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VOLUME II

Projet de Loi entitled “The Companies (Guernsey) Law, 2008” –
Parts I to XVI

*NB Parts XVII to XXXII and Schedules are
contained in Volume III of the Legislation
Brochure*

The Companies (Guernsey) Law, 2008

ARRANGEMENT OF SECTIONS

PART I NATURE AND TYPES OF COMPANIES

1. Nature of a company.
2. Types of company.
3. Protected cell company.
4. Incorporated cell company.
5. Incorporated cell.
6. Company limited by shares.
7. Company limited by guarantee.
8. Unlimited liability company.
9. Mixed liability company.

PART II INCORPORATION

Conditions precedent to incorporation

10. Consent of Commission required before incorporation of a cell company.
11. Special resolution of incorporated cell company required before incorporation of an incorporated cell.
12. Consent of Procureur not required for the incorporation of a company.

Incorporation of a company

13. Founder member.
14. Prohibition of minors, etc. being founder member.
15. Memorandum of incorporation.
16. Articles of incorporation.
17. Application for incorporation.
18. Prohibition of incorporation for an unlawful purpose.
19. Declaration of compliance (incorporation).
20. Effect of incorporation.

PART III NAME, OFFICE, SEAL AND RECORDS

Name

- 21. Compulsory components in a company's name.
- 22. Exemption from section 21(1)(b) for charitable, etc. companies.
- 23. Name of cell of protected cell company.
- 24. Prohibited names.
- 25. Application to change name.
- 26. Declaration of compliance (name change).
- 27. Reservation of names.
- 28. Enforcement of provisions on names.
- 29. Right to object to a company's name.

Office

- 30. Registered office.
- 31. Registered office of an incorporated cell.
- 32. Registered office provided by corporate services provider becoming ineffective.
- 33. Declaration of compliance (ineffective office).

Identification

- 34. Display of name at registered office etc.
- 35. Details to appear in company's correspondence.

Seal

- 36. Common seal.

Company records

- 37. Form of company records.

PART IV ALTERATIONS OF MEMORANDUM AND ARTICLES

Alterations of the memorandum of incorporation

- 38. Restriction on alteration of memorandum.
- 39. Alteration of memorandum of an incorporated cell.
- 40. Court may annul alteration of objects.
- 41. Delivery of altered memorandum to Registrar.

Alterations of the articles of incorporation

- 42. Alteration of articles.
- 43. Alteration of articles of an incorporated cell.
- 44. Entrenched provisions of the articles.

Rectification of memorandum or articles

- 45. Rectification of memorandum or articles.

PART V
CONVERSIONS

Conversions and transfers concerned with cellular status of companies

- 46. Conversion of non-cellular company into protected cell company.
- 47. Conversion of non-cellular company into incorporated cell company.
- 48. Conversion of protected cell company into incorporated cell company.
- 49. Conversion of incorporated cell into non-cellular company.
- 50. Transfer of incorporated cells between incorporated cell companies.
- 51. Conversion of non-cellular company into incorporated cell and transfer to incorporated cell company.
- 52. Conversion of protected cell company into non-cellular company.
- 53. Subsumption of incorporated cells into incorporated cell company and conversion to non-cellular company.

Conversions concerned with liabilities of members of companies

- 54. Conversion of company into unlimited liability company.
- 55. Conversion of company into limited liability company.
- 56. Conversion of limited liability company into mixed liability company.
- 57. Conversion of unlimited liability company into mixed liability company.

General provisions in respect of conversions

- 58. Declaration of compliance (conversion).
- 59. Conversions or transfers not a default.

PART VI
AMALGAMATIONS

- 60. Amalgamation of bodies corporate.
- 61. Types of bodies corporate which can amalgamate.
- 62. Consent of Commission required in certain cases.
- 63. Amalgamation proposal.

- 64. Approval of amalgamation proposal.
- 65. Short form amalgamations for subsidiary companies.
- 66. Application for consent of Commission for amalgamation.
- 67. Determination of applications to Commission.
- 68. Appeals from determinations of Commission.
- 69. Application to Registrar for amalgamation.
- 70. Effect of amalgamation.
- 71. Amalgamation not to prejudice continuity of rights and obligations of amalgamating bodies corporate.
- 72. Amalgamation not a default.
- 73. Power of court to modify amalgamation proposal.
- 74. Declaration of compliance (amalgamation).

PART VII MIGRATIONS

Registration of overseas company as a Guernsey company

- 75. Overseas company may be registered as a Guernsey company.
- 76. Registration must be authorised by foreign law.
- 77. Company cannot be in liquidation, etc.
- 78. Company must satisfy solvency test.
- 79. Supervised companies cannot be registered without consent of the Commission.
- 80. Application for consent of Commission.
- 81. Determination of applications to Commission.
- 82. Appeals from determinations of Commission.
- 83. Application for registration as a Guernsey company.
- 84. Migration details.
- 85. Effect of registration.
- 86. Cancellation of registration.

Transfer of registration of companies to overseas

- 87. Companies may transfer registration.
- 88. Companies cannot transfer registration without a special resolution.
- 89. Companies cannot transfer registration if in liquidation, etc.
- 90. Companies cannot transfer registration unless they satisfy solvency test.
- 91. Transfer of registration of cell companies.
- 92. Companies cannot transfer registration without giving notice to creditors.
- 93. Supervised companies cannot transfer registration without consent of the Commission.
- 94. Application for consent of Commission.
- 95. Determination of applications to Commission.

- 96. Appeals from determinations of Commission.
- 97. Application for transfer of registration.
- 98. Effect of transfer.
- 99. Cancellation of transfer.
- 100. Power of Court to make orders as to transfer of registration.

General

- 101. Declaration of compliance (migration).
- 102. Documents in a language other than English.
- 103. Registration or transfer not to prejudice continuity of company's existence.
- 104. Terminology used in other jurisdictions.

PART VIII ARRANGEMENTS AND RECONSTRUCTIONS

- 105. Application of this Part.
- 106. Relationship between this Part and Parts IV to VII.
- 107. Court order for holding of meeting.
- 108. Statement to be circulated or made available.
- 109. Duty of directors and trustees to provide information.
- 110. Court sanction for compromise or arrangement.
- 111. Powers of Court to facilitate reconstruction or merger.
- 112. Obligations of company in respect of memorandum and articles.

PART IX CORPORATE CAPACITY

Capacity of company and power of directors to bind it

- 113. Unrestricted objects.
- 114. Corporate capacity.
- 115. Power of directors to bind company.

Formalities of doing business

- 116. Company contracts.
- 117. Execution of documents.
- 118. Company may give power of attorney.

Pre-incorporation contracts

- 119. Pre-incorporation contracts.

PART X MEMBERS

Members of a company

- 120. Company shall have at least one member.
- 121. Members of a company.
- 122. Cessation of membership of guarantee and unlimited members.

Register and index of members

- 123. Register of members.
- 124. Index of members.
- 125. Removal of entries relating to former members.
- 126. Treatment of treasury shares in the register.

Inspection of register and index of members

- 127. Rights to inspect and require copies.
- 128. Response to request for inspection or copy.
- 129. Offences in connection with request for or disclosure of information.
- 130. Exception for redeemable and non-voting shares.

PART XI DIRECTORS

Directors

- 131. Director.
- 132. Shadow director.
- 133. Board of directors.
- 134. Management of a company.

Requirement to have director

- 135. Company must have at least one director.
- 136. Directors of incorporated cell companies.

Appointment of director

- 137. Eligibility to be a director.
- 138. Director's consent and declaration of eligibility.
- 139. Appointment of first and subsequent directors.
- 140. Appointment of directors to be voted on individually.

- 141. Validity of acts of directors.

Directors ceasing to hold office

- 142. Directors ceasing to hold office.

Register of directors

- 143. Register of directors.
- 144. Rights to inspect and require copies.
- 145. Duty to notify Registrar of changes.

Use of service address by director

- 146. Validity of service address.
- 147. Record of usual residential address.
- 148. Duty to notify Registrar of change in usual residential address.
- 149. Disclosure of usual residential address by company.
- 150. Application to Court for disclosure of usual residential address.
- 151. Disclosure of usual residential address by Registrar.
- 152. Offences in connection with request for or disclosure of information.

Meetings of directors

- 153. Participation in meetings.
- 154. Minutes of directors' meetings.
- 155. Minutes as evidence.
- 156. Rights to inspect and require copies.

Directors' liabilities

- 157. Exempting directors from liabilities.
- 158. Provision of insurance for directors.
- 159. Provision of qualifying third party indemnities for directors.
- 160. Ratification of acts of directors.

Duties of directors in companies without secretaries

- 161. Duties of directors in companies without secretaries.

Transactions involving self-interest

- 162. Disclosure of interest.
- 163. Avoidance of transactions.

- 164. Effect on third parties.
- 165. Disapplication of these provisions in certain cases.
- 166. Interested director may vote.
- 167. Meaning of interested.

PART XII SECRETARIES

Secretaries

- 168. Company may have secretary.
- 169. Secretary of incorporated cell companies.
- 170. Eligibility to be secretary.
- 171. Duties of secretaries.
- 172. Acts done by person in dual capacity.

Register of secretaries

- 173. Register of secretaries.
- 174. Right to inspect and require copies.

PART XIII RESOLUTIONS AND MEETINGS

Resolutions

- 175. Types of resolution.
- 176. Ordinary resolutions.
- 177. Ordinary resolutions required by articles to have a different proportion of votes.
- 178. Special resolutions.
- 179. Waiver resolutions.
- 180. Unanimous resolutions.

Written resolutions

- 181. Written resolutions.
- 182. Circulation of written resolution proposed by directors.
- 183. Members' power to require circulation of written resolution.
- 184. Circulation of written resolution proposed by members.
- 185. Expenses of circulation.
- 186. Application not to circulate members' statement.
- 187. Procedure for signifying assent to written resolution.
- 188. Period for agreeing to written resolution.

- 189. Publication of written resolution on website.
- 190. Relationship between this Part and company's articles.

Voting

- 191. General rules.
- 192. Restrictions on voting by proxies are void.
- 193. Restrictions on voting on polls or written resolutions are void.
- 194. Votes of joint holders of shares.
- 195. Guardians and attorneys.
- 196. Vote splitting.
- 197. Second vote of chairman at meeting.
- 198. Effect of provision in company's articles as to admissibility of votes.

Calling and holding meetings

- 199. Requirement to hold annual general meeting.
- 200. Incorporated cell exempt from requirement to hold annual general meeting.
- 201. Waiver of requirement to hold annual general meeting.
- 202. Directors' power to call general meetings.
- 203. Members' power to require directors to call general meeting.
- 204. Directors' duty to call meetings required by members.
- 205. Power of members to call meeting at company's expense.
- 206. Court's power to order meeting.

Notice of meetings

- 207. Notice required for a general meeting.
- 208. Publication of notice of meeting on website.
- 209. Persons entitled to receive notice of meetings.
- 210. Contents of notices of meetings.
- 211. Resolution requiring special notice.

Procedure at meetings

- 212. Location of meeting.
- 213. Quorum at meeting.
- 214. Chairman of meeting.
- 215. Declaration by chairman on show of hands.
- 216. Right to demand a poll.
- 217. Participation in meeting.
- 218. Adjournments.
- 219. Membership details available at meeting.
- 220. Matters raised at meeting.

- 221. Resolutions at meeting.

Proxies

- 222. Right to appoint proxies.
- 223. Notice of meeting to contain statement of rights.
- 224. Notice required of appointment of proxy etc.
- 225. Right of proxy to demand a poll.
- 226. Notice required of termination of proxy's authority.
- 227. Saving for more extensive rights conferred by articles.

Records of resolutions and meetings

- 228. Records of resolutions and meetings etc.
- 229. Records as evidence of resolutions etc.
- 230. Records of decisions by sole member.
- 231. Rights to inspect and require copies.

Application to class meetings

- 232. Application to class meetings: shareholders.
- 233. Application to class meetings: members who are not shareholders.

PART XIV
ANNUAL VALIDATION

- 234. Duty to submit annual validation.
- 235. Content of annual validation.
- 236. Declaration of compliance (annual validation).
- 237. Failure to submit annual validation.

PART XV
ACCOUNTS AND REPORTS

Accounting records

- 238. Accounting records.
- 239. Retention of accounting records.
- 240. Inspection of accounting records and returns.
- 241. Application to incorporated cells.
- 242. Offences in connection with accounting records.

Accounts

- 243. Preparation of individual accounts.
- 244. Preparation of consolidated accounts for associated companies.
- 245. Meaning of "accounts" and "financial year".
- 246. Preparation of accounts of incorporated cells.
- 247. Offences in connection with accounts.

Directors' report

- 248. Duty to prepare directors' report.
- 249. Directors' report where company is audited.
- 250. Directors' report where company is not audited.

Rights to accounts and reports

- 251. Delivery of accounts and reports to members and officers.
- 252. Laying of accounts and reports before general meeting.
- 253. Application to incorporated cell companies.
- 254. Application to protected cell companies.

PART XVI
AUDIT

Requirement for and exemption from audit

- 255. Requirement for audit.
- 256. Exemption from audit.

Appointment of auditor

- 257. Appointment of auditor.
- 258. Term of office of auditor.
- 259. Remuneration of auditor.
- 260. Qualification for appointment as auditor.
- 261. Appointment etc. of auditor of incorporated cells.

Auditor's report

- 262. Auditor's report.

Functions of auditors

- 263. Duties of auditor.
- 264. Auditor's general right to information.
- 265. Auditor's right to information from overseas associated companies.

- 266. Offences in connection with auditor's right to information.
- 267. Auditor's rights in relation to resolutions and meetings.

Removal of auditor

- 268. Resolution removing auditor from office.
- 269. Special notice required for resolution removing auditor from office.
- 270. Rights of auditor who has been removed from office.

Resignation of auditor

- 271. Resignation of auditor.
- 272. Rights of resigning auditor.

Statement by auditor on ceasing to hold office

- 273. Statement by auditor to be deposited with company.
- 274. Company's duties in relation to statement.

PART XVII
CAPITAL AND SHARES

Shares

- 275. Legal nature of shares.
- 276. Rights and powers attaching to shares.
- 277. Types of share.
- 278. Shares of no par value.
- 279. Currency of shares.
- 280. Fractional shares.
- 281. Low value shares.
- 282. Numbering of shares.
- 283. No conversion into stock.
- 284. Different amounts may be paid on shares.
- 285. Share certificates.

Share capital

- 286. Reserve liability of company.
- 287. Power of company to alter share capital.
- 288. Share certificates and reduction of share capital.

Transfer of shares

- 289. Transfer of shares.
- 290. Transfer of shares of deceased shareholders.

Issue of shares

- 291. Exercise by directors of powers to issue shares etc.
- 292. General power to issue shares: authorisation by company.
- 293. Additional power to issues shares: companies with one class of share.
- 294. Consideration for issue of shares.
- 295. Consideration to be decided by board of directors.
- 296. Consideration other than cash.
- 297. Exemption to sections 295 and 296
- 298. Consideration in relation to issue of rights to subscribe for, or conversion of securities into, shares.
- 299. Consideration other than cash.
- 300. Time of issue of shares.

Distributions and dividends

- 301. Meaning of distribution.
- 302. Meaning of dividend.
- 303. Procedure for making a distribution other than dividend.
- 304. Procedure for paying a dividend.
- 305. Prohibition of unauthorised distributions.
- 306. Shares in lieu of dividends.
- 307. Member discounts not a distribution.
- 308. Reduction of member liability a distribution.
- 309. Recovery of distributions.

Redeemable shares and acquisition of own shares

- 310. Power to issue redeemable shares.
- 311. Terms and manner of redemption.
- 312. Power of company to acquire its own shares.
- 313. Terms and manner of acquisition.
- 314. Authority for acquisition.
- 315. Authority for market acquisition.
- 316. Meaning of "market acquisition".
- 317. Assignment or release of company's right to acquire own shares.
- 318. Certain payments connected with acquisition of shares also treated as distributions.
- 319. Shares redeemed or acquired to be cancelled.
- 320. Application of procedure for making distributions to redemptions and acquisitions.

- 321. Exemption for open-ended investment companies.
- 322. Effect of failure to redeem or acquire shares.
- 323. Effect of intervening insolvency on redemption or acquisition of shares.
- 324. Power of the Department to make regulations.
- 325. Interpretation.

Treasury shares

- 326. Nature and treatment of treasury shares.
- 327. Maximum holding of treasury shares.
- 328. Cancellation of treasury shares.

Financial assistance for acquisition of own shares

- 329. Financial assistance permitted.
- 330. Meaning of "financial assistance".
- 331. Application of procedure for making distributions to financial assistance.
- 332. Validity of financial assistance which breaches procedure for making distributions.
- 333. Power of the Department to make regulations.
- 334. Application to overseas parents of Guernsey subsidiaries.
- 335. Interpretation.

PART XVIII TAKEOVERS

- 336. Application of this Part.
- 337. Right of transferee to acquire shares.
- 338. Compulsory acquisition of shares by transferee.
- 339. Application to Court by dissenting shareholder to prevent acquisition of shares.
- 340. Meaning of "dissenting shareholder".

PART XIX PROTECTION OF MEMBERS

Restraint of excess powers

- 341. Restraint of excess powers.

Variation of class rights

- 342. Variation of class rights: shareholders.
- 343. Variation of class rights: members other than shareholders.

- 344. Variation of class rights: saving for Court's powers under other provisions.
- 345. Right to object to variation: shareholders.
- 346. Rights to object to variation: members other than shareholders.
- 347. Copy of Court's order to be delivered to Registrar.
- 348. Meaning of class of shareholders.

Unfair prejudice

- 349. Applications in respect of unfair prejudice.
- 350. Power of Court to grant relief for unfair prejudice.
- 351. Copy of order affecting memorandum, articles or resolutions to be delivered to Registrar.
- 352. Supplementary provisions where company's memorandum, articles or resolutions altered.

PART XX
STRIKING OFF

Striking off defunct companies

- 353. Striking defunct company off the Register of Companies.
- 354. Striking off incorporated cells of defunct incorporated cell company.

Striking off defaulting companies

- 355. Striking defaulting company off the Register of Companies.
- 356. Striking off incorporated cells of defaulting incorporated cell company.

Voluntary striking off

- 357. Striking off on application by company.
- 358. Circumstances in which application not to be made: activities of company.
- 359. Circumstances in which applications not to be made: proceedings connected with solvency not concluded.
- 360. Copy of application to be given to members, employees, etc.
- 361. Copy of application to be given to new members, employees, etc.
- 362. Copy of application of supervised company to be given to the Commission.
- 363. Circumstances in which application must be withdrawn.
- 364. Withdrawal of application.
- 365. Declaration of compliance (voluntary striking off).

Provisions applying to all strikings off

- 366. Companies party to proceedings.

- 367. No striking off incorporated cell company until position of its incorporated cells resolved.
- 368. No prejudice to liabilities or powers to wind up.
- 369. Property of struck off company.

Restoration to the Register

- 370. Application for restoration to Register of Companies.
- 371. Restoration to the Register of Companies.
- 372. Property of restored company.
- 373. Meaning of creditor.

PART XXI
ADMINISTRATION

- 374. Administration orders.
- 375. Application for administration order.
- 376. Effect of application for administration order.
- 377. Effect of administration order.
- 378. Details of administration to appear in company's correspondence.
- 379. General powers of administrator.
- 380. General duties of administrator.
- 381. Co-operation with and by administrator.
- 382. Discharge or variation of administration order.
- 383. Remuneration and swearing in of administrator.
- 384. Vacation of office.
- 385. Release of administrator.
- 386. Information to be given by administrator.
- 387. Statement of affairs to be submitted to administrator.
- 388. Protection of interests of creditors and members.
- 389. Administration of incorporated cell company not to prejudice its incorporated cells.
- 390. Cells of protected cell companies: administration subject to liquidation.

PART XXII
VOLUNTARY WINDING UP

- 391. Cases in which company may be wound up voluntarily.
- 392. Notice of voluntary winding up.
- 393. Commencement of voluntary winding up.
- 394. Consequences of resolution to wind up.
- 395. Appointment of liquidator.
- 396. Power to fill vacancy in office of liquidator.
- 397. General provisions as to liquidator.

- 398. Appointment of liquidator by the Court.
- 399. Calling of general meetings by liquidators.
- 400. Final meeting prior to dissolution.
- 401. Delegation of company's powers to creditors.
- 402. Power to apply to Court for directions.
- 403. Removal of liquidator.
- 404. Expenses of voluntary winding up.
- 405. Court may order compulsory winding up.

PART XXIII COMPULSORY WINDING UP

- 406. Circumstances in which Court may wind company up.
- 407. Meaning of "unable to pay debts".
- 408. Application for compulsory winding up.
- 409. Commission may be heard on winding up application.
- 410. Ground on which Department or Commission may make winding up application.
- 411. Power to restrain proceedings and appoint provisional liquidator.
- 412. Powers of Court on hearing application.
- 413. Appointment of liquidator in compulsory winding up.
- 414. Consequences of appointment of liquidator and compulsory winding up order.
- 415. Notice of compulsory winding up.
- 416. Resignation, removal or death of liquidator.
- 417. Examination of liquidator's accounts by Commissioner.
- 418. Expenses of compulsory winding up.

PART XXIV PROVISIONS OF GENERAL APPLICATION IN WINDING UP

- 419. Distribution of company's property.
- 420. Company not to undertake business once wound up.
- 421. No share transfers after commencement of winding up.
- 422. Remedy against delinquent officers.
- 423. Liquidator's remuneration.
- 424. Preferences in or prior to winding up.
- 425. Company to be notified of winding up application.
- 426. Liquidator may seek directions.

PART XXV DISQUALIFICATION ORDERS

- 427. Disqualification orders.

- 428. Ground for making a disqualification order.
- 429. Duration of disqualification order.
- 430. Revocation of disqualification orders.
- 431. Consequences of breaking a disqualification order.

PART XXVI FRAUDULENT AND WRONGFUL TRADING

- 432. Offence of fraudulent trading.
- 433. Civil liability for fraudulent trading.
- 434. Civil liability of directors for wrongful trading.
- 435. Civil liability of directors for wrongful trading: cells of protected cell company.
- 436. Proceedings under sections 433, 434 or 435.

PART XXVII PROTECTED CELL COMPANIES

Formation

- 437. Companies which can be protected cell companies.
- 438. Consent of Commission required.
- 439. Determination of applications to and other decisions of Commission.
- 440. Appeals from determinations and other decisions of Commission.

Status

- 441. Status of protected cell companies.
- 442. Creation of cells.
- 443. Demarcation of the core.
- 444. Cell shares and cell share capital.

Assets and liabilities

- 445. Cellular and core assets.
- 446. Protected assets.
- 447. Recourse agreements.
- 448. Position of creditors.
- 449. Recourse to cellular assets by creditors.
- 450. Recourse to core assets by creditors.
- 451. Liability of cellular assets.
- 452. Liability of core assets.
- 453. Disputes as to liability attributable to cells.
- 454. Attribution of core assets and liabilities.

Dealings with and arrangements within protected cell companies

- 455. Company to inform persons they are dealing with protected cell company.
- 456. Provisions in relation to liquidation of protected cell company.
- 457. Transfer of cellular assets from protected cell company.
- 458. Arrangements between cells affecting cellular assets, etc.

Receivership orders

- 459. Receivership orders in relation to cells.
- 460. Applications for receivership orders.
- 461. Functions of receiver and effect of receivership order.
- 462. Discharge and variation of receivership orders.
- 463. Remuneration of receiver.
- 464. Information to be given by receiver.

General

- 465. Liability to criminal penalties.
- 466. Power of the Commission to make regulations.
- 467. Interpretation of this Part.

PART XXVIII
INCORPORATED CELL COMPANIES

Formation

- 468. Companies which can be incorporated cell companies.
- 469. Consent of Commission required.
- 470. Determination of applications to and other decisions of Commission.
- 471. Appeals from determinations and other decisions of Commission.
- 472. Incorporation of incorporated cell.

Status

- 473. Status of incorporated cell company.
- 474. Status of incorporated cell.

Separate nature of incorporated cell company and its incorporated cells

- 475. Separation of assets and liabilities.
- 476. Transactions.

Winding up

- 477. Winding up of incorporated cell company not to prejudice its incorporated cells.
- 478. Directors of incorporated cell during winding up of its incorporated cell company.
- 479. No dissolution of incorporated cell company until position of its incorporated cells resolved.

General

- 480. Expulsion of incorporated cell from its incorporated cell company.
- 481. Applications for directions.
- 482. Power of the Commission to make regulations.

PART XXIX
BENEFICIAL OWNERSHIP

- 483. Companies to which this Part applies.
- 484. Obligation for companies to have a resident agent.
- 485. Record of resident agent.
- 486. Duties of resident agent.
- 487. Record of beneficial owners.
- 488. Notice to members to disclose beneficial ownership.
- 489. Suspension or cancellation of interests for failure to disclose beneficial ownership.
- 490. Disclosure of beneficial ownership information by resident agent.
- 491. Tipping off.
- 492. Privileged information.
- 493. Provisions in articles concerning beneficial ownership.
- 494. Limited repeals.

PART XXX
OFFICE OF THE REGISTRAR OF COMPANIES

Establishment of Registrar and Registers

- 495. Establishment of Office of Registrar.
- 496. Register of Companies.
- 497. Register of Disqualification Orders.
- 498. Registers may be in electronic form.

Functions of the Registrar

- 499. Functions of Registrar.
- 500. Ancillary powers of Registrar.
- 501. Fees payable to the Registrar.
- 502. Rectification of the Register of Companies.
- 503. Disclosure and publication of confidential information.
- 504. Disclosure and publication of non-confidential information.
- 505. General power of Registrar to reject applications etc.
- 506. Reports.
- 507. Financial and accounting provisions.
- 508. Power of Registrar to apply for directions.

Offences

- 509. False or misleading information.

General

- 510. Exclusion of liability.
- 511. General right to apply to Court to set aside action of Registrar.
- 512. Electronic communications to the Registrar.

PART XXXI CRIMINAL AND CIVIL PENALTIES

- 513. Criminal penalties for offences under this Law.
- 514. Daily default.
- 515. Criminal liability of officers, etc.
- 516. Civil penalties.
- 517. Appeal against civil penalties.
- 518. Relationship of civil penalties with prosecutions.
- 519. Striking off for persistent or gross contraventions.

PART XXXII GENERAL

Exclusions and relief from liability

- 520. Exclusion of liability: States.
- 521. Exclusion of liability: Commission.
- 522. Relief from liability for officers and auditors.

Service and electronic communications

- 523. Service of documents.

524. Electronic communications.

Interpretation

525. Meaning of "hard copy".
 526. Meaning of "sent in electronic form" and related expressions.
 527. Meaning of "solvency test".
 528. Meaning of "name" and "former name".
 529. Meaning of "associated companies".
 530. Meaning of "supervised company".
 531. Meaning of "holding company", "subsidiary" and "wholly-owned subsidiary".
 532. Interpretation.

Ordinances and regulations

533. Power of States to amend by Ordinance.
 534. Regulations made by the Commission.
 535. Regulations made by the Department.
 536. Regulations made by the Registrar.
 537. Regulations to be laid before States.
 538. General power in respect of Ordinances and regulations.

Miscellaneous

539. False or misleading information to the Commission.
 540. Modification of this Law in its application to States trading companies.

General

541. Savings and transitional provisions.
 542. Power to make regulations concerning savings and transitional provisions.
 543. Consequential amendments and repeals.
 544. Citation.
 545. Commencement.

- SCHEDULE 1: Powers of administrator.
 SCHEDULE 2: Office of the Registrar.
 SCHEDULE 3: Electronic communications by company to members.
 SCHEDULE 4: Savings and transitional provisions.
 SCHEDULE 5: Consequential amendments and repeals.

PROJET DE LOI

ENTITLED

The Companies (Guernsey) Law, 2008

THE STATES, in pursuance of their Resolutions of the 29th March, 2007¹ and the 1st November, 2007², have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

PART I

NATURE AND TYPES OF COMPANIES

Nature of a company.

1. A company is a legal person, separate from its members, which comes into existence upon incorporation and continues until it is removed from the Register of Companies.

Types of company.

2. (1) A company is -

(a) a cell company, which may be either -

(i) a protected cell company, or

(ii) an incorporated cell company,

¹ Article XIV of Billet d'État No. XI of 2007.

² Articles XII and XIII of Billet d'État No. XXII of 2007.

- (b) an incorporated cell of an incorporated cell company,
or
 - (c) a company which is neither of the above (a non-cellular company).
- (2) In respect of the liability of its members, a company is either-
- (a) limited -
 - (i) by shares, or
 - (ii) by guarantee,
 - (b) unlimited, or
 - (c) of mixed liability.

(3) Where the word "company" is used without further qualification in this Law and unless the context otherwise requires, it means any type of company referred to in subsection (1) or (2).

Protected cell company.

3. Part XXVII sets out the meaning of and makes further provision in respect of protected cell companies.

Incorporated cell company.

4. Part XXVIII sets out the meaning of and makes further provision in respect of incorporated cell companies.

Incorporated cell.

5. Part XXVIII sets out the meaning of and makes further provision in

respect of incorporated cells.

Company limited by shares.

6. (1) A company limited by shares shall have a share capital.
- (2) A company limited by shares -
 - (a) shall have members whose liability for the company's debts is limited to the amount, if any, unpaid on the shares held by them ("**shareholders**"), and
 - (b) shall have no other type of member.

Company limited by guarantee.

