

# **THE COMPANIES (GUERNSEY) LAWS, 1994**

**(AS AMENDED, 1996)**

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# **THE COMPANIES (GUERNSEY) LAWS, 1994 TO 1996, AS AMENDED**

## **PART I - COMPANY FORMATION**

### **Two persons may form a company**

1. (1) Any two or more persons may associate for any lawful purpose and, by subscribing their names to a memorandum of association and by otherwise complying with the requirement of this Law as to registration, may form a body corporate (hereinafter referred to as a company) and thereby establish the limits of their individual liability as members of the company.
- (2) The persons who subscribe their names to a company's memorandum (hereinafter referred to as the company's founder members) shall be deemed to have agreed to become members of the company and, upon registration of the memorandum, shall be entered as members in the company's Register of Members.
- (3) Any other person who agrees to become a member of a company and whose name is entered in its Register of Members as a shareholder shall be a member of the company.

### **Memorandum of association**

2. (1) A company's memorandum of association shall state:-
  - (a) the company's name;
  - (b) the company's objects;
  - (c) the amount of the company's share capital;
  - (d) the number of shares in the company and the value of each of them;
  - (e) the terms of payment of such shares;
  - (f) that the liability of the company's members is to be limited;
  - (g) the common signature.
- (2) If a company's memorandum states that the object or one of the objects of the company is to carry on business as a general commercial company:-
  - (a) that object shall be to carry on any trade or business whatsoever; and
  - (b) the company shall have power to do anything incidental or conducive to the carrying on by it of any trade or business.

### **Registration of memorandum and rectification of errors therein**

3. (1) A company's memorandum of association shall be registered under the authority of an Act of Court in the Register of Companies.

- (2) The Court shall not authorise the registration of a company's memorandum unless:-
- (a) the application to the Court is made in the name of all the company's founder members;
  - (b) the memorandum is signed by the founder members with a statement of their names and addresses, the signatures being made in the presence of and attested by a witness whose name and address shall also be stated;
  - (c) each founder member is the owner of at least one share in the company; and
  - (d) the number of shares owned by each founder member is written opposite his signature at the foot of the memorandum.
- (3) The Court may, in its absolute discretion and on such terms and conditions as it thinks fit, on an application by or on behalf of a company's members or directors or creditors, by order authorise the rectification of any error or formal defect in the company's memorandum as registered in the Register of Companies.

#### **Articles of association**

4. (1) A company's articles of association prescribing regulations for the conduct of the company shall be registered under the authority of an Act of Court in the Register of Companies in accordance with this section.
- (2) If a company's articles are annexed to the memorandum when the application is made to the Court for permission to register the memorandum, the articles may be registered with the memorandum under the authority of the same Act of Court.
- (3) If a company's articles are not registered with the memorandum as mentioned in subsection (2), the founder members shall register them under the authority of an Act of Court within a period of 6 months beginning on the date of registration of the memorandum.
- (4) If a company's articles are not registered within a period of 6 months beginning on the date of registration of the memorandum, the memorandum shall be void.
- (5) The Court shall not authorise the registration of a company's articles unless:-
- (a) the application to the Court is made in the name of all the company's founder members;
  - (b) the articles are signed by the founder members with a statement of their names and addresses, the signatures being made in the presence of and attested by a witness whose name and address shall also be stated.

#### **Power to prescribe standard table of articles**

5. (1) The Committee may, after consultation with the Commission, by regulation prescribe a standard table of articles.
- (2) The standard table of articles and any amendment thereof effected by regulation of the Committee:-

- (a) shall apply in relation to a company only to the extent that the company expressly adopts it;
- (b) may be so adopted in whole or in part and subject to specified exceptions, adaptations and modifications.

### **Incorporation of company upon registration**

6. (1) Upon the registration of a company's memorandum and articles in the Register of Companies in accordance with the provisions of this Law, the company shall be incorporated under the name and for the objects set out in the memorandum.
  - (2) A company thus incorporated:-
    - (a) shall have a continuous and successive existence in the persons of its members present and future until its dissolution;
    - (b) may have a common seal;
    - (c) may sue and be sued in its name and may exercise all the functions of an incorporated company, including the power to hold land; and
    - (d) shall, subject to the provisions of section 16, be entitled to commence business.
  - (3) Subject to the provisions of this Law, the memorandum and articles of a company shall, from the time of registration bind the company and its members in all respects as if the memorandum and articles:-
    - (a) were comprised in an agreement duly executed by the company and each member; and
    - (b) contained covenants on the part of the company and each member to observe all provisions thereof;
- and any reference in this subsection to a company's memorandum and articles is a reference thereto as from time to time amended in accordance with the provisions of this Law.
- (4) Money payable to a company by a member under the memorandum and articles shall be a civil debt due from him to the company.

### **Members' liability**

7. The liability of a member of a company for the company's debts shall, subject to any express provision of this Law as to personal liability, be limited to the amount, if any, unpaid on the shares held by him.

### **Certificate of registration and registration number**

8. Upon the registration of a company's memorandum and articles in the Register of Companies in accordance with the provisions of this Law, the Greffier shall:-
  - (a) give a certificate of registration in respect of the company which shall be conclusive evidence that the company is duly registered; and

- (b) allocate a registration number to the company.

### **Copies of company documents for members**

- 9. (1) A company shall if so requested by any member, within a period of 7 days beginning on the day of receipt of the request, provide the member with a copy of:-
  - (a) the memorandum and articles;
  - (b) the special resolutions of any general meeting;

subject to the payment in each case of such sum as the company may require not exceeding £5 or such other amount as may be prescribed by regulations of the Committee.

- (2) A company which fails without reasonable excuse, proof whereof shall lie on the company, to comply with any provision of this section is guilty of an offence.

### **Prohibition of minors, etc, becoming members**

- 10. No minor or person under legal disability:-
  - (a) may be a founder member of a company;
  - (b) may become a member of a company, except by acquisition of the shares in question by inheritance or by operation of law; but in such a case the minor or other person shall not count towards the number of two members which this Law requires for the continuity of the company.

## **PART II - CORPORATE CAPACITY**

### **Capacity and transactions with others**

- 11. (1) No act of a company shall be invalidated on the ground of lack of capacity by reason of anything contained in or omitted from the company's memorandum.
- (2) It remains the duty of a company's directors to observe any limitation on their powers imposed by or deriving from the company's memorandum.
- (3) Any act of the directors which, but for subsection (1), would be beyond the company's capacity may only be ratified by the company by special resolution.
- (4) A special resolution ratifying any act of the directors does not affect any liability incurred by them or by any other person; but relief from such liability may be conferred separately by special resolution.

### **Company may give power of attorney**

12. (1) A company may, by power of attorney, empower any person, either generally or in respect of any specified matter, to represent it, act in its name and execute documents on its behalf; and such a power:-
- (a) shall not be valid unless signed by not less than one director and by the secretary or in such other manner as may be prescribed by the articles;
  - (b) shall, unless it states otherwise, be capable of use in any place in Guernsey or elsewhere.
- (2) This section is without prejudice to the provisions of section 29A of the Trusts (Guernsey) Law, 1989.

### **Directors' powers to bind company**

13. (1) A document signed by not less than one director or by any other person duly authorised to act for the company is valid and binding.
- (2) In favour of a person dealing with a company in good faith, the power of the company's directors to bind it, or authorise others to do so, is deemed to be free of any limitation imposed by or deriving from:-
- (a) the company's memorandum or articles;
  - (b) any resolution of the company;
  - (c) any agreement between the company's members or any of them;
- and for the purposes of this subsection:-
- (d) a person deals with a company if he is a party to any transaction or other act to which the company is a party;
  - (e) a person is not to be regarded as acting in bad faith solely because he knows that an act is beyond the directors' powers;
  - (f) a person is presumed to have acted in good faith unless the contrary is proved.
- (2) Subsections (1) and (2) do not affect any liability incurred by reason of the directors having exceeded their powers.

### **No duty to enquire**

14. A party to a transaction with a company is not bound to enquire as to whether the transaction is permitted by the company's memorandum or as to any limitation on the directors powers to bind the company or to authorise others to do so.

### **Pre-incorporation contracts**

15. (1) A contract made by a company before the date on which it is entitled to commence business shall be provisional only and shall not be binding on the company until that date.

(2) If a company commences business or exercises borrowing powers before the date on which it is entitled to commence business, any person who, on behalf of or purportedly on behalf of the company, caused or permitted the transaction in question to be entered into shall, without prejudice to any other liability, be guilty of an offence.

### **Companies which offer shares to the public**

16. (1) A company offering its shares to the public by means of a prospectus or other offer for subscription or sale shall not be entitled to commence business or exercise borrowing powers until:-
- (a) in relation to shares which are to be paid up in cash, the minimum subscription, if any, stipulated in the company's memorandum has been allotted;
  - (b) every director has paid in respect of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, an amount equal to the amount payable on an application for and allotment of the shares offered for public subscription;
  - (c) the secretary or a director has deposited with the Greffier:-
    - (i) a declaration that the conditions set out in paragraphs (a) and (b) have been complied with; and
    - (ii) such fee as may be prescribed for the purposes of this paragraph by Ordinance of the States; and
  - (d) the Greffier has certified that the company is entitled to commence business.
- (2) The Greffier shall give his certificate under subsection (1)(d) upon receipt of the declaration described in subsection (1)(c)(i).
- (3) The said certificate shall be evidence that the company is entitled to commence business.

## **PART III - ALTERATION OF MEMORANDUM & ARTICLES**

### **Restriction on alteration of memorandum**

17. A company may not alter any provision of its memorandum except in the cases, in the manner and to the extent expressly provided for by this Law.

### **Alteration of objects by special resolution**

18. A company may, by special resolution, alter the objects stated in its memorandum.

### **Court may annul alteration of objects**

19. (1) An application may be made to the Court under this section for the annulment of an alteration of a company's objects; and, where such an application is made, the alteration shall not have effect except in so far as it is confirmed by the Court.
- (2) An application under this section:-
- (a) may be made by the holders of not less in the aggregate than 15% of the company's issued share capital;
  - (b) shall not be made by or on behalf of any person who consented to or voted in favour of the alteration;
  - (c) may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose;
  - (d) shall be made within a period of 21 days immediately following the day upon which the resolution altering the company's objects was passed;
  - (e) shall not be heard unless the Court is satisfied that the company has been notified of the date, time and place of the application.
- (3) On an application under this section the Court may, on such terms and conditions as it thinks fit:-
- (a) annul or confirm the alteration in whole or in part;
  - (b) adjourn the proceedings to enable an arrangement to be made to the satisfaction of the Court for the purchase of the interests of dissenting members, in which case the Court may give such directions for facilitating or implementing the arrangement as the Court thinks fit.
- (4) Without prejudice to the generality of subsection (3), an order of the Court under this section may:-
- (a) provide for the purchase by the company of the shares of any member;
  - (b) provide for a reduction of the company's share capital by declaring that the company shall be deemed to have passed a resolution for reducing share capital; and in such a case Part VII of this Law shall apply as if the company had, on the date of the order under this section, made an application to the Court under section 46 for an order confirming the reduction;
- and the order may make such consequential alterations to the company's memorandum and articles as the Court thinks fit.
- (5) Notwithstanding any other provision of this Law, where an order of the Court under this section:-
- (a) annuls an alteration of a company's memorandum in whole or in part, the company may not, without the leave of the Court, make any alteration to its memorandum in contravention of any provision of the order;
  - (b) makes an alteration of a company's memorandum or articles, or confirms an alteration of a company's memorandum in whole or in part, any alteration made by or pursuant to the order shall be of the same effect as if duly made by special resolution of the company,

and the provisions of this Law shall apply accordingly to the memorandum or articles as so altered.

