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Projet de Loi entitled “The Companies (Guernsey) Law, 2008” –
Parts XVII to XXXII and Schedules

*NB Parts I to XVI are contained in Volume II of the
Legislation Brochure*

PART XVII
CAPITAL AND SHARES

Shares

Legal nature of shares.

275. The shares of any shareholder in a company are personal estate.

Rights and powers attaching to shares.

276. (1) A share in a company confers on the shareholder -

- (a) the right to vote on resolutions of the company,
- (b) the right to an equal share in dividends authorised by the board of directors, and
- (c) the right to an equal share in the distribution of the surplus assets of the company.

(2) The rights specified in subsection (1) may be varied by the memorandum and articles of the company or in accordance with the terms on which the share is issued.

Types of share.

277. (1) Subject to the memorandum and articles, different classes of share may be issued in a company.

(2) Without prejudice to the generality of subsection (1), shares may be issued which -

- (a) are redeemable,
- (b) confer preferential rights to distribution of capital or income,
- (c) do not entitle the holder to voting rights,
- (d) entitle the holder to restricted voting rights.

Shares of no par value.

278. (1) A company may issue shares which have no nominal or par value ("**shares of no par value**") if it is authorised to do so by its memorandum or articles.

(2) A company with power to issue shares of no par value may, but need not, also have power to issue shares with a nominal or par value.

(3) The consideration for which and the terms upon which a company may issue shares of no par value shall be determined in accordance with the provisions of the company's memorandum or articles.

Currency of shares.

279. Shares may be denominated in any currency and different classes of shares may be denominated in different currencies (or no currency, in the case of shares of no par value).

Fractional shares.

280. A company may, if so authorised by its memorandum or articles, issue fractions of a share, which shall, except to the extent that the company's memorandum or articles provide otherwise, carry the corresponding proportion of

rights, liabilities and other attributes of whole shares of the same class; and in this Law the word "share" includes fractions of a share so issued, and cognate expressions shall be construed accordingly.

Low value shares.

281. The value of a share may be expressed as an amount which is less than the smallest unit of legal tender of the currency (or any of the currencies) in which the company's share capital is expressed.

Numbering of shares.

282. (1) Each share in a company shall, subject to subsection (2), be distinguished by its particular number.

(2) If at any time -

- (a) all the issued shares in a company are fully paid up and rank *pari passu* for all purposes, or
- (b) all the issued shares of a particular class in a company are fully paid up and rank *pari passu* for all purposes,

none of those shares need thereafter have a distinguishing number so long as they remain fully paid up and rank *pari passu* for all purposes with all shares of the same class for the time being issued and fully paid up.

No conversion into stock.

283. A company's shares may no longer be converted into stock.

Different amounts may be paid on shares.

284. A company may, if so authorised by its memorandum or articles -

- (a) make arrangements, on the issue of shares, to distinguish between shareholders as to the amounts and times of payment of calls on their shares,
- (b) accept from any shareholder the whole or any part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up, or
- (c) pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

Share certificates.

285. A company may, but need not, issue share certificates.

Share capital

Reserve liability of company.

286. A company may by special resolution determine that any portion of its share capital which has not been called up shall not be capable of being called up except in the event and for the purposes of the company being wound up and, if a company so resolves, that portion may not be called up except in that event and for those purposes.

Power of company to alter share capital.

287. (1) A company may, if so authorised by its memorandum or articles, by ordinary resolution alter its memorandum so as to -

- (a) consolidate and divide all or any of its share capital into shares of larger amounts than its existing shares,
- (b) subject to subsection (2), subdivide all or any of its shares into shares of a smaller amount than is fixed by the memorandum,
- (c) cancel shares which, at the date of the passing of the resolution, have not been taken up or agreed to be taken up by any person, and diminish the amount of its share capital by the amount of the shares so cancelled,
- (d) convert all or any of its shares the nominal amount of which is expressed in a particular currency or former currency into shares of a nominal amount of a different currency, the conversion being effected at the rate of exchange (calculated to not less than 3 significant figures) current on the date of the resolution or on such other day as may be specified therein,
- (e) where its share capital is expressed in a particular currency or former currency, denominate or redenominate it, whether by expressing its amount in units or subdivisions of that currency or former currency, or otherwise.

(2) In any subdivision under subsection (1)(b), the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall

be the same as that proportion in the case of the share from which the reduced share was derived.

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

(4) A copy of every resolution under this section shall be delivered by the company to the Registrar within 30 days after the date on which it was passed.

(5) Failure to comply with subsection (4) does not render the 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.

Share certificates and reduction of share capital.

288. (1) Where, whether by operation of law or pursuant to a resolution under section 287(1)(d) or (e) -

- (a) any of a company's shares, the nominal amount of which is expressed in a particular currency or former currency, are converted into shares of a nominal amount of a different currency, or
- (b) a company's share capital, being expressed in a particular currency or former currency, is

denominated or redenominated, whether by expression in units or subdivisions of that currency or former currency or otherwise,

then, notwithstanding any provision to the contrary in the company's memorandum or articles, subsection (2) applies.

- (2) Where this subsection applies -
- (a) the company is not obliged to issue new share certificates showing the different nominal amounts of the shares in question,
 - (b) the existing share certificates, notwithstanding the conversion, denomination or redenomination, continue to be valid, and
 - (c) any reduction of the nominal amounts of the individual shares or of the amount of the company's share capital which is attributable solely to the conversion, denomination or redenomination does not constitute a reduction of share capital provided that -
 - (i) the reduction does not extinguish or reduce the liability on any share in respect of capital which is not paid up (and for the purposes hereof a rounding down in accordance with the *lex monetae* or in accordance with the provisions of section 287(1)(d) of the amount not paid up on any share shall be deemed not to

be an extinction or reduction of any such liability), and

- (ii) the reduction does not reduce the net assets of the company.

Transfer of shares

Transfer of shares.

289. (1) The shares of any shareholder in a company are transferable in the manner provided by the company's memorandum or articles.

(2) The provisions of this section are subject to the Uncertificated Securities (Enabling Provisions) (Guernsey) Law, 2005^a and any Ordinance or regulation made under that Law.

Transfer of shares of deceased shareholders.

290. Any transfer of the shares of a deceased shareholder made by his heir, executor or other lawful representative is, provided that all other formalities prescribed for the validity of such transfers are observed, valid notwithstanding that the transferor's name is not entered in the register of members.

Issue of shares

Exercise by directors of powers to issue shares etc.

291. (1) The directors of a company must not exercise any power of the company -

^a Order in Council No. VI of 2005.

- (a) to issue shares in the company, or
- (b) to grant rights to subscribe for, or to convert any security into, shares in the company,

except in accordance with section 292 or section 293.

(2) Subsection (1) does not apply -

- (a) to the issue of shares in pursuance of an employees' share scheme, or
- (b) to the grant of a right to subscribe for, or to convert any security into, shares so issued.

(3) If this section applies in relation to the grant of a right to subscribe for, or to convert any security into, shares, it does not apply in relation to the issue of shares pursuant to that right.

(4) A director who fails to comply with, or permits or authorises a contravention of, this section, is guilty of an offence.

(5) Nothing in this section affects the validity of an issue or other transaction.

General power to issue shares: authorisation by company.

292. (1) The directors may exercise a power of a company -

- (a) to issue shares in the company, or

- (b) to grant rights to subscribe for, or to convert any security into, shares in the company,

if they are authorised to do so by the company's memorandum or articles or by resolution of the company.

(2) Authorisation may be given for a particular exercise of the power or for its exercise generally, and may be unconditional or subject to conditions.

(3) Authorisation must -

- (a) state the maximum amount of shares that may be issued under it, and

- (b) specify the date on which it will expire, which must not be more than 5 years after -

- (i) in the case of authorisation contained in the company's memorandum or articles at the time of its original incorporation, the date of that incorporation,

- (ii) in any other case, the date on which the resolution is passed by virtue of which the authorisation is given.

(4) Authorisation may -

- (a) be renewed or further renewed by resolution of the company for a further period not exceeding 5 years, and
- (b) be revoked or varied at any time by resolution of the company.

(5) A resolution renewing authorisation must -

- (a) state (or restate) the maximum amount of shares that may be issued under the authorisation or, as the case may be, the amount remaining to be issued under it, and
- (b) specify the date on which the renewed authorisation will expire.

(6) In relation to rights to subscribe for or to convert any security into shares in the company, references in this section to the maximum amount of shares that may be issued under the authorisation are to the maximum amount of shares that may be issued pursuant to the rights.

(7) The directors may issue shares, or grant rights to subscribe for or to convert any security into shares, after authorisation has expired if -

- (a) the shares are issued, or the rights are granted, in pursuance of an offer or agreement made by the company before the authorisation expired, and

- (b) the authorisation allowed the company to make an offer or agreement which would or might require shares to be issued, or rights to be granted, after the authorisation had expired.

(8) A resolution of a company to give, vary, revoke or renew authorisation under this section may be an ordinary resolution, even though it amends the company's articles.

Additional power to issues shares: companies with one class of share.

293. Where a company limited by shares has only one class of shares, the directors may exercise any power of the company -

- (a) to issue shares of that class, or
- (b) to grant rights to subscribe for or to convert any security into such shares,

except to the extent that they are prohibited from doing so by the company's memorandum, articles or any resolution of the company.

Consideration for issue of shares.

294. (1) The consideration for which a share is issued may take any form including, without limitation, cash, promissory notes, contracts for future services, real or personal property, or other securities of the company.

(2) The consideration received or due for an issue of shares, net of the expenses of issue or the commission paid or discount allowed on issue, shall be transferred to an account to be called the "share capital account" and where

consideration is other than cash, the fair value of the consideration shall be credited to the share capital account.

- (3) For the avoidance of doubt -
 - (a) there is no requirement to maintain a share premium account, and
 - (b) it is not unlawful to issue shares at a discount or pay a commission in respect of the issue of shares.

Consideration to be decided by board of directors.

295. (1) Before a company issues shares under section 292 or 293, the board of directors must -

- (a) decide the consideration for which the shares will be issued and the terms on which they will be issued, and
 - (b) resolve that, in its opinion, the consideration for and terms of the issue are fair and reasonable to the company and to all existing members.
- (2) The board of directors must approve a certificate -
- (a) stating the consideration for, and the terms of, the issue,
 - (b) describing the consideration in sufficient detail to identify it, and

- (c) stating that, in their opinion, the consideration and terms of issue are fair and reasonable to the company and to all existing members,

and the certificate must be signed on their behalf by at least one of them.

(3) Nothing in this section applies to the issue of shares in a company on -

- (a) the conversion of any security into shares, or
- (b) the exercise of any right to subscribe for shares.

Consideration other than cash.

296. (1) This section applies, in addition to section 295, where shares are issued otherwise than for cash.

(2) For the purposes of this section, shares that are or are to be credited as paid up, whether wholly or partly, as part of an arrangement that involves the transfer of property or the provision of services and an exchange of cash or cheques or other negotiable instruments, whether simultaneously or not, must be treated as paid up other than in cash to the value of the property or services.

(3) Before a company issues shares under section 292 or 293, the board of directors must -

- (a) determine the reasonable present cash value of the consideration for issue, and

- (b) resolve that, in its opinion, the present cash value of the consideration to be provided for the issue of shares is not less than the amount to be credited for the issue of the shares.

- (4) The certificate referred to in section 295(2) must -
 - (a) state the reasonable present cash value of the consideration and the basis for assessing it, and
 - (b) state that, in the opinion of the board, the present cash value of the consideration to be provided for the issue of the shares is not less than the amount to be credited for the issue of the shares.

- (5) Before shares that have already been issued are credited as fully or partly paid up, the board must -
 - (a) determine the reasonable cash value of the consideration, and
 - (b) resolve that, in its opinion, the present cash value of the consideration is -
 - (i) fair and reasonable to the company and to all existing members, and
 - (ii) not less than the amount to be credited in respect of the shares.

(6) The board of directors must, in respect of a decision under subsection (5), approve a certificate -

(a) describing the consideration in sufficient detail to identify it, and

(b) stating -

(i) the present cash value of the consideration and the basis for assessing it,

(ii) that the present cash value of the consideration is fair and reasonable to the company and to all existing members, and

(iii) that the present cash value of the consideration is not less than the amount to be credited in respect of the shares.

and the certificate must be signed on their behalf by at least one of them.

(7) Nothing in this section applies to the issue of shares in a company on -

(a) the conversion of any security into shares, or

(b) the exercise of any right to subscribe for shares.

Exemption to sections 295 and 296.

297. Sections 295 and 296 do not apply to -

- (a) the issue of shares that are fully paid up from the reserves of the company to all shareholders of the same class in proportion to the number of shares held by each shareholder,
- (b) the consolidation and division of the shares or any class of shares in the company in proportion to those shares or the shares in that class,
- (c) the subdivision of the shares or any class of shares in the company in proportion to those shares or the shares in that class,
- (d) the issue of shares consequent upon the conversion of shares expressed in a particular currency or former currency into a different currency.

Consideration in relation to issue of rights to subscribe for, or conversion of securities into, shares.

298. (1) Before a company grants rights to subscribe for, or to convert any security into, shares in a company, the board of directors must -

- (a) decide the consideration for which the rights or securities and, in either case, the shares will be issued and the terms on which they will be issued, and
- (b) resolve that, in its opinion, the consideration for and terms of the issue of the rights or securities and, in

either case, the shares are fair and reasonable to the company and to all existing members.

- (2) The board of directors must approve a certificate -
 - (a) stating the consideration for, and terms of, the issue of the rights or securities and, in either case, the shares,
 - (b) describing the consideration in sufficient detail to identify it, and
 - (c) stating that, in their opinion, the consideration for and terms of issue of the rights or securities and, in either case, the shares are fair and reasonable to the company and to all existing members,

and the certificate must be signed on their behalf by at least one of them.

Consideration other than cash.

299. (1) This section applies, in addition to section 298, where a company grants rights to subscribe for, or to convert any security into, shares in a company and where the shares are to be issued otherwise than for cash.

(2) For the purposes of this section, shares that are to be credited as paid up, whether wholly or partly, as part of an arrangement that involves the transfer of property or the provision of services and an exchange of cash or cheques or other negotiable instruments, whether simultaneously or not, must be treated as paid up other than in cash to the value of the property or services.

(3) Before a company grants rights to subscribe for, or to convert any security into, shares in a company, the board of directors must -

(a) determine the reasonable present cash value of the consideration for the issue, and

(b) resolve that, in its opinion, the present cash value of the consideration to be provided is not less than the amount to be credited for the issue of the shares.

(4) The certificate referred to in section 298(2) must -

(a) state the reasonable present cash value of the consideration for issue and the basis for assessing it, and

(b) state that, in the opinion of the board, the present cash value of the consideration to be provided is not less than the amount to be credited for the issue of the shares.

Time of issue of shares.

300. A share is issued when the name of the holder is entered on the register of members in respect of that share.

Distributions and dividends

Meaning of distribution.

301. In this Law "**distribution**", in relation to a distribution by a company to a member, means -

- (a) the direct or indirect transfer of money or property, other than the company's own shares, to or for the benefit of the member, or
- (b) the incurring of a debt to or for the benefit of the member,

in respect of the member's interests, and whether by means of a purchase of property, the redemption or other acquisition of shares, a distribution of indebtedness, or by some other means.

Meaning of dividend.

302. (1) In this Law "**dividend**" means every distribution of a company's assets to its members, except distributions by way of -

- (a) an issue of shares as fully or partly paid bonus shares,
- (b) a redemption or acquisition of any of the company's own shares or financial assistance for an acquisition of the company's own shares,
- (c) a reduction of share capital,
- (d) a distribution of assets to members during and for the purposes of its winding up,
- (e) a distribution of assets to members during and for the purposes of an administration order,

- (f) a distribution of assets to members of a cell of a protected cell company during and for the purposes of a receivership order, or
- (g) a distribution of assets to members of a cell of a protected cell company during and for the purposes of the termination of the cell.

(2) For the avoidance of doubt, a dividend may be in the form of money or other property.

Procedure for making a distribution other than dividend.

303. (1) This section applies to distributions other than dividends.

(2) The board of directors of a company may authorise a distribution if -

- (a) it is satisfied on reasonable grounds that the company will, immediately after the distribution, satisfy the solvency test, and
- (b) it satisfies any other requirement in its memorandum and articles.

(3) If, after a distribution is authorised and before it is made, the board ceases to be satisfied on reasonable grounds that the company will, immediately after the distribution is made, satisfy the solvency test, any distribution made by the company is deemed not to have been authorised.

(4) The board of directors must approve a certificate stating -

- (a) that in their opinion the company will, immediately after the distribution, satisfy the solvency test, and
- (b) the grounds for that opinion,

and the certificate must be signed on their behalf by at least one of them.

- (5) In applying the solvency test for the purposes of this section -
 - (a) "**debts**" includes fixed preferential returns on shares ranking ahead of those in respect of which a distribution is made (except where that fixed preferential return is expressed in the memorandum or articles as being subject to the power of the directors to make distributions), but does not include debts arising by reason of the authorisation, and
 - (b) "**liabilities**" includes the amount that would be required, if the company were to be dissolved after the distribution, to repay all fixed preferential amounts payable by the company to members, at that time or on earlier redemption (except where such fixed preferential amounts are expressed in the memorandum or articles as being subject to the power of directors to make distributions) but, subject to paragraph (a), does not include dividends payable in the future.

Procedure for paying a dividend.

304. (1) A company may pay a dividend if -
- (a) the board of directors is satisfied on reasonable grounds that the company will, immediately after payment, satisfy the solvency test, and
 - (b) it satisfies any other requirement in its memorandum and articles.

- (2) The dividend may -
- (a) be of such amount,
 - (b) be paid at such time, and
 - (c) be paid to such members,

as the board thinks fit.

(3) If, after a dividend is authorised and before it is paid, the board ceases to be satisfied on reasonable grounds that the company will, immediately after payment, satisfy the solvency test, any dividend paid by the company is deemed not to have been authorised.

- (4) The board must not authorise a dividend -
- (a) in respect of some but not all the shares in a class, or

- (b) that is of a greater value per share in respect of some shares of a class than it is in respect of other shares of that class,

unless the amount of the dividend in respect of a share of that class is in proportion to the amount paid to the company in satisfaction of the liability of the shareholder under the memorandum and articles of the company or under the terms of issue of the share.

(5) Notwithstanding subsection (4), a member may waive his entitlement to receive a dividend by notice in writing to the company signed by or on behalf of the member.

(6) The board of directors must approve a certificate stating -

- (a) that in their opinion the company will, immediately after payment of the dividend, satisfy the solvency test, and
- (b) the grounds for that opinion,

and the certificate must be signed on their behalf by at least one of them.

(7) In applying the solvency test for the purposes of this section -

- (a) "**debts**" includes fixed preferential returns on shares ranking ahead of those in respect of which a dividend is paid (except where that fixed preferential return is expressed in the memorandum or articles as being subject to the power of the directors to pay dividends),

but does not include debts arising by reason of the authorisation, and

- (b) "**liabilities**" includes the amount that would be required, if the company were to be dissolved after the payment of the dividend, to repay all fixed preferential amounts payable by the company to members, at that time or on earlier redemption (except where such fixed preferential amounts are expressed in the memorandum or articles as being subject to the power of directors to pay dividends) but, subject to paragraph (a), does not include dividends payable in the future.

Prohibition of unauthorised distributions.

305. No distribution of a company's assets to its members is lawful unless it is authorised under this Law, another enactment or any rule of law.

Shares in lieu of dividends.

306. Subject to the memorandum or articles of the company, the board of directors may issue shares to any shareholders who have agreed to accept the issue of shares, wholly or partly, in lieu of a proposed dividend or proposed future dividends if -

- (a) the right to receive shares, wholly or partly, in lieu of the proposed dividend or proposed future dividends has been offered to all shareholders of the same class on the same terms,
- (b) in the case where all shareholders elected to receive the shares in lieu of the proposed dividend or proposed

future dividends, relative voting or distribution rights, or both, would be maintained,

- (c) the shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it,
- (d) the shares issued to each shareholder are issued on the same terms and subject to the same rights as the shares issued to all shareholders in that class who agree to receive the shares, and
- (e) the provisions of section 295 are complied with by the board.

Member discounts not a distribution.

307. (1) The board of directors may resolve that the company offer members discounts in respect of some or all of the goods sold or services provided by the company.

(2) The board may approve a discount scheme under subsection (1) only if it has previously resolved that the proposed discounts are -

- (a) fair and reasonable to the company and to all members, and
- (b) to be available to all members or all members of the same class on the same terms.

(3) A discount scheme may not be approved or continued by the board unless it is satisfied on reasonable grounds that the company satisfies the solvency test.

(4) Subject to subsection (5), a discount accepted by a member under a discount scheme approved under this section is not a distribution for the purposes of this Law.

(5) Where -

- (a) a discount is accepted by a member under a scheme approved or continued by the board, and
- (b) at the time the scheme was approved or the discount was offered, the company did not satisfy the solvency test,

the provisions of section 309 apply in relation to the discount with such modifications as may be necessary as if the discount were a distribution that is deemed not to have been authorised.

Reduction of member liability a distribution.

308. (1) If a company proposes to alter its memorandum or articles, or to acquire shares issued by it, or to redeem shares, in a manner which would cancel or reduce the liability of a shareholder to the company in relation to a share held by him prior to that alteration, acquisition or redemption, the proposed cancellation or reduction of liability is to be treated -

- (a) for the purposes of section 303 as a distribution, and

- (b) for the purposes of section 304(4) and (5) as a dividend.

(2) If a company has altered its memorandum or articles, or acquired shares, or redeemed shares, in a manner which cancels or reduces the liability of a shareholder to the company in relation to a share held prior to that alteration, acquisition or redemption, that cancellation or reduction of liability is to be treated for the purposes of section 309 as a distribution of the amount by which that liability was reduced.

(3) If the liability of a shareholder of an amalgamating body corporate in relation to a share held before the amalgamation is -

- (a) greater than the liability of that shareholder to the amalgamated body corporate in relation to a share or shares into which that share is converted, or
- (b) cancelled by the cancellation of that share in the amalgamation,

the reduction of liability effected by the amalgamation is to be treated for the purposes of section 309(1) and (5) as a distribution by the amalgamated body corporate to that shareholder, whether or not that shareholder becomes a shareholder of the amalgamated body corporate, of the amount by which that liability was reduced.

Recovery of distributions.

309. (1) A distribution made to a member at a time when the company did not, immediately after the distribution, satisfy the solvency test may be recovered by the company from the member except to the extent that -

- (a) the member received the distribution in good faith and without knowledge of the company's failure to satisfy the solvency test,
 - (b) the member has altered his position in reliance on the validity of the distribution, and
 - (c) it would be unfair to require payment in full or at all.
- (2) If, in relation to a distribution made to members -
- (a) the procedure set out in section 303, section 304, sections 310 to 325 or sections 329 to 335 has not been followed, or
 - (b) reasonable grounds for believing that the company would satisfy the solvency test did not exist at the time the certificate was signed,

a director who -

- (i) failed to take reasonable steps to ensure the procedure was followed, or
- (ii) voted to approve the certificate (as the case may be),

is personally liable to the company to repay to the company so much of the distribution as is not able to be recovered from members.

(3) If a distribution is deemed not to have been authorised, a director who -

- (a) ceased after authorisation but before the making of the distribution to be satisfied on reasonable grounds for believing that the company would satisfy the solvency test immediately after the distribution is made, and
- (b) failed to take reasonable steps to prevent the distribution being made,

is personally liable to the company to repay to the company so much of the distribution as is not able to be recovered from members.

(4) If, by virtue of section 307(5), a distribution is deemed not to have been authorised, a director who failed to take reasonable steps to prevent the distribution being made is personally liable to the company to repay to the company so much of the distribution as is not able to be recovered from members.

(5) If, in an action brought against a director or member under this section, the Court is satisfied that the company could, by making a distribution of a lesser amount, have satisfied the solvency test, the Court may -

- (a) permit the member to retain, or
- (b) relieve the director from liability in respect of,

an amount equal to the value of any distribution that could properly have been made.

- (6) In applying the solvency test for the purposes of this section -
- (a) "**debts**" includes fixed preferential returns on shares ranking ahead of those in respect of which a distribution is made (except where that fixed preferential return is expressed in the memorandum or articles as being subject to the power of the directors to make distributions), but does not include debts arising by reason of the authorisation, and
 - (b) "**liabilities**" includes the amount that would be required, if the company were to be dissolved after the distribution, to repay all fixed preferential amounts payable by the company to members, at that time or on earlier redemption (except where such fixed preferential amounts are expressed in the memorandum or articles as being subject to the power of directors to make distributions) but, subject to paragraph (a), does not include dividends payable in the future.

Redeemable shares and acquisition of own shares

Power to issue redeemable shares.

- 310.** A company may, if so authorised by its memorandum or articles -
- (a) subject to the provisions of this section and section 325, issue shares which are, or at the option of the

company or the shareholder are, liable to be redeemed ("redeemable shares"), and

- (b) subject to the provisions of sections 342 to 348, convert all or any class of its shares into redeemable shares.

Terms and manner of redemption.

311. (1) The redemption of shares by a company shall, subject to the provisions of this section, be effected on such terms and in such manner as may be provided for by -

- (a) the company's memorandum or articles, or
- (b) the terms of the issue of those shares.

(2) A company may not redeem its shares if, as a result of the redemption, the company would have no members.

(3) A company may not redeem a share unless it is fully paid.

(4) For the avoidance of doubt, there is no requirement for shares to be redeemed out of a particular account or source.

Power of company to acquire its own shares.

312. A company may, if so authorised by its memorandum or articles, acquire its own shares (including any redeemable shares).

Terms and manner of acquisition.

313. (1) The acquisition by a company of its own shares shall, subject to the provisions of this section, be effected on such terms and in such manner as may be provided for by -

- (a) the company's memorandum or articles, or
- (b) the terms of the issue of those shares.

(2) A company may not acquire a share if, as a result of the acquisition, the company would have no members.

(3) The company must obtain the consent of the shareholders whose shares are being acquired to that acquisition.

