

BILLET D'ÉTAT No. XIV, 2015

29th JULY 2015

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The Income Tax (Zero 10) (Company Intermediate Rate) (Amendment) (Guernsey) Ordinance, 2015

THE STATES, in pursuance of their Resolution of the 31st October, 2014^a, and in exercise of the powers conferred on them by sections 203A and 208C of the Income Tax (Guernsey) Law, 1975^b and all other powers enabling them in that behalf, hereby orders:-

Amendment of 1975 Law.

1. The Income Tax (Guernsey) Law, 1975 ("**the Law**"), as amended, is further amended as follows.

2. After section 2(2)(ad)^c insert the following paragraph -

"(ae) income from the administration of controlled investments (as defined in the Fourth Schedule),".

3. In section 7C^d, in the heading, and in the text of the section, for the words "and insurance manager business" substitute ", insurance manager business

^a Proposition 1 of Billet d'État No. XXII of 2014.

^b Ordres en Conseil Vol. XXV, p. 124; section 203A was inserted by Order in Council No. XVII of 2005 and section 208C was inserted by Order in Council No. V of 2011.

^c Section 2 was substituted by the Income Tax (Zero 10) (Guernsey) Law, 2007 (Order in Council No. V of 2011) and paragraph (ad) was added by the Income Tax (Zero 10) (Company Intermediate Rate) (Amendment) (Guernsey) Ordinance, 2012.

^d Section 7B was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007 (Order in Council No. VI of 2011).

and the administration of controlled investments".

4. After section 47G(ad)^e insert the following paragraph -

"(ae) the administration of controlled investments
carried on in Guernsey, ".

5. After section 139(3) insert the following subsection -

"(4) In addition, subsection (2) does not apply in any year
of charge to the losses of a company where -

- (a) in the year of charge 2014 the company's
income fell within class 2(2)(d),
- (b) the company is carrying on the same business
as it was carrying on in the year of charge
2014, and
- (c) the company's income falls within class
2(2)(ae)".

6. In section 209(1) immediately before the definition of "appropriate
rate" insert the following definition -

"administration of controlled investments" has the
meaning assigned by the Fourth Schedule, ".

^e Section 47G was inserted by the Income Tax (Zero 10) (Guernsey) (No. 2)
Law, 2007 (Order in Council No. VI of 2011).

7. In the Fourth Schedule^f after paragraph 2D insert the following paragraph -

"ADMINISTRATION OF CONTROLLED INVESTMENTS

2E. (1) For the purposes of this Law the "**administration of controlled investments**" means the provision to an unconnected third party of any administrative, secretarial or clerical services in relation to a controlled investment (within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987), including -

- (a) the provision of general accountancy and book-keeping services, but not the audit of accounts, and
- (b) the provision of valuation services on a continuing basis in connection with any dealing in an investment,

and for the purposes of this paragraph services are provided to an unconnected third party only where the person who provides the services, and the person to whom the services are provided, are not connected to each other within the meaning of section 66A(8)(a).

(2) "**Income from the administration of controlled investments**" shall be any income arising from the administration of

^f The Fourth Schedule was inserted by the Income Tax (Zero 10) (Guernsey) Law, 2007 (Order in Council No. V of 2011).

controlled investments."

8. In the Fifth Schedule^g in the table therein insert the following entry immediately below the entry relating to "Income from insurance manager business"

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"2(2)(ae)	Income from the administration of controlled investments	company intermediate rate	10%".
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Year of computation: special provision.

9. Section 6(3A) of the Law applies to any company where the applicable rate of taxation of that company's income is altered by the provisions of this Ordinance *mutatis mutandis*.

Citation.

10. This Ordinance may be cited as the Income Tax (Zero 10) (Company Intermediate Rate) (Amendment) (Guernsey) Ordinance, 2015.

Commencement.

11. This Ordinance shall be deemed to have come into force on the 1st January, 2015.

^g The Fifth Schedule was inserted by the Income Tax (Zero 10) (Guernsey) Law, 2007 (Order in Council No. V of 2011).

The Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2015

THE STATES, in pursuance of their Resolution of the 28th November, 2012^a, and in exercise of the powers conferred on them by sections 533 and 538 of the Companies (Guernsey) Law, 2008, as amended^b, and all other powers enabling them in that behalf, hereby order:-

Amendment of Law.

1. The Companies (Guernsey) Law, 2008, as amended, is further amended as follows.

2. (1) In section 7(3), and in the other provisions set out in subsection (2), for the words "memorandum and articles" substitute "memorandum or articles".

(2) The provisions are sections 8(3), 9(5), 20(4), 22(2) (wherever the words appear), 22(4)(a), 276(2) and 414(4).

3. Section 15(5)(b) is repealed.

^a Article VII of Billet d'État No. XXIII of 2012.

^b Order in Council No. VIII of 2008; amended by Ordinance No. XXV of 2008 (Recueil d'Ordonnances Tome XXXIII, p. 122); Ordinance No. LIV of 2008 (Recueil d'Ordonnances Tome XXXIII, p. 327); Ordinance No. VII of 2009 (Recueil d'Ordonnances Tome XXXIII, p. 472); Ordinance No. XIV of 2009 (Recueil d'Ordonnances Tome XXXIII, p. 487); G.S.I. No. 34 of 2009; Ordinance No. XI of 2010; Order in Council No. XIII of 2010; Ordinance No. XXXI of 2012; Order in Council No. I of 2013; G.S.I. No. 37 of 2013; Ordinance No. XXXI of 2013; Order in Council No. VI of 2014; the Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2014; and G.S.I. No. 84 of 2014.

4. For section 17(9) substitute the following subsection -

"(9) An application for incorporation of a company may only be made by -

(a) a corporate services provider, or

(b) a person, body or officer -

(i) prescribed by the Department for the purposes of this subsection, or

(ii) of a class or description so prescribed."

5. After section 21 insert the following section -

"Alternative company names in non-Roman script, etc.

21A. (1) A company or, if the company is not yet incorporated, a corporate services provider or a person, body or officer prescribed, or of a class or description prescribed, by the Department under section 17(9), may register an alternative company name in the Register of Companies which is expressed in non-Roman alphabet, characters or script, subject to the following conditions -

(a) the company is or, as the case may be, will be registered in the Register of Companies under a name which is in Roman alphabet and script and which conforms with subsections (1) and (2) of section 21 and otherwise conforms with

the provisions of this Law in respect of company names (the company's "**principal name**"),

- (b) an accurate translation of the alternative name is provided to the Registrar, and
- (c) the alternative name includes (in whatever language, alphabet, characters or script it is expressed) the word or words required to be included under subsections (1) and (2) of section 21 and otherwise conforms with the provisions of this Law in respect of company names.

(2) The company's alternative name may, for the avoidance of doubt, differ from the company's principal name.

(3) The registration of an alternative name under subsection (1) is without prejudice to any legal requirement in respect of the use of a company's name, which shall be deemed to relate to the company's principal name.

(4) The provisions of sections 24, 25 and 26 apply with necessary modifications in respect of a company's alternative name as they apply in respect of a company's principal name."

6. In section 24(4) after the words "has consented to the use of that name" insert "or unless the company was incorporated (or, in a case where the company has changed its name, the change of company name was registered) before

the date of establishment in Guernsey of that other person or (as the case may be) the date of registration of the trade mark in accordance with the Trade Marks (Bailiwick of Guernsey) Ordinance, 2006".

7. In section 24(5)(a)(i) and (b)(i) the words "or elsewhere" are repealed.

8. In section 27(1) after "corporate services provider" add "or a person, body or officer prescribed, or of a class or description prescribed, by the Department under section 17(9)".

9. After section 27(1) insert the following subsection -

"(1A) A company may apply to the Registrar to reserve a name for the company if it intends to make an application to the Registrar under section 25, within 3 months, to change its name in accordance with the provisions of that section."

10. In section 27(3)(a) after "an application for incorporation of a company" insert "or for a change of company name".

11. In section 38(1) after "by this section" insert "or by section 52A(17) or 287".

12. After section 38(7) add the following subsection -

"(8) For the avoidance of doubt, this section is without prejudice to the provisions of sections 40, 45, 110 to 112 and 350."

13. After section 40(6) insert the following subsection -

"(7) The annulment of an alteration of a company's objects under this section does not affect any right, title or interest of a third party arising or accruing from or in consequence of a transaction effected by the company prior to the date of the application for the annulment.".

