has effective arrangements for the investigation of complaints against auditors, and against itself in respect of matters arising out of its functions under the rules;

(c) promotes and maintain high standards of integrity in the conduct of audit work;

(d) will cooperate, by the sharing of information or otherwise, with the Minister, the Commission and any other authority, body or person having responsibility for the qualification, supervision or regulation of auditors, whether in Jersey or elsewhere; and

(e) will carry out a quality assurance review of each recognized auditor at least once in any period of 3 years.

(5) An Order made under paragraph (2) may, in particular, provide for the Commission to withdraw its approval of the rules of a recognized professional body if at any time it is satisfied that the body –

(a) has failed to comply with any obligation placed on it by an Order made under Article 110(3);

(b) has ceased to have or is not using any of the arrangements or resources mentioned in paragraph (4)(a);

(c) has ceased to have or is not using any of the arrangements mentioned in paragraph (4)(b);

(d) has not promoted or has not maintained the standards mentioned in paragraph (4)(c);

(e) has failed to cooperate in the manner mentioned in paragraph (4)(d);

(f) has failed to meet the requirements of paragraph (4)(e); or

(g) has failed to give notification or supply information when required to do so under Article 113K.

(6) The rules published by the Commission under paragraph (1)(b) shall be the rules of the recognized professional body that are applicable to the eligibility of a member of the body to be appointed to be a statutory auditor under section 1212(1) of the Companies Act 2006 of the United Kingdom, amended as necessary to make them –

(a) applicable to Jersey and the auditing of the accounts of market traded companies in accordance with this Part; and

(b) comply with any additional relevant requirement of an Order made under paragraph (2).

Appointment of auditors and their functions

113 Appointment and removal of auditors[282]

(1) A company must appoint an auditor to examine and report in accordance with this Law upon its accounts if –

(a) it is a public company;

(b) its articles so require; or

(c) a resolution of the company in general meeting so requires.

(2) If the company is a market traded company –

(a) the auditor appointed under paragraph (1) must be a recognized auditor; and

(b) an audit of the company's accounts by any other person is of no effect for the purposes of this Part.

(3) Except as provided by paragraphs (5) and (6), a company that is required by this Article to appoint an auditor must at each annual general meeting appoint an auditor to hold office from the conclusion of that meeting to the conclusion of the next annual general meeting.

(4) The directors or (failing the directors) the company in general meeting may, at any time before the first annual general meeting, appoint an auditor to hold office to the conclusion of that meeting.

(5) If a company that is required by this Article to appoint an auditor dispenses with the holding of an annual general meeting under Article 87(4) any auditor then in office shall continue to act and be taken to have been re-appointed for each succeeding financial period until –

(a) the conclusion of the next annual general meeting; or

(b) the company in general meeting resolves that the appointment of the auditor be brought to an end.

(6) If –

(a) a company that has dispensed with the holding of an annual general meeting becomes bound to appoint an auditor; and

(b) there is no auditor in office,

the directors must appoint an auditor to continue to act until the conclusion of the next annual general meeting.

(7) The directors or the company in general meeting may fill any casual vacancy in the office of auditor and fix the auditor's remuneration.

(8) A company may by resolution at any time remove an auditor despite anything in any agreement between it and the auditor.

(9) Nothing in this Article is to be taken as depriving a person removed under it of compensation or damages payable to the person in respect of the termination of the person's appointment as auditor.

(10) A company that fails to comply with paragraph (1) and each officer of the company in default is guilty of an offence.

113A Auditor's report[283]

(1) The auditor of a company that is required to appoint an auditor under Article 113 must make a report to the company's members on the accounts of the company examined by the auditor.

(2) The report must state whether, in the opinion of the auditor, the accounts –

(a) have been properly prepared in accordance with this Law; and

(b) give a true and fair view or, alternatively, are presented fairly in all material respects.

(3) The report must –

(a) state the name of the auditor; and

(b) be signed and dated.

(4) If –

(a) the auditor is an individual, the report must be signed by the auditor; or

(b) the auditor is a firm, the report must be signed in his or her name by the individual in the firm who is responsible to it for examining and reporting on the accounts, for and on behalf of the auditor.

(5) The fact that an individual signs an audit report does not make the individual liable to any civil liability to which the individual would not otherwise be liable.

113B Auditor's duties and powers[284]

(1) This Article applies to companies that are required to appoint an auditor under Article 113.

(2) The auditor of a company must, in preparing an audit report, carry out such investigations as will enable the auditor to form an opinion as to –

(a) whether proper accounting records have been kept by the company;

(b) whether proper returns adequate for the audit have been received from branches not visited by the auditor; and

(c) whether the company's accounts are in agreement with its accounting records and returns.

(3) If the auditor is of the opinion –

(a) that proper accounting records have not been kept by the company;

(b) that proper returns adequate for the audit have not been received from branches not visited by the auditor; or

(c) that the company's accounts are not in agreement with its accounting records and returns,

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

(4) The auditor of the company –

(a) has a right of access to the company's records at all times; and

(b) is entitled to require from the company's officers and the secretary such information and explanations as the auditor thinks necessary for the performance of the auditor's duties.

(5) The auditor of a company is entitled –

(a) to receive notice of, and to attend, any meeting of members of the company; and

(b) at any such meeting, to be heard on any part of the business of the meeting that concerns the auditor.

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

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

(a) a written notice of resignation; and

(b) a statement under paragraph (9).

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

(a) on the date on which the notice is deposited; but

(b) if a later date is specified in the notice, on that later date.

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

(a) a statement to the effect that there are no circumstances connected with the auditor's ceasing to hold office that the auditor considers should be brought to the notice of the members or creditors of the company; or

(b) if there are such circumstances, a statement setting out those circumstances.

(10) A company that receives a statement mentioned in paragraph (9)(b) must, within 14 days of receiving the statement, send a copy of it –

(a) to each member of the company; and

(b) to each person entitled to receive notice of a general meeting of the company.

(11) A recognized auditor of a market traded company must –

(a) maintain the working papers relating to the audit of the company in English; and

(b) make those working papers available to the Commission, to a recognized professional body or to a professional oversight body, upon demand.

(12) An auditor who fails to comply with paragraph (9) and each officer of the auditor in default is guilty of an offence.

(13) A company that fails to comply with paragraph (10) and each officer of the company in default is guilty of an offence.

(14) A recognized auditor who fails to comply with paragraph (11) and each officer of the auditor in default is guilty of an offence.

113C False statements to auditors[285]

(1) This Article applies to companies that are required to appoint an auditor under Article 113.

(2) An officer of a company or its secretary is guilty of an offence if –

(a) knowingly or recklessly, the officer or secretary makes to the auditor of the company, either in writing or orally, a statement that conveys or purports to convey any information or explanation that the auditor requires, or is entitled to require, as auditor of the company; and

(b) the statement is false or misleading in a material particular.

113D Ineligibility to act as auditor[286]

(1) A person who is not a recognized auditor must not –

(a) accept an appointment to be, or act as, the auditor of a market traded company for the purpose of this Part; or

(b) attempt to persuade others that the person is a recognized auditor.

(2) A person who is not an auditor must not –

(a) accept an appointment to be or act as the auditor of any other company for the purposes of this Part; or

(b) attempt to persuade others that the person is an auditor.

(3) If, during the term of office of the auditor of a company, the auditor becomes ineligible for appointment as the auditor of the company, the auditor must immediately –

(a) resign from office; and

(b) in accordance with Article 113B(7), (8)(a) and (9), give written notice to the company that the auditor has resigned by reason of becoming ineligible for appointment.

(4) A person is guilty of an offence if the person –

(a) accepts an appointment to be, or acts as, the auditor of a company in contravention of paragraph (1)(a) or paragraph (2)(a);

(b) attempts to persuade others that the person is a recognized auditor or an auditor in contravention of paragraph (1)(b) or paragraph (2)(b); or

(c) fails to give notice mentioned in paragraph (3)(b).

(5) In proceedings against a person for an offence under paragraph (4) it is a defence for the person to show that the person did not know and had no reason to believe that the person was, or had become, ineligible for appointment as the auditor of the company.

(6) The Commission may, in respect of a company that is not a market traded company, on the application of an individual or a firm that is not an auditor, authorize the individual or firm to carry out an audit of the company for the purposes of this Part.

(7) An individual or a firm that knowingly or recklessly provides information in respect of an application under paragraph (6) that is false or misleading in a material particular is guilty of an offence.

(8) The Commission may, when authorizing an individual or a firm under paragraph (6) or at any subsequent time, make the authorization subject to the individual or firm complying with such conditions and limitations as the Commission considers appropriate, including, in particular, in the case of a firm, a condition or limitation that would set out who, in the firm, may be responsible to the firm for examining and reporting on the accounts of a company pursuant to Article 113.

(9) The Commission may amend the conditions and limitations –

(a) at any time on its own volition; or

(b) on the application of the individual or firm authorized by the Commission.

(10) The Commission may suspend or revoke the authorization of an individual or a firm under paragraph (6) if –

(a) in the opinion of the Commission, the individual or firm is not competent or is not a fit and proper individual or firm to carry out an audit of the company for the purposes of this Part; or

(b) the individual or firm has breached any condition or limitation imposed under paragraph (8).

(11) The Commission may, under paragraph (10), suspend the authorization of an individual or a firm –

(a) for a specified period; or

(b) until, on the application of the individual or firm, the individual or firm satisfies the Commission that the suspension may be revoked.

(12) If an individual or a firm who is authorized under paragraph (6) requests the Commission to suspend or revoke the authorization of the individual or firm, the Commission must comply with the request and may publish –

(a) the name of the individual or firm;

(b) details of the action it took in respect of the individual or firm; and

(c) the reason why it took that action.

(13) The suspension of the authorization of an individual or a firm under paragraph (12) shall be –

(a) for a specified period; or

(b) if no period is specified, until the individual or firm applies to the Commission for the authorization to be restored.

(14) If the Commission –

(a) refuses to authorize an individual or a firm under paragraph (6);

(b) makes the authorization of an individual or a firm subject to conditions and limitations under paragraph (8);

(c) amends conditions and limitations of the authorization of an individual or a firm under paragraph (9)(a);

(d) refuses to amend any condition or limitation of the authorization of an individual or a firm on an application made under paragraph (9)(b);

(e) suspends or revokes the authorization of an individual or a firm under Article (10); or

(f) refuses to revoke the suspension of the authorization of an individual or a firm on an application under paragraph (11)(b),

the Commission must, within 7 days of doing so, serve a notice on the individual or firm.

(15) The notice must –

(a) specify the action taken by the Commission;

(b) set out the reasons why the Commission took the action; and

(c) advise the individual or firm of the right the individual or firm has, under paragraph (16), to appeal to the court against the action taken by the Commission.

(16) Where the Commission has served a notice on an individual or a firm under paragraph (15) –

(a) the individual or firm upon whom the notice was served may, within 28 days of the service of the notice or within such longer period as the court may approve, appeal to the court against the action taken by the Commission, as specified in the notice, on the ground that it was unreasonable for the Commission to take the action in all the circumstances of the case; but

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

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

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

(a) makes the authorization of an individual or a firm subject to conditions and limitations under paragraph (8);

(b) amends conditions and limitations of the authorization of an individual or a firm under paragraph (9); or

(c) suspends or revokes the authorization of an individual or a firm under paragraph (10),

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

(19) The Commission may publish –

(a) the name of the individual or firm;

(b) details of the action it took in respect of the individual or firm; and

(c) the reason why it took that action.

113E Independence requirement[287]

(1) The Minister may, by Order, prescribe circumstances where an auditor must not act as the auditor of a company for the purposes of this Part.

(2) The prescribed circumstances must relate to an actual or possible lack of independence on the part of the auditor.

113F Effect of lack of independence[288]

(1) If, during an auditor's term of office as auditor of a company, the auditor becomes prohibited from acting by virtue of an Order made under Article 113E(1), the auditor must immediately –

(a) resign from office; and

(b) in accordance with Article 113B(7), (8)(a) and (9), give written notice to the company that the auditor has resigned by reason of lack of independence.

(2) If an auditor –

(a) fails to resign from office when required to do so under paragraph(1)(a); or

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

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

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

113G Effect of appointment of a partnership[289]

(1) This Article applies where a partnership constituted under the law of Jersey or of a jurisdiction in which a partnership is not a legal person, is by virtue of this Part appointed as the auditor of a company.

(2) Unless a contrary intention appears, the appointment is an appointment of the partnership as such and not of the partners.

(3) If the partnership ceases, the appointment is to be treated as extending to –

(a) any appropriate partnership that succeeds to the practice of the partnership; or

(b) any other appropriate person who succeeds to the practice having previously carried it on in partnership.

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

(a) a partnership is to be regarded as succeeding to the practice of another partnership only if the members of the successor partnership are substantially the same as those of the former partnership; and

(b) a partnership or other person is to be regarded as succeeding to the practice of a partnership only if the partnership or person succeeds to the whole or substantially the whole of the business of the former partnership.

(5) If the partnership ceases and the appointment is not treated under paragraph (3) as extending to any partnership or other person, the appointment may, with the consent of the company in respect of which the partnership is auditor, given at a general meeting of the company, be treated as extending to an appropriate partnership, or other appropriate person, who succeeds to –

(a) the business of the former partnership; or

(b) such part of that business as is agreed by the company in general meeting is to be treated as comprising the appointment.

(6) For the purposes of this Article, a partnership or other person is "appropriate" if the partnership or person –

(a) is an auditor or, as the case may require, a recognized auditor; and

(b) is not prohibited by virtue of an Order made under Article 113E(1) from acting as auditor of the company.

Regulations and exemptions

113H Power to amend Part 16[290]

The States may amend this Part by Regulations.

113I Power to make Regulations in respect of recognized auditors[291]

(1) The States may by Regulations require a recognized auditor to keep and make available to the public specified information, including information regarding –

(a) the auditor's ownership and governance;

(b) the auditor's internal controls with respect to the quality and independence of the auditor's audit work;

(c) the auditor's turnover; and

(d) the companies for whom the auditor has acted as a recognized auditor.

(2) Regulations under this Article may –

(a) impose such obligations as the States thinks fit on recognized auditors;

(b) require the information to be made available to the public in a specified manner.

(3) Such Regulations may further provide for the imposition of fines in respect of offences under the Regulations.

(4) In this Article "specified" means specified by Regulations under this Article.

113J Exemption from liability for damages[292]

(1) A person within paragraph (2) is not liable in damages for anything done or omitted in the discharge or purported discharge of functions to which this paragraph applies.

(2) The persons within this paragraph are –

(a) a recognized professional body;

(b) an officer or employee of a recognized professional body;

(c) a member of the governing body or a member of a committee of a recognized professional body;

(d) a professional oversight body;

(e) an officer or employee of a professional oversight body; and

(f) a member of the governing body or a member of a committee of a professional oversight body.

(3) Paragraph (1) applies to the functions of a recognized professional body so far as relating to, or to matters arising out of, any of the following –

(a) the rules, practices, powers and arrangements of the body;

(b) the obligations to promote and maintain high standards of integrity in the conduct of audit work;

(c) the obligations imposed on the body by or by virtue of this Part.

(4) Paragraph (1) does not apply –

(a) if the act or omission is shown to have been in bad faith; or

(b) so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000[293] (acts of public authorities incompatible with Convention rights).

Information

113K Matters to be notified to the Commission[294]

(1) The Commission may require a recognized professional body –

(a) to notify the Commission immediately of the occurrence of such events as the Commission may specify in writing and to give it such information in respect of those events as is so specified;

(b) to give the Commission, at such times or in respect of such periods as the Commission may specify in writing, such information as is so specified.

(2) The notices and information required to be given must be such as the Commission may reasonably require for the exercise of the Commission's functions under this Part.

(3) The Commission may require information given under this Article to be given in a specified form or verified in a specified manner.

(4) Any notice or information required to be given under this Article must be given in writing unless the Commission specifies or approves some other manner.

113L The Commission may require recognized auditors to give information[295]

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

(2) The Commission may require information given under this Article to be given in a specified form or verified in a specified manner.

(3) Any information required to be given under this Article must be given in writing unless the Commission specifies or approves some other manner.

(4) A recognized auditor who –

(a) fails, within a reasonable time, to comply with a requirement made by the Commission under this Article; or

(b) in purported compliance with such a requirement, knowingly or recklessly provides information that is false or misleading in a material particular,

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

Enforcement

113M Commission to ensure compliance[296]

(1) The Commission must ensure that an audit of a market traded company carried out under this Part by an auditor who is a recognized auditor is carried out in accordance with the rules mentioned in Article 112(1) that are applicable to the auditor when auditing a market traded company under this Part.

(2) Accordingly –

(a) where the rules mentioned in paragraph (1) are the rules of a recognized professional body, the Commission or an agent of the Commission must ensure that the recognized professional body or a delegate thereof approved by the Commission monitors and enforces compliance with those rules and otherwise carries out its obligations under this Part; and

(b) where the rules mentioned in paragraph (1) are rules published under Article 112(1)(b) by the Commission, the Commission must monitor and enforce compliance with those rules.

(3) The Commission or an agent of the Commission may, for the purposes of this Article, in the case of any audit of a market traded company, check

directly that the audit has been carried out in accordance with the rules mentioned in Article 112(1).

(4) The Commission may publish fees that it may charge recognized auditors –

(a) for exercising the powers and carrying out the Commission's duties under Articles 113K and 113L and this Article; or

(b) where any of the Commission's powers or duties under Articles 113K and 113L and this Article are exercised or carried out by an agent of the Commission, to reimburse the Commission for any costs incurred by it by virtue of that arrangement.

113N Delegation of the Commission's powers and duties[297]

(1) The Minister may, on the recommendation of the Commission, make an Order under this Article that enables the powers and duties of the Commission under Articles 113K, 113L and 113M, to the extent specified in the Order, to be exercised or carried out by a body designated by the Order.

(2) That body may be either –

(a) a body corporate established by the Order; or

(b) a body (whether a body corporate or an unincorporated association) that is already in existence either in Jersey or elsewhere.

(3) The Order has the effect of transferring to the body designated by it all the powers and duties of the Commission under Articles 113K, 113L and 113M subject to such exceptions and reservations as may be specified in the Order.

(4) The Order may confer on the body designated by it such other powers and duties supplementary or incidental to those transferred as appear to the Minister to be appropriate.

(5) During the time the powers and duties of the Commission are transferred by an Order made under this Article to a body designated in the Order –

(a) in the case of any transferred powers of the Commission, the Commission cannot exercise them concurrently with the body; and

(b) in the case of any transferred duties of the Commission, the obligation to carry them out rests with the body and not with the Commission.

(6) The Minister must not make an Order under this Article transferring powers or duties of the Commission to an existing body unless it appears to the Minister that –

(a) the body is able and willing to exercise the powers or to carry out the duties that would be transferred by the Order; and

(b) the body has arrangements in place relating to the exercise of the powers or to the carrying out of the duties that are such as to be likely to ensure that the conditions in paragraph (7) are met.

(7) The conditions are –

(a) that the powers and duties in question will be exercised or carried out effectively; and

(b) where the Order is to contain any requirements or other provisions specified under paragraph (8), that those powers and duties will be exercised or carried out in accordance with any such requirements or provisions.

(8) The Order may contain such requirements or other provisions relating to the exercise of the powers or the carrying out of the duties by the designated body as appear to the Minister to be appropriate.

(9) Those provisions may include provisions providing for the designated body to publish and charge fees for exercising the powers or carrying out the duties delegated to it under the Order.

113O Enforcement of rules[298]

(1) A recognized professional body may, to secure the enforcement of its rules mentioned in Article 112(1), apply to the court –

(a) for an order enabling the body to enforce disciplinary action it has decided to take against a person who is or was a recognized auditor bound by the rules; or

(b) for an order making a recognized auditor who is bound by the rules subject to such supervision, restraint or conditions when carrying out an audit of a market traded company under this Part as may be specified in the order.

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

(3) Where it appears to the Commission or a professional oversight body, that a recognized professional body –

(a) has failed to secure the enforcement of its rules mentioned in Article 112(1); or

(b) has otherwise failed to comply with any of its obligations under this Part,

the Commission or the professional oversight body may apply to the court to secure the enforcement of the rules or compliance with any of its obligations.

(4) On such an application, the court may order the recognized professional body to take such steps as the court directs to secure –

(a) the enforcement of the body's rules; or

(b) compliance with any of its obligations under this Part.

(5) The Commission may, to secure the enforcement of rules published by it under Article 112(1)(b), apply to the court –

(a) for an order enabling the Commission to enforce disciplinary action it has decided to take against a person who is or was a recognized auditor bound by the rules; or

(b) for an order making a recognized auditor who is bound by the rules subject to such supervision, restraint or conditions when carrying out an audit of a market traded company under this Part as may be specified in the order.

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

113P Confidentiality[299]

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

(a) the private affairs of an individual; or

(b) any particular business,

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

(2) This Article applies to –

(a) a recognized professional body;

(b) the Commission;

(c) a professional oversight body; and

(d) the registrar.

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

(a) during the lifetime of the individual; or

(b) so long as the business continues to be carried on,

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

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

(5) The persons and bodies are –

(a) a recognized professional body;

(b) the Commission;

(c) a professional oversight body;

(d) the registrar;

(e) any other authority, body or person having responsibility for the qualification, supervision or regulation of auditors, whether situated in Jersey or elsewhere;

(f) an organization that, in a jurisdiction outside Jersey, carries out in that jurisdiction any function that is the same as, or similar to, a function that is carried out in Jersey by the Commission,

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

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

(a) when it is to assist a recognized professional body, the Commission or a professional oversight body to carry out its duties under this Part;

(b) that is to be used to assist an inspector appointed under Part 19;

(c) to a company, that relates to an audit of the company's accounts;

(d) to the public, that relates to the powers and duties of the Commission or a professional oversight body pursuant to Article 113M and that does not enable an audited company or an auditor to be identified;

(e) that may or is to be used for the purposes of criminal proceedings;

(f) that is a summary or collection of information that does not enable any person to whom the information relates to be identified;

(g) that may be published under Article 111(7), 111(15), 113D(12) or 113D(19).

(7) This Article does not prohibit the disclosure of information that is or has been available to the public from any other source.

(8) Nothing in this Article authorizes the making of a disclosure in contravention of the Data Protection (Jersey) Law 2005[300].

(9) A person who discloses information in contravention of this Article is guilty of an offence, unless the person –

(a) did not know, and had no reason to suspect, that the information had been provided as mentioned in paragraph (1); or

(b) took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

113Q Application of Part 19 to market traded companies[301]

(1) In Part 19, references to the affairs of a company shall be taken, where the company is a market traded company, to include reference to –

(a) the company's compliance with the accounting principles applicable to the company under this Part; and

(b) any aspect of its accounts or their auditing that raises or appears to raise important issues affecting the public interest.

(2) If a report mentioned in Article 135(1) is in respect of any aspect of the affairs of a market traded company mentioned in paragraph (1)(a) or (b), the Minister or Commission may, in addition to the persons mentioned in Article 135(2), forward a copy of the report to any of the following –

(a) any relevant recognized professional body;

(b) a professional oversight body;

(c) the registrar.

(3) For the purposes of, or as a consequence of, an investigation of a market traded company being carried out or that has been carried out under Part 19, the Commission or the Minister may direct a company –

(a) to have its accounts re-audited; or

(b) to restate its accounts in respect of a specified period by a specified date and, if further directed to do so, to have them audited.

(4) If a company fails to comply with a direction given under paragraph (3) the company and each officer of the company in default is guilty of an offence.

(5) Where this Article applies –

(a) Article 128(2) shall be taken to include the Minister and the Commission; but

(b) Article 128(3) shall not apply to an application made by the Minister or by the Commission.

PART 17[302]

DISTRIBUTIONS

114 Meaning of "distribution" in this Part[303]

(1) In this Part, "distribution", in respect of a company, means every description of distribution of the company's assets to its members as members, whether in cash or otherwise.

(2) However, "distribution" does not include a distribution by way of –

(a) an issue of shares as fully or partly paid bonus shares;

(b) the redemption or purchase of any of the company's shares;

(c) any reduction of capital made in accordance with Part 12; or

(d) a distribution of assets to members of the company on its winding up.[304]

115 Restrictions on distributions[305]

(1) A company may make a distribution at any time.

(2) A company shall not make a distribution except in accordance with this Article.

(3) A company (other than an open-ended investment company) may make a distribution only if the directors who are to authorize the distribution make a statement in accordance with paragraph (4).

(4) The statement shall state that the directors of the company who are to authorize the distribution have formed the opinion –

(a) that, immediately following the date on which the distribution is proposed to be made, the company will be able to discharge its liabilities as they fall due; and

(b) that, having regard to –

(i) the prospects of the company and to 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 on which the distribution is proposed to be made or until the company is dissolved under Article 150, whichever first occurs.

(5) A director who makes a statement under paragraph (4) without having reasonable grounds for the opinion expressed in the statement is guilty of an offence.

(6) Despite any other provision of this Law, an open-ended investment company may make a distribution only if the directors who are to authorize the distribution reasonably believe that immediately after the distribution has been made the company will be able to discharge its liabilities as they fall due.

(7) A distribution made in accordance with this Article shall be debited by the company to –

(a) a share premium account, or a stated capital account, of the company; or

(b) any other account of the company, other than the capital redemption reserve or the nominal capital account.[306]

(8) In paragraph (7), "nominal capital account", in relation to a company, means a share capital account of the company to which are credited funds equivalent to the nominal value of the shares issued by the company.

(9) A distribution made in accordance with this Article is not for the purposes of Part 12 a reduction of capital.[307]

115A Consequences of unlawful distribution

If a distribution or part of a distribution made by a company to one of its members is made in contravention of Article 115 and at the time of the distribution the member knows or has reasonable grounds for believing that it is so made, the member is liable –

(a) to repay it or the part of it to the company; or

(b) if a distribution was made otherwise than in cash, to pay to the company a sum equal to the value of the distribution or the part of it at that time.

115B Power of States to amend Part 17[308]

The States may amend this Part by Regulations.

PART 18

TAKEOVERS[309]

116 Takeover offers

(1) In this Part, "a takeover offer" means an offer to acquire all the shares, or all the shares of any class or classes, in a company (other than shares which at the date of the offer are already held by the offeror), being an offer on terms which are the same in relation to all the shares to which the offer relates or, where those shares include shares of different classes, in relation to all the shares of each class.

(2) In paragraph (1) "shares" means shares (other than relevant treasury shares) that have been allotted on the date of the offer.[310]

(2A) A takeover offer may include among the shares to which it relates –

(a) all or any shares that are allotted after the date of the offer but before a specified date;

(b) all or any relevant treasury shares that cease to be held as treasury shares before a specified date; and

(c) all or any other relevant treasury shares.[311]

(2B) In this Article –

"relevant treasury shares" means shares which –

(a) are held by the company as treasury shares on the date of the offer; or

(b) become shares held by the company as treasury shares after that date but before a specified date;

"specified date" means a date specified in or determined in accordance with the terms of the offer.[312]

(3) The terms offered in relation to any shares shall for the purposes of this Article be treated as being the same in relation to all the shares or, as the case may be, all the shares of a class to which the offer relates notwithstanding any variation permitted by paragraph (4).

(4) A variation is permitted by this paragraph where –

(a) the law of a country or territory outside Jersey precludes the acceptance of an offer in the form or any of the forms specified or precludes it except after compliance by the offeror with conditions with which the offeror is unable to comply or which the offeror regards as unduly onerous; and

(b) the variation is such that the persons by whom the acceptance of an offer in that form is precluded are able to accept an offer otherwise than in that form but of substantially equivalent value.

(5) The reference in paragraph (1) to shares already held by the offeror includes a reference to shares which the offeror has contracted to acquire but that shall not be construed as including shares which are the subject of a contract binding the holder to accept the offer when it is made, being

a contract entered into by the holder for nothing other than a promise by the offeror to make the offer.[313]

(6) Where the terms of an offer make provision for their revision and for acceptances on the previous terms to be treated as acceptances on the revised terms, the revision shall not be regarded for the purposes of this Part as the making of a fresh offer and references in this Part to the date of the offer shall accordingly be construed as references to the date on which the original offer was made.

(7) In this Part the "offeror" means, subject to Article 122, the person making a takeover offer and the "company" means the company whose shares are the subject of the offer.

117 Right of offeror to buy out minority shareholders

(1) If, in a case in which a takeover offer does not relate to shares of different classes, the offeror has by virtue of acceptances of the offer acquired or contracted to acquire –

(a) in the case of a par value company, not less than 9/10ths in nominal value of the shares to which the offer relates; or

(b) in the case of a no par value company, not less than 9/10ths in number of the shares to which the offer relates,

the offeror may give notice, to the holder of any shares to which the offer relates which the offeror has not acquired or contracted to acquire, that he or she desires to acquire those shares.[314]

(2) If, in a case in which a takeover offer relates to shares of different classes, the offeror has by virtue of acceptances of the offer acquired or contracted to acquire –

(a) in the case of a par value company, not less than 9/10ths in nominal value of the shares of any class to which the offer relates; or

(b) in the case of a no par value company, not less than 9/10ths in number of the shares of any class to which the offer relates,

the offeror may give notice, to the holder of any shares of that class which the offeror has not acquired or contracted to acquire, that he or she desires to acquire those shares.[315]

(3) No notice shall be given under paragraph (1) or (2) unless the offeror has acquired or contracted to acquire the shares necessary to satisfy the minimum specified in that paragraph before the end of the period of 4 months beginning with the date of the offer; and no such notice shall be given after the end of the period of 2 months beginning with the date on which the offeror has acquired or contracted to acquire shares which satisfy that minimum.

(4) When the offeror gives the first notice in relation to an offer he or she shall send a copy of it to the company together with a declaration by the offeror that the conditions for the giving of the notice are satisfied.

(5) Where the offeror is a body corporate (whether or not a company within the meaning of this Law) the declaration shall be signed by a director.

(6) Any person who fails to send a copy of a notice or a declaration as required by paragraph (4) or makes such a declaration for the purposes of that paragraph knowing it to be false or without having reasonable grounds for believing it to be true is guilty of an offence.

(7) If a person is charged with any offence for failing to send a copy of a notice as required by paragraph (4) it is a defence for the person to prove that the person took reasonable steps for securing compliance with that paragraph.

(8) Where during the period within which a takeover offer can be accepted the offeror acquires or contracts to acquire any of the shares to which the offer relates but otherwise than by virtue of acceptances of the offer, then if –

(a) the value of that for which they are acquired or contracted to be acquired (the "acquisition value") does not at that time exceed the value of that which is receivable by an acceptor under the terms of the offer; or

(b) those terms are subsequently revised so that when the revision is announced the acquisition value, at the time mentioned in sub-paragraph (a), no longer exceeds the value of that which is receivable by an acceptor under those terms,

the offeror shall be treated for the purposes of this Article as having acquired or contracted to acquire those shares by virtue of acceptances of the offer; but in any other case those shares shall be treated as excluded from those to which the offer relates.

118 Effect of notice under Article 117

(1) The following provisions shall, subject to Article 121, have effect where a notice is given in respect of any shares under Article 117.

(2) The offeror shall be entitled and bound to acquire those shares on the terms of the offer.

(3) Where the terms of an offer are such as to give the holder of any shares a choice of payment for the holder's shares the notice shall give particulars of the choice and state –

(a) that the holder of the shares may within 6 weeks from the date of the notice indicate the holder's choice by a written communication sent to the offeror at an address specified in the notice; and

(b) which payment specified in the offer is to be taken as applying in default of the holder indicating a choice as aforesaid,

and the terms of the offer mentioned in paragraph (2) shall be determined accordingly.

(4) Paragraph (3) applies whether or not any time limit or other conditions applicable to the choice under the terms of the offer can still be complied with; and if the payment chosen by the holder of the shares –

(a) is not cash and the offeror is no longer able to make that payment; or

(b) was to have been made by a third party who is no longer bound or able to make that payment,

the payment shall be taken to consist of an amount of cash payable by the offeror which at the date of the notice is equivalent to the chosen payment.

(5) At the end of 6 weeks from the date of the notice the offeror shall forthwith–

(a) send a copy of the notice to the company; and

(b) make payment to the company for the shares to which the notice relates.

(6) The copy of the notice sent to the company under paragraph (5)(a) shall be accompanied by an instrument of transfer executed on behalf of the shareholder by a person appointed by the offeror; and on receipt of that instrument the company shall register the offeror as the holder of those shares.

(7) Where the payment referred to in paragraph (5)(b) is to be made in shares or securities to be allotted by the offeror the reference in that paragraph to the making of payment shall be construed as a reference to the allotment of the shares or securities to the company.

(8) Any sum received by a company under paragraph (5)(b) and any other payment received under that paragraph shall be held by the company on trust for the person entitled to the shares in respect of which the sum or other payment was received.

(9) Any sum received by a company under paragraph (5)(b) and any dividend or other sum accruing from any other payment received by a company under that paragraph, shall be paid into a separate bank account, being an account the balance on which bears interest at an appropriate rate and can be withdrawn by such notice (if any) as is appropriate.

(10) Where after reasonable enquiry made at such intervals as are reasonable the person entitled to any sum or other payment held on trust by virtue of paragraph (8) cannot be found and 10 years have elapsed since the sum or other payment was received or the company is wound up, the sum or other payment (together with any interest, dividend or other benefit that has accrued from it) shall be paid to the Viscount.

(11) The expenses of any such enquiry as is mentioned in paragraph (10) may be defrayed out of the money or other property held on trust for the person or persons to whom the enquiry relates.

119 Right of minority shareholder to be bought out by offeror

(1) If a takeover offer relates to all the shares in a company and at any time before the end of the period within which the offer can be accepted –

(a) the offeror has by virtue of acceptances of the offer acquired or contracted to acquire some (but not all) of the shares to which the offer relates; and

(b) those shares (with or without any other shares in the company which he or she has acquired or contracted to acquire) amount, in the case of a par value company, to not less than 9/10ths in nominal value of all the shares in the company or, in the case of a no par value company, to not less than 9/10ths in number of all the shares in the company,

the holder of any shares to which the offer relates who has not accepted the offer may by a written communication addressed to the offeror require him or her to acquire those shares.[316]

(2) If a takeover offer relates to shares of any class or classes and at any time before the end of the period within which the offer can be accepted –

(a) the offeror has by virtue of acceptances of the offer acquired or contracted to acquire some (but not all) of the shares of any class to which the offer relates; and

(b) those shares (with or without any other shares in the company which he or she has acquired or contracted to acquire) amount, in the case of a par value company, to not less than 9/10ths in nominal value of all the shares of that class in the company or, in the case of a no par value company, to not less than 9/10ths in number of all the shares of that class in the company,

the holder of any shares of that class who has not accepted the offer may by a written communication addressed to the offeror require him or her to acquire those shares.[317]

(3) Within one month of the time specified in paragraph (1) or, as the case may be, paragraph (2) the offeror shall give any shareholder who has not accepted the offer notice of the rights that are exercisable by the shareholder under that paragraph; and if the notice is given before the end of the period mentioned in that paragraph it shall state that the offer is still open for acceptance.