(4) The contract for the acquisition of shares must be authorised in accordance with either section 314 or 315.

(5) For the avoidance of doubt, there is no requirement for shares to be acquired out of a particular account or source.

Authority for acquisition.

314. (1) A company may only acquire its own shares, other than under a market acquisition under section 315, in pursuance of a contract authorised in advance in accordance with this section.

(2) The terms of the proposed contract shall be authorised by a special resolution of the company before the contract is entered into, and the following subsections apply in respect of that authority and to resolutions conferring it.

(3) Subject to subsection (4), the authority may be varied, revoked or renewed by special resolution of the company.

(4) The authority conferred by the resolution shall specify a date on which the authority is to expire.

Authority for market acquisition.

315. (1) A company shall not make a market acquisition of its own shares unless -

(a) the acquisition has first been authorised by ordinary resolution, or

(b) such purchases are authorised by the company's memorandum or articles.

(2) That authority may -

(a) be general for that purpose or limited to the acquisition of shares of any particular class or description, and

(b) be unconditional or subject to conditions.

(3) That authority shall -

(a) specify the maximum number of shares authorised to be acquired,

- (b) determine both the maximum and minimum prices which may be paid for the shares, and
- (c) specify a date on which it is to expire.

(4) That authority may be varied, revoked or renewed by ordinary resolution, but this is subject to subsection (3) and, in a resolution to confer or renew authority, the date on which the authority is to expire shall not be later than 18 months after that on which the resolution is passed.

(5) A company may under this section make an acquisition of its own shares after the expiry of the time limit imposed to comply with subsection (3)(c) if the contract of acquisition was concluded before the authority expired and the terms of the authority permitted the company to make a contract of acquisition which would or might be executed wholly or partly after its expiration.

(6) A resolution to confer or vary authority under this section may determine either or both the maximum and minimum prices for acquisition by -

- (a) specifying a particular sum, or
- (b) providing a basis or formula for calculating the amount of the price in question without reference to any person's discretion or opinion.

Meaning of "market acquisition".

316. (1) In section 315 "**market acquisition**" means an acquisition of shares made on a recognised investment exchange provided that the acquisition is subject to a marketing arrangement.

(2) For the purposes of subsection (1), shares are subject to a "marketing arrangement" if -

- (a) they are listed under Part VI of the Financial Services and Markets Act 2000^b, or
- (b) the company has been afforded facilities for dealings in those shares to take place on that exchange without prior permission for individual transactions from the authority governing that exchange and without limit as to the time during which those facilities are to be available.

(3) In this section "recognised investment exchange" has the meaning given by section 44(1) of the Protection of Investors (Bailiwick of Guernsey) Law, 1987^c.

Assignment or release of company's right to acquire own shares.

317. (1) The rights of a company under a contract approved under section 314, or under a contract for an acquisition authorised under section 315, are not capable of being assigned.

^b An Act of Parliament (2000 c. 8).

^c Ordres en Conseil Vol. XXX, p. 281; amended by Vol. XXX, p. 243; Vol. XXXI, p. 278; Vol. XXXII, p. 324; No. XIII of 1994; No. XII of 1995; No. II of 1997; No. XVII of 2002; and by No's XV and XXXII of 2003. Also amended by Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; Ordinances X and XX of 1998; and the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

(2) An agreement by a company to release its rights under a contract approved under section 314 is void unless the terms of the release agreement are approved in advance by a special resolution of the company before the agreement is entered into, and subsections (3) and (4) of section 314 apply to an approval for a proposed release agreement as they apply to an authority mentioned in those subsections.

Certain payments connected with acquisition of shares also treated as distributions.

- 318.** (1) A payment made by a company in consideration of -
- (a) acquiring any right in respect of the acquisition of its own shares in pursuance of a contract approved under section 314,
 - (b) the variation of a contract approved under section 314, or
 - (c) the release of any of the company's obligations in respect of the acquisition of any of its own shares under a contract approved under section 314 or under a contract for an acquisition authorised under section 315,

shall also be treated as a distribution.

(2) If the requirements of section 303 are not satisfied in relation to a contract -

- (a) in a case within subsection (1)(a), no acquisition by the company of its own shares in pursuance of that contract is lawful under this Part,
- (b) in a case within subsection (1)(b), no such acquisition following the variation is lawful under this Part, and
- (c) in a case within subsection (1)(c), the purported release is void.

Shares redeemed or acquired to be cancelled.

319. Subject to the provisions of sections 326 to 328, shares redeemed or acquired under sections 310 to 325 shall be treated as cancelled on redemption or acquisition and the amount of the company's share capital shall be diminished accordingly.

Application of procedure for making distributions to redemptions and acquisitions.

320. (1) For the avoidance of doubt -

- (a) the redemption of shares by a company, and
- (b) the acquisition of shares by a company,

are distributions and accordingly the provisions of sections 303 and 309 apply.

(2) This section is subject to section 321.

Exemption for open-ended investment companies.

321. (1) Sections 303 and 309 do not apply to open-ended investment companies in respect of the redemption of shares by them.

(2) An open-ended investment company shall not redeem its shares unless it satisfies the solvency test.

(3) In applying the solvency test for the purposes of this section -

(a) "**debts**" includes fixed preferential returns on shares ranking ahead of those in respect of which a distribution is made (except where that fixed preferential return is expressed in the memorandum or articles as being subject to the power of the directors to make distributions), but does not include debts arising by reason of the authorisation, and

(b) "**liabilities**" includes the amount that would be required, if the company were to be dissolved after the distribution, to repay all fixed preferential amounts payable by the company to members, at that time or on earlier redemption (except where such fixed preferential amounts are expressed in the memorandum or articles as being subject to the power of directors to make distributions) but, subject to paragraph (a), does not include dividends payable in the future.

Effect of failure to redeem or acquire shares.

322. (1) A company is not liable in damages in respect of any failure on its part to redeem or acquire shares it is obliged to redeem or acquire.

(2) Subsection (1) is without prejudice to any right of a shareholder other than his right to sue the company for damages in respect of its failure.

Effect of intervening insolvency on redemption or acquisition of shares.

323. (1) This section applies where, after shares are agreed to be redeemed or acquired, but before they are so redeemed or acquired, the winding up of the company commences.

(2) If the shares were meant to be redeemed or acquired after the commencement of the winding up, the obligation to so redeem or acquire may not be enforced by the shareholders against the company.

(3) Subject to subsections (4) and (5), if the shares were meant to be redeemed or acquired before the commencement of the winding up, the obligation to so redeem or acquire may be enforced by the shareholders against the company.

(4) Subsection (3) does not apply and the obligation cannot be enforced if, during the period beginning with the date on which the redemption or acquisition was to have taken place and ending with the date of the commencement of the winding up, the company could not lawfully have made that redemption or acquisition.

(5) There shall be paid in priority to any amount which the company is liable under subsection (3) to pay in respect of any shares -

- (a) all other debts and liabilities of the company (other than any due in respect of members' interests),
- (b) if other shares carry rights (whether as to capital or income) which are preferred to the rights as to capital attaching to the first mentioned shares, any amount due in satisfaction of those preferred rights,

but, subject to that, any such amount shall be paid in priority to any amounts due in respect of member's interests.

Power of the Department to make regulations.

324. The Department may make regulations in respect of -

- (a) the circumstances and the manner in which a company may acquire its own shares,
- (b) the authority required for an acquisition by a company of its own shares,
- (c) the authority required for the release by a company of its rights under a contract for the acquisition of its own shares or a contract under which the company may, subject to any conditions, become entitled or obliged to acquire its own shares, and
- (d) generally for the implementation of sections 310 to 325.

Interpretation.

325. In sections 310 to this section, unless the context otherwise requires -

"**contingent purchase contract**" means a contract entered into by a company relating to any of its shares -

- (a) which does not amount to a contract to purchase those shares, but
- (b) under which the company may, subject to any conditions, become entitled or obliged to purchase these shares, and

"**contract**" includes a contingent purchase contract.

*Treasury shares***Nature and treatment of treasury shares.**

326. (1) A company may hold any shares acquired by it in accordance with section 312 as treasury shares if it is authorised to do so by -

- (a) its memorandum or articles, or
- (b) subject to any provision to the contrary in its memorandum or articles, an ordinary resolution.

(2) Where the company holds its shares as treasury shares the shares shall not be cancelled under section 319.

(3) Where a company holds shares as treasury shares, and for the duration of the period for which they are so held -

- (a) the rights in respect of those shares shall not be exercised by or against the company,
- (b) the obligations in respect of those shares shall not be enforced by or against the company, and
- (c) any purported such exercise or enforcement is void.

(4) Without prejudice to the generality of subsection (3), the company shall not -

- (a) exercise any voting rights attaching to those shares,
- (b) subject to subsection (5), make or receive any distribution or dividend in respect of those shares.

(5) Nothing in this section is to be taken as preventing -

- (a) an issue of shares as fully paid bonus shares in respect of treasury shares, or
- (b) the payment of any amount payable on the redemption of the treasury shares (if they are redeemable shares).

(6) Any shares issued as fully paid bonus shares in respect of the treasury shares shall be treated, for the purposes of this Law, as if they were

acquired by the company at the time they were issued in circumstances in which subsection (1) applied.

- (7) Where a company holds shares as treasury shares, it may -
- (a) continue to hold them in accordance with this section,
 - (b) cancel them in accordance with section 328,
 - (c) sell them, or
 - (d) transfer them to an employees' share scheme.

Maximum holding of treasury shares.

327. The number of shares of any class held as treasury shares must not at any time exceed 10% (or such other percentage as may be prescribed by the Department) of the total number of issued shares of that class at that time.

Cancellation of treasury shares.

328. Where shares held as treasury shares are cancelled, the amount of the company's share capital shall be diminished accordingly.

Financial assistance for acquisition of own shares

Financial assistance permitted.

329. (1) Where a person is acquiring or is proposing to acquire shares in a company, the company and any of its subsidiaries may give financial assistance directly or indirectly for the purpose of or in connection with that acquisition before or at the same time as the acquisition takes place.

(2) Where a person has acquired shares in a company and any liability has been incurred (by that or any other person) for the purpose of or in connection with that acquisition, the company and any of its subsidiaries may give financial assistance directly or indirectly for the purpose of or in connection with reducing or discharging the liability so incurred.

(3) In this section -

- (a) a reference to a person incurring a liability includes his changing his financial position by making an agreement or arrangement (whether enforceable or unenforceable, and whether made on his own account or with any other person) or by any other means, and
- (b) a reference to a company giving financial assistance for the purpose of or in connection with reducing or discharging a liability incurred by a person for the purpose of or in connection with the acquisition of shares includes its giving such assistance for the purpose of or in connection with wholly or partly restoring his financial position to what it was before the acquisition took place.

Meaning of "financial assistance".

330. For the purposes of this Law "**financial assistance**" means -

- (a) financial assistance given by way of gift,
- (b) financial assistance given by way of guarantee, security or indemnity, other than an indemnity in

respect of the indemnifier's own neglect or default, or by way of release or waiver,

- (c) financial assistance given by way of a loan or any other agreement under which any of the obligations of the person giving the assistance are to be fulfilled at a time when, in accordance with the agreement, any obligation of another party to the agreement remains unfulfilled, or by way of the novation of, or the assignment of rights arising under, a loan or such other agreement, or
- (d) any other financial assistance given by a company the net assets of which are thereby reduced to a material extent or which has no net assets.

Application of procedure for making distributions to financial assistance.

331. For the avoidance of doubt, financial assistance under section 329 is a distribution and accordingly the provisions of sections 303 and 309 apply.

Validity of financial assistance which breaches procedure for making distributions.

332. (1) In favour of a person dealing with a company in good faith, no financial assistance of the company under section 329 is invalidated by reason of a failure to comply with section 303.

(2) For the purposes of this section, a person deals with a company if he is a party to any transaction or other act to which the company is a party.

(3) A party to a transaction with a company is not bound to enquire as to whether the transaction is in accordance with the provisions of section 303.

(4) Notwithstanding the provisions of this section, it remains the duty of a company's directors to observe any limitation on their powers imposed by or deriving from the provisions of section 303.

Power of the Department to make regulations.

333. The Department may make regulations in respect of -

- (a) the circumstances and the manner in which a company may give financial assistance for the acquisition of its own shares or shares in its holding company,
- (b) the transactions, agreements or arrangements which are or are not to be treated as giving financial assistance for the acquisition of its own shares or shares in its holding company,
- (c) generally for the implementation of sections 329 to 335.

Application to overseas parents of Guernsey subsidiaries.

334. In sections 329 to 335 "company" includes an overseas company in cases where the financial assistance is given by a subsidiary which is registered as a company in the Register of Companies.

Interpretation.

335. In sections 329 to this section, unless the context otherwise requires, "shares" includes stock, debentures, debenture stock, bonds and any other security or capital interest of or in a company, whether constituting a charge on the company's assets or not.

PART XVIII
TAKEOVERS

Application of this Part.

336. This Part applies where a scheme or contract involves the transfer of shares or any class of shares in a company (the "transferor") to any person (the "transferee").

Right of transferee to acquire shares.

337. (1) If, within 4 months after the date of making an offer in respect of such a scheme or contract as is mentioned in 336, the offer is approved by shareholders comprising 90% in value of the shares affected (excluding any shares held as treasury shares), the transferee may, within 2 months after the expiration of those 4 months, give notice to any dissenting shareholder that it desires to acquire his shares (a "notice to acquire").

(2) Subject to section 339, where a notice to acquire is given, the transferee is entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee.

Compulsory acquisition of shares by transferee.

338. (1) Subject to section 339, the transferee shall, on the expiration of one month from the date of the notice to acquire -

- (a) send a copy of the notice to the transferor, and
- (b) pay or transfer to the transferor the consideration required under the notice in respect of the shares he is entitled to acquire,

and the transferor shall thereupon register the transferee as the holder of those shares.

(2) Any sums received by the transferor under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by the transferor on trust for the shareholders entitled to the shares in respect of which the said sum or other consideration was respectively received.

Application to Court by dissenting shareholder to prevent acquisition of shares.

339. (1) A dissenting shareholder may, within 1 month after the date of a notice to acquire, apply to the Court to cancel that notice.

(2) The Court, on an application under subsection (1), may cancel the notice or make such order as it thinks fit,

Meaning of "dissenting shareholder".

340. In this Part, "**dissenting shareholder**" includes -

- (a) a shareholder who has not assented to the scheme or contract, and

- (b) any shareholder who has failed or refused to transfer his shares to the transferee in accordance with the scheme or contract.

PART XIX
PROTECTION OF MEMBERS

Restraint of excess powers

Restraint of excess powers.

341. (1) Any member of a company may apply to the Court for an order restraining the doing of an act -

- (a) which would, but for section 114, be beyond the company's capacity, or
- (b) which is beyond the powers of the directors by virtue of any limitation mentioned in section 115,

but no such application shall be made in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.

- (2) This section is without prejudice to any other remedy.

Variation of class rights

Variation of class rights: shareholders.

342. (1) This section is concerned with the variation of the rights of a class of shareholders.

(2) Without prejudice to any other restrictions on their variation, rights of a class of shareholders may only be varied -

- (a) in accordance with any provision in the company's articles for the variation of those rights, or
- (b) where the company's articles contain no such provision, if the holders of shares of that class consent to the variation in accordance with this section.

(3) The consent required for the purposes of this section on the part of the shareholders of that class is -

- (a) consent in writing from the holders of at least 75% in value of the issued shares of that class (excluding any shares held as treasury shares), or
- (b) a special resolution passed at a separate general meeting of the shareholders of that class sanctioning the variation.

(4) Any amendment of a provision contained in a company's articles for the variation of the rights of a class of shareholders, and any insertion of any such provision into the articles, is itself to be treated as a variation of those rights.

(5) In this section and (except where the context otherwise requires) in any provision in a company's articles for the variation of the rights of a class of shareholders, references to the variation of those rights include references to their abrogation.

Variation of class rights: members other than shareholders.

343. (1) This section is concerned with the variation of the rights of a class of members who are not shareholders.

(2) Without prejudice to any other restrictions on their variation, rights of a class of members may only be varied -

(a) in accordance with any provision in the company's articles for the variation of those rights, or

(b) where the company's articles contain no such provision, if the members of that class consent to the variation in accordance with this section.

(3) The consent required for the purposes of this section on the part of the members of a class is -

(a) consent in writing from at least 75% of the members of the class, or

(b) a special resolution passed at a separate general meeting of the members of that class sanctioning the variation.

(4) Any amendment of a provision contained in a company's articles for the variation of the rights of a class of members, and any insertion of any such provision into the articles, is itself to be treated as a variation of those rights.

(5) In this section and (except where the context otherwise requires) in any provision in a company's articles for the variation of the rights of a class of members, references to the variation of those rights include references to their abrogation.

Variation of class rights: saving for Court's powers under other provisions.

344. Nothing in section 342 or 343 affects the power of the Court under -

- (a) Part VIII, or
- (b) sections 349 to 352.

Right to object to variation: shareholders.

345. (1) This section applies where the rights of a class of shareholders are varied under section 342(2)(b).

(2) The holders of not less than 15% of the issued shares of the class in question (being persons who did not consent to or vote in favour of the resolution for the variation) may apply to the Court to have the variation cancelled and for this purpose any shares held as treasury shares are to be disregarded.

(3) If such an application is made, the variation has no effect unless and until it is confirmed by the Court.

(4) An application to the Court -

- (a) must be made within 21 days after the date on which the consent was given or the resolution was passed (as the case may be), and

- (b) may be made on behalf of the members entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(5) The Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application -

- (a) may, if satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the members of the class represented by the applicant, disallow the variation, and

- (b) shall, if not so satisfied, confirm it.

(6) The decision of the Court on any such application is final.

(7) References in this section to the variation of the rights of a class of members include references to their abrogation.

Rights to object to variation: members other than shareholders.

346. (1) This section applies where the rights of any class of members of a company are varied under section 343(2)(b).

(2) Members amounting to not less than 15% of the members of the class in question (being persons who did not consent to or vote in favour of the resolution for the variation) may apply to the Court to have the variation cancelled.

(3) If such an application is made, the variation has no effect unless and until it is confirmed by the Court.

(4) An application to the Court -

(a) must be made within 21 days after the date on which the consent was given or the resolution was passed (as the case may be), and

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

(5) The Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application -

(a) may, if satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the members of the class represented by the applicant, disallow the variation, and

(b) shall, if not so satisfied, confirm it.

(6) The decision of the Court on any such application is final.

(7) References in this section to the variation of rights of a class of members include references to their abrogation.

Copy of Court's order to be delivered to Registrar.

347. (1) Where the Court makes an order under section 345 or 346, the company must deliver a copy of the order to the Registrar within 14 days after the date of the making of the order or such longer period as the Court may allow.

(2) A company which fails to comply with this section is guilty of an offence and, in addition, liable to a daily default fine.

Meaning of class of shareholders.

348. (1) For the purposes of this Law, shareholders are of one class if the rights attached to their shares are in all respects uniform.

(2) For this purpose the rights attached to shares are not regarded as different from the rights attached to other shares by reason only that they do not carry the same rights to dividends in the 12 months immediately following the date of their issue.

*Unfair prejudice***Applications in respect of unfair prejudice.**

349. (1) A member of a company may apply to the Court for an order under section 350 on the ground that -

- (a) the affairs of the company are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or

- (b) an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.

(2) A member of an incorporated cell may apply to the Court under this section in respect of that cell's incorporated cell company, and the provisions of sections 349 to 352 apply to such an application as if the applicant were a member of that incorporated cell company.

(3) The provisions of sections 349 to 352 apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law as it applies to a member, and references to member shall be construed accordingly.

(4) The Court shall not hear an application under this section unless satisfied that the company has been notified of the date and time of the hearing.

(5) The provisions of sections 349 to 352 are without prejudice to any other remedy.

Power of Court to grant relief for unfair prejudice.

350. (1) If the Court is satisfied that an application under section 349 is well founded it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(2) Without prejudice to the generality of subsection (1), an order of the Court may -

- (a) regulate the conduct of the company's affairs in the future,
- (b) require the company -
 - (i) to refrain from doing or continuing to do an act complained of by the applicant, or
 - (ii) to do any act which the applicant has complained it has omitted to do,
- (c) authorise civil proceedings to be brought in the name and on behalf of the company by such persons and on such terms as the Court may direct,
- (d) provide for the purchase of shares of any member of the company by other members of the company or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly,
- (e) require the company not to make any, or any specified, alterations in its memorandum or articles without the leave of the Court,

and the Court may make such consequential alterations to the company's memorandum or articles and any of its resolutions as the Court thinks fit.

(3) Any alteration to a company's memorandum or articles or any of its resolutions made by or by virtue of an order of the Court under this section

are of the same effect as if duly made in accordance with the provisions of this Law.

Copy of order affecting memorandum, articles or resolutions to be delivered to Registrar.

- 351.** (1) Where an order of the Court under section 350 -
- (a) alters the company's memorandum or articles or any of its resolutions, or
 - (b) gives leave for the company to make any, or any specified, alteration to its memorandum or articles or any of its resolutions,

the company must deliver a copy of the order to the Registrar within 14 days after the date of the making of the order or such longer period as the Court may allow.

(2) A company which fails to comply with this section is guilty of an offence and, in addition, liable to a daily default fine.

Supplementary provisions where company's memorandum, articles or resolutions altered.

352. (1) Where an order of the Court under section 350 alters the memorandum or articles or any resolution of a company, the copy of the order delivered to the Registrar by the company under section 351 must be accompanied by a copy of the company's memorandum, articles or resolution (as the case may be) as so altered.

(2) Every copy of a company's memorandum or articles or any of its resolutions (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, articles or resolution (as the case may be) by alteration.

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

PART XX
STRIKING OFF

Striking off defunct companies

Striking defunct company off the Register of Companies.

353. (1) This section applies where -

- (a) the Registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, or
- (b) the Registrar has reasonable cause to believe, in the case of a company which is being wound up -
 - (i) that no liquidator is acting, or
 - (ii) that the affairs of the company are fully wound up.

(2) Where this section applies in relation to a company, the Registrar may give notice stating -

(a) the paragraph of subsection (1) by virtue of which this section applies, and

(b) that, at the expiration of a period of 2 months beginning with the date of the notice, the company will be struck off the Register of Companies and the company will be dissolved, unless cause is previously shown to the contrary.

(3) A notice given under subsection (2) shall be published in such manner and for such period as the Registrar thinks fit.

(4) A notice given under subsection (2) shall be sent, by recorded delivery service or in such other manner as may be determined by the Registrar -

(a) when this section applies by virtue of subsection (1)(b)(ii), to the liquidator at his last known place of business,

(b) in any other case, to the company at its registered office,

and the Registrar may, if he thinks fit, send it to any officer or founder member of the company.

(5) At the expiration of the period mentioned in subsection (2)(b) the Registrar shall, unless cause to the contrary has been shown, strike the company off the Register of Companies and, upon such striking off, the company shall be dissolved.

(6) The Registrar shall publish notice of the striking off in such manner and for such period as he thinks fit.

Striking off incorporated cells of defunct incorporated cell company.

354. Where section 353(1) applies to an incorporated cell company, the other provisions of that section shall also apply to its incorporated cells, and accordingly its incorporated cells shall be struck off the Register of Companies if their incorporated cell company is struck off.

Striking off defaulting companies

Striking defaulting company off the Register of Companies.

355. (1) This section applies where -

- (a) a company fails to deliver to the Registrar an annual validation in accordance with the requirements of section 235 before the end of January in any year,
- (b) the Registrar receives a notice under section 32 together with a declaration of compliance (ineffective office) from a corporate services provider in respect of a company,
- (c) the Registrar has the opinion set out in section 519 in respect of a company, or
- (d) a company fails to comply with section 484.

(2) Where this section applies in relation to a company, the Registrar may give notice stating -

- (a) the paragraph of subsection (1) by virtue of which this section applies, and
- (b) that, at the expiration of a period of 2 months beginning with the date of the notice, the company will be struck off the Register of Companies and the company will be dissolved, unless cause is previously shown to the contrary.

(3) A notice given under subsection (2) shall be published in such manner and for such period as the Registrar thinks fit.

(4) A notice given under subsection (2) shall be sent, by recorded delivery service or in such other manner as may be determined by the Registrar, to the company at its registered office and the Registrar may, if he thinks fit, send it to any officer or founder member of the company.

(5) At the expiration of the period mentioned in subsection (2)(b) the Registrar shall, unless cause to the contrary has been shown, strike the company off the Register of Companies and, upon such striking off, the company shall be dissolved.

(6) The Registrar shall publish notice of the striking off in such manner and for such period as he thinks fit, and such notice may include the names of the directors of the company struck off.

(7) Where this section applies in relation to a company by virtue of subsection (1)(a), the company shall not be considered to have shown cause to the contrary within the meaning of this section unless it -

- (a) delivers its annual validation to the Registrar, and
- (b) pays to him -
 - (i) the appropriate penalty for each calendar month or part of a calendar month between the date by which it should have delivered its annual validation and the date when it in fact did so, and
 - (ii) any other sums payable under any other enactment by companies delivering annual validations.

(8) In subsection (7) "**appropriate penalty**" means such penalty as may be prescribed by the Registrar.

Striking off incorporated cells of defaulting incorporated cell company.

356. Where section 355(1) applies to an incorporated cell company, the other provisions of that section shall also apply to its incorporated cells and accordingly its incorporated cells shall be struck off the Register of Companies if their incorporated cell company is struck off.

Voluntary striking off

Striking off on application by company.

357. (1) On an application by a company, the Registrar may strike the company off the Register of Companies.

- (2) The application must -
- (a) be made by the board of directors,
 - (b) be accompanied by a declaration of compliance (voluntary striking off) under section 365, and
 - (c) contain such information as may be required by the Registrar.

(3) The Registrar must give notice stating that, at the expiration of a period of 2 months beginning with the date of the notice, the company will be struck off the Register of Companies and the company will be dissolved, unless cause is previously shown to the contrary.

(4) A notice given under subsection (3) shall be published in such manner and for such period as the Registrar thinks fit.

(5) At the expiration of the period mentioned in subsection (3) the Registrar shall, unless cause to the contrary has been shown, strike the company off the Register of Companies and, upon such striking off, the company shall be dissolved.