14. After section 52 insert the following section -

"Conversion of cell of protected cell company into non-cellular company."

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

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

(3) If cell shares have been issued in respect of the cell, the holders of those shares must give the requisite consent to -

- (a) the conversion and incorporation,
- (b) the non-cellular company name, in order to comply with the requirements of sections 21(1) and 24(1),
- (c) the non-cellular company type (limited by shares, limited by guarantee, unlimited or mixed liability, as the case may be),

- (d) upon conversion -
 - (i) the adoption of a memorandum and articles of incorporation which are to be binding on the non-cellular company immediately after conversion and incorporation, complying with the requirements of this Law as to memoranda and articles,
 - (ii) the registration of the cell as a non-cellular company on the Register of Companies,
 - (iii) the translation of the capacity, status and interest of the members of the protected cell company (including, where applicable, and for the avoidance of doubt, members who are the holders of cell shares) in respect of or attributable to the cell from that of member of the protected cell company into that of member of the non-cellular company, and
 - (iv) the translation of the shares (including, where applicable, cell shares), guarantees, rights, interests, debts, obligations and liabilities of the members of the protected cell company

in respect of or attributable to the cell into shares, guarantees, rights, interests, debts, obligations and liabilities in or to the non-cellular company,

(e) in the case of a non-cellular company which is to have shares, the inclusion in its memorandum of a statement of -

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

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

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

(f) in the case of a non-cellular company which is to be limited by guarantee, the inclusion in its memorandum of a statement of the guaranteed amount of each member,

and for the purposes of this subsection the holders of the cell shares are considered to have given the requisite consent to the matters set out in paragraphs (a) to (f) only if -

- (A) the holders of not less than 75% in number of those shares give their written consent thereto, or
- (B) consent thereto is given at a meeting on a show of hands by not less than 75% of -
 - the holders of those shares who vote in person on the matter, and
 - the persons who vote on the matter as duly appointed proxies of the holders of those shares.

(4) The consent of the holders of cell shares given in accordance with subsection (3) may also propose the date on which the conversion and incorporation shall have effect.

(5) If cell shares have not been issued in respect of the cell, the members of the protected cell company who are members by reason of holding shares in the company other than cell shares must authorise, in the manner set out in this subsection, the matters set out in paragraphs (a) to (f) of subsection (3), and for the purposes of this section the authority of those members is considered to have been obtained only if -

(a) the holders of not less than 75% in number of those shares give their written consent thereto, or

(b) consent thereto is given at a meeting on a show of hands by not less than 75% of -

(i) the holders of those shares who vote in person on the matter, and

(ii) the persons who vote on the matter as duly appointed proxies of the holders of those shares.

(6) Without prejudice to the provisions of subsections (3), (4) and (5), if cell shares have been issued in respect of the cell, and the holders of those shares have given their consent in accordance with subsection (3), members of the protected cell company who are members by reason of holding shares in the company other than cell shares must authorize, in the manner set out in subsection (5), the conversion and incorporation.

(7) A cell of a protected cell company may not be converted into and incorporated as a non-cellular company in accordance with the provisions of this section unless, not less than 28 days before the company delivers its application for conversion to the Registrar under subsection (9), the company gives written notice to all its creditors stating that it intends to apply to the Registrar under this section for the conversion of the cell into and its incorporation as a non-cellular company.

(8) The protected cell company shall deliver a copy of the notice referred to in subsection (7) to the Registrar and upon receipt thereof the Registrar shall give notice of the proposed conversion and incorporation in such manner and for such period as he thinks fit.

(9) The protected cell company shall, not less than 28 days after giving the notice referred to in subsection (7), deliver to the Registrar -

- (a) an application for conversion by the directors of the protected cell company, in such form as the Registrar may require,
- (b) a copy of the consent of the Commission,
- (c) a copy or record of the consent of the holders of the cell shares given in accordance with subsection (3) or, as the case may be, of the authority of the members of the protected cell company who are members by reason of holding shares in the company other than cell shares under subsection (5),
- (d) a copy or record of the authority of the members of the protected cell company who are members by reason of holding shares in the company other than cell shares under subsection (6), if required by that subsection,

- (e) a copy of the memorandum and articles of incorporation which are to be binding on the non-cellular company immediately after conversion and incorporation,
- (f) a declaration of compliance (conversion),
- (g) a statement of the non-cellular company's directors as proposed immediately after conversion and incorporation, and
- (h) a statement of the address of the non-cellular company's registered office in Guernsey as proposed immediately after conversion and incorporation.

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

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

(11) Upon receipt of the documents specified in subsection (9), and subject to subsection (14), not less than 28 days after giving notice under subsection (8), the Registrar shall -

- (a) issue a certificate of conversion from protected cell into, and incorporation as, a non-cellular company, stating the date upon which the conversion and incorporation have effect, and which is conclusive evidence that the non-cellular company is duly incorporated,
- (b) register the memorandum (and articles as the case may be) of the non-cellular company in the Register of Companies,
- (c) allocate a registration number to the non-cellular company, and
- (d) publish the fact that the cell has been converted and incorporated in such manner and for such period as he thinks fit.

(12) If the consent of the holders of the cell shares given in accordance with subsection (3) proposes a date on which the conversion and incorporation shall have effect and that date is later than the date on which the Registrar issues the certificate of conversion and incorporation under subsection (11), then the date stated in the certificate as the date of conversion and incorporation shall be the date proposed in the said consent.

(13) Where a cell of a protected cell company is converted into and incorporated as a non-cellular company by virtue of this section -

- (a) all property and rights to which the protected

cell company was entitled and which were attributable to the cell immediately before the conversion and incorporation become the property and rights of the non-cellular company,

- (b) the non-cellular company becomes subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which the protected cell company was subject and which were attributable to the cell immediately before its conversion and incorporation,
- (c) all actions and other legal proceedings which, immediately before the conversion and incorporation, could have been instituted or continued by or against the protected cell company in respect of the cell may be instituted or continued by or against the non-cellular company (and not by or against the protected cell company) after the conversion and incorporation, and
- (d) a conviction, ruling, order or judgment in favour of or against the protected cell company in respect of the cell may be enforced by or against the non-cellular company (and not by or against the protected cell company) after the conversion and incorporation.

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

- (a) directing that effect shall not be given to the conversion and incorporation, or that effect shall only be given subject to such terms and conditions as the Court thinks fit,
- (b) modifying the conversion and incorporation in such manner as may be specified in the order,
- (c) directing the protected cell company or its directors to reconsider the conversion and incorporation or any part of it.

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

(16) For the avoidance of doubt, a cell transfer order under section 457(3) is not required by reason only of the conversion of a cell of a protected cell company into, and its incorporation as, a non-cellular company in accordance with the provisions of this section.

(17) Where a cell of a protected cell company is converted into and incorporated as a non-cellular company by virtue of this section, the protected cell company may by special resolution make any alteration necessary to its memorandum of incorporation in consequence of that conversion and incorporation."

15. Sections 55(2)(d)(ii), 56(2)(d)(ii) and 57(2)(d)(ii) are repealed.

16. After section 59 insert the following section -

"Power to make regulations as to conversions.

59A. The Department may by regulation make such provision as it thinks fit for the purposes of the implementation of and giving effect to the provisions of this Part."

17. In section 61(1) for the words preceding paragraph (a) substitute -

"In an amalgamation, it is immaterial whether all of the bodies corporate are of the same type, and accordingly the amalgamating bodies corporate may be any of, or any combination of, the following".

18. Section 63(1)(f)(ii) is repealed.

19. In section 64(8) for "the Commission" substitute "the Registrar".

20. For section 65 substitute the following section -

"Short form amalgamations for subsidiary bodies corporate.

65. (1) A body corporate and any other body corporate which is a wholly-owned subsidiary of it may amalgamate and continue as one

body corporate (being the body corporate first referred to) without complying with sections 63 and 64 (but subject in all other respects to the provisions of this Part) if -

- (a) each amalgamating body corporate is a body corporate limited by shares,
- (b) at least one of the amalgamating bodies corporate is a company,
- (c) the amalgamation is approved by a resolution of the directors of each amalgamating body corporate, and
- (d) each resolution provides that -
 - (i) the shares of each amalgamating body corporate (including, for the avoidance of doubt, any shares held as treasury shares) other than the amalgamated body corporate will be cancelled without payment or other consideration,
 - (ii) the memorandum and articles of the amalgamated body corporate will be the same as the memorandum and articles of the body corporate first referred to, and

- (iii) the directors are satisfied on reasonable grounds that the amalgamated body corporate will, immediately after the amalgamation becomes effective, satisfy the solvency test.