7. (1) A company limited by guarantee may have a share capital.
- (2) A company limited by guarantee -
 - (a) shall have members whose liability for the company's debts is limited to the guaranteed amount ("**guarantee members**"),
 - (b) may, where the company has a share capital, have shareholders, and
 - (c) shall have no other type of member.
- (3) In the case of a company limited by guarantee which has a share capital, the memorandum and articles may -
 - (a) require a guarantee member also to be a shareholder, or

- (b) prohibit a guarantee member from also being a shareholder.

(4) If the memorandum or articles of a company limited by guarantee do not make provision under subsection (3), a guarantee member may also be a shareholder.

(5) In this Law "**guaranteed amount**" means the amount a guarantee member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within a period of one year after he ceases to be a member

- (a) for the payment of the company's debts incurred before he ceased to be a member and of the costs, charges and expenses of winding up, and
- (b) for any adjustment of the rights of the contributories as between themselves.

(6) If the guaranteed amounts are different for different members, the different amounts shall not of themselves create differing interests in the company as between those guarantee members.

Unlimited liability company.

8. (1) An unlimited liability company may have a share capital.

(2) An unlimited liability company -

- (a) shall have members whose liability for the company's debts is unlimited while they are members, or within a period of one year after they cease to be members

("unlimited members"),

- (b) may, where the company has a share capital, have shareholders, and
- (c) shall have no other type of member.

(3) In the case of an unlimited liability company which has a share capital, the memorandum and articles may -

- (a) require an unlimited member also to be a shareholder, or
- (b) prohibit an unlimited member from also being a shareholder.

(4) If the memorandum or articles of an unlimited liability company do not make provision under subsection (3), an unlimited member may also be a shareholder.

Mixed liability company.

9. (1) A mixed liability company may have a share capital.

(2) A mixed liability company may have members of the following types -

- (a) guarantee members,
- (b) unlimited members,
- (c) where the company has a share capital, shareholders.

(3) The memorandum or articles of a mixed liability company may -

- (a) require a member of one type also to be a member of any other type, and
- (b) prohibit a member of one type from also being a member of any other type.

(4) If the memorandum or articles of a mixed liability company do not make provision under subsection (3), a person may be a member of more than one type.

(5) Without prejudice to any liability that a member has to a mixed liability company, the memorandum and articles of that company may make provision for any adjustments or contributions to be made between members in respect of their liabilities to the company, and if no such provision is made, the liability of members shall be joint and several to the maximum extent of their liability to the company.

PART II INCORPORATION

Conditions precedent to incorporation

Consent of Commission required before incorporation of a cell company.

10. A company cannot be incorporated as a cell company unless it has the written consent of the Commission in accordance with the provisions of -

- (a) Part XXVII in the case of a protected cell company, or
- (b) Part XXVIII in the case of an incorporated cell

company.

Special resolution of incorporated cell company required before incorporation of an incorporated cell.

11. An incorporated cell of an incorporated cell company cannot be incorporated unless the incorporated cell company has passed a special resolution in accordance with the provisions of Part XXVIII.

Consent of Procureur not required for the incorporation of a company.

12. The consent of Her Majesty's Procureur is not required for the incorporation of a company.

Incorporation of a company

Founder member.

13. A company shall have at least one (and may have more than one) founder member.

Prohibition of minors, etc. being founder member.

14. No minor or person under legal disability may be a founder member of a company.

Memorandum of incorporation.

15. (1) The memorandum of incorporation is a memorandum stating that the founder member wishes to incorporate a company.

(2) The memorandum shall state -

(a) the company's name (which must be in compliance with Part III),

(b) that the company's registered office is situated in

Guernsey,

- (c) the type of company within the meaning of section 2(1),
- (d) the type of company in respect of the liability of its members within the meaning of section 2(2).

(3) The founder member shall subscribe to the memorandum by entering in it his name, address and signature and this subscription shall form part of the memorandum.

(4) In the case of a company with a share capital, the memorandum shall also state, in respect of each founder member who is to hold shares -

- (a) the number of shares to be taken on formation by that member,
- (b) the aggregate value of those shares (whether on account of the nominal value of the shares or by way of premium), and
- (c) the amount to be paid up and the amount (if any) to be unpaid on those shares (whether on account of the nominal value of the shares or by way of premium),

and where the company is to have more than one class of share upon incorporation, the statement shall also state the above matters in respect of each class of share.

(5) In the case of a company with a founder member who is a guarantee member, the memorandum shall also state -

- (a) the guaranteed amount of each member, and
- (b) the maximum number of guarantee members which the company may have.

(6) The memorandum shall also state, in the case of a company whose objects are restricted, those objects.

(7) The memorandum may make provision for any other matter, not referred to above, concerning the company, its members or officers.

(8) The memorandum may be in the French language.

Articles of incorporation.

16. (1) Every company shall have articles of incorporation which set out regulations for the conduct of the company.

(2) Standard articles shall be prescribed by the Department and different standard articles may be prescribed for different types and descriptions of companies.

(3) The standard articles shall apply to a company save to the extent that they are varied or disappplied by the company, and that variation or disapplication must be set out in the company's articles.

(4) The articles may be in the French language.

Application for incorporation.

17. (1) An application for the incorporation of a company shall be made to the Registrar.

(2) The application shall be in a form prescribed by the Registrar and shall include or be accompanied by -

- (a) the memorandum of incorporation,
- (b) a statement of the proposed first directors,
- (c) a statement of the proposed address of the company's registered office,
- (d) a statement of the proposed first resident agent, comprising the particulars required to be entered in its record of resident agent under section 485,
- (e) the name and address of the founder member of the company,
- (f) in the case of a company with a share capital, a statement of initial share capital,
- (g) in the case of a company with a founder member who is a guarantee member, a statement of initial guarantee,
- (h) a copy of any consent required under section 10,
- (i) a copy of any special resolution required under section 11, and
- (j) a declaration of compliance (incorporation).

(3) The statement of the proposed first directors shall comprise -

- (a) the consents and declarations required under section 138,
- (b) the particulars required by section 143 to be entered in the register of directors, and
- (c) where the address of a director required by section 143(4)(b) is a service address, his usual residential address.

(4) The statement of initial share capital shall comprise a statement of -

- (a) the total number of shares to be taken on formation by the founder member,
- (b) the aggregate value of those shares (whether on account of the nominal value of the shares or by way of premium), and
- (c) the amount to be paid up and the amount (if any) to be unpaid on those shares (whether on account of the nominal value of the shares or by way of premium),

and where the company is to have more than one class of share, the statement shall also state the above matters in respect of each class of share.

(5) Where shares are to be issued otherwise than for cash, the amounts referred to in subsection (4)(b) shall distinguish between cash and consideration other than cash.

(6) The statement of initial guarantee shall comprise the total guaranteed amount.

(7) The application may propose the date on which the incorporation shall take effect, provided that that date is not later than 3 months after the date of the application.

(8) The application may be accompanied by the articles of incorporation and, if it is not so accompanied, the standard articles apply in accordance with section 16.

(9) An application for incorporation of a company may only be made by a corporate services provider.

(10) Where the memorandum or articles are in the French language they are authoritative, but they shall be accompanied by a translation into the English language.

Prohibition of incorporation for an unlawful purpose.

18. A company may not be incorporated for an unlawful purpose.

Declaration of compliance (incorporation).

19. (1) A declaration of compliance (incorporation) is a declaration, signed by the applicant, that all the requirements of this Law in respect of the incorporation of a company have been fulfilled.

(2) The Registrar, when performing his functions under this Law, may rely upon the declaration in all respects and accordingly shall not be bound to enquire further as to whether, in relation to any application for incorporation, the provisions of this Law have been complied with.

(3) An applicant who without reasonable excuse makes a

declaration which is false, deceptive or misleading in a material particular is guilty of an offence.

Effect of incorporation.

- 20.** (1) If the Registrar grants the application for incorporation -
- (a) the Registrar shall register the memorandum (and articles as the case may be) in the Register of Companies,
 - (b) the company is incorporated on the coming into effect of that registration,
 - (c) the Registrar shall issue a certificate of incorporation in respect of the company, stating the date of incorporation, which is conclusive evidence that the company is duly incorporated, and
 - (d) the Registrar shall allocate a registration number to the company.

(2) If the application proposes a date on which the incorporation is to have effect and that date is later than the date on which the Registrar issues the certificate of incorporation, then the date stated on the certificate as the date of incorporation shall be the proposed date.

PART III

NAME, OFFICE, SEAL AND RECORDS

Name

Compulsory components in a company's name.

21. (1) A company shall have the following word or words at the end of its name -

- (a) in the case of a company limited by shares -
 - (i) "Limited",
 - (ii) "With limited liability",
 - (iii) "Ltd.",
 - (iv) "Avec responsabilité limitée", or
 - (v) "ARL",
- (b) in the case of a company limited by guarantee (but subject to section 22) -
 - (i) "Limited by guarantee", or
 - (ii) "LBG",
- (c) in the case of a mixed liability company -
 - (i) "Mixed liability", or
 - (ii) "ML",

and that word or those words shall form part of its name.

(2) A company shall have the following word or words directly before any words required to be at the end of its name by subsection (1) or, where no words are required to be at the end of its name by subsection (1), at the end of its name -

(a) in the case of a protected cell company -

- (i) "Protected Cell Company",
- (ii) "PCC", or
- (iii) such cognate expression as may be approved in writing by the Commission,

(b) in the case of an incorporated cell company -

- (i) "Incorporated Cell Company",
- (ii) "ICC", or
- (iii) such cognate expression as may be approved in writing by the Commission, and

(c) in the case of an incorporated cell -

- (i) "Incorporated Cell",
- (ii) "IC", or
- (iii) such cognate expression as may be approved in writing by the Commission,

and that word or those words shall form part of its name.

(3) For the purposes of this section, the case of letters, accents, spaces between letters and punctuation marks are to be disregarded.

Exemption from section 21(1)(b) for charitable, etc. companies.

22. (1) A company limited by guarantee which does not have a share capital is exempt from section 21(1)(b) provided that the requirements set out in subsection (2) are complied with.

(2) The requirements referred to in subsection (1) are as follows -

(a) the objects of the company are (or, in the case of a company about to be incorporated, are to be) the promotion of commerce, art, science, education, sport, religion, charity or any profession, and anything incidental or conducive to any of those objects, and

(b) the company's memorandum and articles -

(i) require its profits (if any) or other income to be applied in promoting its objects,

(ii) prohibit it from making a distribution to its members, and

(iii) require all the assets which would otherwise be available to its members generally to be transferred on its winding up either -

(A) to another body with objects similar to its own, or

- (B) to another body the objects of which are any of those specified in paragraph (a) and anything incidental or conducive thereto (whether or not the body is a member of the company),

and that other body has similar provision in its memorandum and articles (or other constitutional provisions if it is not a company) to the provisions required by this paragraph.

(3) Where a company relies upon the exemption granted by this section upon its incorporation, the declaration of compliance (incorporation) shall include within it a declaration that the requirements of this section have been fulfilled.

(4) A company which relies upon the exemption granted by this section -

- (a) shall not alter its memorandum and articles so that it ceases to comply with the requirements of subsection (2), and
- (b) shall have in legible characters in all business letters and order forms of the company the words "a company limited by guarantee".

(5) A company which relies upon the exemption granted by this section which -

- (a) carries on any business other than the promotion of any of the objects mentioned in subsection (2),
- (b) applies any of its profits or other income otherwise than in promoting such objects, or
- (c) makes a distribution to its members,

is guilty of an offence.

(6) If it appears to the Department that a company which relies upon the exemption granted by this section -

- (a) has carried on any business other than the promotion of any of the objects mentioned in subsection (2),
- (b) has applied any of its profits or other income otherwise than in promoting such objects, or
- (c) has made a distribution to its members,

the Department may, in writing, direct the company to change its name in accordance with the provisions of section 25 within such period as may be specified in the direction, so that its name complies with section 21(1)(b).

(7) A company which contravenes subsection (4) or a direction by the Department under subsection (6) is guilty of an offence.

Name of cell of protected cell company.

23. (1) Each cell of a protected cell company shall have its own distinct name or designation.

(2) Notwithstanding that a cell of a protected cell company is not a company, its name shall comply with the provisions of section 24.

Prohibited names.

24. (1) A company shall not have the word or words referred to in section 21(1) or (2) at the end of its name if it is not a company of the type which is so required (subject to section 22) to have that word or those words.

(2) A company must not have a name which is the same as a name -

- (a) currently appearing on the Register of Companies, or
- (b) that has been reserved in accordance with section 27 and subject to the provisions of that section.

(3) In determining for the purposes of subsection (2) whether one name is the same as another, there are to be disregarded -

- (a) the definite article, where it is the first word of the name,
- (b) the expressions "company", "and company" and any of the word or words required by section 21(1) or (2) to be at the end of a name,
- (c) type and case of letters, accents, spaces between letters and punctuation marks,

and "and" and "&" are to be taken as the same.

(4) Without prejudice to the Trade Marks (Bailiwick of Guernsey) Ordinance, 2006³, a company must not have a name which, in the opinion of the Registrar, is likely to cause the public to confuse the company with -

- (a) some other person already established in Guernsey, or
- (b) a trade mark which has already been registered in accordance with the Trade Marks (Bailiwick of Guernsey) Ordinance, 2006,

unless that other person or the proprietor of that trade mark (as the case may be) has consented to the use of that name.

(5) The Registrar may consider, in exercising his functions under subsection (4) -

- (a) whether the name of the company and -
 - (i) the name of the person already established in Guernsey or elsewhere, or
 - (ii) the trade mark (as the case may be),
 are the same or similar, and
- (b) whether the company engages in the provision of the same or similar goods and services as -

³ Ordinance No. I of 2006; amended by the Trade Marks (Bailiwick of Guernsey) (Amendment) Ordinance, 2006.

- (i) the person already established in Guernsey or elsewhere, or
- (ii) the goods and services in respect of which the trade mark was registered (as the case may be).

(6) A company must not have a name which, in the opinion of the Registrar, gives so misleading an indication of its activity as to be likely to cause confusion.

(7) A company must not have a name -

- (a) the use of which would in the opinion of the Registrar constitute a criminal offence, or
- (b) which would in the opinion of the Registrar be contrary to public policy or to accepted principles of morality.

(8) A company must not have a name which in the opinion of the Registrar implies, or might be taken to imply, royal or government connection, support or patronage, unless Her Majesty's Procureur has given written permission for the use of that name.

Application to change name.

25. (1) A company may apply to the Registrar to change its name in accordance with the provisions of this section.

(2) The company shall pass a special resolution authorising the change of name.

(3) The application shall be in the form prescribed by the Registrar and shall be accompanied by -

- (a) the special resolution authorising the change of name, and
- (b) a declaration of compliance (name change).

(4) The Registrar shall, upon receipt of the documents specified in subsection (3) publish the proposed new name in such manner and for such period as he thinks fit.

(5) The Registrar shall -

- (a) consider any relevant representations made to him concerning the proposed change of name, and
- (b) where relevant representations are made by a person other than the applicant, afford the applicant an opportunity to comment upon those representations,

in such manner as may be prescribed by the Registrar or as he thinks fit.

(6) If the Registrar grants the application for change of name he shall -

- (a) issue a certificate of change of name, and the certificate shall state the date upon which the certificate has effect,
- (b) register the new name of the company in the Register of Companies, and

- (c) publish the new name in such manner and for such period as he thinks fit.

(7) Where a company changes its name by virtue of this section, for the avoidance of doubt -

- (a) all property and rights to which it was entitled immediately before that change remain its property and rights,
- (b) it remains subject to all criminal and civil liabilities, and all contracts, debts and other obligations to which it was subject immediately before that change, and
- (c) all actions and other legal proceedings which, immediately before that change, were extant or pending by or against it may be continued by or against it in the new name.

Declaration of compliance (name change).

26. (1) A declaration of compliance (name change) is a declaration, signed by a director or secretary of the company, that all the requirements of this Law in respect of the change of name have been fulfilled.

(2) The Registrar, when performing his functions under this Law, may rely upon the declaration in all respects and accordingly is not bound to enquire further as to whether, in relation to any application for a change of name, the provisions of this Law have been complied with.

(3) A person who without reasonable excuse makes a declaration which is false, deceptive or misleading in a material particular is guilty of an

offence.

Reservation of names.

27. (1) A corporate services provider may apply to the Registrar to reserve a name for a company if -

- (a) it intends to apply for the incorporation of that company within 3 months, and
- (b) it is acting on behalf of the persons who wish that company to be incorporated.

(2) An application under this section must be in the form prescribed by the Registrar.

(3) Where a name has been reserved under this section and for the period for which it is reserved, that name -

- (a) cannot be used in an application for incorporation of a company otherwise -
 - (i) than by the person who reserved that name, or
 - (ii) than with the consent of the person who reserved that name, and
- (b) cannot be reserved by any other person.

(4) A reservation under this section lapses after a period of 3 months commencing on the date the reservation was made.

(5) The Registrar may -

- (a) refuse an application to reserve a name, or
- (b) revoke a reservation already made,

if the name breaches any of the provisions of this Part.

(6) The Registrar may refuse to register a name, notwithstanding that it has already been reserved, if it breaches any of the provisions of this Part.

Enforcement of provisions on names.

28. (1) The Registrar shall refuse -

- (a) to incorporate, or
- (b) to issue a certificate of change of name to,

a company if its proposed name or change of name would breach the provisions of this Part.

(2) The Registrar may direct -

- (a) a company to change its name, or
- (b) a protected cell company to change the name of a cell,

in order to comply with the provisions of this Part, within such period as he may direct.

(3) A company which fails to comply with a direction under subsection (2) is -

- (a) guilty of an offence, and
- (b) liable to be wound up under section 406.

Right to object to a company's name.

29. (1) A person may apply to the Court to -

- (a) set aside the incorporation,
- (b) set aside the name,
- (c) set aside the change of name, or
- (d) set aside the reservation of a name,

of a company which has breached (or which would breach, if it were incorporated) the provisions of section 24(2) or (4).

(2) A person can only make an application under this section if he is (or claims to be) the company referred to in section 24(2) or the person or proprietor referred to in section 24(4).

(3) The Court on an application under this section may make such order, on such terms and conditions, as it thinks fit, including, without limitation, an order validating the incorporation of a company but directing the company and the Registrar to change the company's name.

Office

Registered office.

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

(2) On incorporation, the address of the company's registered office is that specified in the statement given to the Registrar under section 17.

(3) The company may change the address of its registered office -

- (a) by giving notice to the Registrar in the form prescribed by the Registrar,
- (b) if it is an incorporated cell being transferred in accordance with section 50, in accordance with the provisions of subsection (7)(e) of that section, or
- (c) if it is non-cellular company being converted and transferred in accordance with section 51, in accordance with the provisions of subsection (7)(e) of that section.

(4) The change takes 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.

(5) For the purposes of any duty of a company -

- (a) to keep at its registered office, or make available for public inspection there, any register, index or other document, or
- (b) to mention the address of its registered office in any document,

a company which has given notice to the Registrar of a change of the address of its registered office may act on the change as from such date, not more than 14 days after the notice is given, as it may determine.

(6) Where a company unavoidably ceases to perform at its registered office any such duty as is mentioned in subsection (5)(a) in circumstances in which it was not practicable to give prior notice to the Registrar of a change in the address of its registered office, but -

- (a) resumes performance of that duty at other premises as soon as practicable, and
- (b) gives notice accordingly to the Registrar of a change in the situation of its registered office within 14 days of doing so,

it shall not be treated as having failed to comply with that duty.

(7) In proceedings for an offence of failing to comply with any such duty as is mentioned in subsection (5), it is for the person charged to show that by reason of the matters referred to in that subsection or subsection (6) no offence was committed.

Registered office of an incorporated cell.

31. An incorporated cell shall have the same registered office as its incorporated cell company.

Registered office provided by corporate services provider becoming ineffective.

32. (1) A corporate services provider may give notice stating that a registered office address which it provides for a company is no longer effective.

(2) A notice under subsection (1) shall be sent to -

(a) the Registrar, and

(b) each director at -

(i) his service address, and

(ii) his usual residential address where that address is different from his service address.

(3) The notice must state -

(a) the company's name and registration number,

(b) that the address of the registered office is no longer effective, and

(c) that the company may be struck off the Register of Companies in accordance with Part XX if it does not provide a new address for its registered office.

(4) The notice sent to the Registrar must be accompanied by a declaration of compliance (ineffective office).

(5) A company which does not provide a new address for its registered office following a notice under this section is liable to be struck off the Register of Companies in accordance with Part XX.

(6) Notwithstanding any notice under this section, the address of the company's registered office can only be changed in accordance with the provisions of section 30.

Declaration of compliance (ineffective office).

33. (1) A declaration of compliance (ineffective office) is a declaration, signed by a corporate services provider, that all the requirements of this Law in respect of a notice under section 32 have been fulfilled.

(2) The Registrar, when performing his functions under this Law, may rely upon the declaration in all respects and accordingly is not bound to enquire further as to whether, in relation to a notice under section 32, the provisions of this Law have been complied with.

(3) A corporate services provider who without reasonable excuse makes a declaration which is false, deceptive or misleading in a material particular is guilty of an offence.

Identification

Display of name at registered office etc.

34. (1) A company's name shall be displayed, in a conspicuous place and in letters which are easily legible -

- (a) at its registered office, and
- (b) at any other office or place in which its business is ordinarily carried on.

(2) In this section "displayed" means -

- (a) displayed outside, or
- (b) displayed inside, in a place to which the general public have access during ordinary business hours.

(3) A company which fails to comply with the provisions of this section is guilty of an offence.

Details to appear in company's correspondence.

35. (1) A company's name shall appear in all its correspondence unless the company's identity is readily ascertainable -

- (a) from the context of the correspondence, or
- (b) from a course of dealing between the company and the person to whom the correspondence is addressed.

(2) A company's particulars shall appear in all order forms and formal business letters of the company.

(3) Where a company has a website, the company's particulars shall appear in a reasonably prominent location on that website.

(4) A person purporting to act on behalf of a company who signs or issues any negotiable instrument, letter of credit, invoice or order form in which the company's name does not appear is personally liable for the amount of it (unless it is duly paid by the company).

(5) A company in relation to which there is a contravention of subsection (1), (2) or (3) is guilty of an offence.

(6) The particulars referred to in subsection (2) and (3) are -

- (a) its name,
- (b) its registration number,

- (c) the address of its registered office, and
- (d) in the case of a company to which section 22 applies, the fact that it is a company limited by guarantee.

(7) The provisions of this section apply whether or not the correspondence is in electronic form.

Seal

Common seal.

36. (1) A company may, but need not, have one or more common seals.

(2) A common seal may be used in any jurisdiction unless the articles provide to the contrary.

(3) For the avoidance of doubt, no rule of law (whether arising under statute, rule of court or otherwise) shall require a common seal for the valid execution of a document by the company.

(4) The name of the company shall be engraved in legible characters on its common seal.

(5) A company in relation to which there is a contravention of subsection (4) is guilty of an offence.

Company records

Form of company records.

37. (1) Company records -

- (a) may be kept in hard copy or electronic form, and
- (b) may be arranged in such manner as the directors or secretary think fit,

provided that the information in question is adequately recorded for future reference.

(2) Where company records are kept in electronic form -

- (a) they must be capable of being reproduced in hard copy form, and
- (b) they are deemed for the purposes of this Law to be kept at a place if access to them and a hard copy can be obtained at that place.

(3) Where company records are kept otherwise than in bound books, adequate precautions must be taken -

- (a) to guard against falsification, and
- (b) to facilitate the discovery of falsification.

(4) Any duty imposed by law to allow inspection, or to furnish a copy of a company record required by this Law to be kept by a company, shall be treated, where the company records are in electronic form, as a duty to allow inspection, or to furnish a copy -

- (a) in hard copy, or

- (b) if the person seeking inspection or a copy consents, in electronic form.

(5) In this section "**company records**" means any register, index, record, accounting records, agreement, memorandum, articles, minutes or other document required by this Law to be kept by a company.

(6) A company which fails to comply with this section is guilty of an offence.

PART IV

ALTERATIONS OF MEMORANDUM AND ARTICLES

Alterations of the memorandum of incorporation

Restriction on alteration of memorandum.

38. (1) A company may not alter any provision of its memorandum except in the cases, in the manner and to the extent expressly provided for by this section.

(2) A company may alter the statement of its name -

- (a) in all cases, if it changes its name in accordance with the provisions of section 25, or
- (b) in the cases set in Part V, if it converts to a different type of company in accordance with the provisions of that Part.

(3) A company may delete the statement that its registered office is situated in Guernsey if it migrates from Guernsey in accordance with the provisions of Part VII.

(4) A company may alter the statement of the type of company it is if it converts to a different type of company in accordance with the provisions of Part V.

(5) A company may, subject to section 40, alter the statement of its objects, including inserting a statement of its objects if it previously had no such statement, by special resolution.

(6) A company limited by guarantee may alter a statement of the maximum number of guarantee members which it is to have by special resolution.

(7) A company which -

- (a) wishes to make provision in its memorandum for any matter mentioned in section 15(7), or
- (b) wishes to alter any provision in its memorandum mentioned in section 15(7),

may make (or alter) that provision -

- (i) in accordance with the terms of its memorandum, or
- (ii) by unanimous resolution of all its members.

Alteration of memorandum of an incorporated cell.

39. Unless the memorandum of an incorporated cell provides to the contrary, its memorandum may not be altered unless its incorporated cell company has also passed a special resolution so authorising that alteration.

Court may annul alteration of objects.

40. (1) An application may be made to the Court under this section for the annulment of an alteration of a company's objects; and where such an application is made, the alteration shall not have effect except in so far as it is confirmed by the Court.

(2) An application under this section -

(a) may be made by -

(i) members who hold at least 15% of such of the capital of the company as carries the right of voting at general meetings of the company (excluding any shares held as treasury shares),
or

(ii) in the case of a company not having shareholders, or having shareholders and other types of members, members who represent at least 15% of the total voting rights of all members having a right to vote at general meetings,

(b) shall not be made by or on behalf of any person who consented to or voted in favour of the alteration,

(c) may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose,

- (d) shall be made within a period of 21 days immediately following the day upon which the resolution altering the company's objects was passed,
- (e) shall not be heard unless the Court is satisfied that the company has been notified of the date, time and place of the application.

(3) On an application under this section the Court may, on such terms and conditions as it thinks fit -

- (a) annul or confirm the alteration in whole or in part,
- (b) adjourn the proceedings to enable an arrangement to be made to the satisfaction of the Court for the purchase of the interests of dissentient members, in which case the Court may give such directions for facilitating or implementing the arrangement as the Court thinks fit.

(4) Without prejudice to the generality of subsection (3), an order of the Court under this section may -

- (a) provide for the purchase by the company of the shares of any member,
- (b) provide for a reduction of the company's share capital,

and the order may make such consequential alterations to the company's memorandum and articles as the Court thinks fit.

(5) Notwithstanding any other provision of this Law, where an order of the Court under this section -

- (a) annuls an alteration of a company's memorandum in whole or in part, the company may not, without the leave of the Court, make any alteration to its memorandum in contravention of any provision of the order,
- (b) makes an alteration of a company's memorandum or articles, or confirms an alteration of a company's memorandum in whole or in part, any alteration made by or pursuant to the order shall be of the same effect as if duly made under this Law, and the provisions of this Law shall apply accordingly to the memorandum or articles as so altered.

(6) The validity of an alteration of a company's objects shall not be questioned on the ground that it was not authorised in accordance with section 38 except in proceedings taken for the purpose (whether under this section or otherwise) within a period of 21 days immediately following the day upon which the resolution in question was passed; and where any such proceedings are taken otherwise than under this section, subsections (3) to (5) shall so far as appropriate apply in relation to an order of the Court pursuant to such proceedings as they would apply in relation to an equivalent order under this section.

Delivery of altered memorandum to Registrar.

41. (1) Where a company alters its memorandum it shall, in addition to any other requirements imposed by this Law or any other enactment, deliver a copy of the memorandum as altered to the Registrar.

(2) A company which fails to comply with subsection (1) is guilty of an offence.

*Alterations of the articles of incorporation***Alteration of articles.**

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

(2) An alteration so made in respect of a company's articles shall, subject to the provisions of this Law, have the same effect as if originally contained therein and shall be subject in the like manner to alteration by special resolution.

(3) The power of a company under this section to alter its articles includes power to add to them, modify any of them, rescind them in whole or in part and substitute other articles.

Alteration of articles of an incorporated cell.

43. Unless the memorandum or articles of an incorporated cell provide to the contrary, its articles may not be altered unless its incorporated cell company has also passed a special resolution so authorising that alteration.

Entrenched provisions of the articles.

44. (1) A company's articles may contain provision ("**provision for entrenchment**") to the effect that specified provisions of the articles may be amended or repealed only if conditions are met, or procedures complied with, that are more restrictive than those applicable in the case of a special resolution.

(2) Provision for entrenchment may only be made -

(a) in the company's articles on formation, or

(b) by an amendment of the company's articles by unanimous resolution.

(3) Provision for entrenchment does not prevent amendment of the company's articles -

- (a) by unanimous resolution, or
- (b) by order of the Court or other authority having power to alter the company's articles.

Rectification of memorandum or articles

Rectification of memorandum or articles.

45. (1) The Registrar may, in his absolute discretion and on such terms and conditions as he thinks fit -

- (a) on an application by or on behalf of a company's members, directors or creditors, or
- (b) of his own motion,

rectify any error or formal defect in the company's memorandum or articles as registered in the Register of Companies.