Circumstances in which application not to be made: activities of company.

358. (1) An application under section 357 must not be made if, at any time in the 3 months preceding the date of the application, the company has -

- (a) changed its name,
- (b) traded or otherwise carried on business,

- (c) made a disposal for value of property or rights that, immediately before ceasing to trade or otherwise carry on business, it held for the purpose of disposal for gain in the normal course of trading or otherwise carrying on business, or
- (d) engaged in any other activity, except one which is necessary or expedient for the purpose of -
 - (i) making an application under that section or deciding whether to do so,
 - (ii) concluding the affairs of the company, or
 - (iii) complying with the requirement of any enactment.

(2) An application under section 357 must not be made if the company is a party to any proceedings.

(3) For the purposes of this section, a company is not to be treated as trading or otherwise carrying on business by virtue only of the fact that it makes a payment in respect of a liability incurred in the course of trading or otherwise carrying on business.

Circumstances in which applications not to be made: proceedings connected with solvency not concluded.

359. An application under section 357 must not be made 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 1929^d,
- (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,

^d 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.

Copy of application to be given to members, employees, etc.

360. (1) A person who makes an application under section 357 on behalf of a company must secure that, within 7 days after the day on which the application is made, a copy of it is given to every person who at any time on that day is -

- (a) a member of the company,
- (b) an employee of the company,
- (c) a creditor of the company,
- (d) a director of the company, or

(e) a manager or trustee of any pension fund established for the benefit of employees of the company.

(2) Subsection (1) does not require a copy of the application to be given to a director who is a party to the application.

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

(4) A person who fails to comply with the provisions of this section with the intention of concealing the making of the application from the person concerned is guilty of an offence.

(5) In proceedings for an offence under subsection (3) it is a defence for the accused to prove that he took all reasonable steps to perform the duty.

Copy of application to be given to new members, employees, etc.

361. (1) This section applies in relation to any time after the day on which a company makes an application under section 357 and before the day on which the application is finally dealt with or withdrawn.

(2) A person who is a director of the company at the end of a day on which a person (other than himself) becomes -

(a) a member of the company,

(b) an employee of the company,

(c) a creditor of the company,

- (d) a director of the company, or
- (e) a manager or trustee of any pension fund established for the benefit of employees of the company,

must secure that a copy of the application is given to that person within 7 days after that day.

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

(4) A person who fails to comply with the provisions of this section with the intention of concealing the making of the application from the person concerned is guilty of an offence.

(5) In proceedings for an offence under subsection (3) it is a defence for the accused to prove that he took all reasonable steps to perform the duty.

Copy of application of supervised company to be given to the Commission.

362. (1) A person who makes an application under section 357 on behalf of a supervised company must secure that, within 7 days after the day on which the application is made, a copy of it is given to the Commission.

(2) A person who fails to comply with the provisions of this section is guilty of an offence.

Circumstances in which application must be withdrawn.

363. (1) This section applies where a company which has made an application under section 357 falls within any of the circumstances mentioned in section 358 or 359 which would prohibit the making of such an application at any time before its application is determined or withdrawn.

(2) A person who, at the end of a day on which subsection (1) applies is a director of the company, must secure that the company's application is withdrawn forthwith.

(3) A person who fails to comply with the duty imposed upon him by this section is guilty of an offence.

(4) In proceedings for an offence under this section it is a defence for the accused to prove -

(a) that at the time of the failure he was not aware of the fact that the company had made an application under section 357, or

(b) that he took all reasonable steps to perform the duty.

Withdrawal of application.

364. An application under section 357 is withdrawn by notice to the Registrar.

Declaration of compliance (voluntary striking off).

365. (1) A declaration of compliance (voluntary striking off) is a declaration, signed by a director, that all the requirements of this Law in respect of an application for the striking off 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 application for striking off, 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.

Provisions applying to all strikings off

Companies party to proceedings.

366. If it is shown to the Registrar that a company is party to proceedings, this is cause to the contrary within the meaning of section 353(5), 355(5) and 357(5), and accordingly he shall not strike the company off.

No striking off incorporated cell company until position of its incorporated cells resolved.

367. The Registrar shall not strike off an incorporated cell company unless each of its incorporated cells has ceased to exist as an incorporated cell of that incorporated cell company.

No prejudice to liabilities or powers to wind up.

368. Notwithstanding the striking off of a company pursuant to the provisions of this Part -

- (a) the liability, if any, of every officer and member of the company continues and may be enforced accordingly, and

- (b) the power of the Court to wind up the company is not affected.

Property of struck off company.

369. Where a company is dissolved under the provisions of this Part all property and rights then vested in it or held on trust for it (but not property held by it on trust for another person) shall, unless Her Majesty's Receiver-General directs otherwise, become *bona vacantia* belonging to the Crown.

Restoration to the Register

Application for restoration to Register of Companies.

370. (1) The following persons -

- (a) a company which has been struck off under this Part,
- (b) any director, member or creditor thereof,
- (c) any liquidator, administrator or (in the case of a protected cell company) receiver of a cell thereof,
- (d) the Commission in respect of a supervised company or a company engaged in financial services business, or
- (e) any other person appearing to the Court to have a sufficient interest in making the application,

may apply to the Court for an order restoring the company to the Register of Companies.

(2) An application for restoration of an incorporated cell company may also include an application for restoration of any of its incorporated cells.

(3) An application under this section must be made before the expiry of 10 years beginning on the date on which the company was struck off.

(4) An application cannot be made under this section if the company was struck off for the reason set out in section 519.

(5) Notice of an application under this section shall be served on -

(a) the Registrar,

(b) the Commission in respect of a supervised company or a company engaged in financial services business (except where the Commission is the applicant),

(c) Her Majesty's Procureur,

(d) Her Majesty's Receiver-General, and

(e) any liquidator, administrator or (in the case of a protected cell company) receiver of a cell of the company (except where he is the applicant).

(6) The Registrar shall publish notice of the application in such manner and for such period as he thinks fit.

Restoration to the Register of Companies.

371. (1) Before making an order for the restoration of a company, the Court shall give an opportunity to make representations to -

- (a) the Registrar,
- (b) the Commission in respect of a supervised company or a company engaged in financial services business,
- (c) Her Majesty's Procureur and Her Majesty's Receiver-General, and
- (d) such other persons, if any, as the Court thinks fit, including (without limitation) -
 - (i) any member, creditor or director of the company, and
 - (ii) any liquidator, administrator or (in the case of a protected cell company) receiver of a cell of the company.

(2) The Court may, if satisfied -

- (a) that the company was, at the time of its striking off, carrying on business or in operation, or
- (b) otherwise that it would be just and equitable for the company to be restored to the Register of Companies,

order the company to be restored to the Register of Companies.

(3) In deciding whether or not to restore a company to the Register of Companies, and without prejudice to any other matter it may have regard to, the Court shall have regard to -

- (a) whether or not the company would satisfy the solvency test if it is restored, unless the application for restoration is made by a creditor,
- (b) whether the persons who were directors at the time the company was struck off consent to being directors if the company is restored,
- (c) the circumstances in which the company was struck off,
- (d) whether there were persistent or gross violations of this Law or the 1994 Law in respect of the company,
- (e) whether the company was used for fraudulent purposes,
- (f) whether restoration to the Register of Companies would jeopardize the reputation of the Bailiwick as a financial centre, and
- (g) whether it would be just and equitable to restore the company to the Register of Companies.

(4) The restoration of a company's name pursuant to an order under this section is, unless the Court otherwise directs, and without prejudice to any other term of the order, conditional upon the payment by the applicant to the Registrar of -

- (a) all sums which would have been payable by the company if it had not been dissolved and had each year delivered its annual validation in accordance with section 234, and
- (b) such additional amount as may be prescribed by the Registrar.

(5) The restoration of a company's name pursuant to an order under this section is, unless the Court otherwise directs, and without prejudice to any other term of the order, conditional upon the payment by the applicant to Her Majesty's Procureur of -

- (a) any costs incurred by Her Majesty's Receiver-General in administering any property belonging to the company, and
- (b) any costs incurred by Her Majesty's Procureur in connection with the striking off or the application for restoration.

(6) An incorporated cell may only be restored to the Register of Companies if its incorporated cell company is still on the Register as an incorporated cell company.

(7) Upon the restoration of the company's name in accordance with an order under this section, the company shall be deemed to have continued in existence.

(8) An order under this section may contain such directions and make such provision as the Court thinks fit for placing the company and all other persons in the same position as nearly as may be as if the company had not been dissolved.

(9) An order under this section may contain such directions and make such provisions as to costs as the Court thinks fit, including directions -

- (a) requiring any person responsible for the company being struck off to pay the costs of the application for restoration, and
- (b) requiring any person responsible for the company being struck off to reimburse the applicant for any payments made under subsection (4) or (5),

notwithstanding that that person is not a party to the application for restoration.

(10) The Registrar may, subject to such terms and conditions as he thinks fit, restore a struck-off company to the Register of Companies (whether of his own motion or at the request of the company or any director, member or creditor thereof) if he is satisfied that -

- (a) the company was struck off in error or in circumstances in which, under the provisions of this Part, it should not have been struck off,

- (b) an application to the Court under section 370 for the restoration of the company would be successful but is not necessary for the fair disposal of the matter, and
- (c) the restoration of the company to the Register under this subsection would not prejudice any creditor or third party.

(11) Where the Registrar restores a company to the Register under subsection (10), and except to the extent that the Registrar directs otherwise, the provisions of this Law apply in respect of the company as if it had been restored to the Register pursuant to an order of the Court under this section.

(12) Subsection (10) is without prejudice to the other provisions of this section and the provisions of section 370 (application for restoration to Register) and section 502 (rectification of Register).

Property of restored company.

372. (1) If a company's name is restored to the Register of Companies before the expiration of 6 years beginning on the date of its dissolution, the company is entitled, subject to any order of the Court, to have returned to it -

- (a) any property which vested in the Crown upon dissolution, or
- (b) if any such property has been disposed of, its value at the time of disposal.

(2) The Court may extend the period of 6 years set out in subsection (1) if it regards it as equitable to do so having regard to the degree of prejudice the company would otherwise suffer.

Meaning of creditor.

373. In this Part "**creditor**" includes a contingent or prospective creditor.

PART XXI
ADMINISTRATION

Administration orders.

374. (1) Subject to the provisions of this section, if the Court -

- (a) is satisfied that a company (or a cell of a protected cell company) does not satisfy or is likely to become unable to satisfy the solvency test, and
- (b) considers that the making of an order under this section may achieve one or more of the purposes set out in subsection (3),

the Court may make an order under this section (an "**administration order**") in relation to that company (or that cell, as the case may be).

(2) An administration order is an order directing that, during the period for which the order is in force, the affairs, business and property of the company (or cell, as the case may be) shall be managed by a person (the "**administrator**") appointed for the purpose by the Court.

(3) The purposes for the achievement of which an administration order may be made are -

- (a) the survival of the company (or cell, as the case may be), and the whole or any part of its undertaking, as a going concern, or
- (b) a more advantageous realisation of the company's (or cell's, as the case may be) assets than would be effected on a winding up,

and the order shall specify the purpose for which it is made.

(4) Subject to section 390, an administration order may be made notwithstanding that -

- (a) an order for the company's winding up has been made by the Court, or
- (b) the company has passed a resolution for voluntary winding up,

and, if an administration order is so made, then -

- (i) the order for the company's winding up shall be discharged or suspended, or
- (ii) the resolution for voluntary winding up shall cease to have effect or shall be suspended (as the case may be),

on such terms and conditions as the Court thinks fit.

(5) Where an administration order is made, the administrator shall, within 7 days after the day of his appointment, send a copy of the order to the Registrar.

Application for administration order.

- 375.** (1) An application for an administration order may be made by -
- (a) the company,
 - (b) the directors of the company,
 - (c) any member of the company,
 - (d) any creditor of the company, including any contingent or prospective creditor,
 - (e) the Commission, in respect of supervised companies and companies engaged in financial services business,
 - (f) in the case of a company in respect of which the Court has made an order for winding up or which has passed a resolution for voluntary winding up, the liquidator,
 - (g) in the case of an incorporated cell company, an incorporated cell of the incorporated cell company,

- (h) in the case of an incorporated cell, its incorporated cell company,
- (i) in the case of a cell of a protected cell company, the protected cell company,

or by all or any of those parties, together or separately.

(2) The Court, on hearing an application for an administration order, may, on such terms and conditions as it thinks fit -

- (a) grant or dismiss the application,
- (b) adjourn the hearing, conditionally or unconditionally,
or
- (c) make an interim order or any other order it thinks fit.

(3) An interim order under subsection (2) may, without limitation, restrict the performance of any functions of the directors or of the company, whether by reference to the consent of the Court or otherwise.

(4) Notice of an application to the Court for an administration order in respect of a company (or cell of a protected cell company) shall, unless the Court orders otherwise, be served on -

- (a) the company,
- (b) the Commission, in respect of supervised companies and companies engaged in financial services business,

- (c) in the case of an incorporated cell company, each incorporated cell of the incorporated cell company,
- (d) in the case of an incorporated cell, its incorporated cell company,
- (e) such other persons, if any, as the Court may direct, including (without limitation) any creditor,

who shall each be given an opportunity of making representations to the Court before the order is made.

(5) Notice of an application for an administration order shall be delivered to the Registrar at least 2 clear days before the day of the making of the application or, if that is not reasonably practicable, then as soon as reasonably practicable thereafter.

(6) The Registrar shall give notice of the application for an administration order in such manner and for such period as he thinks fit.

Effect of application for administration order.

376. (1) Subject to section 390, during the period between the presentation of an application for an administration order and ending with the making of such an order or the dismissal of the application -

- (a) no resolution may be passed or order made for the company's winding up,

- (b) no proceedings may be commenced or continued against the company except with the leave of the Court and subject to such terms and conditions as the Court may impose (but, for the avoidance of doubt and without limitation, rights of set-off and secured interests, including security interests (within the meaning of the Security Interests (Guernsey) Law, 1993)^e and rights of enforcement thereof, are unaffected by the provisions of this paragraph).

(2) Nothing in subsection (1) requires the leave of the Court for the presentation of an application for the company's winding up.

Effect of administration order.

377. (1) On the making of an administration order any application for the company's winding up shall be dismissed.

(2) During the period for which an administration order is in force -

- (a) no resolution may be passed or order made for the company's winding up, and
- (b) no proceedings may be commenced or continued against the company except with the consent of the administrator or the leave of the Court and subject (where the Court gives leave) to such terms and conditions as the Court may impose (but, for the

^e Order in Council No. III of 1993.

avoidance of doubt and without limitation, rights of set-off and secured interests, including security interests (within the meaning of the Security Interests (Guernsey) Law, 1993) and rights of enforcement thereof, are unaffected by the provisions of this paragraph).

(3) This section is subject to section 390 in the case of the administration of the cell of a protected cell company.

Details of administration to appear in company's correspondence.

378. (1) All correspondence of a company (or cell of a protected cell company) subject to an administration order shall contain the administrator's name and a statement that the affairs, business and property of the company are being managed by the administrator, unless this 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) Where a company (or cell of a protected cell company) subject to an administration order has a website, the administrator's name and a statement that the affairs, business and property of the company are being managed by the administrator shall appear on a reasonably prominent location on that website.

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

General powers of administrator.

379. (1) The administrator may do all such things as may be necessary or expedient for the management of the affairs, business and property of the company (or cell, as the case may be).

(2) Without prejudice to subsection (1), and unless the Court orders otherwise, the administrator has the powers specified in Schedule 1.

(3) The administrator may apply to the Court for directions in relation to -

(a) the extent or performance of any function, and

(b) any matter arising in the course of his administration,

and on such an application the Court may make such order, on such terms and conditions, as it thinks fit.

(4) In performing his functions the administrator is deemed to act as the company's agent (or the protected cell company's agent in the case of a cell), but shall not incur personal liability except to the extent that he is fraudulent, reckless or grossly negligent or acts in bad faith.

(5) A person dealing with the administrator in good faith is not concerned to enquire whether the administrator is acting within his powers.

(6) The administrator has power -

(a) to remove any director of the company (or protected cell company in the case of a cell) and to appoint any

person to be a director of it, whether to fill a vacancy or otherwise, and

- (b) to call any meeting of members or creditors of the company (or cell, as the case may be).

(7) In the case of the administration of an incorporated cell company, the administrator also has power -

- (a) to remove any director of any of its incorporated cells and to appoint any person to be a director of them, whether to fill a vacancy or otherwise,
- (b) to call any meeting of members or creditors of any of its incorporated cells.

General duties of administrator.

380. (1) The administrator shall, on his appointment, take into his custody or under his control all the property to which the company (or cell, as the case may be) is or appears to be entitled.

(2) The administrator shall manage the affairs, business and property of the company (or cell, as the case may be) in accordance with any directions given by the Court.

Co-operation with and by administrator.

381. (1) Any function conferred on the company or its officers, whether by this Law or by the memorandum or articles or otherwise, which could be performed in such a way as to interfere with the performance by the

administrator of his functions may not be performed except with the consent of the administrator, which may be given either generally or in relation to particular cases.

(2) Any function conferred on an incorporated cell or its officers, whether by this Law or by the memorandum or articles or otherwise, which could be performed during the administration of its incorporated cell company in such a way as to interfere with the performance by the administrator of his functions may not be performed except with the consent of the administrator, which may be given either generally or in relation to particular cases.

(3) Any function conferred on an incorporated cell company or its officers, whether by this Law or by the memorandum or articles or otherwise, which could be performed during the administration of any of its incorporated cells in such a way as to interfere with the performance by the administrator of his functions may not be performed except with the consent of the administrator, which may be given either generally or in relation to particular cases.

(4) Any function conferred on a protected cell company or its officers, whether by this Law or by the memorandum or articles or otherwise, which could be performed during the administration of any of its cells in such a way as to interfere with the performance by the administrator of his functions may not be performed except with the consent of the administrator, which may be given either generally or in relation to particular cases.

(5) The administrator of an incorporated cell company shall cooperate, in the management of the affairs, business and property of the incorporated cells of the incorporated cell company, with -

(a) those incorporated cells, and

- (b) their directors and officers,

to the extent that such co-operation will not interfere with the performance of his functions as administrator.

(6) The administrator of an incorporated cell shall co-operate, in the management of the affairs, business and property of the incorporated cell company, with -

- (a) the incorporated cell company, and
- (b) its directors and officers,

to the extent that such co-operation will not interfere with the performance of his functions as administrator.

Discharge or variation of administration order.

382. (1) The administrator may at any time apply to the Court for the administration order to be discharged or varied.

(2) The administrator shall apply to the Court for the administration order to be discharged or varied if it appears to him that -

- (a) the purpose or each of the purposes specified in the order has been achieved or is incapable of achievement, or
- (b) it would otherwise be desirable or expedient to discharge or vary the order.

(3) The Court, on hearing an application under this section for the discharge or variation of an administration order, may, on such terms and conditions as it thinks fit -

- (a) grant or dismiss the application,
- (b) adjourn the hearing, conditionally or unconditionally,
or
- (c) make an interim order or any other order it thinks fit.

(4) Where an administration order is discharged or varied under this section the administrator shall -

- (a) within 7 days after the day of the order, send a copy of the order effecting the discharge or variation to the Registrar, and
- (b) within such time as the Court may direct, send a copy thereof to such other persons as the Court may direct.

Remuneration and swearing in of administrator.

383. (1) The administrator's remuneration, and any costs, charges and expenses properly incurred in the administration, are payable from the company's assets (or cellular assets attributable to the cell in respect of which the administrator was appointed, as the case may be) in priority to all other claims.

- (2) The administrator's fees shall be fixed by the Court.

(3) An administrator shall be sworn before the Court when the Court makes the administration order or at any other time directed by the Court.

Vacation of office.

384. (1) The administrator -

- (a) may at any time be removed from office by order of the Court,
- (b) may resign his office by giving notice of resignation to the Court, and
- (c) shall vacate office if the administration order is discharged.

(2) Where there is a vacancy in the office of administrator the Court may, on the application of any interested party, appoint a replacement.

Release of administrator.

385. (1) A person who has ceased to be the administrator of a company (or cell, as the case may be) has his release with effect from -

- (a) in the case of a person who has died, the time at which notice is given to the Court that he has ceased to hold office,
- (b) in any other case, such time as the Court may determine.

(2) Where a person has his release under this section he is, with effect from the time of release, discharged from all liability both in respect of his acts and omissions in the administration and otherwise in relation to his conduct as administrator, except to the extent that he has incurred personal liability by virtue of section 379(4).

(3) However, nothing in this section prevents the exercise, in relation to a person who has his release under this section, of the Court's powers under section 422.

Information to be given by administrator.

386. (1) Where an administration order is made, the administrator shall -

- (a) forthwith send to the company notice of the order,
- (b) in the case of a cell of a protected cell company, forthwith send to the protected cell company notice of the order,
- (c) forthwith send a copy of the order to the Registrar,
- (d) within 28 days after the day of the making of the order-
 - (i) unless the Court orders otherwise, send notice of the order to all creditors of the company (or cell, as the case may be), so far as he is aware of their addresses,

- (ii) where the order is in respect of an incorporated cell company, send notice of the order to its incorporated cells,
 - (iii) where the notice is in respect of an incorporated cell, send notice of the order to its incorporated cell company, and
 - (iv) in the case of a supervised company or a company engaged in financial services business, send notice of the order to the Commission, and
- (e) within such time as the Court may direct, send a copy of the order to such other persons as the Court may direct.

(2) The Registrar shall give notice of the administration order in such manner and for such period as he thinks fit.

Statement of affairs to be submitted to administrator.

387. (1) Where an administration order is made, the administrator may require all or any of the persons mentioned in subsection (3) to make out and submit to him a statement (a "**statement of affairs**") in such form as he may require as to the affairs of the company (or cell, as the case may be).

(2) The statement of affairs shall be verified by affidavit of the persons required to submit it (or in such other manner as the administrator may require) and shall show -

- (a) particulars of the company's (or cell's, as the case may be) assets, debts and liabilities,
 - (b) the names and addresses of its creditors,
 - (c) any securities held by any of its creditors,
 - (d) the dates when those securities were respectively given, and
 - (e) such further or other information as the administrator may require.
- (3) The persons referred to in subsection (1) are -
- (a) those who are or have been officers of the company,
 - (b) those who have taken part in the company's formation at any time within the period of one year before the date of the administration order ("**the preceding year**"),
 - (c) those who are in the company's employment or have been in its employment within the preceding year, and are in the administrator's opinion capable of giving the information required,
 - (d) those who are or have within the preceding year been officers of or in the employment of a company which

is, or within the preceding year was, an officer of the company.

(4) In subsection (3) -

(a) "**employment**" includes employment under a contract for services, and

(b) in the case of a cell of a protected cell company, references to company include references to the protected cell company.

(5) Where any persons are required under this section to submit a statement of affairs to the administrator, they shall do so (subject to the next subsection) within a period of 21 days after the day on which written notice of the requirement is given to them by the administrator.

(6) The administrator, if he thinks fit, may -

(a) at any time release a person from an obligation imposed on him under subsection (1) or (2), or

(b) either when giving notice under subsection (5) or subsequently, extend the period mentioned in that subsection,

and where the administrator has refused to exercise a power conferred by this subsection, the Court, if it thinks fit, may exercise it.

(7) If a person without reasonable excuse fails to comply with any obligation imposed under this section, he is guilty of an offence and, in addition, liable to a daily default fine.

(8) Nothing in this section compels the production or divulgence by an advocate or other legal adviser of an item subject to legal professional privilege (within the meaning of section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003^f), but an advocate or other legal adviser may be required to give the name and address of any client.

(9) A requirement imposed by an administrator under this section has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise, and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

Protection of interests of creditors and members.

388. (1) At any time when an administration order is in force, a creditor or member of the company (or cell, as the case may be) or, in the case of a supervised company or a company engaged in financial services business, the Commission, may apply to the Court for an order under this section on the ground -

- (a) that the company's (or cell's, as the case may be) affairs, business and property are being or have been managed by the administrator in a manner which is unfairly prejudicial to the interests of its creditors or members generally, or of some part of its creditors or

^f Order in Council No. XXIII of 2003.

members (including, except where the applicant is the Commission, at least the applicant himself),

- (b) that any actual or proposed act or omission of the administrator is or would be so prejudicial, or
- (c) that it would otherwise be desirable or expedient for an order under this section to be made.

(2) The Court, on hearing an application for an order under this section, may, on such terms and conditions as it thinks fit -

- (a) dismiss the application, or make such order as it thinks fit for giving relief in respect of the matters complained of,
- (b) adjourn the hearing, conditionally or unconditionally, or
- (c) make an interim order or any other order that it thinks fit.

(3) An order under this section may in particular -

- (a) regulate the future management by the administrator of the company's (or cell's, as the case may be) affairs, business and property,
- (b) require the administrator to refrain from doing or continuing an act complained of by the applicant, or to

do an act which the applicant has complained he has omitted to do,

- (c) require the summoning of a meeting of members for the purpose of considering such matters as the Court may direct,
- (d) discharge the administration order and make such consequential provision as the Court thinks fit.

(4) Where the administration order is discharged the administrator shall -

- (a) within 7 days after the day of the discharge, send a copy of the order effecting the discharge to the Registrar, and
- (b) within such time as the Court may direct, send a copy thereof to such persons as the Court may direct.

(5) An application for an order under this section may also be made, with leave of the Court, by a person other than one described in subsection (1).

Administration of incorporated cell company not to prejudice its incorporated cells.

389. The administration of an incorporated cell company shall be carried on in such a way as to not prejudice the affairs, business and property of any of its incorporated cells and accordingly, during the administration, the incorporated cell

company shall continue to carry on business to the extent necessary for the continuance of business of its incorporated cells.

Cells of protected cell companies: administration subject to liquidation.

390. (1) An administration order in respect of a cell of a protected cell company -

(a) may not be made if -

(i) a liquidator has been appointed to act in respect of the protected cell company,

(ii) an application has been made for the winding up of the protected cell company, or

(iii) the protected cell company has passed a resolution for voluntary winding up,

(b) shall cease to have effect upon the appointment of a liquidator to act in respect of the protected cell company, but without prejudice to prior acts.