(6) The validity of an alteration of a company's objects shall not be questioned on the ground that it was not authorised in accordance with section 18 except in proceedings taken for the purpose (whether under this section or otherwise) within a period of 21 days immediately following the day upon which the resolution in question was passed; and where any such proceedings are taken otherwise than under this section, subsections (3) to (6) shall so far as appropriate apply in relation to an order of the Court pursuant to such proceedings as they would apply in relation to an equivalent order under this section.

#### **Alteration of articles**

20. (1) Subject to the provisions of this Law and of its memorandum, a company may by special resolution alter its articles.
- (2) Any alteration so made in respect of a company's articles shall, subject to the provisions of this Law, have the same effect as if originally contained therein and shall be subject in like manner to alteration by special resolution.
- (3) The power of a company under this section to alter its articles includes power to add to them, modify any of them, rescind them in whole or in part and substitute other articles.

### **PART IV - NAME, OFFICE AND SEAL**

#### **Company name**

21. The following provisions shall apply in respect of the name of every company:-
- (a) the name shall end with the words "limited", "with limited liability" or "avec responsabilité limitée";
  - (b) the name shall not include, otherwise than at the end thereof, the words "limited", "with limited liability" or "avec responsabilité limitée" or any abbreviation of those words;
  - (c) the name shall not be the same as a name currently appearing in the Register of Companies;
  - (d) the use of the name shall not be such as to constitute a criminal offence or be offensive, misleading or inappropriate in relation to the company concerned; and
  - (e) the name shall not include any word such as "Imperial", "Royal", "Queen" or "Crown" which implies or might be taken to imply royal or government connection, support or patronage, unless Her Majesty's Procureur has given written permission for the use of that word.



### **Power of company to change name**

22. (1) A company may by special resolution change its name.
- (2) A change of name by a company under this Law:-
- (a) shall not be effective unless confirmed by order of the Court;
  - (b) shall not affect the rights of any person or any obligation or liability of the company or render defective any legal proceedings by or against the company, which proceedings may be continued in the new name.
- (3) An application to the Court for an order confirming a change of company name shall not be granted unless, prior to the hearing thereof, the company has, on two occasions falling in successive weeks, placed a notice in La Gazette Officielle giving details of the proposed change of name and of the date, time and place of the hearing.

### **Power of Court in relation to company names**

23. (1) The Court may:-
- (a) upon an application being made to it in that behalf, direct a company to change the name by which it is registered within such period and subject to such penalty as the Court may direct;
  - (b) refuse an application under section 22 for an order confirming a change of company name;

if satisfied that:-

- (a) the name or proposed name is such as to induce the public to confuse the company with some other person or body previously established in Guernsey or elsewhere; or
  - (b) the provisions of paragraphs (a) to (e) of section 21 are not complied with in respect of the name or proposed name; and, in considering for the purposes of section 21(d) whether any name would be misleading or inappropriate, the Court shall have regard to the representations (if any) of the Committee.
- (2) A company which fails to comply with any provision of a direction under subsection (1)(a) is, without prejudice to any penalty specified in the direction:-
- (a) guilty of an offence; and
  - (b) liable to be wound up under section 94.

### **Registered office**

24. (1) A company shall at all times have a registered office in the Island to which all legal process and other communications and notices may be addressed.
- (2) A company shall within a period of 28 days immediately following the date of its incorporation, give notice to the Greffier of the situation of its registered office.

- (3) A company which fails to comply with any provision of subsection (2):-
- (a) is liable to be struck off the Register of Companies in accordance with section 76, the provisions of which shall apply accordingly;
  - (b) is liable to be wound up under section 94; and
  - (c) is guilty of an offence.
- (4) A company may at any time change the situation of its registered office; but the change shall not be effective until notice thereof is given to the Greffier.
- (5) The Greffier shall draw up a list of registered offices and display it or otherwise make it available for inspection at the Greffe.
- (6) A company's name shall be displayed outside its registered office, or in a conspicuous position in a place within its registered office to which the general public have access during ordinary business hours, in letters which are easily legible.
- (7) A company in relation to which there is a failure to comply with any provision of subsection (6) is guilty of an offence.

#### **Company may have common seal**

25. A company may but need not have a common seal upon which its name is engraved in legible characters.

#### **Abolition of requirement for affixing of common seal**

- 25A. Any rule of law (whether arising under statute, rule of court or otherwise) which requires a common seal for the valid execution of a document by a company is abolished.

#### **Official seal for use abroad**

26. (1) A company whose objects require or comprise the transaction of business outside the Island may, if authorised by its articles, have for use in any territory, district or place outside the Island an official seal.
- (2) The official seal shall bear on its face, in legible characters, the name of the company with the addition on its face of the name of every territory, district or place where it may be used.
- (3) A company having an official seal for use in any territory, district or place outside the Island may, by writing, appoint any person there to affix the official seal to documents to which the company is a party there.
- (4) As between the company and any person dealing with a person so appointed, the appointee's authority continues during the period (if any) specified in the instrument of appointment or, if no period is so specified, until notice of the revocation or determination of the appointee's authority is given to the person dealing with him.
- (5) A person affixing an official seal to a document shall certify thereon the date upon which and the place at which it is affixed.

### **Use of company name**

27. (1) A company's name shall appear in legible characters upon its:-
- (a) business letters, statements of account, invoices and order forms;
  - (b) notices and other official publications; and
  - (c) negotiable instruments, letters of credit, bills of exchange and other obligations or promises to pay purporting to be signed or issued by or on behalf of the company.
- (2) A person purporting to act on behalf of a company who signs or issues any document described in subsection (1)(c) upon which the company's name does not appear shall be personally liable thereon.
- (3) A company in relation to which there is a contravention of any provision of subsection (1) is guilty of an offence.

## **PART V - ANNUAL RETURN**

### **Annual return**

28. (1) Every company shall, in each calendar year before the 31st January:-
- (a) complete an annual return containing information current on the 1st January in that year;
  - (b) deliver a copy of the return to the Greffier; and
  - (c) file the original return in a register kept by it for the purpose.
- (2) Every company shall state in its annual return:-
- (a) the address of the company's registered office;
  - (b) the names and addresses of the company's directors;
  - (c) subject to subsection (3), the names and addresses of the company's members;
  - (d) the number of shares issued to each member, the amount paid up thereon and, subject to section 43(4), the distinguishing numbers of those shares;
  - (e) the company's share capital and the number of shares that it is divided into, distinguishing between those which have been issued for cash and those which have allotted in whole or in part for a consideration other than cash;
  - (f) the number of shares issued since the formation of the company;
  - (g) the number of calls made by the company on its members, the amount per share of each call, the total amount of capital called up for payment by means of such calls, the amount

received by the company for those calls and the amount still payable to the company on further calls;

- (h) that the information contained in the return is current as at the 1st January of the year in which it is required to be delivered;

and, where the company's articles provide that the penalty to be incurred by a shareholder who fails to comply with the conditions of payment on his shares is confiscation, the return shall also state:-

- (i) the number of shares which have been declared confiscated;
  - (j) the total amount received by the company on such shares before confiscation; and
  - (k) the amount received by the company from the sale of such shares after confiscation.
- (3) Subsection (2)(c) does not apply in relation to redeemable preference shares.
- (4) A company which fails to comply with any provision of subsection (1) or (2):-
- (a) is guilty of an offence;
  - (b) is liable to be struck off the Register of Companies in accordance with section 76, the provisions of which shall apply accordingly; and
  - (c) in the case of a contravention of subsection (1)(b), is liable to pay to the Greffier the appropriate penalty for each calendar month or part of a calendar month between the date by which it should have delivered its annual return and the date when it in fact does so; and for the purposes of this paragraph:-
    - (i) the expression "the appropriate penalty" has the meaning given by section 76(7); and
    - (ii) when the appropriate penalty has become payable, the Greffier shall not thereafter accept delivery of the company's annual return, and the company shall be deemed not to have complied with subsection (1)(b), unless and until the penalty is paid.

## **PART VI - SHARE CAPITAL**

### **Allotment of shares**

29. (1) No allotment of any share capital of a company which has offered its shares to the public by means of a prospectus, advertisement or other offer for subscription or sale shall be made unless:-
- (a) the minimum subscription has been subscribed; and
  - (b) the sum payable on application for the minimum subscription has been received by the company.

- (2) In determining whether subsection (1)(a) or (b) has been complied with, no account shall be taken of any amount payable otherwise than in cash.
- (3) The expression "the minimum subscription" means:-
- (a) the number of shares (if any) stated by the memorandum or articles and the prospectus to be the minimum subscription upon which the directors may proceed to allotment; or
  - (b) if no such number is so stated, the whole of the share capital so offered for subscription.
- (4) The amount payable by each subscriber on each share shall not be less than 5% of the nominal amount of the share.
- (5) The conditions of this section shall be complied with within a period of 40 days beginning on the date of the offer of the company's shares to the public, in default of which all money received from subscribers shall be refunded to them, without interest, within a further period of 8 days immediately following the expiration of that period.
- (6) If the refund referred to in subsection (5) is not made within the further period mentioned in that subsection, the directors of the company shall, subject to subsection (7), be jointly and severally liable to repay the monies together with interest at the rate of 5% per annum (or such other rate as the States may determine by Ordinance) from the expiration of that further period.
- (7) No director shall be liable pursuant to subsection (6) in respect of any loss of money if he proves that the loss was not due to any misconduct or negligence on his part.
- (8) Any term, condition or agreement pursuant to which an applicant for shares waives or purports to waive any requirement of this section shall be void.
- (9) This section does not apply to an allotment of shares which follows the first allotment of shares offered to the public for subscription.

#### **Effect of irregular allotment**

30. (1) An allotment made by a company to an applicant in contravention of any provision of section 29 is voidable at the instance of the applicant at any time before the expiration of a period of one month beginning on the date of the company's first annual general meeting, and not, without the leave of the Court, later; and the allotment is so voidable notwithstanding that the company is in the course of being wound up.
- (2) An officer of a company who knowingly contravenes, or permits or authorises the contravention of, any provision of section 29 in respect of an allotment shall be liable to indemnify the company and its shareholders for any costs, loss or damage incurred or sustained as a result of the contravention.
- (3) Proceedings for the recovery of compensation in respect of any such costs, loss or damage shall not be commenced after the expiration of 2 years from the date of the allotment.

#### **Return of allotments to Greffier**

31. (1) Subject to section 40(8), when a company makes an allotment of its shares it shall within a period of one month immediately thereafter deliver to the Greffier for registration:-

- (a) a return of the allotments, stating:-
  - (i) the number and nominal amount of the shares comprised in the allotment;
  - (ii) the names and addresses of the allottees (unless the shares are redeemable preference shares); and
  - (iii) the amount (if any) paid or due and payable on each share; and
- (b) in the case of shares allotted as fully or partly paid up otherwise than in cash:-
  - (i) a document stating the title of the allottee to the allotment, whether a contract for sale or for services or other consideration or otherwise; and
  - (ii) a return stating the number and nominal amount of the shares comprised in the allotment and the extent to which they are to be treated as paid up.
- (2) A company which contravenes any provision of subsection (1) is guilty of an offence.

#### **Commissions and discounts on shares**

32. (1) No company shall:-
- (a) subject to subsection (2), pay a commission to any person; or
  - (b) apply its shares or capital money directly or indirectly in payment of any commission, discount or allowance to any person;
- in consideration of his subscribing or agreeing to subscribe (absolutely or conditionally) for shares in the company or procuring or agreeing to procure subscriptions (absolute or conditional) for such shares.
- (2) Subsection (1)(a) does not apply if the payment of the commission and the amount or percentage rate thereof is authorised by the company's articles and disclosed in the prospectus.
- (3) Subsection (1) applies whether the shares or money be so applied by being added to the purchase price of any property acquired by the company or to the contract price of any work to be executed for the company, or whether the money be paid out of the nominal purchase or contract price, or otherwise.
- (4) Nothing in this section affects the power of a company to pay brokerage.

#### **Dividends**

33. A company shall not pay a dividend except from profits available for the purpose.

#### **Different amounts may be paid on shares**

34. A company may, if so authorised by its 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 member 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;
- (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.