(2) Where the Registrar rectifies any memorandum or articles under subsection (1) he shall give notice of that rectification to the company.

(3) Except where the Registrar directs otherwise, the effect of rectification is that the error or defect in question shall be deemed never to have been made.

PART V
CONVERSIONS

Conversions and transfers concerned with cellular status of companies

Conversion of non-cellular company into protected cell company.

46. (1) A non-cellular company may be converted into a protected cell company in accordance with the provisions of this section.

(2) The company cannot be converted unless it has the written consent of the Commission in accordance with the provisions of Part XXVII.

(3) The company must pass a special resolution authorising -

- (a) that conversion, and
- (b) the alteration in its memorandum of the statement of -
 - (i) the company's name, in order to comply with the requirements of section 21(2)(a) and 24(1), and
 - (ii) the company's type to protected cell company.

(4) The special resolution under subsection (3) may also -

- (a) authorise the alteration of the company's articles,
- (b) authorise the creation of cells of the protected cell company and attribute members, shares, capital, assets and liabilities between those cells and between those cells and the core, and
- (c) propose the date on which the conversion shall have effect.

(5) The company shall deliver to the Registrar -

- (a) a copy of the consent of the Commission under subsection (2),
- (b) a copy of the special resolution under subsection (3),
- (c) a copy of its memorandum (and articles, as the case may be) as it is proposed to be altered, and
- (d) a declaration of compliance (conversion).

(6) The declaration of compliance (conversion) must also include a declaration that -

- (a) the protected cell company and each cell will satisfy the solvency test immediately after the conversion, and
- (b) there are no creditors of the company whose interests will be unfairly prejudiced by the conversion.

(7) Upon receipt of the documents specified in subsection (5), the Registrar shall -

- (a) issue a certificate of conversion into protected cell company, and the certificate shall state the date upon which -
 - (i) the conversion, and
 - (ii) the alteration of the memorandum (and articles,

as the case may be),

has effect, and

- (b) publish the fact that the company has been converted in such manner and for such period as he thinks fit.

(8) If the special resolution under subsection (3) proposes a date on which the conversion shall have effect and that date is later than the date on which the Registrar issues the certificate under subsection (7), then the date stated in the certificate shall be the date proposed in that special resolution.

(9) Where a company is converted into a protected cell company by virtue of this section -

- (a) all property and rights to which it was entitled immediately before that conversion remain its property and rights,
- (b) it remains subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which it was subject immediately before that conversion,
- (c) all actions and other legal proceedings which, immediately before that conversion, could have been instituted or continued by or against it may be instituted or continued by or against it in its new name,
- (d) a conviction, ruling, order or judgment in favour of or against it before the conversion may be enforced by or against it after the conversion, and

- (e) subject to subsection (10), its members, shares, capital, assets and liabilities are attributed between its cells, and between its cells and the core, in accordance with the terms of any special resolution which makes such provision as is mentioned in subsection (4)(b).

(10) Regardless of the provisions of subsection (9)(e) and Part XXVII, any creditor who entered into a transaction with a company before that company converted into a protected cell company shall have recourse to all core and cellular assets (other than any cellular assets attributable to a cell created after that conversion) in respect of any liability for that transaction, unless the creditor has agreed otherwise.

(11) If the directors had no reasonable grounds for believing that the protected cell company and each cell would satisfy the solvency test immediately after the conversion, any director who signed the declaration of compliance is personally liable to pay to the core or cell of the protected cell company so much monies as the core or cells had to pay to a creditor which the core or cells would not have had to pay, but for the provisions of subsection (10).

Conversion of non-cellular company into incorporated cell company.

47. (1) A non-cellular company may be converted into a incorporated cell company in accordance with the provisions of this section.

(2) The company cannot be converted unless it has the written consent of the Commission in accordance with the provisions of Part XXVIII.

(3) The company must pass a special resolution authorising -

- (a) that conversion, and
- (b) the alteration in its memorandum of the statement of -

- (i) the company's name, in order to comply with the requirements of section 21(2)(b) and 24(1), and
 - (ii) the company's type to incorporated cell company.
- (4) The special resolution under subsection (3) may also -
 - (a) authorise the alteration of the company's articles, and
 - (b) propose the date on which the conversion shall have effect.
- (5) The company shall deliver to the Registrar -
 - (a) a copy of the consent of the Commission under subsection (2),
 - (b) a copy of the special resolution under subsection (3),
 - (c) a copy of its memorandum (and articles, as the case may be) as it is proposed to be altered, and
 - (d) a declaration of compliance (conversion).
- (6) Upon receipt of the documents specified in subsection (5), the Registrar shall -
 - (a) issue a certificate of conversion into incorporated cell company, and the certificate shall state the date upon

which -

- (i) the conversion, and
- (ii) the alteration of the memorandum (and articles, as the case may be),

has effect, and

- (b) publish the fact that the company has been converted in such manner and for such period as he thinks fit.

(7) If the special resolution under subsection (3) proposes a date on which the conversion shall have effect and that date is later than the date on which the Registrar issues the certificate under subsection (6), then the date stated in the certificate shall be the date proposed in that special resolution.

(8) Where a company is converted into an incorporated cell company by virtue of this section -

- (a) all property and rights to which it was entitled immediately before that conversion remain its property and rights,
- (b) it remains subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which it was subject immediately before that conversion,
- (c) all actions and other legal proceedings which, immediately before that conversion, could have been instituted or continued by or against it may be instituted or continued by or against it in its new name,

and

- (d) a conviction, ruling, order or judgment in favour of or against it before the conversion may be enforced by or against it after the conversion.

Conversion of protected cell company into incorporated cell company.

48. (1) A protected cell company may be converted into an incorporated cell company and its cells incorporated as incorporated cells of that incorporated cell company, as a single process, in accordance with the provisions of this section.

(2) The company cannot be converted unless it has the written consent of the Commission in accordance with the provisions of Part XXVIII.

(3) The company must pass a special resolution authorising -

- (a) that conversion, and
- (b) the alteration in its memorandum of the statement of -
 - (i) the company's name, in order to comply with the requirements of section 21(2)(b) and 24(1), and
 - (ii) the company's type to incorporated cell company.

(4) The special resolution under subsection (3) may also -

- (a) authorise the alteration of the company's articles, and

- (b) propose the date on which the conversion shall have effect.
- (5) Each cell must pass a special resolution -
- (a) authorising an application to be made to the Registrar under section 17 for its incorporation as an incorporated cell of the incorporated cell company, and
 - (b) setting out the memorandum and articles with which it proposes to be incorporated.
- (6) The company shall deliver to the Registrar -
- (a) a copy of the consent of the Commission,
 - (b) a copy of the special resolution of the company,
 - (c) a copy of its memorandum (and articles, as the case may be) as it is (or they are) proposed to be altered,
 - (d) a copy of the special resolution passed by each cell,
 - (e) an application for the incorporation of each cell as an incorporated cell of the incorporated cell company in accordance with section 17 and that application shall be deemed to have complied with the requirements of section 11, and
 - (f) a declaration of compliance (conversion).

(7) The declaration of compliance (conversion) must also include a declaration that -

- (a) the incorporated cell company and each incorporated cell will satisfy the solvency test immediately after the conversion, and
- (b) there are no creditors of the company whose interests will be unfairly prejudiced by the conversion.

(8) Upon receipt of the documents specified in subsection (6) (including any documents required for the incorporation of any incorporated cells) the Registrar shall give notice of the proposed conversion in such manner and for such period as he thinks fit.

(9) Subject to subsection (13), not less than 28 days after giving notice under subsection (8) and upon granting the application for incorporation of each cell in accordance with section 20, the Registrar shall -

- (a) issue a certificate of conversion from protected cell company into incorporated cell company, and the certificate shall state the date upon which -

- (i) the conversion, and

- (ii) the alteration of the memorandum (and articles, as the case may be),

has effect, and

- (b) publish the fact that the company has been converted in such manner and for such period as he thinks fit.

(10) The Registrar shall provide that the conversion of the protected cell company and the incorporation of its cells shall take effect at the same time.

(11) If the special resolution under subsection (3) proposes a date on which the conversion shall have effect and that date is later than the date on which the Registrar issues the certificate under subsection (9), then -

- (a) the date stated in the certificate, and
- (b) the date on which the incorporation of the incorporated cells has effect,

shall be the date proposed in that special resolution.

(12) Where a company is converted into an incorporated cell company by virtue of this section -

- (a) all property and rights to which the core of the protected cell company was entitled immediately before its conversion remain the property and rights of the incorporated cell company,
- (b) the incorporated cell company remains subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which the core of the protected cell company was subject immediately before its conversion,
- (c) all actions and other legal proceedings which, immediately before the conversion, could have been

instituted or continued by or against the core of the protected cell company may be instituted or continued by or against the incorporated cell company,

- (d) a conviction, ruling, order or judgment in favour of or against the core of the protected cell company before the conversion may be enforced by or against the incorporated cell company after the conversion,
- (e) all property and rights attributable to a cell of the protected cell company immediately before its conversion become the property and rights of the incorporated cell which it has become,
- (f) an incorporated cell becomes subject to all criminal and civil liabilities, and all contracts, debts and other obligations, which immediately before the conversion were attributable to the cell of the protected cell company which it was,
- (g) all actions and other legal proceedings which, immediately before the conversion, could have been instituted or continued by or against the protected cell company in respect of any of its cells may be instituted or continued by or against the incorporated cell which that cell has become, and
- (h) a conviction, ruling, order or judgment in favour of or against the protected cell company in respect of any of its cells may be enforced by or against the incorporated cell which that cell has become.

(13) If the Court is satisfied that the conversion would unfairly prejudice a member or creditor of the company, it may, on the application of that person made at any time before the date on which the conversion has effect, or within such further time as the Court may in any particular case allow, make such order as it thinks fit in relation to the conversion, including, without prejudice to the generality of the foregoing, an order -

- (a) directing that effect shall not be given to the conversion,
- (b) modifying the conversion in such manner as may be specified in the order,
- (c) directing the company or its directors to reconsider the conversion or any part of it.

(14) An order under subsection (13) may be made on such terms and conditions and subject to such penalty as the Court thinks fit.

Conversion of incorporated cell into non-cellular company.

49. (1) An incorporated cell may be converted into a non-cellular company in accordance with the provisions of this section.

(2) The incorporated cell must pass a special resolution authorising -

- (a) that conversion, and
- (b) the alteration in its memorandum of the statement of -
 - (i) the company's name, in order to comply with the requirements of section 24(1), and

(ii) the company's type to non-cellular company.

(3) The special resolution under subsection (2) may also -

- (a) authorise the alteration of the company's articles, and
- (b) propose the date on which the conversion shall have effect.

(4) The incorporated cell shall deliver to the Registrar -

- (a) a copy of the special resolution under subsection (2),
- (b) a copy of its memorandum (and articles, as the case may be) as it is (or they are) proposed to be altered, and
- (c) a declaration of compliance (conversion).

(5) Upon receipt of the documents specified in subsection (4), the Registrar shall give notice of the proposed conversion in such manner and for such period as he thinks fit.

(6) Subject to subsection (9), not less than 28 days after giving notice under subsection (5), the Registrar shall -

- (a) issue a certificate of conversion of incorporated cell into non-cellular company, and the certificate shall state the date upon which -
 - (i) the conversion, and

- (ii) the alteration of the memorandum (and articles, as the case may be),

has effect, and

- (b) publish the fact that the company has been converted in such manner and for such period as he thinks fit.

(7) If the special resolution under subsection (2) proposes a date on which the conversion shall have effect and that date is later than the date on which the Registrar issues the certificate under subsection (6), then the date stated in the certificate shall be the date proposed in that special resolution.

(8) Where an incorporated cell is converted into a non-cellular company by virtue of this section -

- (a) all property and rights to which it was entitled immediately before its conversion remain its property and rights,
- (b) it remains subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which it was subject immediately before its conversion,
- (c) all actions and other legal proceedings which, immediately before its conversion, could have been instituted or continued by or against it may be instituted or continued by or against it after its conversion, and
- (d) a conviction, ruling, order or judgment in favour of or

against it before the conversion may be enforced by or against it after the conversion.

(9) If the Court is satisfied that the conversion would unfairly prejudice a member or creditor of the company, it may, on the application of that person made at any time before the date on which the conversion has effect, or within such further time as the Court may in any particular case allow, make such order as it thinks fit in relation to the conversion, including, without prejudice to the generality of the foregoing, an order -

- (a) directing that effect shall not be given to the conversion,
- (b) modifying the conversion in such manner as may be specified in the order,
- (c) directing the company or its directors to reconsider the conversion or any part of it.

(10) An order under subsection (9) may be made on such terms and conditions and subject to such penalty as the Court thinks fit.

Transfer of incorporated cells between incorporated cell companies.

50. (1) An incorporated cell of an incorporated cell company may be transferred to another incorporated cell company in accordance with the provisions of this section.

(2) The incorporated cell companies shall enter into a written agreement that sets out the terms of the transfer ("**the transfer agreement**").

(3) The directors of each incorporated cell company must approve the transfer agreement.

(4) Each incorporated cell company must pass a special resolution authorising the transfer in the terms set out in the transfer agreement.

(5) The incorporated cell being transferred must pass a special resolution authorising the transfer in the terms set out in the transfer agreement.

(6) The special resolution under subsection (5) may also -

- (a) authorise the alteration of the company's articles, and
- (b) propose the date on which the transfer shall have effect.

(7) The incorporated cell company to which the incorporated cell is being transferred shall deliver to the Registrar -

- (a) a copy of the special resolution of each incorporated cell company authorising the transfer,
- (b) a copy of the special resolution of the incorporated cell being transferred approving the transfer,
- (c) a copy of the transfer agreement,
- (d) a copy of its articles if they are proposed to be altered,
- (e) a notice of the proposed new address of the registered office of the incorporated cell which is being transferred, in order to comply with section 31, and
- (f) a declaration of compliance (conversion).

(8) The declaration of compliance (conversion) must also include a declaration that -

- (a) the incorporated cell being transferred satisfies the solvency test, and
- (b) there are no creditors of the incorporated cell whose interests will be unfairly prejudiced by the transfer.

(9) Upon receipt of the documents specified in subsection (7), the Registrar shall -

- (a) issue to the incorporated cell a certificate of transfer of incorporated cell, and the certificate shall state the date upon which -
 - (i) the transfer, and
 - (ii) the alteration of the articles (if any alteration is proposed),

has effect, and
- (b) publish the fact that the incorporated cell has been transferred in such manner and for such period as he thinks fit.

(10) If the special resolution under subsection (5) proposes a date on which the transfer shall have effect and that date is later than the date on which the Registrar issues the certificate under subsection (9), then the date stated in the certificate shall be the date proposed in that special resolution.

(11) Where an incorporated cell is transferred by virtue of this section -

- (a) the incorporated cell ceases to be an incorporated cell of the incorporated cell company that transferred it,
- (b) the incorporated cell becomes an incorporated cell of the incorporated cell company to which it has been transferred,
- (c) all property and rights to which the incorporated cell was entitled immediately before its transfer remain the property and rights of the incorporated cell,
- (d) all civil and criminal liabilities and all contracts, debts and other obligations to which the incorporated cell was subject immediately before its transfer remain the liabilities, contracts, debts and other obligations of the incorporated cell,
- (e) all actions and other legal proceedings which, immediately before its transfer, could have been instituted or continued by or against the incorporated cell may be instituted or continued by or against the incorporated cell after the transfer, and
- (f) a conviction, ruling, order or judgment in favour of or against it before the transfer may be enforced by or against it after its transfer.

Conversion of non-cellular company into incorporated cell and transfer to

incorporated cell company.

51. (1) A non-cellular company may be converted into an incorporated cell and transferred to an incorporated cell company, as a single process, in accordance with the provisions of this section.

(2) The non-cellular company and the incorporated cell company shall enter into a written agreement that sets out the terms of the conversion and transfer ("**the conversion and transfer agreement**").

(3) The directors of the non-cellular company and the incorporated cell company must approve the conversion and transfer agreement.

(4) The incorporated cell company must pass a special resolution authorising the conversion and transfer in the terms set out in the conversion and transfer agreement.

(5) The non-cellular company must pass a special resolution authorising -

(a) that conversion and transfer, and

(b) the alteration in its memorandum of the statement of -

(i) the company's name in order to comply with the requirements of section 21(2)(c) and 24(1), and

(ii) the company's type to incorporated cell.

(6) The special resolution under subsection (5) may also -

(a) authorise the alteration of the company's articles, and

- (b) propose the date on which the conversion and transfer shall have effect.

(7) The non-cellular company shall deliver to the Registrar -

- (a) a copy of the special resolution of the non-cellular company,
- (b) a copy of the special resolution of the incorporated cell company,
- (c) a copy of the conversion and transfer agreement,
- (d) a copy of its memorandum (and articles, as the case may be) as it is (or they are) proposed to be altered,
- (e) a notice of the proposed new address of its registered office, in order to comply with section 31, and
- (f) a declaration of compliance (conversion).

(8) The declaration of compliance (conversion) must also include a declaration that -

- (a) the non-cellular company satisfies the solvency test, and
- (b) there are no creditors of the non-cellular company whose interests will be unfairly prejudiced by the conversion and transfer.

(9) Upon receipt of the documents specified in subsection (8), the Registrar shall -

(a) issue to the non-cellular company a certificate of conversion into incorporated cell, and the certificate shall state the date upon which -

(i) the conversion and transfer, and

(ii) the alteration of its memorandum (and articles, as the case may be),

has effect, and

(b) publish the fact that the non-cellular company has been converted and transferred in such manner and for such period as he thinks fit.

(10) If the special resolution under subsection (5) proposes a date on which the conversion and transfer shall have effect and that date is later than the date on which the Registrar issues the certificate under subsection (9), then the date stated in the certificate shall be the date proposed in that special resolution.

(11) Where a non-cellular company is converted and transferred by virtue of this section -

(a) it becomes an incorporated cell of the incorporated cell company to which it is transferred,

(b) all property and rights to which it was entitled immediately before its conversion and transfer remain its property and rights,

- (c) all civil and criminal liabilities and all contracts, debts and other obligations to which it was subject immediately before its conversion and transfer remain its liabilities, contracts, debts and other obligations,
- (d) all actions and other legal proceedings which, immediately before its conversion and transfer, could have been instituted or continued by or against it may be instituted or continued by or against it after its conversion and transfer, and
- (e) a conviction, ruling, order or judgment in favour of or against it before the conversion and transfer may be enforced by or against it after its conversion and transfer.

Conversion of protected cell company into non-cellular company.

52. (1) A protected cell company may be converted into a non-cellular company in accordance with the provisions of this section.

(2) The company cannot be converted unless it has the written consent of the Commission in accordance with the provisions of Part XXVII.

(3) The company must pass a special resolution authorising -

- (a) that conversion, and
- (b) the alteration in its memorandum of the statement of -
 - (i) the company's name, in order to comply with the requirements of section 24(1), and

(ii) the company's type to a non-cellular company.

(4) The special resolution under subsection (3) may also -

- (a) authorise the alteration of the company's articles, and
- (b) propose the date on which the conversion shall have effect.

(5) A cell must, if cell shares have been issued in respect of it, pass a special resolution authorising that conversion.

(6) The company shall deliver to the Registrar -

- (a) a copy of the consent of the Commission,
- (b) a copy of the special resolution of the company,
- (c) a copy of its memorandum (and articles, as the case may be) as it is (or they are) proposed to be altered,
- (d) a copy of the special resolution of each cell, and
- (e) a declaration of compliance (conversion).

(7) The declaration of compliance (conversion) must also include a declaration that -

- (a) the company satisfies the solvency test, and
- (b) there are no creditors of the company whose interests

will be unfairly prejudiced by the conversion.

(8) Upon receipt of the documents specified in subsection (6), the Registrar shall give notice of the proposed conversion in such manner and for such period as he thinks fit.

(9) Subject to subsection (12), not less than 28 days after giving notice under subsection (8), the Registrar shall -

(a) issue a certificate of conversion from protected cell company to non-cellular company and the certificate shall state the date upon which -

(i) the conversion, and

(ii) the alteration of the memorandum (and articles, as the case may be),

has effect, and

(b) publish the fact that the company has been converted in such manner and for such period as he thinks fit.

(10) If the special resolution under subsection (3) proposes a date on which the conversion shall have effect and that date is later than the date on which the Registrar issues the certificate under subsection (9), then the date stated in the certificate shall be the date proposed in that special resolution.

(11) Where a protected cell company is converted into a non-cellular company by virtue of this section -

(a) all property and rights to which the core and cells were

entitled immediately before that conversion remain the property and rights of the non-cellular company,

- (b) the non-cellular company remains subject to all criminal and civil liabilities, and all contracts, debts, and other obligations, to which the core and each cell were subject immediately before its conversion,
- (c) all actions and other legal proceedings which, immediately before the conversion, could have been instituted or continued by or against the core or any cell may be instituted or continued by or against the non-cellular company after the conversion, and
- (d) a conviction, ruling, order or judgment in favour of or against the core or any cell may be enforced by or against the non-cellular company after the conversion.

(12) If the Court is satisfied that the conversion would unfairly prejudice a member or creditor of the company, it may, on the application of that person made at any time before the date on which the conversion has effect, or within such further time as the Court may in any particular case allow, make such order as it thinks fit in relation to the conversion, including, without prejudice to the generality of the foregoing, an order -

- (a) directing that effect shall not be given to the conversion,
- (b) modifying the conversion in such manner as may be specified in the order,

- (c) directing the company or its directors to reconsider the conversion or any part of it.

(13) An order under subsection (12) may be made on such terms and conditions and subject to such penalty as the Court thinks fit.

Subsumption of incorporated cells into incorporated cell company and conversion to non-cellular company.

53. (1) The incorporated cells of an incorporated cell company may be subsumed into the incorporated cell company and the incorporated cell company converted into a non-cellular company, as a single process, in accordance with the provisions of this section.

(2) The incorporated cells cannot be subsumed and the incorporated cell company converted unless the incorporated cell company has the written consent of the Commission in accordance with the provisions of Part XXVIII.

(3) The incorporated cell company must pass a special resolution authorising -

- (a) the subsumption of the incorporated cells and the conversion of the incorporated cell company, and
- (b) the alteration in its memorandum of the statement of -
 - (i) the incorporated cell company's name in order to comply with the requirements of section 24(1), and
 - (ii) the incorporated cell company's type to a non-cellular company.

(4) The special resolution under subsection (3) may also -

- (a) authorise the alteration of the incorporated cell company's articles, and
- (b) propose the date on which the subsumption and conversion shall have effect.

(5) Each incorporated cell must pass a special resolution authorising it being subsumed into the incorporated cell company.

(6) The special resolutions under subsections (3) and (5) shall state the manner in which the interests and liabilities of each member of each incorporated cell are to be subsumed into interests and liabilities of the incorporated cell company or, if they are not to be so subsumed, the consideration a member will receive, and in particular -

- (a) the manner in which shares of each incorporated cell are to be converted into shares of the incorporated cell company,
- (b) if shares of an incorporated cell are not to be converted into shares of the incorporated cell company, the consideration that the holders of those shares are to receive instead of shares in the incorporated cell company.

(7) The incorporated cell company shall deliver to the Registrar -

- (a) a copy of the consent of the Commission,

- (b) a copy of the special resolution of the incorporated cell company,
- (c) a copy of its memorandum (and articles, as the case may be) as it is (or they are) proposed to be altered,
- (d) a copy of the special resolution of each incorporated cell, and
- (e) a declaration of compliance (conversion).

(8) The declaration of compliance (conversion) must also include a declaration that -

- (a) each incorporated cell and the incorporated cell company satisfy the solvency test, and
- (b) there are no creditors of any incorporated cell or the incorporated cell company whose interests will be unfairly prejudiced by the subsumption and conversion.

(9) Upon receipt of the documents specified in subsection (7), the Registrar shall give notice of the proposed subsumption and conversion in such manner and for such period as he thinks fit.

(10) Subject to subsection (13), not less than 28 days after giving notice under subsection (9), the Registrar shall -

- (a) issue a certificate of subsumption into incorporated cell company and conversion to non-cellular company and the certificate shall state the date upon which -

- (i) the subsumption and conversion, and
- (ii) the alteration of the memorandum (and articles, as the case may be),

has effect, and

- (b) publish the fact that the incorporated cells have been subsumed and the incorporated cell company has been converted in such manner and for such period as he thinks fit.

(11) If the special resolution under subsection (3) proposes a date on which the subsumption and conversion shall have effect and that date is later than the date on which the Registrar issues the certificate under subsection (10), then the date stated in the certificate shall be the date proposed in that special resolution.

(12) Where the incorporated cells are subsumed and the incorporated cell company converted into a non-cellular company by virtue of this section -

- (a) all property and rights to which the incorporated cells were entitled immediately before that subsumption and conversion become the property and rights of the non-cellular company,
- (b) the non-cellular company becomes subject to all criminal and civil liabilities, and all contracts, debts, and other obligations, to which the incorporated cells were subject immediately before that subsumption and conversion,

- (c) all actions and other legal proceedings which, immediately before that subsumption and conversion, could have been instituted or continued by or against the incorporated cells may be instituted or continued by or against the non-cellular company,
- (d) a conviction, ruling, order or judgment in favour of or against the incorporated cells before the subsumption and conversion may be enforced by or against the non-cellular company after the subsumption and conversion,
- (e) all property and rights to which the incorporated cell company was entitled immediately before that subsumption and conversion remain the property and rights of the non-cellular company,
- (f) the non-cellular company remains subject to all criminal and civil liabilities, and all contracts, debts, and other obligations, to which the incorporated cell company was subject immediately before that subsumption and conversion,
- (g) all actions and other legal proceedings which, immediately before that subsumption and conversion, could have been instituted or continued by or against the incorporated cell company may be instituted or continued by or against the non-cellular company, and
- (h) a conviction, ruling, order or judgment in favour of or against the incorporated cell company before the

subsumption and conversion may be enforced by or against the non-cellular company after the subsumption and conversion.

(13) If the Court is satisfied that the subsumption and conversion would unfairly prejudice a member or creditor of any incorporated cell or the incorporated cell company, it may, on the application of that person made at any time before the date on which the subsumption and conversion has effect, or within such further time as the Court may in any particular case allow, make such order as it thinks fit in relation to the subsumption and conversion, including, without prejudice to the generality of the foregoing, an order -

- (a) directing that effect shall not be given to the subsumption and conversion,
- (b) modifying the subsumption and conversion in such manner as may be specified in the order,
- (c) directing the incorporated cell company or its directors to reconsider the subsumption and conversion or any part of it.

(14) An order under subsection (13) may be made on such terms and conditions and subject to such penalty as the Court thinks fit.

Conversions concerned with liabilities of members of companies

Conversion of company into unlimited liability company.

54. (1) A company which is -

- (a) limited by shares,

(b) limited by guarantee, or

(c) of mixed liability,

may be converted into an unlimited company in accordance with the provisions of this section.

(2) The company must pass a unanimous resolution authorising -

(a) that conversion, and

(b) the alteration in its memorandum of the statement of -

(i) the company's name, in order to comply with the requirements of section 24(1), and

(ii) the company's type to unlimited company.

(3) The unanimous resolution under subsection (2) may also -

(a) authorise the alteration of the company's articles, and

(b) propose the date on which the conversion shall have effect.

(4) The company shall deliver to the Registrar -

(a) a copy of the unanimous resolution passed under subsection (2),

(b) a copy of its memorandum (and articles, as the case may be) as it is proposed to be altered, and

(c) a declaration of compliance (conversion).

(5) Upon receipt of the documents specified in subsection (4), the Registrar shall -

(a) issue a certificate of conversion into unlimited company, and the certificate shall state the date upon which -

(i) the conversion, and

(ii) the alteration of the memorandum (and articles, as the case may be),

has effect, and

(b) publish the fact that the company has been converted in such manner and for such period as he thinks fit.

(6) If the unanimous resolution under subsection (2) proposes a date on which the conversion shall have effect and that date is later than the date on which the Registrar issues the certificate under subsection (5), then the date stated on the certificate shall be the date proposed in that unanimous resolution.

Conversion of company into limited liability company.

55. (1) An unlimited or mixed liability company may be converted into a company -

(a) limited by shares, or

(b) limited by guarantee,

in accordance with the provisions of this section.

- (2) The company must pass a special resolution authorising -
 - (a) that conversion,
 - (b) the alteration in its memorandum of the statement of -
 - (i) the company name, in order to comply with the requirements of section 21(1) and 24(1),
 - (ii) the company type to limited by shares or limited by guarantee (as the case may be),
 - (c) in the case of a company which is to have shares, the insertion into its memorandum of a statement of -
 - (i) the number of shares to be taken on conversion by each member,
 - (ii) the aggregate value of those shares (whether on account of the nominal value of the shares or by way of premium),
 - (iii) the amount to be paid up and the amount (if any) to be unpaid on those shares (whether on account of the nominal value of the shares or by way of premium), and
 - (d) in the case of a company which is to be limited by guarantee, the insertion into its memorandum of a

statement of -

- (i) the guaranteed amount of each member, and
- (ii) the maximum number of guarantee members which the company may have.

(3) The special resolution under subsection (2) may also -

- (a) authorise the alteration of the company's articles, and
- (b) propose the date on which the conversion shall have effect.

(4) The company shall deliver to the Registrar -

- (a) a copy of the special resolution passed under subsection (2),
- (b) a copy of its memorandum (and articles, as the case may be) as it is proposed to be altered, and
- (c) a declaration of compliance (conversion).