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

- (a) each amalgamating body corporate is a body corporate limited by shares,
- (b) at least one of the amalgamating bodies corporate is a company,
- (c) the amalgamation is approved by a resolution of the directors of each amalgamating body corporate, and
- (d) each resolution provides that -
 - (i) the shares (including, for the avoidance of doubt any shares held as treasury shares) of all but one of the amalgamating bodies corporate will be cancelled without payment or other consideration,

- (ii) the memorandum and articles of the amalgamated body corporate will be the same as the memorandum and articles of the amalgamating body corporate whose shares are not cancelled, and
- (iii) the directors are satisfied on reasonable grounds that the amalgamated body corporate will, immediately after the amalgamation becomes effective, satisfy the solvency test.

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

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

opinion, the conditions set out in subsection (1) or (as the case may be) subsection (2) are satisfied, and the grounds for that opinion.

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

- (a) copies of the resolution required by subsection (1) or subsection (2) are available for inspection by any member or creditor of an amalgamating body corporate, or any other person to whom an amalgamating body corporate is under any obligation or liability, at the registered offices of the amalgamating bodies corporate, and at such other places as many be specified by the directors, during normal business hours, and
- (b) a member or creditor of an amalgamating body corporate, or any other person to whom an amalgamating body corporate is under any obligation or liability, is supplied free of charge with a copy of the said resolution upon request to an amalgamating body corporate.

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

(6) For the purposes of this section, a subsidiary or a holding company within the meaning of section 531 includes a body

corporate which would be a subsidiary or, as the case may be, a holding company but for the fact that it is an overseas company.

(7) The Department may by regulation extend the provisions of this section, subject to such exceptions, adaptations and modifications as may be prescribed by the regulations, to bodies corporate other than those limited by shares."

21. In section 66(2)(a)(ii) for "companies" substitute "bodies corporate".

22. In section 69(3) after the words "Upon receipt of the documents specified in subsection (2)" insert "or at any time before such receipt where the Registrar has been informed in writing by the directors of each amalgamating body corporate that an application for the proposed amalgamation will be made".

23. In section 70(5) for the words "the day the application for amalgamation was made" substitute "the day on which he gave notice of the proposed amalgamation under section 69(3)".

24. After section 74 insert the following section -

"Power to make regulations as to amalgamations.

74A. The Department may by regulation make such provision as it thinks fit for the purposes of the implementation of and giving effect to the provisions of this Part."

25. In section 76(c) for "the Commission" substitute "the Registrar".

26. In section 84(6) for "the Commission" substitute "the Registrar".

27. Section 89(b) is repealed.

28. In section 94(2)(b) after the words "from the Register" insert "(and the Registrar may by regulation prescribe the fees payable to Her Majesty's Procureur and the Director of Income Tax in respect of applications for and the granting of their respective confirmations under this paragraph)".

29. In section 97(2)(b) after the words "from the Register" insert "(and the Registrar may by regulation prescribe the fees payable to Her Majesty's Procureur and the Director of Income Tax in respect of applications for and the granting of their respective confirmations under this paragraph)".

30. In section 97(3) after the words "Upon receipt of the documents specified in subsection (2)" insert "or at any time before such receipt where the Registrar has been informed in writing by the directors of the transferring company that an application for the removal of the company from the Register of Companies will be made".

31. In section 98(a) after the words "shall be deleted" insert "(and, if the statement is not deleted on or before the date of the removal of the company's name from the Register under paragraph (b), the statement shall be deemed to have been deleted on that date)".

32. In section 102 after the words "the English language" where secondly appearing insert "(made by such person or class or description of person, in such form, and verified and/or certified in such manner, as the Registrar may prescribe by regulation or determine in any particular case)".

33. After section 104 insert the following section -

"Power to make regulations as to migrations."

104A. The Department may by regulation make such provision as it thinks fit for the purposes of the implementation of and giving effect to the provisions of this Part."

34. In section 110(1) for "class or creditors" substitute "class of creditors".

35. In section 110(4) for "A compromise or agreement" substitute "A compromise or arrangement".

36. In section 111(7) for the definition of "**transferee company**" substitute the following definition -

""**transferee company**" and "**transferor company**" include an overseas company, but only if at least one other company concerned in the scheme in question (whether as transferee company or transferor company) is a company registered in the Register of Companies."

37. In section 115(3) after the words "the directors" insert "whether acting on an individual or collective basis".

38. In section 135 -

- (a) the existing text is numbered as subsection "(1)", and
- (b) after subsection (1), as so numbered, insert the following subsection -

"(2) A failure by a company to comply with

subsection (1) is a ground for striking the company off the Register of Companies in accordance with section 355, and the provisions of Part XX of this Law shall apply accordingly."

39. After section 137(2) insert the following subsections -

"(2A) A person who is subject to a disqualification referred to in subsection (2)(c) may apply to the Court for an order that, subject to such terms and conditions as the Court may direct, the prohibition or restriction on him being appointed or holding office as a director imposed by that subsection shall not apply to him on the grounds that it would be just for the Court so to order.

(2B) In determining an application under subsection (2A) the Court may have regard to -

- (a) any matter to which it must or may have regard to under section 428(2) or (3),
- (b) whether the proceedings which resulted in his disqualification in the district, territory or place outside Guernsey complied with the requirements of natural justice and (had they been conducted in Guernsey) would have been compliant with the requirements that must be observed pursuant to the Human Rights (Bailiwick of Guernsey) Law, 2000, and
- (c) whether it would otherwise be in the interest of

justice to make an order under that subsection."

40. In section 150(1) for the words "within 2 weeks" substitute "within 5 working days after the date of receipt of the request".

41. In section 154(1) for "all proceedings at" substitute "the proceedings of".

42. In section 155(1) for "authenticated" substitute "signed".

43. In section 157(2) after the phrase "or an associated company," insert "or a body corporate which is an overseas company and a subsidiary of the company,".

44. In section 161 after the phrase "Where a company has no secretary," insert "or where a company does have a secretary but by virtue of the company's articles the functions of the secretary do not include the duties listed in section 171,".

45. In section 162(1) -

(a) after the words "disclose to the board of directors" insert "the nature and extent of his interest.", and

(b) paragraphs (a) and (b) are repealed.

46. In section 167(2) for "in whole or in party" substitute "in whole or in part".

47. In section 170(2)(c) after "acting as a director," insert "secretary or other officer of a body corporate,".

48. After section 170(2) insert the following subsections -

"(2A) A person who is subject to a disqualification referred to in subsection (2)(c) may apply to the Court for an order that, subject to such terms and conditions as the Court may direct, the prohibition or restriction on him being appointed or holding office as a director, secretary or other officer imposed by that subsection shall not apply to him on the grounds that it would be just for the Court so to order.

(2B) In determining an application under subsection (2A) the Court may have regard to -

- (a) any matter to which it must or may have regard to under section 428(2) or (3),
- (b) whether the proceedings which resulted in his disqualification in the district, territory or place outside Guernsey complied with the requirements of natural justice and (had they been conducted in Guernsey) would have been compliant with the requirements that must be observed pursuant to the Human Rights (Bailiwick of Guernsey) Law, 2000, and
- (c) whether it would otherwise be in the interest of justice to make an order under that subsection."

49. After section 170 insert the following section -

"Validity of acts of secretaries."

170A. The acts of a person acting as a secretary are valid notwithstanding that it is afterwards discovered that -

- (a) there was a defect in his appointment,
- (b) he was not eligible to be a secretary, or
- (c) he had ceased to hold office."

50. In section 171 for the words "the secretary shall take reasonable steps to ensure", substitute "the functions of the secretary are those assigned to him by the company's articles, which may (without limitation) include the duty to ensure or to take reasonable steps to ensure".

51. In sections 178(3), 179(3) and 180(2) for the words "A written resolution" substitute "Subject to such exceptions as may be prescribed or authorised by regulations made by the Department, a written resolution".

52. In section 178(6)(a), 179(6)(a) and 180(3)(a) immediately before the words "the resolution is not" insert "subject to such exceptions as may be prescribed or authorised by regulations made by the Department,".