(4) A notice under paragraph (3) may specify a period for the exercise of the rights, conferred by this Article and in that event the rights shall not be exercisable after the end of that period; but no such period shall end less than 3 months after the end of the period within which the offer can be accepted.

(5) Paragraph (3) does not apply if the offeror has given the shareholder a notice in respect of the shares in question under Article 117.

(6) If the offeror fails to comply with paragraph (3) the offeror and, if the offeror is a company, every officer of the company who is in default or to whose neglect the failure is attributable, is guilty of an offence.

(7) If an offeror other than a company is charged with an offence for failing to comply with paragraph (3) it is a defence for the offeror to prove that he or she took all reasonable steps for securing compliance with that paragraph.

120 Effect of requirement under Article 119

(1) The following provisions shall, subject to Article 121, have effect where a shareholder exercises the shareholder's rights in respect of any shares under Article 119.

(2) The offeror shall be entitled and bound to acquire those shares on the terms of the offer or on such other terms as may be agreed.

(3) Where the terms of an offer are such as to give the holder of shares a choice of payment for the shareholder's shares, the holder of the shares may indicate the shareholder's choice when requiring the offeror to acquire them and the notice given to the holder under Article 119(3) –

(a) shall give particulars of the choice and of the rights conferred by this paragraph; and

(b) may state which payment specified in the offer is to be taken as applying in default of the shareholder indicating a choice,

and the terms of the offer mentioned in paragraph (2) shall be determined accordingly.

(4) Paragraph (3) applies whether or not any time limit or other conditions applicable to the choice under the terms of the offer can still be complied with; and if the payment chosen by the holder of the shares –

(a) is not cash and the offeror is no longer able to make that payment; or

(b) was to have been made by a third party who is no longer bound or able to make that payment,

the payment shall be taken to consist of an amount of cash payable by the offeror which at the date when the holder of the shares requires the offeror to acquire them is equivalent to the chosen payment.

121 Applications to the court

(1) Where a notice is given under Article 117 to the holder of any shares the court may, on an application made by the shareholder within 6 weeks from the date on which the notice was given –

(a) order that the offeror shall not be entitled and bound to acquire the shares; or

(b) specify terms of acquisition different from those of the offer.

(2) If an application to the court under paragraph (1) is pending at the end of the period mentioned in Article 118(5) that paragraph shall not have effect until the application has been disposed of.

(3) Where the holder of any shares exercises the shareholder's rights under Article 119 the court may, on an application made by the shareholder or the offeror, order that the terms on which the offeror is entitled and bound to acquire the shares shall be such as the court thinks fit.

(4) No order for costs or expenses shall be made against a shareholder making an application under paragraph (1) or (3) unless the court considers –

(a) that the application was unnecessary, improper or vexatious; or

(b) that there has been unreasonable delay in making the application or unreasonable conduct on the shareholder's part in conducting the proceedings on the application.

(5) Where a takeover offer has not been accepted to the extent necessary for entitling the offeror to give notices under Article 117 (1) or (2) the court may, on the application of the offeror, make an order authorizing the offeror to give notices under that Article if satisfied –

(a) that the offeror has after reasonable enquiry been unable to trace one or more of the persons holding shares to which the offer relates;

(b) that the shares which the offeror has acquired or contracted to acquire by virtue of acceptances of the offer, together with the shares held by the person or persons mentioned in sub-paragraph (a), amount to not less than the minimum specified in that Article; and

(c) that the terms offered are fair and reasonable,

but the court shall not make an order under this paragraph unless it considers that it is just and equitable to do so having regard, in particular, to the number of shareholders who have been traced but who have not accepted the offer.

122 Joint offers

(1) A takeover offer may be made by 2 or more persons jointly and in that event this Part has effect with the following modifications.

(2) The conditions for the exercise of the rights conferred by Articles 117 and 119 shall be satisfied by the joint offerors acquiring or contracting to acquire the necessary shares jointly (as respects acquisitions by virtue of acceptances of the offer) and either jointly or separately (in other cases); and, subject to the following provisions, the rights and obligations of the offeror under those Articles and Articles 118 and 120 shall be respectively joint rights and joint and several obligations of the joint offerors.

(3) It shall be a sufficient compliance with any provision of those Articles requiring or authorizing a notice or other document to be given or sent by or to the joint offerors that it is given or sent by or to any of them; but the declaration required by Article 117(4) shall be made by all of them and, in the case of a joint offeror being a company, signed by a director of that company.

(4) In Article 116, Article 118(7) and Article 123 references to the offeror shall be construed as references to the joint offerors or any of them.

(5) In Article 118(6) references to the offeror shall be construed as references to the joint offerors or such of them as they may determine.

(6) In Article 118(4)(a) and Article 120(4)(a) references to the offeror being no longer able to make the relevant payment shall be construed as references to none of the joint offerors being able to do so.

(7) In Article 121 references to the offeror shall be construed as references to the joint offerors except that any application under paragraph (3) or (5) may be made by any of them and the reference in paragraph (5)(a) to the offeror having been unable to trace one or more of the persons holding shares shall be construed as a reference to none of the offerors having been able to do so.

123 Associates

(1) The requirement in Article 116(1) that a takeover offer must extend to all the shares, or all the shares of any class or classes, in a company shall be regarded as satisfied notwithstanding that the offer does not extend to shares which associates of the offeror hold or have contracted to acquire; but, subject to paragraph (2), shares which any such associate holds or has contracted to acquire, whether at the time when the offer is made or subsequently, shall be disregarded for the purposes of any reference in this Part to the shares to which a takeover offer relates.

(2) Where during the period within which a takeover offer can be accepted, any associate of the offeror acquires or contracts to acquire any of the shares to which the offer relates, then, if the condition specified in Article 117(8)(a) or (b) is satisfied as respects those shares, they shall be treated for the purpose of that Article as shares to which the offer relates.

(3) In Article 119(1)(b) and (2)(b) the reference to shares which the offeror has acquired or contracted to acquire shall include a reference to shares which any associate of the offeror has acquired or contracted to acquire.

(4) In this Article, "associate", in relation to an offeror, means –

(a) a nominee of the offeror;

(b) a holding company, subsidiary or fellow subsidiary of the offeror or a nominee of such a holding company, subsidiary or fellow subsidiary;

(c) a body corporate in which the offeror is substantially interested.

(5) For the purposes of paragraph (4)(b) a company is a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is a subsidiary of the other.

(6) For the purposes of paragraph (4)(c) an offeror has a substantial interest in a body corporate if –

(a) that body or its directors are accustomed to act in accordance with the offeror's directions or instructions; or

(b) the offeror is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body.

(7) Where the offeror is an individual, the offeror's associates shall also include the spouse and any minor child or step-child of the offeror.

124 Convertible securities

(1) For the purposes of this Part, securities of a company shall be treated as shares in the company if they are convertible into or entitle the holder to subscribe for such shares; and references to the holder of shares or a shareholder shall be construed accordingly.

(2) Paragraph (1) shall not be construed as requiring any securities to be treated –

(a) as shares of the same class as those into which they are convertible or for which the holder is entitled to subscribe; or

(b) as shares of the same class as other securities by reason only that the shares into which they are convertible or for which the holder is entitled to subscribe are of the same class.

124A Power of States to amend Part 18[318]

The States may amend this Part by Regulations.

PART 18A

COMPROMISES AND ARRANGEMENTS[319]

125 Power of company to compromise with creditors and members

(1) Where a compromise or arrangement is proposed between a company and its creditors, or a class of them, or between the company and its members, or a class of them, the court may on the application of the company or a creditor or member of it or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members (as the case may be), to be called in a manner as the court directs.

(2) If a majority in number representing –

(a) 3/4ths in value of the creditors or class of creditors; or

(b) 3/4ths of the voting rights of the members or class of members,

as the case may be, present and voting either in person or by proxy at the meeting, agree to a compromise or arrangement, the compromise or arrangement, if sanctioned by the court, is binding on –

(i) all creditors or the class of creditors; or

(ii) all the members or class of members,

as the case may be and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.[320]

(3) The court's order under paragraph (2) has no effect until the relevant Act of the court has been delivered to the registrar for registration; and the relevant Act of the court shall be annexed to every copy of the company's memorandum issued after the order has been made.

(4) If a company fails to comply with paragraph (3), it is guilty of an offence.

126 Information as to compromise to be circulated

(1) This Article applies where a meeting of creditors or a class of creditors, or of members or a class of members, is called under Article 125.

(2) With the notice calling the meeting which is given to a creditor or member there shall be included a statement explaining the effect of the compromise or arrangement and in particular stating any material interests of the directors of the company (whether as directors or as members or as creditors of the company or otherwise) and the effect on those interests of the compromise or arrangement, in so far as it is different from the effect on the same interests of other persons.

(3) In every notice calling the meeting which is given by advertisement there shall be included either a statement mentioned in paragraph (2) or a notification of the place at which, and the manner in which, creditors or members entitled to attend the meeting may obtain copies of the statement.

(4) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement shall give the same explanation as respects the trustees of a deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(5) Where a notice given by advertisement includes a notification that copies of a statement explaining the effect of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting, every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

(6) If a company fails to comply with a requirement of this Article the company and every officer of it who is in default is guilty of an offence; and for this purpose a trustee of a deed for securing the issue of debentures of the company is deemed an officer of it; but a person is not liable under this paragraph if the person shows that the default was due to the refusal of another person, being a director or trustee for debenture holders, to supply the necessary particulars of the person's interests.

(7) A director of the company, and a trustee for its debenture holders, shall give notice to the company of such matters relating to the person as may be necessary for the purposes of this Article; and a person who defaults in complying with this paragraph is guilty of an offence.

127 Provisions for facilitating company reconstruction or amalgamation

(1) This Article applies where application is made to the court under Article 125 for the sanctioning of a compromise or arrangement proposed between a company and any persons mentioned in that Article.

(2) If it is shown –

(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of a company or companies, or the amalgamation of 2 or more companies; and

(b) that under the scheme the whole or part of the undertaking or the property of a company concerned in the scheme ("a transferor company") is to be transferred to another company ("the transferee company"),

the court may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters –

(i) the transfer to the transferee company of the whole or part of the undertaking and of the property or liabilities of a transferor company;

(ii) the allotting or appropriation by the transferee company of shares, debentures, policies or other similar interests in that company which under the compromise or arrangement are to be allotted or appropriated by the company to or for any person;

(iii) the continuation by or against the transferee company of legal proceedings pending by or against a transferor company;

(iv) the dissolution, without winding up, of a transferor company;

(v) the provision to be made for persons who, within a time and in a manner which the court directs, dissent from the compromise or arrangement;

(vi) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation is fully and effectively carried out.

(3) If an order under this Article provides for the transfer of property or liabilities, then –

(a) that property is by virtue of the order transferred to, and vests in, the transferee company; and

(b) those liabilities are, by virtue of the order, transferred to and become liabilities of that company,

and property (if the order so directs) vests freed from any hypothec, security interest or other charge which is by virtue of the compromise or arrangement to cease to have effect.

(4) Where an order is made under this Article, every company in relation to which the order is made shall cause the relevant Act of the court to be delivered to the registrar for registration within 14 days after the making of the order; and in the event of failure to comply with this paragraph, the company is guilty of an offence.

(5) In this Article, "property" includes property, rights and powers of every description and "liabilities" includes duties.

PART 18B

MERGERS[321]

Chapter 1 – General

127A Interpretation[322]

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

"merged body" means the body resulting from a merger under Article 127C (and 'merged company' is to be read accordingly);

"merger agreement" means an agreement under Article 127D;

"merging body" means a body that is seeking to merge with another body under this Part (and 'merging company' is to be read accordingly);

"new body" means a merged body that is new within the meaning of Article 127C(2) (and 'new company' is to be read accordingly);

"overseas body" means a body incorporated in a jurisdiction outside Jersey;

"relevant Jersey company" means a company that is not a cell company or a cell and does not have unlimited shares or guarantor members;

"survivor body" means a merging body that becomes a merged body as provided for in Article 127C(1)(a) (and 'survivor company' is to be read accordingly).

(2) Nothing in this Part is to be read as preventing –

(a) more than one person from signing the same certificate under this Part; or

(b) more than one certificate signed under this Part from being included in the same document,

and references to a certificate are to be construed accordingly.

(3) For the avoidance of doubt, it is declared that references in this Part to a body as being incorporated (whether in or outside Jersey) are to be construed without reference to sub-paragraphs (b) to (d) of Article 1(2).

(4) Nothing in Part 18 or Part 18A is to be construed as preventing the acquisition or takeover of one merging body by another by way of merger under this Part.

127B Bodies eligible to merge[323]

(1) A relevant Jersey company may merge, subject to the requirements of this Part, with one or more bodies falling within any one or more of paragraphs (2) to (4).

(2) A body falls within this paragraph if it is another relevant Jersey company.

(3) A body falls within this paragraph if –

(a) it is not a company; and

(b) it is incorporated –

(i) in Jersey, and

(ii) under an enactment under which it is permitted to merge with a company.

(4) A body falls within this paragraph if it is an overseas body that –

(a) is not an excluded body under paragraph (5); and

(b) to the reasonable satisfaction of the Commission, is not prohibited, under the law of the jurisdiction in which it is incorporated, from merging with a company.

(5) The Minister may designate, as classes of excluded bodies for the purpose of paragraph (4), one or more classes of overseas bodies, not being classes of bodies designated by the Minister under Regulation 2 of the Foundations (Mergers) (Jersey) Regulations 2009[324].

(6) A designation under paragraph (5) shall be by notice published in a manner that will bring the notice to the attention of those who, in the opinion of the Minister, are likely to be affected by it.

127C Bodies eligible to be merged bodies[325]

(1) The result of a merger under this Part is that the merging bodies continue as a single merged body, and that body is either –

(a) one of the merging bodies; or

(b) a new body that –

(i) is a relevant Jersey company,

(ii) is incorporated in Jersey under the same enactment (other than this Law) as one of the merging bodies, or

(iii) is an overseas body that is incorporated under the law of the same jurisdiction as one of the merging bodies and is not an excluded body under Article 127B(5).

(2) For the purpose of this Part, a merged body is new if it is created by the merger from which it results.

Chapter 2 – Members

127D Merger agreement[326]

(1) Each company proposing to merge shall, in order to do so, enter into an agreement in writing with each body with which it proposes to merge.

(2) The merger agreement shall state the terms and means of effecting the merger and, in particular, the following information –

(a) details of the proposed merged body, including –

(i) whether it is to be a survivor body or a new body,

(ii) whether it is to be a company, an overseas body or some other body, and

(iii) the names and addresses of the persons who are proposed –

(A) to be its directors, or

(B) to manage it, if it is to be a body that does not have directors;

(b) details of any arrangements necessary to complete the merger and to provide for the management of the merged body;

(c) details of any payment, other than of a kind described in paragraph (3), proposed to be made to a member or director of a merging company or to a person having a similar relationship to a merging body that is not a company; and

(d) in relation to any securities of a merging company, the information specified in paragraph (3).

(3) The information referred to in paragraph (2)(d) is –

(a) if the securities are to be converted into securities of the merged body, the manner in which that conversion is to be done; or

(b) otherwise, what the holders are to receive instead and the manner in which and the time at which they are to receive it.

(4) If the merged body is to be a new company, the merger agreement shall also set out –

(a) the proposed memorandum and articles of the merged company; and

(b) a draft of any other document or information that would be required by Part 2 to be delivered to the registrar if the merged company were being incorporated under this Law otherwise than by merger.

(5) If the merged body is to be a survivor company, the merger agreement shall also state –

(a) whether any amendments to the memorandum and articles of the company are proposed to take effect on the merger, with details of those amendments; and

(b) whether it is proposed that, on the merger, any person will become, or cease to be a director of the company, with the name and address of each such person.

(6) If shares of a merging company are held by or on behalf of another merging company and the merged body is to be a company –

(a) the merger agreement shall provide for the cancellation of those shares, without any repayment of capital, when the merger is completed; and

(b) no provision may be made in the merger agreement for the conversion of those shares into securities of the merged company.

(7) A merger agreement may provide that, at any time before the completion of the merger, the agreement may be terminated by –

(a) any one or more of the merging companies, notwithstanding that it has been approved by the members of all or any of those companies; or

(b) any of the merging bodies that are not companies.

(8) If an agreement is terminated under a provision included in it under paragraph (7), nothing in this Part requires or authorizes any further steps to be taken to complete the merger.

127E Resolutions and certificates [327]

(1) Before notice is given of a meeting of a merging company to approve a merger agreement under Article 127F, or to approve a merger under Article 127FA, the directors of that company shall pass a resolution that, in the opinion of the directors voting for the resolution, the merger is in the best interests of the company.

(2) For the purposes of this Article a solvency statement is a statement that, having made full inquiry into the affairs of the company, the person making the statement reasonably believes that the company is, and will remain until the merger is completed, able to discharge its liabilities as they fall due.

(3) If the directors voting for the resolution are satisfied on reasonable grounds that they can properly make a solvency statement in respect of the company, the resolution shall in addition state that they are so satisfied.

(4) If paragraph (3) does not apply –

(a) the resolution shall instead state that the directors voting for it are satisfied on reasonable grounds that there is a reasonable prospect of obtaining the permission of the court under Article 127FD; and

(b) the company shall, as soon as is practicable after the passing of the resolution, inform the other merging bodies that paragraph (3) does not apply.

(5) After a resolution is passed under paragraph (1), but before notice is given as mentioned in that paragraph, each director who voted in favour of it shall sign a certificate –

(a) containing –

(i) if paragraph (3) applies, a solvency statement, or

(ii) if paragraph (3) does not apply, a statement that the director is satisfied on reasonable grounds that there is a reasonable prospect of obtaining the permission of the court under Article 127FD; and

(b) setting out the grounds for that statement.

(6) Before notice is given as mentioned in paragraph (1), each person falling within paragraph (7) shall sign a certificate stating –

(a) that, in his or her opinion, the merged body will be able to continue to carry on business and discharge its liabilities as they fall due –

(i) on and immediately after the completion of the merger, and

(ii) if later, until 12 months after the signing of the certificate; and

(b) the grounds for that opinion, having particular regard to –

(i) the prospects of the merged body,

(ii) the proposals in the merger agreement with respect to the management of the merged body's business, or any proposals in the special resolutions passed under Article 127FA with respect to that matter, and

(iii) the amount and character of the financial resources that will, in the view of the person signing, be available to the merged body.

(7) The persons falling within this paragraph are –

(a) the persons proposed in the merger agreement, or in a special resolution passed under Article 127FA –

(i) to be directors of the merged body, or

(ii) to manage the merged body, if it is to be a body that does not have directors; and

(b) if none of the directors of the merging companies is a person referred to in sub-paragraph (a), each person who must sign a certificate under paragraph (5).

127F Approval of merger agreement [328]

(1) The directors of each merging company shall submit the merger agreement for approval by a special resolution of that company and, where there is more than one class of members, for approval by a special resolution of a separate meeting of each class.

(2) Notice of each meeting –

(a) shall be accompanied by –

(i) a copy or summary of the merger agreement,

(ii) copies of the proposed constitutional documents for the merged body, or a summary of the principal provisions of those documents,

(iii) if a summary is supplied under clause (i) or (ii), information as to how a copy of the document summarized may be inspected by members,

(iv) a copy of the certificates signed under Article 127E(5) and (6) in respect of that company, and a copy of any information that may have been provided, by the date of the notice, to that company by any other merging company under Article 127E(4)(b),

(v) a statement of the material interests in the merger of the directors of each merging body, and of the persons managing any merging body that does not have directors, and

(vi) such further information as a member would reasonably require to reach an informed decision on the merger; and

(b) shall contain sufficient information to alert members to their right to apply to the court under Article 127FB.

(3) A merger is approved under this Article when all of the special resolutions referred to in paragraph (1) have been passed in respect of all of the merging bodies that are companies.

(4) A merger may not be completed unless it is approved under this Article, or under Article 127FA.

127FA Simplified approval of mergers involving subsidiaries[329]

(1) A holding company merger or an inter-subsidiary merger may be approved by a special resolution of each merging company under this Article, without approval of a merger agreement.

(2) For the purpose of this Article, a holding company merger is a merger in which –

(a) the merging bodies are –

(i) a company that is a holding company, and

(ii) one or more other companies that are its wholly-owned subsidiaries; and

(b) the merged body is the holding company, continuing as a survivor company.

(3) For a holding company merger –

(a) each special resolution of a merging subsidiary shall provide that its shares are to be cancelled without any repayment of capital; and

(b) the special resolution of the holding company shall –

(i) provide that the capital accounts of each merging subsidiary are to be added to the capital accounts of the holding company,

(ii) provide that no securities are to be issued and no assets distributed by it in connection with the merger (whether before, on or after the merger),

(iii) specify any changes to its memorandum and articles that are to take effect on the merger, and

(iv) state the names and addresses of the persons who are proposed to be the directors after the merger.

(4) For the purpose of this Article, an inter-subsidiary merger is a merger in which –

(a) the merging bodies are all companies that are wholly-owned subsidiaries of the same holding body (whether that holding body is incorporated in Jersey or elsewhere); and

(b) the merged body is one of the merging companies, continuing as a survivor company.

(5) For an inter-subsidiary merger –

(a) each special resolution of a merging company, other than the survivor company, shall provide that –

(i) its shares are to be cancelled without any repayment of capital, and

(ii) its capital accounts are to be added to the capital accounts of the survivor company; and

(b) the special resolution of the survivor company shall –

(i) provide that the capital accounts of each other merging company are to be added to the capital accounts of the survivor company,

(ii) specify any changes to the memorandum and articles of the survivor company that are to take effect on the merger, and

(iii) state the names and addresses of the persons who are proposed to be the directors of the survivor company after the merger.

(6) A merger is approved under this Article when all of the merging companies have passed the special resolutions required by this Article.

(7) In relation to a merger approved under this Article the provisions of this Part (other than this Article) apply to the extent that they apply to a merger between companies of which one is a survivor, but Articles 127B, 127D and 127F do not apply.

(8) In this Article, 'company' means any company (whether or not having unlimited shares or guarantor members) that is not a cell or a cell company.

127FB Objection by member[330]

(1) A member of a merging company may apply to the court for an order under Article 143 on the ground that the merger would unfairly prejudice the interests of the member.

(2) An application may not be made –

(a) more than 28 days after the merger is approved under Article 127F(3) or 127FA(6), or

(b) by a member who voted in favour of the merger under either of those Articles.

Chapter 3 – Creditors

127FC Notice to creditors[331]

(1) No later than 28 days after a merger is approved under Article 127F(3) or 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.

(2) The notice shall state –

(a) that the company intends to merge, in accordance with this Part, with one or more bodies specified in the notice; and

(b) that the merger agreement, or the company's special resolution passed under Article 127FA, is available to creditors from the company, free of charge, on request.

(3) If Article 127FD applies to the merger, the notice shall in addition –

(a) state that a merging company has applied or will apply for the permission of the court under that Article;

(b) state that any creditor of any of the merging bodies may request the company making the application to send a copy of the application to the creditor; and

(c) set out information as to –

(i) a means by which a creditor may contact the company making the application, or a person representing it in that application, and

(ii) the effect of Article 127FD(4), including the date of the application if known at the time of the notice.

(4) If Article 127FD does not apply to the merger, the notice shall state (in addition to the matters in paragraph (2)) that any creditor of the company may –

(a) object to the merger under Article 127FE(2)(a); or

(b) require the company to notify the creditor if any other creditor of the company applies to the court under Article 127FE(2)(b).

(5) The company shall, within the time limit set out in paragraph (6), publish the contents of the notice –

(a) once in a newspaper circulating in Jersey; or

(b) in any other manner –

(i) approved by the registrar, and

(ii) published by the Commission.

(6) The time limit is whichever is the sooner of –

(a) no later than 28 days after the merger is approved under Article 127F(3) or 127FA(6); or

(b) as soon as practicable after the company sends the last of any notices under paragraph (1).

(7) The Minister may by Order alter the amount specified in paragraph (1).

127FD Company to apply to court if solvency statement not made[332]

(1) This Article applies to a merger if any certificate signed by a director of any of the merging companies under Article 127E(5) does not contain a solvency statement for the purpose of that Article.

(2) The merger may not be completed unless an Act of the court has been obtained permitting the merger on the ground that the merger would not

be unfairly prejudicial to the interests of any creditor of any of the merging bodies.

(3) A merging company to which a certificate mentioned in paragraph (1) relates, or all such companies jointly if there are more than one, shall as soon as is practicable after the merger is approved under Article 127F(3) or 127FA(6) –

(a) apply to the court for an Act permitting the merger under paragraph (2); and

(b) send a copy of that application –

(i) to any creditor who, after the directors have made reasonable enquiries, is known to the directors to have a claim against any of the merging bodies exceeding the amount specified in Article 127FC(1),

(ii) to any other creditor of any of the merging bodies who requests a copy from that company, and

(iii) to the registrar.

(4) The court shall not hear the application for at least 28 days after it is made to the court.

127FE Objection by creditor if all solvency statements made[333]

(1) This Article applies to a merger to which Article 127FD does not apply.

(2) A creditor of a merging company who objects to the merger –

(a) may, within 28 days of the date of the publication of the notice under Article 127FC(5), give notice of the creditor's objection to the company; and

(b) may, within 28 days of the date of the notice of objection, if the creditor's claim against the company has not been discharged, apply to the court for an order restraining the merger or modifying the merger agreement.

(3) If a creditor makes an application under paragraph (2)(b), the company shall, within a reasonable time after receiving a copy of the application, send a copy of it to each other creditor –

(a) to whom a notice was sent under Article 127FC(1);

(b) who has required notification under Article 127FC(3)(b);

(c) who has given notice of objection under paragraph (2)(a); or

(d) to whom the court orders that a copy should be sent.

(4) If on an application under paragraph (2)(b) the court is satisfied that the merger would unfairly prejudice the interests of the applicant, or of any other creditor of the company, the court may make such order as it thinks fit in relation to the merger, including, but not limited to, an order –

(a) restraining the merger; or

(b) modifying the merger agreement in such manner as may be specified in the order.

(5) Paragraph (6) applies if a court is considering making an order under paragraph (4)(b) to modify a merger agreement that does not contain a provision in accordance with Article 127D(7) allowing each of the merging bodies to terminate the merger following the modification.

(6) The court shall not make the order unless –

(a) the order also inserts such a provision in the agreement; and

(b) the court is satisfied that each merging body will have an adequate opportunity to reconsider whether to proceed with the merger following the modification.

(7) If a merger is approved under Article 127FA, references in this Article to the merger agreement are to be read as references to the special resolutions passed under Article 127FA.

Chapter 4 – Commission

127FF Consent of Commission required for mergers involving bodies other than companies[334]

(1) If any of the merging bodies is not a company –

(a) the merging bodies shall apply jointly, in the published form and manner (if any), to the Commission for consent to the merger; and

(b) the merger may not be completed unless the Commission gives consent and any conditions attached to the consent are complied with.

(2) The application for consent shall not be made until after the date of the last publication of a notice under Article 127FC(5).

(3) The application shall be accompanied by –

(a) a copy of the merger agreement and the special resolutions passed under Article 127F;

(b) a copy, in respect of each merging company, of –

(i) the resolution passed under Article 127E(1), together with, if that information is not contained in the resolution, a list identifying the directors who voted in favour of that resolution, and

(ii) the certificates signed under Article 127E(5) and (6);

(c) a copy, in respect of each merging company, of the notice to creditors under Article 127FC, with the date of its publication under Article 127FC(5); and

(d) information, as at the time of the application under this Article, as to –

(i) any application made by a member to the court under Article 127FB, or

(ii) if no such application has been made to the court, the date on which the time for doing so has elapsed or will elapse.

(4) If Article 127FD applies to the merger –

(a) the application under this Article shall in addition be accompanied by information, as at the time of that application, as to the application made, or to be made, to the court under Article 127FD; and

(b) the applicants shall –

(i) keep the Commission informed of the progress of the application under that Article, and

(ii) provide, when available, a copy of the Act of the court permitting the merger.

(5) If Article 127FD does not apply to the merger, the application shall in addition be accompanied by –

(a) information, as at the time of the application under this Article, as to –

(i) any notice of objection given by a creditor under Article 127FE(2)(a), or

(ii) if no such notice has been given, the date on which the time for doing so has elapsed or will elapse; and

(b) evidence satisfactory to the Commission that the merger would not be unfairly prejudicial to the interests of any creditor of any of the merging bodies.

(6) If the merged body is to be a company –

(a) the application shall in addition be accompanied by –

(i) the consents of its proposed directors to act as such, and

(ii) a copy of its proposed memorandum and articles, unless it is to be a survivor company without any amendment to its memorandum or articles; and

(b) the Commission shall inform the registrar of the name proposed for the merged company in the merger agreement, and the registrar shall then inform the Commission whether that name is in his or her opinion in any way misleading or otherwise undesirable.

(7) If one or more of the merging bodies is an overseas body, the application shall in addition be accompanied by evidence satisfactory to the Commission, in respect of each overseas body, that –

(a) the laws of the jurisdiction in which the overseas body is incorporated do not prohibit either or both of –

(i) the proposed merger, or

(ii) if the merged body is to be a new body incorporated in that jurisdiction, the incorporation of that body as the result of that merger;

(b) if those laws or the constitution of the overseas body require that an authorization be given for the application or for the merger, the authorization has been given; and

(c) if the overseas body is not to be a survivor body, the overseas body will, in due course after completion of the merger, cease to be a

body incorporated under the law of the jurisdiction in which it is presently incorporated.

(8) If the merged body is to be an overseas body, the application shall in addition be accompanied by evidence satisfactory to the Commission that the laws of the jurisdiction in which the merged body is to be incorporated provide that upon the merger –

(a) the property and rights to which the merging bodies were entitled immediately before the merger will become the property and rights of the merged body;

(b) the merged body will become subject to any criminal and civil liabilities, and any contracts, debts and other obligations, to which the merging bodies were subject immediately before merger; and

(c) any actions and other legal proceedings that, immediately before the merger, were pending by or against any of the merging bodies may be continued by or against the merged body.

(9) In paragraphs (10), (11) and (12) 'objection' means –

(a) the making by a member of an application to the court under Article 127FB in respect of any merging company; and

(b) the giving of notice of objection under Article 127FE(2)(a) by a creditor of any merging company.

(10) Paragraphs (11), (12) and (13) apply unless, at the time of the application under this Article –

(a) there has been no objection to the merger; and

(b) the time for making any objection has elapsed.

(11) The applicants shall –

(a) notify the Commission of any objection of which they become aware after the application;

(b) notify the Commission of the result once any objection, whenever made, has been disposed of; and

(c) provide to the Commission any further information or document reasonably required by the Commission in connection with any objection.

(12) Until the applicants have complied with paragraph (11), the Commission –

(a) shall not make any decision on the application other than to refuse consent on grounds unconnected to an objection; and

(b) may, in respect of the application, take any other action short of making a decision, or take no further action.

(13) If a document or information required by the Commission under paragraph (11)(c) is not provided within a reasonable time, the Commission may give the applicants a warning notice stating that the application will be refused unless the document or information is provided within a period specified in the notice being not less than 14 days.

(14) Where any document, information or evidence is submitted under this Article –

(a) it shall be authenticated in the manner, if any, published by the Commission; or

(b) the Commission may require it to be authenticated in any manner appearing reasonable to the Commission, if the Commission has not published any manner of authentication in relation to that document, information or evidence.

(15) If a document, information or evidence submitted under this Article is not in English or French, it shall be accompanied by a translation into English or French, certified, in a manner approved by the Commission, to be a correct translation.

127FG Fees, expenses and security[335]

(1) Article 201 applies to the Commission's function of considering applications for consent under Article 127FF, as if references in Article 201 to the registrar were references to the Commission.

(2) On receiving an application under Article 127FF, the Commission may estimate the likely amount of its expenses in dealing with the application.

(3) If that amount exceeds any fee charged under Article 201, as applied by paragraph (1), for the consideration of the application, the Commission may require the applicants to give it security for that excess, to its satisfaction.

(4) If the Commission, in the course of considering the application, subsequently forms the view that its expenses will be of a higher amount it may require the applicants to give it security for the difference, to its satisfaction.

(5) If the Commission requires security under paragraph (3) or (4), the Commission need take no further action in respect of the application until the security has been given.

(6) If –

(a) a fee is charged under Article 201, as applied by paragraph (1), or the Commission requires security under paragraph (3) or (4); and

(b) that fee is not paid, or that security is not given, within a reasonable time from the making of the application or the requirement,

the Commission may give the applicants a warning notice stating that the application will be refused unless the fee is paid, or the security given, within a period specified in the notice being not less than 14 days.

(7) If the Commission has required security under paragraph (3) –

(a) on determining the application the Commission shall ascertain the actual amount of its expenses; and

(b) if the actual amount exceeds any fee paid under Article 201, as applied by paragraph (1), the Commission may, by notice in writing, require the applicants to pay the excess.

(8) An excess notified under paragraph (7)(b) shall be a debt due and payable jointly and severally by the applicants to the Commission.

(9) Without prejudice to any other mode of recovery, the Commission may recover that excess by realising any security given if the excess is not paid by the applicants on demand.

127FH Commission may require further information[336]

(1) Following receipt of an application under Article 127FF, the Commission may by notice require the applicants to supply to the Commission such other document or information as the Commission may reasonably require to determine whether to accept the application.

(2) The documents and information may in particular include any that are reasonably required to assess the solvency, and interests of any creditors, of any merging body that is not a company.

(3) Any such document or information shall be authenticated in any manner reasonably required by the Commission.