(2) No resolution for the voluntary winding up of a protected cell company any cell of which is subject to an administration order shall be effective without the leave of the Court.

(3) For the avoidance of doubt, notwithstanding any restriction or limitation placed on administration orders in respect of the cells of a protected cell company, a protected cell company may be subject to an administration order in the same manner as any other company.

PART XXII
VOLUNTARY WINDING UP

Cases in which company may be wound up voluntarily.

391. (1) A company may be wound up voluntarily -

(a) in either of the following cases -

(i) the period (if any) fixed by the memorandum or articles for the duration of the company expires, or

(ii) the event (if any) occurs on the occurrence of which the memorandum or articles provide that the company shall be dissolved,

provided that in each case the company passes an ordinary resolution that it be wound up voluntarily, or

(b) if the company passes a special resolution that it be wound up voluntarily.

(2) A copy of every ordinary resolution that a company be wound up voluntarily shall be delivered by the company to the Registrar within 30 days after the day of it being passed.

(3) Failure to comply with subsection (2) does not render the resolution void.

- (4) A company which fails to comply with subsection (2) is -
- (a) guilty of an offence, and
 - (b) liable to a civil penalty.

Notice of voluntary winding up.

392. The Registrar shall give notice of the fact that a company has passed-

- (a) a special resolution for voluntary winding up, or
- (b) an ordinary resolution for voluntary winding up,

in such manner and for such period as he thinks fit.

Commencement of voluntary winding up.

393. A voluntary winding up commences upon the passing of the resolution for voluntary winding up.

Consequences of resolution to wind up.

394. (1) From the commencement of a voluntary winding up, the company shall cease to carry on business except in so far as may be expedient for the beneficial winding up of the company.

(2) Subject to subsection (1), the company's corporate state and powers, notwithstanding anything to the contrary in its memorandum or articles, continue until dissolution.

(3) A company which contravenes subsection (1) is guilty of an offence.

Appointment of liquidator.

395. (1) In a voluntary winding up, the company shall, by ordinary resolution -

- (a) appoint a liquidator to wind up the company's affairs and to realise and distribute its assets, and
- (b) fix his remuneration.

(2) Upon the appointment of a liquidator, all powers of the directors cease, except to the extent that the company by ordinary resolution or the liquidator sanctions their continuance.

(3) A person who purports to exercise any powers of a director at a time when, pursuant to subsection (2), those powers have ceased is guilty of an offence.

Power to fill vacancy in office of liquidator.

396. (1) Where, in the course of a voluntary winding up, a vacancy occurs by death or resignation in the office of liquidator -

- (a) the Court, or
- (b) subject to the provisions of any arrangement made with its creditors, the company by ordinary resolution,

may fill the vacancy.

(2) For the purposes of subsection (1)(b) a general meeting may be convened by the continuing liquidators, if any, or by any member of the company.

General provisions as to liquidator.

397. (1) The liquidator shall -

- (a) realise the company's assets and discharge the company's liabilities, and
- (b) having done so, distribute any surplus amongst the members according to their respective entitlements in accordance with section 419.

(2) Where several liquidators are appointed, every power hereby given may be exercised -

- (a) by one or more of them, as may be determined at the time of their appointment, or
- (b) in default of such determination, by any number not less than 2.

(3) A liquidator may exercise all powers which may be given to him by the Court.

Appointment of liquidator by the Court.

398. If for whatever reason no liquidator is appointed in accordance with section 395 or 396, the Court may, on the application of any member or creditor, appoint a liquidator.

Calling of general meetings by liquidators.

399. (1) On the expiration of one year beginning on the date of commencement of a voluntary winding up, and on the expiration of each succeeding year, the liquidator shall, if the winding up is not complete, summon a general meeting of the company.

(2) The liquidator shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(3) The liquidator may summon a general meeting of the company at any other time.

Final meeting prior to dissolution.

400. (1) As soon as the company's affairs are fully wound up, the liquidator shall -

- (a) prepare an account of the winding up, giving details of the conduct of the liquidation and the disposal of the company's property, and stating whether or not any state of affairs described in section 422(1), 433(1) or 434(2) has come to his attention, and
- (b) call a general meeting of the company at which the account shall be presented and an explanation shall be given of it.

(2) After such a meeting the liquidator shall give notice to the Registrar of the holding of the meeting and of its date.

(3) The Registrar shall publish the fact of this final meeting and that the company is to be dissolved in such manner and for such period as he thinks fit.

(4) On the expiration of 3 months beginning on the date of delivery of such notice, the company is dissolved.

Delegation of company's powers to creditors.

401. (1) A company which is being or which is to be voluntarily wound up may, by special resolution, delegate to its creditors or to any committee thereof the power -

- (a) to appoint a liquidator and to fill any vacancy in the office of liquidator,
- (b) to enter into any arrangement regarding the powers to be exercised by the liquidator and the manner in which they are to be exercised,

and any act done by the creditors in pursuance of any such delegated power shall have effect as if done by the company.

(2) Any arrangement entered into between a company which is being or which is to be voluntarily wound up and its creditors is, subject to the right of appeal conferred by subsection (3), binding if sanctioned by a special resolution of the company and by 75% in number and value of the creditors.

(3) A creditor or shareholder of a company which has entered into an arrangement described in subsection (2) may, within 21 days beginning on the date of the completion of the arrangement, apply to the Court for an order that

the arrangement be set aside; and thereupon the Court may make such order as it thinks fit for the setting aside, amendment, variation or confirmation of the arrangement.

Power to apply to Court for directions.

402. A member of a company which is being or which is to be voluntarily wound up may apply to the Court for directions concerning any aspect of the winding up; and upon such an application the Court may make such order as it thinks fit.

Removal of liquidator.

403. In a voluntary winding up, a liquidator by whoever appointed may be removed from office by the Court; and in that case the Court may appoint a replacement.

Expenses of voluntary winding up.

404. All costs, charges and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator, are payable from the company's assets in priority to all other claims.

Court may order compulsory winding up.

405. The Court may, notwithstanding the passing of a resolution under section 391 for the voluntary winding up of a company, entertain an application under section 408 for an order for the compulsory winding up of the company.

PART XXIII

COMPULSORY WINDING UP

Circumstances in which Court may wind company up.

406. A company may be wound up by the Court if -

- (a) the company has by special resolution resolved that the company be wound up by the Court,
- (b) the company does not commence business within one year beginning on the date of its incorporation,
- (c) the company suspends business for a whole year,
- (d) the company has no members (other than the company itself where it holds its own shares as treasury shares),
- (e) the company is unable to pay its debts within the meaning given in section 407,
- (f) the company has failed to comply with a direction of the Registrar under section 28(2) to change its name,
- (g) subject to sections 200 and 201, the company has failed to hold a general meeting of its members in accordance with section 199(1) or (2), in which case the provisions of this Part shall apply in relation to the winding up of the company subject to the modifications set out in section 199(4), (5) and (6),
- (h) the company has failed to send its members a copy of its accounts or reports in accordance with section 251(1), in which case the provisions of this Part shall apply in relation to the winding up of the company

subject to the modifications set out in section 251(5), (6) and (7), or

- (i) the Court is of the opinion that it is just and equitable that the company should be wound up.

Meaning of "unable to pay debts".

407. For the purposes of section 406(e) and without prejudice to the provisions of section 527, a company shall be deemed to be unable to pay its debts if -

- (a) a creditor to whom the company owes a sum exceeding £750 which is then due serves on the company through the office of Her Majesty's Sergeant at the company's registered office a written demand for payment, and
- (b) the company, for a period of 21 days immediately following the date of service, neglects to pay the sum or to secure payment to the reasonable satisfaction of the creditor,

or if it is proved to the satisfaction of the Court that the company fails to satisfy the solvency test.

Application for compulsory winding up.

408. (1) An application for the compulsory winding up of a company may be made to the Court by the company, by any director, member or creditor thereof or by any other interested party.

(2) An order made by the Court on an application under subsection (1) operates for the benefit of all the company's creditors in the same way as if the application had been presented by them.

Commission may be heard on winding up application.

409. (1) An application for an order for the compulsory winding up of a company referred to in subsection (2) shall not be heard unless a copy of the application is served on the Commission not less than 7 days (or such other period as the Court may, in its absolute discretion, direct) before the day of the hearing of the application.

(2) The companies mentioned in subsection (1) are -

- (a) supervised companies,
- (b) companies engaged in a financial services business, or
- (c) companies of any other class or description prescribed by the Commission for the purposes of this section.

(3) At the hearing of the application the Commission may make representations to the Court which the Court shall take into account in deciding whether or not, and in what manner, to exercise its powers under this Part.

Ground on which Department or Commission may make winding up application.

410. (1) A company may be wound up by the Court if the Court is of the opinion that it is desirable that the company should be wound up for the protection of the public or of the reputation of the Bailiwick.

(2) An application under subsection (1) for the compulsory winding up of a company may be made to the Court only by the Department or by the Commission.

(3) An order made by the Court on an application under subsection (1) operates for the benefit of all the company's creditors in the same way as if the application had been presented by them.

(4) This section is in addition to and not in derogation from the other provisions of this Part and any other provision of law relating to winding up.

Power to restrain proceedings and appoint provisional liquidator.

411. On the making of an application for the compulsory winding up of a company or at any time thereafter, any creditor of the company may apply to the Court for an order -

- (a) restraining, on such terms and conditions as the Court thinks fit, any action or proceeding pending against the company,
- (b) appointing a provisional liquidator to ascertain the company's assets and liabilities, manage its affairs and do all acts authorised by the Court.

Powers of Court on hearing application.

412. On hearing an application for the compulsory winding up of a company, the Court may grant the application on such terms and conditions as it thinks fit, dismiss the application, or make such other order as it thinks fit.

Appointment of liquidator in compulsory winding up.

413. (1) On the making of a compulsory winding up order the Court shall, subject to the provisions of subsection (2), appoint a liquidator nominated by the applicant or, where no person has been nominated, make such appointment as it thinks fit.

(2) The Court may, before appointing a person to the office of liquidator, satisfy itself as to whether he is qualified to be appointed.

(3) The Court may, whether before or after appointing a person to the office of liquidator -

(a) require such security as it thinks fit from him, and

(b) order that monies received by him be paid into an account specified by the Court.

(4) A liquidator appointed by the Court shall be sworn and has power -

(a) to bring or defend civil actions in the name of and on behalf of the company,

(b) to carry on the business of the company to the extent expedient for the beneficial winding up of the company,

(c) to make calls of capital,

- (d) to sign all receipts and other documents in the name of and on behalf of the company, and to do any other act relating to the winding up, and for these purposes to use the company seal whenever necessary, and
- (e) to do any act authorised by the Court.

Consequences of appointment of liquidator and compulsory winding up order.

414. (1) Upon the appointment of a liquidator in a compulsory winding up, all powers of the directors cease, except to the extent that the liquidator or the Court sanctions their continuance.

(2) A person who purports to exercise any powers of a director at a time when, pursuant to subsection (1), those powers have ceased is guilty of an offence.

(3) On the making of a compulsory winding up order, the company shall cease to carry on business except in so far as may be expedient for the beneficial winding up of the company.

(4) Subject to subsection (3), the company's corporate state and powers shall, notwithstanding anything to the contrary in its memorandum and articles, continue until dissolution.

(5) The liquidator shall, within 7 days after the day of being appointed, send a copy of the compulsory winding up order to the Registrar.

(6) A company which contravenes subsection (3) is guilty of an offence.

Notice of compulsory winding up.

415. The Registrar shall give notice of the fact that the company is being compulsorily wound up in such manner and for such period as he thinks fit.

Resignation, removal or death of liquidator.

416. In a compulsory winding up -

- (a) a liquidator may resign from office or may be removed from office by the Court, and
- (b) where a vacancy occurs in the office of liquidator by reason of resignation, removal or death, the Court may fill the vacancy.

Examination of liquidator's accounts by Commissioner.

417. (1) In a compulsory winding up, when the liquidator has realised the company's assets he shall apply to the Court for the appointment of a Commissioner of the Court to examine his accounts and to distribute the funds derived from the company's assets.

(2) The Commissioner shall, subject to subsection (4) -

- (a) arrange a creditors' meeting for the purpose of examining and verifying the financial statements and creditors' claims and preferences, and
- (b) fix a date for the distribution of the company's assets.

(3) If a claim is disputed, the Commissioner shall refer the decision on the claim to the Court; but otherwise the liquidator may, subject to

subsection (4), distribute such part of the company's assets as he thinks fit in relation to any claim.

(4) A notice shall, on 2 occasions falling in successive weeks, be placed in La Gazette Officielle stating the day of the meeting or, as the case may be, the distribution (which day shall not in either case be less than 14 days after the day of the second notice).

(5) If any state of affairs described in section 422(1), 433(1) or 434(2) comes to the attention of the liquidator, he shall state this in his accounts.

Expenses of compulsory winding up.

418. All costs, charges and expenses properly incurred in the compulsory winding up of a company, including the remuneration of the liquidator, are payable from the company's assets in priority to all other claims.

PART XXIV

PROVISIONS OF GENERAL APPLICATION IN WINDING UP

Distribution of company's property.

- 419.** (1) Subject to the provisions of -
- (a) this Law and any rule of law as to preferential payments,
 - (b) any agreement between the company and any creditor thereof as to the subordination of the debts due to that creditor to the debts due to the company's other creditors, and

- (c) any agreement between the company and any creditor thereof as to set-off,

the company's assets in a winding up shall be realised and shall be applied in satisfaction of the company's debts and liabilities *pari passu*.

(2) Any surplus shall thereafter be distributed (unless the memorandum or articles provide otherwise) among the members according to their respective rights and interests in the company.

Company not to undertake business once wound up.

420. (1) In a compulsory winding up, the liquidator shall, within a period of 15 days beginning on the day of final distribution of the company's assets, apply to the Court for an order declaring the company to be dissolved.

(2) Immediately upon the dissolution of a company (whether by means of a voluntary winding up, a compulsory winding up or otherwise) the company may not undertake business or contract debts or obligations.

(3) Any member of a company who causes or permits the company to contravene subsection (2) is personally liable in respect of any debt or obligation undertaken.

No share transfers after commencement of winding up.

421. Any transfer of a company's shares made after the commencement of a winding up, other than a transfer made to or with the sanction of the liquidator, is void.

Remedy against delinquent officers.

422. (1) Where in the course of the winding up of a company it appears that any person described in subsection (2) -

- (a) has appropriated or otherwise misapplied any of the company's assets,
- (b) has become personally liable for any of the company's debts or liabilities, or
- (c) has otherwise been guilty of any misfeasance or breach of fiduciary duty in relation to the company,

the liquidator or any creditor or member of the company may apply to the Court for an order under this section.

(2) The persons mentioned in subsection (1) are -

- (a) any past or present officer of the company,
- (b) any other person who, directly or indirectly, is or has been in any way concerned in or has participated in the promotion, formation or management of the company.

(3) On an application under subsection (1) the Court may examine the conduct of the person concerned and may order him -

- (a) to repay, restore or account for such money or such property,

- (b) to contribute such sum to the company's assets,
- (c) to pay interest upon such amount, at such rate and from such date,

as the Court thinks fit in respect of the default, whether by way of indemnity or compensation or otherwise.

Liquidator's remuneration.

423. The liquidator's fees shall, subject to section 395(1)(b), be fixed by the Court.

Preferences in or prior to winding up.

424. (1) The liquidator of a company may apply to the Court for an order under this section if the company has given a preference to any person at any time after the commencement of a period of 6 months immediately preceding the relevant date.

(2) For the purposes of this section -

- (a) a company gives a preference to a person if -
 - (i) that person is one of the company's creditors or is a surety or guarantor for any of the company's debts or other liabilities, and
 - (ii) the company does anything, or permits anything to be done, which improves that person's position in the company's liquidation,

- (b) the relevant date is the earlier of -
 - (i) the date of any application for the compulsory winding up of the company under section 408, or
 - (ii) the date of the passing by the company of any resolution mentioned in section 391 for the voluntary winding up of the company.

(3) If on an application under subsection (1) the Court is of opinion that -

- (a) the company was at the time of giving the preference, or became as a result of giving the preference, unable to pay its debts within the meaning of section 407, and
- (b) the company was influenced in deciding to give a preference by a desire to produce the effect mentioned in subsection (2)(a)(ii),

the Court may make such order as it thinks fit for restoring the position to what it would have been if the company had not given the preference.

(4) Without prejudice to the generality of subsection (3), but subject to subsection (5), an order under this section may -

- (a) require any property transferred in connection with the giving of the preference to be vested in the company,

- (b) require any property to be so vested if it represents in any person's hands the application of either the proceeds of sale of property so transferred or money so transferred,
- (c) release or discharge (in whole or in part) any security given by the company,
- (d) require any person to pay, in respect of benefits received by him from the company, such sums to the liquidator as the Court may direct,
- (e) provide for any surety or guarantor whose obligations to any person were released, reduced or discharged by the giving of the preference to be under such new or revived obligations to that person as the Court thinks fit,
- (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order,
- (g) provide for the extent to which any person whose property is vested by the order in the company, or on whom obligations are imposed by the order, is to be able to claim in the liquidation for debts or other liabilities which arose from, or were released, reduced or discharged by, the giving of the preference.

(5) An order under this section may affect the property of or impose obligations on any person, whether or not he is the person to whom the preference was given, but shall not -

- (a) prejudice any interest in property acquired from a person other than the company in good faith, for value and without notice of the existence of circumstances enabling an order under this section to be applied for,
- (b) prejudice an interest deriving from such an interest, or
- (c) require a person to pay a sum to the liquidator in respect of a benefit received by that person at a time when he was not a creditor of the company, and received by him in good faith, for value and without notice of the existence of circumstances enabling an order under this section to be applied for.

(6) In the application of this section to any case where the person given a preference is connected with the company -

- (a) the reference in subsection (1) to 6 months is to be read as a reference to 2 years, and
- (b) the company is presumed, unless the contrary is shown, to have been influenced in deciding to give the preference by such desire as is mentioned in subsection (3)(b).

(7) For the purposes of subsection (6) a person is "connected" with the company at any time if the company knew or ought to have known at that time that -

(a) that person had any significant direct or indirect proprietary, financial or other interest in or connection with the company (other than as a creditor, surety or guarantor), or

(b) another person had any such interest in or connection with both that person and the company.

(8) The fact that something is done or permitted pursuant to a court order does not, without more, prevent it from being a preference.

(9) This section is without prejudice to any other remedy.

Company to be notified of winding up application.

425. The Court shall not hear an application for the winding up of a company under this Law unless satisfied that the company has been notified of the date, time and place of the application.

Liquidator may seek directions.

426. The liquidator of a company may seek the Court's directions in relation to any matter arising in relation to the winding up of the company and upon such an application the Court may make such order as it thinks fit.

PART XXV

DISQUALIFICATION ORDERS

Disqualification orders.

427. (1) A disqualification order is an order made by the Court prohibiting a person from -

- (a) being a director, secretary or other officer of any company or any specified company,
- (b) being a shadow director of any company or any specified company,
- (c) participating in, or being in any way concerned in, directly or indirectly, the management, formation or promotion of any company or any specified company,
- (d) participating in, or being in any way concerned in, directly or indirectly, the management, formation or promotion of any overseas company,
- (e) being an administrator of any company or any specified company,
- (f) being a receiver of a cell of any protected cell company or any specified protected cell company,
- (g) being a liquidator of any company or any specified company.

(2) The Court can make a disqualification order of its own motion or upon an application made by -

- (a) the Department,
- (b) the Commission,
- (c) Her Majesty's Procureur,
- (d) the Registrar,
- (e) any company of which the person in question is or has been a director, shadow director, secretary, officer or is participating or has participated directly or indirectly in the management, formation or promotion thereof,
- (f) any liquidator, administrator, member or creditor of such a company as is mentioned in paragraph (e),
- (g) any receiver of a cell of a protected cell company which is such a company as is mentioned in paragraph (e), or
- (h) any other interested party, with the leave of the Court.

(3) The order may be made during proceedings initiated for that purpose or in the course of any other proceedings.

(4) A disqualification order may, in the Court's absolute discretion, be granted by consent.

(5) A disqualification order may contain such incidental and ancillary terms and conditions as the Court thinks fit.

(6) The Court shall direct that a copy of the order be served upon the Registrar.

(7) For the purposes of this Part, the Court is constituted by the Bailiff sitting unaccompanied by the Jurats.

Ground for making a disqualification order.

428. (1) The Court may make a disqualification order where it considers that, by reason of a person's conduct in relation to a company or otherwise, that person is unfit to be concerned in the management of a company.

(2) In determining whether a person is unfit, regard shall be had to -

- (a) his probity, competence, experience and soundness of judgement for fulfilling the responsibilities of a director, secretary or officer of a company,
- (b) the diligence with which he has fulfilled his responsibilities,
- (c) whether the interests of members or creditors or potential members or creditors of any company or any specified company are or are likely to be in any way threatened by his being a director, secretary or officer of a company,

- (d) his educational and professional qualifications, his membership of any professional or other relevant bodies and any evidence of his continuing professional education or development,
- (e) the rules, standards and guidelines of any relevant professional, governing, regulatory or supervisory authority,
- (f) his knowledge and understanding of the legal and professional obligations of directors, secretaries or officers of a company, and
- (g) such other matters as the Court thinks fit.

(3) Without prejudice to the generality of the foregoing, the Court may also have regard to -

- (a) the previous conduct and activities in business or financial matters of the person in question,
- (b) any convictions he has for an offence in connection with the promotion, formation, management, liquidation or striking off of a company,
- (c) any convictions he has for any offence and in particular any offence involving fraud or dishonesty,
- (d) whether he has been held liable to make contributions to a company's assets under section 433, 434 or 435,

- (e) whether he has been persistently in default in relation to any provisions of this Law requiring any validation, return, account or other document to be filed with, delivered or sent, or any notice of any matter to be given, to the Registrar,
- (f) his conduct in connection with any company that has gone into insolvent liquidation,
- (g) any misfeasance or breach of any fiduciary or other duty by him in relation to a company,
- (h) whether he has been disqualified, by reason of misconduct or unfitness, from being concerned with the management of an overseas company under the law of any district, territory or place outside Guernsey, and
- (i) where he acted as a resident agent, any breach of his duties as a resident agent.

Duration of disqualification order.

429. (1) A disqualification order shall have effect for such period not exceeding 15 years as shall be specified therein.

(2) Where a disqualification order is made against a person already subject to such an order, the periods specified in those orders shall run concurrently unless the Court orders them to run consecutively.

Revocation of disqualification orders.

430. (1) A person subject to a disqualification order may apply to the Court for a revocation of the order on the ground that he is no longer unfit to be concerned in the management of a company, and the Court may grant the application if satisfied that -

- (a) it would not be contrary to the public interest to do so, and
- (b) the applicant is no longer unfit to be concerned in the management of a company.

(2) An application under this section for the revocation of a disqualification order shall not be heard unless the person upon whose application the disqualification order was made has been served with notice of the application to revoke not less than 28 days (or such other period as the Court may in its absolute discretion direct) before the date of the hearing; and, without prejudice to the foregoing, the Court may -

- (a) direct that notice of the application to revoke shall also be served on such other persons as the Court thinks fit, and
- (b) for that purpose adjourn the hearing of the application.

(3) The revocation of a disqualification order may, with the consent of the parties and in the Court's absolute discretion, be granted by consent.

Consequences of breaking a disqualification order.

431. (1) A person who contravenes any provision of a disqualification

order -

- (a) is guilty of an offence, and
- (b) is personally liable for any debts and liabilities of the company in relation to which the contravention was committed which were incurred at any time when he was acting in contravention of the disqualification order.

(2) A person's liability pursuant to subsection (1)(b) is joint and several with that of the company and of any other person so liable in relation to that company.

PART XXVI FRAUDULENT AND WRONGFUL TRADING

Offence of fraudulent trading.

432. If any business of a company is carried on with intent to defraud creditors (whether of the company or of any other person), or for any fraudulent purpose, every person who is knowingly a party to the carrying on of the business in that manner is guilty of an offence.

Civil liability for fraudulent trading.

- 433.** (1) If in the course of -
- (a) the winding up of a company, or
 - (b) the winding up of the business of or attributable to the cell of a protected cell company in accordance with a receivership order or administration order,

it appears that any business of the company or cell (as the case may be) has been carried on with intent to defraud creditors (whether of the company, of the cell or of any other person), or for any fraudulent purpose, subsection (2) has effect.

- (2) The Court, on the application of -
 - (a) the liquidator, administrator, or any creditor or member of the company, or
 - (b) the administrator, receiver, or any creditor or member of the cell of the protected cell company,

may declare that any persons who were knowingly parties to the carrying on of the business in the manner mentioned above shall be liable to make such contributions to the company's or cell's (as the case may be) assets as the Court thinks proper.

Civil liability of directors for wrongful trading.

434. (1) Subject to subsection (3), if in the course of the winding up of a company it appears that subsection (2) applies to a person, the Court, on the application of the liquidator or any creditor or member of the company, may declare that that person shall be liable to make such contribution to the company's assets as the Court thinks proper.

- (2) This subsection applies in relation to a person if -
 - (a) the company has gone into insolvent liquidation,
 - (b) at some time before the commencement of the winding up of the company, that person knew or ought to have

concluded that there was no reasonable prospect of the company avoiding going into insolvent liquidation, and

(c) that person was a director of the company at that time.

(3) The Court shall not make a declaration under this section in respect of any person if it is satisfied that, after the condition specified in subsection (2)(b) was first fulfilled in relation to him, he took every step with a view to minimising the potential loss to the company's creditors that (assuming him to have known that there was no reasonable prospect of the company avoiding going into insolvent liquidation) he ought to have taken.

(4) For the purposes of subsections (2) and (3), the facts which a director of a company ought to know, the conclusions which he ought to reach and the steps which he ought to take are those which would be known, reached or taken by a reasonably diligent person having both -

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company, and

(b) the general knowledge, skill and experience of that director.