53. After section 180(1) insert the following subsections -

"(1A) A unanimous resolution is agreed to by every member of the company if it is agreed to by every member entitled to vote on it.

(1B) A written resolution is agreed to by every member entitled to vote on it if it is passed by members representing all of the voting rights of eligible members."

54. After section 180(2) insert the following subsections -

"(2A) A resolution passed at a meeting on a show of hands is agreed to by every member entitled to vote on it if it is passed by -

- (a) all members who, being entitled to do so, vote in person on the resolution, and
- (b) all persons who vote on the resolution as duly appointed proxies of members entitled to vote on it.

(2B) A resolution passed on a poll taken at a meeting is agreed to by every member entitled to vote on it if it is passed by members representing all of the voting rights of the members who, being entitled to do so, vote in person or by proxy on the resolution."

55. After section 181(5) insert the following subsection -

"(6) The memorandum or articles of incorporation of a company may make provision which differs from subsection (4) by providing that, for the purposes of this section, the Register of Members shall be deemed to have been closed at, and not to have been re-opened until, such other times as may be specified in the memorandum or, as the case may be, the articles (and accordingly no entries shall be deemed to have

been made in the Register of Members during the period of closure).".

56. In section 187(1) for "an authenticated document" substitute "a document".

57. After section 191(3)(b) insert the following paragraph -

"and (c) every proxy present who has been duly appointed by a member entitled to vote on the resolution has the same number of votes the member would have -

(i) by virtue of paragraph (a), in respect of the shares for which the proxy was appointed, or as the case may be

(ii) by virtue of paragraph (b), provided that only one vote may be cast in respect of any one member.".

58. For section 213(2) substitute the following subsection -

"(2) In any other case, subject to the provisions of the company's articles, two qualifying persons holding 5% of the total voting rights of the company between them present at a meeting are a quorum unless each is a qualifying person because he is appointed as proxy of a member in relation to the meeting and they are proxies of the same member; and, for the avoidance of doubt, one qualifying person may constitute a quorum if the articles so provide.".

59. In section 220 after "directors' report" insert "(where one is required under section 248)".

60. In section 228(1)(b) for "all proceedings" substitute "the proceedings".

61. In section 232(3) for the words "The quorum" substitute "Subject to the provisions of the company's memorandum and articles, the quorum".

62. After section 233(3) insert the following subsection -

"(3A) The Department may by regulation amend subsection (3)."

63. After section 233 insert the following cross heading and section -

"Simplification in respect of small companies"

Power of Department to make regulations.

233A. (1) The Department may, with the object of -

- (a) simplifying the duties, obligations and requirements imposed by the provisions of this Part as those provisions have effect in respect of small companies, and
- (b) reducing the burden of compliance with the provisions of this Part on small companies,

by regulation provide that -

- (i) the provisions of this Part, and
- (ii) for the purpose of giving effect to the provisions of this Part as they apply from time to time in relation to small companies, any other provision of this Law,

shall apply in relation to small companies subject to such exceptions, adaptations and modifications as the Department thinks fit and as may be prescribed by the regulations.

(2) Regulations under this section may also make provision as to the implementation generally of the provisions of this Part in their application to small companies.

(3) For the purposes of this section a small company is -

- (a) one with, for the time being, 10 or fewer members (or such other number as the Department may by regulation prescribe), or
- (b) one which satisfies such other criteria as the Department may by regulation prescribe (and regulations under this paragraph may repeal or amend paragraph (a)).

(4) The provisions of this section are without prejudice to any other provision of this Law conferring power to enact regulations (and

vice versa).".

64. After section 243(3) insert the following subsection -

"(3A) Notwithstanding the provisions of subsection (3), where the company is a licensed insurer within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002 in respect of which the Commission has, by notice in writing served on it under section 35(6) of that Law, agreed to the preparation of its accounts in a form other than a form specified by the provisions of the said section 35 or any requirements thereunder, then the accounts of that company shall -

- (a) be prepared (and state that they are prepared) in accordance with that notice,
- (b) subject to the terms of that notice, be in accordance (and state that they are in accordance) with generally accepted accounting principles, stating which principles have been adopted and which have not, and
- (c) comply (and state that they comply) with any relevant enactment for the time being in force.".

65. After section 243(4) insert the following subsection -

"(5) Notwithstanding the provisions of subsection (1), the directors of a protected cell company may prepare separate accounts in respect of each cell, and the core, of the company rather than accounts for

the company as a whole; and those separate accounts must comply with the provisions of this section in all other respects."

66. In section 248(1) after "financial years" insert "unless the company is exempt from this duty under the provisions of section 248A".

67. In section 248(2) after "directors' report" insert "(where one is required under this section)".

68. After section 248(3) insert the following subsection -

"(4) The Department may make regulations exempting the directors of such types, classes or descriptions of company as may be prescribed by the regulations from the duty under this section to prepare a directors' report for each of the company's financial years."

69. After section 248 insert the following section -

"Exemption from duty to prepare directors' report."

248A. (1) The members of a company may pass a waiver resolution exempting the company's directors from the duty under section 248 to prepare a directors' report for each of the company's financial years.

(2) A resolution under subsection (1) must be passed -

(a) if it relates to only one financial year, in the financial year before the financial year to which it relates,

(b) if it relates to more than one financial year, in

the financial year before the first financial year to which it relates (and for the purposes of this section the resolution may relate to any number, or an indefinite number, of financial years), or

- (c) if the financial year or one of the financial years to which it relates is the company's first financial year, in that financial year.

(3) The effect of the resolution under subsection (1) shall be rescinded if the company has received requests to do so from -

- (a) members holding more than 10% in value of the company's issued share capital or any class of it (excluding any shares held as treasury shares), or
- (b) if the company does not have a share capital, more than 10% in number of the members of the company.

(4) The rescission of the resolution under subsection (1) shall only have effect in a particular financial year (and, where appropriate, in any subsequent financial year to which the resolution related) if the requests from the requisite percentage of members under subsection (3) are received by the company not later than 11 months after the beginning of that financial year.

(5) Without prejudice to the operation of subsection (3), a

company may rescind a resolution under subsection (1) by ordinary resolution of the members of the company.

(6) The rescission under subsection (5) of the resolution under subsection (1) shall only have effect in a particular financial year (and, where appropriate, in any subsequent financial year to which the resolution under subsection (1) related) if the ordinary resolution is passed by the members of the company not later than 11 months after the beginning of that financial year.

(7) The passing of a resolution under subsection (1) only has effect in respect of obligations under this Law and does not prejudice any other obligation of a company's directors to prepare a directors' report.

(8) The members of a supervised company may not pass a resolution under subsection (1).

(9) The Department may make regulations preventing or restricting the directors of such types, classes or descriptions of company as may be prescribed by the regulations from being exempt from the duty under section 248 to prepare a directors' report for each of the company's financial years."

70. In section 249(2) after "directors' report" insert "(where one is required under section 248)".

71. In section 250 after "directors' report" insert "(where one is required under section 248)".

72. In section 251(1)(b) and (2)(b) after "directors' report" insert

"(where one is required under section 248)".

73. In section 252(b) after "directors' report" insert "(where one is required under section 248)".

74. In section 256(3)(a) immediately before the words "share capital" insert "issued".

75. In section 256(4) after the words "in a particular financial year" insert "(and, where appropriate, in any subsequent financial year to which the resolution related)".

76. In section 256(4B) after the words "in a particular financial year" insert "(and, where appropriate, in any subsequent financial year to which the resolution under subsection (1) related)".

77. In section 256(5) the word "its", where first appearing, is repealed.

78. After section 256(6) insert the following subsection -

"(7) Without prejudice to sections 466 and 482 (power of Commission to make regulations in respect of protected cell companies and incorporated cell companies) the Department may by regulations -

- (a) provide that this section shall have effect in respect of protected cell companies, cells of protected cell companies, incorporated cell companies and incorporated cells subject to such exceptions, adaptations and modifications as may be specified in the regulations, and

- (b) make consequential amendments to -
 - (i) this section, and
 - (ii) any other provision of this Law for the purpose of giving effect to this section as it has effect from time to time in respect of such companies and such cells."

79. Section 257(2) is repealed.

80. For section 257(3)(a) and (b) substitute the following paragraphs -

- "(a) at any time before the company's first general meeting,
- (b) following a period during which the company (being exempt from audit) did not have any auditor, at any time before the company's next general meeting,
- (bb) if the company should have appointed an auditor at any time but has failed to do so, or".