(4) If the Commission gives a notice under paragraph (1) –

(a) it need take no further action in respect of the application until the document or information has been supplied; and

(b) if the document or information is not supplied within a reasonable time after the notice, it may give the applicants a warning notice stating that the application will be refused unless the document or information is supplied within a period specified in the notice being not less than 14 days.

127FI Decisions and appeals[337]

(1) After considering an application under Article 127FF the Commission shall –

(a) give its consent without conditions;

(b) give its consent subject to conditions; or

(c) refuse its consent.

(2) In deciding an application the Commission shall –

(a) consider all the relevant circumstances; and

(b) have particular regard to the interests of creditors of the merging bodies, in addition to the matters to which it must have particular regard under Article 7 of the Financial Services Commission (Jersey) Law 1998[338].

(3) The Commission may refuse its consent, or impose conditions on its consent, on any grounds, including any one or more of the following grounds –

(a) that the merger would unfairly prejudice the interests of a creditor of a merging body;

(b) that the merger would be undesirable with regard to any other matter mentioned in paragraph (2);

(c) that the applicants have not complied with a warning notice under Article 127FF(13), 127FG(6) or 127FH(4)(b) within the period specified in that notice;

(d) that any other requirement of or under this Part has not been met in respect of the merger.

(4) Where the merged body is to be an overseas body, the Commission shall, unless it is satisfied that it would be preferable in the circumstances not to do so, impose on any consent a condition that the consent is subject to the merging bodies complying with Article 127FK(2) and the merged body complying with Article 127FK(3).

(5) Where the merged body is to be a new company, the Commission may, without prejudice to the generality of paragraph (3), refuse its consent, as if the application was for incorporation under Part 2, on any ground on which the incorporation or registration of that company could be prevented under this Law (whether by the registrar, the Commission or the court).

(6) On determining an application, the Commission shall inform the applicants in writing of –

(a) its decision;

(b) if consent is given subject to any condition, the terms of that condition; and

(c) if consent is refused or is given subject to any condition –

(i) the reasons for that refusal or condition, and

(ii) the right to appeal under paragraph (7).

(7) If the Commission refuses consent, or gives consent subject to any condition, an applicant may, within one month after being informed of the decision, appeal to the court on the ground that the decision was unreasonable having regard to all the circumstances of the case.

(8) On hearing an appeal under paragraph (7) the court –

(a) may confirm, reverse or vary the decision of the Commission; and

(b) may make such order as to the costs of the appeal as it thinks fit.

Chapter 5 – Registration

127FJ Pre-registration steps: where all merging bodies are companies[339]

(1) This Article applies if all the merging bodies in a merger are companies.

(2) The merging companies shall apply jointly, in the published form and manner (if any), to the registrar to complete the merger.

(3) The application shall not be made until after whichever is the latest of the following dates –

(a) if any application was made to the court under Article 127FB, the last date on which such an application is disposed of otherwise than by an order restraining the merger;

(b) if Article 127FD applies to the merger, the date of the Act of court permitting the merger;

(c) if Article 127FD does not apply to the merger –

(i) 28 days after the last date on which a notice was published under Article 127FC(5), if by then no creditor has given notice of objection under Article 127FE(2)(a),

(ii) 28 days after the last date on which the last notice of objection by a creditor was given under Article 127FE(2)(a), if by then no creditor has applied to the court under Article 127FE(2)(b), or

(iii) if any application was made to the court under Article 127FE(2)(b), the last date on which such an application is disposed of otherwise than by an order restraining the merger.

(4) The application shall be accompanied by –

(a) a copy of the merger agreement, unless the merger was approved under Article 127FA;

(b) a copy of –

(i) if the merged company is to be a new company, its memorandum and articles, or

(ii) if the merged company is to be a survivor company, any amendment to its memorandum or articles provided for under Article 127D(5)(a) or 127FA(3)(b)(iii);

(c) a copy, in respect of each merging company, of –

(i) the resolution passed under Article 127E(1), together with, if that information is not contained in the resolution, a list identifying the directors who voted in favour of that resolution, and

(ii) the certificates signed under Article 127E(5) and (6);

(d) a further certificate, signed by each director who signed a certificate under Article 127E(5), stating –

(i) that the director, and the merging company of which he or she is a director, have complied with the requirements of this Part in respect of the merger, and

(ii) if Article 127FD does not apply to the merger, that in the director's opinion the merger will not unfairly prejudice any interests of any creditor of that merging company;

(e) a copy of any Act of the court under –

(i) Article 143 on an application under Article 127FB,

(ii) Article 127FD, or

(iii) Article 127FE; and

(f) any other document or information required by the registrar to establish that the requirements of paragraph (3) have been met.

(5) The registrar shall register notices as to the merger in accordance with Article 127FM if he or she is satisfied –

(a) that the application complies with paragraphs (2) and (3), and that the documents provided under paragraph (4) comply with that paragraph and with the provisions mentioned in it; and

(b) if the merger agreement provides for the merged company to be a new company, that he or she would have registered the memorandum and articles of the company under Article 8 if it had been incorporated otherwise than by merger.

127FK Pre-registration steps: where merged body is not a company[340]

(1) This Article applies if –

(a) the merged body provided for in the merger agreement is not to be a company;

(b) the Commission has given its consent to the merger under Article 127FI; and

(c) if any conditions were attached to that consent (other than a condition under Article 127FI(4)), those conditions have been met to the satisfaction of the Commission.

(2) When this Article applies, the merging bodies shall take whatever steps are necessary to complete the merger in accordance with the merger agreement under the laws governing the merged body and those merging bodies that are not companies.

(3) As soon as is reasonably practical after the merging bodies have completed the merger the merged body shall –

(a) inform the Commission that it has been completed, including the date of completion;

(b) provide any document or information that the Commission may reasonably require to establish the fact and date of the completion; and

(c) authenticate any such document or information in any manner that the Commission may reasonably require.

(4) If satisfied that the merger has been completed, the Commission shall –

(a) provide the registrar with copies of –

(i) the merger agreement,

(ii) the certificates signed under Article 127E(5) and (6),

(iii) any Act of the court provided to the Commission under Article 127FF or 127FH, and

(iv) the documents provided to the Commission to prove completion; and

(b) instruct the registrar to register the merger.

(5) As soon as is practical after receipt of the documents and instruction under paragraph (4), the registrar shall register notices as to the merger in accordance with Article 127FM.

127FL Pre-registration steps: other cases[341]

(1) This Article applies if –

(a) one or more of the merging bodies in a merger is not a company;

(b) the merged body provided for in the merger agreement is to be a company;

(c) the Commission has given its consent to the merger under Article 127FI; and

(d) if any conditions were attached to that consent, those conditions have been met to the satisfaction of the Commission.

(2) The Commission shall –

(a) provide the registrar with copies of –

(i) the merger agreement,

(ii) the certificates signed under Article 127E(5) and (6),

(iii) the memorandum and articles of the merged company, if they were provided to the Commission under Article 127FF(6)(a)(ii), and

(iv) any Act of the court provided to the Commission under Article 127FF or 127FH; and

(b) instruct the registrar to register the merger.

(3) As soon as is practical after receipt of the documents and instruction under paragraph (2), the registrar shall register notices as to the merger in accordance with Article 127FM.

127FM Registration of notices as to merger[342]

(1) This Article applies where the registrar is to register notices as to a merger under Article 127FJ, 127FK or 127FL.

(2) The completion date of a merger is –

(a) if the merged body is not a company, the date notified under Article 127FK(3); or

(b) if the merged body is a company, the date the last entry on the register is made under this Article in relation to the merger.

(3) The registrar shall enter in the register, in respect of each merging company that is not a survivor body, a notice that –

(a) states that the company has ceased to be incorporated as a separate company because it has merged with a body or bodies specified in the notice, so that they have together continued as a merged body; and

(b) specifies the name of the merged body and –

(i) the enactment under which it is incorporated in Jersey, or

(ii) the jurisdiction outside Jersey in which it is incorporated.

(4) If the merged body is a survivor company, the registrar shall enter in the register, in respect of that company, a notice that –

(a) states that the company has merged with a body or bodies specified in the notice, so that they have together continued as the merged survivor company; and

(b) refers to any change in the company's memorandum and articles that takes effect on the merger.

(5) If the merged body is a new company, the registrar shall, if he or she would have registered the company under this Law if it had been incorporated otherwise than as the result of a merger –

(a) register the memorandum and articles of the new company under Article 8, and issue a certificate of its incorporation under Article 9, as if the registrar had received an application for the creation of the company under Part 2 with the memorandum and articles provided for in the merger agreement; and

(b) enter in the register, in respect of that new company, a notice that states that the company is the result of a completed merger between the former bodies specified in the notice, which have together continued as the new company.

(6) Each entry under this Article –

(a) shall in addition include a note specifying the completion date of the merger to which it relates; and

(b) may in addition include a note of any further information that the registrar considers useful in relation to the merger.

(7) When the registrar enters a notice on the register referring to an overseas body, the registrar shall also immediately send a copy of the notice to the appropriate official or public body in the jurisdiction in which that body is or was incorporated.

(8) The registrar shall send the copy referred to in paragraph (7) –

(a) electronically;

(b) by some other means of instantaneous transmission; or

(c) if no instantaneous transmission to the official or public body is practicable, by such other means as the registrar believes likely to be acceptable to that official or public body.

Chapter 6 – Final

127FN Effect of completion of merger[343]

(1) On the completion date of a merger –

(a) the merging bodies are merged and continue as one merged body as provided in the merger agreement or in the special resolutions passed under Article 127FA;

(b) any merging company that is not a survivor company ceases to be incorporated as a separate company; and

(c) any merging body falling within Article 127B(3) that is not a survivor body ceases to be incorporated as a separate body.

(2) When a merger is completed in which the merged body is a company or a body falling within Article 127B(3) –

(a) all property and rights to which each merging body was entitled immediately before the merger was completed become the property and rights of the merged body;

(b) the merged body becomes subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which each of the merging bodies was subject immediately before the merger was completed; and

(c) all actions and other legal proceedings which, immediately before the merger was completed, were pending by or against any of the merging bodies may be continued by or against the merged body.

(3) Entries made on the register under Article 127FM are conclusive evidence of the following matters to which they refer –

(a) that on the completion date specified in the entry the merging bodies merged and continued as the merged body; and

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

(i) the merger of the merging bodies under this Law, and

(ii) all matters precedent to and incidental to the merger.

(4) The operation of this Article shall not be regarded –

(a) as a breach of contract or confidence or otherwise as a civil wrong;

(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities; or

(c) as giving rise to any remedy by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument, or of any obligation or relationship.

127G Offences relating to merger[344]

(1) A person commits an offence if, on or in connection with an application under this Part, he or she knowingly or recklessly provides to the Commission or to the registrar –

(a) any information which is false, misleading or deceptive in a material particular; or

(b) any document containing any such information.

(2) A person commits an offence if he or she signs a certificate under Article 127E or 127FJ(4)(d) without having reasonable grounds for the opinion expressed in the certificate or for the statement made in the certificate.

127GA Power of States to amend Part 18B[345]

(1) The States may amend this Part by Regulations.

(2) Without prejudice to the generality of the foregoing such Regulations may extend the provisions of this Part, with or without such modifications as may be specified in the Regulations –

(a) to mergers of companies with bodies that are incorporated in Jersey but are not companies; and

(b) to mergers of companies with bodies incorporated outside Jersey.

PART 18C

CONTINUANCE[346]

127H Bodies corporate which are eligible for continuance[347]

(1) Subject to Article 127I, a body which is incorporated outside Jersey may apply under Article 127K to the Commission for the issue to it of a certificate that it continues as a company incorporated under this Law, if it is authorized to make such an application by the laws of the jurisdiction under which it is incorporated outside Jersey.

(2) Subject to Article 127I, a company which is incorporated in Jersey under this Law may apply under Article 127T to the Commission for authorization to seek continuance as a body incorporated under the laws of another jurisdiction, if the proposal to apply in that other jurisdiction for continuance there is approved by the company and its members in accordance with Article 127Q.

127I Restrictions on continuance[348]

(1) An application may not be made under Article 127K, by a body corporate to which paragraph (3) applies, for continuance as a company incorporated under this Law.

(2) An application may not be made under Article 127T, by a company to which paragraph (3) applies, for authorization to seek continuance in another jurisdiction.

(3) This paragraph applies to a body corporate or company if –

(a) it is being wound up, or is in liquidation or is subject to a declaration under the Désastre Law;

(b) it is insolvent;

(c) a receiver, manager or administrator (by whatever name any such person is called) has been appointed, whether by a court or in some other manner, in respect of any property of that body corporate or company;

(d) it has entered into a compromise or arrangement with a creditor (not being a compromise or arrangement approved by the Commission) and that compromise or arrangement is in force; or

(e) an application is pending before a court for the winding up or liquidation of that body corporate or company, or to have it declared insolvent, or for a declaration under the Désastre Law, or for the appointment of such a receiver, manager or administrator or for the approval of such a compromise or arrangement.

(4) For the purposes of paragraph (3), the jurisdiction in which –

(a) the body corporate is being wound up or is in liquidation;

(b) the receiver, manager or administrator has been appointed or the compromise or arrangement has been entered into; or

(c) the application before a court is pending,

is immaterial.

127J Security for Commission's expenses under this Part[349]

(1) On receiving –

(a) an application under Article 127K, by a body incorporated outside Jersey, for continuance as a company incorporated under this Law; or

(b) an application under Article 127T, by a company incorporated under this Law, for authorization to seek continuance in another jurisdiction,

the Commission shall estimate the likely amount of its expenses in dealing with the application.

(2) The Commission shall then require the applicant to give it security for that amount, to the satisfaction of the Commission, and shall not consider the application further until the security has been given.

(3) If the Commission, in the course of considering the application, subsequently forms the view that its expenses will be of a higher amount –

(a) it may require the applicant to give it security for that higher amount, to its satisfaction; and

(b) it may refuse to consider the application further until that security has been given.

(4) On determining the application, the Commission shall ascertain the actual amount of its expenses, and inform the applicant.

(5) The expenses shall be a debt due and payable by the applicant to the Commission.

(6) Without prejudice to any other mode of recovery, the Commission may recover the expenses by realising the security if they are not paid by the applicant on demand.

127K Application to Commission for continuance within Jersey[350]

(1) An application to the Commission under this Article by a body incorporated outside Jersey, for continuance as a company incorporated under this Law, shall be accompanied by –

(a) a copy (certified, in a manner approved by the Commission, to be a true copy) of the memorandum and articles, or of the law or other instrument constituting or defining the constitution of the body corporate;

(b) articles of continuance which comply with Article 127L;

(c) a statement of solvency which is in accordance with Article 127W;

(d) the name under which it is proposed to continue the body corporate as a company incorporated under this Law;

(e) in relation to every person who is a director of the body corporate at the date of the application under this Article or is to be a director of it upon its continuance as a company incorporated under this Law, the particulars specified in Article 84(1)(a) to (f);

(f) in relation to each person who is a secretary of the body corporate at the date of the application under this Article or is to be its secretary upon its continuance as a company incorporated under this Law, the particulars specified in Article 85 and his or her qualifications;

(g) such other information as the registrar would require on an application to register the body corporate as a company under this Law;

(h) such other documents and information as the Commission may require in respect of a particular application under this Article; and

(i) any published application fee.[351]

(2) The application under this Article shall also be accompanied by evidence, satisfactory to the Commission, of the following matters –

(a) that the body corporate is authorized, by the laws of the jurisdiction under which it is incorporated, to make the application to the Commission;

(b) where the constitution of the body corporate or the law of that jurisdiction requires that any authorization be given for the application to the Commission, that it has been given;

(c) that if a certificate of continuance is issued under this Law pursuant to the application under this Article, the body will thereupon cease to be incorporated under the other jurisdiction;

(d) that if a certificate of continuance is so issued, the interests of the members and the creditors of the body corporate will not be unfairly prejudiced; and

(e) that the body corporate is not prevented by Article 127I from making the application under this Article.

(3) If an instrument which is submitted in accordance with paragraph (1)(a) is not in the English or French language, the application under this Article shall also be accompanied by a translation of the instrument into English or French.

(4) Every translation to which paragraph (3) refers shall be certified, in a manner approved by the Commission, to be a correct translation.

127L Articles of continuance[352]

(1) Articles of continuance shall state those amendments to be made to the memorandum or articles of the body corporate, or to the instrument constituting or defining its constitution, which are necessary to conform to the laws of Jersey.

(2) If any other amendments which are to be made to the memorandum or articles, or to the instrument –

(a) have been approved by its members in the manner required by this Law for amendments to the memorandum or articles of a company; and

(b) would be permitted under the laws of Jersey if the body corporate were a company,

the articles of continuance shall also state those amendments.

127M Proposed name[353]

(1) After receiving an application under Article 127K, the Commission shall inform the registrar of the name in which the applicant proposes to continue as a company incorporated under this Law.

(2) The registrar shall then inform the Commission whether that name is in his or her opinion in any way misleading or otherwise undesirable.

(3) If the applicant proposes that it shall continue as a limited company, its name must in any event comply with Article 13(2).

127N Determination of application to Commission for continuance within Jersey[354]

(1) If the Commission, on an application under Article 127K for continuance as a company incorporated under this Law –

(a) is satisfied that the application complies with that Article and with Article 127H(1);

(b) is informed by the registrar that the proposed name of the applicant is in his or her opinion not in any way misleading or otherwise undesirable, and is also satisfied that the name complies with Article 13(2); and

(c) is satisfied that all other approvals and consents required by the law of Jersey for the issue of a certificate of continuance to the applicant have been given,

and, in addition to having paid the application fee (if any), the applicant has paid the expenses due to the Commission under Article 127J, the Commission may grant the application.

(2) If the application is granted, the Commission shall thereupon inform the registrar and deliver to him or her the documents which accompanied the application.

(3) On determining the application, the Commission shall inform the applicant of its decision.

(4) If so required by the applicant, the Commission shall furnish it within 14 days with a statement in writing of its reasons for its decision.

(5) An applicant may, within one month after being informed of a decision by the Commission to refuse its application, appeal to the court on the ground that the decision of the Commission was unreasonable having regard to all the circumstances of the case.[355]

(6) On hearing the appeal, the court –

(a) may confirm or reverse the decision of the Commission; and

(b) may make such order as to the costs of the appeal as it thinks fit.

127O Issue of certificate of continuance within Jersey[356]

(1) When the registrar –

(a) is informed under Article 127N by the Commission that it has granted an application for a certificate of continuance as a company incorporated under this Law; and

(b) receives from the Commission the documents which accompanied the application,

the registrar shall register the application and those documents.

(2) On registration, the registrar shall immediately issue to the applicant a certificate of continuance which is signed by him or her and sealed with his or her seal.

(3) When the registrar issues a certificate of continuance, the registrar shall also immediately send a copy of it (electronically or by some other means of instantaneous transmission) to the appropriate official or public body in the jurisdiction to which Article 127K(2)(a) refers.

127P Effect of issue of certificate of continuance within Jersey[357]

(1) Upon the issue of the certificate of continuance by the registrar –

(a) the body corporate becomes a company incorporated under this Law, to which this Law applies accordingly; and

(b) the memorandum and articles, or the instrument constituting or defining the constitution of the body corporate, as amended in accordance with its articles of continuance, become the memorandum and articles of the continued company.

(2) When a body corporate is continued as a company incorporated under this Law –

(a) all property and rights to which the body corporate was entitled immediately before the certificate of continuance is issued are the property and rights of the company;

(b) the company is subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which the body corporate was subject immediately before the certificate of continuance is issued; and

(c) all actions and other legal proceedings which, immediately before the issue of the certificate of continuance, were pending by or against the body corporate may be continued by or against the company.

(3) A certificate of continuance is conclusive evidence of the following matters –

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

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

(i) the continuance of the company under this Law,

(ii) all matters precedent to its continuance as such a company, and

(iii) all matters incidental to its continuance as such a company; and

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

127Q Approval by company and members of proposal for continuance overseas[358]

(1) A proposal by a company to apply in another jurisdiction for continuance there shall be approved by a special resolution of the company and, where there is more than one class of members, by a special resolution of the members of each class passed at a separate meeting of the members of that class.

(2) Notice of each meeting –

(a) shall be accompanied by a copy or summary of the proposed application in the other jurisdiction for continuance there; and

(b) shall state that any member of the company who objects to the application may, within the time limit specified in Article 127S(2), apply to the court for an order under Article 143 on the ground that the proposed continuance would unfairly prejudice his or her interests.

(3) On a resolution to approve an proposed application in another jurisdiction for continuance –

(a) each member of the company shall be entitled to vote;

(b) on a show of hands, every person present in person at the meeting shall have one vote; and

(c) the right to demand a poll and the right to vote on a poll shall be determined in accordance with Article 97 and Article 92(2)(f) respectively,

subject to any provision to the contrary in the memorandum or articles of the company.

127R Notice to creditors of application to Commission for authorization to seek continuance overseas[359]

(1) At least 31 days before making an application under Article 127T to the Commission for authorization to seek continuance in another jurisdiction, a company shall give notice to its creditors in accordance with paragraph (2).

(2) The notice –

(a) shall state that the company intends to make the application to the Commission, and shall specify the jurisdiction in which it proposes to seek continuance;

(b) shall be sent in writing to each creditor of the company;

(c) shall be published once in a newspaper circulating in Jersey or in such other manner as the court may on application direct; and

(d) shall state that any creditor of the company who objects to the application may within 30 days of the date of the advertisement give notice of his or her objection to the company.

(3) A creditor who gives notice in accordance with paragraph (2)(d) and whose claim against the company has not been discharged may, within 30 days after the date of the notice, apply to the court for an order restraining the application by the company under Article 127T to the Commission.

(4) On the creditor's application the court, if satisfied that the interests of the creditor would be unfairly prejudiced by the proposed continuance, may make an order (subject to such terms, if any, as it may think fit) restraining the application by the company under Article 127T to the Commission.

127S Objections by members to continuance overseas[360]

(1) If a company resolves to make an application under Article 127T to the Commission for authorization to seek continuance in another jurisdiction, any member of the company who objects to the application (other than a member who consented to or voted in favour of it) may apply to the court

for an order under Article 143 on the ground that the proposed continuance would unfairly prejudice his or her interests.

(2) No such application may be made by a member after the expiration of the period of 30 days following the last of the resolutions of the company which are required under Article 127Q.

127T Application to Commission for authorization to seek continuance overseas[361]

(1) An application to the Commission under this Article for authorization to seek continuance in another jurisdiction shall be accompanied by –

(a) a copy (certified, in a manner approved by the Commission, to be a true copy) of each resolution which is required under Article 127Q;

(b) a statement of solvency which is made in accordance with Article 127W;

(c) such other documents and information as the Commission may require in respect of a particular application for such authorization; and

(d) any published application fee.[362]

(2) The application under this Article shall also be accompanied by evidence, satisfactory to the Commission, of the following matters –

(a) that the laws of the jurisdiction in which the company proposes to continue allow its continuance there as a body corporate incorporated under those laws;

(b) that those laws provide that upon the continuance of the company as a body corporate in that jurisdiction –

(i) all property and rights of the company will become the property and rights of the body corporate,

(ii) the body corporate will become subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which the company is subject, and

(iii) all actions and other legal proceedings which are pending by or against the company may be continued by or against the body corporate;

(c) that notice has been given to the creditors of the company in accordance with Article 127R of the application to the Commission under this Article, and either –

(i) that no creditor has applied to the court for an order restraining the application made to the Commission under this Article, or

(ii) that the application of every creditor who has so applied to the court has been determined by the court in a way which does not prevent the Commission from granting the application made to it under this Article;

(d) either –

(i) that no member of the company has applied to the court for an order under Article 143 on the ground specified in Article 127S(1), or

(ii) that the application of every member who has so applied to the court has been determined by the court in a way which does not prevent the Commission from granting the application made to it under this Article;

(e) that the company has complied with such other conditions as may be prescribed; and

(f) that the company is not prevented by Article 127I from making the application.

127U Determination of application to Commission for authorization to seek continuance overseas[363]

(1) If, on an application under Article 127T to the Commission –

(a) it is satisfied that the application complies with that Article and with Article 127H(2); and

(b) in addition to having paid the application fee (if any), the applicant has paid the expenses due to the Commission under Article 127J,

the Commission may grant the application on the condition specified in paragraph (2) and on such other conditions (if any) as it may specify in its decision.

(2) It shall be a condition of the grant of any application made under Article 127T that the applicant will ensure –

(a) that the registrar is informed of the date on which continuance will be or is granted in the other jurisdiction; and

(b) that a copy of the instrument of continuance in the other jurisdiction, certified to be a true copy, is delivered to the registrar,

in sufficient time to enable the registrar to comply with Article 127V.

(3) On determining the application, the Commission shall inform the applicant of its decision.

(4) If so required by the applicant, the Commission shall furnish it within 14 days with a statement in writing of its reasons for its decision.

(5) An applicant may, within one month after being informed of a decision by the Commission to refuse its application, or to grant it subject to a condition (not being a condition specified in paragraph (2)), appeal to the court on the ground that the decision of the Commission was unreasonable having regard to all the circumstances of the case.

(6) On hearing the appeal, the court –

(a) may confirm, reverse or vary the decision of the Commission; and

(b) may make such order as to the costs of the appeal as it thinks fit.

127V Effect of continuance overseas[364]

When a company is, in accordance with the terms of authorization of the Commission under Article 127U, continued as a body corporate under the laws of the other jurisdiction to which the authorization relates –

(a) it thereupon ceases to be a company incorporated under this Law; and

(b) the registrar shall on that date record that by virtue of paragraph (a) of this Article, it has ceased to be so incorporated.

127W Statements of solvency in respect of continuance[365]

(1) A statement of solvency for the purposes of an application under Article 127K for continuance as a company incorporated under this Law shall be signed by each person who is a director of the applicant and shall state that, having made full inquiry into the affairs of the applicant, that director reasonably believes –

(a) that the applicant is and, if the application is granted, will upon the issue to it of a certificate of continuance be able to discharge its liabilities as they fall due; and

(b) that, having regard to –

(i) the prospects of the company,

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

(iii) the amount and character of the financial resources that will in the directors' 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 on which the statement is signed.[366]

(2) A statement of solvency for the purposes of an application under Article 127T for authorization to seek continuance in another jurisdiction shall be signed by each person who is a director of the applicant and shall state that, having made full inquiry into the affairs of the applicant, that director reasonably believes –

(a) that the applicant is and, if the application is granted, will upon its incorporation under the laws of the other jurisdiction be able to discharge its liabilities as they fall due; and

(b) that, having regard to –

(i) the prospects of the applicant,

(ii) the intentions of the directors with respect to the management of the applicant's business, and

(iii) the amount and character of the financial resources that will in the directors' view be available to the applicant if the application is granted,

the applicant, if incorporated under the laws of the other jurisdiction, will be able to discharge its liabilities as they fall due.[367]

(3) A statement of solvency for the purposes of Article 127K or Article 127T shall also be signed by each person who is to be a director of the applicant upon its continuance as proposed in the application and shall state that the person so signing has no reason to believe that anything in the statement is untrue.

(4) A director, or a person who is to be a director, who makes a statement under paragraph (1) or (2) without having reasonable grounds for the opinion expressed in the statement is guilty of an offence.[368]

127X Provisions relating to continuance[369]

(1) The Minister may by Order prescribe for the purposes of this Part –

(a) conditions to be complied with in respect of applications under Article 127T to the Commission for authorization to seek continuance under the laws of other jurisdictions; and

(b) the manner in which records are to be kept, by the registrar, of bodies that have ceased under Article 127V to be companies incorporated under this Law.

(2) Without prejudice to the generality of paragraph (1), conditions to which sub-paragraph (a) of that paragraph refers –

(a) may relate to matters to be complied with on or before the making of such applications to the Commission, or after the grant of such applications; and

(b) may require applicants to appoint and maintain authorized representatives in Jersey for such periods, whether before or after their applications to the Commission are determined, as may be prescribed.

(3) The Commission may publish for the purposes of this Part details of –

(a) the forms of statements of solvency;

(b) any other document or information that is to be provided on applications relating to continuance within or outside Jersey;

(c) how applicants must verify documents or information so provided; and

(d) the application fees that are payable to the Commission.

127Y Offences relating to continuance[370]

Any person who on or in connection with an application under this Part knowingly or recklessly provides to the Commission –

(a) any information which is false, misleading or deceptive in a material particular; or

(b) any document containing any such information,

is guilty of an offence.

PART 18D[371]

CELL COMPANIES

Chapter 1 – General provisions

127YA Application by cell company for creation of cells[372]

(1) A cell company may, by special resolution, resolve to apply to the registrar to create one or more cells of the cell company.

(2) The special resolution –

(a) shall assign to the cell that it proposes shall be created a name that complies with this Law;

(b) shall adopt a memorandum of association in relation to the proposed cell; and

(c) shall adopt articles in relation to the proposed cell.

(3) If a cell company makes a special resolution under paragraph (1), it shall apply to the registrar to create the cell to which the resolution relates, by delivering to the registrar –

(a) in accordance with Article 100, a copy of the resolution; and

(b) the memorandum of association and the articles adopted by the resolution.

127YB Memorandum and articles of cells[373]

(1) The memorandum or articles of a cell may, in addition to providing for matters that a cell company shall or may, under Part 2, as applied to the cell by Article 127YC, provide in the memorandum or articles in relation to a cell, provide that the cell shall be wound up and dissolved on –

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

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

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

(2) A cell company may also provide in the memorandum –

(a) that there may be issued par value shares or no par value shares in respect of the cell mentioned in the memorandum; or

(b) that the cell mentioned in the memorandum may have a guarantor member or guarantor members.

(3) There shall be taken to be included in the articles of a cell –

(a) a provision that the cell may not own shares in its cell company; and

(b) unless the contrary intention appears in the articles, a provision that the cell may own shares in any other cell of its cell company.

(4) The articles of a cell may be amended –

(a) in the manner set out in those articles; or

(b) if there is no such manner set out in the articles, by special resolution of both the cell and of the company of which it is a cell.

(5) Article 11(1) shall not apply in relation to a cell of a cell company and a reference in Article 11(2), (3) or (4) to an alteration in the articles of a company shall be taken to include an alteration made in accordance with paragraph (4) of this Article.

127YC Creation of cells[374]

(1) Subject to this Article, Part 2 shall apply in relation to a proposed cell (and, if it is created, a cell of a cell company) as if a reference in that Part to a company were a reference to a cell or proposed cell, as the case may be.

(2) A memorandum which forms part of the application in accordance with Article 127YA(3) and which specifies that –

(a) the cell or proposed cell to which it refers is to be, or to be taken to be, a public company, shall be taken to be a memorandum delivered to the registrar under Article 3(1) constituting an application for the formation of a public company, although it has not been signed in accordance with that paragraph; or

(b) the cell or proposed cell to which it refers is to be, or to be taken to be, a private company, shall be taken to be a memorandum delivered to the registrar under Article 3(2) constituting an application for the formation of a private company, although it has not been signed in accordance with that paragraph.

(3) Article 3(3) shall apply in relation to a cell or proposed cell of a cell company as if all the words after "more than 30 persons" were deleted.

(4) A reference in Article 3(10) to Article 127YA(4) shall be taken to be a reference to Article 127YB(2).

(5) Article 4(3) shall not apply in relation to a cell or a proposed cell.

(6) Nothing in this Law shall be taken to require there to be a subscriber in relation to a cell or a proposed cell.

(7) The articles forming part of the application in accordance with Article 127YA(3) shall be taken to be articles specifying regulations for the cell delivered to the registrar under Article 5(1).

(8) Articles 5(3) and (4), 6 and 7(4), shall not apply in relation to a cell or a proposed cell.

(9) The requirement in Article 7(1) that the statement referred to in that paragraph shall be signed by the subscribers shall be taken to be satisfied in relation to a cell in relation to which there are no subscribers, if the

statement is signed by the persons who are taken to have applied under Article 3 for the formation of the cell.

(10) If the registrar registers under Article 8 a memorandum and articles in relation to a cell of a protected cell company, he or she shall, instead of issuing a certificate of incorporation in relation to the cell, issue under Article 9 a certificate of recognition in relation to the cell as if a reference in that Article to incorporation or a certificate of incorporation were a reference to the creation of a cell, or a certificate of recognition, respectively.

(11) Article 9(3) shall not apply in relation to a cell of a protected cell company.

(12) Article 9(3) shall apply in relation to a cell of an incorporated cell company as if for the words "the subscribers of the memorandum, together with such other persons who may from time to time become members of the company, shall be" there were substituted the words "there shall be".

127YD Status of cells[375]

(1) A cell of an incorporated cell company –

(a) is created on the day specified in the certificate of incorporation in relation to the cell to be the date of incorporation of the cell; and

(b) is, in accordance with this Law, a company from that day.

(2) A cell of a protected cell company is created on the day specified in the certificate of recognition in relation to the cell to be the date on which the cell was created.

(3) A cell of a protected cell company shall not be a company but it shall, except as otherwise provided by this Part, be treated as a company registered under this Law for the purpose of the application to it of this Law.

(4) In accordance with paragraph (3), except as otherwise provided by this Part, this Law shall apply to a cell of a protected cell company as if a reference in this Law –

(a) to a company were a reference to the cell;

(b) to the directors of a company were a reference to the directors of the cell;

(c) to the memorandum or articles of a company were a reference to the memorandum or articles of the cell;

(d) to incorporation were a reference to the creation of the cell;

(e) to a certificate of incorporation were a reference to a certificate of recognition;

(f) to members of a company were a reference to the members of the cell;

(g) to shares in a company were a reference to shares in the cell;

(h) to assets and liabilities of a company were a reference to the assets and liabilities of the cell; and

(i) to the share capital of a company were a reference to the share capital of the cell.

(5) Despite Article 2 –

(a) a cell of a protected cell company is not, by virtue only of being such a cell of the company, a subsidiary or wholly owned subsidiary of the company; and

(b) a cell of an incorporated cell company is a company that is not a subsidiary or wholly owned subsidiary of the cell company.

127YDA Requirements in relation to secretaries, directors, registered offices and registers[376]

(1) A cell of a cell company shall have the same registered office and secretary as the cell company.

(2) The duties imposed on a company by Article 83 in relation to directors shall, in the case of a cell of a protected cell company, be performed by its cell company.

(3) A cell of an incorporated cell company shall notify the incorporated cell company within 14 days of a director of the cell being appointed or of a director of the cell ceasing to be a director.

(4) If a cell company fails to comply with paragraph (2), or a cell fails to comply with paragraph (3), it, and every officer of it who is in default, is guilty of an offence.