(5) The declaration of compliance (conversion) must also include a declaration that -

- (a) the company satisfies the solvency test, and
- (b) there are no creditors of the company whose interests will be unfairly prejudiced by the conversion.

(6) Upon receipt of the documents specified in subsection (4), the Registrar shall give notice of the proposed conversion in such manner and for such period as he thinks fit.

(7) Subject to subsection (9), not less than 28 days after giving notice under subsection (6), the Registrar shall -

(a) issue a certificate of conversion into company limited by shares or company limited by guarantee (as the case may be), and the certificate shall state the date upon which -

(i) the conversion, and

(ii) the alteration of the memorandum (and articles, as the case may be),

has effect, and

(b) publish the fact that the company has been converted in such manner and for such period as he thinks fit.

(8) If the special resolution under subsection (2) proposes a date on which the conversion shall have effect and that date is later than the date on which the Registrar issues the certificate under subsection (7), then the date stated on the certificate shall be the date proposed in that unanimous resolution.

(9) If the Court is satisfied that the conversion would unfairly prejudice a member or creditor of the company, it may, on the application of that person made at any time before the date on which the conversion has effect, or within such further time as the Court may in any particular case allow, make such

order as it thinks fit in relation to the conversion, including, without prejudice to the generality of the foregoing, an order -

- (a) directing that effect shall not be given to the conversion,
- (b) modifying the conversion in such manner as may be specified in the order,
- (c) directing the company or its directors to reconsider the conversion or any part of it.

(10) An order under subsection (9) may be made on such terms and conditions and subject to such penalty as the Court thinks fit.

Conversion of limited liability company into mixed liability company.

56. (1) A company which is limited -

- (a) by shares, or
- (b) by guarantee,

may be converted into a mixed liability company in accordance with the provisions of this section.

(2) The company must pass a special resolution authorising -

- (a) that conversion, and
- (b) the alteration in its memorandum of the statement of -
 - (i) the company's name, in order to comply with

the requirements of section 21(1)(c) and 24(1),
and

(ii) the company's type to mixed liability company,

(c) in the case of a company which is to have a share capital, the insertion into its memorandum of a statement of -

(i) the number of shares to be taken on conversion by each member,

(ii) the aggregate value of those shares (whether on account of the nominal value of the shares or by way of premium), and

(iii) the amount to be paid up and the amount (if any) to be unpaid on those shares (whether on account of the nominal value of the shares or by way of premium), and

(d) in the case of a company which is to have guarantee members, the insertion into its memorandum of a statement of -

(i) the guaranteed amount of each member,

(ii) the maximum number of guarantee members which the company may have.

(3) The special resolution under subsection (2) may also -

- (a) authorise the alteration of the company's articles, and
 - (b) propose the date on which the conversion shall have effect.
- (4) The company shall deliver to the Registrar -
 - (a) a copy of the special resolution passed under subsection (2),
 - (b) a copy of its memorandum (and articles, as the case may be) as it is proposed to be altered, and
 - (c) a declaration of compliance (conversion).
- (5) Upon receipt of the documents specified in subsection (4), the Registrar shall -
 - (a) issue a certificate of conversion into mixed liability company, and the certificate shall state the date upon which -
 - (i) the conversion, and
 - (ii) the alteration of the memorandum (and articles, as the case may be),
 has effect, and
 - (b) publish the fact that the company has been converted in such manner and for such period as he thinks fit.

(6) If the special resolution under subsection (2) proposes a date on which the conversion shall have effect and that date is later than the date on which the Registrar issues the certificate under subsection (5), then the date stated on the certificate shall be the date proposed in that special resolution.

Conversion of unlimited liability company into mixed liability company.

57. (1) An unlimited company may be converted into a mixed liability company in accordance with the provisions of this section.

(2) The company must pass a special resolution authorising -

- (a) that conversion,
- (b) the alteration in its memorandum of the statement of -
 - (i) the company's name, in order to comply with the requirements of section 21(1)(c) and 24(1), and
 - (ii) the company's type to mixed liability company,
- (c) in the case of a company which is to have a share capital, the insertion into its memorandum of a statement of -
 - (i) the number of shares to be taken on conversion by each member,
 - (ii) the aggregate value of those shares (whether on account of the nominal value of the shares or by way of premium),

- (iii) the amount to be paid up and the amount (if any) to be unpaid on those shares (whether on account of the nominal value of the shares or by way of premium), and
 - (d) in the case of a company which is to have guarantee members, the insertion into its memorandum of a statement of -
 - (i) the guaranteed amount of each member,
 - (ii) the maximum number of guarantee members which the company may have.
- (3) The special resolution under subsection (2) may also -
 - (a) authorise the alteration of the company's articles, and
 - (b) propose the date on which the conversion shall have effect.
- (4) The company shall deliver to the Registrar -
 - (a) a copy of the special resolution passed under subsection (2),
 - (b) a copy of its memorandum (and articles, as the case may be) as it is proposed to be altered, and
 - (c) a declaration of compliance (conversion).
- (5) The declaration of compliance (conversion) must also include

a declaration that -

- (a) the company satisfies the solvency test, and
- (b) there are no creditors of the company whose interests will be unfairly prejudiced by the conversion.

(6) Upon receipt of the documents specified in subsection (4), the Registrar shall give notice of the proposed conversion in such manner and for such period as he thinks fit.

(7) Subject to subsection (9), not less than 28 days after giving notice under subsection (6), the Registrar shall -

- (a) issue a certificate of conversion into mixed liability company, and the certificate shall state the date upon which -

- (i) the conversion, and
- (ii) the alteration of the memorandum (and articles, as the case may be),

has effect, and

- (b) publish the fact that the company has been converted in such manner and for such period as he thinks fit.

(8) If the special resolution under subsection (2) proposes a date on which the conversion shall have effect and that date is later than the date on which the Registrar issues the certificate under subsection (7), then the date stated on the certificate shall be the date proposed in that special resolution.

(9) If the Court is satisfied that the conversion would unfairly prejudice a member or creditor of the company, it may, on the application of that person made at any time before the date on which the conversion has effect, or within such further time as the Court may in any particular case allow, make such order as it thinks fit in relation to the conversion, including, without prejudice to the generality of the foregoing, an order -

- (a) directing that effect shall not be given to the conversion,
- (b) modifying the conversion in such manner as may be specified in the order,
- (c) directing the company or its directors to reconsider the conversion or any part of it.

(10) An order under subsection (9) may be made on such terms and conditions and subject to such penalty as the Court thinks fit.

General provisions in respect of conversions

Declaration of compliance (conversion).

58. (1) A declaration of compliance (conversion) is a declaration, signed by a director (or, in the case of a transfer under section 50, signed by directors of both incorporated cell companies), that all the requirements of this Law in respect of the conversion, transfer, or subsumption and conversion (as the case may be) of a company have been fulfilled.

(2) The Registrar, when performing his functions under this Law, may rely upon the declaration in all respects and accordingly is not bound to enquire further as to whether, in relation to any conversion or transfer, the provisions of this

Law have been complied with.

(3) A director who without reasonable excuse makes a declaration which is false, deceptive or misleading in a material particular is guilty of an offence.

Conversions or transfers not a default.

59. A conversion or transfer under this Part 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.

PART VI

AMALGAMATIONS

Amalgamation of bodies corporate.

60. (1) Two or more bodies corporate may amalgamate and continue as one body corporate which may be one of the bodies corporate or a new body corporate, in accordance with the provisions of this Part.

(2) In this Law, "**body corporate**" means -

- (a) a company, or
- (b) an overseas company.

Types of bodies corporate which can amalgamate.

61. (1) In an amalgamation, all of the bodies corporate must be of the same type, which may be either -

- (a) protected cell companies,
- (b) incorporated cell companies,
- (c) incorporated cells of the same incorporated cell company, or
- (d) non-cellular companies,

and in this subsection, references to types of body corporate include references to their equivalent in the law of the territory, district or place outside Guernsey in which they are registered or incorporated.

(2) At least one of the amalgamating bodies corporate must be a company.

Consent of Commission required in certain cases.

62. (1) Where any of the amalgamating bodies corporate is-

- (a) a supervised company,
- (b) a cell company,
- (c) an incorporated cell, or

- (d) an overseas company,

it cannot amalgamate unless it has the written consent of the Commission, and the amalgamation must be in accordance with the terms and conditions of that consent.

(2) The Commission may, from time to time and in such manner as it thinks fit -

- (a) vary or revoke any term or condition subject to which a consent under subsection (1) was granted, and
- (b) impose any new term or condition in relation to any such consent.

Amalgamation proposal.

63. (1) Where it is proposed to amalgamate two or more bodies corporate pursuant to the provisions of this Part, an amalgamation proposal shall be prepared which shall set out the terms of the amalgamation, and in particular -

- (a) the name of the amalgamated body corporate,
- (b) where the amalgamated body corporate is to be a company, the type of company it is to be within the meaning of section 2,
- (c) the registered office of the amalgamated body corporate,
- (d) the particulars of the directors of the amalgamated body corporate which would be required to be entered

in the register of directors under section 143 if the amalgamated body corporate was a company,

(e) where the amalgamated body corporate is to have a share capital -

(i) the number of shares of the amalgamated body corporate,

(ii) the aggregate value of those shares (whether on account of the nominal value of the shares or by way of premium),

(iii) the amount to be paid up and the amount (if any) to be unpaid on those shares (whether on account of the nominal value of the shares or by way of premium),

(iv) the rights, privileges, limitations and conditions attached to the shares,

and where the amalgamated body corporate is to have more than one class of share, the amalgamation proposal shall also state the above matters in respect of each class of share,

(f) where the amalgamated body corporate is to have guarantee members -

(i) the guaranteed amount of each member, and

- (ii) the maximum number of guarantee members which the company may have,
- (g) the manner in which the interests and liabilities of each member of the amalgamating body corporate are to be converted into interests and liabilities of the amalgamated body corporate or, if they are not to be so converted, the consideration a member will receive, and in particular -
 - (i) the manner in which shares of each amalgamating body corporate are to be converted into shares of the amalgamated body corporate, and
 - (ii) if shares of an amalgamating body corporate are not to be converted into shares of the amalgamated body corporate, the consideration that the holders of those shares are to receive instead of shares in the amalgamated body corporate,
- (h) any payment to be made to a member or director of an amalgamating body corporate, other than payment of a kind described in paragraph (g), and
- (i) details of any arrangement necessary to complete the amalgamation.

(2) The amalgamation proposal shall specify the date on which it is intended to become effective.

(3) If shares of one of the amalgamating bodies corporate are held by or on behalf of another of the amalgamating bodies corporate, the amalgamation proposal -

- (a) shall provide for the cancellation of those shares without payment or the provision of other consideration when the amalgamation becomes effective, and
- (b) shall not provide for the conversion of those shares into shares of the amalgamated body corporate.

Approval of amalgamation proposal.

64. (1) Where it is proposed to amalgamate two or more bodies corporate pursuant to the provisions of this Part, the directors of each amalgamating body corporate must resolve that -

- (a) in their opinion the amalgamation is in the best interests of the body corporate, and
- (b) they are satisfied on reasonable grounds that the amalgamated body corporate will, immediately after the amalgamation becomes effective, satisfy the solvency test.

(2) The directors who vote in favour of a resolution required by subsection (1) shall sign a certificate stating that, in their opinion, the conditions set out in subsection (1) are satisfied, and the grounds for that opinion.

(3) The directors of each amalgamating body corporate shall give to each member of the body corporate, not less than 28 days before the day on which the amalgamation is proposed to take effect -

- (a) a copy of the amalgamation proposal,
- (b) copies of the certificates given by the directors of each body corporate under subsection (2),
- (c) a summary of the principal provisions of, or a copy of, the memorandum and articles of the amalgamated body corporate,
- (d) where a copy of the memorandum and articles of the amalgamated body corporate has not been sent to each member, a statement that a copy thereof will be supplied to any member who requests it,
- (e) a statement of any material interests of the directors and other officers of the body corporate in the proposal, whether in that capacity or otherwise, and
- (f) such further information and explanation as may be necessary to enable a reasonable member to understand the nature and implications for the body corporate and its members of the proposed amalgamation.

(4) The directors of each amalgamating body corporate shall, not less than 28 days before the day on which the amalgamation is proposed to take effect, give written notice of the proposed amalgamation to every creditor of the body corporate.

(5) The directors of each amalgamating body corporate shall ensure that -

- (a) copies of the amalgamation proposal are available for inspection by any member or creditor of the amalgamating body corporate, or any other person to whom an amalgamating body corporate is under any obligation or liability, at the registered offices of the amalgamating bodies corporate, and at such other places as may be specified by the directors, during normal business hours, and
 - (b) a member or creditor of an amalgamating body corporate, or any other person to whom an amalgamating body corporate is under any obligation or liability, is supplied free of charge with a copy of the amalgamation proposal upon request to an amalgamating body corporate.
- (6) The amalgamation proposal shall be approved -
 - (a) by special resolution of the members of each amalgamating body corporate,
 - (b) if any provision in the amalgamation proposal would, if contained in an alteration to an amalgamating body corporate's memorandum or articles or otherwise proposed in relation to that body corporate, require the approval of any particular class of members, by a special resolution of that class.
- (7) A director who in any respect fails to comply with subsection (2), (3), (4) or (5) is guilty of an offence.

(8) In this section "**special resolution**" means, in relation to an overseas company, such resolution of the overseas company or such other action on the part of the overseas company or its members as the Commission shall certify in writing as being equivalent to a special resolution of a company.

Short form amalgamations for subsidiary companies.

65. (1) A company and any other company which is a wholly-owned subsidiary of it may amalgamate and continue as one company (being the company first referred to) without complying with sections 63 and 64 (but subject in all other respects to the provisions of this Part) if -

- (a) each amalgamating company is a company limited by shares,
- (b) the amalgamation is approved by a resolution of the directors of each amalgamating company, and
- (c) each resolution provides that -
 - (i) the shares of each amalgamating company (including, for the avoidance of doubt, any shares held as treasury shares) other than the amalgamated company will be cancelled without payment or other consideration,
 - (ii) the memorandum and articles of the amalgamated company will be the same as the memorandum and articles of the company first referred to, and
 - (iii) the directors are satisfied on reasonable grounds that the amalgamated company will,

immediately after the amalgamation becomes effective, satisfy the solvency test.

(2) Two or more companies, each of which is a wholly-owned subsidiary of the same company, may amalgamate and continue as one company without complying with sections 63 and 64 (but subject in all other respects to the provisions of this Part) if -

- (a) each amalgamating company is a company limited by shares,
- (b) the amalgamation is approved by a resolution of the directors of each amalgamating company, and
- (c) each resolution provides that -
 - (i) the shares (including, for the avoidance of doubt any shares held as treasury shares) of all but one of the amalgamating companies will be cancelled without payment or other consideration,
 - (ii) the memorandum and articles of the amalgamated company will be the same as the memorandum and articles of the amalgamating company whose shares are not cancelled, and
 - (iii) the directors are satisfied on reasonable grounds that the amalgamated company will, immediately after the amalgamation becomes effective, satisfy the solvency test.

(3) In the case of an amalgamation pursuant to the provisions of this section -

- (a) the directors of each amalgamating company, not less than 28 days before the day on which the amalgamation is proposed to take effect, shall give written notice of the proposed amalgamation to every creditor of the company,
- (b) the resolutions approving the amalgamation, taken together, shall be deemed to constitute an amalgamation proposal which has been approved, and
- (c) the directors who vote in favour of a resolution required by subsection (1) or subsection (2) shall sign a certificate stating that, in their opinion, the conditions set out in subsection (1) or (as the case may be) subsection (2) are satisfied, and the grounds for that opinion.

(4) The directors of each amalgamating company shall ensure that-

- (a) copies of the resolution required by subsection (1) or subsection (2) are available for inspection by any member or creditor of an amalgamating company, or any other person to whom an amalgamating company is under any obligation or liability, at the registered offices of the amalgamating companies, and at such other places as many be specified by the directors, during normal business hours, and

- (b) a member or creditor of an amalgamating company, or any other person to whom an amalgamating company is under any obligation or liability, is supplied free of charge with a copy of the said resolution upon request to an amalgamating company.

(5) A director who fails to comply with subsection (3)(a), (3)(c) or (4) is guilty of an offence.

Application for consent of Commission for amalgamation.

66. (1) An application for the Commission's consent for the amalgamation of two or more bodies corporate pursuant to the provisions of this Part shall be made in accordance with this section.

(2) The application shall be in such form as the Commission may require and shall include or be accompanied by -

- (a) either -
 - (i) the amalgamation proposal, which shall comply with the provisions of section 63 and which shall have been approved in accordance with the provisions of section 64, or
 - (ii) in the case of a short form amalgamation for subsidiary companies under section 65, the resolutions approving the amalgamation, which shall comply with the provisions of section 65(1) or (as the case may be) section 65(2),
- (b) any certificates required under section 64(2) or 65(3)(c),

- (c) a declaration of compliance (amalgamation),
- (d) a copy of the memorandum and articles of the amalgamated body corporate,
- (e) the name of the amalgamated body corporate or -
 - (i) if the amalgamated body corporate is not to be one of the amalgamating bodies corporate but is to be a new body corporate, or
 - (ii) if the amalgamation proposal provides for a change of the name of the amalgamated body corporate,

the proposed name of the body corporate,
- (f) where the proportion of the claims of the creditors of the amalgamated body corporate in relation to the value of the assets of the amalgamated body corporate is greater than the proportion of the claims of creditors of any amalgamating body corporate in relation to the value of the assets of that amalgamating body corporate, a certificate signed by the directors of the amalgamating body corporate and by the directors or proposed directors of the amalgamated body corporate stating that no creditor will be prejudiced by that fact,
- (g) a document signed by each person named in the amalgamation proposal as a director of the

amalgamated body corporate containing a statement of his consent to be a director thereof,

- (h) such other information and documents, verified in such manner as the Commission may require (whether in relation to any particular application or otherwise), including, without limitation, where any of the amalgamating bodies corporate is an overseas company, evidence that the amalgamation is lawful under the law of the district, territory or place where the overseas company is incorporated or registered, and
- (i) the fee prescribed by the Commission.

Determination of applications to Commission.

67. (1) In deciding whether to grant any application made under section 66 and, if so, subject to what, if any, terms or conditions, the Commission must have regard to the protection of the public interest, including the need to -

- (a) protect the public, in Guernsey and elsewhere, against the effects of dishonesty, incompetence or malpractice,
- (b) counter financial crime and the financing of terrorism in Guernsey and elsewhere,
- (c) protect and enhance the reputation of the Bailiwick as a financial centre,

and the Commission shall consider those matters, both in determining the extent to which any person would in its opinion be a fit and proper person to be concerned in the business of the amalgamated body corporate, and also more generally.

- (2) If the Commission -
 - (a) refuses an application for consent,
 - (b) imposes terms or conditions upon that consent, or
 - (c) imposes new terms and conditions or varies or revokes terms and conditions in relation to that consent,

it shall give the applicant a written notice of its decision and the reasons for it and of that person's right under section 68 to appeal.

(3) Nothing in subsection (2) requires the Commission to disclose information the disclosure of which would be prejudicial to -

- (a) a criminal or regulatory investigation, whether in Guernsey or elsewhere,
- (b) co-operation or relations with any investigatory, regulatory or prosecuting authority, or
- (c) a third party,

but, if the Commission decides pursuant to this subsection to withhold information which it considers relevant to the decision taken, the Commission must so inform the applicant by written notice and, in the event of an appeal under section 68, subsection (2) of that section shall apply.

Appeals from determinations of Commission.

68. (1) An applicant may appeal to the Court against -

- (a) the refusal of an application for consent,
- (b) the imposition of terms and conditions upon that consent,
- (c) the imposition of new terms and conditions or the variation or revocation of terms and conditions in relation to that consent, or
- (d) the withholding of information pursuant to section 67(3),

by a summons served on the Chairman of the Commission.

The summons must state the grounds and material facts on which the appellant relies and must be served within 28 days after the date of the written notice referred to in section 67.

(2) On an appeal under subsection (1)(d), the Court may examine any information the disclosure of which the Commission considers would be prejudicial as set out in section 67(3); but that information shall not be disclosed to the appellant or any person representing him unless the Court determines that the prejudice occasioned to the appellant by its non-disclosure would be disproportionate to any legitimate objective of preventing prejudice as set out in that section.

(3) The grounds of an appeal under this section are that -

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,

- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(4) The Commission may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the application the Court may -

- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just.

The provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007⁴.

- (5) On an appeal under this section the Court may -
 - (a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court thinks fit, or

⁴ Order of the Royal Court No. IV of 2007.

(b) confirm the decision, in whole or in part.

(6) On an appeal under this section against a decision of the Commission the Court may, on the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

(7) An appeal from a decision of the Court under this section lies to the Court of Appeal on a question of law.

(8) In this section "**the Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of an appeal under this section the Court may appoint one or more assessors to assist it in the determination of any matter before it.

Application to Registrar for amalgamation.

69. (1) When an amalgamation proposal has been approved in accordance with the provisions of section 64 or, where section 65 applies, when the provisions of that section have been complied with, an application for the amalgamation shall be made to the Registrar by the directors of each amalgamating body corporate.

(2) The application shall be in such form as may be required by the Registrar and shall include or be accompanied by -

(a) in cases where the consent of the Commission is required by section 62, a copy of that consent,

(b) in cases where the amalgamated body corporate will not be one of the amalgamating bodies corporate but a new company, the particulars required under section 17(2) in respect of the incorporation of a company,

- (c) such other information or documents as the Registrar may require, including anything that could be required under section 17 in respect of an application for incorporation of a company, and
- (d) a declaration of compliance (amalgamation).

(3) Upon receipt of the documents specified in subsection (2), the Registrar shall give notice of the proposed amalgamation in such manner and for such period as he thinks fit, and such notice shall include a statement that information concerning the amalgamation can be obtained from the amalgamating bodies corporate.

(4) Where the amalgamated body corporate will be a company, it must conform with the requirements of Part III, but for the avoidance of doubt, it shall not be required to make an application to change its name under section 25.

Effect of amalgamation.

70. (1) If the amalgamated body corporate is the same as one of the amalgamating bodies corporate, and whether or not the amalgamated body corporate is a company -

- (a) the Registrar shall issue a certificate of amalgamation stating -
 - (i) the registration numbers (if any) and names of the amalgamated body corporate and all amalgamating bodies corporate, and
 - (ii) the date upon which the certificate has effect, and

- (b) that certificate shall be conclusive evidence that the bodies corporate are duly amalgamated.

(2) If the amalgamated body corporate is not one of the amalgamating bodies corporate but a new body corporate -

- (a) if the new body corporate is a company -
 - (i) the Registrar shall register the memorandum (and articles as the case may be) in the Register of Companies,
 - (ii) the company is incorporated on the coming into effect of the certificate of amalgamation,
 - (iii) the Registrar shall issue a certificate of incorporation in respect of the company which shall be conclusive evidence that the company is duly incorporated, and
 - (iv) the Registrar shall allocate a registration number to the company,
- (b) whether or not the new body corporate is a company -
 - (i) the Registrar shall issue a certificate of amalgamation stating -
 - (A) the registration numbers (if any) and names of the amalgamated body

corporate and all amalgamating bodies
corporate, and

(B) the date upon which the certificate has
effect, and

(ii) that certificate shall be conclusive evidence that
the bodies corporate are duly amalgamated.

(3) In the case of those amalgamating bodies corporate which are companies, the Registrar shall delete the particulars of those companies (other than the amalgamated company) from the Register of Companies and enter a notice in the Register of Companies stating that the names of those companies have, pursuant to the provisions of this section, been so deleted for the purposes of the amalgamation of those companies with the amalgamated company (the name of which shall be specified in the notice); and thereupon those first-mentioned companies shall be deemed to have been removed from the Register of Companies.

(4) If the amalgamation proposal proposed a date on which the amalgamation was to have effect and that date is later than the date the certificate of amalgamation is issued, then the date stated on the certificate as the date of amalgamation shall be the proposed date.

(5) The Registrar must not issue the certificate of amalgamation until at least 28 days have passed since the day the application for amalgamation was made.

(6) On the date stated in the certificate of amalgamation -

(a) the amalgamation shall be effective,

- (b) the name of the amalgamated body corporate shall be the name specified in the amalgamation proposal, and
- (c) any provisions of the amalgamation proposal which provide for the conversion of shares or rights of members in the amalgamating bodies corporate shall have effect according to their tenor.

(7) The Registrar shall publish the fact that the bodies corporate have amalgamated in such manner and for such period as he thinks fit.

(8) This section is subject to any order the Court may make under section 73.

Amalgamation not to prejudice continuity of rights and obligations of amalgamating bodies corporate.

71. Upon amalgamation -

- (a) all property and rights to which the amalgamating bodies corporate were entitled immediately before the amalgamation become the property and rights of the amalgamated body corporate,
- (b) the amalgamated body corporate is subject to all criminal and civil penalties, and all contracts, debts and other obligations, to which the amalgamating bodies corporate were subject immediately before the amalgamation,
- (c) all actions and other legal proceedings which could have been instituted or continued by or against the amalgamating bodies corporate may be instituted or

continued by or against the amalgamated body corporate, and

- (d) a conviction, ruling, order or judgment in favour of or against the amalgamating bodies corporate may be enforced by or against the amalgamated body corporate.

Amalgamation not a default.

72. An amalgamation under this Part 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.

Power of court to modify amalgamation proposal.

73. (1) If the Court is satisfied that the implementation of an amalgamation proposal would unfairly prejudice a member or creditor of an amalgamating body corporate or any other person to whom an amalgamating body corporate is under any obligation or liability, it may, on the application of that person made at any time before the date on which the amalgamation becomes effective, or within such further time as the Court may in any particular case allow,

make such order as it thinks fit in relation to the proposal, including, without prejudice to the generality of the foregoing, an order -

- (a) directing that effect shall not be given to the proposal,
- (b) modifying the proposal in such manner as may be specified in the order,
- (c) directing the body corporate or its directors to reconsider the proposal or any part of it.

(2) An order under subsection (1) may be made on such terms and conditions and subject to such penalty as the Court thinks fit.

Declaration of compliance (amalgamation).

74. (1) A declaration of compliance (amalgamation) is a declaration, signed by a director, that all the requirements of this Law in respect of the amalgamation of a body corporate (other than section 69 in respect of a declaration made to the Commission under section 66) have been fulfilled.

(2) The Registrar, when performing his functions under this Law, may rely upon the declaration in all respects and accordingly is not bound to enquire further as to whether, in relation to any application for amalgamation of a body corporate, the provisions of this Law have been complied with.

(3) A person who without reasonable excuse makes a declaration which is false, deceptive or misleading in a material particular is guilty of an offence.

PART VII
MIGRATIONS

Registration of overseas company as a Guernsey company

Overseas company may be registered as a Guernsey company.

75. (1) An overseas company may apply to the Registrar to be registered as a Guernsey company in accordance with the provisions of this Part.

(2) In this Part "**registered as a Guernsey company**" means -

- (a) ceasing to be registered as a company in the district, territory or place in which it was incorporated or where it is now registered, and
- (b) becoming registered as a company in the Register of Companies.

Registration must be authorised by foreign law.

76. An overseas company cannot be registered as a Guernsey company unless -

- (a) the company is able under the law of the district, territory or place in which it is incorporated to be registered as a Guernsey company,
- (b) the company has complied with the requirements of that law in relation to its registration as a Guernsey company, and
- (c) where that law does not require the company's members, or a specified proportion of them, to consent to its registration as a Guernsey company, the transfer has been consented to by such resolution of the company or such other action on the part of the

company or its members as the Commission shall certify in writing as being equivalent to a special resolution.

Company cannot be in liquidation, etc.

77. An overseas company cannot be registered as a Guernsey company if-

- (a) the company is being wound up, is in liquidation or has been declared insolvent,
- (b) a receiver or administrator has been appointed, whether by a court or not, in relation to any property of the company,
- (c) the company has entered into a compromise or arrangement with a creditor (other than a compromise or arrangement approved by the Commission), and the compromise or arrangement is in force,
- (d) an application has been made to a court, whether in Guernsey or elsewhere -
 - (i) to put the company into liquidation, to wind it up or to have it declared insolvent,
 - (ii) for the approval of a compromise or arrangement between the company and a creditor (other than a compromise or arrangement approved by the Commission), or

- (iii) for the appointment of a receiver or administrator in relation to any property of the company,

and (in each case) the application has not been finally disposed of, or

- (e) the company is empowered by its memorandum or articles or other equivalent constitutive documents to issue bearer shares.

Company must satisfy solvency test.

78. An overseas company cannot be registered as a Guernsey company unless it would, immediately after registration, satisfy the solvency test.

Supervised companies cannot be registered without consent of the Commission.

79. (1) An overseas company which -

- (a) intends to become a supervised company in Guernsey,
or
- (b) is the equivalent of a supervised company in the district, territory or place outside Guernsey from which it is migrating,

cannot be registered as a Guernsey company unless it has the written consent of the Commission, and its registration must be in accordance with the terms and conditions of that consent.

(2) The Commission may, from time to time and in such manner as it thinks fit -

- (a) vary or revoke any term or condition subject to which a consent under subsection (1) was granted, and
- (b) impose any new term or condition in relation to any such consent.

Application for consent of Commission.

80. (1) An application for the consent of the Commission for an overseas company to be registered in Guernsey shall be made in accordance with this section.