81. For section 257(4) and (5) substitute the following subsections -

"(4) Notwithstanding the provisions of subsection (3), the members may appoint an auditor of the company by ordinary resolution at

any time.

(5) If an auditor is not appointed in accordance with the provisions of this section for any financial year of a company, the Court may, on the application of a member or creditor of the company, and subject to such terms and conditions as it thinks fit, appoint an auditor of the company for that financial year or for such other period as the Court may direct."

82. In section 258(1)(b) for the words "next period for appointing auditors" substitute "period of his appointment".

83. In section 258(2) -

- (a) for the words "Where no auditor has been appointed" substitute "Where no new auditor has been appointed",
- (b) for the words "next period for appointing auditors" substitute "period of an auditor's appointment", and
- (c) paragraph (a) is repealed.

84. In section 283 -

- (a) in the heading to the section for the words "No conversion" substitute "Conversion", and
- (b) in the text of the section the words "no longer" are repealed.

85. In section 284 after the words "if so authorised by its memorandum

or articles" insert "or by the terms of issue of the shares in question".

86. In section 287(1) -

- (a) after the words "alter its memorandum" insert "or articles",
- (b) in paragraph (b) after the word "memorandum" insert "or articles".

87. For sections 291 to 293 substitute the following section -

"Powers of directors to issue shares etc.

291. (1) The directors of a company may, to the extent authorised by the company's memorandum or articles or by resolution of the company, or in the circumstances referred to in subsection (2), exercise any power of the company -

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

(2) The directors of a company may, except to the extent that they are prohibited or restricted from doing so by the company's memorandum or articles or by resolution of the company -

- (a) issue shares in pursuance of an employees' share scheme, or

- (b) grant a right to subscribe for, or to convert any security into, shares so issued.
- (3) The authorisation referred to in subsection (1) -
 - (a) may be given for a particular exercise of the power or for its exercise generally,
 - (b) may be unconditional or subject to conditions,
 - (c) may state the maximum number and/or aggregate value of shares that may be issued under it or be unlimited as to number or aggregate value,
 - (d) in relation to rights to subscribe for or to convert any security into shares in the company, may state the maximum number and/or aggregate value of shares that may be issued pursuant to the rights or be unlimited as to number or aggregate value,
 - (e) may specify the date, event or circumstance on which it will expire or may be of unlimited duration,
 - (f) may be renewed or further renewed by resolution of the company,
 - (g) may be varied or revoked at any time by

resolution of the company.

(4) 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.

(5) 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.

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

88. In section 294(3) after paragraph (b) insert the following paragraph -

- "and (c) amounts transferred to the share capital account may, subject to the provisions of this Law as to the making of distributions, be distributed to shareholders, whether as dividends or otherwise."

- 89.** In section 295(1) for "section 292 or 293" substitute "section 291".
- 90.** In section 295(1)(b) the words "and to all existing members" are repealed.
- 91.** Section 295(2) is repealed.
- 92.** In section 296(3) for "section 292 or 293" substitute "section 291".
- 93.** Section 296(4) is repealed.
- 94.** In section 296(5)(b)(i) the words "and to all existing members" are repealed.
- 95.** Section 296(6) is repealed.
- 96.** In section 298(1)(b) the words "and to all existing members" are repealed.
- 97.** Section 298(2) is repealed.
- 98.** Section 299(4) is repealed.
- 99.** In section 309(1) after the words "satisfy the solvency test may" insert ", within a period of two years beginning immediately after the day of the distribution,".
- 100.** After section 309(4) insert the following subsection -

"(4A) Notwithstanding subsections (2), (3) and (4), and without prejudice to subsection (5)(b), a director of a company is not at any particular time personally liable to the company to repay to the company a distribution or any part thereof under this section where the company -

(a) did in fact satisfy the solvency test immediately after the distribution in question was made, and

(b) does, at that time, satisfy the solvency test.".

101. In section 310(a) the words "subject to the provisions of this section and section 325," are repealed.

102. For section 311(3) substitute -

"(3) For the avoidance of doubt, a company may redeem a share whether or not it is fully paid.".

103. For section 337(1) substitute the following subsection -

"(1) If, within a period of 4 months after the date of making an offer in respect of such a scheme or contract as is mentioned in section 336, the offer is approved or accepted by shareholders comprising not less than 90% in value of the shares affected, the transferee may, within a period of two months immediately after the last day on which the offer can be approved or accepted, give notice to any dissenting shareholder that it desires to acquire his shares (a "**notice to acquire**").".

104. For section 337(2) substitute the following subsection -

"(2) Subject to section 339, where a notice to acquire is given, the transferee is entitled and bound to acquire the dissenting shareholder's shares on the terms of the offer; and, where the terms of the offer provided a choice of consideration, the notice must give particulars of the choice and state -

- (a) the period within which, and the manner in which, the dissenting shareholder must notify the transferee of his choice, and
- (b) which consideration specified in the offer will apply if he does not so notify the transferee."

105. After section 337(2) insert the following subsections -

"(3) For the avoidance of doubt, an offer in respect of such a scheme or contract as is mentioned in section 336 may be made and accepted, and a notice to acquire may be given, to a member of the transferor resident or otherwise present in any district, territory or place outside Guernsey, irrespective of any law (statutory or otherwise) in force in that district, territory or place prohibiting or restricting the making or acceptance of such offers or the giving of such notices; and accordingly that law does not prevent an offer so made or a notice to acquire so given from being an offer, or a notice to acquire, for the purposes of this Part.

(4) If the law in force in any district, territory or place outside Guernsey prohibits or restricts the making of offers in respect of such a scheme or contract as is mentioned in section 336 or the giving of notices to acquire to the member in question, then for the purposes of this Law the offer may be made or (as the case may be) the notice may be given

by notice in La Gazette Officielle or in any other manner allowed by the transferor's articles.

(5) Subsection (4) is without prejudice to any other method or means of making such offers or giving such notices lawfully in Guernsey or elsewhere."

106. After section 337(5) (as inserted by the preceding section) insert the following subsections -

"(6) Notwithstanding subsection (2), and subject to section 339, the transferee is only entitled to acquire the shares of a dissenting shareholder by virtue of that subsection where the offer relates to all the shares in the company or (as the case may be) to all the shares in the particular class to which the dissenting member belongs, excluding -

- (a) any shares held as treasury shares, unless the transferee elects that the offer shall relate to such shares,
- (b) shares held by the transferee, and
- (c) shares which the transferee has contracted to acquire otherwise than by means of the offer.

(7) For the purposes of calculating the threshold specified in subsection (1) of 90% in value of the shares affected, shares held as treasury shares and shares held by the transferee or any class or description of person specified in section 337A shall not be taken into account."

107. After section 337 insert the following section -

"Persons whose shares are to be disregarded."

337A. (1) The persons referred to in section 337(7) are -

- (a) a nominee of the transferee,
- (b) a holding company, subsidiary or fellow subsidiary of the transferee or a nominee of such a holding company, subsidiary or fellow subsidiary,
- (c) a body corporate in which the transferee is substantially interested,
- (d) a person who is, or is a nominee of, a party to a share acquisition agreement with the transferee, or
- (e) where the transferee is an individual, his spouse and any minor child or step-child of his.

(2) For the purposes of subsection (1)(b) a company is a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is a subsidiary of the other.

(3) For the purposes of subsection (1)(c) a transferee has a substantial interest in a body corporate if -

- (a) the body or its directors are accustomed to act

in accordance with his directions or instructions, or

- (b) he is entitled to exercise or control the exercise of one third or more of the voting power in general meeting of the body.

(4) For the purposes of subsection (1)(d) an agreement is a share acquisition agreement if -

- (a) it is an agreement for the acquisition of, or of an interest in, shares to which the offer relates,
- (b) it includes provisions imposing obligations or restrictions on any one or more of the parties to it with respect to their use, retention or disposal of such shares, or their interests in such shares, acquired in pursuance of the agreement (whether or not together with any other shares to which the offer relates or any other interests of theirs in such shares), and
- (c) it is not an excluded agreement (see subsection (5)).

(5) An agreement is an "**excluded agreement**" -

- (a) if it is not legally binding, unless it involves mutuality in the undertakings, expectations or understandings of the parties to it, or

- (b) if it is an agreement to underwrite or sub-underwrite an offer of shares in a company, provided the agreement is confined to that purpose and any matters incidental to it.