(5) A director of a cell shall not be taken, by virtue only of being such a director, to have any duties or liabilities in respect of –

(a) the cell company in relation to the cell; or

(b) any other cell of the cell company.

(6) A director of a cell shall not be entitled, by virtue only of being such a director, to obtain from the cell company in relation to the cell, or any other cell of the cell company, any information in respect of the cell company or any other cell of the cell company.

127YE Annual return in respect of cells[377]

(1) Article 71(1) (which requires a company to deliver an annual return to the registrar) shall not apply to a cell of a cell company.

(2) However, the cell company must –

(a) include in its annual return the information required by Article 71 in respect of each cell of the company; and

(b) in respect of each of its cells – deliver to the registrar a copy of so much its annual return as relates to the cell.

(3) If a cell company fails to comply with paragraph (2) it is guilty of an offence.

(4) A cell of a cell company shall provide all relevant information to the cell company in sufficient time to enable the cell company to comply with the requirements of paragraph (2) in relation to the cell company.

(5) If a cell fails to comply with paragraph (4), the cell, and, where the cell is a public company, every officer of the cell who is in default, is guilty of an offence.

127YF [378]

127YG Accounts of cell companies[379]

(1) Nothing in Article 105 shall be taken to require a cell company to prepare the accounts in relation to a cell of the company that are required to be prepared in relation to the cell.[380]

(2) Subject to any provision to the contrary in the articles of a cell of a cell company or of the company, a member of the cell company who is not a member of the cell shall only be entitled to be provided by the cell with so much of the accounts of the cell as is necessary in order for the cell company to comply with the requirements of Article 127YE(2) in relation to the cell company.

(3) Nothing in this Article shall require the preparation, in relation to a cell of a cell company, of accounts in relation to the affairs of the cell that occurred before this Article came into operation.

127YH Incorporation of a cell independent of a cell company

(1) A cell of a cell company may apply to the registrar to be incorporated as a company independent of that company.

(2) If the articles of the cell are silent or do not provide otherwise, the application must be approved by a special resolution of the members of the cell or, if the cell has more than one class of members, a special resolution of each class of members.

(3) The application must include the information that would be required under Part 2 were the cell being incorporated under this Law otherwise than by virtue of this Article.

(4) In respect of an application under this Article the registrar has all the powers given under Part 2.

(5) Where a cell has made an application under this Article, a member of the cell who objects to the cell being incorporated as a company independent of its cell company may apply to the court for an order under Article 143 on the grounds that the incorporation or the terms of the incorporation unfairly prejudice his or her interests.

(6) An application may not be made under paragraph (5) after the expiration of the period of 30 days following the application being made under paragraph (1).

(7) When a cell is registered as a separate company by virtue of this Article –

(a) where the cell was a cell of an incorporated cell company, all property and rights to which the cell was entitled immediately before its registration remain the property and rights of the separate company;

(b) where the cell was a cell of a protected cell company, all property and rights of that company in respect of the cell immediately before its registration become the property and rights of the separate company;

(c) where the cell was a cell of an incorporated cell company, the separate company remains subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which the cell was subject immediately before its registration;

(d) where the cell was a cell of a protected cell company, all contracts, debts and other obligations of that company in respect of the cell, to which the protected cell company was subject immediately before the registration of the separate company, become the contracts, debts and other obligations of the separate company;

(e) where the cell was a cell of an incorporated cell company, all actions and other legal proceedings which, immediately before the registration of the separate company, were pending by or against the cell may be continued by or against the separate company; and

(f) where the cell was a cell of a protected cell company, all actions and other legal proceedings which, immediately before the registration of the separate company, were pending by or against the protected cell company in respect of the cell may be continued by or against the separate company.

(8) The operation of paragraph (7)(b) and (d) shall not be regarded –

(a) as a breach of contract or confidence or otherwise as a civil wrong;

(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities; or

(c) as giving rise to any remedy by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument, or of any obligation or relationship.

127YI Transfer of cell[381]

(1) A cell of a cell company may become a cell of another cell company by being transferred from the former to the latter.

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

(3) A transfer of a cell is provisionally approved if –

(a) the directors of the cell company from which the cell is to be transferred have approved the transfer agreement;

(b) the agreement is approved by a special resolution of the cell company to which the cell is being transferred; and

(c) any of the following occur –

(i) the transfer agreement is sanctioned by the court as an arrangement in accordance with Article 125,

(ii) the transfer agreement is consented to by all the members of the cell being transferred and all the creditors (if any) of that cell,

(iii) where the agreement of all the creditors of the cell cannot be obtained, the transfer is authorized by a special resolution of the cell and sanctioned by the court on it being satisfied that no creditor of the cell will be materially prejudiced by the transfer.

(4) A director of a cell who has approved a transfer agreement under which the cell shall be transferred to another cell company shall, as soon as practicable after the transfer has been provisionally approved in accordance with paragraph (3) –

(a) sign a declaration stating that the director believes on reasonable grounds that –

(i) the cell is able to discharge its liabilities as they fall due, and

(ii) the transfer has been provisionally approved in accordance with paragraph (3); and

(b) ensure that a copy of the declaration is delivered to the cell company to which the cell is to be transferred.

(5) A director who makes a declaration under paragraph (4) without having reasonable grounds to do so is guilty of an offence.

(6) The cell company to which the cell is to be transferred shall, within 21 days of receiving the declaration required to be delivered to the cell company under paragraph (4)(b), deliver to the registrar –

(a) a copy of the special resolution of the cell company provisionally approving the transfer agreement;

(b) a copy of the transfer agreement;

(c) a copy of the memorandum and the articles that it is intended the cell being transferred shall have when it is transferred; and

(d) a copy of the declaration delivered to the cell company under paragraph (4)(b).

(7) If a cell company fails to deliver to the registrar the documents mentioned in paragraph (6) within the period specified in that paragraph, the company, and every officer of it who is in default, is guilty of an offence.

(8) If a cell company delivers to the registrar, within the period specified in paragraph (6), the special resolution of that company provisionally approving the transfer agreement, the company shall be taken to have complied with the requirements of Article 100(1) in relation to that resolution.

(9) The registrar may, after receiving the documents referred to in paragraph (6) in relation to the transfer of a cell –

(a) if the requirements of this Article have been complied with, approve the transfer of the cell; or

(b) if the requirements of this Article have not been complied with, refuse to approve the transfer of the cell.

(10) The registrar may not approve the transfer of a cell under paragraph (9) if the transfer would be inconsistent with the memorandum or articles of the cell, the cell company transferring the cell or the cell company to which it is to be transferred.

(11) If the registrar approves the transfer of the cell –

(a) the cell is transferred to the cell company specified in the transfer agreement in relation to the cell to be the cell company to which it is to be transferred;

(b) the cell ceases to be a cell of the cell company that transferred it;

(c) the cell becomes a cell of the company to which it has been transferred;

(d) the registrar shall register the transfer of the cell, and the memorandum and articles, delivered to the registrar under paragraph (6);

(e) the registrar shall, in the case of –

(i) the transfer of a cell to an incorporated cell company, issue a certificate of incorporation of the cell under Article 9 as if he or she had received an application for the creation of the cell under Article 127YA, or

(ii) the transfer of a cell to a protected cell company, issue a certificate of recognition of the cell under Article 9 as if he or she had received an application for the creation of the cell under Article 127YA and Article 127YC(10) applied in relation to the cell; and

(f) the registrar shall record that the cell has ceased to be a cell of the company that transferred the cell.

(12) If a cell that was a cell of an incorporated cell company is transferred under paragraph (11)(a) –

(a) all property and rights to which the cell was entitled immediately before the transfer shall –

(i) if the transfer is to an incorporated cell company, remain the property and rights of the cell, or

(ii) if the transfer is to a protected cell company, become the property and rights of that company in respect of the cell;

(b) the liabilities, and all contracts, debts and other obligations to which the cell was subject immediately before the transfer shall –

(i) if the transfer is to an incorporated cell company, remain the liabilities, contracts, debts and other obligations of the cell, or

(ii) if the transfer is to a protected cell company, become the liabilities, contracts, debts and other obligations of that company in respect of the cell; and

(c) all actions and other legal proceedings which, immediately before the transfer were pending by or against the cell may –

(i) if the transfer is to an incorporated cell company, be continued by or against the cell, or

(ii) if the transfer is to a protected cell company, be continued by or against that company in respect of the cell.

(13) If a cell that was a cell of a protected cell company is transferred under paragraph (11)(a) –

(a) all property and rights of that company in respect of the cell immediately before the transfer shall –

(i) if the transfer is to an incorporated cell company, become the property and rights of the cell, or

(ii) if the transfer is to a protected cell company, become the property and rights of that company in respect of that cell;

(b) all liabilities, contracts, debts and other obligations of that company in respect of the cell, to which the protected cell company was subject immediately before the transfer shall –

(i) if the transfer is to an incorporated cell company, become the liabilities, contracts, debts and other obligations of the cell, or

(ii) if the transfer is to a protected cell company, become the liabilities, contracts, debts and other obligations of that company in respect of the cell; and

(c) all actions and other legal proceedings that, immediately before the transfer, were pending by or against the protected cell company in respect of the cell may –

(i) if the transfer is to an incorporated cell company, be continued by or against the cell, or

(ii) if the transfer is to a protected cell company, be continued by or against that company is respect of the cell.

(14) The operation of paragraphs (11), (12) and (13) shall not be regarded –

(a) as a breach of contract or confidence or otherwise as a civil wrong;

(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities; or

(c) as giving rise to any remedy by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument, or of any obligation or relationship.

127YIA Company may become cell of cell company[382]

(1) A company ("the transferring company") that is not a cell company may become a cell of a cell company by being transferred to the cell company.

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

(3) A transfer of a transferring company is provisionally approved if –

(a) the directors of the transferring company have approved the transfer agreement;

(b) the transfer agreement is approved by a special resolution of the cell company to which the transferring company is to be transferred; and

(c) any of the following occur –

(i) the transfer agreement is sanctioned by the court as an arrangement in accordance with Article 125,

(ii) the transfer agreement is consented to by all the members of the transferring company and all the creditors (if any) of that company,

(iii) where the agreement of all the creditors of the transferring company cannot be obtained, the transfer is authorized by a special resolution of the transferring company and sanctioned by the court on it being satisfied that no creditor of the transferring company will be materially prejudiced by the transfer.

(4) Each director of a transferring company who has approved a transfer agreement under which the company shall be transferred to a cell company shall, as soon as practicable after the transfer has been provisionally approved in accordance with paragraph (3) –

(a) sign a declaration stating that the director believes on reasonable grounds that –

(i) the transferring company is able to discharge its liabilities as they fall due,

(ii) there are no creditors of the transferring company whose interests will be unfairly prejudiced by the company becoming a cell of the cell company, and

(iii) the transfer has been provisionally approved in accordance with paragraph (3); and

(b) ensure that a copy of the declaration is, as soon as practicable, delivered to the cell company to which the transferring company is to be transferred.

(5) A director who makes a declaration under paragraph (4) without having reasonable grounds to do so is guilty of an offence.

(6) The cell company to which the transferring company is to be transferred shall, within 21 days of receiving the declaration required to be delivered to the cell company under paragraph (4)(b), deliver to the registrar –

(a) a copy of the special resolution of the cell company provisionally approving the transfer agreement;

(b) a copy of the transfer agreement;

(c) a copy of the memorandum and the articles that it is intended the transferring company shall have when it is transferred; and

(d) a declaration made in accordance with paragraph (4), signed by each director of the transferring company.

(7) If a cell company fails to deliver the documents mentioned in paragraph (6) within the period specified in that paragraph, the company, and every officer of it who is in default, is guilty of an offence.

(8) If a cell company delivers to the registrar, within the period specified in paragraph (6), the special resolution of that company provisionally approving the transfer agreement, the company shall be taken to have complied with the requirements of Article 100(1) in relation to that resolution.

(9) The registrar may, after receiving the documents referred to in paragraph (6) in relation to the transfer of a transferring company –

(a) if the requirements of this Article have been complied with, approve the transfer of the transferring company; or

(b) if the requirements of this Article have not been complied with, refuse to approve the transfer of the transferring company.

(10) The registrar may not approve the transfer of a transferring company under paragraph (9) if the transfer would be inconsistent with the memorandum, or articles, of the transferring company or of the cell company to which the transferring company is to be transferred.

(11) If the registrar approves the transfer of the transferring company –

(a) the transferring company is transferred to the cell company specified in the transfer agreement in relation to the transferring company to be the cell company to which it is to be transferred;

(b) the transferring company ceases to be a company that is not a cell;

(c) the transferring company becomes a cell of the cell company;

(d) the registrar shall register the transfer of the transferring company, and the memorandum and articles, delivered to the registrar under paragraph (6);

(e) the registrar shall, in the case of –

(i) the transfer of a transferring company to an incorporated cell company, issue a certificate of incorporation of the cell under Article 9 as if he or she had received an application for the creation of the cell under Article 127YA, or

(ii) the transfer of a transferring company to a protected cell company, issue a certificate of recognition of the cell under Article 9 as if he or she had received an application for the creation of the cell under Article 127YA and Article 127YC(10) applied in relation to the cell; and

(f) the registrar shall record that the transferring company has ceased to be a company that is not a cell.

(12) If a transferring company is transferred under paragraph (11)(a) –

(a) all property and rights to which the company was entitled immediately before the transfer shall –

(i) if the company became a cell of an incorporated cell company, become the property and rights of the cell, or

(ii) if the company became a cell of a protected cell company, become the property and rights of the protected cell company in respect of the cell;

(b) the liabilities, and all contracts, debts and other obligations to which the transferring company was subject immediately before the transfer shall –

(i) if the company became a cell of an incorporated cell company, become the liabilities, contracts, debts and other obligations of the cell, or

(ii) if the company became a cell of a protected cell company, become the liabilities, contracts, debts and other obligations of the protected cell company in respect of the cell;

(c) all actions and other legal proceedings which, immediately before the transfer were pending by or against the cell as a company may –

(i) if the company became a cell of an incorporated cell, be continued by or against the cell, or

(ii) if the company became a cell of a protected cell company, be continued by or against the protected cell company in respect of the cell.

(13) The operation of paragraphs (11) and (12) shall not be regarded –

(a) as a breach of contract or confidence or otherwise as a civil wrong;

(b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities; or

(c) as giving rise to any remedy by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument, or of any obligation or relationship.

127YJ Application of Part 21 to cell companies

(1) Where a cell company with one or more cells is being wound up under Part 21 the company shall not be taken to have no assets and no liabilities while the company continues to have any such cell.

(2) Accordingly, in the course of the winding up of the company, each cell of the company must –

(a) be transferred to another cell company;

(b) be wound up;

(c) be continued as a body corporate or cell under the law of another jurisdiction;

(d) be incorporated independently of the cell company; or

(e) be merged with another company.

127YL Names of incorporated cell companies

(1) The name of an incorporated cell company must end with the words "Incorporated Cell Company" or with the abbreviation "ICC".

(2) A company that is registered with a name that ends with the words "Incorporated Cell Company" or the abbreviation "ICC" may, in setting out or using its name for any purpose under this Law, do so in full or in the abbreviated form, as it determines.

(3) An incorporated cell company must assign a distinctive name to each of its cells that –

(a) distinguishes the cell from any other cell of the company; and

(b) ends with the words "Incorporated Cell" or with the abbreviation "IC".[383]

(4) Article 13(2) (which specifies how the name of a limited company must end) shall not apply to a cell of an incorporated cell company where the cell is a limited company.

127YM Restriction on alteration of memorandum or article

(1) The power conferred by Article 11 on a company to alter its memorandum or articles shall not be exercisable by a company to provide for it to be a cell company unless –

(a) the alteration is sanctioned by the court as an arrangement in accordance with Article 125;

(b) the alteration is consented to by all the members of the company and all the creditors of the company; or

(c) if the consent of all the creditors of the company cannot be obtained, the alteration is authorized by a special resolution of the company and sanctioned by the court on it being satisfied that no creditor will be materially prejudiced by the alteration.[384]

(2) The power conferred by Article 11 on a cell company to alter its memorandum or articles shall not be exercisable by a cell company to provide for it to cease to be a cell company, or for it to convert from an incorporated cell company to a protected cell company or from a protected cell company to an incorporated cell company, unless –

(a) the alteration is authorized by a special resolution of the company and of each cell of the company, and sanctioned by the court in accordance with Article 125;

(b) the alteration is consented to by all the members of the company, all the members of each cell of the company, and all the creditors of the company and of each cell of the company; or

(c) where the consent of all the creditors of the company and of each cell of the company cannot be obtained, the alteration is authorized by a special resolution of the company and of each cell of the

company, and sanctioned by the court on it being satisfied that no such creditor will be materially prejudiced by the alteration.

(3) Where a company seeks to change its status in accordance with paragraph (1) or paragraph (2) the registrar shall issue under Article 9 a certificate of incorporation that is appropriate to the altered status of the company if there is delivered to the registrar –

(a) a copy of the special resolution that alters its memorandum and its name; and

(b) evidence satisfactory to the registrar that the requirements of paragraphs (1) or paragraph (2), as appropriate, have been met.

(4) Where a company changes its status in accordance with paragraph (1) or paragraph (2) the change of status shall take effect when the registrar issues a certificate of incorporation in accordance with paragraph (3).

(5) Where a company changes its status in accordance with this paragraph the special resolution required under Article 11 for it to do so must include any change of name of the company necessary for it to comply with this Law.

(6) A body that is incorporated outside Jersey may, with the approval of the Commission, change its status in the manner set out in this Article as part of the process of obtaining the issue of a certificate of continuance in accordance with Part 18C.

(7) A change of status of a company to which paragraph (6) applies shall have effect on the issue of the certificate of continuance in accordance with Article 127O.

(8) When a certificate of incorporation is, in accordance with paragraph (3), issued under Article 9 in relation to a protected cell company that has become an incorporated cell company –

(a) the registrar shall, at the same time, issue in relation to each cell of the cell company a certificate of incorporation under Article 9 as if he or she had received an application for the creation of the cell under Article 127YA after the company had became an incorporated cell company;

(b) the certificate of recognition issued to each cell of the cell company under Article 9 as modified by Article 127YC(10) shall cease to have effect; and

(c) Article 127YI (11), (13) and (14) shall apply in relation to each cell of the protected cell company as if the cell had been transferred to the protected cell company under Article 127YI.[385]

(9) When a certificate of incorporation is, in accordance with paragraph (3), issued under Article 9 in relation to an incorporated cell company that has become a protected cell company –

(a) the registrar shall, at the same time, issue under Article 9 in relation to each cell of the cell company a certificate of recognition as if he or she had received an application for the creation of the cell under Article 127YA after the company had became a protected cell company;

(b) the certificate of incorporation issued to each cell of the cell company under Article 9 as modified by Article 127YC(10) shall cease to have effect; and

(c) Article 127YI (11), (12) and (14) shall apply in relation to each cell of the protected cell company as if the cell had been transferred to the protected cell company under Article 127YI.[386]

127YN Power of States to amend Part

The States may amend this Part by Regulations.

T127YN [387]

Chapter 2 – Protected cell companies

127YO Interpretation

In this Chapter –

"cellular assets", in respect of a protected cell company, means the assets of the company attributable solely to the cell or cells of the company;

"cellular liabilities", in respect of a protected cell company, means the liabilities of the company attributable solely to a cell or cells of the company;

"non-cellular assets", in respect of a protected cell company, means its assets that are not its cellular assets;

"non-cellular liabilities", in respect of a protected cell company, means its liabilities that are not its cellular liabilities.

127YP Status of cells of protected cell companies

(1) A cell of a protected cell company is not a body corporate and has no legal identity separate from that of its cell company.

(2) However, a cell of a protected cell company may enter into an agreement with its cell company or with another cell of the company that shall be enforceable as if each cell of the company were a body corporate that had a legal identity separate from that of its cell company.

(3) Where a protected cell company is liable for any criminal penalty, under this Law or otherwise, due to the act or default of a cell of the company or of an officer of a cell of the company, the penalty –

(a) may only be met by the company from the cellular assets of the cell; and

(b) shall not be enforceable in any way against any other assets of the company, whether cellular or non-cellular.

127YQ Membership of protected cell company

(1) In a protected cell company –

(a) its non-cell members are members of the company but are not, by virtue of being such members, members of any cell of the company; and

(b) the cell members of a cell created by the company are members of that cell but are not, by virtue of being such members, members of the company or of any other cell of the company.

(2) In paragraph (1) –

"cell member", in respect of a protected cell company, means –

(a) a registered holder of a share in a cell of the company; or

(b) a guarantee member of a cell of the company;

"non-cell member", in respect of a protected cell company, means –

(a) a registered holder of a share in the company that is not a share in a cell of the company; or

(b) a guarantor member of the company who is not a guarantor member of the company by virtue of being a guarantee member of a cell of the company.

127YR Additional duties of directors of protected cell companies

(1) A director of a protected cell company must exercise his or her powers and must discharge his or her duties in such a way as shall best ensure that –

(a) the cellular assets of the company are kept separate and are separately identifiable from the non-cellular assets of the company; and

(b) the cellular assets attributable to each cell of the company are kept separate and are separately identifiable from the cellular assets attributable to other cells of the company.

(2) A director of a protected cell company must ensure, when the company enters into an agreement in respect of a cell of the company –

(a) that the other party to the transaction knows or ought reasonably to know that the cell company is acting in respect of a particular cell; and

(b) that the minutes of any meeting of directors held with regard to the agreement clearly record the fact that the company was entering into the agreement in respect of the cell and that the obligation imposed by sub-paragraph (a) was or will be complied with.[388]

(3) A director who fails to comply with the requirements of paragraph (1) or paragraph (2) shall be guilty of an offence.

(4) The duties of a director of a protected cell company under this Article are in addition to those under Article 74.

127YS Names of protected cell companies

(1) The name of a protected cell company must end with the words "Protected Cell Company" or with the abbreviation "PCC".

(2) A company that is registered with a name that ends with the words "Protected Cell Company" or the abbreviation "PCC" may, in setting out or using its name for any purpose under this Law, do so in full or in the abbreviated form, as it determines.

(3) A protected cell company must assign a distinctive name to each of its cells that –

(a) distinguishes the cell from any other cell of the company; and

(b) ends with the words "Protected Cell" or with the abbreviation "PC".

(4) Article 13(2) (which specifies how the name of a limited company must end) shall not apply to a cell of a protected cell company where the cell has the features of a limited company.

127YT Liability of protected cell company and its cells

(1) Where a protected cell company –

(a) enters into a transaction in respect of a particular cell of the company; or

(b) incurs a liability arising from an activity or asset of a particular cell,

a claim by any person in connection with the transaction or liability extends only to the cellular assets of the cell.

(2) Where a protected cell company –

(a) enters into a transaction in its own right and not in respect of any of its cells;

(b) incurs a liability arising from an activity of the company in its own right and not in respect of any of its cells; or

(c) incurs a liability arising from an asset held by the company in its own right and not in respect of any of its cells,

a claim by any person in connection with the transaction or liability extends only to the non-cellular assets of the company.

(3) Except as provided by paragraphs (4) and (6), a protected cell company has no power –

(a) to meet any liability attributable to a particular cell of the company from the non-cellular assets of the company; or

(b) to meet any liability, whether attributable to a particular cell or not, from the cellular assets of another cell of the company.

(4) If –

(a) a protected cell company is permitted to do so under its articles; and

(b) the requirement set out in paragraph (5) is satisfied,

the company may meet any liability attributable to a particular cell of the company from the company's non-cellular assets.

(5) The requirement mentioned in paragraph (4)(b) is that prior to the protected cell company meeting any liability attributable to the particular cell from the company's non-cellular assets the directors who are to authorize the liability being met in such a way must make a statement that, having made full enquiry into the affairs and prospects of the company, they have formed the opinion –

(a) that, immediately following the date on which the liability is proposed to be met by the non-cellular assets of the company, the company will be able to discharge its non-cellular liabilities as they fall due; and

(b) that, having regard to the prospects of the company and to the intentions of the directors with respect to the management of the company's business and to the amount and character of the financial resources that will in their view be available to the company, the company will be able to continue to carry on business and will be able to discharge its non-cellular liabilities as they fall due until the expiry of the period of one year immediately following the date on which the liability is proposed to be met by the non-cellular assets of the company or until the company is dissolved under Article 150, whichever first occurs.[389]

(6) A protected cell company may meet any liability, whether attributable to a particular cell or not, from the cellular assets of another cell if –

(a) it is permitted to do so by the articles of that other cell; and

(b) the requirement set out in paragraph (7) is satisfied.

(7) The requirement mentioned in paragraph (6)(b) is that prior to the protected cell company meeting any liability from the cellular assets of that other cell the directors who are to authorize the liability being met in such a way must make a statement that, having made full enquiry into the affairs and prospects of that cell, they have formed the opinion –

(a) that, immediately following the date on which the liability is proposed to be met by the cellular assets of the cell, the cell will be able to discharge its liabilities as they fall due; and

(b) that, having regard to the prospects of the cell and to the intentions of the directors with respect to the management of the cell's business and to the amount and character of the financial resources that will in their view be available to the cell, the cell will be able to continue to carry on business and will be able to discharge its liabilities as they fall due until the expiry of the period of one year immediately following the date on which the liability is proposed to be met by the cellular assets of the cell or until the cell is dissolved, as if it were a company, under Article 150, whichever first occurs.

(8) A director who makes a statement under paragraph (5) or paragraph (7) without having reasonable grounds for the opinion expressed in the statement is guilty of an offence.

127YU Protection of cellular and non-cellular assets of protected cell companies[390]

(1) Where a creditor of a protected cell company has a claim against the company in respect of a particular cell of the company (in this Article called "the relevant cell") by virtue of a transaction to which Article 127YT(1) applies, only the cellular assets of the company held by it in respect of the relevant cell shall be available to the creditor.

(2) Where a creditor of a protected cell company has a claim against the company by virtue of a transaction to which Article 127YT(1) does not apply, the cellular assets of the company shall not be available to the creditor.

(3) Accordingly –

(a) a creditor of the company to whom paragraph (1) applies only has the right to seek by proceedings or by any other means, whether in Jersey or elsewhere, to make or attempt to make the cellular assets of the company held by it in respect of the relevant cell available for all or any part of the amount owed to the creditor; and

(b) a creditor of the company to whom paragraph (2) applies has no right to seek by proceedings or by any other means, whether in Jersey or elsewhere, to make or attempt to make the cellular assets of the company available for all or any part of the amount owed to the creditor.

(4) If a creditor of a protected cell company to whom paragraph (1) applies succeeds, whether in Jersey or elsewhere, in making available for all or any part of the amount owed to the creditor any assets of the company that are not its cellular assets held by it in respect of the relevant cell, the creditor shall be liable to pay to the company an amount equal to the benefit so obtained.

(5) If a creditor of a protected cell company to whom paragraph (2) applies succeeds, whether in Jersey or elsewhere, in making available for all or any part of the amount owed to the creditor any cellular assets of the company, the creditor shall be liable to pay to the company an amount equal to the benefit so obtained.

(6) Any amount recovered by a protected cell company in respect of a cell of the company by virtue of paragraph (4) or paragraph (5), and the right to claim that amount, shall form part of the cellular assets of the company held by it in respect of the cell.

(7) If a creditor of a protected cell company to whom paragraph (1) applies succeeds, whether in Jersey or elsewhere in seizing or attaching or otherwise levying execution against any assets of the company, that are not its cellular assets held by it in respect of the relevant cell, for all or any part of the amount owed to the creditor, the creditor shall hold those assets or their proceeds on trust for the company or, as the case may be, the cell of the company whose cellular assets were wrongfully seized or attached.

(8) If a creditor of a protected cell company to whom paragraph (2) applies succeeds, whether in Jersey or elsewhere in seizing or attaching or otherwise levying execution against any cellular assets of the company

for all or any part of the amount owed to the creditor, the creditor shall hold those assets or their proceeds on trust for the cell of the company whose cellular assets were wrongfully seized or attached.

(9) Where paragraph (7) or paragraph (8) applies, the creditor must –

(a) keep the assets so held on trust separated and identifiable as trust property; and

(b) pay or return them on demand to the protected cell company,

and shall be guilty of an offence if he or she fails to do so.

(10) Any amount recovered by a protected cell company by virtue of a trust mentioned in paragraph (7) shall form part of the non-cellular assets of the company or, as the case may be, the cellular assets of the cell of the company whose cellular assets were wrongfully seized or attached.

(11) Any amount recovered by a protected cell company by virtue of a trust mentioned in paragraph (8) shall form part of the cellular assets of the cell of the company whose cellular assets were wrongfully seized or attached.

(12) If a creditor becomes liable to pay an amount or to return assets to a protected cell company under paragraph (4), paragraph (5) or paragraph (9)(b) and no amount or an insufficient amount is received, or no assets or less than all the assets are recovered, the company must cause or procure an auditor, acting as an expert and not as an arbitrator, to certify the loss suffered by the company and then, as the case may be –

(a) transfer to the company from the cellular assets of the relevant cell, if the liability was attributable to it, an amount sufficient to make good the loss suffered by the company's cellular or non-cellular assets, as the case may be; or

(b) transfer from its non-cellular assets, if the liability was attributable to them an amount sufficient to make good the loss suffered by its the cellular assets.

(13) Where an amount transferred by virtue of paragraph (12)(a) was in respect of a loss suffered by the company's cellular assets, the amount transferred shall be transferred to the cell of the company whose cellular assets were wrongfully made available to a creditor or seized, attached or executed against.

(14) An amount transferred by virtue of paragraph (12)(b) shall be transferred to the cell of the company whose cellular assets were wrongfully made available to a creditor or seized, attached or executed against.

(15) If a company fails to comply with paragraph (12), (13) or (14) the company and every officer of it who is in default is guilty of an offence.

(16) Paragraphs (4) to (14) do not apply to any payment made to a creditor by a protected cell company in accordance with Article 127YT(4) or Article 127YT(6).

127YV Effect of commencement of summary winding up of protected cell company

(1) Where a protected cell company is being wound up, Article 148(2) shall not apply in respect of any cell of the company.

(2) Where a cell of a protected cell company is being wound up, Article 148(2) shall not apply in respect of the company or any other cell of the company.

127YW Court may determine liability of protected cells companies

(1) The court, on the application of a protected cell company, may determine, in accordance with this Part, if a liability of the company is to be met by its non-cellular assets, by the cellular assets of a specific cell of the company or by a combination of those assets.[391]

(2) The court, on the application of a protected cell company, may determine, in accordance with this Part, if, or to what extent, an asset of the company is a cellular asset or a non-cellular asset of any of the cells of the cell company.[392]

PART 19

INVESTIGATIONS

128 Appointment of inspectors[393]

(1) The Minister or the Commission may appoint one or more competent inspectors to investigate the affairs of a company and to report on them as the Minister or the Commission may direct.[394]

(2) The appointment may be made on the application of the registrar, the company or a member, officer or creditor of the company.

(3) The Minister or the Commission may, before appointing inspectors, require the applicant, other than the registrar, to give security, to an amount not exceeding £10,000 or such other sum as may be prescribed for payment of the costs of the investigation.[395]

(4) This Article applies whether or not the company is being wound up.

(5) In any case where the Minister or the Commission may exercise a discretion under this Article, the decision of the Minister shall prevail.[396]

129 Powers of inspectors

(1) If inspectors appointed under Article 128 to investigate the affairs of a company think it necessary for the purposes of their investigation to investigate also the affairs of another body corporate which is or at any relevant time has been the company's subsidiary or holding company, or a subsidiary of its holding company or a holding company of its subsidiary, they shall have power to do so; and they shall report on the affairs of the other body corporate so far as they think that the results of

their investigation of its affairs are relevant to the investigation of the affairs of the first mentioned company.

(2) Inspectors so appointed may at any time in the course of their investigation, without the necessity of making an interim report, inform the Minister or the Commission as the case may be and the Attorney General of matters coming to their knowledge as a result of the investigation tending to show that an offence has been committed.[397]

(3) Where, for the purposes of paragraph (1) –

(a) the company is a cell company, that paragraph shall extend to any cell of the company, whether present or past; or

(b) the company is or was a cell of a cell company, that paragraph shall extend to its cell company and to any other cell of the cell company, whether past or present.[398]

130 Production of records and evidence to inspectors

(1) If inspectors appointed under Article 128 consider that any person is or may be in possession of information relating to a matter which they believe to be relevant to the investigation, they may require the person –

(a) to produce and make available to them all records in the person's custody or power relating to that matter;

(b) at reasonable times and on reasonable notice, to attend before them; and

(c) otherwise to give them all assistance in connection with the investigation which the person is reasonably able to give,

and it is that person's duty to comply with the requirement.

(2) Inspectors may for the purposes of the investigation examine on oath any such person as is mentioned in paragraph (1), and may administer an oath accordingly.

(3) A person who, being required under paragraph (1) to answer any question which is put to him or her by an inspector –

(a) knowingly or recklessly makes a statement which is false, misleading or deceptive in a material particular; or

(b) knowingly or recklessly withholds any information the omission of which makes the information which is furnished misleading or deceptive in a material particular,

is guilty of an offence.[399]

(4) An answer given by a person to a question put to him or her in exercise of the powers conferred by this Article may not be used in evidence against him or her in any criminal proceedings except –

(a) proceedings in which the person is charged with knowingly or recklessly making a false statement in the course of being examined on oath under paragraph (2);

(b) proceedings under paragraph (3); or

(c) proceedings for contempt of court under Article 134(2).[400]

131 Power of inspectors to call for directors' bank accounts

If inspectors appointed under Article 128 have reasonable grounds for believing that a director, or past director, of the company or other body corporate whose affairs they are investigating maintains or has maintained a bank account of any description, whether alone or jointly with another person and whether in Jersey or elsewhere, into or out of which there has been paid money which has been in any way connected with an act or omission, or series of acts or omissions, which constitutes misconduct (whether fraudulent or not) on the part of that director towards the company or other body corporate or its members, the inspectors may require the director to produce and make available to them all records in the director's possession or under the director's control relating to that bank account.

132 Authority for search

(1) Inspectors appointed under Article 128 may for the purpose of an investigation under that Article apply to the Bailiff for a warrant under this Article in relation to specified premises.