(5) The reference in subsection (4) to the functions carried out in relation to a company by a director of the company includes any function which he does not carry out but which has been entrusted to him.

(6) For the purposes of this section a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

(7) In this section, director includes a shadow director.

(8) This section is without prejudice to section 433.

Civil liability of directors for wrongful trading: cells of protected cell company.

435. (1) Subject to subsection (3), if in the course of the winding up of the business of or attributable to a cell of a protected cell company in accordance with a receivership order or administration order, it appears that subsection (2) applies to a person, the Court, on the application of the administrator, receiver, or any creditor or member of the cell, may declare that that person shall be liable to make such contribution to the cell's assets as the Court thinks proper.

(2) This subsection applies in relation to a person if -

(a) the cell has gone into insolvent liquidation,

(b) at some time before the commencement of the winding up, that person knew or ought to have concluded that there was no reasonable prospect of the cell avoiding insolvent liquidation, and

(c) that person was a director of the protected cell company at that time.

(3) The Court shall not make a declaration under this section in respect of any person if it is satisfied that, after the condition specified in subsection

(2)(b) was first fulfilled in relation to him, he took every step with a view to minimising the potential loss to the cell's creditors that (assuming him to have known that there was no reasonable prospect of the cell avoiding going into insolvent liquidation) he ought to have taken.

(4) For the purposes of subsections (2) and (3), the facts which a director of a protected cell company ought to know, the conclusions which he ought to reach and the steps which he ought to take are those which would be known, reached or taken by a reasonably diligent person having both -

- (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the protected cell company, and
- (b) the general knowledge, skill and experience of that director.

(5) The reference in subsection (4) to the functions carried out in relation to a protected cell company by a director of the company includes any function which he does not carry out but which has been entrusted to him.

(6) For the purposes of this section a cell goes into insolvent liquidation if the cellular assets attributable to the cell (and, where the company has entered into a recourse agreement, the assets liable under that agreement) are insufficient to discharge the claims of creditors in respect of that cell and the expenses of the receivership order or administration order (as the case may be).

(7) In this section, director includes a shadow director.

- (8) This section is without prejudice to section 433.

Proceedings under sections 433, 434 or 435.

436. (1) On the hearing of an application under section 433, 434 or 435, the applicant may himself give evidence or call witnesses.

(2) Where under section 433, 434 or 435 the Court makes a declaration, it may give such further directions as it thinks proper for giving effect thereto; and in particular the Court may -

(a) provide for the liability of any person under the declaration to be a charge on -

(i) any debt or obligation due from the company or cell to him,

(ii) any mortgage, charge, hypothèque, lien or other security on assets of the company or cell held by or vested in him,

(iii) any interest in any mortgage charge, hypothèque, lien or other security on assets of the company or cell held by or vested in him,

or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf, and

(b) make such further orders as may be necessary for enforcing any charge imposed under this subsection.

- (3) For the purposes of subsection (2)(a) "assignee" -
- (a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage, charge, hypothèque, lien or other security was created, issued or transferred or the interest created, but
 - (b) does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4) Where the Court makes a declaration under section 433, 434 or 435 in relation to a person who is a creditor of the company or cell of the protected cell company (as the case may be), it may direct that the whole or any part of any debt owed by the company or cell to that person and any interest thereon shall rank in priority after all other debts owed by the company or cell and after any interest on those debts.

(5) Sections 433, 434 or 435 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the declaration under the section is to be made.

PART XXVII
PROTECTED CELL COMPANIES

Formation

Companies which can be protected cell companies.

437. (1) A company cannot be incorporated as a protected cell company, and an existing company cannot be converted into a protected cell company, unless -

- (a) the company is declared (or when incorporated will be declared) by the Commission to be an authorised collective investment scheme under section 8 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987,
- (b) the company is (or when incorporated will be) a closed-ended investment company,
- (c) the company is (or when incorporated will be) a licensee within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002^g,
- (d) the company and its affairs are (or when incorporated will be) administered by a licensed person with a place of business in Guernsey, provided that the company is not (or when incorporated will not be) -
 - (i) a licence holder within the meaning of the Insurance Managers and Insurance

^g Order in Council No. XXI of 2002; amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

Intermediaries (Bailiwick of Guernsey) Law, 2002^h,

- (ii) a licensed institution within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994ⁱ,
 - (iii) a licensed fiduciary within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law, 2000^j, or
 - (iv) a company licensed to carry on controlled investment business within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, or
- (e) the company is of any other class or description prescribed by the Commission.

(2) For the purposes of subsection (1)(d) a licensed person means a person who -

^h Order in Council No. XXII of 2002; amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

ⁱ Order in Council No. XIII of 1994; amended by No's. XVII and XXI of 2002; No. XVI of 2003; and the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

^j Order in Council No. I of 2001; amended by No. XIV of 2003; and by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

- (a) is a licence holder within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002 or the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,
- (b) is a licensed institution within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
- (c) holds a full fiduciary licence within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law, 2000,
- (d) carries on a controlled investment business within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 and holds a licence under section 4 of that Law, or
- (e) is a company which is of any other class or description prescribed by the Commission.

Consent of Commission required.

438. (1) The following cannot be done except under the authority of and in accordance with the terms and conditions of the written consent of the Commission -

- (a) the incorporation of a company as a protected cell company,

- (b) the conversion of an existing company into a protected cell company, and
- (c) the conversion of an existing protected cell company into a non-cellular company.

(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.

(3) An application for the consent of the Commission under subsection (1) -

- (a) shall be made to the Commission in such form, and shall be accompanied by such documents and information, verified in such manner, as the Commission may require, whether in relation to any particular application or otherwise, and
- (b) shall be accompanied by such fee as may be prescribed by the Commission.

(4) A person who contravenes, or who causes or permits any contravention of, any term or condition of a consent of the Commission is guilty of an offence.

Determination of applications to and other decisions of Commission.

- 439.** (1) In deciding whether to -
- (a) grant any application for consent made under section 438,
 - (b) impose any term or condition upon that consent,
 - (c) vary or revoke any term or condition of that consent,
or
 - (d) impose any new term or condition on that consent,

the Commission must have regard to the protection of the public interest, including the need to -

- (i) protect the public, in Guernsey and elsewhere, against the effects of dishonesty, incompetence or malpractice,
- (ii) counter financial crime and the financing of terrorism in Guernsey and elsewhere,
- (iii) 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,
 - (c) varies or revokes any term or condition of that consent, or
 - (d) imposes any new term or condition on 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 440 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 440, subsection (2) of that section shall apply.

Appeals from determinations and other decisions of Commission.

- 440.** (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 variation or revocation of any term or condition of that consent,
 - (d) the imposition of any new term or condition on that consent, or
 - (e) the withholding of information pursuant to section 439(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 439.

(2) On an appeal under subsection (1)(e), the Court may examine any information the disclosure of which the Commission considers would be prejudicial as set out in section 439(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, 2007^k.

- (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 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.

Status

^k Order of the Royal Court No. IV of 2007.

Status of protected cell companies.

441. (1) A protected cell company is a single legal person.

(2) The creation by a protected cell company of a cell does not create, in respect of that cell, a legal person separate from the company.

Creation of cells.

442. A protected cell company may create one or more cells for the purpose of segregating and protecting cellular and core assets in the manner provided by this Part.

Demarcation of the core.

443. The core is the protected cell company excluding its cells.

Cell shares and cell share capital.

444. (1) A protected cell company may, in respect of any of its cells, create and issue shares ("**cell shares**") the proceeds of the issue of which ("**cell share capital**") shall be comprised in the cellular assets attributable to the cell in respect of which the cell shares were issued.

(2) The proceeds of the issue of shares other than cell shares created and issued by a protected cell company shall be comprised in the company's core assets.

(3) A protected cell company may pay a dividend (a "**cellular dividend**") in respect of cell shares.

(4) The provisions of this Law, subject to the provisions of this Part, and unless the context requires otherwise, apply in relation to -

- (a) cell shares as they apply to shares which are not cell shares, and
- (b) cell share capital as they apply to share capital which is not cell share capital.

Assets and liabilities

Cellular and core assets.

445. (1) The assets of a protected cell company are either cellular assets or core assets.

(2) It is the duty of the directors of a protected cell company-

- (a) to keep cellular assets separate and separately identifiable from core assets, and
- (b) to keep cellular assets attributable to each cell separate and separately identifiable from cellular assets attributable to other cells.

(3) The cellular assets of a protected cell company comprise the assets of the company attributable to the cells of the company.

(4) The assets attributable to a cell of a protected cell company comprise -

- (a) assets represented by the proceeds of cell share capital and reserves attributable to the cell, and

(b) all other assets attributable to the cell.

(5) The core assets of a protected cell company comprise the assets of the company attributable to the core of the company.

(6) The assets attributable to the core of a protected cell company comprise -

(a) assets represented by the proceeds of core share capital and reserves attributable to the core, and

(b) all other assets attributable to the core.

(7) For the purposes of subsections (4) and (6), the expression "**reserves**" includes retained earnings, capital reserves and share premiums.

(8) Notwithstanding the provisions of subsection (2), the directors of a protected cell company may cause or permit cellular assets and core assets to be held -

(a) by or through a nominee, or

(b) by a company the shares and capital interests of which may be cellular assets or core assets, or a combination of both.

(9) The duty imposed by subsection (2) is not breached by reason only that the directors of a protected cell company cause or permit cellular assets or core assets, or a combination of both, to be collectively invested, or collectively

managed by an investment manager, provided that the assets in question remain separately identifiable in accordance with subsection (2).

Protected assets.

446. In this Part "**protected assets**" means -

- (a) any cellular assets attributable to any cell of the protected cell company in respect of a liability not attributable to that cell, and
- (b) any core assets in respect of a liability attributable to a cell.

Recourse agreements.

447. (1) A "**recourse agreement**" is a written agreement between a protected cell company and a third party which provides that, pursuant to an arrangement effected by the protected cell company (within the meaning of section 458), protected assets may, notwithstanding the provisions of this Part, be subject to a liability owed to that third party.

(2) Before entering into a recourse agreement, each director of the protected cell company who authorises it must make a declaration that he believes, on reasonable grounds -

- (a) that no creditor of the company will be unfairly prejudiced by the recourse agreement, and
- (b) that (unless the memorandum or articles provide to the contrary) -

(i) where the protected assets are assets attributable to a cell, the members of that cell, or

(ii) where the protected assets are core assets, the members of the core,

have passed a resolution approving the recourse agreement.

(3) A director who without reasonable excuse makes a declaration under subsection (2) which is false, deceptive or misleading in a material particular is guilty of an offence.

(4) Any member or creditor of the protected cell company may, subject to such reasonable restrictions as the protected cell company may impose, inspect or request a copy of the directors' declaration.

(5) If a company fails to allow an inspection or refuses a request for a copy under subsection (4) it is guilty of an offence.

Position of creditors.

448. (1) Subject to the terms of any recourse agreement, the rights of creditors of a protected cell company correspond with the liabilities provided for in sections 451 and 452.

(2) Subject to the terms of any recourse agreement, no such creditor has any rights other than the rights referred to in this section and in sections 449, 450, 451 and 452.

(3) There is implied (except in so far as the same is expressly excluded in writing) in every transaction entered into by a protected cell company the following terms -

- (a) that no party shall seek, whether in any proceedings or by any other means whatsoever or wheresoever, to make or attempt to make liable any protected assets,
- (b) that if any party succeeds by any means whatsoever or wheresoever in making liable any protected assets, that party shall be liable to the company to pay a sum equal to the value of the benefit thereby obtained by him, and
- (c) that if any party succeeds in seizing or attaching by any means or otherwise levying execution against any protected assets, that party shall hold those assets or their proceeds on trust for the company and shall keep those assets or proceeds separate and identifiable as such trust property.

(4) All sums recovered by a protected cell company as a result of any such trust as is described in subsection (3)(c) shall be credited against any concurrent liability imposed pursuant to the implied term set out in subsection (3)(b).

(5) Any asset or sum recovered by a protected cell company pursuant to the implied term set out in subsection (3)(b) or (3)(c) or by any other means whatsoever or wheresoever in the events referred to in those subsections

shall, after the deduction or payment of any costs of recovery, be applied by the company so as to compensate the cell affected or (as the case may be) the core.

(6) In the event of any protected assets being taken in execution in respect of a liability to which they are not attributable, and in so far as such assets or compensation in respect thereof cannot otherwise be restored to the cell affected or (as the case may be) the core, the company shall -

- (a) cause or procure an independent expert, acting as expert and not as arbitrator, to certify the value of the assets lost to the cell affected or (as the case may be) the core, and
- (b) transfer or pay, from the cellular or core assets to which the liability was attributable, to the cell affected or (as the case may be) the core, assets or sums sufficient to restore to the cell affected or (as the case may be) the core, the value of the assets lost.

(7) This section has extra-territorial application.

Recourse to cellular assets by creditors.

449. Without prejudice to the provisions of sections 448 and 451, and subject to the terms of any recourse agreement, cellular assets attributable to a cell of a protected cell company -

- (a) are only available to the creditors of the company who are creditors in respect of that cell and who are thereby entitled, in conformity with the provisions of

this Part, to have recourse to the cellular assets attributable to that cell,

- (b) are absolutely protected from the creditors of the company who are not creditors in respect of that cell and who accordingly are not entitled to have recourse to the cellular assets attributable to that cell.

Recourse to core assets by creditors.

450. Without prejudice to the provisions of sections 448 and 452, and subject to the terms of any recourse agreement, core assets of a protected cell company -

- (a) are only available to the creditors of the company who are creditors in respect of the core and who are thereby entitled, in conformity with the provisions of this Part, to have recourse to the core assets,
- (b) are absolutely protected from the creditors of the company who are not creditors in respect of the core and who accordingly are not entitled to have recourse to the core assets.

Liability of cellular assets.

451. (1) Subject to the provisions of subsection (2), and to the terms of any recourse agreement, where any liability arises which is attributable to a particular cell of a protected cell company -

- (a) the cellular assets attributable to that cell are liable, and

(b) the liability is not a liability of any protected assets.

(2) In the case of loss or damage which is suffered by a particular cell of a protected cell company and which is caused by fraud perpetrated by or upon the core or another cell, the loss or damage is the liability solely of the company's core assets or (as the case may be) that other cell's assets, without prejudice to any liability of any person other than the company.

(3) Any liability not attributable to a particular cell of a protected cell company is the liability solely of the company's core assets.

(4) Notwithstanding the above provisions of this section the liabilities under subsection (1)(a) of the cellular assets attributable to a particular cell of a protected cell company shall abate rateably until the value of the aggregate liabilities equals the value of those assets: but the provisions of this subsection do not apply in any situation where there is a recourse agreement or where any of the liabilities of the company's cellular assets arises from fraud such as is referred to in subsection (2).

(5) This section has extra-territorial application.

Liability of core assets.

452. (1) Subject to the provisions of subsection (2), and to the terms of any recourse agreement, where any liability arises which is attributable to the core of a protected cell company -

(a) the core assets are liable, and

(b) the liability is not a liability of any protected assets.

(2) In the case of loss or damage which is suffered by the core of a protected cell company and which is caused by fraud perpetrated by or upon a cell, the loss or damage is the liability solely of the cellular assets of that cell, without prejudice to any liability of any person other than the company.

(3) This section has extra-territorial effect.

Disputes as to liability attributable to cells.

453. (1) In the event of any dispute as to -

- (a) whether any right is in respect of a particular cell,
- (b) whether any creditor is a creditor in respect of a particular cell,
- (c) whether any liability is attributable to a particular cell,
- (d) the amount to which any liability is limited,

the Court, on the application of the protected cell company, and without prejudice to any other right or remedy of any person, may issue a declaration in respect of the matter in dispute.

(2) The Court, on hearing an application for a declaration under subsection (1) -

- (a) may direct that any person shall be heard on the application,

- (b) may make an interim declaration, or adjourn the hearing, conditionally or unconditionally,
- (c) may make the declaration subject to such terms and conditions as it thinks fit,
- (d) may direct that the declaration is binding upon such persons as may be specified.

Attribution of core assets and liabilities.

454. (1) Liabilities of a protected cell company not otherwise attributable to any of its cells shall be discharged from the company's core assets.

(2) Income, receipts and other property or rights of or acquired by a protected cell company not otherwise attributable to any cell shall be applied to and comprised in the company's core assets.

Dealings with and arrangements within protected cell companies

Company to inform persons they are dealing with protected cell company.

- 455.** (1) A protected cell company shall -
- (a) inform any person with whom it transacts that it is a protected cell company, and
 - (b) for the purposes of that transaction, identify or specify the cell in respect of which that person is transacting, unless that transaction is not a transaction in respect of a particular cell, in which case it shall specify that the transaction is in respect of the core.

(2) If, in contravention of subsection (1), a protected cell company -

- (a) fails to inform a person that he is transacting with a protected cell company, and that person is otherwise unaware that, and has no reasonable grounds to believe that, he is transacting with a protected cell company, or
- (b) fails to identify or specify the cell (or core as the case may be) in respect of which a person is transacting, and that person is otherwise unaware of, and has no reasonable basis of knowing, which cell (or the core as the case may be) he is transacting with,

then, in either such case -

- (i) the directors (notwithstanding any provision to the contrary in the company's memorandum or articles or in any contract with the company or otherwise) incur personal liability to that person in respect of the transaction, and
- (ii) the directors have a right of indemnity against the core assets of the company, unless they were fraudulent, reckless or negligent, or acted in bad faith.

(3) Where, pursuant to the provisions of 522, the Court relieves a director of all or part of his personal liability under subsection (2)(i), the Court may order that the liability in question shall instead be met from such of the cellular or core assets of the protected cell company as may be specified in the order.

Provisions in relation to liquidation of protected cell company.

456. (1) Notwithstanding any statutory provision or rule of law to the contrary, in the liquidation of a protected cell company, the liquidator -

- (a) is bound to deal with the company's assets in accordance with the requirements set out in paragraphs (a) and (b) of section 445(2),
- (b) in discharge of the claims of creditors of the protected cell company, shall apply the company's assets to those entitled to have recourse thereto in conformity with the provisions of this Part.

(2) Any provision of an enactment or rule of law which provides that a company's assets in a winding up shall be realised and applied in satisfaction of the company's debts and liabilities *pari passu* shall be modified and shall apply in relation to protected cell companies subject to the provisions of this Part.

Transfer of cellular assets from protected cell company.

457. (1) It is lawful, subject to the provisions of subsection (3), for the cellular assets attributable to any cell of a protected cell company, but not the core assets of a protected cell company, to be transferred to another person, wherever resident or incorporated, and whether or not a protected cell company.

(2) A transfer pursuant to subsection (1) of cellular assets attributable to a cell of a protected cell company does not of itself entitle creditors of that company to have recourse to the assets of the person to whom the cellular assets were transferred.

(3) No transfer of the cellular assets attributable to a cell of a protected cell company may be made except under the authority of, and in accordance with the terms and conditions of, an order of the Court under this section (a "**cell transfer order**").

(4) The Court shall not make a cell transfer order in relation to a cell of a protected cell company -

(a) unless it is satisfied -

(i) that the creditors of the company entitled to have recourse to the cellular assets attributable to the cell consent to the transfer, or

(ii) that those creditors would not be unfairly prejudiced by the transfer, and

(b) without hearing the representations of the Commission thereon.

(5) The Court, on hearing an application for a cell transfer order-

(a) may make an interim order or adjourn the hearing, conditionally or unconditionally,

(b) may dispense with any of the requirements of subsection (4)(a).

(6) The Court may attach such conditions as it thinks fit to a cell transfer order, including conditions as to the discharging of claims of creditors entitled to have recourse to the cellular assets attributable to the cell in relation to which the order is sought.

(7) The Court may make a cell transfer order in relation to a cell of a protected cell company notwithstanding that -

(a) a liquidator has been appointed to act in respect of the company or the company has passed a resolution for voluntary winding up,

(b) a receivership order has been made in respect of the cell or any other cell of the company,

(c) an administration order has been made in respect of the cell, the company or any other cell thereof.

(8) The provisions of this section are without prejudice to any power of a protected cell company lawfully to make payments or transfers from the cellular assets attributable to any cell of the company to a person entitled, in conformity with the provisions of this Part, to have recourse to those cellular assets.

(9) For the avoidance of doubt, a protected cell company does not require a cell transfer order to invest, and change investment of, cellular assets or otherwise to make payments or transfers from cellular assets in the ordinary course of the company's business.

Arrangements between cells affecting cellular assets, etc.

458. (1) For the avoidance of doubt, a protected cell company may, in the ordinary course of its business or the business attributable to any of its cells, effect an arrangement within the meaning of subsection (2).

(2) An "arrangement" is a dealing with, or a transfer, disposition or attribution of, the cellular or core assets of a protected cell company which has effect -

- (a) as between any of the company's cells,
- (b) as between the core and any of its cells,
- (c) as between the company and the core, or
- (d) as between the company and any of its cells,

but an arrangement does not include a transaction between the company and another person.

(3) The Court, on the application of any person mentioned in subsection (4), and on such terms and conditions as it thinks fit, may make, and subsequently vary, rescind, replace or confirm, an order in respect of -

- (a) the execution, administration or enforcement of an arrangement, or
- (b) any cellular or core assets of a protected cell company subject to, or affected by, an arrangement, including

(without limitation) an order as to their attribution, transfer, disposition, tracing, vesting, preservation, application, recovery or delivery.

(4) An application for an order under subsection (3) may be made by -

- (a) the protected cell company,
- (b) a director, liquidator or administrator of the company,
- (c) the receiver or administrator of any cell of the company affected by the arrangement,
- (d) a manager of the business of the company,
- (e) a manager of the business of or attributable to any cell of the company affected by the arrangement, or
- (f) with leave of the Court, any other person who has, directly or indirectly, some interest in, or who is otherwise affected by, the arrangement.

(5) A protected cell company shall, in respect of an arrangement, make such adjustments to its accounting records, including those of or attributable to its cells, as may be necessary or expedient.

(6) For the avoidance of doubt -

(a) the adjustments referred to in subsection (5) may include the transfer, disposition or attribution of assets, rights and liabilities of the protected cell company -

(i) as between any of the company's cells,

(ii) as between the core and any of its cells,

(iii) as between the company and the core, or

(iv) as between the company and any of its cells

but without prejudice to the singular legal personality of the company provided by section 441, and

(b) the effecting of an arrangement does not require a cell transfer order.

(7) An order under subsection (3) may be made *ex parte*.

(8) This section has extra-territorial application.

Receivership orders

Receivership orders in relation to cells.

459. (1) Subject to the provisions of this section, if in relation to a protected cell company the Court is satisfied -

- (a) that the cellular assets attributable to a particular cell of the company (and, where the company has entered into a recourse agreement, the assets liable under that agreement) are or are likely to be insufficient to discharge the claims of creditors in respect of that cell,
- (b) that the making of an administration order in respect of that cell would not be appropriate, and
- (c) that the making of an order under this section would achieve the purposes set out in subsection (3),

the Court may make an order under this section (a "**receivership order**") in respect of that cell.

(2) A receivership order may be made in respect of one or more cells.

(3) A receivership order is an order directing that the business and cellular assets of or attributable to a cell shall be managed by a person specified in the order ("**the receiver**") for the purposes of -

- (a) the orderly winding up of the business of or attributable to the cell, and
- (b) the distribution of the cellular assets attributable to the cell (and, where the company has entered into a recourse agreement, the assets liable under that agreement) to those entitled to have recourse thereto.

- (4) A receivership order -
- (a) may not be made if -
 - (i) a liquidator has been appointed to act in respect of the protected cell company, or
 - (ii) the protected cell company has passed a resolution for voluntary winding up,
 - (b) may be made in respect of a cell subject to an administration order,
 - (c) shall cease to be of effect upon the appointment of a liquidator to act in respect of the protected cell company, but without prejudice to prior acts.

(5) No resolution for the voluntary winding up of a protected cell company any cell of which is subject to a receivership order shall be effective without leave of the Court.

Applications for receivership orders.

460. (1) An application for a receivership order in respect of a cell of a protected cell company may be made by -

- (a) the company,
- (b) the directors of the company,
- (c) any creditor of the company in respect of that cell,

- (d) any holder of cell shares in respect of that cell,
- (e) the administrator of that cell, or
- (f) the Commission.

(2) The Court, on hearing an application -

- (a) for a receivership order, or
- (b) for leave, pursuant to section 459(5), for a resolution for voluntary winding up,

may make an interim order or adjourn the hearing, conditionally or unconditionally.

(3) Notice of an application to the Court for a receivership order in respect of a cell of a protected cell company shall be served upon -

- (a) the company,
- (b) the administrator (if any) of the cell,
- (c) the Commission, and
- (d) such other persons (if any) as the Court may direct,

who shall each be given an opportunity of making representations to the Court before the order is made.

Functions of receiver and effect of receivership order.

461. (1) The receiver of a cell -
- (a) may do all such things as may be necessary for the purposes set out in section 459(3), and
 - (b) has all the functions of the directors in respect of the business and cellular assets of or attributable to the cell.
- (2) The receiver may at any time apply to Court -
- (a) for directions as to the extent or exercise of any function or power,
 - (b) for the receivership order to be discharged or varied, or
 - (c) for an order as to any matter arising in the course of his receivership.
- (3) In exercising his functions and powers the receiver is deemed to act as the agent of the protected cell company and does not incur personal liability except to the extent that he is fraudulent, reckless or grossly negligent, or acts in bad faith.
- (4) Any person dealing with the receiver in good faith is not concerned to enquire whether the receiver is acting within his powers.

(5) Where an application has been made for, and during the period of operation of, a receivership order, no proceedings may be commenced or continued against the protected cell company in relation to the cell in respect of which the receivership order was applied for or made except with the consent of the receiver or the leave of the Court and subject (where the Court gives leave) to such terms and conditions as the Court may impose (but, for the avoidance of doubt and without limitation, rights of set-off and secured interests, including security interests (within the meaning of the Security Interests (Guernsey) Law, 1993) and rights of enforcement thereof, are unaffected by the provisions of this subsection).