#### **Reserve liability of company**

35. 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 purchase own shares**

36. A company may purchase the shares of any of its members under the authority of an order of the Court under section 19(4) or 75(4); and such an order may make such consequential alterations to the company's memorandum or articles as the Court thinks fit.

#### **Power of company to alter share capital**

37. (1) A company may, if so authorised by its articles, by resolution passed in general meeting alter its memorandum so as to:-
- (a) increase its share capital by creating new shares of such amount as it thinks expedient;
  - (b) consolidate and divide all or any of its share capital into shares of larger amounts than its existing shares;
  - (c) convert all or any of its fully paid shares into stock, and reconvert that stock into paid-up shares of any denomination;
  - (d) subject to subsection (2), subdivide all or any of its shares into shares of a smaller amount than is fixed by the memorandum;
  - (e) 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;
  - (f) convert all or any of its fully paid shares the nominal amount of which is expressed in a particular currency into fully paid shares of a nominal amount of a different currency, the conversion being effected at the rate of exchange (calculated to not less than three significant figures) current on the date of the resolution or on such other date as may be specified therein.
- (2) In any subdivision under subsection (1)(d), 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) No resolution under this section shall be valid unless and until a copy thereof is lodged with the Greffier who shall as soon as reasonable practicable enter the resolution in the Register of Companies.

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

#### **Shares issued at a premium**

38. (1) If a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums shall be transferred to an account to be called the "share premium account".

(2) The provisions of this Law relating to the reduction of a company's share capital shall, subject to the provisions of this section, apply as if the share premium account were part of the company's paid up share capital.

(3) The share premium account may be applied by the company:-

- (a) in paying up unissued shares to be allotted to members as fully paid bonus shares;
- (b) in writing off:-
  - (i) the company's preliminary expenses; or
  - (ii) the expenses of, or the commission paid on or discount allowed on, any issue of the company's shares; or
- (c) in providing for any premium payable on the redemption of any redeemable preference shares.

#### **Shares issued at a discount**

39. (1) Notwithstanding the provisions of section 32, a company may issue its shares at a discount if:-

- (a) the shares are of a class already issued;
- (b) the issue at a discount is authorised by resolution passed in general meeting of the company and is sanctioned by order of the Court;
- (c) the resolution specifies the maximum rate of discount at which the shares are to be issued; and
- (d) the shares are issued:-
  - (i) not less than one year after the date on which the company was entitled to commence business; and
  - (ii) within a period of one month immediately following the date of the Court's order under paragraph (b) or such other period as the Court may allow.



(2) An application to the Court for an order under subsection (1)(b) may be granted if the Court, having regard to all the circumstances of the case, thinks it proper to do so; and the Court's order may be made on such terms and conditions as it thinks fit.

(3) Every prospectus relating to an issue of shares at a discount shall contain particulars in respect of the discount to be allowed on the issue or in respect of so much of that discount as has not been written off at the date of the issue of the prospectus.

(4) A company which issues its shares at a discount otherwise than in compliance with this section is guilty of an offence.

### **Redeemable preference shares**

40. (1) A company may, if so authorised by its articles:-

- (a) subject to the provisions of this section, issue preference shares which are, or at the option of the company or the shareholder are liable, to be redeemed;
- (b) subject to the provisions of section 51, convert all or any class of its preference shares into redeemable preference shares, provided that:-
  - (i) no such shares shall be redeemed except out of the profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;
  - (ii) no such shares shall be redeemed unless they are fully paid;
  - (iii) any premium payable on redemption shall before the shares are redeemed, be provided for out of the profits of the company or out of the company's share premium account;
  - (iv) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall, out of the profits of the company which would otherwise have been available for dividend, be transferred to a reserve fund, to be called the "capital redemption reserve fund", a sum equal to the nominal amount of the shares redeemed, and the provisions of this Law relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company.

(2) The redemption of preference shares by a company:-

- (a) shall, subject to the provisions of this section, be effected on such terms and in such manner as may be provided for by the company's articles; and
- (b) shall not be deemed to have reduced the amount of the company's authorised share capital.

(3) Where a company redeems or proposes to redeem any preference shares, it may issue shares up to the nominal amount of the preference shares redeemed or to be redeemed in the same manner as if the preference shares had not been issued.

(4) Where a company issues shares pursuant to subsection (3), the share capital of the company shall not for the purposes of any enactment relating to duty payable on documents registered at the Greffe be deemed to have been increased by the new issue provided that, where the new shares are issued before

redemption, the preference shares are redeemed within a period of one month immediately following the issue of the new shares.

(5) Where a company redeems any preference shares it shall within a period of one month immediately thereafter give notice in writing of the fact to the Greffier, who shall as soon as reasonably practicable register such notice in the Register of Companies.

(6) A company which fails to comply with any provision of subsection (6) is guilty of an offence.

(7) The capital redemption reserve fund may, notwithstanding the provisions of this section, be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

(8) In relation to redeemable preference shares issued under this section, there may be omitted:-

- (a) from the company's return of allotments, the names and addresses of the allottees;
- (b) from the company's annual return, the names and addresses of the holders of the shares.

#### **Particulars in annual return as to commission and discounts**

41. (1) Where a company pays commission or allows a discount on the issue of any of its shares, the company shall include in its annual return the following additional particulars:-

- (a) the total amount paid by way of commission or, as the case may be;
- (b) the total amount of the discount or of so much of the discount as has not been written off during the preceding calendar year.

(2) A company which contravenes any provision of subsection (1) is guilty of an offence.

#### **Fractional shares and low value shares**

42. (1) A company may, if so authorised by its articles, issue fractions of a share, which shall, except to the extent that the company's 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.

(2) 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.

#### **Nature, transfer and numbering of shares**

43. (1) The shares of any member of a company:-

- (a) are personal estate; and
- (b) shall be transferable in the manner provided by the company's articles.

(2) Each share in a company shall, subject to subsection (3), be distinguished by its particular number.

(3) If at any time all the issued shares in a company, or all the issued shares of a particular class, are fully paid up and rank pari passu for all purposes, none of those shares shall thereafter be required to have a distinguishing number so long as it remains fully paid up and continues to rank pari passu for all purposes with all shares of the same class for the time being issued and fully paid up.

(4) The requirement imposed by:-

- (a) section 55(1)(a), that the distinguishing number of any share in a company shall be inscribed in the Register of Members; and
- (b) section 28(2)(d), that the distinguishing number shall be entered in the annual return;

shall not apply in relation to a share which is not for the time being required to have a distinguishing number by virtue of subsection (3).

#### **Transfer of shares of deceased member**

44. Any transfer of the shares of a deceased member made by his heir, executor or other lawful representative shall, provided that all other formalities prescribed for the validity of such transfers are observed, be valid notwithstanding that the transferor's name is not entered in the Register of Members.

### **PART VII - REDUCTION OF SHARE CAPITAL**

#### **Special resolution for reduction of share capital**

45. (1) Subject to the confirmation of the Court, a company may by special resolution reduce its share capital in any way.

(2) In particular, and without prejudice to the generality of subsection (1), the company may:-

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
- (b) with or without extinguishing or reducing any liability on any of its shares:-
  - (i) cancel any paid-up share capital which is lost or unrepresented by available assets; or
  - (ii) pay off any paid-up share capital which exceeds the company's wants;

and the company may, so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

- (3) A special resolution under this section is referred to in this Law as "a resolution for reducing share capital".

### **Approval by Court of resolution reducing share capital**

46. (1) Where a company has passed a resolution for reducing share capital, it shall apply to the Court for an order confirming the reduction.
- (2) An application under subsection (1) shall not be entertained unless, prior to the hearing thereof, the company has, on two occasions falling in successive weeks, placed a notice in La Gazette Officielle setting out the terms of the application and the date, time and place of the hearing.
- (3) If the proposed reduction of share capital involves:-
- (a) a diminution of liability in respect of unpaid share capital; or
  - (b) the payment to any shareholder of any paid-up share capital,
- and in any other case in which the Court so directs, the next three subsections have effect, but subject throughout to subsection (7).
- (4) Every creditor of the company who, at the date of the hearing of the application, is entitled to a debt or claim which, if that date were the date of the commencement of the company's winding up, would be admissible in proof against the company, shall be entitled to object to the reduction of share capital.
- (5) At the hearing of the application the company shall furnish to the Court a list, signed and certified to be true and complete by a director or secretary of the company, of the names and addresses of all creditors of the company and the amounts respectively due to them.
- (6) If a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor upon the company securing payment of his debt or claim by appropriating (as the Court may direct) the following amount:-
- (a) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim; or
  - (b) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.
- (7) If a proposed reduction of share capital involves a diminution of liability in respect of unpaid share capital or the payment to a shareholder of paid-up share capital, the Court may, if it thinks it proper to do so having regard to any special circumstances of the case, direct that subsections (4) to (6) of this section shall not apply as regards any class of creditor.
- (8) Where the list furnished to the Court under subsection (5) contains any material error or omission, the company and the person who signed the list (unless the latter proves that such error or omission occurred without his knowledge and that he exercised all due diligence to prevent it) shall be guilty of an offence.

### **Powers of Court on making order confirming reduction**

47. (1) The Court, if satisfied that, in respect of every creditor of the company who under section 46(4) is entitled to object to the reduction of capital:-

- (a) his consent to the reduction has been obtained; or
- (b) his debt or claim has been discharged, determined or secured;

may by order confirm the reduction on such terms and conditions as it thinks fit.

(2) Where the Court so orders it may also:-

- (a) if for any special reason it thinks it proper to do so, by order direct the company, during such period commencing on or after the date of the order as is specified therein to add to its name as the last words thereof the words "and reduced"; and
- (b) by order require the company to publish (as the Court directs):-
  - (i) the reasons for the reduction of capital or such other information in regard to it as the Court thinks fit with a view to giving proper information to the public; and
  - (ii) if the Court thinks fit, the causes which led to the reduction.

(3) Where under subsection (2)(a) a company is ordered to add to its name the words "and reduced", those words shall until the expiration of the period specified in the order, be deemed to be part of the company's name.

#### **Act of Court to form part of memorandum**

48. The Act of Court containing an order confirming a resolution for reducing share capital:-

- (a) shall be deemed to be substituted for the corresponding part of the company's memorandum; and
- (b) shall have effect as if originally contained therein;

but without prejudice to anything done in accordance with the provisions of the memorandum before the date of the order.

#### **Liability of member in respect of reduced shares**

49. (1) If a company's share capital is reduced, no member of the company past or present shall be liable (subject to the following provisions of this section) in respect of any share to any call or contribution exceeding the amount of the difference (if any) between the following amounts:-

- (a) the amount of the share as fixed by the Act of Court confirming the resolution for reducing share capital; and
- (b) the amount paid on the share or (if appropriate) the reduced amount deemed to have been paid on it.

(2) Subsections (3) and (4) apply if:-

- (a) a creditor entitled under section 46(4) to object to the reduction of share capital has been, without neglect or default on his part, omitted from the list of creditors furnished to the Court by the company under section 46(6); and
  - (b) after the reduction of capital, the company is unable within the meaning of section 95 to pay the amount of his debt or claim.
- (3) Every person who was a member of the company at the date of the said Act of Court shall be liable to contribute, towards payment of the debt or claim in question, an amount not exceeding that which he would have been liable to contribute if the winding up of the company had commenced on the day before that date.
- (4) If the company is wound up, the Court, on the application of the creditor in question and upon proof of his omission from the list as aforesaid, may if it thinks fit settle a list of persons accordingly so liable to contribute, and may make and enforce calls and orders against the contributories settled on the list as if they were ordinary contributories in a winding up.
- (5) Nothing in this section shall affect the rights of the contributories among themselves.