(2) If the Bailiff is satisfied that the conditions in paragraph (3) are fulfilled the Bailiff may issue a warrant authorizing a police officer and any other person named in the warrant to enter the specified premises (using such force as is reasonably necessary for the purpose) and to search them.

(3) The conditions referred to in paragraph (2) are –

(a) that there are reasonable grounds for suspecting that there is on the premises material (whether or not it can be particularised) which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and

(b) that the investigation for the purposes of which the application is made might be seriously prejudiced unless immediate entry can be secured to the premises.

(4) Where a person has entered premises in the execution of a warrant issued under this Article, the person may seize and retain any material, other than items subject to legal professional privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

(5) In this Article, "premises" includes any place and, in particular, includes –

(a) any vehicle, vessel, aircraft or hovercraft;

(b) any offshore installation; and

(c) any tent or movable structure.

133 Obstruction

Any person who wilfully obstructs any person acting in the execution of a warrant issued under Article 132 is guilty of an offence.

134 Failure to co-operate with inspectors

(1) If any person –

(a) fails to comply with a requirement under Article 130 or 131; or

(b) refuses to answer any question put to the person by the inspectors for the purpose of the investigation,

the inspectors may certify the refusal in writing to the court.

(2) The court may thereupon inquire into the case and, after hearing any witness who may be produced against or on behalf of the alleged offender and any statement in defence, the court may punish the offender as if the person had been guilty of contempt of the court.

135 Inspectors' reports

(1) The inspectors may, and if so directed by the Minister or the Commission shall –

(a) make interim reports; and

(b) on conclusion of their investigation make a final report,

to the Minister or the Commission as the case may be.[401]

(2) The Minister or the Commission may –

(a) forward a copy of any report made by the inspectors to the company's registered office;

(b) furnish a copy on request and on payment of the prescribed or published fee to –

(i) any member of the company or other body corporate which is the subject of the report,

(ii) any person whose conduct is referred to in the report,

(iii) the auditors of the company or that body corporate,

(iv) the applicants for the investigation,

(v) a relevant supervisory authority, or

(vi) any person whose financial interests appear to the Minister or the Commission to be affected by the matters dealt with in the report, whether as a creditor of the company or as a body corporate, or otherwise; and

(c) cause the report to be printed and published.[402]

(3) In this Article, "relevant supervisory authority" means an authority discharging in a country or territory outside Jersey supervisory functions corresponding to those of the Commission in respect of bodies corporate.[403]

136 Power to bring civil proceedings on behalf of body corporate

(1) If, from any report made or information obtained under this Part, it appears to the Minister or the Commission that civil proceedings ought in the public interest to be brought by a body corporate, the Minister or the Commission may bring those proceedings in the name and on behalf of the body corporate.[404]

(2) The Minister or the Commission shall at the expense of the States or the Commission as appropriate indemnify the body corporate against any costs or expenses incurred by it in or in connection with proceedings brought under this Article.[405]

(3) In any case where the Minister or the Commission may exercise a discretion under this Article, the decision of the Minister shall prevail.[406]

137 Expenses of investigating a company's affairs

(1) The expenses of and incidental to an investigation by inspectors shall be defrayed in the first instance by the Minister or the Commission, but the following are liable to make repayment to the Minister or the Commission to the extent specified –

(a) a person who –

(i) is convicted in proceedings on a prosecution instituted as a result of the investigation, or

(ii) is ordered to pay the whole or any part of the proceedings brought under Article 136,

may in the same proceedings be ordered to pay those expenses to the extent specified in the order;

(b) a body corporate in whose name proceedings are brought under that Article is liable to the amount or value of any sums or property recovered by it as a result of those proceedings;

(c) a body corporate which has been the subject of the investigation is liable except so far as the Minister or the Commission otherwise directs; and

(d) the applicant or applicants for the investigation (other than the registrar), is or are liable to the extent (if any) which the Minister or the Commission may direct.[407]

(2) For the purposes of this Article, costs or expenses incurred by the Minister or the Commission in or in connection with proceedings brought under Article 136 (including expenses incurred under paragraph (2) of it) are to be treated as expenses of the investigation giving rise to the proceedings.[408]

(3) A liability to repay the Minister or the Commission imposed by paragraph (1)(a) or (b) is (subject to satisfaction of the Minister's or Commission's right to repayment) a liability also to indemnify all persons against liability under sub-paragraph (c) or (d) of that paragraph; and a liability imposed by sub-paragraph (a) is (subject as mentioned above) a liability also to indemnify all persons against liability under sub-paragraph (b).[409]

(4) A person liable under paragraph (1) is entitled to a contribution from any other person liable under the same paragraph according to the amount of their respective liabilities under it.

(5) Expenses to be defrayed by the Minister or the Commission under this Article shall, so far as not recovered under it, be paid out of money provided by the States or the Commission as appropriate.[410]

(6) There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Minister or the Commission may determine in respect of general staff costs and overheads.[411]

138 Inspectors' report to be evidence

(1) A copy of a report of inspectors certified by the Minister or the Commission to be a true copy, is admissible in legal proceedings as evidence of the opinion of the inspectors in relation to a matter contained in the report.[412]

(2) A document purporting to be a certificate mentioned in paragraph (1) shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.

139 Privileged information

Nothing in this Part requires the disclosure or production, to the Commission or to an inspector appointed by the Minister or the Commission –

(a) by a person of information or records which the person would in an action in the court be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in the court except, if the person is a lawyer, the name and address of his or her client;

(b) by a company's bankers (as such) of information or records relating to the affairs of any of their customers other than the company or other body corporate under investigation.[413]

140 Investigation of external companies

This Part applies to external companies and to bodies corporate which have at any time been external companies as if they were companies under this Law, but subject to such adaptations and modifications as may be specified in Regulations made by the States.

PART 20

UNFAIR PREJUDICE

141 Power for member to apply to court

(1) A member of a company may apply to the court for an order under Article 143 on the ground that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of its members generally or of some part of its members (including at least the member) or that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.

(2) The provisions of this Article and Articles 142 and 143 apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law, as those provisions apply to a member of the company; and references to a member or members are to be construed accordingly.

142 Power for Minister or the Commission to apply to court[414]

(1) If in the case of a company –

(a) the Minister or the Commission has received a report under Article 135; and

(b) it appears to the Minister or the Commission that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of its members generally or of some part of its members, or that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial,

the Minister or the Commission may apply to the court for an order under Article 143.[415]

(2) In any case where the Minister or the Commission may exercise a discretion under this Article, the decision of the Minister shall prevail.[416]

143 Powers of court

(1) If the court is satisfied that an application under Article 127FB, 127S, 141 or 142 is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.[417]

(2) Without prejudice to the generality of paragraph (1), the court's order may –

(a) regulate the conduct of the company's affairs in the future;

(b) require the company to refrain from doing or continuing an act complained of by the applicant or to do an act which the applicant has complained it has omitted to do;

(c) authorize civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct; and

(d) provide for the purchase of the rights of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accounts accordingly.[418]

(3) If an order under this Article requires the company not to make any, or any specified, alterations in the memorandum or articles, the company shall not then without leave of the court make such alterations in breach of that requirement.

(4) An alteration in the company's memorandum or articles made by virtue of an order under this Article is of the same effect as if duly made by resolution of the company, and the provisions of this Law apply to the memorandum or articles as so altered accordingly.

(5) The Act of the court recording the making of an order under this Article altering, or giving leave to alter, a company's memorandum or articles shall, within 14 days from the making of the order or such longer period as the court may allow, be delivered by the company to the registrar for registration, and if a company fails to comply with this paragraph, the company is guilty of an offence.

PART 21

WINDING UP OF COMPANIES

Chapter 1 – Winding up of companies of limited duration[419]

144 Procedure – winding up of limited life companies[420]

(1) Where a limited life company is to be wound up and dissolved upon –

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

(b) the happening of some other event,

specified in its memorandum or articles, and the period expires or the other event happens, the company shall thereupon be deemed to pass a special resolution for its winding up summarily.

(2) Within 21 days thereafter, a notice of the resolution so deemed to be passed shall be delivered to the registrar.

(3) If a statement of solvency is made in accordance with Article 146(2) within 28 days after the event referred to in paragraph (1), and is delivered to the registrar within 21 days after it is made, the limited life company shall continue to be wound up summarily in accordance with Chapter 2 of this Part.

(4) If a statement of solvency is not delivered to the registrar in accordance with paragraph (3), the limited life company shall be wound up in a

creditors' winding up in accordance with Chapter 4 of this Part and for that purpose Article 151 shall apply as though the opinion referred to in that Article had been recorded at the expiration of 28 days after the happening of the event referred to in paragraph (1).

144A Procedure – winding up of other companies of limited duration[421]

(1) Where a company (other than a limited life company) is to be wound up and dissolved upon the expiration of a fixed period of time specified in its memorandum or articles, and the period expires, the company shall deliver to the registrar within 21 days after that period has expired a notice stating –

(a) that the period has expired; and

(b) the date of expiration.

(2) If a company fails to comply with paragraph (1), any director, member or creditor of the company may, at any time after the expiration of the period of 21 days referred to in paragraph (1), deliver such a notice to the registrar.

(3) Where a notice is delivered to the registrar in accordance with paragraph (2), the director, member or creditor shall at the same time deliver a copy of the notice to the company.

(4) If a statement of solvency in accordance with Article 146(2) –

(a) has been made within 28 days before and is delivered to the registrar with a notice delivered in accordance with paragraph (1); or

(b) has been made and is delivered to the registrar within 28 days after a notice is delivered in accordance with paragraph (2),

the company shall be wound up summarily in accordance with Chapter 2 of this Part.

(5) If, notice having been delivered in accordance with paragraph (1) or paragraph (2), a statement of solvency is not made and delivered to the registrar as provided in paragraph (4), the company shall be wound up in a creditors' winding up in accordance with Chapter 4 of this Part and for that purpose the company shall be deemed to pass a resolution for a creditors' winding up –

(a) where notice is delivered in accordance with paragraph (1), upon delivery of the notice to the registrar; and

(b) where notice is delivered in accordance with paragraph (2), upon the expiration of 28 days after the copy of the notice is delivered to the company.

Chapter 2 – Summary winding up[422]

145 Application of this Chapter

(1) This Chapter applies to the winding up of a company that –

(a) has no liabilities;

(b) has liabilities that have already fallen due or that fall due within 6 months after the commencement of the winding up, that it will be able to discharge in full within 6 months of the commencement of the winding up;

(c) has liabilities that will arise more than 6 months after the commencement of the winding up that it will be able to discharge in full as they fall die; or

(d) has a combination of the liabilities mentioned in sub-paragraph (b) and (c).

(2) A winding up under this Chapter is a summary winding up.

146 Procedure

(1) A company, not being a company in respect of which a declaration has been made and not recalled under the Désastre Law, may be wound up under this Chapter –

(a) in accordance with Article 144;

(b) in accordance with Article 144A; or

(c) in the manner set out in paragraphs (2) and (3).

(2) That manner is firstly for the directors of the company to make a statement of solvency signed by each director that states that, having made full enquiry into the company's affairs, each director is satisfied that –

(a) the company has no assets and no liabilities;

(b) the company has assets and no liabilities;

(c) the company will be able to discharge its liabilities in full within the 6 months after the commencement of the winding up;

(d) the company has liabilities that will fall due more than 6 months after the commencement of the winding up that it will be able to discharge in full as they fall due; or

(e) both sub-paragraphs (c) and (d) apply to the company,

as the case may be.

(3) And secondly –

(a) for the company to pass, within 28 days after the statement of solvency has been signed by the directors, a special resolution that the company be wound up summarily; and

(b) for a copy of the special resolution to be delivered to the registrar in accordance with Article 100 together with the directors' statement of solvency.

(4) A director is guilty of an offence if –

(a) he or she signs a statement of solvency when having no reasonable grounds for making the statement; and

(b) the statement is subsequently delivered to the registrar.

147 Commencement of summary winding up

A summary winding up under which assets of a company are to be distributed commences –

(a) where a limited life company has under Article 144(1) been deemed to pass a special resolution for winding up, upon its being deemed to have passed that resolution;

(b) where a company (other than a limited life company) whose existence is limited by a period of time is wound up pursuant to Article 144A, when a requirement of Article 144A(4) is complied with; and

(c) in any other case, when the requirement of Article 146(3)(a) is complied with.

148 Effect on status of company

(1) The corporate state and capacity of a company continues after the commencement of the company's summary winding up until the company is dissolved.

(2) However, the company's powers shall not be exercised except so far as may be required –

(a) to realise its assets;

(b) to discharge its liabilities; and

(c) to distribute its assets in accordance with Article 150.

(3) Paragraph (2) is subject to Articles 154 and 186A.

149 Appointment of liquidator

(1) A company may, on or after the commencement of its summary winding up, by special resolution, appoint a person to be liquidator for the purposes of the winding up.

(2) On the appointment of a liquidator the directors cease to be authorized to exercise their powers in respect of the company and those powers may be exercised by the liquidator.

(3) Paragraph (2) is subject to –

(a) the resolution appointing the liquidator or any subsequent special resolution of the company providing otherwise; and

(b) Article 150.

(4) Article 83 applies to a liquidator appointed under this Article as it applies to a director.

150 Application of assets and dissolution

(1) The registrar shall register a statement delivered under Article 146 or paragraph (5) of this Article.

(2) On the registration by the registrar of a statement delivered under Article 146 that the company has no assets and no liabilities the company is dissolved.

(3) Where the statement delivered under Article 146 states that the company has assets and no liabilities the company shall, on the registration of the statement by the registrar, distribute its assets among its members according to their rights or otherwise as provided by its memorandum or articles.

(4) Where the statement delivered under Article 146 states that the company has liabilities, the company, after the registration of the statement by the registrar –

(a) shall satisfy those liabilities as they become due or within 6 months of that commencement, as the case may be; and

(b) if the directors of the company reasonably believe that the company is able to pay any remaining liabilities as they fall due, may then distribute its remaining assets among its members according to their rights or otherwise as provided by its memorandum or articles.

(5) As soon as a company has completed the distribution of its assets in accordance with paragraph (3) or paragraph (4), it shall deliver to the registrar a statement signed by each of the directors or, if the distribution has been completed by a liquidator appointed under Article 149, by the liquidator, stating that each director or the liquidator, having made full enquiry into the company's affairs, is satisfied that the company has no assets and no liabilities.

(6) The company is dissolved on the registration of that statement.

(7) A director or liquidator who signs a statement delivered to the registrar under paragraph (5) without having reasonable grounds for stating that the company has no assets and no liabilities is guilty of an offence.

151 Effect of insolvency

(1) This Article applies if, after the commencement of a summary winding up of a company –

(a) a liquidator appointed in accordance with Article 149 forms the opinion; or

(b) no liquidator having been appointed under Article 149, the directors of the company form the opinion,

that the company has liabilities that it will be unable to discharge within 6 months of the commencement of the winding up or, if they fall due after that date, as they fall due.

(2) The liquidator or directors shall record the opinion –

(a) in the case of a liquidator, in his or her records of the administration of the affairs of the company; or

(b) in the case of directors, in the minutes of a meeting of the directors.

(3) The liquidator or directors shall give each creditor of the company notice by post calling a meeting of the creditors to be held in Jersey not less than 14 days after the service of the notice and not more than 28 days after the opinion was recorded in accordance with paragraph (2).

(4) The notice shall contain the name of a person nominated as liquidator of the company for a creditors' winding up.

(5) The liquidator or directors shall deliver a copy of the notice to the registrar.

(6) The liquidator or directors shall also give notice of the meeting of the creditors of the company by advertisement in the Jersey Gazette not less than 10 days before the day for which the meeting is called.

(7) Before the meeting the liquidator or directors shall furnish any creditor free of charge with such information concerning the affairs of the company as the creditor may reasonably request.

(8) At the meeting the liquidator or directors shall provide a statement as to the affairs of the company.

(9) The statement shall be verified by affidavit by the liquidator or by some or all of the directors.

(10) At the creditors' meeting the liquidator shall preside if one has been appointed but otherwise a director nominated by the directors shall preside.

(11) From the day of the creditors' meeting the winding up becomes a creditors' winding up and this Law has effect as if the meeting were the meeting of creditors mentioned in Article 160 and Article 162 shall apply accordingly.

(12) A liquidator or director who, without reasonable excuse, fails to comply with any of his or her obligations under this Article is guilty of an offence.

152 Remuneration of liquidator

A liquidator appointed under Article 149 is entitled to receive from the company the remuneration –

(a) agreed between the liquidator and the company before his or her appointment;

(b) subsequently approved by the company in general meeting; or

(c) subsequent determined by the court.

153 Cesser of office by liquidator

A liquidator appointed under Article 149 –

(a) may be removed from office by a special resolution of the company; and

(b) shall vacate office if he or she ceases to be qualified to hold the office.

154 Termination of summary winding up

(1) Where –

(a) the summary winding up of a company has commenced;

(b) the company has not received any contribution from any present or past member pursuant to Article 192;

(c) the company has not for the purposes of the winding up distributed any of its assets among its members;

(d) the company is able to discharge its liabilities as they fell due; and

(e) termination of the winding up has been approved by a special resolution of the company,

the documents described in paragraph (2) may be delivered to the registrar and thereupon the winding up shall forthwith terminate.

(2) The documents to be delivered to the registrar pursuant to paragraph (1) are –

(a) a certificate signed by all the directors of the company stating that –

(i) the company has received no contribution of the type mentioned in paragraph (1)(b),

(ii) the company has made no distribution of the type mentioned in paragraph (1)(c), and

(iii) the company is able to discharge its liabilities as they fell due; and

(b) a copy of the special resolution approving the termination of the winding up.

(3) Upon the termination of a winding up pursuant to paragraph (1) –

(a) any liquidator appointed for the purpose of the winding up shall cease to hold office; and

(b) the company and all other persons shall be in the same position, subject to paragraph (4), as if the winding up had not commenced.

(4) The termination of a winding up pursuant to paragraph (1) shall not affect the validity of anything duly done by any liquidator, director or other person, or by operation of law, before its termination.

(5) A director who signs a certificate delivered to the registrar pursuant to paragraph (1) without having reasonable grounds for believing that the statements in it are true is guilty of an offence.

154A Declaration under Désastre Law

(1) If –

(a) a summary winding up of a company has commenced; and

(b) a declaration is made in respect of the company under the Désastre Law,

the winding up shall forthwith terminate.

(2) Upon the termination of the winding up pursuant to paragraph (1) –

(a) any liquidator appointed for the purpose of the winding up shall cease to hold office; and

(b) the company and all other persons shall be in the same position, subject to paragraph (3), as if the winding up had not commenced.

(3) The termination of a winding up pursuant to paragraph (1) shall not affect the validity of any thing duly done by any liquidator, director or other person, or by operation of law, before the termination.

Chapter 3 – Winding up on just and equitable grounds[423]

155 Power for court to wind up

(1) A company, not being a company in respect of which a declaration has been made (and not recalled) under the Désastre Law, may be wound up by the court if the court is of the opinion that –

(a) it is just and equitable to do so; or

(b) it is expedient in the public interest to do so.

(2) An application to the court under this Article on the ground mentioned in paragraph (1)(a) may be made by the company or by a director or a member of the company or by the Minister or the Commission or by a supervisory body within the meaning of the Proceeds of Crime Supervisory Bodies (Jersey) Law 2008[424].[425]

(3) An application to the court under this Article on the ground mentioned in paragraph (1)(b) may be made by the Minister or by the Commission.[426]

(4) If the court orders a company to be wound up under this Article it may –

(a) appoint a liquidator;

(b) direct the manner in which the winding-up is to be conducted; and

(c) make such orders as it sees fit to ensure that the winding-up is conducted in an orderly manner.

(5) The Act of the court ordering the winding up of a company under this Article –

(a) must be delivered by the company to the registrar within 14 days after it is made; and

(b) shall be recorded by the registrar when he or she receives it.

(6) If the company fails to comply with paragraph (5)(a), it and every officer of it in default is guilty of an offence.

Chapter 4 – Creditors' winding up

156 Application of this Chapter

(1) This Chapter applies to the winding up of a company otherwise than under Chapter 1, 2 or 3 of this Part.

(2) A winding up under this Chapter is a creditors' winding up.

157 Procedure

A company, not being one in respect of which a declaration has been made (and not recalled) under the Désastre Law, may be wound up under this Chapter if the company so resolves by special resolution.

158 Notice of winding up[427]

(1) If a company has passed a resolution for a creditors' winding up, or is deemed under Article 144(4) or Article 144A(5) to have done so, the company must within 14 days give notice of that fact by advertisement in the Jersey Gazette.

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

159 Commencement and effects of creditors' winding up[428]

(1) A creditors' winding up is deemed to commence –

(a) at the time the resolution for winding up is passed, or is deemed under Article 144(4) or Article 144A(5) to have been passed; or

(b) where Article 151 applies, at the time the winding up becomes a creditors' winding up,

as the case may be, and where Article 148 has not previously had effect, the company must from the commencement of the winding up cease to carry on its business, except so far as may be required for its beneficial winding up.

(2) The corporate state and capacity of the company continue until the company is dissolved.

(3) A transfer of shares, not being a transfer made to or with the sanction of the liquidator, and an alteration in the status of the company's members made after the commencement of the winding up, is void.

(4) After the commencement of the winding up no action shall be taken or proceeded with against the company except by leave of the court and subject to such terms as the court may impose.

160 Meeting of creditors in creditors' winding up

(1) The company shall –

(a) not less than 14 days before the day on which there is to be held the company meeting at which the resolution for a creditors' winding up is to be proposed, give by post to its creditors notice calling a meeting of creditors to be held in Jersey on the same day as, and immediately following the conclusion of, the company meeting and nominating a person to be liquidator for the purposes of a creditors' winding up;

(b) give notice of the creditors' meeting by advertisement in the Jersey Gazette not less than 10 days before the day for which that meeting has been called;

(c) during the period before the creditors' meeting furnish creditors free of charge with such information concerning the company's affairs as they may reasonably require.

(2) The directors shall –

(a) make out a statement as to the affairs of the company, verified by affidavit by some or all of the directors;

(b) lay that statement before the creditors' meeting; and

(c) appoint a director to preside at that meeting,

and the director so appointed shall attend the meeting and preside over it.

(3) If –

(a) the company without reasonable excuse fails to comply with paragraph (1);

(b) the directors without reasonable excuse fail to comply with paragraph (2); or

(c) a director without reasonable excuse fails to comply with paragraph (2), so far as requiring the director to attend and preside at the creditors' meeting,

the company, the directors or the director (as the case may be) is guilty of an offence.

161 Appointment of liquidator

(1) The creditors and the company at their respective meetings mentioned in Article 160 may nominate a person to be liquidator for the purpose of the winding up.

(2) Where a creditors' meeting is called in accordance with Article 151, the person nominated to be liquidator in the notice calling the meeting shall be deemed, for the purposes of this Article, to have been nominated as aforesaid by the company.

(3) The person nominated by the creditors, or if no person is nominated by the creditors, the person nominated, or deemed to have been nominated, by the company is appointed liquidator with effect from the conclusion of the creditors' meeting.

(4) In the case of different persons being nominated, a director, member or creditor of the company may, within 7 days after the date on which the nomination was made by the creditors, apply to the court for an order either –

(a) directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors; or

(b) appointing some other person to be liquidator instead of the person nominated by the creditors.

(5) A liquidator appointed under this Article shall within 14 days after the liquidator's appointment give notice thereof signed by the liquidator to the registrar and to the creditors.

(6) A liquidator who fails to comply with paragraph (5) is guilty of an offence.

(7) Article 83 applies to a liquidator appointed under this Article as it applies to a director.

162 Appointment of liquidation committee

(1) A creditors' meeting may appoint a liquidation committee consisting of not more than 5 persons to exercise the functions conferred on it by or under this Law.

(2) If a committee is appointed, the company may, in general meeting, appoint such number of persons not exceeding 5 as they think fit to act as members of the committee.

(3) The creditors may resolve that all or any of the persons so appointed by the company ought not to be members of the committee; and if the creditors so resolve –

(a) the persons mentioned in the resolution are not then, unless the court otherwise directs, qualified to act as members of the committee; and

(b) on an application to the court under this provision the court may appoint other persons to act as such members in place of the persons mentioned in the resolution.

163 Remuneration of liquidator, cesser of directors' powers, and vacancy in office of liquidator

(1) A liquidator in a creditors' winding up is entitled to receive such remuneration as is agreed between the liquidator and the liquidation committee or, if there is no committee, between the liquidator and the creditors or, failing any such agreement, as is fixed by the court.

(2) On the appointment of a liquidator in a creditors' winding up, all the powers of the directors cease, except so far as the liquidation committee (or, if there is no committee, the creditors) sanction their continuance.

(3) The creditors may at any time remove a liquidator.

(4) If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator (other than a liquidator appointed by the court) the creditors may fill the vacancy.

164 No liquidator appointed

(1) This Article applies where a creditors' winding up has commenced but no liquidator has been appointed.

(2) During the period before the appointment of a liquidator, the powers of the directors shall not be exercised except –

(a) with the sanction of the court;

(b) to secure compliance with Article 160; or

(c) to protect the company's assets.

(3) If the directors, without reasonable excuse, fail to comply with this Article, they are guilty of an offence.

165 Costs of creditors' winding up

All costs, charges and expenses properly incurred in a creditors' winding up, including the remuneration of the liquidator, are payable out of the company's assets in priority to all other claims.

166 Application of the law relating to *désastre*

(1) Subject to this Article and Article 165, in a creditors' winding up the same rules prevail with regard to the respective rights of secured and unsecured creditors, to debts provable, to the time and manner of proving debts, to the admission and rejection of proofs of debts, to the order of payment of debts and to setting off debts as are in force for the time being with respect to persons against whom a declaration has been made under the Désastre Law with the substitution of references to the winding up for references to the *désastre* and references to the liquidator for references to the Viscount.[429]

(2) Any surplus remaining after payment of the debts proved in the winding up, before being applied for any other purpose, shall be applied in paying interest on those debts which bore interest prior to the commencement of the winding up in respect of the period during which they have been outstanding since the commencement of the winding up and at the rate of interest applicable apart from the winding up.

167 Arrangement when binding on creditors

(1) An arrangement entered into between a company immediately preceding the commencement of, or in the course of, a creditors' winding up and its creditors is (subject to the right of appeal under this Article) binding –

(a) on the company, if sanctioned by a special resolution; and

(b) on the creditors, if acceded to by three-quarters in number and value of them.

(2) A creditor or contributory may, within 3 weeks from the completion of the arrangement, appeal to the court against it; and the court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

168 Meetings of company and creditors

(1) If a creditors' winding up continues for more than 12 months, the liquidator shall call a general meeting of the company and a meeting of the creditors to be held at the first convenient date within 3 months after the end of the first 12 months from the commencement of the winding up, and of each succeeding 12 months, or such longer period as the Commission may allow, and shall lay before the meetings an account of the liquidator's acts and dealings and of the conduct of the winding up during the preceding 12 months.[430]

(2) If the liquidator fails to comply with this Article, the liquidator is guilty of an offence.

169 Final meeting and dissolution

(1) As soon as the affairs of a company in a creditors' winding up are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving an explanation of it.

(2) Each such meeting shall be called by not less than 21 days' notice sent by post, accompanied by a copy of the liquidator's account.

(3) Within 7 days after the date of the meetings (or, if they are not held on the same date, after the date of the later one) the liquidator shall make a return to the registrar of the holding of the meetings and of their dates and in the case of a public company a copy of the account.

(4) If the copy is not delivered or the return is not made in accordance with paragraph (3), the liquidator is guilty of an offence.

(5) If a quorum is not present at either such meeting, the liquidator shall, in lieu of the return required by paragraph (3), deliver a return that the meeting was duly called and that no quorum was present; and when that return is made the provisions of that paragraph as to the making of the return are, in respect of that meeting, deemed complied with.

(6) The registrar on receiving the account and, in respect of each such meeting, either of the returns mentioned above, shall forthwith register them, and at the end of 3 months from the registration of the return the company is deemed to be dissolved; but the court may, on the application of the liquidator or of another person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the court thinks fit.

(7) The person on whose application an order of the court under this Article is made shall, within 14 days after the making of the order, deliver to the

registrar the relevant Act of the court for registration; and if that person fails to do so the person is guilty of an offence.

(8) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this Article the liquidator is guilty of an offence.

169A Procedure at creditors' meeting[431]

(1) Except as otherwise provided by this Article, a creditor who has been given notice of a creditors' meeting is entitled to vote at the meeting (either in person or by proxy) and any adjournment of it.

(2) The value of a creditor's vote shall be calculated according to the amount of the creditor's debt at the date of the commencement of the winding up.

(3) A debt for an unliquidated amount or a debt the value of which has not been ascertained does not give a creditor the right to vote at a creditors' meetings but the chairman of the meeting may put upon the debt an estimated minimum value that entitles the creditor to vote.

(4) For a resolution to pass at a creditors' meeting it must be supported by creditors the values of whose votes are at least half the value of the votes of the creditors who vote on the resolution.

(5) A creditors' meeting is not competent to act unless there are present 3 creditors (or their proxies) or, if there are less than 3 creditors, all of the creditors (or their proxies), being in either case creditors entitled to vote.

170 Powers and duties of liquidator

(1) The liquidator in a creditors' winding up may, with the sanction of the court or the liquidation committee (or, if there is no such committee, a meeting of the creditors) –

(a) pay a class of creditors in full;

(b) compromise any claim by or against the company.

(2) The liquidator may, without sanction, exercise any other power of the company as may be required for its beneficial winding up.

(3) The liquidator may –

(a) settle a list of contributories (and the list of contributories is *prima facie* evidence of the persons named in it to be contributories);

(b) make calls; and

(c) summon general meetings of the company for the purpose of obtaining its sanction by special resolution or for any other purpose the liquidator may think fit.

(4) The liquidator shall pay the company's debts and adjust the rights of the contributories among themselves.

(5) The appointment or nomination of more than one person as liquidator shall declare whether any act to be done is to be done by all or any one or more of them, and in default, any such act may be done by 2 or more of them.

171 Power to disclaim onerous property[432]

(1) For the purpose of this Article "onerous property" means –

(a) movable property;

(b) a contract lease;

(c) other immoveable property if it is situated outside Jersey,

that 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 liquidator in a creditors' winding up may, within 6 months after the commencement of the winding up, by the giving of notice, signed by him or her and referring to this Article and Article 173, to each person who is interested in or under any liability in respect of the property disclaimed, disclaim on behalf of the company any onerous property of the company.

(3) A disclaimer under this Article shall –

(a) operate so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; and

(b) discharge the company from all liability in respect of the property as of the date of the commencement of the creditors' winding up,

but shall not, except so far as is necessary for the purpose of releasing the company from liability, affect the rights or liabilities of any other person.

(4) A person sustaining loss or damage in consequence of the operation of a disclaimer under this Article shall be deemed to be a creditor of the company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

172 Disclaimer of contract leases[433]

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

(a) no application under Article 173 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 paragraph (1)(b) it may also, instead of or in addition to any order it makes under Article 173, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

173 Powers of court in respect of disclaimed property[434]

(1) This Article applies where the liquidator of a company has disclaimed property under Article 171.

(2) An application may be made to the court under this Article by –

(a) any person who claims an interest in the disclaimed property (which term shall be taken to include, in the case of the disclaimer of a contract lease, a person claiming under the company as a hypothecary creditor or an under lessee); or

(b) any person who is under any liability in respect of the disclaimed property (which term shall be taken to include a guarantor), not being a liability discharged by the disclaimer.

(3) Subject to paragraph (4), the court may, on an application under this Article, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to –

(a) a person entitled to it or a trustee for such a person; or

(b) a person subject to a liability mentioned in paragraph (2)(b) or a trustee for such a person.

(4) The court shall not make an order by virtue of paragraph (3)(b) except where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(5) The effect of an order under this Article shall be taken into account in assessing for the purpose of Article 171(4) the extent of loss or damage sustained by a person in consequence of the disclaimer.

174 Unenforceability of liens on records[435]

(1) Subject to paragraph (2), in a creditors' winding up a lien or other right to retain possession of a record of a company shall be unenforceable to the extent that its enforcement would deny possession of the record to the liquidator.

(2) Paragraph (1) does not apply to a lien on a document that gives a title to property and is held as such.

175 Appointment or removal of liquidator by the court[436]

(1) The court may appoint a liquidator if for any reason there is no liquidator acting in a creditors' winding up.

(2) The court may, on reason being given, remove a liquidator in a creditors' winding up and may appoint another.

176 Transactions at an undervalue[437]

(1) If a company has at a relevant time entered into a transaction with a person at an undervalue the court may, on the application of the liquidator in a creditors' winding up, make such an order as the court thinks fit for

restoring the position to what it would have been if the company had not entered into the transaction.

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

(a) that the company entered into the transaction in good faith for the purpose of carrying on its business; and

(b) that, at the time it entered into the transaction, there were reasonable grounds for believing that the transaction would be of benefit to the company.

(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 things, namely –

(a) require property transferred as part of the transaction to be vested in the company;

(b) require property to be so vested 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 company;

(d) require a person to pay in respect of a benefit received by him or her from the company such sum to the company 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 in the company by the order, or

(ii) on whom an obligation is imposed by the order,

is to be able to prove in the winding up of the company for debts or other liabilities that 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 or she is the person with whom the company entered into the transaction.

(5) An order made under paragraph (1) –

(a) shall not prejudice an interest in property that was acquired from a person other than the company and was acquired in good faith and for value, or prejudice any interest deriving from such an interest; and

(b) shall not require a person who in good faith and for value received a benefit from the transaction to pay a sum to the company, except where the person was a party to the transaction.

(6) In considering for the purposes 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 company had entered into a transaction at an undervalue, and

(ii) that the company 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 company or the person with whom the company had entered into the transaction.

(7) For the purposes of this Article, a company enters into a transaction with a person at an undervalue if –

(a) it makes a gift to that person;

(b) it enters into a transaction with that person –

(i) on terms for which there is no *cause*, or

(ii) 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 company.

(8) Subject to paragraphs (9) and (10), the time at which a company 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 5 years immediately preceding the date of commencement of the winding up.

(9) The time to which paragraph (8) refers is not a relevant time unless –

(a) the company was insolvent when it entered into the transaction; or

(b) the company became insolvent as a result of the transaction.

(10) If the transaction at an undervalue was entered into with a person connected with the company or with an associate of the company, paragraph (9) does not apply and the time to which paragraph (8) refers is a relevant time unless it is proved that –

(a) the company was not insolvent when it entered into the transaction; and

(b) it did not become insolvent as a result of the transaction.