(2) The application shall be in such form as the Commission may require and shall include or be accompanied by -

- (a) the migration details,
- (b) such other information and documents, verified in such manner as the Commission may require, and
- (c) such fee as may be prescribed by the Commission.

Determination of applications to Commission.

81. (1) In deciding whether to grant any application made under section 80 and, if so, subject to what, if any, terms or conditions, the Commission must have regard to the protection of the public interest, including the need to -

- (a) protect the public, in Guernsey and elsewhere, against the effects of dishonesty, incompetence or malpractice,
- (b) counter financial crime and the financing of terrorism in Guernsey and elsewhere,

- (c) protect and enhance the reputation of the Bailiwick as a financial centre,

and the Commission shall consider those matters, both in determining the extent to which any person would in its opinion be a fit and proper person to be concerned in the business of the company, and also more generally.

(2) If the Commission -

- (a) refuses an application for consent,
- (b) imposes terms or conditions upon that consent, or
- (c) imposes new terms and conditions or varies or revokes terms and conditions in relation to that consent,

it shall give the applicant a written notice of its decision and the reasons for it and of that person's right under section 82 to appeal.

(3) Nothing in subsection (2) requires the Commission to disclose information the disclosure of which would be prejudicial to -

- (a) a criminal or regulatory investigation, whether in Guernsey or elsewhere,
- (b) co-operation or relations with any investigatory, regulatory or prosecuting authority, or
- (c) a third party,

but, if the Commission decides pursuant to this subsection to withhold information which it considers relevant to the decision taken, the Commission must so inform

the applicant by written notice and, in the event of an appeal under section 82, subsection (2) of that section shall apply.

Appeals from determinations of Commission.

- 82.** (1) An applicant may appeal to the Court against -
- (a) the refusal of an application for consent,
 - (b) the imposition of terms or conditions upon that consent,
 - (c) the imposition of new terms and conditions or the variation or revocation of terms and conditions in relation to that consent, or
 - (d) the withholding of information pursuant to section 81(3),

by a summons served on the Chairman of the Commission.

The summons must state the grounds and material facts on which the appellant relies and must be served within 28 days after the date of the written notice referred to in section 81.

(2) On an appeal under subsection (1)(d), the Court may examine any information the disclosure of which the Commission considers would be prejudicial as set out in section 81(3); but that information shall not be disclosed to the appellant or any person representing him unless the Court determines that the prejudice occasioned to the appellant by its non-disclosure would be disproportionate to any legitimate objective of preventing prejudice as set out in that section.

- (3) The grounds of an appeal under this section are that -
- (a) the decision was ultra vires or there was some other error of law,
 - (b) the decision was unreasonable,
 - (c) the decision was made in bad faith,
 - (d) there was a lack of proportionality, or
 - (e) there was a material error as to the facts or as to the procedure.

(4) The Commission may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the application the Court may -

- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just.

The provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007⁵.

- (5) On an appeal under this section the Court may -

⁵ Order of the Royal Court No. IV of 2007.

- (a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court thinks fit, or
- (b) confirm the decision, in whole or in part.

(6) On an appeal under this section against a decision of the Commission the Court may, on the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

(7) An appeal from a decision of the Court under this section lies to the Court of Appeal on a question of law.

(8) In this section "**the Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of an appeal under this section the Court may appoint one or more assessors to assist it in the determination of any matter before it.

Application for registration as a Guernsey company.

83. (1) An application for registration as a Guernsey company shall be made to the Registrar.

(2) The application shall be in a form prescribed by the Registrar and shall include or be accompanied by -

- (a) the migration details,
- (b) a copy of any consent required under section 79,

(c) such other information and documents, verified in such manner, as the Registrar may require, and

(d) a declaration of compliance (migration).

(3) The application may propose the date on which registration as a Guernsey company shall take effect, provided that that date is not later than 3 months after the date of the application.

(4) If the company wishes the standard articles to apply in accordance with section 16, its application must state this.

(5) An application for registration as a Guernsey company may only be made by a corporate services provider.

Migration details.

84. (1) In this Part "**migration details**" means -

(a) a copy of the company's certificate of incorporation in the district, territory or place in which it is incorporated or registered,

(b) a copy of the memorandum and articles which are to be binding on the company immediately after its registration in Guernsey, complying with the requirements of this Law as to memoranda and articles, together with, if different, a copy of the company's current memorandum and articles,

(c) a statement of the company's current directors,

- (d) a statement of the company's directors as proposed immediately after registration as a Guernsey company,
- (e) a statement of the address of the company's registered office -
 - (i) in the district, territory or place in which it is incorporated or registered, and
 - (ii) as proposed, in Guernsey,
- (f) in the case of a company with a share capital a statement of share capital,
- (g) in the case of a company with guarantee members the aggregate guaranteed amount of all its members,
- (h) in the case of a cell company a copy of any consent required under section 10,
- (i) evidence acceptable to the Registrar or Commission (as the case may be) that the company is not prohibited from being registered in Guernsey by section 76, 77 or 78, and
- (j) evidence satisfactory to the Registrar or Commission (as the case may be) that, on the date of registration, the company will cease to be incorporated and registered under the law of any district, territory or place outside Guernsey.

(2) The statement of the company's current directors shall comprise -

- (a) the particulars required by section 143 to be entered in the register of directors, and
- (b) where the address of a director required by section 143(4)(b) is a service address, his usual residential address.

(3) The statement of the company's directors as proposed immediately after registration as a Guernsey company shall comprise -

- (a) the consents and declarations required under section 138,
- (b) the particulars required by section 143 to be entered in the register of directors, and
- (c) where the address of a director required by section 143(4)(b) is a service address, his usual residential address.

(4) The statement of share capital shall comprise a statement of -

- (a) the number of issued shares,
- (b) the aggregate value of those shares (whether on account of the nominal value of the shares or by way of premium),
- (c) the number of shares held as treasury shares,

- (d) the amount paid up and the amount (if any) unpaid on those shares (whether on account of the nominal value of the shares or by way of premium),

and where the company has more than one class of share, the statement shall also state the above matters in respect of each class of share.

(5) Where shares have been issued otherwise than for cash, the amounts referred to in subsection (4)(b) shall distinguish between cash and consideration otherwise than cash.

(6) The memorandum and articles which are to be binding on the company immediately after its registration in Guernsey may be different from its current memorandum and articles if the amendments have been consented to by such resolution of the company or such other action on the part of the company or its members as the Commission shall certify in writing as being equivalent to a special resolution.

Effect of registration.

85. (1) Upon receipt of the application for registration as a Guernsey company -

- (a) the Registrar shall register the memorandum and articles (as the case may be) in the Register of Companies,
- (b) subject to the provisions of this Part, the company shall be treated in all respects as a company within the meaning of this Law,

- (c) the Registrar shall issue a certificate of registration in respect of the company which shall be conclusive evidence that the company is duly registered, and
- (d) the Registrar shall allocate a registration number to the company.

(2) If the application proposed a date on which registration as a Guernsey company was to have effect and that date is later than the date on which the Registrar issues the certificate of registration, then the company shall be registered as a Guernsey company on (and the date stated on the certificate shall be) the proposed date.

Cancellation of registration.

86. (1) Where an overseas company is registered as a Guernsey company under this Part, the company shall, as soon as possible, file with the Registrar any certificate or other document issued under the law of the district, territory or place in which the company has ceased to be incorporated and registered evidencing the fact that the company has ceased to be incorporated and registered under the law thereof.

(2) If the Court is satisfied that -

- (a) an overseas company has been registered as a Guernsey company pursuant to the provisions of this Part, and
- (b) the company continues to be incorporated or registered under the law of any district, territory or place outside Guernsey,

the Court may, in its absolute discretion on the application of -

- (i) the company or any of its members, directors or creditors,
- (ii) the Commission, or
- (iii) the Registrar,

make such order as it thinks fit for the removal of the company's name from the Register of Companies.

(3) An order under subsection (2) may be made subject to such terms and conditions and subject to such penalty as the Court thinks fit.

(4) On the making of an order under subsection (2) the company's registration in Guernsey shall (unless the Court orders otherwise) be void from the outset.

Transfer of registration of companies to overseas

Companies may transfer registration.

87. (1) A company may apply to the Registrar to be removed from the Register of Companies in accordance with the provisions of this Part.

(2) In this Part "**removed from the Register of Companies**" means removed from the Register of Companies for the purposes of becoming registered as a company under the law of a district, territory or place outside Guernsey.

Companies cannot transfer registration without a special resolution.

88. A company cannot be removed from the Register of Companies unless it has passed a special resolution that it be so removed.

Companies cannot transfer registration if in liquidation, etc.

89. A company cannot be removed from the Register of Companies if -

- (a) the company has been declared to be insolvent pursuant to the provisions of the Law entitled "Loi ayant rapport aux Débiteurs et à la Renonciation" of 1929⁶,
- (b) a Commissioner or Committee of Creditors has been appointed under that Law to supervise or secure the company's estate,
- (c) the company's affairs have been declared to be in a state of *désastre* at a meeting of arresting creditors held before a Commissioner,
- (d) an interim vesting order has been made against the company in respect of any of its real property in the Bailiwick,
- (e) otherwise than for the sole purpose of solvent amalgamation, solvent reconstruction or solvent winding up -
 - (i) a liquidator of the company (provisional or otherwise) has been appointed to act, or
 - (ii) the company has passed a special resolution requiring that it be voluntarily wound up,

⁶ Ordres en Conseil Vol. VIII, p. 310.

- (f) possession or control has been taken of any of the company's property or affairs by or on behalf of creditors or the holders of debentures issued by it,
- (g) an application has been made to the Court under Part XXIII for the company's compulsory winding up,
- (h) in the case of a protected cell company, a receivership order has been applied for or is in force in respect of any of its cells, or
- (i) an administration order has been applied for or is in force in respect of the company or, in the case of a protected cell company, in respect of any of its cells.

Companies cannot transfer registration unless they satisfy solvency test.

90. A company cannot be removed from the Register of Companies unless it would immediately before removal satisfy the solvency test.

Transfer of registration of cell companies.

91. (1) An incorporated cell cannot be removed from the Register of Companies unless its incorporated cell company is also removed.

(2) An incorporated cell company cannot be removed from the Register unless all of its incorporated cells are also removed.

Companies cannot transfer registration without giving notice to creditors.

92. A company cannot be removed from the Register of Companies unless, before it applies to the Registrar under section 97 for removal, it gives written notice to all its creditors stating that it intends to so apply.

Supervised companies cannot transfer registration without consent of the Commission.

93. (1) A supervised company cannot be removed from the register unless it has the written consent of the Commission, and its removal must be in accordance with the terms and conditions of that consent.

(2) The Commission may, from time to time and in such manner as it thinks fit -

- (a) vary or revoke any term or condition subject to which a consent under subsection (1) was granted, and
- (b) impose any new term or condition in relation to any such consent.

Application for consent of Commission.

94. (1) An application for the consent of the Commission for a supervised company to be removed from the Register of Companies shall be in accordance with this section.

(2) The application shall be in such form as the Commission may require and shall include or be accompanied by -

- (a) evidence acceptable to the Commission that the removal of the company from the Register is not prohibited by sections 88, 89, 90, 91 or 92,
- (b) confirmation from Her Majesty's Procureur and the Administrator of Income Tax that they have no objection to the removal of the company from the Register,

- (c) evidence acceptable to the Commission that the company is able to become incorporated under the law of the district, territory or place in question,
- (d) such other information and documents, verified in such manner, as the Commission may require (whether in relation to any particular application or otherwise), and
- (e) such fee as may be prescribed by the Commission.

Determination of applications to Commission.

95. (1) In deciding whether to grant any application made under section 94 and, if so, subject to what, if any, terms or conditions, the Commission must have regard to the protection of the public interest, including the need to -

- (a) protect the public, in Guernsey and elsewhere, against the effects of dishonesty, incompetence or malpractice,
- (b) counter financial crime and the financing of terrorism in Guernsey and elsewhere,
- (c) protect and enhance the reputation of the Bailiwick as a financial centre,

and the Commission shall consider those matters, both in determining the extent to which any person would in its opinion be a fit and proper person to be concerned in the business of the company, and also more generally.

(2) If the Commission -

- (a) refuses an application for consent,

- (b) imposes terms or conditions upon that consent, or
- (c) imposes new terms and conditions or varies or revokes terms and conditions in relation to that consent,

it shall give the applicant a written notice of its decision and the reasons for it and of that person's right under section 96 to appeal.

(3) Nothing in subsection (2) requires the Commission to disclose information the disclosure of which would be prejudicial to -

- (a) a criminal or regulatory investigation, whether in Guernsey or elsewhere,
- (b) co-operation or relations with any investigatory, regulatory or prosecuting authority, or
- (c) a third party,

but, if the Commission decides pursuant to this subsection to withhold information which it considers relevant to the decision taken, the Commission must so inform the applicant by written notice and, in the event of an appeal under section 96, subsection (2) of that section shall apply.

Appeals from determinations of Commission.

96. (1) An applicant may appeal to the Court against -

- (a) the refusal of an application for consent,
- (b) the imposition of terms or conditions upon that consent,

- (c) the imposition of new terms and conditions or the variation or revocation of terms and conditions in relation to that consent, or
- (d) the withholding of information pursuant to section 95(3),

by a summons served on the Chairman of the Commission.

The summons must state the grounds and material facts on which the appellant relies and must be served within 28 days after the date of the written notice referred to in section 95.

(2) On an appeal under subsection (1)(d), the Court may examine any information the disclosure of which the Commission considers would be prejudicial as set out in section 95(3); but that information shall not be disclosed to the appellant or any person representing him unless the Court determines that the prejudice occasioned to the appellant by its non-disclosure would be disproportionate to any legitimate objective of preventing prejudice as set out in that section.

(3) The grounds of an appeal under this section are that -

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or

- (e) there was a material error as to the facts or as to the procedure.

(4) The Commission may, where an appeal under this section has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the application the Court may -

- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just.

The provisions of this subsection are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007⁷.

(5) On an appeal under this section the Court may -

- (a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court thinks fit, or
- (b) confirm the decision, in whole or in part.

(6) On an appeal under this section against a decision of the Commission the Court may, on the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the

⁷ Order of the Royal Court No. IV of 2007.

determination of the appeal.

(7) An appeal from a decision of the Court under this section lies to the Court of Appeal on a question of law.

(8) In this section "**the Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of an appeal under this section the Court may appoint one or more assessors to assist it in the determination of any matter before it.

Application for transfer of registration.

97. (1) An application for removal from the Register of Companies shall be made to the Registrar.

(2) The application shall be in a form prescribed by the Registrar and shall include or be accompanied by -

- (a) a copy of any consent required under section 93,
- (b) a copy of the confirmation mentioned in section 94(2)(b),
- (c) evidence acceptable to the Registrar that the removal of the company from the Register is not prohibited by sections 88, 89, 90, 91 or 92,
- (d) evidence acceptable to the Registrar that on the date of the removal of the company's name from the Register the company will be incorporated under the law of the district, territory or place in question,

- (e) such other information and documents, verified in such manner, as the Registrar may require, and
- (f) a declaration of compliance (migration).

(3) Upon receipt of the documents specified in subsection (2), the Registrar shall give notice of the proposed transfer in such manner and for such period as he thinks fit.

(4) An application for removal from the Register may only be made by a corporate services provider.

Effect of transfer.

98. Not less than 28 days after the day on which the Registrar gave notice under section 97(3) -

- (a) the statement in the company's memorandum that its registered office is situated in Guernsey shall be deleted,
- (b) the company's name shall be removed from the Register,
- (c) the company shall cease to be a company within the meaning of this Law,
- (d) the Registrar shall file in the Register a notice stating that the company's name has, pursuant to the provisions of this section, been removed from the Register of Companies for the purpose of the company becoming incorporated under the law of the district, territory or place specified in the notice, and

- (e) the Registrar shall publish the fact that the company has been removed from the Register of Companies in such manner and for such period as he thinks fit.

Cancellation of transfer.

99. (1) Where a company is removed from the Register of Companies under this Part, the company shall, as soon as possible, file with the Registrar any certificate or other document issued under the law of the district, territory or place in which the company has become incorporated evidencing the fact that the company has become incorporated under the law thereof.

(2) If the Court is satisfied that -

- (a) a company's name has been removed from the Register pursuant to the provisions of this Part, and
- (b) the company has not become incorporated under the law of any district, territory or place outside Guernsey,

the Court may, in its absolute discretion on the application of -

- (i) the company or any of its members, directors or creditors,
- (ii) the Commission, or
- (iii) the Registrar,

make such order as it thinks fit for the restoration of the company's name to the Register.

(3) An order under subsection (2) may be made subject to such terms and conditions and subject to such penalty as the Court thinks fit.

(4) On the making of an order under subsection (2) the removal of the company's name from the Register shall (unless the Court otherwise orders) be void from the outset.

Power of Court to make orders as to transfer of registration.

100. (1) If the Court is satisfied that the removal of a company from the Register of Companies under section 98 would unfairly prejudice a member or creditor of the company or any other person to whom the company is under any obligation or liability, the Court may, on the application of that person made at any time before the date on which the removal of the company takes place, or within such further time as the Court may in any particular case allow, make such order as it thinks fit in relation to the removal, including, without prejudice to the generality of the foregoing, an order -

- (a) directing that the removal of the company shall not take place, or shall only take place subject to such terms and conditions as the Court thinks fit,
- (b) modifying the proposal for the removal of the company in such manner as may be specified in the order,
- (c) directing the company or its directors to reconsider the proposal for the removal of the company or any part of the proposal.

(2) An order under subsection (1) may be made on such terms and conditions and subject to such penalty as the Court thinks fit.

*General***Declaration of compliance (migration).**

101. (1) A declaration of compliance (migration) is a declaration, signed by a director, that all the requirements of this Part in respect of registration as a Guernsey company, or the removal of a company from the Register of Companies (as the case may be), have been fulfilled.

(2) The Registrar, when performing his functions under this Part, may rely upon a declaration of compliance in all respects and accordingly is not bound to enquire further as to whether, in relation to an application for registration as a Guernsey company, or an application for the removal of a company from the Register of Companies (as the case may be), the provisions of this Part have been complied with.

(3) A person who without reasonable excuse makes a declaration of compliance under this Part which is false, deceptive or misleading in a material particular is guilty of an offence.

Documents in a language other than English.

102. Where a document provided to the Registrar or Commission under this Part is not in the English language, a translation of it into the English language must also be provided.

Registration or transfer not to prejudice continuity of company's existence.

103. (1) Registration as a Guernsey company or removal from the Register of Companies does not -

- (a) create a new legal person,
- (b) notwithstanding the provisions of section 1 (company continues until removed from Register), prejudice or

affect the identity or continuity of the legal person constituted by the company.

(2) Upon registration as a Guernsey company or removal from the Register of Companies -

- (a) all property and rights to which the company was entitled immediately before that registration or removal remain its property and rights,
- (b) the company remains subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which it was subject immediately before that registration or removal,
- (c) all actions and other legal proceedings which immediately before that registration or removal could have been instituted or continued by or against the company may be instituted or continued by or against it after that registration or removal, and
- (d) a conviction, ruling, order or judgment in favour of or against the company before that registration or removal may be enforced by or against it after that registration or removal.

Terminology used in other jurisdictions.

104. References in this Part to companies, certificates of incorporation, directors, liquidations, members or any other matter concerning a company include references to their equivalents in the law of the territory, district or place outside Guernsey from which or to which a company is migrating.

PART VIII
ARRANGEMENTS AND RECONSTRUCTIONS

Application of this Part.

105. (1) The provisions of this Part apply where a compromise or arrangement is proposed between a company and -

- (a) its creditors, or any class of them, or
- (b) its members, or any class of them.

(2) In this Part, "**arrangement**" includes a reorganisation of the 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.

Relationship between this Part and Parts IV to VII.

106. (1) Where a proposed compromise or arrangement would amount to -

- (a) an alteration of a company's memorandum or articles under Part IV,
- (b) a conversion or transfer under Part V,
- (c) an amalgamation under Part VI, or
- (d) a migration under Part VII,

(in this section referred to as the "**administrative procedure**"), the Court may, if it thinks fit, allow the compromise or arrangement to be effected in accordance with the provisions of this Part rather than in accordance with the provisions of those Parts.

(2) Where the Court has failed to -

- (a) order a meeting following an application under section 107, or
- (b) sanction a compromise or arrangement following an application under section 110,

the company may not seek to effect that compromise or arrangement, or a compromise or arrangement which is substantially the same as that compromise or arrangement, by way of an administrative procedure without the leave of the Court.

(3) Where an administrative procedure has commenced but has not yet been completed, the Court may, on an application under section 107 in respect of a compromise or arrangement which would have the same or substantially the same effect as the administrative procedure, make such order in respect of the administrative procedure as it thinks fit.

Court order for holding of meeting.

107. (1) The Court may, on an application under this section, order a meeting of the creditors or class of creditors, or of the members or class of members (as the case may be), to be summoned in such manner as the Court directs.

(2) An application under this section may be made by -

- (a) the company,
- (b) any creditor or member of the company,
- (c) if the company is being wound up, the liquidator,

- (d) if the company has an administration order is in force, the administrator, or
- (e) if a cell of a protected cell company has a receivership order in force, the receiver.

Statement to be circulated or made available.

108. (1) Where a meeting is summoned under section 107 -

- (a) every notice summoning the meeting that is sent to a creditor or member must be accompanied by a statement complying with this section, and
- (b) every notice summoning the meeting that is given by advertisement must either -
 - (i) include such a statement, or
 - (ii) state where and how creditors or members entitled to attend the meeting may obtain copies of such a statement.

(2) The statement must -

- (a) explain the effect of the compromise or arrangement, and
- (b) in particular, state -

- (i) any material interests of the directors of the company (whether as directors, members, creditors or otherwise), and
- (ii) the effect on those interests of the compromise or arrangement, in so far as it is different from the effect on the like interests of other persons.

(3) Where the compromise or arrangement affects the rights of debenture holders of the company, the statement must give the like explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(4) Where a notice given by advertisement states that copies of an explanatory statement can be obtained by creditors or members entitled to attend the meeting, every such creditor or member is entitled, on making application in the manner indicated by the notice, to be provided by the company with a copy of the statement free of charge.

(5) Subject to subsection (7), a company which fails to comply with this section is guilty of an offence.

(6) For the purposes of subsection (5) the trustee of a deed for securing the issue of debentures of the company is treated as an officer of the company.

(7) A person is not guilty of an offence under this section if he shows that the default was due to the refusal of a director or trustee for debenture holders to supply the necessary particulars of his interests.

Duty of directors and trustees to provide information.

109. (1) It is the duty of -

- (a) any director of a company, and
- (b) any trustee for its debenture holders,

to give notice to the company of such matters relating to himself as may be necessary for the purposes of section 108.

(2) A person who fails to comply with the provisions of this section is guilty of an offence.

Court sanction for compromise or arrangement.

110. (1) If a majority in number representing 75% in value of the members or class of members (excluding any shares held as treasury shares), or creditors or class or creditors (as the case may be), present and voting either in person or by proxy at the meeting summoned under section 107, agree a compromise or arrangement, the Court may, on an application under this section, sanction the compromise or arrangement.

(2) In exercising its discretion under this section, the Court may consider whether -

- (a) the majority is acting in good faith in the interests of the creditors or class of creditors, or members or class of members (as the case may be) it professes to represent, and
- (b) the different interests of creditors or members are such that they should be treated as belonging to a different class of creditors or members.

(3) An application under this section may be made by -

- (a) the company,
- (b) any creditor or member of the company,
- (c) if the company is being wound up, the liquidator,
- (d) if the company has an administration order in force, the administrator, or
- (e) if a cell of a protected cell company has a receivership order in force, the receiver.

(4) A compromise or agreement sanctioned by the Court is binding upon -

- (a) all creditors or the class of creditors, or on the members or class of members (as the case may be),
- (b) the company,
- (c) in the case of a company in the course of being wound up, the liquidator and contributories of the company,
- (d) in the case of a company with an administration order in force, the administrator and contributories of the company, and
- (e) in the case of a cell of a protected cell company with a receivership order in force, the receiver and all contributories of the protected cell company.

(5) Every company in relation to which an order is made under this section must cause a copy of the order to be delivered to the Registrar within 7 days after its making.

(6) A company which fails to comply with subsection (5) is guilty of an offence and in addition liable to a daily default fine.

Powers of Court to facilitate reconstruction or merger.

111. (1) This section applies where an application is made to the Court under section 110 to sanction a compromise or arrangement and it is shown that -

- (a) the compromise or arrangement is proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the merger of any 2 or more companies, and
- (b) under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme ("**a transferor company**") is to be transferred to another company ("**the transferee company**").

(2) The Court may, either by order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters -

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company,
- (b) the issuing or appropriation by the transferee company of any shares, debentures, policies or other like

interests in that company which under the compromise or arrangement are to be issued or appropriated by that company to or for any person,

- (c) the continuation by or against the transferee company of any legal proceedings extant or pending by or against any transferor company,
- (d) the dissolution, without winding up, of any transferor company,
- (e) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement,
- (f) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or merger is fully and effectively carried out.

(3) If an order under this section provides for the transfer of property or liabilities -

- (a) the property is by virtue of the order transferred to, and vests in, the transferee company, and
- (b) the liabilities, by virtue of the order, are transferred to and become liabilities of that company.

(4) The property (if the order so directs) vests freed from any charge that is by virtue of the compromise or arrangement to cease to have effect.

(5) Every company in relation to which an order is made under this section must cause a copy of the order to be delivered to the Registrar within 7 days after its making.

(6) A company which fails to comply with subsection (5) is guilty of an offence and in addition liable to a daily default fine.

(7) In this section -

"property" includes property, rights and powers of every description, and

"transferee company" includes an overseas company.

Obligations of company in respect of memorandum and articles.

112. (1) This section applies to any order under -

(a) section 110, or

(b) section 111,

that alters the company's memorandum or articles.

(2) The copy of the order delivered to the Registrar by the company under section 110(5) or 111(5) must be accompanied by a copy of the company's memorandum or articles (as the case may be), as amended.

(3) Every copy of the company's memorandum or articles (as the case may be) issued by the company after the order is made must be accompanied by a copy of the order, unless the effect of the order has been incorporated into the memorandum or articles (as the case may be) by amendment.

(4) In this section, references to the effect of the order include the effect of the compromise or arrangement to which the order relates.

(5) A company which fails to comply with this section is guilty of an offence.

PART IX CORPORATE CAPACITY

Capacity of company and power of directors to bind it

Unrestricted objects.

113. Unless a company's memorandum specifically limits its objects, its objects are unrestricted.

Corporate capacity.

114. The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything contained in or omitted from -

- (a) the company's memorandum or articles,
- (b) any resolution of the company, or
- (c) any agreement between the company's members.

Power of directors to bind company.

115. (1) In favour of a person dealing with a company in good faith, the powers of the directors to bind the company, or authorise others to do so, is deemed to be free of any limitation imposed by or deriving from -

- (a) the company's memorandum or articles,

- (b) any resolution of the company, or
- (c) any agreement between the company's members.

(2) For the purpose of this section -

- (a) a person "deals with" a company if he is a party to any transaction or other act to which the company is a party,
- (b) a person dealing with a company -
 - (i) is not bound to enquire as to any limitation on the powers of the directors to bind the company or authorise others to do so,
 - (ii) is presumed to have acted in good faith unless the contrary is proved, and
 - (iii) is not to be regarded as acting in bad faith solely because he knows that an act is beyond the powers of the directors.

(3) Subsections (1) and (2) do not affect any liability incurred by reason of the directors having exceeded their powers.

Formalities of doing business

Company contracts.

116. A contract may be made -

- (a) by a company, and subject to section 36(1), by writing under its common seal, or
- (b) on behalf of a company, by a person acting under its authority, express or implied.

Execution of documents.

117. A document is executed for and in the name of a company -

- (a) subject to section 36(1), by the affixing of its common seal,
- (b) by signature of a director or secretary of the company, or
- (c) by such other means as may be authorised by its memorandum or articles.

Company may give power of attorney.

118. (1) A company may, by power of attorney, empower any person, either generally or in respect of any specified matter, to represent it, act in its name and execute documents on its behalf, and such a power -

- (a) is not valid unless signed -
 - (i) by a director of the company, or
 - (ii) in such other manner as may be provided for in the articles, and
- (b) is, unless it states otherwise, capable of use in any place in Guernsey or elsewhere.

(2) This section -

- (a) is without prejudice to the provisions of section 34 of the Trusts (Guernsey) Law, 2007⁸, and
- (b) for the avoidance of doubt, has effect notwithstanding the provisions of the Powers of Attorney and Affidavits (Bailiwick of Guernsey) Law, 1995⁹.

Pre-incorporation contracts

Pre-incorporation contracts.

119. (1) Subject to the provisions of this section, a person who makes a pre-incorporation contract is bound by it and entitled to its benefits.

(2) A pre-incorporation contract may be ratified by a company, by a resolution of the directors, within such period as may be specified in the contract or, if no period is so specified, within a reasonable period after the incorporation of the company on whose behalf it was made.

(3) Where a company ratifies a pre-incorporation contract it must give notice of that fact to the other party to the contract within a period of 28 days from the day on which the contract was ratified.

(4) Where subsections (2) and (3) are complied with, the company is bound by and entitled to the benefits of the contract and the person who made it ceases to be so bound and entitled.

⁸ Approved by the States of Deliberation on the 25th July, 2007.