#### **Penalty for concealing name of creditor, etc**

50. Any officer of a company who:-

- (a) wilfully conceals the name of a creditor entitled under section 46(4) to object to a reduction of the company's share capital;
- (b) wilfully misrepresents the nature or amount of the debt or claim of a creditor so entitled; or
- (c) aids, abets, connives in or is privy to any such concealment or misrepresentation as is described in paragraph (a) or (b);

is guilty of an offence.

### **PART VIII - VARIATION OF SHAREHOLDERS' RIGHTS**

#### **Variation of rights attached to any class of shares**

51. (1) This section applies if, in the case of a company whose share capital is divided into different classes of shares:-
- (a) provision is made by the memorandum or articles, or by the terms of issue of the shares, for the variation of the rights attached to any class of the company's shares, subject to:-
    - (i) the consent of any specified proportion of the holders of issued shares of that class; or
    - (ii) the sanction of a resolution passed at a separate meeting of the holders of such shares; and

- (b) in pursuance of that provision, the rights attached to any class of the company's shares are at any time varied.
- (2) The holders of not less than 15% in the aggregate 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 annulled; and if such an application is made, the variation shall have no effect unless and until confirmed by the Court.
- (3) An application to the Court under subsection (2):-
  - (a) shall be made within a period of 21 days immediately following the date upon which the consent was given or the resolution was passed (as the case may be); and
  - (b) may be made on behalf of the shareholders entitled to make the application by such of their number as they may appoint in writing for the purpose.
- (4) The Court, after hearing the applicant and any other person appearing to the Court to be interested in the application:-
  - (a) may annul the variation, if satisfied having regard to all the circumstances of the case that the variation would unfairly prejudice the shareholders of the class represented by the applicant;
  - (b) shall confirm the variation, if not so satisfied.
- (5) The decision of the Court on an application under subsection (2) shall be final.
- (6) "Variation" in this section includes abrogation, and cognate expressions shall be construed accordingly.

#### **Issue of non-voting shares**

- 52. Notwithstanding the provisions of section 69(n)(i) and section 71, a company may, if its articles so provide, issue shares which:-
  - (a) do not entitle the holder to voting rights in any general meeting of the company; or
  - (b) entitle the holder to restricted voting rights in any such meeting.

### **PART IX - COMPANY RECORDS AND ACCOUNTS**

#### **Minute books**

- 53. (1) Every company shall cause minutes of all proceedings at its annual and extraordinary general meetings and at meetings of its directors to be entered as soon as reasonably practicable in books (hereinafter called "minute books") kept for that purpose.

(2) All such minutes shall (unless the question of approval is deferred until a specific later date or occasion) be approved by the meeting to which they relate or by the next similar meeting, and a minute purporting to be signed by the chairman of the meeting at which it was approved, and any copy of such a signed minute, shall be evidence of the proceedings.

(3) Where in accordance with this section minutes have been made of the proceedings at any meeting described in subsection (1) then, until the contrary is proved:-

- (a) the meeting shall be deemed to have been duly held and convened;
- (b) all proceedings conducted at the meeting shall be deemed to have been duly conducted; and
- (c) all appointments of directors or liquidators made in the course of those proceedings shall be deemed valid.

(4) A company in relation to which there is a failure to comply with any provision of subsection (1) or (2) is guilty of an offence.

#### **Register of directors and secretaries**

54. (1) Every company shall keep a register of its directors and secretaries.

(2) The register shall contain the following particulars in respect of each director:-

- (a) in the case of an individual, his present and previous forenames and surnames, his usual residential address, his nationality and his business occupation (if any);
- (b) in the case of a body corporate, its corporate name and its registered office (or, if it has no registered office, its principal office).

(3) The register shall contain the following particulars in respect of each secretary:-

- (a) in the case of an individual his present and previous forenames and surnames and his usual residential address;
- (b) in the case of a body corporate, its corporate name and registered office (or, if it has no registered office, its principal office).

(4) A company in relation to which there is a failure to comply with any provision of subsection (1), (2) or (3) is guilty of an offence.

(5) For the purposes of this section:-

- (a) in the case of a peer or person bearing a title different from his surname, the expression "surname" means that title;
- (b) references to a previous name do not include a name which:-
  - (i) was changed or disused before the person concerned attained the age of 18 years; or
  - (ii) has been changed or disused for a period of at least 20 years.



### **Register of members**

55. (1) Every company shall keep a register of members and shall enter in it the names and addresses of all persons who are or who have since the formation of the company been shareholders therein together with a statement, in relation to each such person, of:-
- (a) the number of shares attributed to him, together with (subject to section 43(4)) the distinguishing numbers of such shares, indicating those allotted for cash and those allotted in whole or in part for a consideration other than cash;
  - (b) the amount paid up on the shares and the date of each payment;
  - (c) the date on which he was registered as a shareholder;
  - (d) the date on which he ceased to be the holder of any share.
- (2) A company which fails to comply with any provision of subsection (1) is guilty of an offence.

### **Members' addresses**

56. (1) The address of a member entered in the Register of Members shall be deemed to be his actual address.
- (2) Whenever a member changes his address he shall give written notice of the new address to the company at its registered office.
- (3) Upon receipt of such a notice the directors or the secretary shall enter the change of address in the register.

### **Index of members**

57. (1) Every company with more than 50 members shall, unless the Register of Members is in such a form as to constitute in itself an index, keep an index of the names of the members of the company and shall, within a period of 14 days after the day on which any alteration is made in the Register of Members, make any necessary alteration in the index.
- (2) The index shall be such as to enable the account in the Register of Members of each member to be readily found.
- (3) The index shall be kept with the Register of Members.
- (4) A company in relation to which there is a failure to comply with any provision of this section is guilty of an offence.

### **Inspection of minute books, registers and index**

58. (1) Every company shall keep at its registered office:-

- (a) its minute books;
- (b) its Register of Members;
- (c) its register of annual returns required to be kept by section 28(1)(c);
- (d) its register of directors and secretaries required to be kept by section 54(1);
- (e) the index, if any, referred to in section 57.

(2) Subsection (1) is deemed to be complied with in the case of a minute book if the original book or a photocopy of it is kept at a place in Guernsey which can be ascertained by reference to the Register of Members.

(3) The minute books, registers and index referred to in subsection (1) shall, during ordinary business hours, subject to the provisions of subsection (7), and subject to such reasonable restrictions as the company may by its articles or in general meeting impose, but so that not less than two hours in each day be allowed for inspection, be open to inspection as follows:-

- (a) minutes of proceedings at general meetings may be inspected by any member without charge;
- (b) minutes of proceedings at directors' meetings may be inspected by any director without charge;
- (c) other documents described in subsection (1) may be inspected by any member or director without charge and by any other person on payment of the appropriate fee.

(4) A person may take a note of, and may on payment of the appropriate fee request a copy of any part of, a book, register or index open to his inspection under subsection (3); and the company shall cause any copy so requested to be sent to him within 7 days after the receipt by the company of the request.

(5) In subsections (3) and (4) "the appropriate fee" means:-

- (a) such sum as may be prescribed by regulations of the Committee; or
- (b) such lesser sum as the company may stipulate;

and regulations under this subsection may make different provision for different cases, purposes and circumstances.

(6) If an inspection under subsection (3) is refused, or if a copy of a document requested under subsection (4) is not sent within the specified period, the company is guilty of an offence; and in the event of any such refusal or default the Court may, on the application of any person entitled to make such an inspection or to require such a copy, order upon such penalty as the Court thinks fit that an immediate inspection be permitted or that the requisite copies be sent forthwith.

(7) A company may, on giving notice in La Gazette Officielle, close the Register of Members for periods not exceeding 30 days in the aggregate in any calendar year.

### **Accounting records**

59. (1) Every company shall keep accounting records which are sufficient to show and explain the company's transactions and which are such as to:-

- (a) disclose with reasonable accuracy, at any time, the financial position of the company at that time; and
  - (b) enable the company's directors to ensure that its balance sheet and profit and loss account are prepared properly and in accordance with any relevant enactment for the time being in force.
- (2) The accounting records shall in particular contain:-
  - (a) day to day entries of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place; and
  - (b) a record of the assets and liabilities of the company.
- (3) If the company's business involves dealing in goods, the accounting records shall contain:-
  - (a) statements of stock held by the company at the end of each of its financial years;
  - (b) all statements of stocktakings from which any statement described in paragraph (a) has been or is to be prepared;
  - (c) except in the case of goods sold by ordinary retail trade, statements of all goods sold and purchased, showing the goods, buyers and sellers in sufficient detail to enable them to be identified.
- (4) The accounting records shall be:-
  - (a) kept at the registered office of the company or such other place as its directors think fit; and
  - (b) open at all reasonable times to inspection by any director or secretary of the company.
- (5) If accounting records are kept at a place outside Guernsey, accounts and returns in respect of the business dealt with in the accounting records so kept shall be sent to and kept at, a place in Guernsey, where they shall at all reasonable times be open to inspection by any director or secretary of the company.
- (6) The accounts and returns to be sent to and kept in Guernsey in accordance with subsection (5) shall be such as to:-
  - (a) disclose with reasonable accuracy the financial position of the business in question at intervals not exceeding 6 months; and
  - (b) enable the company's directors to ensure that its balance sheet and profit and loss account are prepared properly and in accordance with any relevant enactment for the time being in force.
- (7) Any accounting records which a company is required by this section to keep shall be preserved by it for a period of at least 6 years from the date on which they are made.
- (8) If in respect of a company there is a contravention of any provision of subsections (1) to (7):-
  - (a) the company is guilty of an offence; and
  - (b) any officer of the company who would otherwise be guilty of an offence by virtue of section 113 shall be so guilty unless he shows that he acted honestly and that, in the

circumstances in which the business of the company was carried on, the default was excusable.

(9) Any officer of a company who fails to take all reasonable steps for securing compliance by the company with subsection (7), or who intentionally causes any default by the company thereunder, is (without prejudice to the provisions of section 113) guilty of an offence.

#### **Form of company records and use of computers, etc**

60. (1) Any minute book, register, index or accounting record required by this Law to be kept by a company may be kept either by making entries in books or by recording the matters in question in any other manner including, without prejudice to the generality of the foregoing, a non-legible form.
- (2) If any such minute book, register, index or accounting record is kept not by making entries in a book but in some other manner:-
- (a) it is deemed for the purposes of this Law to be kept at a place if access to it and written copies of it can be obtained at that place;
  - (b) adequate measures shall be taken for guarding against falsification and for facilitating its discovery and production; and
  - (c) if the matters in question are recorded in a non-legible form, the recording shall be capable of being reproduced in a legible form.
- (3) If default is made in complying with any provision of subsection (2)(b) the company is guilty of an offence.
- (4) Any duty imposed by law to allow inspection, or to furnish a copy, of any part of a minute book, register, index or accounting record required by this Law to be kept by a company shall be treated, where the matters in question are recorded in a non legible form, as a duty to allow inspection, or to furnish a copy, of the relevant part of the recording in a legible form.

#### **Use of registration number**

61. (1) A company's registration number shall be stated upon all returns, records and other documents required to be submitted by or in relation to the company to the Greffier under or for the purposes of this Law.
- (2) A company in relation to which there is a contravention of any provision of subsection (1) is guilty of an offence.

## **PART X - AUDIT**

### **Appointment and remuneration of auditors**

62. (1) Every company except an unaudited company shall, subject to subsection (2), at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.
- (2) If the company's first general meeting is not held within a period of 3 months immediately following the day on which the company became entitled to commence business, the directors shall appoint the first auditors as soon as possible after the expiry of that period.
- (3) If auditors are not appointed at an annual general meeting, the Court may, on the application of a member or creditor of the company, appoint an auditor of the company for the current year.
- (4) The first auditors of the company may be appointed by the directors before the first general meeting of the company; and auditors so appointed shall hold office until the first annual general meeting unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at that meeting may appoint the auditors.
- (5) The directors of a company may fill a casual vacancy in the office of auditor; and for the duration of such a vacancy any surviving or continuing auditors may continue to act.
- (6) The remuneration of auditors appointed by:-
- (a) the company in general meeting, shall be fixed by the company in general meeting;
  - (b) the directors or the Court, shall be fixed by the directors or the Court, as the case may be.