176A Giving of preferences[438]

(1) If a company has at a relevant time given a preference to a person the court may, on the application of the liquidator in a creditors' winding up,

make such an order as the court thinks fit for restoring the position to what it would have been if the preference had 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 things, namely –

(a) require property transferred in connection with the giving of the preference to be vested in the company;

(b) require property to be vested in the company 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 company;

(d) require a person to pay in respect of a benefit received by him or her from the company such sum to the company 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;

(g) provide for the extent to which a person –

(i) whose property is vested by the order in the company, or

(ii) on whom obligations are imposed by the order,

is to be able to prove in the winding up of the company for debts or other liabilities that 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 or she is the person to whom the preference was given.

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

(a) prejudice an interest in property that was acquired from a person other than the company and was acquired in good faith and for value, or prejudice any interest deriving from such an interest; or

(b) require a person who in good faith and for value received a benefit from the preference to pay a sum to the company, except where the payment is in respect of a preference given to that person at a time when he or she was a creditor of the company.

(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 that amounted to the giving of the preference by the company, and

(ii) of the fact that the company 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 company or the person to whom the company gave the preference.

(6) For the purposes of this Article, a company gives a preference to a person if –

(a) the person is a creditor of the company or a surety or guarantor for a debt or other liability of the company; and

(b) the company –

(i) does anything, or

(ii) suffers anything to be done,

that has the effect of putting the person into a position which, in the event of the winding up of the company, will be better than the position he or she 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 company, 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 the winding up of the company, would be better than the position in which the person would be if the preference had not been given.

(8) A company that gave a preference to a person who was, at the time the preference was given, an associate of or connected with the company (otherwise than by reason only of being the company's employee) shall be 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 paragraphs (10) and (11), the time at which a company gives a preference is a relevant time for the purpose of paragraph (1) if the preference was given during the period of 12 months immediately preceding the commencement of the winding up.

(10) The time to which paragraph (9) refers is not a relevant time unless –

(a) the company was insolvent at the time the preference was given; or

(b) the company became insolvent as a result of giving the preference.

(11) If the preference was given to a person connected with the company or to an associate of the company, paragraph (10) does not apply and the time to which paragraph (9) refers is a relevant time unless it is proved that –

(a) the company was not insolvent at the time the preference was given; and

(b) it did not become insolvent as a result of the preference being given.

176B Definitions relating to transactions at an undervalue and preferences[439]

(1) For the purposes of Articles 176 and 176A, a person is connected with a company if –

(a) he or she is a director of the company;

(b) he or she is an associate of a director of the company; or

(c) he or she is an associate of the company.

(2) For the purposes of Articles 176 and 176A 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 or she is in partnership, and of the husband or wife or a relative of any individual with whom he or she is in partnership;

(c) a person is an associate of any person whom he or she employs or by whom he or she is employed;

(d) a person in his or her capacity as a trustee of a trust is an associate of another person if –

(i) the beneficiaries of the trust include that other person or an associate of that other person, or

(ii) 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 either persons who are his or her associates, or he or she and persons who are his or her associates, have control of the other company, or

(ii) if each company is controlled by a group of 2 or more persons and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he or she 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 persons who are his or her associates together have control of the company; and

(g) a provision that a person is an associate of another person shall 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 or she is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, for which purpose –

(a) any relationship of the half blood shall be treated as a relationship of the whole blood and the stepchild or adopted child of a person as his or her child; and

(b) an illegitimate child shall be treated as the legitimate child of his or her 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 shall be treated as employed by the company.

(6) For the purposes of this Article, a person shall be taken as having control of a company if –

(a) the directors of the company or of another company that has control of it (or any of them) are accustomed to act in accordance with his or her directions or instructions; or

(b) he or she is entitled –

(i) to exercise, or

(ii) to control the exercise of,

more than one third of the voting power at any general meeting of the company or of another company which has control of it,

and where 2 or more persons together satisfy either of the above conditions, they shall be taken as having control of the company.

(7) For the purposes of this Article "company" includes a company incorporated outside Jersey.

177 Responsibility of persons for wrongful trading[440]

(1) Subject to paragraph (3), if in the course of a creditors' winding up it appears that paragraph (2) applies in relation to a person who is or has been a director of the company, the court on the application of the liquidator may, if it thinks it proper to do so, order that that person be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company arising after the time referred to in paragraph (2).

(2) This paragraph applies in relation to a person if at a time before the date of commencement of the creditors' winding up of the company that person as a director of the company –

(a) knew that there was no reasonable prospect that the company would avoid a creditors' winding up or the making of a declaration under the Désastre Law; or

(b) on the facts known to him or her was reckless as to whether the company would avoid such a winding-up or the making of such a declaration.

(3) The court shall not make an order under paragraph (1) with respect to a person if it is satisfied that after either condition specified in paragraph (2) was first satisfied in relation to him or her the person took

reasonable steps with a view to minimising the potential loss to the company's creditors.

(4) On the hearing of an application under this Article, the liquidator may himself or herself give evidence or call witnesses.

178 Responsibility for fraudulent trading[441]

(1) If, in the course of a creditors' winding up, it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of another person, or for a fraudulent purpose, the court may, on the application of the liquidator, order that persons who were knowingly parties to the carrying on of the business in that manner are to be liable to make such contributions to the company's assets as the court thinks proper.

(2) On the hearing of the application the liquidator may himself or herself give evidence or call witnesses.

(3) Where the court makes an order under this Article or Article 177, it may give such further directions as it thinks proper for giving effect to the order.

(4) Where the court makes an order under this Article or Article 177 in relation to a person who is a creditor of the company, it may direct that the whole or part of a debt owed by the company to that person and any interest thereon shall rank in priority after all other debts owed by the company and after any interest on those debts.

(5) This Article and Article 177 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the order under paragraph (1) is to be made.

179 Extortionate credit transactions[442]

(1) This Article applies in a creditors' winding up where the company is, or has been, a party to a transaction for, or involving, the provision of credit to the company.

(2) The court may, on the application of the liquidator, make an order with respect to the transaction if the transaction –

(a) is or was extortionate; and

(b) was entered into in the period of 3 years ending with the commencement of the creditors winding up.

(3) For the purposes of this Article, a transaction is extortionate if, having regard to the risk accepted by the person providing the credit –

(a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or

(b) it otherwise grossly contravened ordinary principles of fair dealing.

(4) It shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this Article is or, as the case may be, was extortionate.

(5) An order under this Article with respect to a transaction may contain one or more of the following as the court thinks fit –

(a) provision setting aside the whole or part of an obligation created by the transaction;

(b) provision otherwise varying the terms of the transaction or varying the terms on which a security for the purposes of the transaction is held;

(c) provision requiring a person who is or was a party to the transaction to pay to the liquidator sums paid to that person, by virtue of the transaction, by the company;

(d) provision requiring a person to surrender to the liquidator property held by him or her as security for the purposes of the transaction;

(e) provision directing accounts to be taken between any persons.

180 Delivery and seizure of property[443]

(1) Where a person has in his or her possession or control property or records to which a company appears in a creditors' winding up to be entitled, the court may require that person forthwith (or within a period which the court may direct) to pay, deliver, convey, surrender or transfer the property or records to the liquidator.

(2) Where –

(a) the liquidator seizes or disposes of property that is not property of the company; and

(b) at the time of seizure or disposal the liquidator believes, and has reasonable grounds for believing, that he or she is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,

the liquidator –

(i) is not liable to any person in respect of loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by the negligence of the liquidator; and

(ii) has a lien on the property, or the proceeds of its sale, for expenses incurred in connection with the seizure or disposal.

181 Liability in respect of purchase or redemption of shares[444]

(1) This Article applies where a company (other than an open-ended investment company) is being wound up in a creditors' winding up and –

(a) it has within 12 months before the commencement of the winding up made a payment under Article 55 or Article 57 or under Regulations made under Article 59 in respect of the redemption or purchase of its own shares;

(b) the payment was not made lawfully; and

(c) the aggregate realisable value of the company's assets and the amount paid by way of contribution to its assets (apart from this Article) is not sufficient for the payment of its liabilities and the expenses of the winding up.[445]

(2) In this Article, the amount of a payment that has not been made lawfully for the purpose of the redemption or purchase is referred to as the "relevant payment".[446]

(3) Subject to paragraphs (5) and (6), the court on the application of the liquidator may order –

(a) a person from whom the shares were redeemed or purchased; or

(b) a director,

to contribute in accordance with this Article to the company's assets so as to enable the insufficiency to be met.

(4) A person from whom any shares were redeemed or purchased may be ordered to contribute an amount not exceeding so much of the relevant payment as was made in respect of his or her shares.

(5) A person from whom shares were redeemed or purchased shall not be ordered to contribute under this Article unless the court is satisfied that, when he or she received payment for his or her shares –

(a) he or she knew; or

(b) he or she ought to have concluded from the facts known to him or her,

that immediately after the relevant payment was made the company would be unable to discharge its liabilities as they fell due, and that the realisable value of the company's assets would be less than the aggregate of its liabilities.

(6) A director who has expressed an opinion under Article 55(9) may be ordered, jointly and severally with any other person who is liable to contribute under this Article, to contribute an amount not exceeding the relevant payment, unless the court is satisfied that the director had grounds for the opinion expressed.

(7) Where a person has contributed an amount under this Article, the court may direct any other person who is jointly and severally liable to contribute under this Article to pay to him or her such amount as the court thinks just and reasonable.

(8) Article 192 does not apply in relation to liability accruing by virtue of this Article.

(9) [447]

182 Resolutions passed at adjourned meetings[448]

Any resolution passed at an adjourned meeting of a company's creditors shall be treated for all purposes as having been passed on the date on which it was in fact passed, and not as having been passed on any earlier date.

183 Duty to co-operate with liquidator[449]

(1) In a creditors' winding up each of the persons mentioned in paragraph (2) shall –

(a) give the liquidator information concerning the company and its promotion, formation, business, dealings, affairs or property which the liquidator may at any time after the commencement of the winding up reasonably require;

(b) attend on the liquidator at reasonable times and on reasonable notice when requested to do so; and

(c) notify the liquidator in writing of any change of his or her address, employment, or name.

(2) The persons referred to in paragraph (1) are –

(a) those who are, or have at any time been, officers of or the secretary to the company;

(b) those who have taken part in the formation of the company at any time within 12 months before the commencement of the winding up;

(c) those who are in the employment of the company, or have been in its employment within those 12 months, and are in the liquidator's opinion capable of giving information which he or she requires; and

(d) those who are, or within those 12 months have been, officers of, or in the employment of, a body corporate that is, or within those 12 months was, secretary to the company in question.

(3) For the purposes of paragraph (2) "employment" includes employment under a contract for services (*contrat de louage d'ouvrage*).

(4) A person who, without reasonable excuse, fails to comply with an obligation imposed by this Article, is guilty of an offence.

184 Liquidator to report possible misconduct[450]

(1) The liquidator in a creditors' winding up shall take the action specified in paragraph (2) if it appears to the liquidator in the course of the winding up –

(a) that the company has committed a criminal offence;

(b) that a person has committed a criminal offence in relation to the company being wound up; or

(c) in the case of a director, that for any reason (whether in relation to the company being wound up, or to a holding company of the company being wound up or to any subsidiary of such a holding

company) his or her conduct has been such that an order should be sought against him or her under Article 78.

(2) The liquidator shall –

(a) forthwith report the matter to the Attorney-General; and

(b) furnish the Attorney-General with information and give him or her access to, and facilities for inspecting and taking copies of, documents (being information or documents in the possession or under the control of the liquidator and relating to the matter in question) as the Attorney-General requires.

(3) Where a report is made to the Attorney General under paragraph (2), the Attorney-General may refer the matter to the Minister or the Commission for further enquiry.

(4) The Minister or the Commission –

(a) shall thereupon investigate the matter; and

(b) for the purpose of the investigation may exercise any of the powers that are exercisable by inspectors appointed under Article 128 to investigate a company's affairs.

(5) If it appears to the court in the course of a creditors' winding up –

(a) that the company has committed a criminal offence;

(b) that a person has committed a criminal offence in relation to the company being wound up; or

(c) in the case of a director, that for any reason (whether in relation to the company being wound up, or to a holding company of the company being wound up or of any subsidiary of such a holding company) his or her conduct has been such as to raise a question whether an order should be sought against him or her under Article 78,

and that no report with respect to the matter has been made by the liquidator to the Attorney-General under paragraph (2), the court may (on the application of a person interested in the winding up or of its own motion) direct the liquidator to make such a report.

185 Obligations arising under Article 184[451]

(1) For the purpose of an investigation by the Minister or the Commission under Article 184(4), an obligation imposed on a person by a provision of this Law to produce documents or give information to, or otherwise to assist, inspectors appointed as mentioned in that paragraph is to be regarded as an obligation similarly to assist the Minister in his or her, or the Commission in its, investigation.

(2) Article 130(4) shall apply in respect of an answer given by a person to a question put to him or her in exercise of the powers conferred by Article 184(4).

(3) Where criminal proceedings are instituted by the Attorney-General following a report or reference under Article 184, the liquidator and every

officer and agent of the company past and present (other than the defendant) shall give the Attorney-General any assistance in connection with the prosecution which he or she is reasonably able to give.

(4) In paragraph (3) "agent" includes a banker, advocate or solicitor of the company and a person employed by the company as auditor, whether or not that person is an officer of the company.

(5) If a person fails to give assistance as required by paragraph (3), the court may, on the application of the Attorney-General –

(a) direct the person to comply with that paragraph; and

(b) if the application is made with respect to a liquidator, direct that the costs shall be borne by the liquidator personally unless it appears that the failure to comply was due to the fact that the liquidator did not have sufficient assets of the company in his or her hands to enable him or her to do so.

185A Termination of creditors' winding up[452]

(1) The liquidator of a company that is in the course of being wound up by a creditors' winding up may apply to the court for an order terminating the winding up, and the members may, by special resolution, authorize the company to make such an application.

(2) The court shall refuse the application unless it is satisfied that the company is then able to discharge its liabilities in full as they fall due.

(3) In considering the application the court shall have regard to the interests of the creditors of the company.

(4) If the application for winding up the company was made by the Commission under Article 155(2) or (3) the court shall also have regard to the views of the Commission.

(5) If the court makes an order under this Article it may make such order as to costs as it thinks fit.

(6) Upon the termination of a creditors' winding up pursuant to paragraph (1) any liquidator appointed for the purpose of the creditors' winding up shall cease to hold office.

(7) The termination of a creditors' winding up pursuant to paragraph (1) shall not prejudice the validity of any thing duly done by any liquidator, director or other person, or by operation of law, before its termination.

185B Declaration under Désastre Law[453]

(1) If –

(a) a creditors' winding up of a company has commenced; and

(b) a declaration is made in respect of the company under the Désastre Law,

the winding up shall forthwith terminate.

(2) Upon the termination of the winding up pursuant to paragraph (1) –

(a) any liquidator appointed for the purpose of the winding up shall cease to hold office; and

(b) the company and all other persons shall be in the same position, subject to paragraph (3), as if the winding up had not commenced.

(3) The termination of a winding up pursuant to paragraph (1) shall not affect the validity of any thing duly done by any liquidator, director or other person, or by operation of law, before the termination.

186 Distribution of company's property

(1) Subject to –

(a) any enactment as to the order of payment of debts; and

(b) in respect of protected cells companies, the provisions of Part 18D,

a company's property shall on a winding up be applied in satisfaction of the company's liabilities *pari passu*.

(2) Unless the memorandum or articles otherwise provide any remaining property of the company shall be distributed among the members according to their rights and interests in the company.

(3) Despite paragraphs (1) and (2) and Article 166, if, in the course of a creditor's winding up of a company, the liquidator (or, if a liquidator has not yet been appointed, a director) is satisfied that the company's assets will be sufficient to ensure that –

(a) the costs, charges and expenses properly incurred in the winding up may be paid; and

(b) the claims of all creditors (including any interest owing on a debt) may be satisfied in full,

the liquidator, or, with the sanction of the court under Article 164(2), the director, may, before or after meeting some or all of those costs, charges and expenses and satisfying some or all of the claims of the creditors, distribute to the members of the company, proportional to their rights or interests, or otherwise as provided by the company's memorandum or articles, so much of the company's assets as shall not be required to meet those costs, charges, expenses and claims.[454]

Chapter 5 – Provisions of general application

186A References to the Court[455]

(1) The following persons, namely –

(a) the company, in a summary winding up;

(b) the liquidator or a contributory or creditor of the company, in a creditors' winding up,

may apply to the court for the determination of a question arising in the winding up, or for the court to exercise any of its powers in relation to the winding up.

(2) The court, if satisfied that it will be just and beneficial to do so, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or make such other order on the application as it thinks just.

(3) The court may exercise all or any of the powers that would have been exercisable by it or by the Viscount if a declaration had been made in relation to the company under the Désastre Law and may make an order terminating the winding up.

187 Enforcement of liquidator's duty to make returns, etc.

(1) If, in a winding up, a director or a liquidator who has defaulted in delivering a document or in giving any notice which the person is by law required to deliver or give fails to make good the default within 14 days after the service on the person of a notice requiring the person to do so the court has the following powers.

(2) On an application made by a creditor or contributory of the company, or by the registrar, the court may make an order directing the director or the liquidator to make good the default within the time specified in the order.

(3) The court's order may provide that costs of and incidental to the application shall be borne, in whole or in part, by the director or the liquidator personally.

(4) Nothing in paragraph (1) prejudices the operation of any enactment imposing penalties on a director or a liquidator in respect of a default mentioned therein.

188 Qualifications of liquidator

(1) A person who is not an individual is not qualified to act as a liquidator.

(2) The Minister may prescribe the qualifications required for any person to act as a liquidator.

(3) An appointment made in contravention of this Article or any Order made under it is void; a person who acts as liquidator when not qualified to do so is guilty of an offence.

(4) A liquidator shall vacate office if the liquidator ceases to be a person qualified to act as a liquidator.

189 Corrupt inducement affecting appointment as liquidator

A person who gives or agrees or offers to give to a member or creditor of a company any valuable benefit with a view to securing his or her own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself or herself, as the company's liquidator, is guilty of an offence.

190 Notification by liquidator of resignation, etc.

(1) A liquidator who resigns, is removed or for any other reason vacates office shall within 14 days after the resignation, removal or vacation of office give notice thereof, signed by the liquidator, to the registrar and in the case of a creditors' winding up (except where the removal is pursuant to Article 163(3)) to the creditors.

(2) A liquidator who fails to comply with paragraph (1) is guilty of an offence.

191 Notification that company is in liquidation

(1) When a company is being wound up, every invoice, order for goods or services or business letter issued by or on behalf of the company, or a liquidator of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is in liquidation.

(2) In the event of failure to comply with this Article, the company and every officer of it who is in default is guilty of an offence.

192 Liability as contributories of present and past members[456]

(1) Except as otherwise provided by this Article, where a company is wound up, each present and past member of the company is liable to contribute to its assets to an amount sufficient for payment of its liabilities, the expenses of the winding up, and for the adjustment of the rights of the contributories among themselves.

(2) A past member of a particular class is not, as a member of that class, liable to contribute –

(a) unless it appears to the court that the present members of that class are unable to satisfy the contributions required to be made by them as such members;

(b) if he or she ceased to be a member of that class for 12 months or more before the commencement of the winding up; or

(c) in respect of a liability of the company contracted after he or she ceased to be a member of that class.

(3) A past or present guarantor member is not liable in that capacity to contribute unless it appears to the court that the past and present members in their capacity as the holders of limited shares are unable to satisfy the contributions required to be made by them as such members.

(4) A past or present member in his or her capacity as the holder of an unlimited share is not liable to contribute unless it appears to the court that the past and present members in their capacities as the holders of limited shares or as guarantor members are unable to satisfy the contributions required to be made by them as such members.

(5) A contribution shall not be required from a past or present member, as such a member, exceeding –

(a) any amount unpaid on any limited shares in respect of which he or she is liable; or

(b) the amount undertaken to be contributed by him or her to the assets of the company if it should be wound up.

(6) A sum due to a member of the company, in his or her capacity as a member, by way of dividends, profits or otherwise is not in a case of competition between himself or herself and any other creditor who is not a member of the company, a liability of the company payable to that member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributors among themselves.

193 Bar against other proceedings in bankruptcy

The winding up of a company under this Law bars the right to take any other proceedings in bankruptcy except the right of a creditor or the company to apply for a declaration under the Désastre Law.

194 Disposal of records

(1) When a company has been wound up and is about to be dissolved, its records and those of a liquidator may be disposed of as follows –

(a) in the case of a summary winding up, in the way that the company by special resolution directs; and

(b) in the case of a creditors' winding up, in the way that the liquidation committee or, if there is no such committee, the company's creditors, may direct.

(2) After 10 years from the company's dissolution no responsibility rests on the company, a liquidator, or a person to whom the custody of the records has been committed, by reason of any record not being forthcoming to a person claiming to be interested in it.

(3) The Commission may direct that for such period as it thinks proper (but not exceeding 10 years from the company's dissolution), the records of a company which has been wound up shall not be destroyed.[457]

(4) A person who acts in contravention of a direction made for the purposes of this Article, is guilty of an offence.

194A Power of States to amend Part 21[458]

The States may amend this Part by Regulations.

PART 22

EXTERNAL COMPANIES

195 Power to make Regulations as to registration and regulation of external companies

(1) This Article applies to external companies.

(2) The States may by Regulations make provisions with respect to any of the following matters –

(a) the delivery to the registrar by an external company of –

(i) notice that it has become or ceased to be an external company,

(ii) particulars of its name, place and date of incorporation and its registered number in that place,

(iii) the address of its registered office or principal place of business, and

(iv) an address in Jersey at which a document may be served on it;

(b) requiring an external company to change the name under which it carries on business in Jersey, or which it uses in connection with an address in Jersey for the purposes of its business; and

(c) the manner in which a document may be served on an external company.

(3) Regulations under this Article may provide for the payment of annual and other fees and for the imposition of fines and daily default fines for breaches of the Regulations.

(4) A person who passes off or represents an external company as incorporated in Jersey is guilty of an offence.

PART 23

REGISTRAR

196 Registrar and other officers

(1) For the purposes of the registration of companies under this Law, the Commission shall appoint an officer known as the registrar of companies and such other officers as may be necessary to assist the registrar in the exercise of the registrar's functions under this Law.[459]

(2) Any functions of the registrar under this Law may, to the extent authorized by the registrar, be exercised by any officer on the staff of the Commission.[460]

(3) An officer appointed under this Article shall be an officer of the Commission.[461]

197 Registrar's seal

The Commission may direct a seal or seals to be prepared for the authentication of documents required for or in connection with the registration of companies.[462]

198 Registered numbers

(1) The registrar shall allocate to every company a number, which shall be known as the company's registered number.

(2) Companies' registered numbers shall be in such form, consisting of one or more sequences of figures or letters as the registrar may from time to time determine.

(3) The registrar may upon adopting a new form of registered number make such changes of existing registered numbers as appear to the registrar necessary.

199 Size, durability, etc. of documents delivered to registrar

(1) The Commission may publish requirements (whether as to size, weight, quality or colour of paper, size, type or colouring of lettering, or otherwise) in respect of documents delivered to the registrar to ensure that they are of standard size, durable and easily legible.[463]

(2) If a document is delivered to the registrar that in the opinion of the registrar does not comply with a published requirement, the registrar may serve on a person by whom the document was delivered (or, if 2 or more, any of them) a notice stating his or her opinion and giving details of the relevant requirement.[464]

(3) Where the registrar serves a notice under paragraph (2), then for the purposes of any enactment which enables a penalty to be imposed in respect of an omission to deliver to the registrar a document required to be delivered under that provision (and, in particular, for the purposes of any such enactment whereby such a penalty may be imposed by reference to each day during which the omission continues) –

(a) a duty imposed by that provision to deliver a document to the registrar is to be treated as not having been discharged by the delivery of that document; but

(b) no account is to be taken of days falling within the period beginning with the day on which the document was delivered to the registrar and ending with the 14th day after the date of service of the notice under paragraph (2).

200 Form of documents to be delivered to the registrar[465]

(1) The Commission may publish forms to be used for any of the purposes of this Law.

(2) Where this Law requires a document to be delivered to the registrar, but the form of the document has not been published by the Commission it shall be sufficient compliance with the requirement if a document or the

information it must contain is delivered in a form and manner acceptable to the registrar.

(3) The Commission may publish details of the manner in which any document to be delivered to the registrar is to be authenticated.

(4) Unless otherwise provided by or under this Law, a document delivered to the registrar by a company pursuant to this Law shall be signed by an officer or the secretary of the company.

201 Fees and charges[466]

(1) The Commission may require the payment to it of published fees in respect of the performance by the registrar of his or her functions under this Law or a charge for the provision by the registrar of any service, advice, or assistance.

(2) When documents are delivered to the registrar in accordance with Article 7 (which relates to the incorporation of a company) or Article 71 (which relates to the annual return of a company) they must be accompanied by such amount (additional to any fee or charge mentioned in paragraph (1)) as the States may determine by Regulations.

(3) The Commission shall pay any additional amount received in accordance with paragraph (2) to the Treasurer of the States.

(4) Where a fee mentioned in paragraph (1) or an amount mentioned in (2) is payable in respect of the performance of a function by the registrar the registrar need take no action until the fee or amount is paid.

(5) Where the fee or additional amount is payable on the receipt by the registrar of a document required to be delivered to the registrar the registrar shall be taken not to have received the document until the fee or additional amount is paid.

201A Keeping of records by registrar[467]

(1) The information that is contained in a document delivered to the registrar under this Law or to the Judicial Greffier under the Laws repealed by Article 223 and kept by the registrar may be recorded and kept by the registrar in any form –

(a) which is approved by the Commission;

(b) which is capable of being inspected; and

(c) of which a copy can be produced in legible form.[468]

(2) The keeping by the registrar of a record of a document in accordance with paragraph (1) shall be sufficient compliance with any duty that the registrar has to keep the document.

202 Inspection and production of records kept by registrar[469]

(1) A person may inspect a record kept by the registrar.

(2) A person may require –

(a) a certificate of the incorporation of a company; or

(b) a certified or uncertified copy of a record, kept by the registrar, which the person is entitled to inspect or of any part of such a record.

(3) A certificate given under paragraph (2) shall be signed by the registrar and sealed with the registrar's seal.

(4) A copy, certified in writing by the registrar in the manner described in paragraph (3) to be an accurate copy –

(a) of a record kept by the registrar; or

(b) of any part of such a record,

shall be admissible in evidence in all legal proceedings as of equal validity with the original record and as evidence of any fact stated in it of which direct oral evidence would be admissible.

(5) Where a document purports on its face to be a copy of a record or part of a record, certified in either case in accordance with paragraphs (3) and (4), it shall be unnecessary for the purposes of paragraph (4) to prove the official position or handwriting of the registrar.

(6) The rights conferred by paragraphs (1) and (2) are subject to the following limitations –

(a) the right of inspection does not extend to an original document of which a record is kept in accordance with Article 201A(1);

(b) in relation to documents delivered to the registrar with a prospectus pursuant to a requirement of an Order made under Article 29, the rights shall be exercisable only during the period or with the permission specified in the Order; and

(c) the rights conferred by paragraph (2) are subject to Article 71(4)[470].

203 Enforcement of company's duty to make returns

(1) If a company, having failed to comply with a provision of this Law which requires it to deliver to the registrar any document, or to give notice to the registrar of any matter, does not make good the failure within 14 days after the service of a notice on the company requiring it to do so, the court may, on an application made to it by a member or creditor of the company or by the registrar, make an order directing the company and any officer of it to make good the failure within a time specified in the order.

(2) The court's order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of it responsible for the failure.

(3) Nothing in this Article prejudices the operation of any Article imposing penalties on a company or its officers in respect of a failure mentioned above.

204 Destruction of records[471]

The registrar may destroy any record kept by the registrar –

(a) where it is an original document and the registrar has recorded and kept the information in it in accordance with Article 201A(1);

(b) where it has been kept for over 10 years and is or was comprised in or annexed or attached to the accounts or annual returns of a company; or

(c) where it relates only to a company that has been dissolved (whether under this Law or otherwise) more than 10 years previously.

205 Registrar's powers to strike companies off register[472]

(1) If the registrar has reason to believe that a company is not carrying on business or is not in operation –

(a) the registrar may send to it a letter inquiring whether it is carrying on business or is in operation; and

(b) if the registrar receives an answer to the effect that the company is not carrying on business or is not in operation, or if the registrar does not within one month after sending the letter receive an answer, he or she may publish in the Jersey Gazette and send to the company a notice under paragraph (6).

(2) Where a company does not deliver a return to the registrar in accordance with Article 71, before 30th June in the year in which that return is due, the registrar may send to the company a notice under paragraph (6).

(3) Where in the case of a company (other than a limited life company) –

(a) its memorandum specifies or its articles specify a period of time for the duration of the company;

(b) that period has expired; and

(c) a notice in accordance with either of paragraphs (1) and (2) of Article 144A has not been delivered to the registrar,

the registrar may publish in the Jersey Gazette and send to the company a notice under paragraph (6).

(4) If, where a company is being wound up in a creditors' winding up, the registrar has reason to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of 6 consecutive months, the registrar shall publish in the Jersey Gazette and send to the company or the liquidator (if any) a notice under paragraph (6).

(5) If the registrar has reason to believe that a company which is being wound up summarily has, for a period of 6 months failed to comply with Article 150(4), he or she shall publish in the Jersey Gazette and send to the company or the liquidator (if any) a notice under paragraph (6).

(6) A notice to which paragraph (1), (2), (3), (4) or (5) refers shall state that at the end of the period of 3 months following the date of the notice, the

name of the company will be struck off the register and the company will be dissolved unless –

(a) where the notice relates to non-compliance with a requirement of this Law, that requirement is complied with; or

(b) in any other case, reason is shown by the company or a member, creditor or liquidator of the company why the company's name should not be struck off the registrar and the company should not be dissolved.

(7) If the conditions in paragraph (6) (a) or (b) (as the case may be) have not been satisfied before the end of the period mentioned in the notice, the registrar may strike the company's name off the register.

(8) On the striking of the company's name off the register under paragraph (7), the company shall by operation of this Article be dissolved; but the liability (if any) of every director and member of the company shall nevertheless continue and may be enforced as if the company had not been dissolved.

(9) On striking a company's name off the register under paragraph (7), the registrar shall publish notice of that fact in the Jersey Gazette.

(10) A notice to be sent under this Article to a company or a liquidator may be sent by post, and in the case of a liquidator may be addressed to him or her at his or her last known place of business.

(11) Where –

(a) the name of a company is struck off the register under paragraph (7); and

(b) the company is a protected cell company,

the registrar must also strike off the register the name of each cell (if any) of the company.[473]

205A Registrar may strike company off register at end of duration[474]

(1) Where in the case of a company (other than a limited life company) –

(a) its memorandum specifies or its articles specify a period of time for the duration of the company;

(b) that period has expired; and

(c) a notice in accordance with either of Article 144A(1) and (2) has not been delivered to the registrar,

the registrar may proceed in accordance with paragraph (2).

(2) Where the registrar is entitled to proceed in accordance with this paragraph, the registrar may publish in the Jersey Gazette, and send to the company by post, a notice that at the end of 3 months from the date of that notice the name of the company mentioned in it will, unless reason is shown to the contrary, be struck off the register and the company will be dissolved.

(3) At the end of the period mentioned in the notice the registrar may, unless reason to the contrary is previously shown by the company or a member,

creditor or liquidator of it, strike its name off the register, and shall publish notice of this in the Jersey Gazette; and on the striking off the company is dissolved; but the liability (if any) of every director and member of the company continues and may be enforced as if the company had not been dissolved.

PART 24

MISCELLANEOUS AND FINAL PROVISIONS

206 Form of company's records

(1) The records, which a company is required by this Law to keep, may be kept in the form of a bound or loose-leaf book, or photographic film, or may be entered or recorded by a system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

(2) A company shall take reasonable precautions –

(a) to prevent loss or destruction of;

(b) to prevent falsification of entries in; and

(c) to facilitate detection and correction of inaccuracies in,

the records required by this Law to be kept, and a company which fails to comply with the provisions of this paragraph is guilty of an offence.

207 Examination of records and admissibility of evidence

(1) If any record referred to in Article 206(1) is kept otherwise than in intelligible written form, any duty imposed on the company by this Law to allow examination of, or to furnish extracts from, such record shall be treated as a duty to allow examination of, or to furnish a copy of the extract from, the record in intelligible written form.

(2) The records kept by a company in compliance with this Law shall be admissible in the form in which they are made intelligible under paragraph (1) as *prima facie* evidence, before and after the dissolution of the company, of all facts stated therein.

208 Production and inspection of records where offence suspected

(1) If, on an application by the Attorney General, there is shown to be reasonable cause to believe that a person has, while an officer of a company, committed an offence in connection with the management of the company's affairs and that evidence of the commission of the offence is to be found in any records of or under the control of the company, the court may make an order –

(a) authorizing a person named in it to inspect the records in question, or any of them, for the purpose of investigating and obtaining evidence of the offence; or

(b) requiring the secretary of the company or an officer of it named in the order to produce and make available the records (or any of them) to a person named in the order at a place so named.

(2) Paragraph (1) applies also in relation to records of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to records of or under the control of the company, except that no order referred to in paragraph (1)(b) shall be made by virtue of this paragraph.

(3) The decision of the court on an application under this Article is not appealable.

209 Legal professional privilege

Where criminal proceedings are instituted by the Attorney General under this Law against any person, nothing in this Law is to be taken to require any person to disclose any information which the person is entitled to refuse to disclose on grounds of legal professional privilege in proceedings in the court.

210 Right to refuse to answer questions

A person may refuse to answer any question put to him or her pursuant to any provision of this Law if his or her answer would tend to expose that person, or the spouse of that person, to proceedings under the law of Jersey for an offence or for the recovery of any penalty.

211 Relief for private companies

The States may, by Regulations, provide that private companies, or private companies satisfying conditions specified in the Regulations, shall be exempt from compliance with any provision of this Law so specified or that any such provision shall apply to such companies with such modifications as may be so specified.