(6) The reference in subsection (4)(b) to the use of interests in shares is to the exercise of any rights or of any control or influence arising from those interests (including the right to enter into an agreement for the exercise, or for control of the exercise, of any of those rights by another person).

(7) In this section -

- (a) **"agreement"** includes any agreement or arrangement,
- (b) references to provisions of an agreement include -
 - (i) undertakings, expectations or understandings operative under an arrangement, and
 - (ii) any provision whether express or implied and whether absolute or not.

(8) The Department may by regulation amend this section."

108. In section 340Y in the definition of "Financial Services Authority" after the words "Markets Act" insert ", and includes any body which has succeeded to the functions thereof".

109. After section 355(1)(d) insert the following paragraph -

"or (e) a company has less than the minimum number of directors stipulated by section 135(1)".

110. After section 357 insert the following section -

"Circumstances in which application not to be made: outstanding liabilities."

357A. An application under section 357 must not be made if the company has any outstanding liabilities (other than an obligation to return share capital to members on or prior to dissolution); and the declaration of compliance (voluntary striking off) under section 365 must, without prejudice to the requirements of that section, state that the company has no outstanding liabilities."

111. In section 359, paragraphs (a) and (b) are repealed.

112. In section 385(2) after "with effect from the time of release," insert "and subject to subsection (4),".

113. After section 385(3) insert the following subsections -

"(4) A release under subsection (1)(b) may be granted subject to such terms, conditions, restrictions and limitations, and may make

provision in respect of such incidental, supplementary and ancillary matters, as the Court thinks fit.

(5) Without prejudice to any other powers of the Court, an order of the Court granting a release under subsection (1)(b) may be revoked on proof that it was obtained by or by means of -

- (a) fraud,
- (b) the omission, suppression, concealment or misrepresentation of any material fact, or
- (c) any submission, statement, pleading or document made or presented to the Court which was false, deceptive or misleading in a material particular."

114. After section 392 insert the following section -

"Supervised companies, etc, to give notice of voluntary winding up to Commission.

392A. (1) A company of a class or description set out in section 409(2) which passes an ordinary or special resolution that it be wound up voluntarily under section 391(1)(a) or (b) shall deliver a copy of the resolution to the Commission within a period of 30 days after the day of the resolution being passed.

(2) Failure to comply with subsection (1) does not render the resolution void.

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

115. After section 400 insert the following section -

"Members may grant release of liquidator in voluntary winding up.

400A. (1) This section applies in respect of the release of the liquidator of a company which is being wound up voluntarily.

(2) The members of the company may, by ordinary resolution, grant the liquidator his release under this section.

(3) The ordinary resolution may, for the avoidance of doubt, be passed at the general meeting of the company referred to in section 400(1)(b) (final meeting prior to dissolution).

(4) Where a liquidator is granted his release under this section, he is, with effect from the time determined by the resolution, and subject to subsections (5) and (6), discharged from all liability -

(a) in respect of his acts and omissions in the winding up, and

(b) otherwise in relation to his conduct as liquidator,

other than liability arising from his own fraud, recklessness or gross negligence or except to the extent that he has acted in bad faith.

(5) The release of the liquidator under this section may not take effect before the date on which the liquidator gives notice to the Registrar of the ordinary resolution and release.

(6) A release under this section may be granted subject to such terms, conditions, restrictions and limitations, and may make provision in respect of such incidental, supplementary and ancillary matters, as the members of the company may specify by ordinary resolution.

(7) Without prejudice to any other powers of the court, an ordinary resolution of the members of a company granting a release under this section may be revoked by the Court on proof that it was obtained by or by means of -

- (a) fraud,
- (b) the omission, suppression, concealment or misrepresentation of any material fact, or
- (c) any submission, statement, pleading or document made or presented to the company or its members which was false, deceptive or misleading in a material particular.

(8) Nothing in this section prevents the exercise, in relation to a person granted his release under this section, of the Court's powers under section 422 (remedy against delinquent officers).

(9) This section is without prejudice to the provisions of section 426A (court may grant release of liquidator); and accordingly if the

members of the company do not grant the liquidator his release under this section, an application for release may be made to the Court under that section."

116. In section 409(2)(c) for "the Commission" substitute "the Department".

117. In section 417(4) the words "or, as the case may be, the distribution" and "in either case" are repealed.

118. After section 419(2) insert the following subsection -

"(3) For the avoidance of doubt the distribution of any surplus under subsection (2) is not a distribution within the meaning of section 301 or for the purposes of section 303."

119. After section 425 insert the following section -

"Commission to be notified of applications by company in course of winding up."

425A. (1) The Court shall not, after the commencement of the winding up of a company referred to in subsection (3), hear any application (whether under this Law or otherwise) by the company or the liquidator, unless satisfied that the Commission has, by notice in writing served not less than 7 days before the date of the hearing (or such other period as the Court may, in its absolute discretion, direct), been notified of the date, time and place of the application.

(2) 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, whether under this Part and Part XXII or XXIII, as the case may be, or otherwise.

(3) 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 Department for the purposes of this section.

(4) For the purposes of this section a winding up is deemed to commence -

- (a) in the case of the voluntary winding up of a company, upon the passing of the resolution for voluntary winding up,
- (b) in the case of the compulsory winding up of a company, on the date of the hearing of the application for the compulsory winding up of the company under section 408.

(5) The provisions of this section are in addition to and not in derogation from the provisions of section 409."

120. After section 426 insert the following section -

"Court may grant release of liquidator."

426A. (1) The Court may, on the application of -

- (a) the liquidator of a company which is being or has been wound up,
- (b) a provisional liquidator of such a company, or
- (c) a person who has ceased to hold office as a liquidator or provisional liquidator,

grant him his release under this section.

(2) Where a liquidator or provisional liquidator is granted his release under this section, he is, with effect from the time determined by the Court, and subject to subsection (3), discharged from all liability -

- (a) in respect of his acts and omissions in the winding up, and
- (b) otherwise in relation to his conduct as liquidator or provisional liquidator,

other than liability arising from his own fraud, recklessness or gross negligence or except to the extent that he has acted in bad faith.

(3) A release under this section may be granted subject to such terms, conditions, restrictions and limitations, and may make provision

in respect of such incidental, supplementary and ancillary matters, as the Court thinks fit.

(4) Without prejudice to any other powers of the court, an order of the Court granting a release under this section may be revoked on proof that it was obtained by or by means of -

- (a) fraud,
- (b) the omission, suppression, concealment or misrepresentation of any material fact, or
- (c) any submission, statement, pleading or document made or presented to the Court which was false, deceptive or misleading in a material particular.

(5) Nothing in this section prevents the exercise, in relation to a person granted his release under this section, of the Court's powers under section 422 (remedy against delinquent officers).

(6) This section is in addition to, and not in derogation from, section 400A (members may grant release of liquidator in voluntary winding up).".

121. In section 434(3) for the words "he ought to have taken" substitute "he ought reasonably to have taken".

122. In section 435(3) for the words "he ought to have taken" substitute "he ought reasonably to have taken".

123. In section 437(1) -

- (a) in paragraph (a) after the word "authorised" insert "or registered",
- (b) after paragraph (a) insert the following paragraph -
 - "(aa) the company is (or when incorporated will be) licensed to carry on controlled investment business within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, ", and
- (c) paragraph (d)(iv) is repealed.

124. After section 438(1)(c) add the following paragraph -

- "and (d) the conversion of a cell of an existing protected cell company into and its incorporation as a non-cellular company.".

125. In section 467 in the definition of "creditors" after the word "authorised" insert "or registered".**126.** In section 468(1) -

- (a) in paragraph (a) after the word "authorised" insert "or registered",
- (b) after paragraph (a) insert the following paragraph -

"(aa) the company is (or when incorporated will be) licensed to carry on controlled investment business within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987," and

(c) paragraph (d)(iv) is repealed.

127. After section 498 insert the following section -

"Retention of copies of records in electronic form.

498A. (1) Documents received by or issued by or on behalf of the Registrar under or for the purposes of this Law (including documents in electronic form or sent by electronic means) may, if a copy of the document is retained in electronic form, be destroyed or otherwise disposed of -

- (a) in the case of a document in electronic form and sent by electronic means, at any time, and
- (b) in any other case, on the expiration of a period of three years following the date of their receipt or issue, as the case may be.