### **Qualification for appointment as auditor**

63. (1) A person is not qualified for appointment as an auditor under this Law unless he is:-
- (a) a member of:-
    - (i) the Institute of Chartered Accountants in England and Wales, of Scotland or in Ireland;
    - (ii) the Chartered Association of Certified Accountants; or
    - (iii) the Association of Authorised Public Accountants; or
  - (b) for the time being authorised by the Committee to audit the accounts of companies as having similar qualifications obtained outside the United Kingdom.
- (2) An officer or servant of a company, or a partner or employee of an officer or servant of a company, is not qualified for appointment by that company as an auditor.
- (3) Subsections (1) and (2) are without prejudice to any other enactment for the time being in force; and in this section the words "qualified" and "disqualified" are to be construed accordingly.
- (4) An auditor of a company who becomes disqualified during his term of office shall forthwith cease to act as auditor and notify the company accordingly in writing.

- (5) A person who:-
- (a) acts as auditor of a company when he knows that he is disqualified; or
  - (b) fails without reasonable excuse to give a notification in accordance with subsection (4);
- is guilty of an offence.
- (6) A company may appoint as its auditor an individual partnership or body corporate.

#### **Auditors' report**

64. (1) Subject to paragraph 3(a) of Schedule 2, a company's auditors shall make a report (an "auditors' report") to the company's members on the accounts examined by them and on every balance sheet and profit and loss account laid before the company in general meeting during their term of office; and that report shall be laid before the company in general meeting.
- (2) The auditors' report shall state:-
- (a) whether in the auditors' opinion the balance sheet and profit and loss account have been prepared properly and in accordance with any relevant enactment for the time being in force; and
  - (b) without prejudice to the foregoing, whether in their opinion a true and fair view is given:-
    - (i) in the balance sheet, of the state of the company's affairs at the end of the financial year to which it relates; and
    - (ii) in the profit and loss account, of the company's profit or loss for that financial year.

#### **Auditors' powers and duties**

65. (1) A company's auditors shall in preparing their report, carry out such investigations as will enable them to form an opinion as to:-
- (a) whether proper accounting records have been kept by the company in accordance with section 59; and
  - (b) whether the company's balance sheet and profit and loss account are in agreement with its accounting records.
- (2) Every auditor of a company has a right of access at all times to the company's books, accounts and vouchers and may require from the company's officers such information and explanations as he thinks necessary for the performance of his duties.
- (3) If a company's auditors are of the opinion that:-
- (a) proper accounting records in accordance with section 59 have not been kept;
  - (b) the balance sheet or the profit and loss account is not in agreement with the accounting records;

- (c) the directors' report is inconsistent with the balance sheet or the profit and loss amount; or
- (d) they have failed to obtain all access, information and explanations necessary for their audit;

they shall state that fact in their report.

## **PART XI - DIRECTORS**

### **Appointment of directors by articles and share qualification**

66. (1) A person may not be appointed as director of a company by the articles unless, before their registration, he has:-
- (a) signed and deposited with the Greffier a written consent to act as director; and
  - (b) either signed the memorandum for the qualifying number of shares in the company (if any) or signed and delivered to the Greffier a written contract to take and if necessary pay for the qualifying number (if any).
- (2) Within 3 months of the registration of the memorandum and articles, the founder members shall deliver to the Greffier a list of the persons who have consented to act as directors of the company.
- (3) If the list contains the name of any person who has not consented to act as director, the founder members shall be guilty of an offence.
- (4) Every director who is required by the company's articles to hold a qualifying number of shares, and who is not already so qualified, shall obtain his qualification within a period of 2 months immediately following the date of his appointment or such shorter period as may be set out by the articles.
- (5) The office of director of a company shall be determined forthwith if the director:-
- (a) does not comply with subsection (4); or
  - (b) after the expiration of the appropriate period specified in subsection (4), ceases at any time to hold the requisite share qualification.
- (6) A person whose office as director of a company is determined under subsection (5) may not be reappointed until he has obtained the requisite share qualification.
- (7) If after the expiration of the appropriate period specified in subsection (4) a person who does not hold the requisite share qualification acts as a director of a company, he is guilty of an offence.

### **Liability of directors who misrepresent company position**

67. If an officer of a company or any person purporting to act in such a capacity knowingly and wilfully misrepresents the company's true position at a general meeting in such manner as to induce the shareholders to declare a higher dividend than is justified by the company's actual position, or so as to

encroach upon its capital, he shall be responsible and personally liable for the consequences of his misrepresentation.

### **Disqualification orders**

- 67A. (1) Where the Court considers that, by reason of a person's conduct in relation to any body corporate or otherwise, that person is unfit to be concerned in the management of a company, the Court may, if satisfied that it is desirable in the public interest to do so, make and subsequently renew (on one or more occasions) an order against him (a "disqualification order") prohibiting him, without the leave of the Court:-
- (a) from being a director or other officer of any company or any specified company;
  - (b) from participating in, or being in any way concerned in, directly or indirectly, the management, formation or promotion of any company of any specified company.
- (2) A disqualification order and any renewal thereof shall have effect for such period not exceeding 5 years as shall be specified therein.
- (3) A disqualification order and any renewal thereof may contain such incidental and ancillary terms and conditions as the Court thinks fit.
- (4) An application for a disqualification order or for a renewal thereof may be made by the Committee, by the Commission, by Her Majesty's Procureur, by any body corporate of which the person in question is, or has been, an officer, by any liquidator, member or creditor of such a body corporate or, with the leave of the Court, by any other interested party.
- (5) A person who contravenes any provision of a disqualification order or renewal thereof:-
- (a) shall be guilty of an offence; and
  - (b) shall be 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 or the renewal thereof.
- (6) A person's liability pursuant to subsection (5)(b) is joint and several with that of the company and of any other person so liable in relation to that company.
- (7) In determining whether or not a person is unfit to be concerned in the management of a company, the Court shall have regard to the provisions of Schedule 3, which shall have effect accordingly.
- (8) A disqualification order may be renewed at any time before, or within a period of one month immediately succeeding, the date of the expiration of the order.
- (9) A person subject to a disqualification order or renewal thereof may apply to the Court for a revocation of the order or renewal 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.
- (10) An application under subsection (9) for the revocation of a disqualification order or renewal shall not be heard unless the person upon whose application the disqualification order or (as the case may be) the



renewal 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.

(11) For the removal of doubt, a disqualification order or renewal thereof, or an application under subsection (9) for the revocation of a disqualification order or renewal, may, with the agreement of the parties, and in the Court's absolute discretion, be granted by consent.

### **Fraudulent trading**

- 67B. (1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors (whether of the company or of any other person), or for any fraudulent purpose, the following provisions have effect.
- (2) The Court, on application of the liquidator or any creditor or member of the company, may declare that any persons who were knowingly parties to the carrying on of the business in the manner above mentioned shall be liable to make such contributions to the company's assets as the Court thinks proper.

### **Wrongful trading**

- 67C. (1) Subject to subsection (3), if in the course of the winding up of a company it appears that subsection (2) applies in relation to a person who is or has been a director of the company, the Court, on the application of the liquidator 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; and
  - (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;

but the Court shall not make a declaration under this section in any case where the time mentioned in paragraph (b) was before the date of the coming into force of this section.

(3) The Court shall not make a declaration under this section with respect to 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 or ascertain, the conclusions which he ought to reach and the steps which he ought to take are those which would be known or ascertained, or 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, which means a person in accordance with whose directions or instructions the directors of the company are accustomed to act.
- (8) This section is without prejudice to the provisions of section 67B.

#### **Proceedings in respect of fraudulent or wrongful trading**

- 67D. (1) On the hearing of an application under section 67B or 67C, the applicant may himself give evidence or call witnesses.
- (2) Where under section 67B or 67C 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 any debt or obligation due from the company to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the company 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) from time to time make such further orders as may be necessary for enforcing any charge imposed under this subsection.
- (3) For the purposes of subsection (2)(a), the expression "assignee":-
- (a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge 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 67B or 67C in relation to a person who is a creditor of the company, it may direct that the whole or any part of any debt owed by the company to that person and any interest thereon shall rank in priority after all other debts owed by the company and after any interest on those debts.
- (5) Sections 67B and 67C 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.

### **Greffier to keep register of disqualification orders**

- 67E. The Greffier shall keep a register of all disqualification orders, and all renewals thereof, made by the Court under section 67A; and the register shall form part of the public records of the Island.

### **Company articles, etc, may not exclude remedies**

- 67F. (1) Any provision, term or condition, in whatever words, and whether contained in a company's articles or in any contract with the company or otherwise, for exempting any person from, or indemnifying him against, any liability which, pursuant to sections 67A to 67D or any other provision of this Law under which personal liability may be imposed or incurred, would otherwise attach to him shall, subject to subsections (2) and (3), be void.
- (2) Subsection (1) shall not, of itself, prevent a company from purchasing and maintaining for any such person insurance against any such liability.
- (3) Subsection (1) shall not deprive any person of any exemption or indemnity to which he was lawfully entitled before the date of the coming into force of that subsection.

## **PART XII - MEETINGS**

### **Annual general meeting**

68. (1) Every company shall hold a general meeting of its shareholders:-
- (a) firstly, within a period of 18 months beginning on the date on which it is entitled to commence business; and
  - (b) thereafter, at least once in every calendar year.
- (2) No more than 15 months may elapse between one annual general meeting and the next.
- (3) If default is made in holding a meeting in accordance with any provision of subsection (1) or (2), the company is guilty of an offence.
- (4) The directors shall, 10 days prior to the annual general meeting, send every member a copy of a report (the "directors' report") which shall include:-
- (a) the company's profit and loss account during the relevant financial year and balance sheet showing the state of its affairs at the end of that year;
  - (b) in the case of an unaudited company, the statement required by paragraph 3(b) of Schedule 2.
- (5) The directors' report shall be countersigned by not less than two directors of the company or, if there are less than two directors, by the sole director.

(6) If subsection (4) is not complied with in respect of any meeting, or if default is made in holding a meeting in accordance with subsection (1) or (2), any member may, not less than 14 days after:-

- (a) the date upon which the meeting was held; or, as the case may be,
- (b) the last date upon which the meeting ought to have been held;

apply to the Court under this subsection.

(7) Upon hearing an application under subsection (6), the Court may direct that the company be wound up, that a report be presented or that a meeting be held, or make such other order as it thinks fit.

(8) The Court may order that the costs of an application under subsection (6) be paid by any person who, in the opinion of the Court, is responsible for the default.

(9) The provisions of Part XVI of this Law shall, subject to the provisions of subsections (6), (7) and (8) above, apply in relation to the winding up of a company pursuant to this section.