⁹ No. V of 1995.

- (5) In this section, "**pre-incorporation contract**" means -
- (a) a contract purporting to be made by a company before its incorporation, or
 - (b) a contract made by a person on behalf of a company before and in contemplation of its incorporation.

PART X MEMBERS

Members of a company

Company shall have at least one member.

120. A company shall have at least one member.

Members of a company.

121. (1) Upon subscribing to the memorandum, the founder member is deemed to have agreed to become a member of the company and, on its incorporation, becomes a member and must be entered as such in its register of members.

(2) Every other person who agrees to become a member of a company whose name is entered in its register of members (and, in the case of a guarantee member, who gives the undertaking set out in section 7(5)) is a member of the company.

Cessation of membership of guarantee and unlimited members.

122. (1) A person does not cease to be a guarantee member of a company except -

- (a) by the dissolution of the company,

(b) by retirement -

(i) in accordance with such formalities as may be set out by the company's articles, or

(ii) where no such formalities are set out, by notice in writing addressed to the directors (which notice may, in the case of the member's death or legal disability, be given by his heir, executor or other lawful representative), or

(c) by the cancellation of his interest in the company by virtue of section 489 or otherwise.

(2) A person shall not cease to be an unlimited member of a company except -

(a) by the dissolution of the company,

(b) by retirement -

(i) in accordance with such formalities as may be set out by the company's articles, or

(ii) where no such formalities are set out, by notice in writing addressed to the directors (which notice may, in the case of the member's death or legal disability, be given by his heir, executor or other lawful representative), or

- (c) by the cancellation of his interest in the company by virtue of section 489 or otherwise.

(3) This section does not permit a cessation of membership which would breach any requirement mentioned in section 7(3)(a), 8(3)(a) or 9(3)(a).

(4) A cessation of membership does not prejudice any liability a member may have to the company or its creditors under this Law, any other enactment or any other rule of law.

Register and index of members

Register of members.

123. (1) An incorporated cell company shall keep a register of the members of each of its incorporated cells at its registered office.

(2) A company (other than an incorporated cell) shall keep a register of its members at its registered office.

(3) There shall be entered in the register -

- (a) the names and addresses of the members,
- (b) the date on which a person was registered as a member, and
- (c) the date on which a person ceased to be a member.

(4) In the case of a company having a share capital, there shall be entered in the register, with the names of the members holding shares, a statement of -

(a) the shares held by the member, distinguishing each share,

(i) by its number (where it has a number), and

(ii) where the company has more than one class of shares, by its class, and

(b) the amount paid or agreed to be considered as paid on the shares.

(5) Where shares have been issued otherwise than for cash, the amounts referred to in subsection (4)(b) shall distinguish between cash and consideration otherwise than cash.

(6) In the case of a company having guarantee members there shall be entered in the register, with the names of each of those members, a statement of the guaranteed amount.

(7) In the case of a protected cell company, the register shall distinguish between members of its cells and members of the core.

(8) A company which fails to comply with this section is guilty of an offence.

Index of members.

124. (1) An incorporated cell company having an incorporated cell with more than 50 members shall keep an index of the names of the members of the incorporated cell, unless the register of members of the incorporated cell is in such form as to constitute in itself an index.

(2) A company (other than an incorporated cell) with more than 50 members shall keep an index of the names of the members of the company, unless the register of members is in such a form as to constitute in itself an index.

(3) The company shall make any necessary alteration in the index within 14 days of the day on which any alteration is made in the register of members.

(4) The index shall be such as to enable the account in the register of members of each member to be readily found.

(5) The index shall be kept with the register of members.

(6) A company in relation to which there is a failure to comply with this section is guilty of an offence.

Removal of entries relating to former members.

125. An entry relating to a former member of a company may be removed from the register after the expiration of 10 years after the date on which he ceased to be a member.

Treatment of treasury shares in the register.

126. Where a company holds shares as treasury shares, the company must be entered in the register as the member holding those shares.

Inspection of register and index of members

Rights to inspect and require copies.

127. (1) The register and index of members must be open, during ordinary business hours, to the inspection -

- (a) of any member or director of the company to which it relates without charge, and
- (b) of any other person on payment of such fee as may be prescribed by the Department or such lesser fee as the company may stipulate.

(2) A person may require a copy of the company's register of members, or of any part of it, on payment of such fee as may be prescribed by the Department or such lesser fee as the company may stipulate.

(3) A person seeking to exercise any of the rights conferred by this section shall make a request to the company to that effect.

(4) A request under subsection (3) shall contain the following information -

- (a) in the case of an individual, his name and address,
- (b) in the case of an organisation, the name and address of an individual responsible for making the request on behalf of the organisation,
- (c) the purposes for which the information is to be used,
- (d) whether the information will be disclosed to any other person, and if so -
 - (i) where that person is an individual, his name and address,

- (ii) where that person is an organisation, the name and address of an individual responsible for receiving the information on its behalf, and
- (iii) the purpose for which the information is to be used by that person.

Response to request for inspection or copy.

128. (1) Where a company receives a request under section 127, it must within 5 working days either -

- (a) comply with the request, or
- (b) apply to the Court.

(2) If it applies to the Court, it must notify the person making the request.

(3) If on an application under this section the Court is satisfied that the inspection or copy is not sought for a proper purpose -

- (a) it shall direct the company not to comply with the request, and
- (b) it may further order that the company's costs on the application be paid in whole or in part by the person who made the request, even if he is not a party to the application.

(4) If the Court makes such a direction and it appears to the Court that the company is or may be subject to other requests made for a similar purpose (whether made by the same person or different persons), it may direct that the

company is not to comply with any such request; and the order must contain such provision as appears to the Court appropriate to identify the requests to which it applies.

(5) If on an application under this section the Court does not direct the company not to comply with the request -

- (a) the company must comply with the request immediately upon the Court giving its decision or, as the case may be, the proceedings being finally disposed of, and
- (b) the Court may order that the company pay the costs of the person who made the request if he is a party to the application.

(6) Where a company fails to comply with subsection (1) or (5) it is guilty of an offence and the Court may by order compel an immediate inspection or, as the case may be, direct that the copy be sent to the person requesting it.

Offences in connection with request for or disclosure of information.

129. (1) It is an offence for a person knowingly or recklessly to make in a request under section 127 a statement that is misleading, false or deceptive in a material particular.

(2) It is an offence for a person in possession of information obtained by exercise of either of the rights conferred by section 127 -

- (a) to do anything that results in the information being disclosed to another person, or

- (b) to fail to do anything with the result that the information is disclosed to another person,

knowing or having reason to suspect that that person may use the information for a purpose that is not a proper purpose.

Exception for redeemable and non-voting shares.

130. The provisions of this Part in relation to the inspection of the register and index and requiring of a copy of the register or any part of it do not apply in relation to members in respect of any -

- (a) redeemable shares, or
- (b) non-voting shares,

held by them.

PART XI DIRECTORS

Directors

Director.

131. In this Law "**director**" includes an alternate director and any person occupying the position of director, by whatever name called.

Shadow director.

132. (1) In this Law "**shadow director**", in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act.

(2) A person is not to be regarded as a shadow director by reason only that the directors act on advice given by him in a professional capacity.

(3) For the purposes of sections 160 and 162 to 166, a shadow director is treated as a director.

Board of directors.

133. In this Law "board" and "board of directors", in relation to a company, mean -

- (a) directors of the company who number not less than the quorum required by the memorandum or articles acting together as a board of directors, or
- (b) if the company only has one director, that director.

Management of a company.

134. (1) The business and affairs of a company must be managed by, or under the direction or supervision of, the board of the company.

(2) The board of a company has all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.

(3) Subsections (1) and (2) are subject to any modifications, exceptions or limitations contained in this Law or in the company's memorandum or articles.

Requirement to have director

Company must have at least one director.

135. A company must have at least one director.

Directors of incorporated cell companies.

136. (1) Each director of an incorporated cell company shall also be a director of each of its incorporated cells, and no person may be a director of an incorporated cell unless he is also a director of its incorporated cell company.

(2) Subsection (1) is subject to -

- (a) any exercise of the powers of an administrator under section 379(6) or (7),
- (b) any direction given during a liquidation under section 478.

Appointment of director

Eligibility to be a director.

137. (1) A minor shall not be appointed or hold office as a director.

(2) The following persons shall not be appointed or hold office as a director -

- (a) a person who is subject to a disqualification order under Part XXV,
- (b) a person subject to a disqualification order under section 67A of the 1994 Law, or
- (c) a person who is disqualified, by reason of misconduct or unfitness, from acting as a director under the law of a district, territory or place outside Guernsey,

subject to the terms of that order or disqualification.

(3) An appointment made in contravention of this section is void.

(4) Nothing in this section affects the liability of a person under any provision of this Law if he -

(a) purports to act as director, or

(b) acts as shadow director,

although he could not, by virtue of this section, be validly appointed or hold office as a director.

Director's consent and declaration of eligibility.

138. (1) A person must not be appointed as director unless he has in writing -

(a) consented to being a director, and

(b) declared that he is not ineligible under section 137 to be a director.

(2) A person who without reasonable excuse makes a declaration under subsection (1)(b) which is false, deceptive or misleading in a material particular is guilty of an offence.

Appointment of first and subsequent directors.

139. (1) The persons named in the statement of the proposed first directors in the application for incorporation under section 17 hold office as directors from the date of incorporation until ceasing to hold office in accordance with the provisions of this Part.

(2) All subsequent directors must, unless the memorandum or articles otherwise provide, be appointed by ordinary resolution.

Appointment of directors to be voted on individually.

140. (1) Subject to the memorandum or articles, the members of a company may vote on a resolution to appoint a director only if -

- (a) the resolution is for the appointment of one director, or
- (b) the resolution is a single resolution for the appointment of two or more directors and a separate resolution that it be so voted on has first been passed without a vote being cast against it.

(2) A resolution moved in contravention of subsection (1) is void even though the moving of it was not objected to at the time.

(3) No provision for the automatic reappointment of retiring directors in default of another appointment has effect on the passing of a resolution in contravention of subsection (1).

Validity of acts of directors.

141. (1) The acts of a person acting as a director are valid notwithstanding that it is afterwards discovered that -

- (a) there was a defect in his appointment,
- (b) he was not eligible to be a director,
- (c) he had ceased to hold office, or

(d) he was not entitled to vote on the matter in question.

(2) This section applies even if the resolution for the person's appointment as director is void under section 140.

Directors ceasing to hold office

Directors ceasing to hold office.

142. (1) A person ceases to be a director if he -

- (a) resigns in accordance with subsection (2),
- (b) is removed in accordance with the memorandum or articles,
- (c) becomes ineligible to be a director in accordance with section 137,
- (d) dies, or
- (e) otherwise vacates office in accordance with the memorandum or articles.

(2) A director may resign by sending written notice of resignation to the company, which notice is effective when received or at a later time specified in the notice.

(3) Notwithstanding the vacation of office, a person who held office as a director remains liable, whether under the provisions of this Law which impose liabilities on directors or otherwise, in respect of acts and omissions and decisions made while that person was a director.

*Register of directors***Register of directors.**

143. (1) A company shall keep a register of directors at its registered office.

(2) The register of directors of an incorporated cell company is deemed to constitute also the register of directors of each of its incorporated cells.

(3) Where, in accordance with sections 379(6) or (7) or 478, the directors of an incorporated cell are different from the directors of its incorporated cell company, the register shall set out those differences.

(4) Where a director is an individual, the following particulars must be entered in the register -

- (a) his name and any former name,
- (b) his address, which may be either -
 - (i) his usual residential address, or
 - (ii) his service address (which may be stated as "the company's registered office"),
- (c) his nationality,
- (d) his business occupation (if any), and
- (e) his date of birth.

(5) Where a director is not an individual, the following particulars must be entered in the register -

- (a) its corporate or firm name and any former such name it has had within the preceding 5 years,
- (b) its registered office (or, if it has no registered office, its principal office),
- (c) its legal form and the law by which it is governed, and
- (d) if applicable, the register in which it is entered and its registration number in that register.

(6) It is not necessary for the register to contain particulars of a former name in the following cases -

- (a) in the case of a peer or an individual normally known by a British title, where the name is one by which the person was known before the adoption of or succession to the title,
- (b) in the case of any person, where the former name -
 - (i) was changed or disused before the person attained the age of 18 years, or
 - (ii) has been changed or disused for 20 years or more.

(7) In this section, "name" and "former name" have the meaning given by section 528.

(8) A company which fails to comply with this section is guilty of an offence.

Rights to inspect and require copies.

144. (1) The register of directors must be open, during ordinary business hours, to the inspection of -

- (a) any member or director without charge,
- (b) any other person on payment of such fee as may be prescribed by the Department or such lesser fee as the company may stipulate.

(2) A person may require a copy of the register, or any part of it, on payment of such fee as may be prescribed by the Department or such lesser fee as the company may stipulate; and the company shall cause any copy so requested to be sent to the person within 5 working days of the receipt of the request.

(3) A company which fails to comply with this section is guilty of an offence and the Court may by order compel an immediate inspection or, as the case may be, direct that a copy be sent to the person requesting it.

Duty to notify Registrar of changes.

145. (1) A company must, within the period of 14 days from the occurrence of -

- (a) any change in its directors, or
- (b) any change in the particulars contained in its register of directors,

give notice to the Registrar of the change and of the date on which it occurred.

(2) Notice of a person having become a director of the company must -

(a) contain a statement of the particulars of the new director that are required to be included in the company's register of directors, and

(b) be accompanied by the consent and declaration required by section 138.

(3) A company which fails to comply with this section is -

(a) guilty of an offence, and

(b) liable to a civil penalty.

Use of service address by director

Validity of service address.

146. Where a director's address entered in the register of directors is a service address, service of any summons, notice, document or other matter at that address is deemed as effective as if it were service at the director's usual residential address.

Record of usual residential address.

147. (1) Where a director's address entered in the register of directors is a service address, the company (or, in the case of an incorporated cell, its incorporated cell company) shall keep a record of the director's usual residential address.

(2) A company which fails to comply with this section is guilty of an offence.

Duty to notify Registrar of change in usual residential address.

148. (1) Where a person becomes a director of a company and his address entered in the register of directors is a service address, the company (or, in the case of an incorporated cell, its incorporated cell company) must, within the period of 14 days after the day the person becomes a director, give notice to the Registrar of the directors usual residential address.

(2) Where a director's address entered in the register of directors is a service address, the company (or in the case of an incorporated cell, its incorporated cell company) must, within the period of 14 days from any change in its record of the director's usual residential address, give notice to the Registrar of the change and of the date on which it occurred.

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

Disclosure of usual residential address by company.

149. (1) Where a director's address entered in the register of directors is a service address, a person may request the company (or, in the case of an incorporated cell, its incorporated cell company) to disclose the director's usual residential address to him in accordance with the provisions of this section.

(2) A request under subsection (1) shall contain the following information -

(a) in the case of an individual, his name and address,

- (b) in the case of an organisation, the name and address of an individual responsible for making the request on behalf of the organisation,
- (c) the purposes for which the information is to be used, and
- (d) whether the information will be disclosed to any other person, and if so -
 - (i) where that person is an individual, his name and address,
 - (ii) where that person is an organisation, the name and address of an individual responsible for receiving the information on its behalf, and
 - (iii) the purpose for which the information is to be used by that person.

Application to Court for disclosure of usual residential address.

150. (1) If a company (or, in the case of an incorporated cell, its incorporated cell company) does not comply with a request made under section 149 within 2 weeks, the person who made the request ("**the applicant**") may make an application to the Court.

(2) The applicant must notify the company (or incorporated cell company, as the case may be) if he makes an application.

(3) If on an application under this section the Court is satisfied that the request is made for a proper purpose, it may direct the company (or incorporated cell company as the case may be) to comply with the request.

(4) If on an application under this section the Court is satisfied that the request is not made for a proper purpose, it may direct the company (or incorporated cell company as the case may be) not to comply with the request.

(5) If the Court gives a direction under subsection (4) and it appears to the Court that the company (or incorporated cell company as the case may be) is or may be subject to other requests made for a similar purpose (whether made by the same person or different persons) it may direct that the company (or incorporated cell company as the case may be) is not to comply with any such request, and the order must contain such provision as appears to the Court appropriate to identify the requests to which it applies.

(6) In considering whether a request is made for a proper purpose, the Court may consider how effective the service address is in effecting service in respect of proceedings taking place outside Guernsey.

(7) The Court may make such order as to costs as it thinks fit on an application under this section.

(8) A company (or incorporated cell company as the case may be) which fails to comply with subsection (3) is guilty of an offence and the Court may by order compel the company (or incorporated cell company as the case may be) to comply with the request.

Disclosure of usual residential address by Registrar.

151. (1) Where a director's address entered in the register of directors is a service address, the Registrar shall disclose the director's usual residential address to the following persons upon request by those persons -

- (a) Her Majesty's Procureur, Her Majesty's Sheriff or Her Majesty's Sergeant,

- (b) the Commission,
 - (c) the Administrator of Income Tax,
 - (d) a police officer,
 - (e) a customs officer, or
 - (f) such other persons as may be prescribed by the Department.
- (2) A request under subsection (1) shall -
- (a) be in writing,
 - (b) state that disclosure is required by that person for the proper exercise of his functions, and
 - (c) shall be signed by the person seeking disclosure or by any person appointed by him for that purpose.

Offences in connection with request for or disclosure of information.

152. (1) It is an offence for a person without reasonable excuse to make in a request under section 149 a statement that is false, deceptive or misleading in a material particular.

(2) It is an offence for a person in possession of information obtained by exercise of the rights conferred by section 149 -

- (a) to do anything that results in the information being disclosed to another person, or

- (b) to fail to do anything with the result that the information is disclosed to another person,

knowing or having reason to suspect that that person may use the information for a purpose that is not a proper purpose.

Meetings of directors

Participation in meetings.

153. (1) Subject to any provision to the contrary in a company's memorandum or articles, if a director is, by any means, in communication with one or more other directors so that each director participating in the communication can hear or read what is said or communicated by each of the others, each director so participating is deemed to be present at a meeting with the other directors so participating.

(2) A meeting of directors conducted pursuant to subsection (1) shall be deemed to be held in the place in which the chairman of the meeting is present.

Minutes of directors' meetings.

154. (1) A company must cause minutes of all proceedings at meetings of its directors to be recorded.

(2) Where the records are not kept in Guernsey, a copy of them must be kept -

- (a) at the company's registered office, or
- (b) at such other place in Guernsey as the directors think fit.

(3) The records (or, where the records are not kept in Guernsey, the copies) must be kept for at least 6 years from the date of the meeting.

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

(5) The duty imposed upon an incorporated cell under this section lies with its incorporated cell company.

Minutes as evidence.

155. (1) Minutes recorded in accordance with section 154, if purporting to be authenticated by the chairman of the meeting or by the chairman of the next directors' meeting, are evidence of the proceedings at the meeting.

(2) Where minutes have been made in accordance with section 154 of the proceedings of a meeting of directors, then, unless the contrary is proved-

- (a) the meeting is deemed duly held and convened,
- (b) all proceedings at the meeting are deemed to have duly taken place, and
- (c) all appointments at the meeting are deemed valid.

Rights to inspect and require copies.

156. (1) The minutes of directors' meetings must be open, during ordinary business hours, to the inspection of any director without charge.

(2) A director may require a copy of any minutes of directors' meetings, or any part of them, without charge and the company shall cause any

copy so requested to be sent to the director within 5 working days after the date of receipt of the request.

(3) A company which fails to comply with this section is guilty of an offence and the Court may by order compel an immediate inspection or, as the case may be, direct that a copy be sent to the director requesting it.

Directors' liabilities

Exempting directors from liabilities.

157. (1) Any provision that purports to exempt a director of a company (to any extent) from any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company is void.

(2) Any provision by which a company directly or indirectly provides an indemnity (to any extent) for a director of the company, or an associated company, against any liability attaching to him in connection with any negligence, default, breach of duty or breach of trust in relation to the company of which he is a director is void, except as is permitted by section 158 or 159.

(3) This section applies to any provision, whether contained in a company's memorandum or articles or in any contract with the company or otherwise.

(4) Nothing in this section prevents a company's memorandum or articles from making such provision as was, before the commencement of this Law, lawful for dealing with conflicts of interest.

Provision of insurance for directors.

158. Section 157(2) does not prevent a company from purchasing and maintaining for a director of the company, or an associated company, insurance against any such liability as is mentioned in that subsection.

Provision of qualifying third party indemnities for directors.

159. (1) Section 157(2) does not apply to qualifying third party indemnity provision.

(2) Third party indemnity provision means provision for indemnity against liability incurred by a director to a person other than the company or an associated company; and such provision is qualifying third party indemnity provision if the requirements of subsection (3) are met.

(3) The provision must not provide any indemnity against -

(a) any liability of the director to pay -

(i) a fine imposed in criminal proceedings,

(ii) a sum payable to a regulatory authority by way of a penalty in respect of non-compliance with any requirement of a regulatory nature (however arising), or

(b) any liability incurred by the director -

(i) in defending criminal proceedings in which he is convicted,

- (ii) in defending civil proceedings brought by the company, or an associated company, in which judgment is given against him, or
- (iii) in connection with an application for relief under section 522 in which the Court refuses to grant him relief.

(4) The references in subsection (3)(b) to a conviction, judgment or refusal of relief are to the final decision in the proceedings.

(5) For this purpose -

(a) a conviction, judgment or refusal of relief becomes final -

- (i) if not appealed against, at the end of the period for bringing an appeal,
- (ii) if appealed against, at the time when the appeal (or any further appeal) is disposed of, and

(b) an appeal is disposed of -

- (i) if it is determined and the period for bringing any further appeal has ended, or
- (ii) if it is abandoned or otherwise ceases to have effect.

Ratification of acts of directors.

160. (1) This section applies to the ratification by a company of conduct by a director which exceeds his powers or amounts to negligence, default, breach of duty or breach of trust in relation to the company.

(2) The decision of the company to ratify such conduct -

(a) must be taken by the members, and

(b) may be taken by ordinary resolution, subject to anything in the company's memorandum or articles requiring a higher majority (or unanimity).

(3) Subject to subsection (7), where the resolution is proposed as a written resolution, members with a personal interest, direct or indirect, in the ratification are not eligible members.

(4) Subject to subsection (7), where the resolution is proposed at a meeting, it is passed only if the necessary majority is obtained disregarding votes in favour of the resolution by members with a personal interest, direct or indirect, in the ratification; but this does not prevent such members from attending, being counted towards the quorum and taking part in the proceedings at any meeting at which the decision is considered.

(5) Subsections (3) and (4) do not apply in respect of ratification of conduct by a director which exceeds his powers.

(6) For the purposes of this section -

(a) "conduct" includes acts and omissions, and

(b) "director" includes a former director.

(7) Nothing in this section affects -

- (a) the validity of a decision taken by unanimous resolution, or
- (b) any power of the directors to agree not to sue, or to settle or release a claim made by them on behalf of the company.

(8) This section does not affect any other enactment or rule of law as to the requirements for valid ratification or any rule of law as to acts that are incapable of being ratified by the company.

Duties of directors in companies without secretaries

Duties of directors in companies without secretaries.

161. Where a company has no secretary, and without prejudice to the responsibility of any other person or to any other responsibilities they may hold, the directors are the persons primarily responsible for carrying out the duties listed in section 171.

Transactions involving self-interest

Disclosure of interest.

162. (1) A director of a company must, immediately after becoming aware of the fact that he is interested in a transaction or proposed transaction with the company, disclose to the board of directors -

- (a) if the monetary value of the director's interest is quantifiable, the nature and monetary value of that interest, or

- (b) if the monetary value of the director's interest is not quantifiable, the nature and extent of that interest.

(2) Subsection (1) does not apply if -

- (a) the transaction or proposed transaction is between the director and the company, and
- (b) the transaction or proposed transaction is or is to be entered into in the ordinary course of the company's business and on usual terms and conditions.

(3) A general disclosure to the board to the effect that a director has an interest (as director, officer, employee, member or otherwise) in a party and is to be regarded as interested in any transaction which may after the date of the disclosure be entered into with that party is sufficient disclosure of interest in relation to that transaction.

(4) A failure by a director to comply with subsection (1) does not affect the validity of a transaction entered into by the company or the director.

(5) A director who fails to comply with this section is guilty of an offence.

Avoidance of transactions.

163. (1) A transaction in which a director is interested may be avoided by the company at any time before the expiration of 3 months after the date the transaction is disclosed to the board of directors unless the transaction has been ratified in accordance with section 160.

(2) A transaction cannot be avoided, if the company receives fair value under it, on the basis of information known to the company and the interested director at the time the transaction is entered into.

(3) If a transaction is entered into by the company in the ordinary course of its business and on usual terms and conditions, the company is presumed to receive fair value under the transaction.

(4) For the purposes of this section -

- (a) a person seeking to uphold a transaction and who knew or ought to have known of the director's interest at the time the transaction is entered into has the burden of establishing fair value, and
- (b) in any other case, the company has the burden of establishing that it did not receive fair value.

Effect on third parties.

164. The avoidance of a transaction under section 163 does not affect the title or interest of a person in or to property which that person has acquired if the property was acquired -

- (a) from a person other than the company,
- (b) for valuable consideration, and
- (c) without knowledge of the circumstances of the transaction under which the person referred to in paragraph (a) acquired the property from the company.

Disapplication of these provisions in certain cases.

165. Nothing in sections 162 and 163 applies in relation to -

- (a) remuneration or other benefit given to a director,
- (b) insurance purchased or maintained for a director in accordance with section 158, or
- (c) qualifying third party indemnity provision provided for a director in accordance with section 159.

Interested director may vote.

166. Subject to the company's memorandum and articles, a director who is interested in a transaction entered into, or to be entered into, by the company, may -

- (a) vote on a matter relating to the transaction,
- (b) attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purpose of a quorum,
- (c) sign a document relating to the transaction on behalf of the company, and
- (d) do any other thing in his capacity as a director in relation to the transaction,

as if the director were not interested in the transaction.

Meaning of interested.

167. (1) Subject to subsection (2), a director of a company is interested in a transaction to which the company is a party if the director -

- (a) is a party to, or may derive a material benefit from, the transaction,
- (b) has a material financial interest in another party to the transaction,
- (c) is a director, officer, employee or member of another party (other than a party which is an associated company) who may derive a material financial benefit from the transaction,
- (d) is the parent, child or spouse of another party who may derive a material financial benefit from the transaction, or
- (e) is otherwise directly or indirectly materially interested in the transaction.

(2) A director is not interested in a transaction to which the company is a party if the transaction comprises only the giving by the company of security to a third party which has no connection with the director, at the request of the third party, in respect of a debt or obligation of the company for which the director or another person has personally assumed responsibility in whole or in part under a guarantee, indemnity or security.

(3) For the purposes of this section, a subsidiary within the meaning of section 531 includes a body corporate which would be a subsidiary but for the fact that it is an overseas company.

PART XII
SECRETARIES

Secretaries

Company may have secretary.

- 168.** (1) A company may, but need not, have a secretary.
- (2) A director of a company may also be its secretary.

Secretary of incorporated cell companies.

169. The secretary of an incorporated cell company shall also be a secretary of each of its incorporated cells, and no person may be a secretary of an incorporated cell unless he is also a secretary of its incorporated cell company.

Eligibility to be secretary.

- 170.** (1) A minor shall not be appointed or hold office as a secretary.
- (2) The following persons shall not be appointed or hold office as a secretary -
- (a) a person who is subject to a disqualification order under Part XXV,
 - (b) a person subject to a disqualification order under section 67A of the 1994 Law, or
 - (c) a person who is disqualified from acting as a director, by reason of misconduct or unfitness, under the law of a district, territory or place outside Guernsey,

subject to the terms of the order or disqualification.

(3) An appointment made in contravention of this section is void.

(4) Nothing in this section affects the liability of a person under any provision of this Law if he purports to act as a secretary although he could not, by virtue of this section, be validly appointed or hold office as a secretary.

Duties of secretaries.

171. Where a company has a secretary, and without prejudice to the responsibility of any other person or to any other responsibilities he may hold, the secretary shall take reasonable steps to ensure -

- (a) that all registers and indexes are maintained in accordance with the provisions of this Law,
- (b) that all notices and documents required to be filed or served upon the Registrar or other persons are duly so filed or served,
- (c) that all resolutions, records (other than records of beneficial owners) and minutes of the company are properly kept,
- (d) that copies of the memorandum and articles are kept fully up to date, and
- (e) that the board of directors is aware of any obligations imposed by -
 - (i) the memorandum and articles, and

- (ii) the rules of any stock exchange the company is listed on.

Acts done by person in dual capacity.

172. A provision requiring or authorising a thing to be done by or to a director and the secretary of a company is satisfied by its being done by or to the same person acting both as director and secretary.

Register of secretaries

Register of secretaries.

173. (1) Where a company has a secretary, it shall keep a register of secretaries at its registered office.

(2) The register of secretaries of an incorporated cell company is deemed to constitute also the register of secretaries of each of its incorporated cells.

(3) Where a secretary is an individual, the following particulars must be entered in the register -

- (a) his name and any former name, and
- (b) his service address (which may be stated as "the company's registered office").

(4) Where a secretary is not an individual, the following particulars must be entered in the register -

- (a) its corporate or firm name and any former such name it has had within the preceding 5 years,

- (b) its registered office (or, if it has no registered office, its principal office),
- (c) its legal form and the law by which it is governed, and
- (d) if applicable, the register in which it is entered and its registration number in that register.