(2) A copy of a document (including a document in electronic form or sent by electronic means) retained in electronic form pursuant to subsection (1) -

- (a) may be received in evidence, and
- (b) unless the contrary is proved, is deemed to be a

copy of the document of which it purports to be a copy.

(3) This section is without prejudice to -

(a) any other provision of this Law (or any regulations made under it) relating to documents in electronic form or sent by electronic means, and

(b) the Electronic Transactions (Guernsey) Law, 2000."

128. In section 513(1)(b) -

(a) the expression "291(4)," is repealed, and

(b) after "391(4)," insert "392A(3),".

129. In section 523(1) -

(a) in paragraph (a) the words "or transmitted" are repealed and after "place of abode," insert "or by being transmitted to his relevant electronic address,"

(b) in paragraph (b) the words "or transmitted" are repealed and after "its registered office," insert "or by being transmitted to its relevant electronic address,"

(c) in paragraph (c) the words "or transmitted" are repealed and

after "principal office elsewhere," insert "or by being transmitted to its relevant electronic address," and

- (d) in paragraph (d) the words "or transmitted" are repealed and after "principal place of business elsewhere," insert "or by being transmitted to its relevant electronic address,".

130. After section 523(2)(a) insert the following paragraphs -

- "(aa) **"electronic address"** includes, without limitation, an e-mail address and a telecommunications address,

- (ab) **"relevant electronic address"** means an electronic address -

- (i) with which the person or body concerned has a personal, business or other connection, and

- (ii) a document transmitted to which is likely to come to his attention,".

131. In section 523(2)(b) -

- (a) after the words "by electronic communication" insert "(that is to say, in electronic form and by electronic means)", and

- (b) for the words "when it is received" substitute "immediately after it was transmitted, unless the contrary is shown".

132. In section 523(8) -

- (a) in paragraph (a) for the words "on the third day" substitute "on the second day",
- (b) in paragraph (b) for the words "on the seventh day" substitute "on the third day".

133. After section 523(8) insert the following subsection -

"(8A) Subsection (8) is without prejudice to any different time periods specified in a company's articles, but only in relation to documents sent -

- (a) by the company to its members or their proxies, or
- (b) by members or their proxies to the company."

134. In section 530 -

- (a) the existing text is numbered as subsection "(1)",
- (b) in subsection (1), as so numbered, in paragraph (a) after "an authorisation" insert "or registration", and
- (c) after subsection (1), as so numbered, insert the following subsection -

"(2) The Department may by regulation amend subsection (1) by adding any class or description of company

to it or by removing or varying any class or description of company specified in it."

135. In section 531(6) for "sections 167 and 265" substitute "sections 65, 157(2), 167, 265 and 337A".

136. In section 531(7) for "section 334" substitute "sections 65, 334 and 337A".

137. In section 532(1) for the definition of "closed-ended investment company" substitute -

"closed-ended investment company" means a company which is a closed-ended investment scheme within the meaning of section 44(1) of the Protection of Investors (Bailiwick of Guernsey) Law, 1987,".

138. In section 532(1) for the definition of "open-ended investment company" substitute -

"open-ended investment company" means a company which is an open-ended investment scheme within the meaning of section 44(1) of the Protection of Investors (Bailiwick of Guernsey) Law, 1987,".

139. In sections 534(3)(b), 535(2)(b) and 536(4)(b) after "amending any enactment" insert "(including this Law)".

140. In paragraph 21 of Part 3 of Schedule 6 after the words "the Financial Services Authority" insert "or any body which has succeeded to the functions thereof".

Citation.

141. This Ordinance may be cited as the Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2015.

Commencement.

142. This Ordinance shall come into force on the day appointed by regulations made by the States Commerce and Employment Department; and different days may be appointed for different provisions and different purposes.

The Prison (Guernsey) (Amendment) Ordinance, 2015

THE STATES, in pursuance of their Resolution of the 28th January, 2015^a and in exercise of the powers conferred on them by sections 6, 7 and 8 of the Prison (Enabling Provisions) (Guernsey) Law, 2010^b, hereby order:-

Amendment of the Ordinance of 2013.

1. The Prison (Guernsey) Ordinance, 2013^c is amended as follows.
2. In Schedule 3 to that Ordinance –
 - (a) in paragraph 1(1) (Constitution of the Panel), omit "and not more than eight", and
 - (b) in paragraph 8(4)(a)(ii) (Meetings), for "eight", substitute "more".

Interpretation.

3. Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation.

4. This Ordinance may be cited as the Prison (Guernsey) (Amendment)

^a Article IX of Billet d'État No. I of 2015.

^b Order in Council No. XIII of 2012.

^c Ordinance No. XXIX of 2013.

Ordinance, 2015.

Commencement.

5. This Ordinance shall come into force on the 1st August, 2015.

The Parochial Administration (Miscellaneous Amendments) Law, 2014 (Commencement) Ordinance, 2015

THE STATES, in exercise of the powers conferred on them by section 9 of the Parochial Administration (Miscellaneous Amendments) Law, 2014^a and all other powers enabling them in that behalf, hereby order:-

Commencement of sections 1 to 5, and 7 to 9, of the Law.

1. Sections 1 to 5, and 7 to 9, of the Parochial Administration (Miscellaneous Amendments) Law, 2014 shall come into force on the 1st September, 2015.

Citation.

2. This Ordinance may be cited as the Parochial Administration (Miscellaneous Amendments) Law, 2014 (Commencement) Ordinance, 2015.

^a Order in Council No. VI of 2015.

The Loi Relative aux Douits (Amendment) Law, 2013 (Commencement) Ordinance, 2015

THE STATES, in exercise of the powers conferred on them by section 4 of the Loi relative aux Douits (Amendment) Law, 2013^a and all other powers enabling them in that behalf, hereby order:-

Commencement of Law.

1. The Loi relative aux Douits (Amendment) Law, 2013 shall come into force on the 1st September, 2015.

Citation.

2. This Ordinance may be cited as the Loi relative aux Douits (Amendment) Law, 2013 (Commencement) Ordinance, 2015.

^a Order in Council No. VII of 2014.

The South Sudan (Restrictive Measures) (Guernsey) Ordinance, 2015

THE STATES LEGISLATION SELECT COMMITTEE, in exercise of the powers conferred on the States by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^a, as amended and all other powers enabling the States in that behalf, and in exercise of the powers conferred on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948^b, as amended, hereby orders:-

Application and infringement of EU Regulation.

1. (1) Subject to the modifications in section 2, Council Regulation (EU) 2015/735 of the 7th May 2015^c concerning restrictive measures in respect of the situation in South Sudan, and repealing Regulation (EU) No. 748/204 ("the **EU Regulation**") has full force and effect in Guernsey.

(2) A person who contravenes, or causes or permits any contravention of, any of the prohibitions in or requirements of the EU Regulation is guilty of an offence.

Modification of EU Regulation.

2. The modifications referred to in section 1 are as follows -

(a) Articles 24 and 25 shall not apply,

^a Ordres en Conseil Vol. XXXV(1), p. 65.

^b Ordres en Conseil Vol. XIII, p. 288; there are amendments not material to this Ordinance.

^c OJ L 117, 8.5.2015, p. 13.

- (b) a reference to the competent authority of a Member State shall be construed so as to include the Policy Council,
- (c) a reference to the obligation of a competent authority of a Member State, or Member State, to inform or notify shall be construed as an obligation on the part of the Policy Council to inform or notify one of Her Majesty's Principal Secretaries of State,
- (d) a reference to the obligation of any natural or legal person, entity or body to transmit information to the Commission shall be construed as an obligation to transmit such information to the Policy Council,
- (e) a reference to a Member State shall be construed so as to include Guernsey,
- (f) a reference to the Union shall be construed so as to include Guernsey,
- (g) a reference to a vessel under the jurisdiction of a Member State shall be construed so as to include a Guernsey ship and a Guernsey fishing vessel,
- (h) a reference to an aircraft under the jurisdiction of a Member State shall be construed so as to include an aircraft registered on the Register of Aircraft established under the Aviation Registry (Guernsey)

Law, 2013^d,

- (i) a reference to the territory of the Union and its airspace shall be construed so as to include Guernsey, its airspace and the territorial waters adjacent thereto, and
- (j) the inclusion of any natural or legal person, entity or body in any list provided for by the EU Regulation shall be subject to any annulment of the EU Regulation in its application to that person, entity or body by the Court of Justice of the European Union and having effect in the European Union for the time being.