- (6) During the period of operation of a receivership order -
- (a) the functions of the directors shall cease in respect of the business and cellular assets of or attributable to the cell in respect of which the order was made, and
 - (b) where the company has entered into a recourse agreement affecting the cell, the receiver of the cell shall be deemed a director of the protected cell company in respect of the assets liable under that agreement.

Discharge and variation of receivership orders.

462. (1) The Court shall not discharge a receivership order unless it appears to the Court that the purpose for which the order was made has been achieved or substantially achieved or is incapable of achievement.

(2) The Court, on hearing an application for the discharge or variation of a receivership order, may make any interim order or adjourn the hearing, conditionally or unconditionally.

(3) Upon the Court discharging a receivership order in respect of a cell of a protected cell company on the ground that the purpose for which the order was made has been achieved or substantially achieved, the Court may direct that any payment made by the receiver to any creditor of the company in respect of that cell shall be deemed full satisfaction of the liabilities of the company to that creditor in respect of that cell; and the creditor's claims against the company in respect of that cell are thereby deemed extinguished.

(4) Nothing in subsection (3) operates so as to affect or extinguish any right or remedy of a creditor against any other person, including any surety of the protected cell company.

(5) Subject to the provisions of -

- (a) this Part and any rule of law as to preferential payments,
- (b) any agreement between the protected cell company and any creditor thereof as to the subordination of the debts due to that creditor to the debts due to the company's other creditors, and
- (c) any agreement between the protected cell company and any creditor thereof as to set-off,

the company's cellular assets attributable to any cell of the company in relation to which a receivership order has been made shall, in the winding up of the business of or attributable to that cell pursuant to the provisions of this Part, be realised and applied in satisfaction of the company's liabilities attributable to that cell *pari passu*.

(6) Any surplus shall thereafter be distributed (unless the memorandum or articles provide otherwise) -

(a) among the holders of the cell shares or the persons otherwise entitled to the surplus, or

(b) where there are no cell shares and no such persons, among the holders of the core shares,

in each case according to their respective rights and interests in or against the company.

(7) The Court may, upon discharging a receivership order in respect of a cell of a protected cell company, direct that the cell shall be dissolved on such date as the Court may specify.

(8) Immediately upon the dissolution of a cell of a protected cell company, the company may not undertake business or incur liabilities in respect of that cell.

(9) Where a receivership order is discharged or varied under this section the receiver shall -

(a) within 7 days after the day of the order effecting the discharge or variation, send a copy of the order to the Registrar, and

(b) within such time as the Court may direct, send a copy thereof to such other persons as the Court may direct.

Remuneration of receiver.

463. The remuneration of a receiver and any expenses properly incurred by him are payable, in priority to all other claims, from the cellular assets attributable to the cell in respect of which the receiver was appointed.

Information to be given by receiver.

- 464.** (1) Where a receivership order has been made, the receiver shall-
- (a) forthwith send to the protected cell company notice of the order,
 - (b) within 7 days after the day of the making of the order, send a copy of the order to the Registrar,
 - (c) within 28 days after the day of the making of the order-
 - (i) unless the Court orders otherwise, send notice of the order to all creditors of the cell (so far as he is aware of their addresses),
 - (ii) send notice of the order to the Commission, and
 - (d) within such time as the Court may direct, send a copy of the order to such other persons as the Court may direct.

(2) The Registrar shall give notice of the receivership order in such manner and for such period as he thinks fit.

General

Liability to criminal penalties.

465. (1) Where a protected cell company is liable to any criminal penalty, whether under this Law or otherwise, due to the act or default of a cell or an officer acting in relation to a cell, then without prejudice to any liability of that officer, the penalty -

- (a) may only be met by the company from the cellular assets attributable to the cell, and
- (b) is not enforceable in any way against any other assets of the company, whether cellular or core.

(2) Where a protected cell company is liable to any criminal penalty, whether under this Law or otherwise, due to the act or default of the core or an officer acting in relation to the core, then without prejudice to any liability of that officer, the penalty -

- (a) may only be met by the company from core assets, and
- (b) is not enforceable in any way against any cellular assets.

Power of the Commission to make regulations.

466. The Commission may make regulations in respect of protected cell companies, which may include, without limitation, provision in respect of -

- (a) the conduct of the business of protected cell companies,
- (b) the manner in which protected cell companies may carry on, or hold themselves out as carrying on, business,
- (c) the form and content of the accounts of protected cell companies,
- (d) the winding up, administration or receivership of protected cell companies, and
- (e) the implementation generally of this Part.

Interpretation of this Part.

467. In this Part, unless the context requires otherwise -

"**cell shares**" means shares created and issued by a protected cell company in respect of one of its cells pursuant to the provisions of section 444, the proceeds of the issue of which (the "**cell share capital**") shall be comprised in the cellular assets attributable to that cell,

"**cell share capital**" means the proceeds of issue of cell shares,

"**cell transfer order**" means an order of the Court under section 457(3) sanctioning the transfer of the cellular assets attributable to any cell of a protected cell company to another person,

"**cellular assets**" of a protected cell company means the assets of the company attributable to the company's cells pursuant to section 445(4),

"**cellular dividend**" means a dividend payable by a protected cell company in respect of cell shares pursuant to the provisions of section 444(3),

"**creditors**" includes present, future and contingent creditors and, in relation to a protected cell company which is an authorised collective investment scheme within the meaning of section 44(1) of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, also includes any investor (within the meaning of that section),

"**core assets**" of a protected cell company comprise the assets of the company which are not cellular assets,

"**protected assets**" means -

- (a) any cellular assets attributable to any cell of a protected cell company, in respect of a liability not attributable to that cell, and
- (b) any core assets, in respect of a liability attributable to a cell,

"**receiver**" means a person appointed as such by a receivership order,

"**receivership order**" means an order of the Court under section 459 in relation to a cell of a protected cell company, and

"**recourse agreement**" means a written agreement between a protected cell company and a third party which provides that, pursuant to an arrangement effected by the protected cell company (within the meaning of section 458), protected assets may, notwithstanding the provisions of this Part, be subject to a liability owed to that third party.

PART XXVIII
INCORPORATED CELL COMPANIES

Formation

Companies which can be incorporated cell companies.

468. (1) A company cannot be incorporated as an incorporated cell company, and an existing company cannot be converted into an incorporated cell company, unless -

- (a) the company is declared (or when incorporated will be declared) by the Commission to be an authorised collective investment scheme under section 8 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987,
- (b) the company is (or when incorporated will be) a closed-ended investment company,

- (c) the company is (or when incorporated will be) a licensee within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002,
- (d) the company and its affairs are (or when incorporated will be) administered by a licensed person with a place of business in Guernsey, provided that the company is not (or when incorporated will not be) -
 - (i) a licence holder within the meaning of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,
 - (ii) a licensed institution within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
 - (iii) a licensed fiduciary within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law, 2000, or
 - (iv) a company licensed to carry on controlled investment business within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, or
- (e) the company is of any other class or description prescribed by the Commission.

(2) For the purposes of subsection (1)(d) a licensed person means a person who -

- (a) is a licence holder within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002 or the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,
- (b) is a licensed institution within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
- (c) holds a full fiduciary licence within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law, 2000,
- (d) carries on a controlled investment business within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 and holds a licence under section 4 of that Law, or
- (e) is a company of any other class or description prescribed by the Commission.

Consent of Commission required.

469. (1) The following cannot be done except under the authority of and in accordance with the terms and conditions of the written consent of the Commission -

- (a) the incorporation of a company as an incorporated cell company,
 - (b) the conversion of an existing company into an incorporated cell company, and
 - (c) the subsumption of the incorporated cells of an incorporated cell company into their incorporated cell company and the conversion of the incorporated cell company into a non-cellular company.
- (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.
- (3) An application for the consent of the Commission under subsection (1) -
- (a) shall be made to the Commission in such form, and shall be accompanied by such documents and information, verified in such manner, as the Commission may require, whether in relation to any particular application or otherwise, and

- (b) shall be accompanied by such fee as may be prescribed by the Commission.

(4) A person who contravenes, or who causes or permits any contravention of, any term or condition of a consent of the Commission, is guilty of an offence.

Determination of applications to and other decisions of Commission.

470. (1) In deciding whether to -

- (a) grant any application for consent made under section 469,
- (b) impose any term or condition upon that consent,
- (c) vary or revoke any term or condition of that consent,
or
- (d) impose any new term or condition on that consent,

the Commission must have regard to the protection of the public interest, including the need to -

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

- (iii) 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,
 - (c) varies or revokes any term or condition of that consent, or
 - (d) imposes any new term or condition on 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 471 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 471, subsection (2) of that section shall apply.

Appeals from determinations and other decisions of Commission.

- 471.** (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 variation or revocation of any term or condition of that consent,
 - (d) the imposition of any new term or condition on that consent, or
 - (e) the withholding of information pursuant to section 470(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 470.

(2) On an appeal under subsection (1)(e), the Court may examine any information the disclosure of which the Commission considers would be prejudicial as set out in section 470(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, 2007¹.

- (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 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

¹ Order of the Royal Court No. IV of 2007.

more assessors to assist it in the determination of any matter before it.

Incorporation of incorporated cell.

472. (1) An incorporated cell of an incorporated cell company cannot be incorporated unless the incorporated cell company has passed a special resolution authorising an application for the incorporated cell's incorporation.

(2) The special resolution may authorise an application for the incorporation of one or more specified incorporated cells.

(3) The special resolution must specify, in respect of each incorporated cell which is proposed to be incorporated -

(a) the proposed memorandum, excluding details relating to the founder member, and

(b) the proposed articles.

(4) An application for incorporation must be made in accordance with the terms and conditions of that special resolution.

(5) An application for the incorporation must be made within 3 months commencing on the date on which the special resolution authorising it was passed.

Status

Status of incorporated cell company.

473. An incorporated cell company is a single legal person.

Status of incorporated cell.

474. (1) An incorporated cell is a single legal person separate from its incorporated cell company.

(2) Notwithstanding the provisions of any enactment, an incorporated cell is not a subsidiary of its incorporated cell company.

(3) An incorporated cell may not itself be an incorporated cell company or a protected cell company.

(4) An incorporated cell may not be a member of its incorporated cell company.

(5) Unless the contrary intention appears in its memorandum or articles, an incorporated cell may be a member of any other incorporated cell of its incorporated cell company.

(6) An incorporated cell shall have the same registered office as its incorporated cell company.

Separate nature of incorporated cell company and its incorporated cells

Separation of assets and liabilities.

475. (1) It is the duty of the directors of an incorporated cell company and its incorporated cells -

- (a) to keep the assets and liabilities of the incorporated cell company separate and separately identifiable from the assets and liabilities of its incorporated cells, and

- (b) to keep the assets and liabilities of each incorporated cell separate and separately identifiable from the assets and liabilities of the other incorporated cells of the incorporated cell company.

(2) The duty imposed by subsection (1) is not breached by reason only that the directors cause or permit assets of the incorporated cell company or any of its incorporated cells to be collectively invested, or collectively managed by an investment manager, provided that the assets in question remain separately identifiable in accordance with subsection (1).

Transactions.

476. (1) An incorporated cell company has no power, by virtue of its position as an incorporated cell company, to enter into transactions on behalf of any of its incorporated cells.

(2) An incorporated cell has no power, by virtue of its position as an incorporated cell, to enter into transactions on behalf of -

- (a) its incorporated cell company, or
- (b) other incorporated cells of its incorporated cell company.

(3) The directors and officers of an incorporated cell company and its incorporated cells must ensure that, in respect of every transaction that the incorporated cell company or incorporated cell enters into, it is stated whether the transaction is being entered into by the incorporated cell company or by an incorporated cell and, if it is by an incorporated cell, which incorporated cell.

*Winding up***Winding up of incorporated cell company not to prejudice its incorporated cells.**

477. The winding up of an incorporated cell company shall be carried out in such a way as not to prejudice the affairs, business and property of any of its incorporated cells, and accordingly, during the winding up, the incorporated cell company shall continue to carry on business to the extent necessary for the continuance of business of its incorporated cells.

Directors of incorporated cell during winding up of its incorporated cell company.

478. (1) The appointment of a liquidator in respect of an incorporated cell company does not affect the position of the directors of its incorporated cells, subject to any direction to the contrary given by -

- (a) the liquidator,
- (b) a resolution of the incorporated cell, or
- (c) the Court,

in the course of a winding up.

(2) The Commission may make an application to the Court for a direction of the Court under subsection (1).

No dissolution of incorporated cell company until position of its incorporated cells resolved.

479. An incorporated cell company that is being wound up shall not be dissolved until each of its incorporated cells has ceased to exist as an incorporated cell of that incorporated cell company, and the Court may stay such dissolution on such terms and conditions as it thinks fit.

General

Expulsion of incorporated cell from its incorporated cell company.

480. (1) An application to the Court to expel an incorporated cell from its incorporated cell company, on a ground set out in subsection (2), may be made by -

- (a) the Commission,
- (b) the incorporated cell company,
- (c) the administrator of the incorporated cell company, or
- (d) the liquidator of the incorporated cell company.

(2) The grounds referred to in subsection (1) are -

- (a) that the affairs of the incorporated cell are being or have been conducted in a manner which is unfairly prejudicial to its incorporated cell company or any incorporated cell of that company, or to the members of that company or its incorporated cells,

- (b) that the incorporated cell is being or has been used for fraudulent purposes,
- (c) that a failure to expel the incorporated cell would jeopardize the reputation of the Bailiwick as a financial centre, or
- (d) that it would be just and equitable to expel the incorporated cell.

(3) The Court may make such order, subject to such terms and conditions, as it thinks fit upon an application under this section, including an order requiring the incorporated cell to convert into a company.

Applications for directions.

481. (1) A director of an incorporated cell company or incorporated cell may apply to the Court for directions as to how he should or might act in any of the affairs of the incorporated cell company or incorporated cell, and upon such an application the Court may make such order as it thinks fit.

(2) An application under subsection (1) may be made *ex parte*.

(3) The Court hearing an application under this section may direct that the whole or any part of the application shall be heard *in camera*, and an application for a direction under this subsection shall be heard *in camera* unless the Court directs otherwise.

Power of the Commission to make regulations.

482. The Commission may make regulations in respect of incorporated cell companies, which may include, without limitation, provision in respect of -

- (a) the conduct of the business of incorporated cell companies,
- (b) the manner in which incorporated cell companies may carry on, or hold themselves out as carrying on, business,
- (c) the form and content of the accounts of incorporated cell companies,
- (d) the winding up, administration or receivership of incorporated cell companies, and
- (e) the implementation generally of this Part.

PART XXIX
BENEFICIAL OWNERSHIP

Companies to which this Part applies.

483. This Part applies to all companies other than companies which are -

- (a) listed on a stock exchange recognised by the Registrar for the purposes of this section,
- (b) open-ended investment companies,
- (c) closed-ended investment companies, or

- (d) of any other class or description prescribed by the Department for the purposes of this section.

Obligation for companies to have a resident agent.

484. (1) Every company to which this Part applies shall have a resident agent who is either -

- (a) an individual, resident in Guernsey, who is a director of the company, or
- (b) a corporate services provider.

(2) If a company has more than one director who satisfies subsection (1)(a), then some or all of them may be resident agents, and if this is the case, their functions and liabilities shall be joint and several.

(3) The resident agent of an incorporated cell company is also deemed to be the resident agent of each of its incorporated cells.

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

(5) A company which fails to comply with this section is liable to be struck off the Register of Companies in accordance with Part XX.

Record of resident agent.

485. (1) A company shall keep a record of its resident agent, which shall comprise -

- (a) in the case of a resident agent who is a director, his name,
- (b) in the case of a resident agent who is a corporate services provider -
 - (i) its corporate or firm name, and
 - (ii) its address.

(2) The record of resident agent of an incorporated cell company is also deemed to constitute the record of resident agent of each of its incorporated cells.

(3) A company must, within 14 days after the date of the occurrence of -

- (a) any change in its resident agent, or
- (b) any change in the details contained in its record of resident agent,

give notice to the Registrar of the change and of the date on which it occurred.

(4) In this section "name" has the meaning given by section 528.

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

(6) A company which fails to comply with subsection (3) is liable to a civil penalty.

Duties of resident agent.

486. The resident agent of a company shall take reasonable steps to ascertain the identity of the persons who are the beneficial owners of members' interests in that company.

Record of beneficial owners.

487. (1) Where a resident agent has ascertained, in accordance with section 486, that a member of a company is not a beneficial owner of that member's interest, he shall keep a record of the required details of the beneficial owner in respect of that member in the "**record of beneficial owners**".

(2) The record of beneficial owners shall be kept at the company's registered office.

(3) In this Part, "**required details**" means, in respect of an individual -

- (a) his name,
- (b) his usual residential address,
- (c) his nationality, and
- (d) his date of birth.

(4) In this Part, "**required details**" means, in respect of a company or overseas company -

- (a) its corporate or firm name,
- (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,
- (d) if applicable, the register in which it is entered and its registration number in that register.

(5) In this Part, "**required details**" means, in respect of a class of beneficial owners of such a size that it is not reasonably practicable to identify each member of the class, information sufficient to identify and describe the class of individuals who are beneficial owners.

Notice to members to disclose beneficial ownership.

488. (1) A resident agent of a company may give notice to a member of that company requiring that member to disclose -

- (a) whether they are holding their interest in that company for their own benefit or the benefit of another person, and
- (b) if for the benefit of another person, the required details in respect of that person.

(2) A member who receives a notice under subsection (1) must comply with that notice within such reasonable time as may be specified in the notice.

- (3) A member who without reasonable excuse -
- (a) fails to comply with subsection (2), or
 - (b) makes a statement in response to a notice under this section which is false, deceptive or misleading in a material particular,

is guilty of an offence.

Suspension or cancellation of interests for failure to disclose beneficial ownership.

489. (1) If, in the opinion of the resident agent of a company, a member has -

- (a) failed, without reasonable excuse, to comply with section 488(2), or
- (b) made a statement in response to a notice under that section which is false, deceptive or misleading in a material particular,

the resident agent shall give notice of this to the company.

(2) On receipt of a notice under subsection (1), the company may-

- (a) place such restrictions as it thinks fit on rights attaching to the member's interest in the company, including, without limitation -
 - (i) any right to transfer the interest,
 - (ii) any voting rights,
 - (iii) any right to further shares in respect of shares already held, and
 - (iv) any right to payment due to the member's interest, whether in respect of capital or otherwise, or
- (b) cancel the member's interest in the company.

(3) Any restriction under subsection (2)(a) is removed if the company is struck off or upon the commencement of the company's winding up.

(4) A member may apply to the Court to set aside any restriction or cancellation under subsection (2).

(5) The Court shall not hear an application under subsection (4) unless satisfied that the company has been notified of the date and time of the hearing.

(6) The Court may make such order on such terms and conditions as it thinks fit on an application under subsection (4).

Disclosure of beneficial ownership information by resident agent.

490. (1) The resident agent shall, on receipt of a certificate described in subsection (2), disclose to (as the case may be) -

- (a) Her Majesty's Procureur,
- (b) the Commission,
- (c) a police officer, or
- (d) a customs officer,

any information required by that person which the resident agent is required to hold by virtue of his obligations under this Part and any other information he holds in respect of the beneficial ownership of a company.

(2) The certificate referred to in subsection (1) is a certificate signed by -

- (a) Her Majesty's Procureur,
- (b) the Director General of the Commission,
- (c) the Chief Officer of Police, or
- (d) the Chief Officer of Customs,

(as the case may be) or any person appointed by any of them for that purpose.

(3) The certificate shall state -

- (a) what information is required,
- (b) that the information is required for the purpose of -
 - (i) any criminal or regulatory investigation which is being or may be carried out, whether in Guernsey or elsewhere,
 - (ii) any criminal or regulatory proceedings which have been or may be initiated, whether in Guernsey or elsewhere,
 - (iii) the initiation or bringing to an end of any such investigation or proceedings, or
 - (iv) facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end, and
- (c) that the person signing it has satisfied himself that the making of the disclosure is proportionate to what is sought to be achieved by it.

(4) Nothing in this section prejudices any power to disclose information which exists apart from this section.

(5) The information that may be disclosed by virtue of this section includes information obtained before this Law came into force.

- (6) A resident agent who without reasonable excuse -
- (a) fails to comply with this section, or
 - (b) makes a statement, in response to a certificate under this section, which is false, deceptive or misleading in a material particular,

is guilty of an offence.

Tipping off.

491. (1) A resident agent is guilty of an offence if he knows or suspects that a certificate has been issued, or is proposed to be issued, under section 490 in respect of a company for which he is a resident agent, and he discloses to any person information or any other matter which may prejudice -

- (a) any criminal or regulatory investigation which is being or may be carried out, whether in Guernsey or elsewhere, or
- (b) any criminal or regulatory proceedings which have been or may be initiated, whether in Guernsey or elsewhere,

which are connected with the issue of that certificate.

(2) Nothing in subsection (1) makes it an offence for an advocate or other legal adviser to disclose any information or other matter -

(a) to, or to a representative of, a client of his in connection with the giving by him of legal advice to the client, or

(b) to any person -

(i) in contemplation of or in connection with legal proceedings, and

(ii) for the purpose of those proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(4) In proceedings against a person for an offence under this section, it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in subsection (1).

Privileged information.

492. (1) Nothing in this Part compels the production or divulgence by an advocate or other legal adviser of an item subject to legal professional privilege (within the meaning of section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003), but an advocate or other legal adviser may be required to give the name and address of any client.

(2) A requirement imposed by or under this Part has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise, and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

Provisions in articles concerning beneficial ownership.

493. (1) The operation of this Part does not limit or otherwise restrict any provision in a company's articles that relieves the company from recognising any interests other than the interests of the members of the company.

(2) Without prejudice to the generality of the subsection (1), the operation of this Part does not limit or otherwise restrict any provision in a company's articles that relieves the company from recognising -

- (a) any trust, express, implied or constructive, in respect of shares, or
- (b) any beneficial owner of shares.

Limited repeals.

494. The following provisions of the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959^m are repealed to the extent that they apply to incorporations of companies in the Island of Guernsey -

- (a) section 3,
- (b) in section 4, subsections (1), (2), (3), (5), (6), (7), and (8).

PART XXX

^m Recueil d'Ordonnances Tome XII, p. 105; amended by Tome XV, p. 197; Tome XVI, p. 473; Tome XX, p. 412; Tome XXV, p. 80; and No. IV of 2003. Also amended by Order in Council No. XII of 1995 and by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

OFFICE OF THE REGISTRAR OF COMPANIES

*Establishment of Registrar and Registers***Establishment of Office of Registrar.**

495. (1) The Department shall establish an office to be known as the Office of the Registrar of Companies ("**the Office of the Registrar**").

(2) The holder of that office shall be known as the Registrar of Companies ("**the Registrar**").

(3) The Registrar shall be appointed by the Department.

(4) An appointment of the Registrar under this section -

(a) may be periodic or for a fixed term,

(b) is subject to such terms and conditions as the Department may from time to time think fit, and

(c) may be varied or terminated at any time by the Department, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment.

(5) The Registrar shall, subject to the terms and conditions of his appointment, exercise the functions assigned or transferred to him by or under this Law and any other enactment.

(6) For the purposes of the Public Functions (Transfer and

Performance) (Bailiwick of Guernsey) Law, 1991ⁿ -

- (a) the Office of the Registrar is a public office, and
- (b) the Registrar is an office holder.

(7) The provisions of Schedule 2 have effect in respect of the Office of the Registrar.

Register of Companies.

496. The Registrar shall keep and maintain a register of companies, to be called the Register of Companies, for the purposes of this Law.

Register of Disqualification Orders.

497. (1) The Registrar shall keep and maintain a register of disqualification orders, to be called the Register of Disqualification Orders, for the purposes of this Law.

(2) The Register of Disqualification Orders shall be open to inspection by the public during normal business hours without payment of a fee.

Registers may be in electronic form.

498. Any register kept, or other information held, by the Registrar may be in electronic form.

Functions of the Registrar

ⁿ Order in Council No. XXI of 1991.

Functions of Registrar.

499. (1) The functions of the Registrar are -
- (a) to administer the Office of the Registrar, the Register of Companies and the Register of Disqualification Orders,
 - (b) to advise the Department on new corporate structures and developments which would -
 - (i) promote and enhance the Register of Companies and the law relating to companies, and
 - (ii) encourage business growth in Guernsey,
 - (c) to communicate with -
 - (i) any authority appearing to the Registrar to exercise, in a place outside Guernsey, functions corresponding to his, and
 - (ii) such other persons as he thinks fit,

for the purposes of assisting them and promoting and enhancing the Register of Companies and the law relating to companies,
 - (d) to advise the Department generally in relation to the registration, regulation, governance and administration

of companies and the law, practice and procedures relating thereto,

(e) to make to the Department such recommendations as he thinks fit for improving -

(i) his effectiveness,

(ii) the adequacy and effectiveness of the functions conferred on him by this Law or any other enactment, and

(iii) the adequacy and effectiveness of the provisions of this Law or any other enactment relating to him, and

(f) to exercise, subject to the terms and conditions of his appointment, such other functions as may be assigned or transferred to him by or under this Law or any other enactment.

(2) Subsection (1)(c) does not authorise the Registrar to disclose confidential information (and see section 503).

Ancillary powers of Registrar.

500. (1) The Registrar, having regard to the provisions of section 499, has power to do anything that appears to him to be necessary or expedient for the purpose of exercising his functions including, without limitation, power -

- (a) to request the production of and otherwise obtain such documents, accounts and information from such persons and within such periods and at such times and intervals as he thinks fit,
- (b) subject to any provision to the contrary in this Law or any other enactment, to publish information, guidance, reports and other documents,
- (c) to appoint any person or body to advise him in relation to the exercise of any of his functions, and
- (d) to request advice from Her Majesty's Procureur in relation to the exercise of any of his functions.

(2) For the purposes of exercising his functions the Registrar may, having regard to the provisions of section 499 -

- (a) acquire, lease, use, dispose of, exchange or otherwise deal with any movable or immovable property and any interest in it, and
- (b) enter into any contract, including any contract of purchase, sale, insurance, hire or bailment, or make any arrangement with any person.

(3) The Registrar may sue and be sued as Registrar.

Fees payable to the Registrar.