### **General provisions as to meetings**

69. The following provisions apply to any annual general meeting or other general meeting of a company:-

- (a) the meeting may, if the company's articles so permit, be held at any place in Guernsey or elsewhere;
- (b) unless the company's articles provide otherwise, a person may attend the meeting in person or by proxy;
- (c) a person who attends the meeting by proxy shall, unless the company's articles provide otherwise, be deemed to be present for the purposes of:-
  - (i) the quorum required by paragraph (g) below; and
  - (ii) demanding a poll under paragraph (m) below;
- (d) a list of the names and addresses of all members showing the number of shares respectively held by them shall be available for inspection throughout the meeting;
- (e) the members may, subject to paragraph (f) below, raise any matter relating to the formation of the company or arising out of the directors' report, regardless of whether notice has been given;
- (f) no resolution for which notice has not been given in accordance with the articles may be passed;
- (g) unless the company's articles provide otherwise, two members present, holding one twentieth of the issued share capital between them, shall be a quorum;
- (h) the members shall elect one of their number as chairman;
- (i) the subjects set out in the convening notice shall be considered and put to the vote first;
- (j) every proposition duly proposed and seconded shall be put to the vote unless contrary to this Law or the company's articles;

- (k) unless the company's articles provide otherwise, any resolution of the meeting other than a special resolution shall require a simple majority of the votes cast;
- (l) the chairman may, at his option, subject to paragraph (m) below, take a vote on a show of hands or on a poll; and, in the case of a vote on a show of hands, the declaration of the chairman that a resolution has been carried or rejected shall be deemed to be the decision of the meeting;
- (m) unless the company's articles provide otherwise, any one or more of the members present holding at least one tenth of the issued share capital between them may, before a proposition is put to the vote or immediately after a vote has been taken on a show of hands, demand a poll;
- (n) for the purpose of ascertaining the number of votes cast:-
  - (i) on a show of hands, every member present in person and entitled to vote has one vote;
  - (ii) on a poll, every member present in person or (unless voting by proxy is prohibited by the articles) represented by proxy shall have the number of votes to which having regard to the company's articles, he is entitled by reason of the number of shares held by him; and if he votes (whether in person or by proxy), he need not use all his votes or cast all the votes he uses in the same way;
  - (iii) a member who has not paid any call for capital on any of his shares may not vote in right of those shares;
  - (iv) in the case of an equality of votes, the chairman shall have a second vote;
- (o) the meeting may adjourn from time to time;
- (p) at any such adjourned meeting, any resolution for which notice has been given in accordance with the articles, whether before or after the original meeting, may be passed;
- (q) the adjourned meeting shall have the same powers as an original meeting;
- (r) any resolution passed at the adjourned meeting shall be deemed to be passed when it is actually passed and not on the date of the former meeting.

#### **Extraordinary general meeting on members' requisition**

70. (1) The members of a company may, by serving a members' requisition on the company, require the convening of an extraordinary general meeting.
- (2) A members' requisition is a requisition of one or more members holding at least one tenth of the issued shares between them.
- (3) The requisition shall state the objects of the meeting, shall be dated and shall be signed by all requisitionists.
- (4) If the directors do not, within a period of 21 days beginning on the date of service on the company of the requisition, duly convene a meeting, the requisitionists may, within a period of 3 months beginning on that date, themselves convene a meeting.

(5) The provisions of this section are without prejudice to any powers the director. may have to convene an extraordinary general meeting without a members requisition.

### **Voting rights**

71. (1) Every member of a company shall, save as otherwise provided in this Law, have at least one vote in general meeting of the company.
- (2) Any member entitled to attend and vote at a general meeting may, subject to the provisions of this section, and provided that voting by proxy is not prohibited by the articles, appoint another person to attend and vote in his place.
- (3) Where several persons are joint holders of shares, they shall not each have a vote in right of those shares, but shall elect one of their number to represent them and vote in their name.
- (4) In default of compliance with subsection (3), the person whose name appears first on the Register of Members shall be the one entitled to vote.
- (5) Guardians in the names of their wards and attorneys in the names of their principals may vote at general meetings.

### **Convening of meetings**

72. (1) The annual general meeting of a company required to be held by section 68 shall be convened by the directors of the company or by persons authorised by them for the purpose.
- (2) Written notice of the date, time and place of any general meeting, signed by the persons convening the meeting, shall, subject to the provisions of subsection (3), be given to every member of the company at least 10 days before the day of the meeting, and such a notice is referred to in this Law as a "convening notice".
- (3) All members of a company entitled to attend and vote at a general meeting may in any particular case agree that:-
- (a) a general meeting shall be deemed to have been duly called; and
  - (b) notice of the intention to propose any special resolution shall be deemed to have been duly given;

notwithstanding that the meeting is called by shorter notice than that specified in subsection (2) or that subsection (2) has otherwise not been complied with.

### **Special resolutions**

73. (1) Subject to the provisions of section 72(3), a special resolution is not effective unless passed by a majority of not less than three-quarters of the votes recorded (including, where there is a poll, any votes cast by proxy) at a general meeting in respect of which notice specifying the intention to propose the resolution has been duly given.

(2) A copy of every special resolution of a company shall be delivered by the company to the Greffier within the following period:-

- (a) if it is a resolution under section 18 altering the company's objects, and no application for its annulment has been made to the Court within the 21 day period specified in section 19(2)(d), a period of 15 days immediately following the expiration of that 21 day period;
- (b) in any other case, a period of 21 days immediately following the day upon which it was passed;

and the Greffier shall, as soon as is reasonably practicable, enter the resolution in the Register of Companies.

(3) If there is a failure to comply with any provision of subsection (2) in respect of a special resolution of a company then, without prejudice to any provision of this Law requiring the resolution to be approved by the Court:-

- (a) the resolution shall be void ab initio; and
- (b) the company is guilty of an offence.

#### **Written resolutions of companies**

73A. (1) Anything that may be done by resolution (including a special resolution) passed at a general meeting of a company or at a meeting of the holders of any class of shares in a company may, subject to any provision to the contrary in the memorandum or articles of the company, be done by resolution in writing signed by or on behalf of the members who, on the date when the resolution is deemed to be passed, would be entitled to vote on the resolution if it were proposed at a meeting.

(2) A resolution in writing may consist of several instruments in the same form each signed by or on behalf of one or more members.

(3) A resolution in writing shall be deemed to be passed when the instrument, or the last of several instruments, is last signed or on such later date as may be specified in the resolution.

(4) Any document attached to a resolution in writing shall be deemed to have been laid before a meeting of the members signing the resolution.

(5) Sections 53 and 58 (minute books and inspection thereof) apply in relation to a resolution in writing as if it had been passed at a meeting.

(6) This section is without prejudice to any rule of law relating to the effectiveness of the assent of members or any class of members given to a document, act or matter otherwise than at a meeting.

(7) A resolution in writing of a company shall, unless the company's memorandum or articles provide otherwise, be passed by the majority that it would have required if put to the vote on a poll at a general meeting at which the whole of the company's membership was present in person.

(8) Notice specifying the proposed resolution in writing shall be given by the company:-

- (a) to each of the company's members, not less than 14 days (or such shorter period as all the members may in any particular case agree) before the date on which the members are

required to give their vote, by ordinary post to the members' addresses entered in the Register of Members; or

- (b) in accordance with such other formalities as may be prescribed by the company's articles.

### **Participation in meetings**

- 73B. (1) Subject to any provision to the contrary in a company's memorandum or articles, if a member is, by any means, in communication with one or more other members so that each member participating in the communication can hear or read what is said or communicated by each of the others, each member so participating is deemed to be present at a meeting with the other members so participating.
- (2) A meeting of members conducted pursuant to subsection (1) shall be deemed to be held in the place in which the chairman of the meeting is present.
- (3) Subsections (1) and (2) apply in relation to meetings of directors or committees of directors as they apply in relation to meetings of members.

## **PART XIII - PROTECTION FOR MEMBERS**

### **Restraint of excess powers**

74. (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 11(1), be beyond the company's capacity; or
  - (b) which is beyond the powers of the directors by virtue of any limitation mentioned in section 13(2);

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.

### **Relief for members unfairly prejudiced**

75. (1) A member of a company may apply to the Court for an order under this section on the ground that:-
- (a) the affairs of the company are being or have been conducted in a manner which is unfairly prejudicial to the interests of some part of the members (including at least himself); or
  - (b) any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.



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

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

(4) Without prejudice to the generality of subsection (3), an order of the Court under this section 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 the shares of any member of the company by other members or by the company itself; and
- (e) in the case of a purchase of shares by the company itself, provide for a reduction of the company's share capital by declaring that the company shall be deemed to have passed a resolution for reducing share capital; and in such a case Part VII of this Law shall apply as if the company had, on the date of the order under this section, made an application to the Court under section 46 for an order confirming the reduction;

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

(3) Notwithstanding any other provision of this Law, where an order of the Court under this section requires a company not to make any alteration, or any specified alteration, to its memorandum or articles, the company may not, without the leave of the Court, make any such alteration in contravention of any provision of the order.

(4) Any alteration to a company's memorandum or articles made by or by virtue of an order of the Court under this section shall be of the same effect as if duly made by special resolution of the company, and the provisions of this Law shall apply accordingly to the memorandum or articles as so altered.

(5) The Greffier shall enter as soon as practicable in the Register of Companies any order of the Court:-

- (a) under which a company is deemed to have passed a resolution for reducing share capital; or
- (b) making any alteration to a company's memorandum or articles.

(8) This section applies 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 a member shall be construed accordingly.

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

## **PART XIV - STRIKING OFF**

### **Striking a company off the register**

76. (1) This section applies whenever:-
- (a) a company has failed to deliver to the Greffier an annual return in accordance with the requirements of section 28(1) and (2) before the end of January in any year;
  - (b) the Greffier has reasonable cause to believe that a company is not carrying on business or in operation;
  - (c) the Greffier 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; or
  - (d) a company has failed to give notice to the Greffier of the situation of its registered office in accordance with section 24(2).
- (2) When this section applies in relation to a company, the Greffier 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 on the date of the notice, the company's name 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 La Gazette Officielle and shall be sent, by recorded delivery service or in such other manner as may be prescribed by regulations of the Committee:-
- (a) when this section applies by virtue of subsection (1)(c)(ii), to the liquidator at his last known place of business;
  - (b) in any other case:-
    - (i) to the company at its registered office;
    - (ii) if no office has been registered or if notice of the situation thereof has not been given, to any officer of the company; or
    - (iii) if there is no officer whose name and address are known to the Greffier, to each founder member at the address stated in the memorandum.
- (4) At the expiration of the period mentioned in subsection (2)(b) the Greffier may, unless cause to the contrary is previously shown, strike the name of the company concerned off the Register of Companies, and upon his publishing notice of such striking off in La Gazette Officielle the company shall be dissolved.

- (5) Notwithstanding the striking-off of a company's name pursuant to subsection (4):-
- (a) the liability, if any, of every officer and member of the company shall continue and may be enforced accordingly; and
  - (b) the power of the Court to wind up the company shall not be affected.
- (6) When 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:-
- (a) it delivers its annual return to the Greffier; 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 return and the date when it in fact did so; and
    - (ii) any other sums payable under any other enactment, statutory instrument or rule of court by companies delivering annual returns.
- (7) In subsection (6) "the appropriate penalty" means the aggregate of:-
- (a) for the first calendar month or part thereof;
  - (b) £20 for the second calendar month or part thereof; and
  - (c) £50 for each subsequent calendar month or part thereof.
- (8) When this section applies in relation to a company by virtue of subsection (1)(d), the company shall not be considered to have shown cause to the contrary within the meaning of this section unless it delivers notice of the situation of its registered office to the Greffier.
- (9) When a company is dissolved under subsection (4) 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**

77. (1) Where a company is struck off the Register of Companies pursuant to section 76(4), 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 for the company to be restored to the Register;
- on the application of the company or any member or creditor thereof before the expiration of 20 years beginning on the date of publication of the notice referred to in section 76(4), order the name of the company to be restored to the Register.
- (2) Upon the restoration of a company's name in accordance with an order under subsection (1), the company shall be deemed to have continued in existence.

(3) An order under subsection (1) 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.

(4) The restoration of a company's name pursuant to an order under subsection (1) shall, unless the Court otherwise directs, and without prejudice to any other term of the order, be conditional upon the payment by the applicant to the Greffier 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 return in accordance with section 28; and
- (b) an additional amount of £100.

(5) 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 under section 76(4), the company shall be 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.

(6) An application under this section for the restoration of a company's name to the Register of Companies shall not be granted unless Her Majesty's Procureur has, on behalf of the Crown, consented to the application.

(7) A person wishing to obtain the consent of Her Majesty's Procureur for the purposes of subsection (6) shall pay to him such fee as may be prescribed by Ordinance of the States.