(5) It is not necessary for the register to contain particulars of a former name in the following cases -

- (a) in the case of a peer or an individual normally known by a British title, where the name is one by which the person was known before the adoption of or succession to the title,
- (b) in the case of any person, where the former name -
 - (i) was changed or disused before the person attained the age of 18 years, or
 - (ii) has been changed or disused for 20 years or more.

(6) In this section, "name" and "former name" have the meaning given in section 528.

(7) A company which fails to comply with this section is guilty of an offence.

Right to inspect and require copies.

174. (1) Where a company has a secretary, the register of secretaries must be open, during ordinary business hours, to the inspection of -

- (a) any member or director without charge, or
- (b) any other person on payment of such fee as may be prescribed by the Department or such lesser fee as the company may stipulate.

(2) A person may require a copy of the register, or any part of it, on payment of such fee as may be prescribed by the Department or such lesser fee as the company may stipulate; and the company shall cause any copy so requested to be sent to the person within 5 working days after the date of the receipt of the request.

(3) A company which fails to comply with this section is guilty of an offence and the Court may by order compel an immediate inspection or, as the case may be, direct that a copy be sent to the person requesting it.

PART XIII

RESOLUTIONS AND MEETINGS

Resolutions

Types of resolution.

175. (1) A resolution of the members (or class of members) of a company shall be either -

- (a) an ordinary resolution,
- (b) a special resolution,

(c) a waiver resolution, or

(d) a unanimous resolution.

(2) Subject to subsection (3), a resolution may be passed either -

(a) at a general meeting, or

(b) as a written resolution.

(3) A resolution to remove an auditor under section 268 may not be passed as a written resolution.

Ordinary resolutions.

176. (1) An ordinary resolution of the members (or of a class of members) of a company means a resolution passed by a simple majority.

(2) A written resolution is passed by a simple majority if it is passed by members representing a simple majority of the total voting rights of eligible members.

(3) A resolution passed at a meeting on a show of hands is passed by a simple majority if it is passed by a simple majority of -

(a) the members who, being entitled to do so, vote in person on the resolution, and

(b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.

(4) A resolution passed on a poll taken at a meeting is passed by a simple majority if it is passed by members representing a simple majority of the total voting rights of members who, being entitled to do so, vote in person or by proxy on the resolution.

(5) Anything that may be done by ordinary resolution may also be done by special resolution.

(6) The articles may specify the manner in which notice must be given of an ordinary resolution in contemplation of a general meeting of the company at which the resolution is to be proposed.

Ordinary resolutions required by articles to have a different proportion of votes.

177. Section 176 does not preclude a company's memorandum or articles from providing that certain ordinary resolutions are to be passed by a different proportion of votes than a simple majority.

Special resolutions.

178. (1) A special resolution of the members (or of a class of members) of a company means a resolution passed by a majority of not less than 75%.

(2) A written resolution is passed by a majority of not less than 75% if it is passed by members representing not less than 75% of the total voting rights of eligible members.

(3) A written resolution is not passed as a special resolution unless it was proposed as such; and, once so proposed, it may only be passed as such.

(4) A resolution passed at a meeting on a show of hands is passed by a majority of not less than 75% if it is passed by not less than 75% of -

- (a) the members who, being entitled to do so, vote in person on the resolution, and
- (b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.

(5) A resolution passed on a poll taken at a meeting is passed by a majority of not less than 75% if it is passed by members representing not less than 75% of the total voting rights of the members who, being entitled to do so, vote in person or by proxy on the resolution.

(6) Where a resolution is passed at a meeting -

- (a) the resolution is not a special resolution unless notice of the meeting included the text of the resolution and specified the intention to propose the resolution as a special resolution, and
- (b) if the notice of the meeting so specified, the resolution may only be passed as a special resolution.

(7) A copy of every special resolution of a company shall be delivered by the company to the Registrar within 30 days of it being passed.

(8) Failure to comply with subsection (7) does not render a special resolution void.

(9) A company which fails to comply with subsection (7) is -

(a) guilty of an offence, and

(b) liable to a civil penalty.

Waiver resolutions.

179. (1) A waiver resolution of the members of a company means a resolution passed by a majority of not less than 90%.

(2) A written resolution is passed by a majority of not less than 90% if it is passed by members representing not less than 90% of the total voting rights of eligible members.

(3) A written resolution is not passed as a waiver resolution unless it is proposed as such; and once so proposed it may only be passed as such.

(4) A resolution passed at a meeting on a show of hands is passed by a majority of not less than 90% if it is passed by not less than 90% of -

(a) the members who, being entitled to do so, vote in person on the resolution, and

(b) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.

(5) A resolution passed on a poll taken at a meeting is passed by a majority of not less than 90% if it is passed by members representing not less than 90% of the total voting rights of the members who (being entitled to do so) vote in person or by proxy on the resolution.

(6) Where a resolution is passed at a meeting -

- (a) the resolution is not a waiver resolution unless notice of the meeting included the text of the resolution and specified the intention to propose the resolution as a waiver resolution, and
- (b) if the notice of the meeting so specified, the resolution may only be passed as a waiver resolution.

(7) A copy of every waiver resolution of a company shall be delivered by the company to the Registrar within 30 days of it being passed.

(8) Failure to comply with subsection (7) does not render a waiver resolution void.

(9) A company which fails to comply with subsection (7) is -

- (a) guilty of an offence, and
- (b) liable to a civil penalty.

Unanimous resolutions.

180. (1) A unanimous resolution of the members of a company means a resolution agreed to by every member of the company.

(2) A written resolution is not passed as a unanimous resolution unless it is proposed as such; and once it is so proposed it may only be passed as such.

(3) Where a resolution is passed at a meeting -

- (a) the resolution is not a unanimous resolution unless notice of the meeting included the text of the resolution

and specified the intention to propose the resolution as a unanimous resolution, and

- (b) if the notice of the meeting so specified, the resolution may only be passed as a unanimous resolution.

(4) A copy of every unanimous resolution of a company shall be delivered by the company to the Registrar within 30 days of it being passed.

(5) Failure to comply with subsection (4) does not render a unanimous resolution void.

(6) A company which fails to comply with subsection (4) is -

- (a) guilty of an offence, and
- (b) liable to a civil penalty.

Written resolutions

Written resolutions.

181. (1) A resolution may be proposed as a written resolution -

- (a) by the directors of a company under section 182, or
- (b) by the members of a company under section 183.

(2) Subject to any contrary intention, references in enactments passed or made before or after this Law comes into force to -

- (a) a resolution of a company in general meeting, or

- (b) a resolution of a meeting of a class of members of the company,

have effect as if they included references to a written resolution of the members, or of a class of members of a company, as the case may be.

(3) The members eligible to vote on a written resolution are those who would have been entitled to vote on the circulation date of the resolution and "eligible members" shall be construed accordingly.

(4) If persons entitled to vote on a written resolution change during the course of the day that is the circulation date of the resolution, the eligible members are the persons entitled to vote on the resolution at the time that the first copy of the resolution is sent or submitted to a member for his agreement.

(5) The circulation date of a written resolution is the date on which copies of it are sent to members in accordance with this Part (or, if copies are sent to members on different days, the first of those days).

Circulation of written resolution proposed by directors.

182. (1) This section applies to a resolution proposed as a written resolution by the directors of the company.

(2) The company must send a copy of the resolution, at the same time so far as reasonably practicable, to all eligible members.

(3) The copy of the resolution must be accompanied by a statement informing the member -

- (a) how to signify agreement to the resolution under section 187, and

- (b) as to the date by which the resolution must be passed if it is not to lapse under section 188.

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

(5) Failure to comply with this section does not render a written resolution void.

Members' power to require circulation of written resolution.

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

(2) Any resolution may properly be moved as a written resolution unless -

- (a) it would, if passed, be ineffective (whether by reason of inconsistency with any enactment or the company's memorandum or articles or otherwise),
- (b) it is defamatory of any person, or
- (c) it is frivolous or vexatious.

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

(4) A company is required to circulate the resolution and any accompanying statement once it has received requests that it do so from members

representing not less than the requisite percentage of the total voting rights of all members entitled to vote on the resolution.

(5) The "**requisite percentage**" under subsection (4) is 5% or such lower percentage as is specified for this purpose in the company's articles.

Circulation of written resolution proposed by members.

184. (1) The company must send a copy of the resolution and (subject to section 186) any accompanying statement, at the same time so far as reasonably practicable, to all eligible members.

(2) The company must send the copies (or, if copies are sent to members on different days, the first of those copies) not more than 21 days after the date on which it becomes subject to the requirement under section 183 to circulate the resolution.

(3) The copy of the resolution must be accompanied by written guidance as to -

(a) how to signify agreement to the resolution under section 187, and

(b) the date by which the resolution must be passed if it is not to lapse under section 188.

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

(5) Failure to comply with this section does not render a written resolution void.

Expenses of circulation.

185. (1) The expenses of a company in complying with section 183 must be paid by the members who requested the circulation of the resolution unless the company resolves otherwise.

(2) Unless the company has previously so resolved, it is not bound to comply with section 183 unless there is deposited with or tendered to it a sum reasonably sufficient to meet its expenses in doing so.

Application not to circulate members' statement.

186. (1) A company is not required to circulate a members' statement under section 184 if, on an application by the company or another person who claims to be aggrieved, the Court is satisfied that the rights conferred by section 183 and that section are being abused.

(2) The Court may order the members who requested the circulation of the statement to pay the whole or part of the company's costs on such an application, even if they are not parties to the application.

Procedure for signifying assent to written resolution.

187. (1) A member signifies his agreement to a proposed written resolution when the company receives from him (or from someone acting on his behalf) an authenticated document -

- (a) identifying the resolution to which it relates, and
- (b) indicating his agreement to the resolution.

(2) A member's agreement to a written resolution, once signified, may not be revoked.

(3) A written resolution is passed when the requisite majority of eligible members have signified their agreement to it.

Period for agreeing to written resolution.

188. (1) A proposed written resolution lapses if it is not passed before the end of -

- (a) the period specified for this purpose in the company's memorandum or articles, or
- (b) if none is specified, the period of 28 days beginning with the circulation date.

(2) The agreement of a member to a written resolution is ineffective if signified after the expiry of that period.

Publication of written resolution on website.

189. (1) Notice of -

- (a) a written resolution, or
- (b) a statement relating to a written resolution,

is not validly given by a company by means of a website unless it is given in accordance with this section and Schedule 3.

(2) The notice must be available on the website throughout the period beginning with the circulation date and ending on the date on which the resolution lapses under section 188.

Relationship between this Part and company's articles.

190. A provision of the articles of a company is void in so far as it would have the effect that a resolution that is required by or otherwise provided for in an enactment could not be proposed and passed as a written resolution.

Voting

General rules.

191. (1) On a vote on a written resolution -

- (a) in the case of a company having a share capital, every member has one vote in respect of each share, and
- (b) in any other case, every member has one vote.

(2) On a vote on a resolution on a show of hands at a meeting -

- (a) every member present in person has one vote, and
- (b) every proxy present who has been duly appointed by a member entitled to vote on the resolution has one vote.

(3) On a vote on a resolution taken on a poll taken at a meeting -

- (a) in the case of a company having a share capital, every member has one vote in respect of each share, and
- (b) in any other case, every member has one vote.

(4) The provisions of this section have effect subject to any provision of the company's memorandum or articles which may, in particular, provide for the issue of shares which -

- (a) do not entitle the holder to voting rights, or
- (b) entitle the holder to restricted voting rights.

Restrictions on voting by proxies are void.

192. (1) Where a member entitled to vote on a resolution has appointed one proxy only, and the company's articles provide that the proxy has fewer votes in a vote on a resolution on a show of hands taken at a meeting than the member would have if he were present in person -

- (a) the provision about how many votes the proxy has on a show of hands is void, and
- (b) the proxy has the same number of votes on a show of hands as the member who appointed him would have if he were present at the meeting.

(2) Where a member entitled to vote on a resolution has appointed more than one proxy, subsection (1) applies as if the references to the proxy were references to the proxies taken together.

Restrictions on voting on polls or written resolutions are void.

193. In relation to a resolution required or authorised by an enactment, if a company's articles provide that a member has a different number of votes in relation to a resolution when it is passed as a written resolution and when it is passed on a poll taken at a meeting -

- (a) the provision about how many votes a member has in relation to the resolution passed on a poll is void, and

- (b) a member has the same number of votes in relation to the resolution when it is passed on a poll as he has when it is passed as a written resolution.

Votes of joint holders of shares.

194. (1) In the case of joint holders of shares of a company, only the vote of the senior holder who votes (and any proxies duly authorised by him) may be counted by the company.

(2) For the purposes of this section, the senior holder of a share is determined by the order in which the names of the joint holders appear in the register of members.

(3) Subsections (1) and (2) have effect subject to any provision of the company's articles.

Guardians and attorneys.

195. Guardians in the names of their wards and attorneys in the names of their principals may vote.

Vote splitting.

196. On a written resolution or on a poll taken at a general meeting, a member entitled to more than one vote need not, if he votes, use all his votes or cast all the votes he uses in the same way.

Second vote of chairman at meeting.

197. Subject to any provision of the company's memorandum or articles, in the case of an equality of votes at a general meeting, the chairman has a second or casting vote.

Effect of provision in company's articles as to admissibility of votes.

198. (1) This section applies where -

- (a) a person votes on a resolution of a company,
 - (b) that person was not entitled to vote as he did, and
 - (c) the company's articles provide that an objection to a person's entitlement to vote must be made in accordance with a procedure specified in the articles.
- (2) The person is deemed to have been entitled to vote as he did if

-

- (a) no objection to his entitlement to vote is made in accordance with the procedure, or
- (b) at least one objection to his entitlement to vote is made in accordance with the procedure, and each such objection is rejected in accordance with it.

Calling and holding meetings

Requirement to hold annual general meeting.

199. (1) Subject to sections 200 and 201, every company shall hold a general meeting of its members -

- (a) firstly, within a period of 18 months beginning on the date on which it was incorporated,
- (b) thereafter, at least once in every calendar year.

(2) Subject to section 201, no more than 15 months may elapse between one annual general meeting and the next.

(3) If default is made in holding a meeting in accordance with subsection (1) or (2), the company is guilty of an offence.

(4) If default is made in holding a meeting in accordance with subsection (1) or (2), any member may, not less than 14 days after the last date upon which the meeting ought to have been held, apply to the Court under this subsection.

(5) Upon hearing an application under subsection (4), the Court may direct that -

(a) the company be wound up, or

(b) a meeting be held,

or make such other order as it thinks fit.

(6) The Court may order that the costs of an application under subsection (4) be paid by any person who, in the opinion of the Court, is responsible for the default.

(7) The provisions of Part XXIII shall, subject to the provisions of subsections (4), (5) and (6), apply to the winding up of a company pursuant to this section.

(8) This section does not apply to companies which are in the course of being compulsorily wound up under Part XXIII.

Incorporated cell exempt from requirement to hold annual general meeting.

200. Subject to the other provisions of this Law, an incorporated cell is not required to hold annual general meetings under section 199 unless it is so required by -

- (a) its memorandum or articles, or
- (b) a special resolution.

Waiver of requirement to hold annual general meeting.

201. (1) The members of a company may waive the requirement to have a general meeting under section 199 by the passing of a waiver resolution.

(2) The resolution may be for a particular year or years or for an indefinite period.

(3) The effect of the resolution shall be rescinded if the company has received requests to do so from -

- (a) members who hold more than 10% of such of the capital of the company as carries the right of voting at general meetings of the company (excluding any capital held as treasury shares), or
- (b) in the case of a company not having shareholders, or having shareholders and other types of members, members who represent more than 10% of the total voting rights of all the members having a right to vote at general meetings.

(4) The rescission of the resolution only has effect in a particular calendar year (or in the period referred to in section 199(1)(a), as the case may be) if the requests from the requisite percentage of members under subsection (3) are

received by the company not later than 3 months before the end of that year (or that period, as the case may be).

Directors' power to call general meetings.

202. The directors of a company may call a general meeting of the company.

Members' power to require directors to call general meeting.

203. (1) Notwithstanding anything to the contrary in the company's memorandum or articles, the members may require the directors to call a general meeting.

(2) The directors are required to call a general meeting once the company has received requests to do so from -

- (a) members who hold more than 10% of such of the capital of the company as carries the right of voting at general meetings of the company (excluding any capital held as treasury shares), or
- (b) in the case of a company not having shareholders, or having shareholders and other types of members, members who represent more than 10% of the total voting rights of all the members having a right to vote at general meetings.

(3) A request under this section -

- (a) must state the general nature of the business to be dealt with at the meeting, and

- (b) may include the text of a resolution that may properly be moved and is intended to be moved at the meeting.
- (4) A resolution may properly be moved at a meeting unless -
 - (a) it would, if passed, be ineffective (whether by reason of inconsistency with any enactment or the company's memorandum or articles or otherwise),
 - (b) it is defamatory of any person, or
 - (c) it is frivolous or vexatious.
- (5) The provisions of this section are without prejudice to -
 - (a) the power to rescind the waiver of the requirement to hold a general meeting under section 201,
 - (b) any powers the directors have to convene a general meeting without a members' requisition.

Directors' duty to call meetings required by members.

204. (1) Directors required under section 203 to call a general meeting of the company must call a meeting -

- (a) within 21 days after the date on which they become subject to the requirement, and
- (b) to be held on a date not more than 28 days after the date of the notice convening the meeting.

(2) If the requests received by the company identify a resolution intended to be moved at the meeting, the notice of the meeting must include notice of the resolution.

(3) The business that may be dealt with at the meeting includes a resolution of which notice is given in accordance with this section.

(4) If the resolution is to be proposed as a special resolution, the directors are treated as not having duly called the meeting if they do not give the required notice of the resolution in accordance with section 178.

Power of members to call meeting at company's expense.

205. (1) If the directors -

(a) are required under section 203 to call a meeting, and

(b) do not do so in accordance with section 204,

the members who requested the meeting (or any of them representing more than one half of the total voting rights of the members who requested the meeting) may themselves call a general meeting.

(2) Where the requests received by the company included the text of a resolution intended to be moved at the meeting, the notice of the meeting must include notice of the resolution.

(3) The meeting must be called for a date not more than 3 months after the date on which the directors become subject to the requirement to call a meeting.

(4) The meeting must be called in the same manner, as nearly as possible, as that in which meetings are required to be called by the directors of the company.

(5) The business which may be dealt with at the meeting includes a resolution of which notice is given in accordance with this section.

(6) Any reasonable expenses incurred by the members requesting the meeting by reason of the failure of the directors to call a meeting must be reimbursed by the company.

(7) Any sum so reimbursed shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

Court's power to order meeting.

206. (1) This section applies if for any reason it is impracticable -

- (a) to call a meeting of a company in any manner in which meetings of that company may be called, or
- (b) to conduct the meeting in the manner prescribed by the company's memorandum or articles or this Law.

(2) 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.

(3) Where such an order is made, the Court may give such ancillary or consequential directions as it thinks expedient.

(4) Such directions may include a direction that one member of the company present at the meeting be deemed to constitute a quorum.

(5) A meeting called, held and conducted in accordance with an order under this section is deemed for all purposes to be a meeting of the company duly called, held and conducted.

Notice of meetings

Notice required for a general meeting.

207. (1) A general meeting of a company (other than an adjourned meeting) must be called by notice of at least 10 days or such longer period as the company's articles may provide.

(2) A general meeting may be called by shorter notice than otherwise required if all the members entitled to attend and vote so agree.

Publication of notice of meeting on website.

208. (1) Notice of a meeting is not validly given by a company by means of a website unless it is given in accordance with this section and Schedule 3.

(2) The notice must be available on the website throughout the period beginning with the date of the notification required by paragraph 9 of Schedule 3 and ending with the conclusion of the meeting.

Persons entitled to receive notice of meetings.

209. (1) Notice of a general meeting of a company must be sent to -

- (a) every member, and
- (b) every director.

(2) In subsection (1), the reference to members includes any person who is entitled to a share in consequence of the death or bankruptcy of a member, if the company has been notified of their entitlement.

(3) This section has effect subject to -

- (a) any enactment, and
- (b) any provision of the company's memorandum or articles.

Contents of notices of meetings.

210. (1) Notice of a general meeting of a company must -

- (a) state the time and date of the meeting,
- (b) state the place of the meeting,
- (c) contain any information which may be required by the memorandum or articles, in accordance with section 176(6), in respect of an ordinary resolution which is to be proposed at the meeting,

- (d) contain the information required under section 178(6)(a) in respect of a resolution which is to be proposed as a special resolution at the meeting,
- (e) contain the information required under section 179(6)(a) in respect of a resolution which is to be proposed as a waiver resolution at the meeting, and
- (f) contain the information required under section 180(3)(a) in respect of a resolution which is to be proposed as a unanimous resolution at the meeting.

(2) Subject to any provision of the company's memorandum or articles, notice of a general meeting must state the general nature of the business to be dealt with at the meeting.

Resolution requiring special notice.

211. (1) Where by any provision of this Law or any other enactment special notice is required of a resolution, the resolution is not effective unless notice of the intention to move it has been given to the company at least 28 days before the date of the meeting at which it is moved.

(2) The company must, where practicable, give its members notice of any such resolution in the same manner and at the same time as it gives notice of the meeting.

(3) Where that is not practicable, the company must give its members notice at least 14 days before the meeting -

- (a) by notice in La Gazette Officielle, or

- (b) in any other manner allowed by the company's articles.

(4) If, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice is deemed to have been properly given, though not given within the time required.

Procedure at meetings

Location of meeting.

212. Subject to the provisions of a company's articles, a general meeting may be held at any place in Guernsey or elsewhere.

Quorum at meeting.

213. (1) In the case of a company having only one member, one qualifying person present at a meeting is a quorum.

(2) In any other case, subject to the provisions of the company's articles, two qualifying persons -

- (a) holding 5% of the issued share capital (excluding any share capital represented by treasury shares) between them where the company is limited by shares, or
- (b) holding 5% of the total voting rights of the company where the company does not have shareholders, or has shareholders and other types of members,

present at a meeting are a quorum unless each is a qualifying person because he is appointed as proxy of a member in relation to the meeting and they are proxies of

the same member; and, for the avoidance of doubt, one qualifying person may be a quorum if the articles so provide.

- (3) For the purposes of this section, a "qualifying person" means-
 - (a) a person who is a member of the company, or
 - (b) a person appointed as proxy of a member in relation to the meeting.

Chairman of meeting.

214. (1) A member, or proxy of a member, may be elected to be chairman of a meeting by a resolution passed at the meeting.

(2) Subsection (1) is subject to any provision of the company's articles that states who may or may not be chairman.

Declaration by chairman on show of hands.

215. (1) On a vote on a resolution at a meeting on a show of hands, a declaration by the chairman that the resolution -

- (a) has or has not been passed, or
- (b) has been passed with a particular majority,

is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(2) An entry in respect of such a declaration in minutes of the meeting recorded in accordance with section 228 is also conclusive evidence of that fact without such proof.

(3) This section does not have effect if a poll is demanded in respect of the resolution (and is not subsequently withdrawn).

Right to demand a poll.

216. (1) A provision of a company's articles is void in so far as it would have the effect of excluding the right to demand a poll at a general meeting on any question other than -

- (a) the election of the chairman of the meeting, or
- (b) the adjournment of the meeting.

(2) A provision of the company's articles is void in so far as it would have the effect of making ineffective a demand for a poll on a question which is made -

- (a) by not less than 5 members having the right to vote on the resolution, or
- (b) by a member or members representing not less than 10% of the total voting rights of all the members having the right to vote on the resolution.

Participation in meeting.

217. (1) Subject to any provision to the contrary in a company's articles, 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 or read what is said or communicated by each of the others, each member so participating is deemed to be present at a meeting with the other members so participating.

(2) A meeting of members conducted pursuant to subsection (1) shall be deemed to be held in the place in which the chairman of the meeting is present.

Adjournments.

218. (1) A meeting may adjourn from time to time.

(2) At any such adjourned meeting, any resolution for which notice has been given in accordance with the articles and this Law, whether before or after the original meeting, may be passed.

(3) The adjourned meeting has the same powers as the original meeting.

(4) Any resolution passed at the adjourned meeting shall be deemed to be passed when it is actually passed and not on the date of the former meeting.

Membership details available at meeting.

219. Subject to any provision of the articles, a list of the names and addresses of all members (other than the company itself where it holds its own shares as treasury shares) showing the number of shares (or, in the case of a company without a share capital, the total voting rights) respectively held by them shall be available for inspection throughout the meeting.

Matters raised at meeting.

220. Subject to section 221, the members may raise any matter relating to the formation of the company or arising out of the directors' report, regardless of whether notice has been given.

Resolutions at meeting.

221. No resolution for which notice has not been properly given may be passed at a meeting.

*Proxies***Right to appoint proxies.**

222. (1) A member of a company is entitled to appoint another person as his proxy to exercise all or any of his rights to attend and to speak and vote at a meeting of the company.

(2) In the case of a company having a share capital, a member may appoint more than one proxy in relation to a meeting, provided that each proxy is appointed to exercise the rights attached to a different share or shares held by him.

Notice of meeting to contain statement of rights.

223. (1) In every notice calling a meeting of a company there must appear a statement informing the member of -

- (a) his rights under section 222, and
- (b) any more extensive rights conferred by the company's articles to appoint more than one proxy.

(2) Failure to comply with this section does not affect the validity of the meeting or anything done at the meeting.

(3) Where a company fails to comply with this section it is guilty of an offence.

Notice required of appointment of proxy etc.

224. (1) This section applies to -

- (a) the appointment of a proxy, and
- (b) any document necessary to show the validity of, or otherwise relating to, the appointment of a proxy.

(2) Any provision of the company's articles is void in so far as it would have the effect of requiring any such appointment or document to be received by the company or another person earlier than the following time -

- (a) in the case of a meeting or adjourned meeting, 48 hours before the time for holding the meeting or adjourned meeting,
- (b) in the case of a poll taken more than 48 hours after it was demanded, 24 hours before the time appointed for the taking of the poll,
- (c) in the case of a poll taken not more than 48 hours after it was demanded, the time at which it was demanded.

(3) In calculating the periods mentioned in subsection (2) no account shall be taken of any part of a day that is not a working day.

Right of proxy to demand a poll.

225. (1) The appointment of a proxy to vote on a matter at a meeting of a company authorises the proxy to demand, or join with others in demanding, a poll on that matter.

(2) In applying the provisions of section 216(2), a demand by a proxy counts -

- (a) for the purposes of paragraph (a) of that subsection, as a demand by the member,
- (b) for the purposes of paragraph (b) of that subsection, as a demand by a member representing the voting rights that the proxy is authorised to exercise.

Notice required of termination of proxy's authority.

226. (1) This section applies to notice that the authority of a person to act as proxy is terminated ("**notice of termination**").

(2) The termination of the authority of a person to act as proxy does not affect -

- (a) whether he counts in deciding whether there is a quorum at a meeting,
- (b) the validity of anything he does as chairman of a meeting, or
- (c) the validity of a poll demanded by him at a meeting,

unless the company receives notice of the termination before the commencement of the meeting.

(3) The termination of the authority of a person to act as proxy does not affect the validity of a vote given by that person unless the company receives notice of the termination -

- (a) before the commencement of the meeting or adjourned meeting at which the vote is given, or
- (b) in the case of a poll taken more than 48 hours after it is demanded, before the time appointed for taking the poll.

(4) If the company's articles require or permit members to give notice of termination to a person other than the company, the references above to the company receiving notice have effect as if they were or (as the case may be) included a reference to that person.

(5) Subsections (2) and (3) have effect subject to any provision of the company's articles which has the effect of requiring notice of termination to be received by the company or another person at a time earlier than that specified in those subsections: but this is subject to subsection (6).

(6) Any provision of the company's articles is void in so far as it would have the effect of requiring notice of termination to be received by the company or another person earlier than the following time -

- (a) in the case of a meeting or adjourned meeting, 48 hours before the time for holding the meeting or adjourned meeting,
- (b) in the case of a poll taken more than 48 hours after it was demanded, 24 hours before the time appointed for the taking of the poll,
- (c) in the case of a poll taken not more than 48 hours after it was demanded, the time at which it was demanded.

(7) In calculating the periods mentioned in subsection (3)(b) and (6) no account shall be taken of any part of a day that is not a working day.

Saving for more extensive rights conferred by articles.

227. Nothing in sections 222 to 226 prevents a company's articles from conferring more extensive rights on members or proxies than are conferred by those sections.

Records of resolutions and meetings

Records of resolutions and meetings etc.

228. (1) Every company must keep records comprising -

- (a) copies of all resolutions of members passed otherwise than at general meetings,
- (b) minutes of all proceedings of general meetings, and
- (c) details provided to the company in accordance with section 230.

(2) The records must be kept for at least 6 years after the date of the resolution, meeting or decision (as appropriate).

(3) Where a company fails to comply with this section it is guilty of an offence.

(4) The duty imposed upon an incorporated cell under this section lies with its incorporated cell company.

Records as evidence of resolutions etc.

229. (1) This section applies to the records kept in accordance with section 228.

(2) Where there is a record of a written resolution, the requirements of this Law in respect of the passing of the resolution are deemed to be complied with unless the contrary is proved.

(3) The minutes of proceedings of a general meeting, if purporting to be signed by the chairman of that meeting or by the chairman of the next general meeting, are evidence of the proceedings at the meeting.