501. (1) The Registrar may make regulations which prescribe -

- (a) the fees payable (whether generally or in any particular case) in respect of the exercise of his functions,
- (b) the interest payable in the event of default in the due payment of fees, and
- (c) the persons by whom such fees and interest are to be payable.

(2) The Registrar may refuse to exercise his functions in any particular case if the fees payable have not been paid.

Rectification of the Register of Companies.

502. (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 Register of Companies.

(2) Where the Registrar rectifies the Register of Companies in respect of a company, he shall give notice of that rectification to the company.

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

Disclosure and publication of confidential information.

503. Any confidential information held by the Registrar shall not be disclosed or published by him except in accordance with the provisions of this Law, any other enactment or any rule of law.

Disclosure and publication of non-confidential information.

504. Any information held by the Registrar, other than confidential information, may be disclosed or published by him -

- (a) in accordance with the provisions of this Law, any other enactment or any rule of law, or
- (b) if no such provision is made, in such manner, subject to such conditions and for such purposes as he thinks fit.

General power of Registrar to reject applications etc.

505. Notwithstanding that the Registrar is not bound to enquire further as to whether the provisions of this Law or any other enactment have been complied with, the Registrar may reject any application, annual validation or other matter submitted to him, on such terms and conditions as he thinks fit, if it appears to him that the provisions of this Law or any other enactment in respect of that application, annual validation or other matter have not been complied with.

Reports.

506. (1) The Registrar shall, whenever directed by the Department, submit to the Department a report on the exercise of his functions in such form and in respect of such period as the Department may specify.

(2) The Department -

(a) shall submit the Registrar's report made under subsection (1) to the States, and

(b) may at the same time or at any other time submit their own report to the States on the exercise by the Registrar of his functions.

Financial and accounting provisions.

507. (1) All fees, civil penalties and similar sums received by the Registrar in the exercise of his functions shall be paid by him to the Department for the general revenue account of the States.

(2) Subsection (1) does not apply if and to the extent that, in accordance with agreed financial procedures, the Department directs otherwise.

(3) The Registrar shall -

(a) keep proper accounts and proper records in relation to those accounts, and

(b) submit to the Department, whenever the Department may direct but not less than once in any 12 month period, a statement of account giving a true and fair

view of the state of affairs of the Office of the Registrar.

(4) Without prejudice to the preceding provisions of this section, the Registrar shall, whenever directed by the Department, submit to the Department, in respect of such period as the Department may specify, audited accounts of the Office of the Registrar together with the auditor's report thereon prepared by an auditor appointed by the Registrar with the approval of the Department.

Power of Registrar to apply for directions.

508. (1) The Registrar may, if he believes it would assist him in the proper and lawful exercise of his functions, apply to the Court for directions, or for a determination of any question of fact, law or procedure, in such manner as may be prescribed by order of the Court, and on such an application the Court may make such order as it thinks fit.

(2) Notwithstanding any other provision of this Law, where the Registrar makes an application under subsection (1) in respect of a matter, he may delay the doing of any thing required by this Law in respect of that matter, pending the outcome of that application.

(3) An appeal from an order of the Court under this section lies, with leave of the Court or the Court of Appeal, to the Court of Appeal on a question of law.

(4) Section 21 of the Court of Appeal (Guernsey) Law, 1961^o (powers of a single judge) applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

Offences

False or misleading information.

- 509.** (1) If a person to whom subsection (2) applies -
- (a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
 - (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
 - (c) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
 - (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

^o Ordres en Conseil Vol. XVIII, p. 315.

he is guilty of an offence.

- (2) This subsection applies to a person who -
- (a) makes any statement or provides any information or document to the Registrar, or to any officer, servant or agent of the Registrar, when acting in the exercise of his functions, or
 - (b) otherwise than as mentioned in paragraph (a) makes any statement or provides any information or document to the Registrar in circumstances in which he knows or could reasonably be expected to know that the statement, information or document would or might be used by the Registrar for the purpose of exercising his functions.

General

Exclusion of liability.

- 510.** No liability is incurred by -
- (a) the Registrar,
 - (b) any person to whom the Registrar has, under paragraph 3 of Schedule 2, delegated any function,
 - (c) any person appointed as Deputy Registrar under paragraph 4 of Schedule 2, or

- (d) any officer or servant of the Registrar,

in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of their functions under this Law, unless the thing was done or omitted to be done in bad faith.

General right to apply to Court to set aside action of Registrar.

511. (1) Without prejudice to any specific right of appeal in any enactment, a person who is directly affected by any action, direction, decision or determination of the Registrar (including an order directing payment of a civil penalty) in respect of a company (including an inchoate company) can apply to the Court to set aside or modify that action, direction, decision or determination.

(2) An application under subsection (1) shall be made in such manner as may be prescribed by order of the Court.

(3) On such an application the Court may make such order on such terms and conditions as it thinks fit, and without limitation -

- (a) in relation to an application in respect of a civil penalty, the order may increase the amount of the civil penalty for which the company is liable,
- (b) in relation to an application in respect of a striking off under section 519, the execution of the order may be stayed subject to the payment of any outstanding criminal penalties, fees or civil penalties by the company or such other person as it thinks fit.

- (4) Subject to any direction given by the Court -
- (a) the applicant shall give notice of the application to the Registrar,
 - (b) where the applicant is not the company in respect of which the application is made, the applicant shall give notice of the application to the company (or, where the company is inchoate, to the person who appears to the applicant to be responsible for the company), and
 - (c) the application shall be made within 21 days after the day of the action, direction, decision or determination of the Registrar.

(5) An appeal from an order of the Court under this section lies, with leave of the Court or the Court of Appeal, to the Court of Appeal on a question of law.

(6) Section 21 of the Court of Appeal (Guernsey) Law, 1961 (powers of a single judge) applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

Electronic communications to the Registrar.

512. (1) Any document (other than a summons) to be given to or served on the Registrar under or for the purposes of this Law may be in such electronic form and may be submitted by such electronic means as may be permitted by the Registrar, and without limitation this section applies to any, and to anything

accompanying any, application, annual validation, statement, consent, declaration or signature.

- (2) This section is without prejudice to -
- (a) the Electronic Transactions (Guernsey) Law, 2000^P,
and
 - (b) the provisions of any regulations of the Registrar in relation to the practice and procedure of the Office of Registrar.

PART XXXI
CRIMINAL AND CIVIL PENALTIES

Criminal penalties for offences under this Law.

- 513.** (1) A company or person guilty of an offence -
- (a) under section 34(3), 35(5), 36(5), 37(6), 41(2), 64(7), 65(5), 109(2), 110(6), 111(6), 112(5), 123(8), 124(6), 128(6), 143(8), 144(3), 145(3), 147(2), 148(3), 150(8), 154(4), 156(3), 162(5), 173(7), 174(3), 199(3), 223(3), 228(3), 230(3), 231(3), 251(4), 266(2), 266(3), 352(3) or 447(5) is liable on summary conviction to a fine not exceeding level 2 on the uniform scale,

^P Order in Council No. VIII of 2000.

- (b) under section 19(3), 22(5), 22(7), 26(3), 33(3), 58(3), 74(3), 101(3), 108(5), 138(2), 178(9), 179(9), 180(6), 182(4), 184(4), 236(3), 237(1), 242(1), 242(2), 247, 272(6), 274(6), 287(6), 291(4), 347(2), 351(2), 360(3), 361(3), 362(2), 363(3), 365(3), 378(3), 387(7), 391(4), 394(3), 395(3), 414(2), 414(6), 438(4), 447(3), 469(4), 484(4), 485(5), 488(3) or 490(6) is liable on summary conviction to a fine not exceeding level 5 on the uniform scale,

- (c) under section 28(3), 129(1), 129(2), 152(1), 152(2), 249(4), 260(7), 266(1), 360(4), 361(4), 431(1), 491(1), 509(1) or 539(1) is liable -
 - (i) on summary conviction, to a fine not exceeding level 5 on the uniform scale, imprisonment for a term not exceeding 3 months or both,

 - (ii) on conviction on indictment, to a fine, imprisonment for a term not exceeding 2 years or both,

- (d) under section 432, is liable -
 - (i) on summary conviction, to a fine not exceeding level 5 on the uniform scale, imprisonment for a term not exceeding 12 months or both,

- (ii) on conviction on indictment, to a fine, imprisonment for a term not exceeding 10 years or both.

(2) The imposition by this Law of a criminal penalty in respect of any act or omission is without prejudice to any other remedy or liability (civil or criminal) in respect thereof (except as provided for by section 518).

Daily default.

514. (1) Where a person is liable under the provisions of this Law to a daily default fine in respect of any offence, he is liable, for each day of continued contravention, to a daily default fine not exceeding 10% of the maximum fine.

(2) In this section the "**maximum fine**" means the amount on the uniform scale which a fine cannot exceed on summary conviction of the offence.

Criminal liability of officers, etc.

515. (1) Where an offence under this Law is committed by a company and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) any officer of the company,
- (b) any shadow director of the company, or
- (c) any person purporting to act in such a capacity,

he as well as the company is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a company are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were an officer.

(3) Where an offence under this Law is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in such a capacity,

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where an offence under this Law is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of the body and not in the name of any of its members.

(5) A fine imposed on an unincorporated body on its conviction of an offence under this Law shall be paid from the funds of the body.

Civil penalties.

516. (1) This section applies to companies which are liable to a civil penalty.

(2) If the Registrar is satisfied that a company is liable to a civil penalty he may make an order directing it to pay the civil penalty.

(3) The Registrar may, if he thinks fit, make regulations concerning civil penalties, including provision for -

(a) the amount of the civil penalty, and

(b) the imposition and amount of additional daily penalties.

(4) Where regulations make provision for the imposition of additional daily penalties, an order of the Registrar under subsection (2) directing a company to pay a civil penalty may provide that an additional daily penalty shall accrue after the date of the imposition of the original penalty without further notice.

(5) In default of payment of a civil penalty, the Registrar may proceed to enforce payment as if the amount due were a civil debt.

Appeal against civil penalties.

517. A company aggrieved by an order made by the Registrar under section 516(2) may apply to set it aside or modify it in accordance with section 511.

Relationship of civil penalties with prosecutions.

518. (1) A company is not liable to a civil penalty if a prosecution in respect of the matter has been commenced.

(2) If the prosecution commences after the civil penalty has been paid, the Registrar shall repay the civil penalty to the company.

Striking off for persistent or gross contraventions.

519. A company in respect of which, in the opinion of the Registrar, there have been persistent or gross contraventions of this Law or the 1994 Law is liable to be struck off the Register of Companies in accordance with Part XX.

PART XXXII

GENERAL

Exclusions and relief from liability

Exclusion of liability: States.

520. No liability is incurred by -

- (a) the States or any department thereof, or
- (b) any member, officer or servant of the States,

in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of their functions under this Law, unless the thing was done or omitted to be done in bad faith.

Exclusion of liability: Commission.

521. No liability is incurred by -

- (a) the Commission, or

- (b) any member, officer or servant of the Commission,

in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of their functions under this Law, unless the thing was done or omitted to be done in bad faith.

Relief from liability for officers and auditors.

522. (1) If in proceedings for negligence, default, breach of duty or breach of trust against -

- (a) an officer of a company, or
- (b) a person appointed by a company as auditor (whether he is or is not an officer of the company),

it appears to the Court that the officer or person is or may be liable but that -

- (i) he acted honestly and reasonably, and
- (ii) having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused,

the Court may relieve him, either wholly or in part, from his liability on such terms and conditions as it thinks fit.

(2) If any such officer or person has reason to apprehend that a claim will or might be made against him in respect of negligence, default, breach of duty or breach of trust -

- (a) he may apply to the Court for relief, and
- (b) the Court has the same power to relieve him as it has under subsection (1).

Service and electronic communications

Service of documents.

523. (1) Any document to be given or served under or for the purposes of this Law may be given or served -

- (a) on an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode,
- (b) on a company, by being left at, or sent by post or transmitted to, its registered office,
- (c) on an overseas company, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in the Bailiwick or, if there is no such place, its registered or principal office or last known registered or principal office elsewhere,
- (d) on an unincorporated body, by being given to or served on any partner, member, manager or officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in

the Bailiwick or, if there is no such place, its principal or last known principal place of business elsewhere,

- (e) on the Registrar, by being left at, or sent by post or, subject to section 512, transmitted to, the principal offices of the Registrar in Guernsey.

(2) In subsection (1) -

- (a) the expression "**by post**" means by registered post, recorded delivery service or ordinary letter post, and
- (b) the expression "**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication; in which event the document shall be regarded as served when it is received.

(3) If a person notifies the Registrar of an address for service within the Bailiwick for the purposes of this Law, any document to be given to or served on him may be given or served by being left at, or sent by post or transmitted to, that address.

(4) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served -

- (a) by being published by the Registrar in such manner and for such period as he thinks fit, or

- (b) by being published in La Gazette Officielle (or, where service is required to be effected in Alderney, in the Alderney Official Gazette) on two occasions falling in successive weeks,

and a document served under this subsection is sufficient if addressed to the person for whom it is intended.

(5) Subsections (1) to (4) are without prejudice to any other lawful method of service.

(6) Notwithstanding the provisions of subsections (1) to (5) and any other enactment or rule of law in relation to the service of documents, no document to be given to or served on the Registrar under or for the purposes of this Law shall be deemed to have been given or served until it is received.

(7) If a person upon whom a document is to be served under this Law is a minor or person under legal disability, the document shall be served on his guardian; and if there is no guardian, the party wishing to effect service may apply to the Court for the appointment of a person to act as guardian for the purposes of this Law.

(8) A document sent by post is, unless the contrary is shown, deemed for the purposes of this Law to have been received -

- (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,

- (b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any day which is not a working day.

(9) Service of a document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(10) In this section "**document**" does not include a summons.

(11) The provisions of this section are subject to any contrary provision in this Law.

Electronic communications.

524. (1) Schedule 3, which makes provision for the use of electronic communications -

- (a) by a company to its members or their proxies, or
- (b) to a company,

has effect.

(2) This section is without prejudice to the Electronic Transactions (Guernsey) Law, 2000^q.

^q Order in Council No. VIII of 2000.

*Interpretation***Meaning of "hard copy".**

525. A document is sent or supplied in hard copy form if it is sent or supplied in a paper copy or similar form capable of being read.

Meaning of "sent in electronic form" and related expressions.

526. (1) A document is sent in electronic form if it is in electronic form and -

(a) is sent by electronic means, which means that it is sent and received at its destination by means of electronic equipment for the processing (which expression includes, without limitation, digital compression) or storage of data, and entirely transmitted and received by wire, by radio, by optical means or by other electromagnetic means, or

(b) is sent by other means.

(2) A document authorised or required to be sent in electronic form must be sent in a form, and by a means, that the sender reasonably considers will enable the recipient -

(a) to read it, and

(b) to retain a copy of it.

(3) For the purposes of this section, a document can be read only if -

- (a) it can be read with the naked eye, or
- (b) to the extent that it consists of images, it can be seen with the naked eye.

Meaning of "solvency test".

527. (1) For the purposes of this Law a company satisfies the solvency test if -

- (a) the company is able to pay its debts as they become due,
- (b) the value of the company's assets is greater than the value of its liabilities, and
- (c) in the case of a supervised company, the company satisfies any other requirements as to solvency imposed in relation to it by or under -
 - (i) the Protection of Investors (Bailiwick of Guernsey) Law, 1987,
 - (ii) the Insurance Business (Bailiwick of Guernsey) Law, 2002,
 - (iii) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,

- (iv) the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
- (v) the Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law, 2000, and
- (vi) any other enactment prescribed by the Commission for the purposes of this section.

(2) Without prejudice to sections 303 and 304, in determining whether the value of a company's assets is greater than the value of its liabilities, the directors -

- (a) must have regard to -
 - (i) the most recent accounts of the company, and
 - (ii) all other circumstances that the directors know or ought to know affect, or may affect, the value of the company's assets and the value of the company's liabilities, and
- (b) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

(3) This section also applies to amalgamations as if references to the company were references to the amalgamated body corporate and in determining whether the value of the amalgamated body corporate's assets will be greater than the value of its liabilities, the directors of each amalgamating body corporate -

- (a) must have regard to -
 - (i) accounts prepared as if the amalgamation had become effective, and
 - (ii) all other circumstances that the directors know or ought to know would affect, or may affect, the value of the amalgamated body corporate's assets and the value of its liabilities,
- (b) may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

(4) This section applies to cells and cores of protected cell companies as if references to companies were references to cells or cores (as the case may be) of protected cell companies.

Meaning of "name" and "former name".

528. (1) For the purposes of sections 143, 173 and 485, "name" means a person's forename and surname, except in the case of -

- (a) a peer, or
- (b) an individual usually known by a title,

in which case the title may be stated instead of his forename and surname or in addition to either or both of them.

(2) For the purposes of sections 143 and 173 a "**former name**" means a name by which the individual was formerly known and, where a person is or was formerly known by more than one such name, each of them must be stated.

Meaning of "associated companies".

529. (1) For the purposes of this Law, companies are associated if -

- (a) one is a subsidiary of the other,
- (b) both are subsidiaries of the same company,
- (c) one is an incorporated cell company and the other is its incorporated cell, or
- (d) both are incorporated cells of the same incorporated cell company.

(2) References to an "associated company" have a corresponding meaning.

Meaning of "supervised company".

530. For the purposes of this Law, a "**supervised company**" is a company which -

- (a) holds or formerly held a licence under section 4 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 or an authorisation under section 8 of that Law,
- (b) is or was a closed-ended investment company,

- (c) is a licensee or former licensee within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002 or the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,
- (d) is a licensed institution or former licensed institution within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
- (e) is a licensed fiduciary or former licensed fiduciary within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law, 2000, or
- (f) is a company of any other class or description prescribed by the Commission for the purposes of this section.

Meaning of "holding company", "subsidiary" and "wholly-owned subsidiary".

531. (1) For the purposes of this Law a company is, subject to the provisions of subsection (3), a subsidiary of another if, but only if -

- (a) that other -
 - (i) is a member of it and controls the composition of its board of directors,
 - (ii) holds more than half in value of its equity share capital in the case of a company limited by shares, or

(iii) holds more than half of the total voting rights in the case of a company which is not a company limited by shares, or

(b) the first mentioned company is a subsidiary of any company which is that other's subsidiary.

(2) For the purposes of subsection (1) the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company has some power, exercisable without the consent or concurrence of any other person, to appoint or remove the holders of all or a majority of the directorships; and that other company shall be deemed to have a power to appoint a person to any directorship in respect of which any of the following conditions is satisfied -

(a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power,

(b) that a person's appointment thereto follows necessarily from his appointment as a director of that other company,

(c) that the directorship is held by that other company itself or by a subsidiary of it.

(3) In determining whether a company is a subsidiary of another -

(a) any shares held or power exercisable by that other in a

fiduciary capacity shall be treated as not held or exercisable by it,

(b) subject to paragraphs (c) and (d), any shares held or power exercisable -

(i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity),

(ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other,

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded,

(d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that

business.

- (4) For the purposes of this Law -
- (a) a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary, and
 - (b) a company shall be deemed to be the wholly-owned subsidiary of another if it has no members apart from that other and that other's wholly-owned subsidiaries and its or their nominees.

(5) For the purposes of this section "**equity share capital**" in relation to a company, means its share capital -

- (a) excluding any part thereof which, as respects neither dividends nor capital, carries a right to participate beyond a specified amount in a distribution,
- (b) excluding any shares held as treasury shares.

(6) Except as set out in sections 167 and 265 and in the definition of "employees' share scheme" in section 532, a body corporate is not to be regarded as a subsidiary if it is an overseas company.

(7) Except as set out in section 334, a body corporate is not to be regarded as a holding company if it is an overseas company.

Interpretation.

532. (1) In this Law, unless the context otherwise requires, the following expressions shall be construed as follows -

"**accounts**" means either individual accounts prepared in accordance with section 243 or consolidated accounts prepared in accordance with section 244,

"**administration order**" means an administration order made by the Court in respect of a company (or a cell of a protected cell company) under section 374,

"**administrator**" means a person appointed by the Court to manage the affairs, business and property of a company (or a cell of a protected cell company) under an administration order,

"**Administrator of Income Tax**" means the Administrator within the meaning of the Income Tax (Guernsey) Law, 1975^r,

"**amalgamation**" means an amalgamation of two or more bodies corporate pursuant to the provisions of Part VI, and related expressions shall be construed accordingly,

^r Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118, 200, 333 and 565; Vol. XXVIII, pp. 184, 278, 353 and 409; Vol. XXIX, p. 214; Vol. XXXI, pp. 406 and 473; Vol. XXXII, p. 307; No. IV of 1991; No. VI of 1992; No's. IV and VIII of 1993; No. XXV of 1994; No's. III and VII of 1995; No. V of 1996; No's. IV and XXII of 1997; No's. II and VI of 1999; No. IV of 2000; No's. VI and XVII of 2001; No. VII of 2002; No's. IV, XVIII and XXVI of 2003; No's. XII and XVI of 2004; No's. V, VI and XVII of 2005; No's. II and VII of 2006; the Income Tax (Guernsey) (Amendment) Law, 2007; and (with effect from the 1st January 2008, the Income Tax (Zero 10) (Guernsey) Law, 2007. Also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

"**articles**" means a company's articles of incorporation as lawfully amended from time to time,

"**associated company**" : see section 529,

"**board**" and "**board of directors**": see section 133,

"**body corporate**" means -

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

"**cell**" means a cell created by a protected cell company for the purpose of segregating and protecting cellular and core assets in the manner provided by Part XXVII,

"**cell company**" means a company which is either a protected cell company or an incorporated cell company,

"**circulation date**" : see section 181(5),

"**civil penalty**" : see section 516,

"**closed-ended investment company**" means a collective investment scheme within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 under which -

- (a) the property in question belongs beneficially to, and is managed by or on behalf of, a body corporate having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds, and
- (b) the investors are not entitled under the terms of the scheme –
 - (i) to have their units redeemed or repurchased by, or out of funds provided by, the body, or
 - (ii) to sell their units on an investment exchange,at a price related to the value of the property to which they relate,

"Commission" means the Guernsey Financial Services Commission,

"company" : see sections 1 and 2(3),

"confidential information" means -

- (a) a director's usual residential address,
- (b) beneficial ownership details within the meaning of Part XXIX,

"**contravention**" includes failure to comply, and related expressions shall be construed accordingly,

"**core**" means a protected cell company excluding its cells,

"**corporate services provider**" means a person who holds a full fiduciary licence within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000,

"**the Court**" means the Royal Court sitting as an Ordinary Court,

"**customs officer**" means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law^s, 1972,

"**daily default**" : see section 514,

"**department**" of the States means any department, council or committee of the States, howsoever called,

"**the Department**" means the States of Guernsey Commerce and Employment Department,

"**director**" : see section 131,

^s Ordres en Conseil Vol. XXIII, p. 573; Vol. XXIV, p. 87; Vol. XXXI, p. 278; No. XIII of 1991; No. X of 2004; and the Excise Duties (Budget) Ordinance, 2005 (No. XXXII). Also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

"distribution" : see section 301,

"dividend" : see section 302,

"documents" means information recorded in any form (including without limitation, in electronic form) and, in relation to information recorded otherwise than in legible form, references to its production, howsoever expressed, include references to the production of the information in hard copy,

"electronic means" : see section 526,

"eligible members" : see section 181(3),

"employees' share scheme" is a scheme for encouraging or facilitating the holding of shares or debentures in a company by or for the benefit of-

- (a) the *bona fide* employees or former employees of the company or any associated company,
- (b) the wives, husbands, widows, widowers or children or step-children under the age of 18 of such employees or former employees, or
- (c) such other persons or classes of persons as may be prescribed by the Department,

and, for the purposes of this definition, the expression "associated company" shall be construed as if a subsidiary within the meaning of section 531 included a body

corporate which would be a subsidiary but for the fact that it is an overseas company,

"enactment" includes a Law, Ordinance, Act of Parliament, Order in Council and any subordinate legislation,

"financial services business" means financial services business as defined in Schedule 1 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^t,

"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,

"founder member" means a person who subscribes his name to a company's memorandum,

"functions" includes duties and powers,

^t Order in Council No. VIII of 1999; amended by Order in Council No. II of 2005; Ordinance XXVIII of 1999; Ordinance XII of 2002; Ordinance XXXIII of 2003; certain sections of the Law are modified in their application to external confiscation orders by Ordinance XXXIII of 1999; and Schedule 1 was substituted by G.S.I. No. 27 of 2002 and numbered as schedule 1 by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.