## **PART XV - VOLUNTARY WINDING UP**

### **Cases in which company may be wound up voluntarily**

78. A company may be wound up voluntarily:-

- (a) in either of the following cases:-
  - (i) the period (if any) fixed by the articles for the duration of the company expires; or
  - (ii) the event (if any) occurs on the occurrence of which the articles provide that the company shall be dissolved;

provided that in each case the company resolves in general meeting that it be wound up voluntarily; or

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

### **Notice of special resolution to wind up**

79. A company which passes a special resolution for voluntary winding up shall give notice of the resolution in La Gazette Officielle.

### **No share transfers after commencement of winding up**

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

### **Commencement of voluntary winding up**

81. A voluntary winding up shall be deemed to commence:-
- (a) in a case where the company has passed a special resolution that it be wound up voluntarily, upon the resolution being entered by the Greffier in the Register of Companies in accordance with section 73(2);
  - (b) in any other case, upon the passing of the resolution for voluntary winding up.

### **Consequences of resolution to wind up**

82. (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 shall, notwithstanding anything to the contrary in its articles, continue until dissolution.
- (3) A company which contravenes any provision of subsection (1) is guilty of an offence.

### **Appointment of liquidator**

83. (1) In a voluntary winding up, the company in general meeting shall:-
- (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 in general meeting 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**

84. (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 in general meeting;

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 shareholder of the company.

#### **General provisions as to liquidator**

85. (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 104.
- (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 two.
- (3) A liquidator may exercise all powers which may be given to a liquidator by the Court.

#### **Appointment of liquidator by the Court**

86. If for whatever reason no liquidator is appointed in accordance with section 83, the Court may, on the application of any member, appoint a liquidator.

#### **Calling of general meeting by liquidators**

87. (1) On the expiration of a period of one year beginning on the 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**

88. (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 106(1) 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 Greffier of the holding of the meeting and of its date.
- (3) On the expiration of a period of 3 months beginning on the date of registration of such notice, the company shall be deemed to be dissolved.

### **Delegation of company's powers to creditors**

89. (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 shall, subject to the right of appeal conferred by subsection (3), be binding if sanctioned by a special resolution of the company and by three-quarters 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 a period of 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**

90. A liquidator or shareholder 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.

### **Removal of liquidator**

91. 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**

92. 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**

93. The Court may, notwithstanding the passing of a resolution under section 78 for the voluntary winding up of a company, entertain an application under section 96 for an order for the compulsory winding up of the company.

## **PART XVI - COMPULSORY WINDING UP**

### **Circumstances in which Court may wind company up**

94. A company may be wound up by the Court if:-
- (a) the company has by special resolution resolved that the company be wound up;
  - (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 number of members of the company is reduced to less than two;
  - (e) the company is unable to pay its debts;
  - (f) the company has failed to comply with a direction of the Court under section 23(1)(a) to change its name;
  - (g) the company has failed to give notice to the Greffier of the situation of its registered office in accordance with section 24(2);
  - (h) the company has failed to hold a general meeting of its shareholders in accordance with section 68(1) or (2) or there has been a failure to comply with section 68(4) in respect of any meeting of the company, in which case the provisions of this Part of this Law shall apply in relation to the winding up of the company subject to the modifications set out in section 68(6), (7) and (8);
  - (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"**

95. 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 then due has served on the company through the office of the Sergeant at the company's registered office a written demand for payment; and
- (b) the company has, for a period of 21 days immediately following the date of service, neglected 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 is unable to pay its debts.

### **Application for compulsory winding up**

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

(2) An order made by the Court on an application under subsection (1) shall operate 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**

96A. (1) An application for an order for the compulsory winding up of a company of a description set out in subsection (3) shall not be heard unless a copy of the application has been served on the Commission not less than seven days (or such other period as the Court may, in its absolute discretion, direct) before the day of the hearing 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 under this Part of this Law.

(3) The descriptions of company referred to in subsection (1) are the following:-

- (a) a company which carries on or formerly carried on controlled investment business within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 and which holds or formerly held a licence under section 3 of that Law or an authorisation under section 8 of that Law;
- (b) a company which is registered or was formerly registered as an insurer by the Commission under the Insurance Business (Guernsey) Law, 1986 or which is exempt from such registration by virtue of section 8 of that Law;
- (c) a company which is a licensed institution or former licensed institution within the meaning of the Banking Supervision (Bailiwick of Guernsey) Law, 1994;
- (d) a company which is of any other class or description prescribed for the purposes of this section by regulations of the Commission.

### **Ground on which Committee may make winding up application**

- 96B. (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 of Guernsey.
- (2) An application under subsection (1) for the compulsory winding up of a company may be made to the Court only by the Committee or by the Commission on its behalf.
- (3) An order made by the Court on an application under subsection (1) shall operate 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 of this Law and any other provision of law relating to winding up.

### **Power to restrain proceedings and appoint provisional liquidator**

97. 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**

98. 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**

99. (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 shall have 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;
- (e) to do any act authorised by the Court.

#### **Consequences of appointment of liquidator and compulsory winding up order**

100. (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 articles, continue until dissolution.
- (5) A company which contravenes any provision of subsection (3) is guilty of an offence.

#### **Resignation, removal or death of liquidator**

101. 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**

102. (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 two 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).

#### **Expenses of compulsory winding up**

103. 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 XVII - PROVISIONS OF GENERAL APPLICATION IN WINDING UP**

#### **Distribution of company's property**

104. (1) Subject to the provisions of:-

(a) this Law and of any rule of law as to preferential payments; and

(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;

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**

105. (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) A company's members who cause or permit the company to contravene any provision of subsection (2) shall be personally liable in respect of any debt or obligation undertaken.

### **Remedy against delinquent officers**

106. (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**

107. The liquidator's fees shall, subject to section 83(1)(b), be fixed by the Court.

### **Preferences in or prior to winding up**

108. (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 96; or
  - (ii) the date of the passing by the company of any resolution mentioned in section 78 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 95; 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 dictate;
- (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**

109. 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**

110. 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 XVIII - MISCELLANEOUS**

#### **Penalties for offences under this Law**

111. (1) A company or person guilty of an offence:-

- (a) under section 9(2), 24(3)(c), 24(7), 27(3), 28(4), 31(2), 40(6), 41(2), 53(4), 54(4), 55(2), 57(4), 58(6), 61(2), 66(7), 68(3) or 73(3), is liable on summary conviction to a fine not exceeding level 2 on the uniform scale;
- (b) under section 15(2), 39(4), 59(8)(a), 59(8)(b), 59(9), 60(3), 82(3), 83(3), 100(2) or 100(5), or under paragraph 4(1) of Schedule 2, is liable on summary conviction to a fine not exceeding level 5 on the uniform scale;
- (c) under section 23(2)(a), 46(8), 50, 63(5), 66(3), 67A(5)(a) or 112, or under paragraph 4(2) of Schedule 2, 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.

(2) The imposition by this Law of a criminal penalty in respect of any act or omission shall be without prejudice to any other remedy or liability (civil or criminal) in respect thereof.

#### **False statements**

112. A person who in or in connection with any document, report or record required by or for the purposes of this Law, or in compliance or purported compliance with any requirement imposed by or under this Law, or otherwise for the purposes of this Law:-

- (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;

is guilty of an offence.

#### **Criminal liability of officers, etc**

113. (1) Where an offence under this Law committed by a company is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the company or any person purporting to act in any such 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 a director.



(3) For the purposes of this section a person in accordance with whose directions or instructions any officer of a company acts shall be deemed to be an officer of the company.

### **Applications to the Court**

114. In any enactment relating to applications to the Court in respect of companies, any reference to an application, petition, demande or requête shall unless the context requires otherwise, be construed as a reference to an application to the Court made in such manner as the Court may direct; and cognate expressions shall be construed accordingly.

### **Fees**

115. Upon the occurrence in relation to a company of any of the following events, the company shall pay to the Greffier the following fees:-
- (a) for the delivery under section 24(2) of notice of the situation of the first registered office, unless delivered at the same time as the registration of the company's memorandum, £15.00;
  - (b) for the giving of notice under section 24(4) of a change in the situation of the registered office, £15.00;
  - (c) in respect of a winding up in consequence of a failure to comply with section 24, £15.00;
  - (d) in respect of a winding up in consequence of a failure to comply with a direction of the Court to change the company name under section 23(1), £15.00;
  - (e) for the deposit under section 66(1)(a) of a director's consent to act as such, unless deposited at the same time as the registration of the company's memorandum, £15.00;
  - (f) for the delivery under section 73(2) of a special resolution to change the company's name, £30.00;
  - (g) for the registration of a company's articles in the Register of Companies, unless registered with the memorandum under the authority of the same Act of Court, £20;
  - (h) upon or in relation to any such event, circumstance or matter as may be prescribed by Ordinance of the States, such fee as may be so prescribed.

### **Service of documents**

116. (1) Any document other than a summons 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 body corporate with a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, that office;

- (c) on a body corporate without a registered office in the Bailiwick, 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 outside the Bailiwick;
- (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 Greffier, by being left at, or sent by post to, the Greffe;

and in this section the expression "transmitted" means transmitted by telex, facsimile transmission or any similar means producing a document containing the text of the communication.

(2) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served by being published in La Gazette Officielle on two occasions falling in successive weeks.

(3) If a person upon whom a document is to be served under this Law is an infant or person under guardianship, the document shall be served on his guardian; and if there is no guardian, an application may be made to the Court for the appointment of a person to act as Guardian for the purposes of this Law.

(4) A document sent by post shall unless the contrary is shown, be 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 Island or the Isle of Man, on the third day after the day of posting;
- (b) in the case of a document sent elsewhere by airmail on the seventh day after the day of posting;

excluding in each case any non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958.

(5) Service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(6) The provisions of this section are without prejudice to:-

- (a) any specific provision of this Law relating to service;
- (b) any other lawful method of service.

(7) Notwithstanding the provisions of this section and of any other rule of law in relation to the service of documents, no document to be given or delivered to or served on the Greffier under or for the purposes of this Law shall be deemed to have been given, delivered or served until it is received.

### **Interpretation**

117. (1) In this Law, unless the context otherwise requires:-

"annual general meeting" means the general meeting of the members of a company required to be held by section 68;

"annual return" means the document required to be completed in accordance with the requirements of section 28;

"article" means a company's articles of association as lawfully amended from time to time;

"auditor" means a person appointed as an auditor in accordance with section 62;

"auditors' report" the meaning given by section 64;

"body corporate" means a body of persons incorporated under the laws of any district, territory or place, and includes a company;

"capital redemption reserve fund" has the meaning given by 40(1)(b)(iv);

"Commission" means the Guernsey Financial Services Commission;

"Committee" means the States Advisory and Finance Committee or such other committee of the States as the States may by Ordinance determine;

"common seal" means the common seal a company may have under sections 6(2)(b) and 25;

"company" means a body corporate the memorandum and articles of which are registered in the Register of Companies;

"compulsory winding up" means a winding up conducted in accordance with the provisions of Part XVI of this Law;

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

"contributory" means a person liable to contribute to the assets of a company in the event of its being wound up, and, for the purposes of proceedings for determining, and all proceedings prior to the final determination of, the persons deemed to be contributories, includes any person alleged to be a contributory;

"convening notice" has the meaning given by section 72(2);

"the Court" means the Royal Court sitting as an Ordinary Court;

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

"directors' report" has the meaning given by section 68(4);

"entitled to commence business" and like expressions shall be construed in accordance with sections 6(2)(d) and 16;

"extraordinary general meeting" means a general meeting of the members of a company other than an annual general meeting;

"financial year" means a period (whether of 12 months or not) ending not more than 12 months before a company's annual general meeting and beginning on the date of the company's incorporation or (if later) at the end of its previous financial year;

"founder member" has the meaning given by section 1(2);

"Greffier" means Her Majesty's Greffier;

"Her Majesty's Procureur" includes Her Majesty's Comptroller;

"the Law of 1908" means the Law entitled "Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée" of 1908;

"liquidator" includes a provisional liquidator appointed under section 97(b);

"member" in relation to a company, means a person who agrees to become a member of the company and whose name is entered or who is entitled to have his name entered as a shareholder in the company's Register of Members;

"memorandum" means a company's memorandum of association, as lawfully amended from time to time;

"minute book" has the meaning given by section 53(1);

"officer" in relation to a company, includes a director, liquidator, manager and secretary thereof;

"official seal" means a company's official seal for use abroad in accordance with section 26;

"redeemable preference shares" shall be construed in accordance with section 40;

"the Register of Companies" means the register kept by the Greffier 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 of 1908;

"the Register of Members" means the register kept by a company pursuant to section 55(1) in which the names of the company's shareholders are entered, and includes a Register of Transfers kept by a company pursuant to Article LXIV of the Law of 1908;

"registration number" in relation to a company, means the number allocated thereto by the Greffier under section 8(b);

"resolution for reducing share capital" has the meaning given by section 45(3);

"return of allotments" means the return required to be submitted under section 31;

"seal" means a company's common seal or, if the circumstances of the case so require, its official seal; and cognate expressions shall be construed accordingly;

"Sergeant" means Her Majesty's Sergeant;

"shares" means shares in the share capital of a company and (except where a distinction between shares and stock is express or implied) includes stock;

"share premium account" has the meaning given by section 38(1);

"the States" means the States of Guernsey;

"unable to pay its debts" and like expressions in relation to a company shall be construed in accordance with section 95;

"unaudited company" means an unaudited company within the meaning of Schedule 2;

"voluntary winding up" means a winding up conducted in accordance with the provisions of Part XV of this Law.