212 Power of court to grant relief in certain cases

(1) If in proceedings for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor it appears to the court that that officer or person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that the person has acted honestly and that having regard to all the circumstances of the case (including those connected with his or her appointment) he or she ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the court may relieve the person, either wholly or partly, from his or her liability on such terms as it thinks fit.

(2) If an officer or person mentioned in paragraph (1) has reason to apprehend that a claim will or might be made against the person in respect of negligence, default, breach of duty or breach of trust, he or she may apply to the court for relief; and the court on the application has the same power to relieve the person as it would have had if proceedings against him or her for negligence, default, breach of duty or breach of trust had been brought.

213 Power of court to declare dissolution of company void[475]

(1) Where a company has been dissolved under this Law or the Désastre Law, the court may at any time within 10 years of the date of the dissolution, on an application made for the purpose by –

(a) a liquidator of the company; or

(b) any other person appearing to the court to be interested,

make an order, on such terms as the court thinks fit, declaring the dissolution to have been void and the court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the company had not been dissolved.

(2) Thereupon such proceedings may be taken which might have been taken if the company had not been dissolved.

(3) The person on whose application the order was made shall within 14 days after the making of the order (or such further time as the court may allow), deliver the relevant Act of the court to the registrar for registration.

(4) A person who fails to comply with paragraph (3) is guilty of an offence.

(5) Paragraph (6) applies where –

(a) an order is made under this Article that declares that the dissolution of a company dissolved under Article 150 is void; and

(b) the company's assets (if any) at the time of its dissolution were not sufficient for the discharge of all its liabilities at that time.

(6) The court on the application of a creditor of the company may order –

(a) a person to whom any assets were distributed under Article 150; and

(b) any director or liquidator who signed a statement delivered to the registrar under Article 146 or 150 that the company had no liabilities,

to contribute to the company's assets so as to enable the insufficiency mentioned in paragraph (5)(b) to be met.

(7) Paragraph (6)(b) does not include a person who shows that he or she had reasonable grounds for being satisfied when signing the statement mentioned in that paragraph that the company had no liabilities.

(8) A person mentioned in paragraph (6)(a) is liable to contribute an amount not exceeding the amount or value of the assets that were distributed to the person.

(9) A director or liquidator mentioned in paragraph (6)(b) may be ordered, jointly and severally with any other person who is liable to contribute under this Article, to contribute an amount not exceeding the insufficiency mentioned in paragraph (5)(b).

(10) Where a person has contributed an amount under this Article, the court may direct any other person who is jointly and severally liable to contribute under this Article to pay to him or her such amount as the court thinks just and reasonable.

(11) Article 192 does not apply in relation to liability accruing by virtue of this Article.

213A Recognition of status of foreign corporations[476]

(1) If at any time –

(a) any question arises whether a body which purports to have corporate status under or, as the case may be, which appears to have lost corporate status under the laws of a territory which is not at that time a recognized State should or should not be regarded as having legal personality as a body corporate under the law of Jersey; and

(b) it appears that the laws of that territory are at that time applied by a settled court system in that territory,

that question and any other material question relating to the body shall be determined (and account shall be taken of those laws) as if that territory were a recognized State.

(2) For the purposes of paragraph (1) –

(a) "a recognized State" is a territory which is recognized by Her Majesty's Government in the United Kingdom as a State;

(b) the laws of a territory which is so recognized shall be taken to include the laws of any part of the territory which are acknowledged by the federal or other central government of the territory as a whole; and

(c) a material question is a question (whether as to capacity, constitution or otherwise) which, in the case of a body corporate, falls to be determined by reference to the laws of the territory under which the body is incorporated.

(3) Any registration or other thing done at a time before the coming into force of this Article shall be regarded as valid if it would have been valid at that time, had paragraphs (1) and (2) then been in force.

214 Registration in the Public Registry

The Judicial Greffier shall register in the Public Registry all Acts and orders affecting immovable property made under this Law.

215 Punishment of offences[477]

(1) Schedule 1 has effect with respect to the way in which offences under this Law are punishable on conviction.

(2) In relation to an offence under a provision of this Law specified in the first column of Schedule 1 (the general nature of the offence being described in the second column) –

(a) the corresponding entry in the third column shows the maximum punishment by way of fine or imprisonment under this Law that may be imposed on a person convicted of the offence;

(b) the corresponding entry (if any) in the fourth column shows that a person convicted of the offence is also liable to a daily default fine;

(c) a reference in the third column to a period of years or months is a reference to a term of imprisonment of that duration; and

(d) a reference in the third or fourth column to a level is a reference to a fine of that level on the standard scale.

(3) In paragraph (2)(b), liability to a daily default fine means that if –

(a) a person has been convicted of the offence;

(b) the person is convicted of having again committed that offence; and

(c) on that subsequent occasion the contravention has continued for more than one day,

then in addition to the person's liability to a fine under paragraph (2)(a) on conviction in respect of that subsequent offence, he or she is liable to the fine specified in the fourth column of Schedule 1 for each day (other than the first day) on which the subsequent offence is proved to have continued.

(4) For the purposes of any Article of this Law where under or pursuant to this Law an officer of a company or other body corporate who is in default is guilty of an offence, the expression "officer in default" means any officer of the company or body corporate who knowingly and wilfully authorizes or permits the default, refusal or contravention mentioned in the Article.

216 Accessories and abettors[478]

Any person who aids, abets, counsels or procures the commission of an offence under this Law shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.

217 General powers of the court

(1) Where, on the application of the Attorney General or the registrar, the court is satisfied that any person has failed to comply with any requirement made by or pursuant to this Law, or has committed any breach of duty as an officer of the company, it may order that person to

comply with that requirement or, so far as the breach of duty is capable of being made good, make good the breach.

(2) The court shall not make an order against any person under this Article unless the court has given that person the opportunity of adducing evidence and being heard in relation to the matter to which the application relates.

217A Limitation of liability[479]

(1) No person or body to whom this Article applies shall be liable in damages for anything done or omitted in the discharge or purported discharge of any functions under this Law or any enactment made, or purportedly made, under this Law unless it is shown that the act or omission was in bad faith.

(2) This Article applies to –

(a) the States;

(b) the Minister or any person who is, or is acting as, an officer, servant or agent in an administration of the States for which the Minister is assigned responsibility or who is an inspector appointed by the Minister under Article 128 or who is performing any duty or exercising any power on behalf of the Minister; and

(c) the Commission, any Commissioner or any person who is, or is acting as, an officer, servant or agent of the Commission or who is an inspector appointed by the Commission under Article 128 or who is performing any duty or exercising any power on behalf of the Commission.

218 Power to make Rules

Rules may be made in the manner prescribed by the Royal Court (Jersey) Law 1948[480] relating to the procedure to be followed by the court in giving effect to the provisions of this Law.

219 Orders

(1) The Minister may by Order make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for prescribing any matter which may be prescribed by this Law.

(1A) The Minister shall consult the Commission before making any Order under this Law.[481]

(1B) In prescribing fees for the purposes of this Law, the Minister may take into consideration such matters as he or she thinks fit, and such fees may be prescribed so as to raise income in excess of the amount necessary to cover the expenses of the Minister in discharging his or her functions under this Law.[482]

(2) The Subordinate Legislation (Jersey) Law 1960[483] shall apply to Orders made under this Law.

220 General provisions as to Regulations and Orders

(1) Except insofar as this Law otherwise provides, any power conferred thereby to make any Regulations or Order may be exercised –

(a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and

(b) so as to make in relation to the cases in relation to which it is exercised –

(i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise),

(ii) the same provision for all cases in relation to which the power is exercised or different provisions for different cases or classes of case, or different provisions as respects the same case or class of case for different purposes of this Law, or

(iii) any such provision either unconditionally or subject to any specified conditions.

(2) Without prejudice to any specific provision of this Law, any Regulations or Order under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the States or the Minister, as the case may be, to be necessary or expedient for the purposes of the Regulations or Order.

(3) A power conferred on the States by this Law to make Regulations to amend any provision of this Law includes the power to make Regulations to make such transitional, consequential, incidental or supplementary amendments to any other provision of this Law as appears to the States to be necessary or expedient.[484]

221 Transitional provisions

(1) The transitional provisions in Schedule 2 shall have effect with regard to the Laws repealed by Article 223 and to existing companies.

(2) The States may, by Regulations, make provision for any other transitional matter connected with the coming into force of this Law.

223 Repeal

The Companies (Jersey) Law 1861 to 1968 are repealed.

224 Citation

This Law may be cited as the Companies (Jersey) Law 1991.

SCHEDULE 1[485]

(Article 215)

PUNISHMENT OF OFFENCES

Article of Law creating offence	General nature of offence	Punishment	Daily default fine (where applicable)
12(2)	Company failing to send to one of its members a copy of its memorandum or articles, when so required by the member	Level 3	
14(4)	Company failing to deliver to Judicial Greffier copy of altered certificate of incorporation following change of name	Level 3	Level 2
15(5)	Company failing to change name on direction of registrar	Level 3	Level 2
16(5)	Company failing to comply with condition of direction, or to deliver to registrar copy of notice of direction of Commission or of withdrawal or amendment of condition	Level 3	Level 2
17(5)	Private company failing to give written notice to registrar of increase of membership beyond 30	Level 3	Level 2
17(8)	Private company failing to deliver to registrar Act of the court relieving company from consequences of increasing the number of its members beyond 30	Level 3	Level 2
17(8)	Company failing to deliver to registrar copy of direction by Commission modifying Article 17(2) in its application to the company	Level 3	Level 2
22(1A)	Company failing to have its name engraved on company seal	Level 3	
22(2)	Officer of company etc. using company seal without name	Level 3	

Article of Law creating offence	General nature of offence	Punishment	Daily default fine (where applicable)
	engraved on it in legible characters		
29(3)	Failure to comply with Order of Minister prohibiting the circulation of a prospectus in Jersey, the circulation of a prospectus outside Jersey by a company, or the procuring by a company (whether in or outside Jersey) of the circulation of a prospectus outside Jersey	2 years or a fine; or both	
33	Circulation of a prospectus with a material statement in it which is untrue or misleading or with the omission from it of the statement of a material fact	10 years or a fine; or both	
36(2)	Public company failing to deliver to registrar statement disclosing the amount or rate per cent of share commission	Level 3	Level 2
41(3)	Company failing to keep a register of members	Level 4	Level 2
42(1B)	Company registering transfer of shares to which Taxation (Land Transactions) (Jersey) Law 2009 applies, without production of LTT receipt	Level 3	–
44(4)	Company failing to give notice to registrar as to place where register of members is kept	Level 4	Level 2
45(3)	Refusal of inspection of members' register; failure to send copy on requisition	Level 4	
46(3)	Misuse of information obtained from members' register	A fine	
47(4)	Company failing to deliver to registrar Act of court ordering rectification of register of members	Level 3	Level 2
49(10)	Company failing to comply with requirements in respect of	Level 3	Level 2

Article of Law creating offence	General nature of offence	Punishment	Daily default fine (where applicable)
	overseas branch registers		
50(5)	Company default in compliance with Article 50(1) (certificates to be made ready following allotment or transfer of shares)	Level 3	Level 2
53(5)	Company failing to deliver to registrar Act of court when application made to cancel resolution varying members' rights	Level 3	Level 2
54(5)	Company failing to deliver to registrar statement or notice required by Article 54 (particulars of special rights of members)	Level 3	Level 2
55(10)	Director making statement without reasonable grounds for the opinion expressed	2 years or a fine; or both	
58B(4)	Company failing to dispose for treasury shares	Level 3	Level 2
66	Officer of company concealing name of creditor entitled to object to reduction of capital, or wilfully misrepresenting nature or amount of debt or claim, etc.	2 years or a fine; or both	
67(9)	Company failing to comply with requirements as to registered office	Level 3	
69(2)	Company failing to have name on business correspondence, invoices, etc.	Level 3	
70(3)	Company failing to comply with Article 70(1) or (2) (matters to be stated on business correspondence, etc.)	Level 3	
71(6)	Company failing to comply with requirements for annual returns	Level 3	Level 2
74A(2)	Company failing to record contracts with sole member who is a director	Level 3	

Article of Law creating offence	General nature of offence	Punishment	Daily default fine (where applicable)
78(4)	Person acting in contravention of disqualification order	2 years or a fine; or both	
83(4)	Default in complying with Article 83 (keeping register of directors and secretaries; refusal of inspection)	Level 3	Level 2
87(8)	Company default in holding annual general meeting	Level 4	
88(3)	Company default in complying with Commission direction to hold company meeting	A fine	
88(5)	Company failing to register resolution that meeting held under Article 88 is to be its annual general meeting	Level 3	Level 2
95A(2)	Sole member failing to provide company with written record of decision	Level 3	
96(3)	Failure to give notice, to member entitled to vote at company meeting, that he or she may do so by proxy	Level 3	
96(5)	Officer of company authorizing or permitting issue of irregular invitations to appoint proxies	A fine	
98(4)	Company failing to keep minutes of proceedings at company and board meetings, etc.	Level 3	Level 2
99(3)	Refusal of inspection of minutes of general meeting; failure to send copy of minutes on member's request	Level 3	
100(5)	Company failing to include copy of resolution to which Article 100 applies with memorandum or articles; failing to forward copy to member on request	Level 3	
109	Company failing to comply with Article 103 (keeping accounting	Level 4	For contravention of

Article of Law creating offence	General nature of offence	Punishment	Daily default fine (where applicable)
	records), 104 (retaining accounting records), 105 (preparing and laying accounts), Article 106 (publishing interim accounts), Article 107 (supplying copies of accounts to members) or 108 (delivering copy of accounts to registrar)		Article 107 or 108, Level 2
109	Liquidator or other officer of public company failing to comply with Article 103, 104, 105, 106, 107 or 108	2 years or a fine; or both	
110(5)(a)	Failure to comply with an obligation imposed by an Order made under the Article	Level 4	Level 2
110(5)(b)	Knowingly or recklessly provides information that is false or misleading in a material particular	2 years or a fine; or both	
111(16)	Failure by recognized auditor or any officer in default to inform Commission of change in provided information	Level 4	Level 2
111(17)	Person providing false or misleading information	2 years or a fine; or both	
113(10)	Company failing to appoint auditor when required to do so	A fine	
113(10)	Officer failing to appoint auditor when company required to do so	2 years or a fine; or both	
113B(12)	Auditor ceasing to hold office failing to deposit statement as required by Article 113B(9)	A fine	
113B(12)	Failure by officer of auditor ceasing to hold office to deposit statement as required by Article 113B(9)	A fine	
113B(13)	Company failing to send notice of auditor's resignation to members and to other persons entitled to receive notice of general meetings	A fine	

Article of Law creating offence	General nature of offence	Punishment	Daily default fine (where applicable)
113B(13)	Failure by officers of company to send notice of auditor's resignation to members and to other persons entitled to receive notice of general meetings	A fine	
113B(14)	Recognized auditor failing to keep working papers of audit of market traded company in the English language or failing to produce them on demand	A fine	
113B(14)	Officer of recognized auditor failing to keep working papers of audit of market traded company in the English language or failing to produce them on demand	A fine	
113C(2)	Company officer or secretary making false or misleading statement to auditors	5 years or a fine; or both	
113D(4)	Person accepting an appointment to be, or acting as, an auditor of a market traded company or attempting to persuade others that the person is a recognized auditor, when not a recognized auditor	2 years or a fine; or both	
113D(4)	Person accepting an appointment to be, or acting as, an auditor of a company or attempting to persuade others that the person is an auditor, when not an auditor	2 years or a fine; or both	
113D(4)	Person failing to give company notice of ineligibility	2 years or a fine; or both	
113D(7)	Person providing false or misleading information	2 years or a fine; or both	
113F(2)	Auditor or officer in default if auditor acting when prohibited or failing to give notice	2 years or a fine; or both	
113L(4)(a)	Recognized auditor or officer in default failing to comply with a requirement of the Commission to provide information	Level 4	

Article of Law creating offence	General nature of offence	Punishment	Daily default fine (where applicable)
113L(4)(b)	Recognized auditor or officer in default providing false or misleading information to the Commission	2 years or a fine; or both	
113P(9)	Unauthorized disclosure of information	2 years or a fine; or both	
113Q(4)	Company failing to comply with a direction to have its accounts re-audited or to restate them (and failing, if further directed to do so, to have those restated accounts audited)	A fine	
113Q(4)	Officer of company that fails to comply with a direction to have the company's accounts re-audited or to restate them (and failing, if further directed to do so, to have those restated accounts audited)	2 years or a fine; or both	
115(5)	Director making statement without having reasonable grounds for doing so	2 years or a fine, or both	
117(6)	Offeror failing to send to company whose shares are the subject of the offer notice and declaration required by Article 117(4); making false declaration for purposes of Article 117(4)	2 years or a fine; or both	
119(6)	Offeror failing to give minority shareholder notice of rights exercisable under Article 119(1) or (2)	A fine	
125(4)	Company failing to annex Act of court to memorandum	Level 3	
126(6)	Company failing to comply with requirements of Article 126 (information to members and creditors about compromise or arrangement)	Level 3	
126(7)	Director or trustee for debenture holders failing to give notice to	A fine	

Article of Law creating offence	General nature of offence	Punishment	Daily default fine (where applicable)
	company of such matters relating to himself or herself as are necessary for purposes of Article 126		
127(4)	Company failing to deliver to registrar Act of court sanctioning compromise or arrangement	Level 3	Level 2
127G(1)	Person providing false, misleading or deceptive information or document in connection with application under Part 18B	2 years or a fine; or both	
127G(2)	Person signing certificate without reasonable grounds for doing so	2 years or a fine; or both	
127W(4)	Director, or future director, making statement without having reasonable grounds for doing so	2 years or a fine, or both	
127Y	Person giving false, misleading or deceptive information in respect of application under Part 18C	2 years or a fine; or both	
127YDA(4)	Company or cell failing to comply with requirements re directors	Level 3	Level 2
127YE(3)	Cell company failing to provide annual return for cell of the company	Level 3	Level 2
127YE(5)	Cell of cell company and officer failing to provide information to cell company	Level 3	Level 2
127YI(5)	Director making declaration without reasonable grounds to do so	2 years or a fine; or both	
127YI(7)	Cell company and officers failing to file document in respect of cell transfer	Level 3	Level 2
127YIA(5)	Director making declaration without having reasonable grounds to do so	2 years or a fine; or both	

Article of Law creating offence	General nature of offence	Punishment	Daily default fine (where applicable)
127YIA(7)	Cell company and officer failing to file document in respect of cell transfer	Level 3	Level 2
127YR(3)	Director failing to keep assets of protected cell company separate or failing to make clear the position of company in respect of an agreement by it in respect of a cell	Fine	
127YT(8)	Director making statement without reasonable grounds for the opinion expressed	2 years or a fine; or both	
127YU(9)	Creditor failing to keep cell assets separate and identifiable	Level 3	Level 2
127YU(15)	Company failing to take action in respect of loss wrongly suffered by its cellular or non-cellular assets	Level 3	Level 2
130(3)	Person giving false, misleading or deceptive information etc. to an inspector	2 years or a fine; or both	
133	Obstruction of person acting in execution of search warrant issued under Article 132	2 years or a fine; or both	
143(5)	Company failing to deliver to registrar Act of court altering, or giving leave to alter, company's memorandum or articles following application by member, Minister or Commission	Level 3	Level 2
146(4)	Director giving statement of solvency for the purpose of a summary winding up	2 years or a fine or both	
150(7)	Director or liquidator giving statement that company has no liabilities	2 years or a fine or both	
151(12)	Director or liquidator of company in summary winding up failing to take any required action on forming opinion that company is unable to discharge its liabilities	2 years or a fine; or both	

Article of Law creating offence	General nature of offence	Punishment	Daily default fine (where applicable)
	as they fall due		
154(5)	Director signs certificate with out having reasonable grounds for belief that the statements in it are true	2 years or a fine; or both	
155(6)	Company and officer in default failing to deliver to registrar Act of court ordering company to be wound up on just and equitable grounds	Level 3	Level 2
158(2)	Company and officer in default failing to advertise resolution for creditors' winding up	Level 3	Level 2
160(3)	Company or director failing to comply with Article 160 in respect of calling or giving notice of creditors' meeting; directors failing to attend and lay statement before creditors' meeting	A fine	
161(6)	Liquidator failing to give notice of appointment	Level 3	Level 2
164(3)	Directors exercising powers in breach of Article 164, where no liquidator	6 months or a fine; or both	
168(2)	Liquidator failing to call company general meeting and creditors' meeting at end of each year	Level 3	
169(4)	Liquidator failing to give registrar notice of final meeting	Level 2	Level 1
169(7)	Failure to deliver to registrar Act of court deferring dissolution of company	Level 3	Level 2
169(8)	Liquidator, failing to call final meeting of company or creditors	Level 3	
183(4)	Failure to co-operate with liquidator	6 months or a fine; or both	
188(3)	Person acting as liquidator when	2 years or a fine;	

Article of Law creating offence	General nature of offence	Punishment	Daily default fine (where applicable)
	not qualified to do so	or both	
189	Giving, offering etc. corrupt inducement affecting appointment as liquidator	2 years or a fine; or both	
190(2)	Liquidator failing to give notice of resignation, etc.	A fine	
191(2)	Failing to state on correspondence, etc. that company is in liquidation	A fine	
194(4)	Failing to comply with direction regarding destruction of records of company which has been wound up	Level 4	
195(4)	Person passing off or representing external company as incorporated in Jersey	A fine	
206(2)	Company failing to take reasonable precautions to prevent loss or falsification of company records	Level 3	
213(4)	Failing to deliver to registrar Act of the court declaring dissolution of company void	Level 3	Level 2
Schedule 2, paragraph 8(2)	Failure of existing company to notify registrar that it has more than 30 members	Level 3	Level 2
Schedule 2, paragraph 9(3)	Failure of existing company to notify registrar of address of registered office	Level 3	Level 2

SCHEDULE 2

(Article 221)

TRANSITIONAL PROVISIONS

1 Interpretation

For the purposes of this Schedule –

"appointed day" means the day on which Article 223 comes into force;[486]

"1861 Law" means the Loi (1861) sur les Sociétés à Responsabilité Limitée[487];

"former Laws" means the Laws repealed by Article 223;

"1968 Law" means the Companies (Supplementary Provisions) (Jersey) Law 1968[488].

2 Company having no articles of association

Where, within 6 months before the appointed day, a memorandum of association of a company has been registered under Article 3 of the 1861 Law, but no articles of association have been presented for registration under Article 5 of that Law before the appointed day, the memorandum of association shall be null and the company shall not be incorporated under that Law.

3 Unconfirmed special resolution by existing company

Where –

(a) within 30 days before the appointed day the shareholders of a company have adopted a resolution in respect of which the conditions specified in paragraphs 1 and 2 of Article 27 of the 1861 Law have been complied with; but

(b) the resolution has not before the appointed day been confirmed in accordance with paragraph 3 of that Article,

the resolution, if confirmed on or after the appointed day in the manner provided in paragraph 3 of that Article, shall be treated as a special resolution passed under this Law on the date when the resolution is confirmed.

4 Winding up and dissolution of existing company

Where on the appointed day an existing company has been dissolved pursuant to the former Laws but the winding up and liquidation of its affairs have not been completed, the winding up and liquidation shall proceed in the same manner and with the same incidents as if this Law had not been enacted.

5 Notices under Article 38A of 1861 Law

Where, before the appointed day, the Judicial Greffier has delivered to a company a notice under paragraph (1) of Article 38A of the 1861 Law, the provisions of paragraphs (2), (3), (6) and (7) of that Article shall continue in force after the appointed day for the purposes of giving effect to that notice.

6 Registration of documents under former laws

Where, under any provision of the former Laws, an obligation to register a document with, or that it be registered by, the Judicial Greffier is outstanding on the appointed day or where, after the appointed day, such an obligation arises under any provision of the former Laws which continues to have effect by virtue of Article 17 of the Interpretation (Jersey) Law 1954[489], the obligation shall have effect with the substitution of a requirement to deliver the document to the registrar for registration for the requirement to register it with, or that it be registered by, the Judicial Greffier.

7 Records of existing companies

On the appointed day all documents and records relating to existing companies held by the court or by the Judicial Greffier pursuant to any of the provisions of the former Laws shall be delivered to the registrar.

8 Membership of existing company

(1) An existing company which, when Article 16 comes into force, has more than 30 members shall within 3 months deliver to the registrar a statement of that fact and the registrar shall thereupon issue a certificate of incorporation showing the company to be a public company.

(2) If a company fails to comply with sub-paragraph (1) it is guilty of an offence.

9 Public office of existing company

(1) When Article 67 comes into force, the public office of an existing company as notified to the Judicial Greffier for the purposes of Article 17 of the 1861 Law shall be deemed to be its registered office.

(2) An existing company which has not so notified the Judicial Greffier of the address of its public office, shall within 3 months of the coming into force of Article 67 –

(a) establish a registered office as required by that Article; and

(b) notify the registrar of the address of that office.

(3) If a company fails to comply with sub-paragraph (2) it is guilty of an offence.

10 Offences

(1) An offence committed before the appointed day under any of the provisions of the former Laws may, notwithstanding any repeal by this Law, be prosecuted and punished after that day as if this Law had not been enacted.

(2) A contravention of any provision of the former Laws committed before the appointed day shall not be visited with any more severe punishment under this Law than would have been applicable under that provision at the time of the contravention; but where an offence for the continuance of which a penalty was provided has been committed under any provision of the former Laws, proceedings may be taken under this Law in respect of the continuance of the offence on and after the appointed day in the like manner as if the offence had been committed under the corresponding provision of this Law.

11 References elsewhere to the former laws

(1) A reference in any enactment, instrument or document (whether express or implied, and in whatever phraseology) to a provision of the former Laws which is replaced by a corresponding provision of this Law is to be read, where necessary to retain for the enactment, instrument or document the same force and effect as it would have had but for the enactment of this Law, as, or as including, a reference to the corresponding provision by which it is replaced in this Law.

(2) The generality of sub-paragraph (1) is not affected by any specific conversion of references made by this Law, nor by the inclusion in any provision of this Law of a reference (whether express or implied, and in whatever phraseology) to the provision of the former Laws which is replaced by a corresponding provision of this Law.

12 Saving for Interpretation (Jersey) Law 1954

Nothing in this Schedule shall be taken as prejudicing Article 17 of the Interpretation (Jersey) Law 1954.[490]

ENDNOTES

Table of Legislation History

Legislation	Year and Number	Commencement
Companies (Jersey) Law 1991	L.30/1991	30 March 1992 (R&O.8308) (except for certain purposes under Articles 114 and 223, which cif 2 November 1992 (R&O.8467))
Companies (Qualifications of Secretary) (Jersey) Order 1992	R&O.8326	30 March 1992
Companies (Amendment) (Jersey) Law 1992	L.12/1992	2 November 1992 (R&O.8466)
Companies (Amendment No. 2) (Jersey) Law 1995	L.19/1995	30 June 1995
Companies (Qualifications of Auditor) (Jersey) Order 1996	R&O.8941	1 July 1996
Limited Liability Partnerships (Jersey) Law 1997	L.3/1997	9 September 1998 (R&O.9233)
Companies (Amendment No. 3) (Jersey) Law 1997	L.30/1997	1 August 1997
Financial Services Commission (Jersey) Law 1998	L.11/1998	1 July 1998 (R&O.9238)
Companies (Amendment No. 4) (Jersey) Law 1998	L.30/1998	21 November 1998
Investment Business (Jersey) Law 1998	L.32/1998	1 March 1999 (R&O.9356)
Companies (Amendment No. 5) (Jersey) Law 1999	L.7/1999	16 April 1999
Fees (Miscellaneous Amendments and Validation) (Jersey) Law 1999	L.30/1999	5 November 1999
Financial Services (Extension) (Jersey) Law 2000	L.25/2000	27 November 2000 (R&O.119/2000)
Companies (Amendment No. 6) (Jersey) Law 2002	L.9/2002	1 September 2002 (R&O.67/2002)
Companies (Amendment No. 7) (Jersey) Law 2002	L.26/2002	1 September 2002
Companies (Redemption, and Financial Assistance) (Jersey) Regulations 2002	R&O.68/2002	1 September 2002
Transfer of Functions (Economic Development Committee) (Jersey) Act 2003	R&O.101/2003	14 October 2003
States of Jersey (Amendments and Construction Provisions No. 4) (Jersey) Regulations 2005	R&O.44/2005	9 December 2005

Legislation	Year and Number	Commencement
Companies (Amendment No. 8) (Jersey) Law 2005	L.37/2005	1 February 2006 (R&O.14/2006) except - (a) Article 24; (b) Article 35 - only in force to the extent that it substitutes Article 186 1 August 2006 (R&O.80/2006) as to Article 24 and, to the extent that it is not already in force, Article 35
Companies (Amendment No. 1) (Jersey) Regulations 2006	R&O.13/2006	1 February 2006; ceased to be in force on 1 August 2006
Companies (Amendment No. 2) (Jersey) Regulations 2008	R&O.6/2008	22 January 2008
Financial Services Commission (Amendment No. 4) (Jersey) Law 2007	L.33/2007	24 January 2008
Collective Investment Funds (Amendment No. 4) (Jersey) Law 2008	L.14/2008	4 April 2008
Companies (Amendment No. 9) (Jersey) Law 2008	L.27/2008	27 June 2008, except Articles 17 to 22, in force 1 August 2008 (R&O.84/2008)
Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008	L.32/2008	19 September 2008 (R&O.115/2008)
Companies (Amendment No. 3) (Jersey) Regulations 2009	R&O.20/2009	3 March 2009
Foundations (Jersey) Law 2009	L.23/2009	17 July 2009
Companies (Amendment No. 10) (Jersey) Law 2009	L.26/2009	6 November 2009
Taxation (Land Transactions) (Jersey) Law 2009	L.10/2009	1 January 2010 (R&O.131/2009)
Companies (Amendment No. 4) (Jersey) Regulations 2009	R&O.125/2009	10 December 2009 except Regulations 2 to 6, in force 5 April 2010 (R&O.29/2010)
Companies (Amendment No. 5) (Jersey) Regulations 2011	R&O.20/2011	23 February 2011
Separate Limited Partnerships (Jersey) Law 2011	L.6/2011	20 April 2011 (R&O.42/2011)
Companies (Amendment No. 6) (Jersey) Regulations 2011	R&O.90/2011	20 July 2011

Table of Renumbered Provisions

Original	Current
This Law has not been renumbered in this edition	
PART I	PART 1
1(2A)	repealed by L.9/2002; former paragraph inserted by L.30/1997
1(3), (4), (5)	spent, omitted from this revised edition
PART II	PART 2
5A	repealed by L.26/2002; former Article inserted by 30/1997
5B	repealed by L.26/2002; former Article inserted by 30/1997
PART III	PART 3
PART IV	PART 4
PART V	PART 5
PART VI	PART 6
PART VII	PART 7
29(4)	repealed by L.9/2002
(5)	repealed by L.9/2002
PART VIII	PART 8
38(3)	repealed by L.9/2002
PART IX	PART 9
50(4)	repealed by L.9/2002
PART X	PART 10
PART XI	PART 11
56	repealed by L.9/2002
PART XII	PART 12
PART XIII	PART 13
PART XIV	PART 14
73(3)	repealed by L.9/2002
84(1)	84
84(2)	repealed by

Original	Current
	L.9/2002
PART XV	PART 15
PART XVI	PART 16
PART XVII	PART 17
114(7)	repealed by L.9/2002; former paragraph inserted by L.12/1992
PART XVIII	PART 18
PART XVIIIA	PART 18A
125(5)	repealed by L.9/2002
PART XVIIIB	PART 18B
PART XVIIIC	PART 18C
PART XIX	PART 19
PART XX	PART 20
PART XXI	PART 21
176(9)	repealed by L.9/2002
183(2)(d)	spent, omitted from this revised edition
(5)	spent, omitted from this revised edition
PART XXII	PART 22
PART XXIII	PART 23
200(1)	200
200(2)	repealed by L.9/2002
PART XXIV	PART 24
222	repealed by L.37/2005
224 (1)	224
(2)	spent, omitted from this revised edition
FIRST SCHEDULE	SCHEDULE 1
SECOND SCHEDULE	SCHEDULE 2
THIRD SCHEDULE	repealed by L.37/2005

Table of Endnote References

[1]	*This Law has been amended by the States of Jersey (Amendments and Construction Provisions No. 4) (Jersey) Regulations 2005. The amendments replace all references to a Committee of the States of Jersey with a reference to a Minister of the States of Jersey, and remove and add defined terms appropriately, consequentially upon the move from a committee system of government to a ministerial system of government*
[2] *Long Title*	*amended by L.9/2002*
[3] *Article 1(1)*	*definitions "distributable profits", "equity share capital" deleted by L.9/2002*
[4] *Article 1(1)*	*definition "arrangement" inserted by L.9/2002*
[5] *Article 1(1)*	*definition "capital accounts" inserted by L.9/2002*
[6] *Article 1(1)*	*definition "cause" inserted by L.9/2002*
[7] *Article 1(1)*	*definition "certificate of continuance" inserted by L.9/2002*
[8]	*chapter 13.250*
[9] *Article 1(1)*	*definition "Commission" inserted by L.11/1998*
[10]	*definition "Court" substituted by L.30/1998*
[11] *Article 1(1)*	*definition "delivered" inserted by L.9/2002*
[12]	*chapter 04.160*
[13] *Article 1(1)*	*definition "fixed period of time" inserted by L.9/2002*
[14] *Article 1(1)*	*definition "former forenames or surname" inserted by L.9/2002*
[15] *Article 1(1)*	*definition "guarantee company" inserted by L.9/2002*
[16] *Article 1(1)*	*definition "guarantor member" inserted by L.9/2002*
[17]	*chapter 13.370*
[18]	*chapter 20.650*
[19] *Article 1(1)*	*definition "limited company" substituted by L.9/2002*
[20] *Article 1(1)*	*definition "limited life company" inserted by L.9/2002*
[21] *Article 1(1)*	*definition "limited share" inserted by L.9/2002*
[22] *Article 1(1)*	*definition "merged company" inserted by L.9/2002, deleted by R&O.20/2011*
[23] *Article 1(1)*	*definition "net asset value" inserted by L.9/2002*
[24] *Article 1(1)*	*definition "no par value company" inserted by L.9/2002*
[25] *Article 1(1)*	*definition "no par value share" inserted by L.9/2002*
[26] *Article 1(1)*	*definition "open-ended investment company" substituted by R&O.20/2009*
[27] *Article 1(1)*	*definition "partnership" inserted by L.9/2002, deleted by R&O.125/2009*
[28] *Article 1(1)*	*definition "par value company" inserted by L.9/2002*
[29] *Article 1(1)*	*definition "par value share" inserted by L.9/2002*
[30] *Article 1(1)*	*definition "private company" substituted by L.9/2002*
[31] *Article 1(1)*	*definition "prospectus" substituted by L.9/2002*
[32] *Article 1(1)*	*definition "public company" substituted by L.9/2002*
[33]	*Article 8 of the Financial Services Commission (Amendment No. 4) (Jersey) Law 2007, which came into force on 2nd November 2007, states-* ***"8 Initial publication of fees*** *(1) The Commission must, before [24th January 2008], publish fees for the purpose of the Laws specified in the Schedule to this Law. (NOTE: the Schedule includes this Law)* *(2) The fees so published –* *(a) shall be the same fees as those prescribed under those Laws; and* *(b) shall have effect when this Law comes fully into force.* *(3) On this Law coming fully into force, the fees published under this Article shall be taken to have been published under Article 15(5) of the [Financial Services Commission (Jersey) Law 1998].*