Appeals against decisions of Policy Council.

3. (1) A person aggrieved by a decision of the Policy Council made under the EU Regulation may appeal to the Ordinary Court against that decision on the grounds 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

^d Order in Council No. XIII of 2013; Ordinance No. XI of 2014.

- (e) there was a material error as to the facts or as to the procedure.

(2) An appeal under this section shall be instituted -

- (a) within a period of 28 days immediately following the date of the decision of the Policy Council (or such other period as the Ordinary Court may in any particular case direct), and
- (b) by summons served on the Chief Minister stating the grounds and material facts on which the appellant relies.

(3) The Chief Minister may, where an appeal under this section has been instituted, apply to the Ordinary 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 Chief Minister's 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,

and the provisions of this subsection are without prejudice to the inherent powers of the Royal Court or to the provisions of rule 52(3) of the Royal Court Civil Rules, 2007^e.

^e O.R.C. No. IV of 2007; amended by No. II of 2008.

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

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

(5) On an appeal under this section the Ordinary Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision in question, pending the determination of the appeal.

(6) An appeal from a decision of the Ordinary Court made on an appeal under this section lies, with leave of the Ordinary Court or Court of Appeal, to the Court of Appeal on a question of law.

(7) Section 21 of the Court of Appeal (Guernsey) Law, 1961^f ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (6) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

^f Ordres en Conseil Vol. XVIII, p. 315.

Powers to obtain information.

4. The Schedule has effect in order to facilitate the obtaining, by or on behalf of the Policy Council, of information and documents for the purpose of ensuring compliance with the EU Regulation.

Failure to provide information or to co-operate.

5. A person who, without reasonable excuse, fails to comply with any obligation to provide information to or co-operate with the Policy Council in the exercise of any power to request or demand the provision of information, or the co-operation of any person, under any article of the EU Regulation is guilty of an offence.

Furnishing of false information etc.

6. A person who in purported compliance with any article of the EU Regulation intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, is guilty of an offence.

Penalties and proceedings.

7. (1) A person guilty of an offence under -

- (a) section 1(2), 5 or 6, or
- (b) paragraph 2(b) or (c) of the Schedule,

is liable -

- (i) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine,

or to both,

- (ii) on summary conviction, to imprisonment for a term not exceeding three months, to a fine not exceeding level 5 on the uniform scale, or to both.

(2) A person guilty of an offence under paragraph 2(a) or 3(2) of the Schedule is liable on summary conviction to imprisonment for a term not exceeding three months, to a fine not exceeding level 5 on the uniform scale, or to both.

Offences by legal persons and unincorporated bodies.

8. (1) Where a legal person is guilty of an offence under this Ordinance, and the offence 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 director, manager, secretary or other similar officer, or any foundation official, of the legal person, or
- (b) any person purporting to act in any such capacity,

he as well as the legal person is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a legal person are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director.

(3) Where an offence under this Ordinance 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 any capacity described in paragraph (a) or (b),

that person 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 Ordinance is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of that 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 Ordinance shall be paid from the funds of that body.

Certain provisions of Customs and Excise Law applicable.

9. (1) Section 55 of the Customs and Excise (General Provisions)

(Bailiwick of Guernsey) Law, 1972^g applies to the detention of a person for an offence under section 1 as it applies to the detention of a person for an offence under the customs Laws or excise Laws.

(2) Sections 61 to 65 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 apply in relation to offences, fines, penalties and proceedings for offences under this Ordinance as they apply to offences, fines, penalties and proceedings for offences under the customs Laws or excise Laws.

Interpretation.

10. (1) In this Ordinance, except where the context requires otherwise -

"**advocate**" means an advocate of the Royal Court of Guernsey,

"**Bailiff**" includes the Bailiff, the Deputy Bailiff, a Lieutenant Bailiff, a Juge-Délégué and a Judge of the Royal Court,

"**contravention**" includes failure to comply, and cognate expressions shall be construed accordingly,

"**Court of Appeal**" means the court established by the Court of Appeal (Guernsey) Law, 1961,

"**customs Laws**" and "**excise Laws**" mean those provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law,

^g Ordres en Conseil Vol. XXIII, p. 573; No. XIII of 1991; and No. X of 2004.

1972 and any other enactment for the time being in force relating to customs or, as the case may be, excise,

"enactment" includes a Law, an Ordinance and any subordinate legislation,

"EU Regulation" has the meaning given by section 1,

"foundation official" has the same meaning as it does under the Foundations (Guernsey) Law, 2012^h,

"Guernsey" means the Bailiwick of Guernsey apart from the Islands of Alderney and Sark,

"Guernsey fishing vessel" and **"Guernsey ship"** have the meanings given by section 294(1) of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002ⁱ,

"Judge of the Royal Court" means the office of that name established by section 1 of the Royal Court (Reform) (Guernsey) Law, 2008^j,

"Ordinary Court" means the Royal Court of Guernsey sitting as an Ordinary Court which, for the purposes of this Ordinance, may be validly

^h Order in Council No. I of 2013.

ⁱ Ordres en Conseil Vol. XLIV(2), p. 1; Order in Council No. XIII of 2010; Merchant Shipping (Bailiwick of Guernsey) (Amendment) Law, 2014; Recueil d'Ordonnances Tome XXIX, p. 406; Tome XXXIII, p. 624; Ordinance No. LIV of 2012.

^j Order in Council No. XXII of 2008.

constituted by the Bailiff sitting alone,

"Policy Council" means the States of Guernsey Policy Council,

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance, and

"uniform scale of fines" means the scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^k,

and other terms used in this Ordinance and the EU Regulation shall have the same respective meanings as in the EU Regulation.

(2) A reference in this Ordinance to an enactment or to the EU Regulation is a reference thereto as from time to time amended, repealed and re-enacted (with or without modification), extended or applied.

Repeal.

11. The South Sudan (Restrictive Measures) (Guernsey) Ordinance, 2014^l is repealed.

^k Ordres en Conseil Vol. XXXI, p. 278.

^l Ordinance No. XXXIX of 2014.

Citation.

12. This Ordinance may be cited as the South Sudan (Restrictive Measures) (Guernsey) Ordinance, 2015.

Commencement.

13. This Ordinance shall come into force on the 18th May, 2015.

SCHEDULE

Section 4

INFORMATION

1. (1) The Policy Council (or any person authorised by it for that purpose either generally or in a particular case) may request any person to furnish or produce to it (or, as the case may be, to that authorised person) such information and documents in his possession or control as the Policy Council (or, as the case may be, that authorised person) may require for the purpose of ensuring compliance with the EU Regulation; and a person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) No obligation of secrecy or confidence or other restriction on the disclosure of information to which any person may be subject, whether arising by statute, contract or otherwise, is contravened by reason of the disclosure by that person or by any of his officers, servants or agents of any information or document in compliance with this Schedule.

(3) Nothing in this Schedule compels the production by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

(4) Where a person is convicted of an offence under this Schedule of failing to furnish any information or produce any document, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(5) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any

document so produced and to request that person or, where that person is a legal person, any other person who is a present or past officer of, or is employed by, the legal person, to provide an explanation of any such document.

2. A person who -

- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time is specified, within a reasonable time) to comply with a request made under this Schedule,
- (b) intentionally furnishes any false information, document or explanation, or recklessly furnishes any information, document or explanation which is false, to any person exercising his powers under this Schedule, or
- (c) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, tampers with, falsifies, secretes, removes or otherwise disposes of any document,

is guilty of an offence.

3. (1) No information furnished or document produced (including any copy or extract made of any document produced) by any person in pursuance of a request or order made under this Schedule shall be disclosed except -

- (a) with the consent of the person by whom the information was furnished or the document was

produced: provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this item but such consent may instead be given by any person who is entitled to that information or to possession of that document in his own right,

- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced or any person holding or acting in any office under or in the service of the Crown in right of Guernsey,
- (c) on the authority of the Policy Council, to the European Commission, to any of the competent authorities listed in or under the EU Regulation or any annex thereto, or to one of Her Majesty's Principal Secretaries of State, for the purpose of assisting the Commission, that competent authority or that Principal Secretary of State to ensure compliance with the EU Regulation, or
- (d) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings.

(2) A person who without reasonable excuse discloses any information or document in contravention of subparagraph (1) is guilty of an offence.