(2) Unless the context requires otherwise, any reference in this Law to an enactment is a reference thereto as re-enacted, amended, extended or applied.

### **Power to modify by Ordinance**

118. (1) The States may by Ordinance:-

- (a) add, delete or change the name of any body in section 63(1)(a);
- (b) amend sections 62, 63, 64 and 65:-
  - (i) so as to exclude the application of any requirement of those provisions in relation to companies of such descriptions and in such circumstances as may be specified in the Ordinance;
  - (ii) as respects the application of those provisions in any case where a company's auditor is a body corporate or a partnership as such;
- (c) amend sections 28 and 76(1)(a) so as to substitute for references to the month of January and to the 31st of January references to any other period of the year and to the last day of any other month;
- (d) alter any sum specified in sections 76(7), 77(4)(b) and 95(a);
- (e) alter any fee specified in section 115;
- (f) amend any provision of Schedule 2 ("unaudited companies").

(2) An Ordinance under this Law may:-

- (a) empower the Committee or the Commission, in specified circumstances, to make regulations, issue licences or permissions and give directions;
- (b) make provision for its enforcement, including provision as to the creation, trial (summarily or on indictment) and punishment of offences;
- (c) contain incidental, supplemental, transitional and consequential provision;
- (d) be varied or repealed by a subsequent Ordinance of the States;
- (e) make such other provision as the States may consider necessary or expedient for the implementation of this Law;
- (f) make consequential amendments to this Law and other enactments relating to companies or auditors.

(3) Any power conferred by this Law to make an Ordinance or regulation 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;
- (c) so as to prohibit the doing of anything in relation to which provision may be made by Ordinance or regulation except under the authority of and in accordance with the conditions of a licence granted, subject to the satisfaction of such criteria and the payment of such fee as may be specified in the order, by such person or body as may be so specified.

#### **Rights reserved to Crown and States**

119. Nothing in this Law affects the right of Her Majesty or the States to incorporate companies or other bodies under letters patent or Royal Charter or, as the case may be, by Projet de Loi with the sanction of Her Majesty in Council.

#### **Greffier may rely upon Act of Court when registering company**

120. The Greffier, when registering a company's memorandum and articles in the Register of Companies under the authority of an Act of Court under section 3 or 4, and when giving a certificate of registration in relation to the company under section 8, may rely upon the Act of Court in all respects and accordingly shall not be bound to enquire further as to whether, in relation to the company or its memorandum or articles, the provisions of this Law have been complied with.

#### **Savings and transitional provisions**

121. Schedule 1 shall have effect for the purpose of making savings and transitional provisions.

#### **Repeals**

122. The Companies (Guernsey) Laws, 1908 to 1990 and the Companies (Exemption from Audit) Ordinance, 1991 are repealed.

### **Citation**

123. This Law may be cited as the Companies (Guernsey) Law, 1994.

### **Commencement**

124. This Law shall come into force on the day appointed by Ordinance of the States, and such an Ordinance may:-

- (a) appoint different days for different provisions and different purposes;
- (b) include savings and transitional provisions in addition to those contained in Schedule 1.

## **SCHEDULE 1**

### **SAVINGS AND TRANSITIONAL PROVISIONS**

#### **Current winding up proceedings**

1. 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**

2. The provisions of sections 76(9) and 77 shall 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; or
  - (b) under section 24 of the companies (Guernsey) Law, 1990;

as those provisions apply in relation to a company struck off the Register under section 76(4) of this Law.

#### **Companies issuing bank notes**

3. The repeal effected by the Companies (Guernsey) Law, 1990 of Article XXXVI of the Law of 1908 does not affect any liability to which a person was subject before that repeal came into force.

#### **Company books**

4. (1) The repeal effected by the said Law of 1990 of Articles XXXVII and XXXVIII of the Law of 1908 does not relieve a company or any officer thereof of any duty imposed by those Articles in relation to any period before the repeal came into force.  
  
(2) Article XXXVII of the Law of 1908 shall continue to have effect as respects books kept in accordance with its provisions in relation to any period before the repeal of that Article by the said Law of 1990, in the same way as if that repeal had not been enacted.

#### **Special resolutions passed before commencement**

5. Articles XLVI, LI and LVIII of the Law of 1908 apply in relation to a resolution passed before the amendments and repeals of those Articles by the said Law of 1990 came into force, in the same way as if that Law had not been passed.



### **Existing auditors**

6. Section 63 does not apply in the case of a person who satisfies the Committee that at the 1st April, 1991 he was carrying on the business of auditing the accounts of companies.

### **Existing companies and records**

7. The repeal by this Law of the Companies (Guernsey) Laws, 1908 to 1990 shall not affect the incorporation of any company registered or deemed to be registered under those Laws, the validity of any public record kept by the Greffier thereunder or the validity of any record kept by a company thereunder.

### **Savings for regulations**

8. Notwithstanding the repeal by this Law of the Companies (Guernsey) Laws, 1908 to 1990, the Company Documents (Inspection and Copying Fees) Regulations, 1991 shall remain in force.

### **General savings**

9.
  - (1) Anything done under or for the purposes of the Companies (Guernsey) Laws, 1908 to 1990 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 Companies (Guernsey) Laws, 1908 to 1990 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, statutory instrument or rule of court to an enactment or a provision of an enactment repealed and re-enacted (with or without modification) by 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 an enactment repealed and re-enacted (with or without modification) by this Law could have been made or done under this Law, it shall (unless the contrary intention appears) have effect as if made or done under this Law.

## **SCHEDULE 2**

### **UNAUDITED COMPANIES**

#### **Companies to which this Schedule applies**

1. (1) Subject to the provisions of subparagraph (3), this Schedule applies to:-
  - (a) dormant companies; and
  - (b) asset-holding companies.
- (2) For the purposes of this Schedule:-
  - (a) a company is "dormant" during any period in which (disregarding any transaction arising from a founder's subscription for shares in accordance with the company's memorandum, and disregarding any fees payable under the Companies Laws) no transaction occurs which is required by section 59 of this Law to be entered in its accounting records (and a company ceases to be dormant on the occurrence of such a transaction);
  - (b) a company is an "asset-holding company" during any period in which:-
    - (i) its principal purpose is to own specified assets or assets of specified descriptions;
    - (ii) it does not engage in trade;
    - (iii) its activities (if any) are all directly connected with its ownership of those assets;
    - (iv) it receives no significant income other than income derived directly from its ownership of those assets; and
    - (v) it incurs no significant expenditure other than expenditure incidental to its ownership of those assets;

and a company ceases to be an asset-holding company when it no longer has all of the above attributes.

- (3) This Schedule does not apply to:-
  - (a) a company which has more than 10 members; or
  - (b) a company which carries on banking business, insurance business or controlled investment business.

#### **Acquisition and retention of unaudited status**

2. (1) A dormant company or an asset-holding company may become an unaudited company by the unanimous agreement in writing of all of its members.

(2) A company which has become an unaudited company in accordance with subparagraph (1) ceases to be an unaudited company:-

- (a) at the conclusion of any annual general meeting of the company held thereafter, unless a resolution is passed at that meeting with the approval of every member voting thereon (whether in person or by proxy) that the company shall continue to be an unaudited company;
- (b) whenever its annual return is delivered thereafter to the Greffier, unless there is endorsed on that annual return a certificate signed by two directors of the company or by one director and the Secretary thereof:-
  - (i) that this Schedule applies to the company;
  - (ii) that it is a dormant company or an asset-holding company, as the case may be;
  - (iii) that all of its members agreed in writing on a specified date to its being an unaudited company; and
  - (iv) if an annual general meeting of the company has taken place since that agreement, that a resolution has been passed at each such meeting with the approval of every member voting thereon (whether in person or by proxy) that the company shall continue to be an unaudited company; or
- (c) when it ceases to be a company to which this Schedule applies.

#### **Effect of unaudited status**

3. In the case of an unaudited company:-

- (a) sections 62 and 64 this Law do not apply; but
- (b) the directors' report must state that the company's balance sheet and profit and loss account:-
  - (i) have been prepared properly, in accordance with generally accepted accounting principles, and in accordance with any relevant enactment for the time being in force; and
  - (ii) are in agreement with the accounting records, which have been properly kept in accordance with section 59 of this Law; but
  - (iii) have not been audited.

#### **Offences**

4. (1) If any provision of paragraph 3(b) of this Schedule is not complied with in the case of an unaudited company, every officer of that company who is in default is guilty of an offence.

(2) If any certificate such as is referred to in paragraph 2(2)(b) of this Schedule or any report containing such a statement as is referred to in paragraph 3(b) of this Schedule is false in a material

particular, any director or Secretary who signed it when he knew, or could with reasonable diligence have discovered, its falsity is guilty of an offence.

### **Savings**

5. (1) The fact that a company is an unaudited company does not preclude a member or creditor from applying to the Court for the appointment of an auditor under section 62(3) of this Law.
- (2) This Schedule does not prejudice any rights of a member of a company under section 74 or 75 of this Law or under the company's articles, and is subject to those articles.

### **Interpretation**

6. For the purposes of this Schedule, unless the context otherwise requires:-

"assets" means any property, whether real or personal, immovable or movable, corporeal or incorporeal, and includes money, securities, things in action, intellectual property and other intangible assets;

"asset-holding" shall be construed in accordance with paragraph 1(2)(b) above;

"banking business" means the business of accepting money for the purpose of investment on deposit;

"controlled investment business" has the meaning given in the Protection of Investors (Bailiwick of Guernsey) Law, 1987;

"dormant" shall be construed in accordance with paragraph 1(2)(a) above;

"insurance business" has the same meaning as in the Insurance Business (Guernsey) Law, 1986;

"specified" means specified in the company's memorandum.

## **SCHEDULE 3**

### **SECTION 67A**

#### **Directors to be fit and proper persons**

1. Every person who is, or is to be, a director of the company shall be a fit and proper person to hold that position.
2. In determining whether a person is a fit and proper person to hold a particular position, regard shall be had to:-
  - (a) his probity, competence, solvency and soundness of judgment for fulfilling the responsibilities of that position;

- (b) the diligence with which he is fulfilling or likely to fulfil those responsibilities;
  - (c) whether the interests of members or creditors or potential members or creditors of the company are, or are likely to be, in any way threatened by his holding that position; and
  - (d) the rules, standards and guidelines of any relevant professional, governing, regulatory or supervisory authority.
- 3. Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question.
- 4. The States may by Ordinance amend any provision of this Schedule or sections 67A to 67F.