	(4) In this Article – *"Commission" means the Jersey Financial Services Commission established by the principal Law;* *"published", in respect of fees published in accordance with this Article, means published in a manner likely to bring them to the attention of those affected by the fees."*
[34] *Article 1(1)*	*definitions "published" and "publish" inserted by L.33/2007*
[35] *Article 1(1)*	*definition "recognized professional body" inserted by L.9/2002, deleted by R&O.125/2009*
[36] *Article 1(1)*	*definition "securities" substituted by L.9/2002; former definition substituted by L.30/1998*
[37]	*chapter 13.780*
[38] *Article 1(1)*	*definition "surname" inserted by L.9/2002*
[39] *Article 1(1)*	*definition "unlimited share" inserted by L.9/2002*
[40] *Article 1(1)*	*definition "variation" inserted by L.9/2002*
[41] *Article 1(1)*	*amended by L.37/2005, L.14/2008, L.27/2008, R&O.90/2011*
[42]	*chapter 04.120*
[43]	*chapter 13.475*
[44] *Article1(2)*	*amended by L.3/1997, L.9/2002, R&O.90/2011*
[45] *Article 2*	*substituted by L.9/2002*
[46] *Article 2(4)*	*substituted by L.27/2008*
[47] *Article 2(5)*	*repealed by L.27/2008*
[48] *Article 2A*	*inserted by L.9/2002*
[49] *Article 2B*	*inserted by L.27/2008*
[50] *Article 3*	*substituted by L.37/2005; former Article substituted by L.9/2002*
[51] *Article 3(3)*	*amended by L.33/2007*
[52] *Article 3A*	*inserted by L.9/2002*
[53] *Article 3B*	*inserted by L.9/2002*
[54] *Article 3C*	*inserted by L.9/2002*
[55] *Article 3D*	*substituted by L.37/2005; former Article inserted by L.9/2002*
[56] *Article 3E*	*inserted by L.9/2002*
[57] *Article 3F*	*inserted by L.9/2002*
[58] *Article 3G*	*inserted by L.9/2002*
[59] *Article 3H*	*inserted by L.9/2002*
[60] *Article 3I*	*inserted by L.37/2005*
[61] *Article 4*	*substituted by L.9/2002; former Article amended by L.30/1997*
[62] *Article 4(2)*	*amended by L.6/2011*
[63]	*chapter 04.280*
[64]*Article 4(4)*	*added by L.37/2005*
[65] *Article 4A*	*inserted by L.9/2002*
[66] *Article 4A(2)*	*substituted by L.37/2005*
[67] *Article 4B*	*inserted by L.9/2002*
[68] *Article 4C*	*inserted by L.9/2002*
[69] *Article 5*	*substituted by L.9/2002*
[70]	*chapter 04.280*
[71] *Article 5(5)*	*added by L.37/2005*
[72] *Article 6*	*substituted by L.9/2002*
[73] *Article 7(1)*	*amended by L.33/2007*
[74] *Article 7(3)*	*inserted by L.9/2002*
[75] *Article 7(4)*	*inserted by L.9/2002*
[76] *Article 8*	*substituted by L.37/2005*
[77]*Article 9(1)*	*substituted by R&O.20/2011; former Article substituted by L.9/2002*
[78] *Article 9(4)*	*substituted by L.37/2005; formerly substituted by L.9/2002*
[79] *Article 9(5)*	*substituted by L.9/2002; amended by L.37/2005*
[80] *Article 9(6)*	*inserted by L.9/2002*

[81] *Article 11*	*substituted by L.30/1997*
[82] *Article 11(4)*	*amended by L.9/2002*
[83] *Article 12(1)*	*amended by L.33/2007*
[84] *Article 13(2)*	*substituted by L.9/2002*
[85] *Article 13(3)*	*inserted by L.9/2002*
[86] *Article 13(3A)*	*inserted by L.27/2008*
[87] *Article 13(3B)*	*inserted by L.27/2008*
[88] *Article 13(4)*	*added by L.37/2005*
[89] *Article 14(2)*	*amended by L.9/2002*
[90] *Part heading*	*substituted by L.9/2002*
[91] *Article 16*	*substituted by L.9/2002; former Article 16(7) amended by L.12/1992*
[92] *Article 16(7)*	*inserted by L.26/2009*
[93] *Article 16(8)*	*inserted by L.26/2009*
[94] *Article 16(9)*	*inserted by L.26/2009*
[95] *Article 16(10)*	*inserted by L.26/2009*
[96] *Article 17*	*substituted by L.9/2002; former Article 17(3) amended by L.11/1998*
[97] *Article 17(2)*	*substituted by R&O.125/2009; former Article substituted by L.37/2005*
[98] *Article 17(4)*	*repealed by L.27/2008*
[99] *Article 17(6)*	*amended by L.37/2005*
[100] *Article 17(9)*	*inserted by L.26/2009*
[101] *Article 17(10)*	*inserted by L.26/2009*
[102] *Article 17(11)*	*inserted by L.26/2009*
[103] *Article 17A*	*inserted by L.9/2002*
[104] *Article 17B*	*inserted by L.9/2002*
[105] *Article 17C*	*inserted by L.9/2002*
[106] *Article 17C*	*amended by L.37/2005*
[107] *Article 22*	*substituted by L.9/2002*
[108] *Article 23*	*substituted by L.9/2002*
[109] *Article 24*	*substituted by L.9/2002*
[110] *Article 25(2)*	*amended by L.37/2005*
[111] *Article 26(1)*	*substituted by L.9/2002*
[112] *Article 26(2)*	*substituted by L.9/2002*
[113] *Article 26(3)*	*substituted by L.9/2002*
[114] *Article 26(3A)*	*substituted by L.9/2002*
[115] *Article 27(1)*	*amended by L.9/2002*
[116] *Article 27(2)*	*substituted by L.9/2002*
[117] *Article 28*	*amended by L.9/2002*
[118] *Article 29(1)*	*substituted by L.9/2002*
[119] *Article 29(2)*	*amended by L.9/2002*
[120] *Article 35(1)*	*substituted by L.9/2002*
[121] *Article 36(1)*	*amended by L.9/2002*
[122] *Article 36(2A)*	*inserted by L.9/2002*
[123] *Article 37*	*amended by L.9/2002*
[124] *Article 38*	*heading amended by L.9/2002*
[125] *Article 38(1)*	*amended by L.7/1999, L.9/2002*
[126] *Article 38(1A)*	*inserted by L.7/1999*
[127] *Article 38A*	*substituted by L.37/2005; former Article substituted by L.9/2002*
[128] *Article 38B*	*inserted by L.9/2002*
[129] *Article 39*	*substituted by L.9/2002*
[130] *Article 39(3)*	*amended by L.26/2009*
[131] *Article 39A*	*inserted by L.9/2002*
[132] *Article 39A(4)*	*inserted by L.26/2009*
[133] *Article 39B*	*inserted by L.9/2002*
[134] *Article 40*	*substituted by L.37/2005*
[135] *Article 40A*	*inserted by L.9/2002*
[136] *Article 40B*	*inserted by L.9/2002*

[137] *Article 40C*	*inserted by L.26/2009*
[138] *Article 41(1)*	*substituted by L.9/2002*
[139] *Article 41(2)*	*amended by L.9/2002*
[140] *Article 42(1)*	*substituted by L.30/1998*
[141] *Article 42(1A)*	*inserted by L.10/2009*
[142] *Article 42(1B)*	*inserted by L.10/2009*
[143] *Article 42(2)*	*amended by L.10/2009*
[144] *Article 42(6)*	*substituted by L.30/1998*
[145] *Article 45(1)*	*amended by L.33/2007*
[146] *Article 45(2)*	*substituted by L.9/2002, amended by L.33/2007*
[147] *Article 46(1)*	*amended by L.9/2002*
[148] *Article 47(1)*	*amended by L.9/2002*
[149] *Article 49*	*substituted by L.9/2002*
[150] *Article 50*	*by R&O.8328 it is provided that a company shall not be required to complete and have ready for delivery a share certificate pursuant to Article 50 of the Law if –* *(a) it is an open-ended investment company;* *(b) it holds a permit as a functionary of Group 1 of Part II of the Schedule to the Collective Investment Funds (Jersey) Law 1988, as amended; and* *(c) its articles do not require a certificate to be delivered on every occasion that shares of the company are allotted or transferred*
[151] *Article 50(1)*	*amended by L.30/1998*
[152] *Article 50(2)*	*substituted by L.9/2002*
[153] *Article 50(3)*	*substituted by L.9/2002*
[154] *Article 51(1)*	*amended by L.9/2002*
[155] *Article 51(2)*	*inserted by L.7/1999*
[156] *Article 51A*	*inserted by L.30/1998*
[157]	*chapter 13.100*
[158] *Article 52*	*substituted by L.9/2002*
[159] *Article 53*	*heading amended by L.9/2002*
[160] *Article 53(1)*	*substituted by L.9/2002*
[161] *Article 53(2)*	*substituted by L.9/2002*
[162] *Article 53(2A)*	*inserted by L.9/2002*
[163] *Article 53(4)*	*amended by L.9/2002*
[164] *Article 54(1)*	*substituted by L.9/2002*
[165] *Article 54(2)*	*substituted by L.9/2002*
[166] *Article 54(3)*	*amended by L.9/2002*
[167] *Article 54(4)*	*amended by L.9/2002*
[168] *Article T55*	*inserted by R&O.6/2008, repealed by L.27/2008*
[169] *Article 55*	*substituted by L.37/2005; former Article substituted by L.9/2002*
[170] *Article 55(4)*	*substituted by L.27/2008*
[171] *Article 55(5)*	*substituted by L.27/2008*
[172] *Article 55(6)*	*repealed by L.27/2008*
[173] *Article 55(7)*	*repealed by L.27/2008*
[174] *Article 55(9)*	*substituted by R&O.6/2008*
[175] *Article 55(12)*	*amended by R&O.6/2008*
[176] *Article 55(13)*	*repealed by L.27/2008*
[177] *Article 55(14)*	*repealed by L.27/2008*
[178] *Article 55(15)*	*repealed by L.27/2008*
[179] *Article 55(16)*	*substituted by L.27/2008*
[180] *Article 55(18)*	*amended by R&O.6/2008*
[181]	*L.14/1968*
[182] *Article 55(21)*	*added by R&O.6/2008*
[183] *Article 57*	*substituted by L.9/2002*

	By R&O.8333 it was provided that a resolution authorizing a company to purchase its own shares on a stock exchange may determine either or both the maximum and minimum prices for purchase by – *(a) specifying a particular sum; or* *(b) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion*
[184] *Article 57(7)*	*amended by R&O.6/2008*
[185] *Article 58*	*substituted by R&O.6/2008*
[186] *Article 58(4)*	*repealed by L.27/2008*
[187] *Article 58(5)*	*repealed by L.27/2008*
[188] *Article 58A*	*inserted by R&O.6/2008*
[189] *Article 58A(5)*	*amended by L.27/2008*
[190] *Article 58B*	*inserted by R&O.6/2008 as Article T58B renumbered by L.27/2008*
[191] *Article 58C*	*inserted by L.26/2009*
[192] *Article 59*	*substituted by L.37/2005; former Article substituted by L.9/2002*
[193] *Article 60*	*substituted by L.9/2002*
[194] *Article 61*	*substituted by L.9/2002; former Article 61(2A) inserted by L.7/1999*
[195] *Article 61(3)*	*amended by L.27/2008, L.26/2009*
[196] *Article 61(4)*	*substituted by L.37/2005*
[197] *Article 61(5)*	*substituted by L.37/2005*
[198] *Article 62(1)*	*amended by L.9/2002*
[199] *Article 62(2)*	*amended by L.9/2002*
[200] *Article 62(6)*	*amended by L.9/2002*
[201] *Article 64(1)*	*amended by L.9/2002*
[202] *Article 64(2)*	*amended by L.9/2002*
[203] *Article 64(2A)*	*inserted by L.9/2002*
[204] *Article 65(1)*	*amended by L.9/2002*
[205] *Article 66A*	*inserted by L.26/2009*
[206] *Article 67*	*substituted by L.26/2009*
[207] *Article 67A*	*inserted by L.26/2009*
[208] *Article 67B*	*inserted by L.26/2009*
[209] *Article 67C*	*inserted by L.26/2009*
[210] *Article 68*	*repealed by L.37/2005*
[211] *Article 71*	*substituted by L.9/2002*
[212] *Article 71(3)*	*substituted by L.33/2007*
[213] *Article 71(5)*	*substituted by L.33/2007*
[214] *Article 73*	*substituted by L.37/2005*
[215]	*chapter 13.225*
[216] *Article 73(4)*	*substituted by R&O.6/2008*
[217] *Article 73(4A)*	*added by L.6/2011, substituted by R&O.90/2011*
[218] *Article 73(4B)*	*inserted by R&O.90/2011*
[219] *Article 73(5)*	*repealed by L.27/2008*
[220] *Article 74(2)*	*amended by L.9/2002, L.37/2005*
[221] *Article 74A*	*inserted by L.9/2002*
[222] *Article 75(2)*	*substituted by L.9/2002*
[223] *Article 75(2A)*	*inserted by L.9/2002*
[224] *Article 75(2B)*	*inserted by L.9/2002*
[225] *Article 75(3)*	*substituted by L.9/2002*
[226] *Article 78*	*substituted by L.23/2009; former Article substituted by L.37/2005; former Article substituted by L.9/2002; former Article 78(1) amended by L.11/1998*
[227]	*chapter 13.265*
[228] *Article 79*	*substituted by L.9/2002*
[229] *Article 82(2)*	*amended by R&O.8326, L.9/2002*
[230] *Article 82(3)*	*amended by L.9/2002*
[231] *Article 83(2)*	*amended by L.33/2007*

[232] *Article 83(3)*	*substituted by L.9/2002*
[233] *Article 85A*	*inserted by L.27/2008*
[234] *Article 87(4)*	*amended by L.27/2008*
[235] *Article 87(6)*	*amended by L.27/2008*
[236] *Article 87(7)*	*amended by L.9/2002*
[237] *Article 88(1)*	*amended by L.11/1998*
[238] *Article 88(4)*	*amended by L.11/1998*
[239] *Article 89(1)*	*amended by L.9/2002*
[240] *Article 89(2)*	*substituted by L.9/2002*
[241] *Article 90(1)*	*amended by L.9/2002, L.27/2008, L.26/2009*
[242] *Article 90(1A)*	*inserted by L.26/2009*
[243] *Article 90(2)*	*amended by L.9/2002, L.27/2008*
[244] *Article 91(1)*	*amended by L.9/2002 L.27/2008*
[245] *Article 91(2)*	*amended by L.27/2008*
[246] *Article 91(3)*	*amended by L.9/2002*
[247] *Article 92*	*substituted by L.9/2002*
[248] *Article 93(1)*	*amended by L.9/2002*
[249] *Article 94(1)*	*amended by L.9/2002*
[250] *Article 95(1)*	*substituted by L.9/2002*
[251] *Article 95(1A)*	*inserted by L.9/2002*
[252] *Article 95(1B)*	*inserted by L.9/2002*
[253] *Article 95(6)*	*amended by L.9/2002*
[254] *Article 95A*	*inserted by L.9/2002*
[255] *Article 96(6)*	*amended by L.9/2002*
[256] *Article 97(1)*	*amended by L.9/2002*
[257] *Article 98(1)*	*amended by L.9/2002*
[258] *Article 99(1)*	*amended by L.9/2002*
[259] *Article 99(2)*	*amended by L.33/2007*
[260] *Article 99(4)*	*amended by L.9/2002*
[261] *Article 100(2)*	*amended by L.33/2007*
[262] *Article 100(3)*	*amended by L.9/2002*
[263] *Article 100(4)*	*amended by L.33/2007*
[264] *Article 101*	*amended by L.9/2002*
[265] *Part 16*	*substituted by R&O.125/2009*
[266] *Article 102*	*substituted by R&O.125/2009*
[267]	*chapter 13.100*
[268]	*chapter 13.100.95*
[269]	*chapter 13.475*
[270] *Article 102(1A)*	*inserted by R&O.90/2011*
[271] *Article 103*	*substituted by R&O.125/2009*
[272] *Article 104*	*substituted by R&O.125/2009*
[273] *Article 105*	*substituted by R&O.125/2009*
[274] *Article 106*	*substituted by R&O.125/2009*
[275] *Article 107*	*substituted by R&O.125/2009*
[276] *Article 108*	*substituted by R&O.125/2009*
[277] *Article 109*	*substituted by R&O.125/2009*
[278] *Article 110*	*substituted by R&O.125/2009*
[279] *Article 110(5)*	*amended by R&O.20/2011*
[280] *Article 111*	*substituted by R&O.125/2009*
[281] *Article 112*	*substituted by R&O.125/2009 Regulation 6 of R&O.125/2009 makes the following transitional provision –* *(2) An auditor –* *(a) who under Article 112 of the Law is qualified to be a recognized auditor; and*

(b) who, within 3 months after 5 April 2010, makes an application under Article 111(1) of the Law,

shall be taken to be and to have been a recognized auditor from 5 April 2010 until the application is finally determined by the Commission or, on appeal, by the court or is withdrawn.

(3) An auditor –

(a) who is not qualified under Article 112 of the Law to be a recognized auditor; and

(b) who was the auditor of a market traded company on 5 April 2010,

shall be taken to be a recognized auditor in respect of the auditing of the company for a period of one year from 5 April 2010 and for any additional period, not exceeding one year, as the Commission may, in any particular case, approve.

[282] *Article 113* *substituted by R&O.125/2009*

[283] *Article 113A* *substituted by R&O.125/2009*

[284] *Article 113B* *substituted by R&O.125/2009*

[285] *Article 113C* *substituted by R&O.125/2009*

[286] *Article 113D* *substituted by R&O.125/2009 Regulation 6 of R&O.125/2009 makes the following transitional provision –*

(4) Where –

(a) immediately before 5 April 2010, a person was authorized under Article 113(2) or 113B(2) to audit a company; and

(b) on 5 April 2010 the company was not a market traded company,

the person shall be taken to have been authorized under Article 113D(6) to audit the company.

[287] *Article 113E* *substituted by R&O.125/2009*

[288] *Article 113F* *inserted by R&O.125/2009*

[289] *Article 113G* *inserted by R&O.125/2009*

[290] *Article 113H* *inserted by R&O.125/2009*

[291] *Article 113I* *inserted by R&O.125/2009*

[292] *Article 113J* *inserted by R&O.125/2009*

[293] *chapter 15.350*

[294] *Article 113K* *inserted by R&O.125/2009*

[295] *Article 113L* *inserted by R&O.125/2009*

[296] *Article 113M* *inserted by R&O.125/2009*

[297] *Article 113N* *inserted by R&O.125/2009*

[298] *Article 113O* *inserted by R&O.125/2009*

[299] *Article 113P* *inserted by R&O.125/2009*

[300] *chapter 15.240*

[301] *Article 113Q* *inserted by R&O.125/2009*

[302] *Part 17* *substituted by L.37/2005*

[303] *Article 114* *substituted by L.27/2008*

[304] *Article 114(2)* *amended by R&O.20/2009*

[305] *Article 115* *substituted by L.27/2008*

[306] *Article 115(7)* *amended by L.26/2009*

[307] *Article 115(9)* *inserted by L.26/2009*

[308] *Article 115B* *inserted by L.27/2008*

[309] *Part 18* *heading substituted by L.9/2002*

[310] *Article 116(2)* *substituted by R&O.6/2008*

[311] *Article 116(2A)* *inserted by R&O.6/2008*

[312] *Article 116(2B)* *inserted by R&O.6/2008*

[313] *Article 116(5)* *amended by R&O.6/2008*

[314] *Article 117(1)* *substituted by L.9/2002; amended by R&O.6/2008*

[315] *Article 117(2)* *substituted by L.9/2002; amended by R&O.6/2008*

[316] *Article 119(1)*	*substituted by L.9/2002; amended by R&O.6/2008*
[317] *Article 119(2)*	*substituted by L.9/2002; amended by R&O.6/2008*
[318] *Article 124A*	*inserted by L.37/2005*
[319] *Part 18A*	*heading inserted by L.9/2002*
[320] *Article 125(2)*	*substituted by L.27/2008; formerly substituted by L.9/2002, L.37/2005*
[321] *Part 18B*	*heading inserted by L.9/2002*
[322] *Article 127A*	*substituted by R&O.20/2011; former article inserted by L.9/2002*
[323] *Article 127B*	*substituted by R&O.20/2011 Regulation 9 of R&O.20/2011 makes the following transitional provision –* *(1) The principal Law applies to a merger falling within paragraph (2) as if these Regulations had not come into force.* *(2) A merger falls within this paragraph if, immediately before the commencement of these Regulations –* *(a) the merger has been approved under Article 127B or 127C of the principal Law; and* *(b) the registrar has not complied with Article 127G(3).;* *former Article inserted by L.9/2002*
[324]	*chapter 13.265.50*
[325] *Article 127C*	*substituted by R&O.20/2011 Regulation 9 of R&O.20/2011 makes the following transitional provision –* *(1) The principal Law applies to a merger falling within paragraph (2) as if these Regulations had not come into force.* *(2) A merger falls within this paragraph if, immediately before the commencement of these Regulations –* *(a) the merger has been approved under Article 127B or 127C of the principal Law; and* *(b) the registrar has not complied with Article 127G(3).;* *former Article inserted by L.9/2002*
[326] *Article 127D*	*substituted by R&O.20/2011; former Article inserted by L.9/2002*
[327] *Article 127E*	*substituted by R&O.20/2011; former Article inserted by L.9/2002*
[328] *Article 127F*	*substituted by R&O.20/2011; former Article inserted by L.9/2002*
[329] *Article 127FA*	*inserted by R&O.20/2011*
[330] *Article 127FB*	*inserted by R&O.20/2011*
[331] *Article 127FC*	*inserted by R&O.20/2011*
[332] *Article 127FD*	*inserted by R&O.20/2011*
[333] *Article 127FE*	*inserted by R&O.20/2011*
[334] *Article 127FF*	*inserted by R&O.20/2011*
[335] *Article 127FG*	*inserted by R&O.20/2011*
[336] *Article 127FH*	*inserted by R&O.20/2011*
[337] *Article 127FI*	*inserted by R&O.20/2011*
[338]	*chapter 13.250*
[339] *Article 127FJ*	*inserted by R&O.20/2011*
[340] *Article 127FK*	*inserted by R&O.20/2011*
[341] *Article 127FL*	*inserted by R&O.20/2011*
[342] *Article 127FM*	*inserted by R&O.20/2011*
[343] *Article 127FN*	*inserted by R&O.20/2011*
[344] *Article 127G*	*substituted by R&O.20/2011 Regulation 9 of R&O.20/2011 makes the following transitional provision –* *(1) The principal Law applies to a merger falling within paragraph (2) as if these Regulations had not come into force.* *(2) A merger falls within this paragraph if, immediately before the commencement of these Regulations –* *(a) the merger has been approved under Article 127B or 127C of the principal Law; and*

	(b) the registrar has not complied with Article 127G(3).; former Article inserted by L.9/2002
[345] *Article 127GA*	*inserted by L.26/2009*
[346] *Part 18C*	*heading inserted by L.9/2002*
[347] *Article 127H*	*inserted by L.9/2002*
[348] *Article 127I*	*inserted by L.9/2002*
[349] *Article 127J*	*inserted by L.9/2002*
[350] *Article 127K*	*inserted by L.9/2002*
[351] *Article 12K(1)*	*amended by L.33/2007*
[352] *Article 127L*	*inserted by L.9/2002*
[353] *Article 127M*	*inserted by L.9/2002*
[354] *Article 127N*	*inserted by L.9/2002*
[355] *Article 127N(5)*	*amended by L.27/2008*
[356] *Article 127O*	*inserted by L.9/2002*
[357] *Article 127P*	*inserted by L.9/2002*
[358] *Article 127Q*	*inserted by L.9/2002*
[359] *Article 127R*	*inserted by L.9/2002*
[360] *Article 127S*	*inserted by L.9/2002*
[361] *Article 127T*	*inserted by L.9/2002*
[362] *Article 127T(1)*	*amended by L.33/2007*
[363] *Article 127U*	*inserted by L.9/2002*
[364] *Article 127V*	*inserted by L.9/2002*
[365] *Article 127W*	*inserted by L.9/2002*
[366] *Article 127W(1)*	*amended by L.27/2008*
[367] *Article 127W(2)*	*amended by L.27/2008*
[368] *Article 127W(4)*	*added by L.27/2008*
[369] *Article 127X*	*substituted by L.33/2007; former Article inserted by L.9/2002*
[370] *Article 127Y*	*inserted by L.9/2002*
[371] *Part 18D*	*(Articles 127YA – 127YW) inserted by L.37/2005*
[372] *Article 127YA*	*substituted by R&O.6/2008*
[373] *Article 127YB*	*substituted by R&O.6/2008*
[374] *Article 127YC*	*substituted by R&O.6/2008*
[375] *Article 127YD*	*substituted by R&O.6/2008*
[376] *Article 127YDA*	*inserted by R&O.6/2008; renumbered by L.27/2008*
[377] *Article 127YE*	*substituted by R&O.6/2008; renumbered by L.27/2008*
[378] *Article 127YF*	*repealed by R&O.6/2008*
[379] *Article 127YG*	*substituted by R&O.6/2008*
[380] *Article 127YG(1)*	*amended by R&O.20/2011*
[381] *Article 127YI*	*substituted by R&O.6/2008; renumbered by L.27/2008*
[382] *Article 127YIA*	*inserted by R&O.6/2008; renumbered by L.27/2008*
[383] *Article 127YL(3)*	*amended by R&O.6/2008*
[384] *Article 127YM(1)*	*amended by R&O.6/2008*
[385] *Article 127YM(8)*	*added by R&O.6/2008*
[386] *Article 127YM(9)*	*added by R&O.6/2008*
[387] *Article T127YN*	*inserted by R&O.6/2008, repealed by L.27/2008*
[388] *Article 127YR(2)*	*amended by R&O.6/2008*
[389] *Article 127YT(5)*	*amended by R&O.6/2008*
[390] *Article 127YU*	*See R&O.13/2006 as to deemed amendment effective for the period 1 February 2006 to 1 August 2006*
[391] *Article 127YW(1)*	*amended by R&O.6/2008*
[392] *Article 127YW(2)*	*added by R&O.6/2008*
[393] *Article 128*	*heading amended by L.9/2002*
[394] *Article 128(1)*	*amended by L.11/1998, L.9/2002*
[395] *Article 128(3)*	*amended by L.11/1998, L.9/2002*
[396] *Article 128(5)*	*inserted by L.11/1998*
[397] *Article 129(2)*	*amended by L.11/1998*

[398]	*Article 129(3)*	*added by L.37/2005*
[399]	*Article 130(3)*	*substituted by L.9/2002*
[400]	*Article 130(4)*	*substituted by L.9/2002*
[401]	*Article 135(1)*	*substituted by L.11/1998*
[402]	*Article 135(2)*	*amended by L.11/1998, L.9/2002, L.33/2007*
[403]	*Article 135(3)*	*inserted by L.9/2002*
[404]	*Article 136(1)*	*amended by L.11/1998*
[405]	*Article 136(2)*	*amended by L.11/1998*
[406]	*Article 136(3)*	*inserted by L.11/1998*
[407]	*Article 137(1)*	*amended by L.11/1998*
[408]	*Article 137(2)*	*amended by L.11/1998*
[409]	*Article 137(3)*	*amended by L.11/1998*
[410]	*Article 137(5)*	*amended by L.11/1998*
[411]	*Article 137(6)*	*amended by L.11/1998*
[412]	*Article 138(1)*	*amended by L.11/1998*
[413]	*Article 139*	*amended by L.11/1998, L.9/2002*
[414]	*Article 142*	*heading amended by L.11/1998*
[415]	*Article 142(1)*	*amended by L.11/1998*
[416]	*Article 142(2)*	*inserted by L.11/1998*
		correction published March 2007: substitute "Minister" for "Committee"
[417]	*Article 143(1)*	*amended by L.9/2002, R&O.20/2011*
[418]	*Article 143(2)*	*amended by L.9/2002*
[419]		*cross heading amended by L.30/1997*
[420]	*Article 144*	*substituted by L.30/1997*
[421]	*Article 144A*	*inserted by L.30/1997*
[422]	*Part 21*	*chapter 2 substituted by L.37/2005*
[423]	*Part 21*	*chapter 3 (Article 155) substituted by L.37/2005*
[424]		*chapter 08.785*
[425]	*Article 155(2)*	*amended by L.37/2005, L.32/2008*
[426]	*Article 155(3)*	*amended by L.37/2005*
[427]	*Article 158*	*substituted by L.37/2005*
[428]	*Article 159*	*substituted by L.37/2005*
[429]	*Article 166(1)*	*amended by L.37/2005*
[430]	*Article 168(1)*	*amended by L.11/1998*
[431]	*Article 169A*	*inserted by L.37/2005*
[432]	*Articles 179-186*	*substituted with Articles 179-186A, L.37/2005*
[433]	*Articles 179-186*	*substituted with Articles 179-186A, L.37/2005*
[434]	*Articles 179-186*	*substituted with Articles 179-186A, L.37/2005*
[435]	*Articles 179-186*	*substituted with Articles 179-186A, L.37/2005*
[436]	*Articles 179-186*	*substituted with Articles 179-186A, L.37/2005*
[437]	*Articles 179-186*	*substituted with Articles 179-186A, L.37/2005*
[438]	*Articles 179-186*	*substituted with Articles 179-186A, L.37/2005*
[439]	*Articles 179-186*	*substituted with Articles 179-186A, L.37/2005*
[440]	*Articles 179-186*	*substituted with Articles 179-186A, L.37/2005*
[441]	*Articles 179-186*	*substituted with Articles 179-186A, L.37/2005*
[442]	*Articles 179-186*	*substituted with Articles 179-186A, L.37/2005*
[443]	*Articles 179-186*	*substituted with Articles 179-186A, L.37/2005*
[444]	*Articles 179-186*	*substituted with Articles 179-186A, L.37/2005*
[445]	*Article 181(1)*	*amended by R&O.20/2009*
[446]	*Article 181(2)*	*substituted by R&O.20/2009*
[447]	*Article 181(9)*	*repealed by L.26/2009*
[448]	*Articles 179-186*	*substituted with Articles 179-186A, L.37/2005*
[449]	*Articles 179-186*	*substituted with Articles 179-186A, L.37/2005*
[450]	*Articles 179-186*	*substituted with Articles 179-186A, L.37/2005; Article 184 amended by Article 41 of L.37/2005*

[451] *Articles 179-186*	*substituted with Articles 179-186A, L.37/2005; Article 185 amended by Article 41 of L.37/2005*
[452] *Articles 179-186*	*substituted with Articles 179-186A, L.37/2005*
[453] *Articles 179-186*	*substituted with Articles 179-186A, L.37/2005*
[454] *Article 186(3)*	*added by L.27/2008*
[455] *Articles 179-186*	*substituted with Articles 179-186A, L.37/2005*
[456] *Article 192*	*substituted by L.37/2005*
[457] *Article 194(3)*	*amended by L.11/1998*
[458] *Article 194A*	*inserted by L.26/2009*
[459] *Article 196(1)*	*amended by L.9/2002*
[460] *Article 196(2)*	*amended by L.11/1998*
[461] *Article 196(3)*	*substituted by L.11/1998*
[462] *Article 197*	*amended by L.11/1998*
[463] *Article 199(1)*	*substituted by L.33/2007*
[464] *Article 199(2)*	*substituted by L.33/2007*
[465] *Article 200*	*substituted by L.33/2007*
[466] *Article 201*	*substituted by L.33/2007; former Article amended by L.11/1998*
[467] *Article 201A*	*inserted by L.30/1997*
[468] *Article 201A(1)*	*amended by L.11/1998*
[469] *Article 202*	*substituted by L.30/1997*
[470] *Article 202(6)*	*amended by L.9/2002*
[471] *Article 204*	*substituted by L.30/1997*
[472] *Article 205*	*substituted by L.9/2002*
[473] *Article 205(11)*	*added by L.37/2005*
[474] *Article 205A*	*inserted by L.30/1997*
[475] *Article 213*	*substituted by L.37/2005*
[476] *Article 213A*	*inserted by L.9/2002*
[477] *Article 215*	*substituted by L.30/1997*
[478] *Article 216*	*substituted by L.9/2002*
[479] *Article 217A*	*inserted by L.11/1998*
[480]	*chapter 07.770*
[481] *Article 219(1A)*	*inserted by L.11/1998*
[482] *Article 219(1B)*	*inserted by L.30/1999, amended by L.33/2007*
[483]	*chapter 15.720*
[484] *Article 220(3)*	*added by L.27/2008*
[485] *Schedule 1*	*amended and substituted by L.37/2005; amended by L.27/2008, L.23/2009, L.26/2009, L.10/2009, R&O.125/2009, R&O.20/2011; formerly substituted by L.30/1997, formerly amended by L.11/1998, L.9/2002*
[486] *Schedule 2*	*Article 223 came into force on 2 November 1992 vide R&O.8467*
[487]	*Tomes I–III, page 232*
[488]	*L.14/1968*
[489]	*chapter 15.360*
[490]	*chapter 15.360*