"guarantee member" : see section 7,

"guaranteed amount" : see section 7,

"Guernsey" includes Herm and Jethou,

"hard copy" : see section 525,

"Her Majesty's Procureur" includes Her Majesty's Comptroller,

"holding company" : see section 531,

"incorporated cell " means a company incorporated as, or converted into, an incorporated cell in accordance with the provisions of Part XXVIII,

"incorporated cell company" means a company incorporated as, or converted into, an incorporated cell company in accordance with the provisions of Part XXVIII,

"liability" includes duty, debt and obligation,

"limited company" : see sections 6 and 7,

"member's interests" means -

- (a) in the case of members who are shareholders, their shares,

- (b) in the case of members who are guarantee members, their interests in the company by virtue of being guarantee members,
- (c) in the case of members who are unlimited members, their interests in the company by virtue of being unlimited members,

"**memorandum**" means a company's memorandum of incorporation as lawfully amended from time to time,

"**mixed liability company**" : see section 9,

"**non-cellular company**" means a company which is neither a cell company nor an incorporated cell,

"**officer**", in relation to a company, includes a director, liquidator, manager, secretary, receiver and administrator thereof,

"**open-ended investment company**" means a collective investment scheme within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 under which –

- (a) the property in question belongs beneficially to, and is managed by or on behalf of, a body corporate having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds, and

(b) the investors are entitled under the terms of the scheme–

(i) to have their units redeemed or repurchased by, or out of funds provided by, the body, or

(ii) to sell their units on an investment exchange,

at a price related to the value of the property to which they relate,

"overseas company" means a body of persons registered or incorporated under the law of any district, territory or place outside Guernsey,

"police officer" means a member of the salaried police force of the Island of Guernsey and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,

"prescribed by the Commission" means prescribed by regulations made by the Commission under section 534,

"prescribed by the Department" means prescribed by regulations made by the Department under section 535,

"prescribed by the Registrar" means prescribed by regulations made by the Registrar under section 536,

"protected cell company" means a company incorporated as, or converted into, a protected cell company in accordance with the provisions of Part XXVII,

"**publish**" means make available to the public,

"**redeemable shares**" means shares which are, or at the option of the company or the shareholder are, liable to be redeemed,

"**Register of Companies**" : see section 496,

"**register of directors**" : see section 143,

"**Register of Disqualification Orders**" : see section 497,

"**register of members**" : see section 123,

"**register of secretaries**" : see section 173,

"**Registrar**" means the Registrar of Companies (see section 495),

"**resident agent**" : see section 484,

"**security**" means any mortgage, charge, hypothèque, lien or other security, and "secured interests" shall be construed accordingly,

"**sent in electronic form**" : see section 526,

"**sent by electronic means**" : see section 526,

"**servant**" includes a person employed under a contract of service or apprenticeship (whether written or oral, express or implied) and a person engaged on a consultancy or secondment basis,

"**shadow director**" : see section 132,

"**shareholder**" : see section 6(2)(a),

"**solvency test**" : see section 527,

"**special notice**" : see section 211,

"**States**" means the States of Guernsey,

"**subordinate legislation**" means any regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect,

"**subsidiary**" : see section 531,

"**supervised company**" : see section 530,

"**the 1994 Law**" means the Companies (Guernsey) Law, 1994^u,

"**transaction**" means anything (including, without limitation, any agreement, arrangement, dealing, disposition, circumstance, event or relationship) whereby any liability arises or is imposed; and related expressions shall be construed accordingly,

^u Order in Council No. XXXIII of 1994; amended by No. XIV of 1996; No. I of 2001; No. II of 2002; the Companies (Guernsey) (Amendment) Law, 2005; and by Ordinance No. XXXIII of 2003; the Companies (Fees and Penalties) Ordinance, 2006; and the Incorporated Cell Companies Ordinance, 2006.

"**uniform scale**" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^v,

"**unlimited liability company**" : see section 8,

"**unlimited members**" : see section 8,

"**working day**" means a day which is not a Saturday, a Sunday, Christmas Day or Good Friday or a day appointed as a public holiday by Ordinance of the States under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^w.

(2) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(3) Any reference in this Law to a thing done under or for the purposes of this Law includes a reference to a thing done under or for the purposes of any Ordinance or Regulations made under this Law; and a reference to a thing done under this Law includes a reference to a thing done for the purposes of this Law (and vice versa).

Ordinances and regulations

Power of States to amend by Ordinance.

533. (1) The States may by Ordinance amend this Law.

^v Ordres en Conseil Vol. XXXI, p. 278.

^w Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; and No. XI of 1993.

- (2) Without limitation, an Ordinance under subsection (1) may -
- (a) make provision for a codification of the duties that a director owes to a company,
 - (b) make provision in respect of overseas companies which are administered from Guernsey or have an address in Guernsey,
 - (c) make provision in respect of audit and the regulation of auditors as set out in the Eighth Company Law Directive on Audit (2006/43/EC) including, without limitation, provision for -
 - (i) the eligibility, recognition, approval, registration and supervision of auditors,
 - (ii) the training, assessment and qualifications required to be an approved auditor,
 - (iii) the recognition of supervisory and professional bodies for auditors,
 - (iv) the recognition and approval of professional rules for auditors, and
 - (v) restrictions on eligibility to carry out audits on any class or description of company,
 - (d) make provision in respect of takeovers as set out in the

European Directive on Takeover Bids (2004/25/EC) including, without limitation, provision for -

- (i) the creation, recognition or establishment of an appropriate supervisory body to exercise functions in respect of takeovers or other transactions that affect the ownership of any type, class or description of company,
 - (ii) the conferring of functions and powers on that supervisory body,
 - (iii) the creation or recognition of rules to be applied by the supervisory body in connection with the regulation of takeover bids or other transactions that affect the ownership of any type, class or description of company, and
 - (iv) the creation and enforcement of sanctions or penalties in respect of the contravention of those rules, and
- (e) make provision (notwithstanding section 283) for the conversion of shares to stock and vice versa.

(3) The provisions of subsection (2)(c) and (d) are without prejudice to the provisions of the European Communities (Implementation)

(Bailiwick of Guernsey) Law, 1994^x.

- (4) An Ordinance under this Law -
 - (a) may, for the avoidance of doubt,
 - (i) create new offences, and
 - (ii) repeal, replace, amend, extend, adapt, modify or disapply any rule of common or customary law,
 - (b) may be amended or repealed by a subsequent Ordinance hereunder, and
 - (c) may contain such consequential, incidental, supplementary or transitional provision as may appear to be necessary or expedient including, without limitation, provision amending any enactment.

Regulations made by the Commission.

534. (1) This section governs the making of regulations by the Commission under this Law.

(2) The Commission must consult with the Department before making the regulations.

(3) The regulations -

^x Order in Council No. III of 1994.

- (a) may be amended or repealed by subsequent regulations hereunder,
- (b) may contain such consequential, incidental, supplemental or transitional provision as may appear to the Commission to be necessary or expedient including provision amending any enactment.

Regulations made by the Department.

535. (1) This section governs the making of regulations by the Department under this Law.

(2) The regulations -

- (a) may be amended or repealed by subsequent regulations hereunder,
- (b) may contain such consequential, incidental, supplemental or transitional provision as may appear to the Department to be necessary or expedient including provision amending any enactment.

Regulations made by the Registrar.

536. (1) This section governs the making of regulations by the Registrar under this Law.

(2) Without prejudice to any other power conferred on him to make regulations or his functions under section 499, the Registrar may make such

regulations as he thinks fit in relation to the practice and procedure of the Office of Registrar.

(3) The Registrar must consult with and obtain the approval of the Department before making the regulations.

(4) The regulations -

(a) may be amended or repealed by subsequent regulations hereunder,

(b) may contain such consequential, incidental, supplemental or transitional provision as may appear to the Registrar to be necessary or expedient including provision amending any enactment.

Regulations to be laid before States.

537. Any regulations made under this Law shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

General power in respect of Ordinances and regulations.

538. Any power to make Ordinances or regulations under this Law may be exercised -

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

- (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
 - (iii) any such provision either unconditionally or subject to any prescribed conditions.

Miscellaneous

False or misleading information to the Commission.

539. (1) If a person to whom subsection (2) applies -

- (a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,

- (c) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

he is guilty of an offence.

(2) This subsection applies to a person who -

- (a) makes any statement or provides any information or document to the Commission, or to any officer, servant or agent of the Commission, when acting in the exercise of their respective functions under this Law, or
- (b) otherwise than as mentioned in paragraph (a) makes any statement or provides any information or document to the Commission, or to any officer, servant or agent of the Commission, in circumstances in which he knows or could reasonably be expected to know that the statement, information or document would or might be used by them for the purpose of exercising their respective functions under this Law.

Modification of this Law in its application to States trading companies.

540. (1) Sections 139 and 140 of this Law do not apply to States trading companies within the meaning of the States Trading Companies (Bailiwick of Guernsey) Law, 2001^y.

(2) A breach of section 5 of the States Trading Companies (Bailiwick of Guernsey) Ordinance, 2001^z cannot be ratified under section 160 of this Law.

General

Savings and transitional provisions.

541. Schedule 4 (which makes savings and transitional provisions) has effect.

Power to make regulations concerning savings and transitional provisions.

542. (1) The Department may make regulations containing such savings and transitional provisions as it thinks fit in connection with the commencement of any provision of this Law.

(2) Regulations under this section may, without limitation, make such adaptations and modifications of provisions already in force as the Department thinks fit in connection with the commencement of any other provisions of this Law not yet in force.

(3) Savings and transitional provisions made under this section

^y Order in Council No. XII of 2001.

^z Ordinance No. XXIII of 2001.

are additional and without prejudice to those made by or under any other provision of this Law.

Consequential amendments and repeals.

543. Schedule 5 (which makes consequential amendments and repeals) has effect.

Citation.

544. This Law may be cited as the Companies (Guernsey) Law, 2008.

Commencement.

545. This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions.

SCHEDULE 1
POWERS OF ADMINISTRATOR

Section 379

In the application of this Schedule to a company -

- (a) the word "he" and related expressions refer to the administrator, and
- (b) in the case of a cell of a protected cell company, the word "company" includes a cell of a protected cell company or, where necessary, the protected cell company itself.

1. Power to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as may seem to him expedient.

2. Power to sell or otherwise dispose of the property of the company by public auction or private contract.

3. Power to raise or borrow money and grant security for that purpose over the property of the company.

4. Power to appoint an advocate or accountant or other professionally qualified person to assist him in the performance of his functions.

5. Power to bring or defend any action or other legal proceedings in the name and on behalf of the company, or where the administration relates to the cell

of a protected cell company, in the name and on behalf of the company in so far as the matter relates to the affairs, business and property of the cell.

6. Power to refer to arbitration any question affecting the company.
7. Power to effect and maintain insurances in respect of the business and property of the company.
8. Power to use the company's seal where the company has a seal.
9. Power to do all acts and to execute in the name and on behalf of the company any receipt or other document.
10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.
11. Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.
12. Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the company.
13. Power to make any payment which is necessary or incidental to the performance of his functions.
14. Power to carry on the business of the company.
15. Power to establish subsidiaries of the company.

16. Power to transfer to subsidiaries of the company the whole or any part of the business and property of the company.

17. Power to grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company.

18. Power to make any arrangement or compromise on behalf of the company.

19. Power to call up any uncalled capital of the company.

20. Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company, or in *désastre* or *saisie* proceedings in relation to any such person, and to receive dividends, and to accede to trust deeds for the creditors of any such person.

21. Power to present or defend an application for the winding up of the company.

22. Power to change the address of the company's registered office except where the administration is in respect of the cell of a protected cell company.

23. Power to do all other things incidental to the exercise of the foregoing powers.

SCHEDULE 2
OFFICE OF THE REGISTRAR

Section 495(7)

Salary or fees of Registrar.

1. The Registrar shall be paid such salary or fees, emoluments and other allowances as the Department may determine.

Appointment of staff.

2. (1) The Registrar may -

(a) subject to the approval of the Department, appoint such officers and servants, and

(b) appoint and instruct such other persons,

on such terms and conditions (whether as to remuneration, expenses, pensions or otherwise) as he thinks necessary for the exercise of his functions.

(2) The Registrar may, subject to the approval of the Department, establish and maintain such schemes or make such other arrangements as he thinks fit for the payment of pensions and other benefits in respect of his officers and servants.

Delegation of functions.

3. (1) The Registrar may, by an instrument in writing, either generally or otherwise as specified in the instrument, arrange for any of his functions to be exercised in his name by any person named or described in the instrument, other than this power of delegation.

(2) A function exercised by a delegate pursuant to an arrangement made under this paragraph is for all purposes exercised by the Registrar; and every decision taken or other thing done by a delegate pursuant to such an arrangement has the same effect as if taken or done by the Registrar.

(3) An arrangement made under this paragraph for the exercise of a function by a delegate -

(a) may be varied or terminated at any time by the Registrar, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement,

(b) does not prevent the exercise of the function by the Registrar while the arrangement subsists.

(4) The provisions of this paragraph and of paragraph 4 are without prejudice to the provisions of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^{aa}.

Appointment of Deputy Registrar.

4. (1) Without prejudice to the generality of paragraph 3, the Department may, subject to such terms and conditions as it thinks fit, appoint any person as Deputy Registrar with authority to exercise the Registrar's functions during any period during which the Registrar is unavailable.

^{aa} Order in Council No. XXI of 1991.

(2) A function exercised by a Deputy Registrar pursuant to an appointment under this paragraph is for all purposes exercised by the Registrar; and every decision taken or other thing done by a Deputy Registrar pursuant to such an appointment has the same effect as if taken or done by the Registrar.

- (3) An appointment under this paragraph of a Deputy Registrar -
- (a) may be varied or terminated at any time by the Department, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment,
 - (b) does not prevent the exercise of the function by the Registrar while the appointment subsists.

Disclosure of interests.

5. (1) The Registrar shall, if he has any direct or indirect personal interest in the outcome of any matter of which he is seized under this Law or any other enactment, disclose the nature of his interest to the Department.

(2) For the purposes of this paragraph, a general notice given by the Registrar to the effect that he is a member, director or officer of a body corporate, and is to be regarded as interested in any matter concerning that body corporate, is a sufficient disclosure in relation to any such matter.

Official seal.

6. (1) The Registrar may have an official seal for the authentication of documents required for the purpose of exercising his functions.

- (2) Any document -

- (a) sealed with the official seal of the Registrar, and
- (b) signed by the Registrar or by any person to whom, pursuant to paragraph 3, he has delegated authority to affix his official seal,

is deemed to be duly executed by or on behalf of the Registrar and is effective in law to bind him.

Proof of documents.

7. (1) In any legal proceedings the provisions of subparagraph (2) apply in relation to any document purporting to be -

- (a) issued by or on behalf of the Registrar, or
- (b) signed by the Registrar, by any of his officers or servants or by any person to whom, pursuant to paragraph 3, he has delegated authority to sign documents of that description.

(2) The document -

- (a) may be received in evidence,
- (b) unless the contrary is proved, is deemed -
 - (i) to be the document which it purports to be, and

- (ii) to have been issued by or on behalf of the Registrar or, as the case may be, to have been signed by the person by whom it purports to have been signed, without proof of his identity, signature or official capacity, and
- (c) is evidence of the matters stated therein.

SCHEDULE 3
ELECTRONIC COMMUNICATIONS BY COMPANY TO MEMBERS

Section 524

General

Application of this Schedule.

1. This Schedule applies where a document, other than a summons, is sent -

- (a) by a company to its members or their proxies, or
- (b) to a company.

Agreement to communication in electronic form.

2. (1) A document can only be sent in any particular electronic form if the recipient has so agreed, either generally or in any particular case.

For the meaning of "sent in electronic form" see section 526.

(2) The agreement of a member may be deemed by virtue of provision made by the articles or a resolution of the company.

Address for communication in electronic form.

3. Where paragraph 2 applies, the document may only be sent -

- (a) by electronic means, to an address specified for that purpose by the recipient (generally or in any particular case), or
- (b) by other means, to an address to which it could be sent

if it were a document in hard copy.

For the meaning of "sent by electronic means" see section 526.

Relationship between this Schedule and articles.

4. This Schedule is subject to any provision to the contrary in the company's articles.

Other agreed forms of communication.

5. A document sent otherwise than in hard copy form or electronic form is validly sent if it is sent in a manner that has been agreed by the recipient.

Communications by a company to its members

Means of communication.

6. A company may send documents -

- (a) subject to paragraphs 2 and 3, in electronic form, or
- (b) subject to the following paragraphs of this Schedule and sections 189 and 208, by means of a website.

Member must agree to communication by means of website.

7. (1) Documents can only be sent by means of a website if the member has so agreed, either generally or in any particular case.

(2) The agreement of a member under subparagraph (1) may be deemed by virtue of provision made by the articles or a resolution of the company.

Availability of document on website.

8. (1) A document authorised or required to be sent by means of a website must be made available in a form, and by a means, that the company reasonably considers will enable the recipient -

(a) to read it, and

(b) to retain a copy of it.

(2) For this purpose a document can be read only if -

(a) it can be read with the naked eye, or

(b) to the extent that it consists of images, it can be seen with the naked eye.

Notification of availability of document on website.

9. (1) The company must notify the intended recipient of -

(a) the presence of the document on the website,

(b) the address of the website,

(c) the place on the website where it may be accessed, and

(d) how to access the document.

(2) Where the document is a notice of a company meeting, the notification must -

- (a) state that it concerns a notice of a company meeting, and
 - (b) specify the place, date and time of the meeting.
- (3) The document is taken to be sent -
- (a) on the date on which the notification required by this paragraph is sent, or
 - (b) if later, the date on which the document first appears on the website after that notification is sent.

Period of availability on website.

10. (1) The company must make the document available on the website throughout -

- (a) the period specified by the applicable provision of this Law, or
- (b) if no such period is specified, the period of 28 days beginning with the day on which the notification required under paragraph 9 is sent to the person in question.

(2) For the purposes of this section, a failure to make a document available on a website throughout the period shall be disregarded if -

- (a) it is made available on the website for part of the period, and

- (b) the failure to make it available throughout that period is wholly attributable to circumstances that it would not be reasonable to have expected the company to prevent or avoid.

SCHEDULE 4
SAVINGS AND TRANSITIONAL PROVISIONS

Section 541

Existing companies and records.

1. The repeal by this Law of the enactments under Schedule 5 does not affect -

- (a) the incorporation of any company registered or deemed to be registered under those enactments,
- (b) the validity of any public record kept by Her Majesty's Greffier thereunder, or
- (c) the validity of any record kept by a company thereunder.

Register of Companies.

2. (1) Her Majesty's Greffier shall transfer to the Registrar the register kept by him and called the "Register of Companies incorporated with Limited Liability" which forms part of the public records of the Island and which was formerly kept pursuant to Article III of the Law entitled "Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée" of 1908^{bb} (in this paragraph referred to as "**the old register**").

(2) The old register shall be treated for all purposes as part of the Register of Companies kept by the Registrar under Part XXX.

^{bb} Ordres en Conseil Vol. X, p.298.

(3) Her Majesty's Greffier shall transfer to the Registrar all documents and information in his custody which formed part of the old register at one time but which no longer form part of the old register.

Saving for existing minor directors.

3. Section 137(1) does not apply to any minor appointed or holding office as a director before its coming into force.

Company director disqualification.

4. (1) Her Majesty's Greffier shall transfer to the Registrar the register of company director disqualification orders kept by him under section 67E of the 1994 Law (in this paragraph referred to as "**the old register**").

(2) The old register shall be treated for all purposes as part of the Register of Disqualification Orders kept by the Registrar under section 497 of this Law.

(3) A disqualification order made under the 1994 Law shall be treated for all purposes as if it were a disqualification order made under section 427 of this Law.

Transactions etc. of protected cell companies before provision for core protection and secured interests under 2006 Ordinance.

5. The provisions of Part XXVII which re-enact the amendments made to the Protected Cell Companies Ordinance, 1997^{cc} by sections 1, 4 and 5 of the

^{cc} Ordinance No. V of 1997; amended by No. XV of 1998; No. XXI of 2005; and No. XVII of 2006.

Protected Cell Companies (Amendment) Ordinance, 2006^{dd} (which provided that non-cellular assets are not to be used to satisfy cellular liabilities, that receivership orders are subject to secured interests, and that administration orders are subject to secured interests) do not have any effect upon transactions or securities entered into or liabilities incurred before the coming into force of the Protected Cell Companies (Amendment) Ordinance, 2006, and the provisions of the Protected Cell Companies Ordinance, 1997 as it was in force immediately before those amendments, shall apply accordingly in their stead.

Memorandum and articles of association.

6. Any memorandum of association or articles of association within the meaning of the 1994 Law of a company incorporated before the coming into force of this Law which are lawful under the 1994 Law shall be treated as if they were a memorandum of incorporation or articles of incorporation (as the case may be) under this Law.

Reconversion of stock into shares.

7. (1) A company having a share capital that has converted paid-up shares into stock (before the repeal by this Law of the power to do so) may reconvert that stock into paid-up shares of any value.

(2) A company may exercise the power conferred by this paragraph only if its members have passed an ordinary resolution authorising it to do so.

(3) A resolution under subparagraph (2) may authorise a company to exercise the power conferred by this paragraph -

^{dd} Ordinance No. XVII of 2006.

- (a) on more than one occasion, or
- (b) at a specified time or in specified circumstances.

Savings for acquisition of own shares.

8. The validity of the acquisition by a company of its own shares prior to the coming into force of this Law is not affected by anything in this Law.

Savings for financial assistance for acquisition of own shares.

9. The validity of the giving of financial assistance by a company or any of its subsidiaries prior to the coming into force of this Law is not affected by anything in this Law.

Current winding up proceedings.

10. Proceedings in relation to the winding up of a company instituted before the commencement of this Law may continue as if this Law had not been enacted.

Past and current striking off.

11. The provisions of section 369 apply in relation to a company struck off the Register of Companies -

- (a) under section 3 of the Law entitled "Loi supplémentaire à la Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée" of 1936,
- (b) under section 24 of the Companies (Guernsey) Law,

1990^{ee}, or

(c) under section 76 of the 1994 Law,

as those provisions apply in relation to a company struck off the Register under section 355 of this Law.

Beneficial ownership.

12. (1) The beneficial ownership provisions of this Law do not apply to a company which was incorporated before the commencement of this Law until the expiry of 6 months after the date of commencement of this Law.

(2) A company incorporated before the commencement of this Law shall, within 6 months after the date of commencement of this Law, send a statement of its first resident agent to the Registrar comprising the details required by section 485.

(3) In this paragraph the "**beneficial ownership provisions**" means -

- (a) Part XXIX,
- (b) section 235(1)(d), and
- (c) section 355(1)(d).

General savings.

13. (1) Anything done under or for the purposes of any enactment

^{ee} Order in Council No. XXVII of 1990.

repealed by this Law ("**the repealed enactments**") before the commencement of this Law shall, to the extent that the same is required or authorised to be done under or for the purposes of this Law, have effect as if done under or for the purposes of the equivalent provision of this Law.

(2) Anything in the process of being done under or for the purposes of the repealed enactments before the commencement of this Law may, to the extent that the same is required or authorised to be done under or for the purposes of this Law, be continued to be done under or for the purposes of the equivalent provision of this Law.

(3) Any reference howsoever expressed in any enactment or subordinate legislation to a repealed enactment which is re-enacted (with or without modification) by or under this Law shall (unless the contrary intention appears) be construed as a reference to the provision as re-enacted.

(4) In so far as any subordinate legislation made or other thing done (or having effect as if made or done) under or for the purposes of a repealed enactment could be made or done under or for the purposes of this Law, it shall (unless the contrary intention appears) have effect as if made or done under or for the purposes of this Law.

SCHEDULE 5
CONSEQUENTIAL AMENDMENTS AND REPEALS

Section 543

Qualification for appointment as auditor of limited partnership.

1. (1) For section 17 of the Limited Partnerships (Guernsey) Law, 1995^{ff} (qualification for appointment as auditor of a limited partnership) substitute the following section -

"Qualification for appointment as auditor.

17. Section 260 of the Companies (Guernsey) Law, 2008 (qualification for appointment as auditor) applies to limited partnerships as it applies to companies under that Law."

- (2) In the Limited Partnerships (Guernsey) Law, 1995 -
- (a) in section 40(1) (penalties for offences committed under that Law) repeal "17(5)",
 - (b) in section 41(1) (interpretation) in the definition of "qualified" and "disqualified" repeal "(3)", and
 - (c) in section 43 (power to make regulations) repeal paragraph (e).

^{ff} Order in Council No. XII of 1995; amended by No. V of 1996; No. IV of 2001; No. X of 2006; and by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

Incorporation of companies by advocates no longer exempted activity.

2. In section 3(1)(r) of the Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law, 2000^{gg} (list of exempted activities) the words "the incorporation of companies by an advocate and" are repealed.

Licensing criteria for fiduciaries.

3. In Schedule 1 to the Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law, 2000, after paragraph 3(2)(f) (fiduciaries to be fit and proper persons) insert the following -

"(g) his record of compliance with any provision contained in or made under the Companies (Guernsey) Law, 2008 in acting as a corporate services provider or a resident agent within the meaning of that Law."

Company law repeals.

4. (1) The following enactments are repealed -

Laws

- (a) the Companies (Guernsey) Law, 1994,
- (b) the Companies (Amendment) (Guernsey) Law, 1996,
- (c) the Companies (Enabling Provisions) (Guernsey),

^{gg} Order in Council No. I of 2001.

Law, 1996,

- (d) the Companies (Amendment) (Guernsey) Law, 2001,
- (e) the Companies (Amendment) Guernsey Law, 2005,

Ordinances

- (f) the Companies (Guernsey) Law, 1994 (Commencement and Miscellaneous Provisions) Ordinance, 1995,
- (g) the Companies (Guernsey) Law, 1994 (Commencement) (No. 2) Ordinance, 1995,
- (h) the Companies (Amendment) (Guernsey) Law, 1996 (Commencement) Ordinance, 1997,
- (i) the Amalgamation of Companies Ordinance, 1997,
- (j) the Guarantee Companies Ordinance, 1997,
- (k) the Migration of Companies Ordinance, 1997,
- (l) the Protected Cell Companies Ordinance, 1997,
- (m) the Companies (Purchase of Own Shares) Ordinance, 1998,
- (n) the Companies (Financial Assistance for Acquisition

of Own Shares) Ordinance, 1998,

- (o) the Protected Cell Companies (Amendment) Ordinance, 1998,
- (p) the Companies (Shares of No Par Value) Ordinance, 2002,
- (q) the Protected Cell Companies (Amendment) Ordinance, 2005,
- (r) the Protected Cell Companies (Amendment) Ordinance, 2006,
- (s) the Incorporated Cell Companies Ordinance, 2006,
- (t) the Companies (Fees and Penalties) Ordinance, 2006,
- (u) the Companies (Purchase of Own Shares) (Treasury Shares) Ordinance, 2006,
- (v) the Amalgamation of Companies (Amendment) Ordinance, 2008,
- (w) the Incorporated Cell Companies (Amendment) Ordinance, 2008,
- (x) the Migration of Companies (Amendment) Ordinance, 2008,

- (y) the Protected Cell Companies (Amendment) Ordinance, 2008,

Regulations

- (z) the Companies (Compulsory Winding-up) (Notification to Commission) Regulations, 1999,
- (aa) the Amalgamation of Companies (Supervised Companies) Regulations, 1999,
- (bb) the Companies (Shares of No Par Value) (Modification of Legislation) Regulations, 2002,
- (cc) the Protected Cell Companies (Prescribed Companies) Regulations, 2005.

(2) This Law also makes the limited repeals to the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959 set out in section 494.