(4) Where there is a record of proceedings of a general meeting of a company, then, unless the contrary is proved -

- (a) the meeting is deemed duly held and convened,
- (b) all proceedings at the meeting are deemed to have duly taken place, and
- (c) all appointments at the meeting are deemed valid.

Records of decisions by sole member.

230. (1) This section applies to a company that has only one member.

(2) Where the member takes any decision that -

- (a) may be taken by the company in general meeting, and
- (b) has effect as if agreed by the company in general meeting,

he must (unless that decision is taken by way of a written resolution) provide the company with details of that decision.

(3) Where a person fails to comply with this section he is guilty of an offence.

(4) Failure to comply with this section does not affect the validity of any decision referred to in subsection (2).

Rights to inspect and require copies.

231. (1) The records referred to in section 228 must be open, during ordinary business hours, to the inspection of any member or director of the company without charge.

(2) Any -

(a) member, on payment of such fee as may be prescribed by the Department or such lesser fee as the company may stipulate, or

(b) director,

may require a copy of any of the records referred to in section 228.

(3) Where a company fails to comply with this section it is guilty of an offence and the Court may by order compel an immediate inspection or, as the case may be, direct that the copy be sent to the person requesting it.

Application to class meetings

Application to class meetings: shareholders.

232. (1) Subject to subsection (2), the provisions of this Part, other than sections -

(a) 199 to 201, and

(b) 203 to 206,

apply (with necessary modifications) in relation to a meeting of holders of a class of shares as they apply in relation to a general meeting.

(2) The following provisions do not apply in relation to a meeting in connection with the variation of rights attached to a class of shares (a "**variation of class rights meeting**") -

(a) section 213, and

(b) section 216.

(3) The quorum for a variation of class rights meeting is -

(a) for a meeting other than an adjourned meeting, two persons present holding at least one-third of the voting rights of the class in question,

(b) for an adjourned meeting, one person present holding shares of the class in question,

(c) where the class has only one member, that member.

(4) For the purposes of subsection (3), where a person is present by proxy or proxies, he is treated as holding only the shares in respect of which the proxies are authorised to exercise voting rights.

(5) At a variation of class rights meeting, any holder of shares of the class in question present may demand a poll.

(6) For the purposes of this section -

- (a) any alteration of a provision contained in a company's articles for the variation of the rights attached to a class of shares, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights, and
- (b) references to the variation of rights attached to a class of shares include references to their abrogation.

Application to class meetings: members who are not shareholders.

233. (1) Subject to subsection (2), the provisions of this Part, other than sections -

- (a) 199 to 201, and
- (b) 203 to 206,

apply (with necessary modifications) in relation to a meeting of a class of members who are not shareholders as they apply in relation to a general meeting.

(2) The following provisions do not apply in relation to a meeting in connection with the variation of rights of a class of members who are not shareholders (a "**variation of class rights meeting**") -

- (a) section 213, and
 - (b) section 216.
- (3) The quorum for a variation of class rights meeting is -
- (a) for a meeting other than an adjourned meeting, two members present (in person or by proxy) who together represent at least one-third of the voting rights of the class,
 - (b) for an adjourned meeting, one member of the class present (in person or by proxy),
 - (c) where the class has only one member, that member.
- (4) At a variation of class rights meeting, any member present (in person or by proxy) may demand a poll.
- (5) For the purposes of this section -
- (a) any alteration of a provision contained in a company's articles for the variation of the rights of class of members, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights, and
 - (b) references to the variation of rights attached to a class of members include references to their abrogation.

PART XIV

ANNUAL VALIDATION

Duty to submit annual validation.

234. (1) In each calendar year before the 31st January, every company incorporated before 1st December in the previous calendar year shall -

- (a) complete an annual validation containing information current on the 31st December in that previous year,
- (b) deliver to the Registrar -
 - (i) the validation,
 - (ii) a declaration of compliance (annual validation),
 - (iii) where necessary, such information as will allow the Registrar to confirm the fee payable, and
 - (iv) where necessary, its consent to allow the Registrar to seek further information from the Administrator of Income Tax in order to confirm the fee payable, and
- (c) file a copy of the validation in a register kept by the company for that purpose.

(2) The duty imposed upon an incorporated cell under subsection (1) lies with its incorporated cell company.

Content of annual validation.

235. (1) The annual validation shall be in such form as the Registrar directs and shall state -

- (a) the address of the company's registered office,
- (b) the particulars of its directors required to be entered in its register of directors under section 143,
- (c) where the company is obliged to keep a record of the directors' usual residential addresses in accordance with section 147, that it was current as at the 31st December of the year to which the annual validation relates and that any change in that record has been notified to the Registrar in accordance with section 148,
- (d) the particulars of its resident agent required to be entered in its record of resident agent under section 485,
- (e) the category or categories of its principal business activities by reference to a system of classifying business activities prepared by the Registrar,
- (f) whether the company is exempt from audit in its current financial year,
- (g) where the company is an incorporated cell company, the name and registration number of each of its incorporated cells,

- (h) that the company's register of members kept in accordance with section 123 was current as at the 31st December of the year to which the annual validation relates, and
- (i) that the information contained in the validation was current as at the 31st December of the year to which it relates.

(2) Where the company has a share capital, the annual validation shall state -

- (a) the number of issued shares,
- (b) the aggregate value of those shares (whether on account of the nominal value of the shares or by way of premium),
- (c) the amount paid up and the amount (if any) unpaid on those shares (whether on account of the nominal value of the shares or by way of premium),
- (d) the number of shares redeemed by the company in the calendar year to which the validation relates together with the total redemption price, and
- (e) the number of shares held as treasury shares,

and, where the company has more than one class of share, the validation shall also state the above matters in respect of each class of share.

(3) Where shares have been issued otherwise than for cash, the amounts referred to in subsection (2)(b) shall distinguish between cash and consideration otherwise than cash.

(4) Where the company has guarantee members, the annual validation shall state the number of guarantee members it has and the aggregate guaranteed amount of all its guarantee members.

Declaration of compliance (annual validation).

236. (1) A declaration of compliance (annual validation) is a declaration, signed by a director or secretary of the company, that all the requirements of this Law in respect of the annual validation have been fulfilled.

(2) The Registrar, when performing his functions under this Law, may rely upon the declaration in all respects and accordingly is not bound to enquire further as to whether, in relation to the annual validation, the provisions of this Law have been complied with.

(3) A person who without reasonable excuse makes a declaration which is false, deceptive or misleading in a material particular is guilty of an offence.

Failure to submit annual validation.

237. (1) A company which fails to comply with section 234 or 235 is -

- (a) guilty of an offence and in addition liable to a daily default fine, and
- (b) liable to a civil penalty.

(2) A company which fails to comply with section 234 or 235 is liable to be struck off the Register of Companies in accordance with Part XX.

(3) An annual validation and declaration of compliance (annual validation) which has been delivered to the Registrar which does not comply with all the requirements of this Part shall be treated as if it has not been delivered to the Registrar.

PART XV ACCOUNTS AND REPORTS

Accounting records

Accounting records.

238. Every company shall keep accounting records which are sufficient to show and explain its transactions and are 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 are prepared properly and in accordance with any relevant enactment for the time being in force.

Retention of accounting records.

239. (1) A company's accounting records shall be kept -

- (a) at the company's registered office, or
- (b) at such other place as its directors think fit.

(2) If accounting records are kept at a place outside Guernsey, returns in respect of the business dealt with in the accounting records shall be sent to

and kept at a place in Guernsey and those returns shall 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 are prepared properly and in accordance with any relevant enactment for the time being in force.

(3) Accounting records (and, where returns are sent, returns) shall be kept by the company for a period of at least 6 years after the date on which they are made.

Inspection of accounting records and returns.

240. Accounting records (and, where returns are sent, returns) shall at all reasonable times be open to inspection by any director, secretary or officer of the company at the place at which they are kept.

Application to incorporated cells.

241. The duties imposed upon an incorporated cell under sections 238 to 240 lie with its incorporated cell company.

Offences in connection with accounting records.

242. (1) A company which fails to comply with sections 238 to 241 is guilty of an offence.

(2) An officer of a company who fails to take all reasonable steps for securing compliance by the company with section 239(3) is (without prejudice to the provisions of section 515) guilty of an offence.

*Accounts***Preparation of individual accounts.**

243. (1) Subject to section 244, the directors of every company shall prepare accounts of that company for each of the company's financial years ("**individual accounts**").

(2) The accounts shall include -

(a) a profit and loss account, and

(b) a balance sheet.

(3) The accounts shall -

(a) give (and state that they give) a true and fair view,

(b) be in accordance (and state that they are in accordance) with generally accepted accounting principles and state which principles have been adopted, and

(c) comply (and state that they comply) with any relevant enactment for the time being in force.

(4) The accounts shall be approved by the board of directors and signed on their behalf by at least one of them.

Preparation of consolidated accounts for associated companies.

244. (1) The directors of associated companies may, if they think fit, prepared consolidated accounts of those companies ("**consolidated accounts**").

(2) The consolidated accounts shall include -

(a) a profit and loss account, and

(b) a balance sheet.

(3) The consolidated accounts shall -

(a) give (and state that they give) a true and fair view,

(b) be in accordance (and state that they are in accordance) with generally accepted accounting principles and state which principles have been adopted, and

(c) comply (and state that they comply) with any relevant enactment for the time being in force.

(4) The consolidated accounts shall be approved by the board of directors of each associated company and signed on their behalf by at least one director from each board.

(5) If the directors of a company prepare consolidated accounts for a financial year, they are not required to prepare individual accounts in accordance with section 243 for that financial year.

(6) The members of a company may, by ordinary resolution, require the preparation of individual accounts in respect of that company and, if they do, the directors must prepare accounts for that company in accordance with section 243.

Meaning of "accounts" and "financial year".

245. In this Law -

"**accounts**" means either individual accounts prepared in accordance with section 243 or consolidated accounts prepared in accordance with section 244,

"**financial year**" means -

- (a) firstly, the period beginning on the date on which a company was incorporated and ending within 18 months of that date,
- (b) thereafter, the period beginning on the day after its previous financial year ended and ending within 18 months of that date.

Preparation of accounts of incorporated cells.

246. The functions of the directors of an incorporated cell under sections 243 and 244 lie with the directors of its incorporated cell company.

Offences in connection with accounts.

247. A company in respect of which there is a failure to comply with section 243 or 244 is guilty of an offence.

Directors' report

Duty to prepare directors' report.

248. (1) The directors of every company shall prepare a directors' report for each of the company's financial years.

(2) The directors' report must state the principal activities (if any) of the company in the course of the financial year and may be in summary form.

(3) The directors of associated companies may, if they think fit, combine their directors' reports, and if the combined report states the principal

activities of all associated companies, the requirements of this section are satisfied.

Directors' report where company is audited.

249. (1) This section applies to a company unless it is exempt from audit in accordance with section 256 for the financial year in question.

(2) The directors' report must contain a statement to the effect that, in the case of each of the persons who are directors at the time the report is approved -

- (a) so far as the director is aware, there is no relevant audit information of which the company's auditor is unaware, and
- (b) he has taken all the steps he ought to have taken as a director to make himself aware of any relevant audit information and to establish that the company's auditor is aware of that information.

(3) A director is regarded as having taken all the steps that he ought to have taken as a director in order to do the things mentioned in subsection (2)(b) if he has -

- (a) made such enquiries of his fellow directors and of the company's auditors for that purpose, and
- (b) taken such other steps (if any) for that purpose,

as are required by his duty as a director of the company to exercise reasonable care, skill and diligence.

(4) Where a director's report containing the statement required by

this section is approved but the statement is false, every director of the company who -

- (a) knew that the statement was false or was reckless as to whether it was false, and
- (b) failed to take reasonable steps to prevent the report from being approved,

is guilty of an offence.

(5) In this section "**relevant audit information**" means information needed by the company's auditor in connection with preparing his report.

Directors' report where company is not audited.

250. Where a company is exempt from audit in accordance with section 256, its directors' report must state that its accounts are exempt from the requirement to be audited and have not been audited.

Rights to accounts and reports

Delivery of accounts and reports to members and officers.

251. (1) Every company must send a copy of -

- (a) its accounts,
- (b) its directors' report, and
- (c) its auditor's report (where one is required under Part XVI),

to each member of the company within 12 months after the end of the financial year to which they relate.

- (2) Every company must send a copy of the most recent -
 - (a) accounts,
 - (b) directors' report, and
 - (c) auditor's report (where one is required under Part XVI),

to a member or officer of the company within 7 days after the date on which the member makes such a request, provided that he has not previously made such a request within that financial year.

(3) The duty imposed upon an incorporated cell under this section lies with its incorporated cell company.

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

(5) If subsection (1) is not complied with, any member may, not less than 14 days after the date mentioned in that subsection, apply to the Court under this subsection.

(6) Upon hearing an application under subsection (5), the Court may -

- (a) direct that the company be wound up,

(b) direct that the accounts or reports (as the case may be) be sent, or

(c) make such other order as it thinks fit.

(7) The Court may order that the costs of an application under subsection (5) be paid by any person who, in the opinion of the Court, is responsible for the default.

(8) The provisions of Part XXIII shall, subject to the provisions of subsections (5), (6) and (7), apply in relation to the winding up of a company pursuant to this section.

Laying of accounts and reports before general meeting.

252. If a company holds a general meeting under section 199, it shall lay before that meeting copies of its most recent -

(a) accounts,

(b) directors' report, and

(c) auditor's report (where one is required under Part XVI).

Application to incorporated cell companies.

253. The duties imposed upon an incorporated cell under section 251 lie with its incorporated cell company.

Application to protected cell companies.

254. The memorandum or articles of a protected cell company may provide that -

- (a) a member of a cell of a protected cell company who is not a member of its core may be provided only with so much of its accounts, directors' report and auditor's report as relate to the cell,
- (b) a member of the core of a protected cell company who is not a member of a cell may be provided only with so much of its accounts, directors' report and auditor's report as relate to the core.

PART XVI

AUDIT

Requirement for and exemption from audit

Requirement for audit.

255. A company's accounts for a financial year must be audited in accordance with the provisions of this Part unless the company is exempt from audit under the provisions of section 256.

Exemption from audit.

256. (1) The members of a company may pass a waiver resolution exempting the company from the requirement under section 255 to have its accounts for a financial year audited.

(2) A resolution under subsection (1) must be passed -

- (a) in the financial year before the financial year to which it relates, or
- (b) if the financial year is the company's first financial year, in that financial year.

(3) The effect of the resolution under subsection (1) shall be rescinded if the company has received requests to do so from -

- (a) members holding more than 10% in value of the company's share capital or any class of it (excluding any shares held as treasury shares), or
- (b) if the company does not have a share capital, more than 10% in number of the members of the company.

(4) The rescission of the resolution under subsection (1) shall only have effect in a particular financial year if the requests from the requisite percentage of members under subsection (3) are received by the company not later than 3 months after the beginning of that financial year.

(5) The passing of a resolution under subsection (1) only has effect in respect of its obligations under this Law and does not prejudice any other obligation of a company to have its accounts audited.

(6) The Department may make regulations preventing certain types, classes or descriptions of company from being exempt from audit.

Appointment of auditor

Appointment of auditor.

257. (1) An auditor must be appointed for each financial year of a company, unless -

- (a) the company is exempt from audit for that financial year, or

- (b) the directors reasonably resolve otherwise on the ground that audited accounts are unlikely to be required.

(2) For each financial year for which an auditor is appointed (other than the company's first financial year), the appointment must be made within 28 days after -

- (a) the end of the time allowed for sending out copies of the company's annual accounts and reports for the previous financial year, or
- (b) if earlier, the day on which copies of the company's annual accounts and reports for the previous financial year are sent out,

and this period is the "**period for appointing auditors**".

(3) The directors may appoint an auditor of the company -

- (a) at any time before the company's first period for appointing auditors,
- (b) following a period during which the company (being exempt from audit) did not have any auditor, at any time before the company's next period for appointing auditors, or
- (c) to fill a casual vacancy in the office of auditor.

(4) The members may appoint an auditor of the company by ordinary resolution -

- (a) during a period for appointing auditors,
- (b) if the company should have appointed an auditor during a period for appointing auditors but failed to do so, or
- (c) where the directors have power to appoint under subsection (3) but have failed to make an appointment.

(5) If an auditor is not appointed within 28 days after the day on which the members could have so appointed him under subsection (4), the Court may, on the application of a member or creditor of the company, appoint an auditor of the company for that financial year.

Term of office of auditor.

258. (1) An auditor of a company holds office in accordance with the terms of his appointment, subject to the requirements that -

- (a) he does not take office until any previous auditor ceases to hold office, and
- (b) he ceases to hold office at the end of the next period for appointing auditors unless re-appointed.

(2) Where no auditor has been appointed by the end of the next period for appointing auditors, any auditor in office immediately before that time is deemed to be re-appointed at that time, unless -

- (a) he was appointed by the directors,
- (b) the company's articles require actual re-appointment,

- (c) the members have resolved that he should not be re-appointed,
- (d) the company is exempt from audit for the financial year, or
- (e) the directors have resolved that no auditor should be appointed for the financial year in question.

(3) This section is without prejudice to the provisions of this Part as to removal and resignation of auditors.

(4) No account shall be taken of any loss of opportunity of deemed re-appointment under this section in ascertaining the amount of compensation or damages payable to an auditor on his ceasing to hold office for any reason.

Remuneration of auditor.

259. The remuneration of an auditor appointed by -

- (a) the members, shall be determined by -
 - (i) the members by ordinary resolution, or
 - (ii) the directors, if the members by ordinary resolution so resolve,
- (b) the directors, shall be determined by the directors,
- (c) the Court, shall be determined by the Court.

Qualification for appointment as auditor.

260. (1) An individual is not qualified for appointment as an auditor unless he is -

- (a) a member of an appropriate body, or
- (b) for the time being authorised by the Department to audit the accounts of companies as having similar qualifications obtained outside the United Kingdom,

and in this section such an individual is termed a "**qualified individual**".

(2) A partnership is not qualified for appointment as auditor unless -

- (a) control of the partnership rests with qualified individuals, and
- (b) every partner who is not a qualified individual satisfies any applicable requirement of an appropriate body to observe and uphold the ethical standards thereof.

(3) A body corporate is not qualified for appointment as auditor unless -

- (a) control of the body corporate rests with qualified individuals, and
- (b) every director who is not a qualified individual satisfies any applicable requirement of an appropriate body to observe and uphold the ethical standards thereof.

(4) An officer or servant of a company, or a partner or employee of an officer or servant of a company, is not qualified for appointment by that company as an auditor.

(5) Subsections (1) to (4) are without prejudice to any other relevant enactment for the time being in force, and in this section the words "qualified" and "disqualified" are to be construed accordingly.

(6) An auditor who becomes disqualified during his term of office shall -

- (a) forthwith cease to act as auditor, and
- (b) notify the company accordingly in writing.

(7) A person who -

- (a) acts as auditor of a company when he knows that he is disqualified, or
- (b) fails without reasonable cause to give a notification in accordance with subsection (6)(b),

is guilty of an offence.

(8) In this section -

"appropriate body" means -

- (a) the Institute of Chartered Accountants in England and Wales,

- (b) the Institute of Chartered Accountants in Ireland,
- (c) the Institute of Chartered Accountants of Scotland,
- (d) the Association of Chartered Certified Accountants, or
- (e) such other body as may be prescribed by the Department,

"control" means entitlement to exercise a majority of the votes cast -

- (a) in the case of a partnership, at any meeting of the partners or other management body, and
- (b) in the case of a body corporate, at any meeting of the members or directors or other management body.

Appointment etc. of auditor of incorporated cells.

261. (1) The functions imposed upon the directors of an incorporated cell in respect of the appointment and remuneration of its auditors lie with the directors of its incorporated cell company.

(2) An incorporated cell may, with the agreement of the directors of its incorporated cell company, elect -

- (a) in its memorandum or articles, or
- (b) by way of a special resolution,

that the functions of the members of an incorporated cell in respect of the appointment and remuneration of its auditors shall lie with and be exercised by the

directors of its incorporated cell company.

Auditor's report

Auditor's report.

262. (1) A company's auditor must make a report to the company's members on all accounts of the company of which copies are, during his tenure of office, to be sent out to members under section 251.

(2) The auditor's report shall state whether in the auditor's opinion, the accounts -

- (a) give a true and fair view,
- (b) are in accordance with generally accepted accounting principles, and
- (c) comply with any relevant enactment for the time being in force.

(3) The auditor's report must state the name of the auditor and be signed and dated.

Functions of auditors

Duties of auditor.

263. (1) A company's auditor, in preparing his report, must carry out such investigations as will enable him to form an opinion as to -

- (a) whether proper accounting records have been kept by the company, and

- (b) whether the company's accounts are in agreement with the accounting records.

(2) If the auditor is of the opinion -

- (a) that proper accounting records have not been kept by the company, or
- (b) that the company's accounts are not in agreement with the accounting records,

the auditor shall state that fact in his report.

(3) If the auditor fails to obtain all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit, he shall state that fact in his report.

Auditor's general right to information.

264. (1) An auditor of a company -

- (a) has a right of access at all times to the company's books, accounts and vouchers (in whatever form they are held), and
- (b) may require any of the following persons to provide him with such information or explanations as he thinks necessary for the performance of his duties as auditor.

(2) Those persons are -

- (a) any officer or employee of the company,

- (b) any person holding or accountable for any of the company's books, accounts or vouchers,
- (c) any associated company which is not an overseas company,
- (d) any officer, employee or auditor of any such associated company or any person holding or accountable for any books, accounts or vouchers of any such associated company, and
- (e) any person who fell within any of paragraphs (a) to (d) at a time to which the information or explanations required by the auditor relate.

(3) A statement made by a person in response to a requirement under this section may not be used in evidence against him in criminal proceedings except proceedings for an offence under section 266.

(4) Nothing in this section compels a person to disclose information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

Auditor's right to information from overseas associated companies.

265. (1) Where a company has an associated company which is an overseas company, the auditor of the company may require the company to obtain from any of the following persons such information or explanations as he may reasonably require for the purposes of his duties as auditor.

(2) Those persons are -

- (a) the associated company,

- (b) any officer, employee or auditor of the associated company,
- (c) any person holding or accountable for any of the associated company's books, accounts or vouchers, and
- (d) any person who fell within paragraph (b) or (c) at a time to which the information or explanations relate.

(3) If so required, the company must take all such steps as are reasonably open to it to obtain the information or explanations from the person concerned.

(4) A statement made by a person in response to a requirement under this section may not be used in evidence against him in criminal proceedings except proceedings for an offence under section 266.

(5) Nothing in this section compels a person to disclose information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

(6) For the purposes of this section, a subsidiary within the meaning of section 531 includes a body corporate which would be a subsidiary but for the fact that it is an overseas company.

Offences in connection with auditor's right to information.

266. (1) A person who knowingly or recklessly makes to an auditor of a company a statement (oral or written) that -

- (a) conveys or purports to convey any information or

explanations which the auditor requires, or is entitled to require, under section 264, and

- (b) is misleading, false or deceptive in a material particular,

is guilty of an offence.

(2) A person who fails to comply with a requirement under section 264 without delay is guilty of an offence unless it was not reasonably practicable for him to provide the required information or explanations.

(3) A company that fails to comply with section 265 is guilty of an offence.

(4) Nothing in this section affects any right of an auditor to apply for an injunction to enforce any of his rights under section 264 or 265.

Auditor's rights in relation to resolutions and meetings.

267. (1) In relation to a written resolution proposed to be agreed to by a company, the company's auditor is entitled to receive such communications relating to the resolution as, by virtue of any provision of Part XIII, are required to be supplied to a member of the company.

(2) A company's auditor is entitled -

- (a) to receive all notices of, and other communications relating to, any general meeting which a member of the company is entitled to receive,
- (b) to attend any general meeting of the company, and

- (c) to be heard at any general meeting which he attends on any part of the business of the meeting which concerns him as auditor.

(3) Where the auditor is not an individual, the right to attend or be heard at a meeting is exercisable by an individual authorised by the auditor in writing to act as its representative at the meeting.

Removal of auditor

Resolution removing auditor from office.

268. (1) The members of a company may remove an auditor from office at any time.

(2) This power is exercisable only -

- (a) by ordinary resolution at a general meeting, and
- (b) in accordance with section 269.

(3) Nothing in this section is to be taken as depriving the auditor removed of compensation or damages payable to him in respect of the termination -

- (a) of his appointment as auditor, or
- (b) of any appointment terminating with that as auditor.

(4) An auditor may not be removed from office before the expiration of his term of office except by resolution under this section.

Special notice required for resolution removing auditor from office.

269. (1) Special notice is required for a resolution at a general meeting

of a company removing an auditor from office.

(2) On receipt of notice of such an intended resolution the company must immediately send a copy of it to the person proposed to be removed.

(3) The auditor proposed to be removed may make in respect of the intended resolution representations in writing to the company (not exceeding a reasonable length) and request their notification to members of the company.

(4) The company must (unless the representations are received too late for it to do so) -

(a) in any notice of the resolution given to members of the company, state the fact of the representations having been made, and

(b) send a copy of the representations to every member of the company to whom notice of the meeting is or has been sent.

(5) If a copy of any such representations is not sent out as required because they were received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representations be read out at the meeting.

(6) Copies of the representations need not be sent out and the representations need not be read at the meeting if, on the application either of the company or of any other person claiming to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused.

(7) The Court may order the company's costs on an application under subsection (6) to be paid in whole or in part by the auditor, notwithstanding

that he is not a party to the application.

Rights of auditor who has been removed from office.

270. (1) An auditor who has been removed by resolution under section 268 has, notwithstanding his removal, the rights conferred by section 267(2) in relation to any general meeting of the company -

- (a) at which his term of office would otherwise have expired, or
- (b) at which it is proposed to fill the vacancy caused by his removal.

(2) In such a case the references in that section to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a former auditor.

Resignation of auditor

Resignation of auditor.

271. (1) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office.

(2) The notice is not effective unless it is accompanied by the statement required under -

- (a) section 273(1), or
- (b) section 273(2).

(3) An effective notice of resignation operates to bring the auditor's term of office to an end as of the date on which the notice is deposited or

on such later date as may be specified in it.

Rights of resigning auditor.

272. (1) This section applies where an auditor's notice of resignation is accompanied by a statement of the circumstances connected with his resignation under section 273(1).

(2) The auditor may deposit with the notice a signed requisition calling on the directors of the company forthwith duly to convene a general meeting of the company for the purposes of receiving and considering such explanation of the circumstances connected with his resignation as he may wish to place before the meeting.

(3) The auditor may request that the company circulates to its members -

- (a) before the meeting convened on his requisition, or
- (b) before any general meeting at which his term of office would otherwise have expired or at which it is proposed to fill the vacancy caused by his resignation,

a statement in writing (not exceeding a reasonable length) of the circumstances connected with his resignation.

(4) The company must (unless the statement is received too late for it to comply) -

- (a) in any notice of the meeting given to the members of the company, state the fact of the statement having been made, and

- (b) send a copy of the statement to every member of the company to whom notice of the meeting is or has been sent.

(5) The directors must within 21 days after the date of the deposit of a requisition under this section proceed duly to convene a meeting for a day not more than 28 days after the date on which the notice convening the meeting is given.

(6) A company which fails to comply with subsection (5) is guilty of an offence.

(7) If a copy of the statement mentioned above is not sent out as required because it was received too late or because of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the statement be read out at the meeting.

(8) Copies of a statement need not be sent out and the statement need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused.

(9) The Court may order the company's costs on an application under subsection (8) to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

(10) An auditor who has resigned has, notwithstanding his resignation, the rights conferred by section 267(2) in relation to any such general meeting of the company as is mentioned in subsection (3)(a) or (b) above; and in such a case the references in that section to matters concerning the auditor as auditor shall be construed as references to matters concerning him as a former auditor.

Statement by auditor on ceasing to hold office

Statement by auditor to be deposited with company.

273. (1) Where an auditor of a company ceases for any reason to hold office, he must deposit at the company's registered office a statement of the circumstances connected with his ceasing to hold office, unless he considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company.

(2) If an auditor considers that there are no circumstances in connection with his ceasing to hold office that need to be brought to the attention of members or creditors of the company, he must deposit at the company's registered office a statement to that effect.

(3) A statement required by this section must be deposited -

- (a) in the case of resignation, along with the notice of resignation,
- (b) in the case of failure to seek re-appointment, not less than 14 days before the end of the time allowed for next appointing an auditor, and
- (c) in any other case, within 14 days after the date on which he ceases to hold office.

Company's duties in relation to statement.

274. (1) This section applies where a statement is deposited under section 273(1).

(2) The company must within 14 days after the date of the deposit of the statement either -

- (a) send a copy of it to every member and officer of the company, or
 - (b) apply to the Court.
 - (3) If the company applies to the Court, it must notify the auditor of the application.
 - (4) If the Court is satisfied that the auditor is abusing the rights conferred by section 273 -
 - (a) it shall direct that copies of the statement need not be sent out, and
 - (b) it may further order the company's costs on the application to be paid in whole or in part by the auditor, even if he is not a party to the application,
- and the company must within 14 days after the date of the Court's decision send to the persons mentioned in subsection (2)(a) a statement setting out the effect of the order.
- (5) If no such direction is made the company must send copies of the statement to the persons mentioned in subsection (2)(a) within 14 days after the date of the Court's decision or, as the case may be, the date of the discontinuance of the proceedings.
 - (6) A company which fails to comply with this section is guilty of an offence.

(7) In proceedings for such an offence it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.