



Jersey

## **BANKRUPTCY (DÉSASTRE) (AMENDMENT No. 5) (JERSEY) LAW 2006**

### **Arrangement**

---

#### **Article**

1	Interpretation.....	75
2	Article 1 amended.....	75
3	Article 2 amended.....	76
4	Article 3 substituted.....	77
5	Article 4 amended.....	77
6	New Article 8A.....	77
7	Article 10 substituted.....	78
8	Article 11 amended.....	79
9	Article 15 amended.....	79
10	New Article 15A.....	80
11	Article 16 amended.....	80
12	Article 17 substituted.....	81
13	Article 18 amended.....	90
14	Article 21 substituted.....	90
15	Article 24 substituted.....	91
16	Article 31 substituted.....	92
17	Article 32 substituted.....	92
18	Article 36 substituted.....	94
19	Article 37 amended.....	94
20	Article 42 amended.....	95
21	Part 10 substituted.....	95
22	Article 49 amended.....	99
23	New Article 49A.....	100
24	Article 50 substituted.....	100
25	Further amendments.....	100
26	Machinery of government amendments.....	100
27	Transitional provision.....	101
28	Citation and commencement.....	101

**SCHEDULE** **102**

---

ADDITIONAL AMENDMENTS TO PRINCIPAL LAW 102



Jersey

## **BANKRUPTCY (DÉSASTRE) (AMENDMENT No. 5) (JERSEY) LAW 2006**

**A LAW** to amend further the Bankruptcy (Désastre) (Jersey) Law 1990.

*Adopted by the States*

*25th October 2005*

*Sanctioned by Order of Her Majesty in Council*

*9th May 2006*

*Registered by the Royal Court*

*26th May 2006*

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

### **1 Interpretation**

In this Law, “the principal Law” means the Bankruptcy (Désastre) (Jersey) Law 1990<sup>1</sup>.

### **2 Article 1 amended**

In Article 1(1) of the principal Law –

- (a) after the definition of “Commission” there shall be inserted the following definitions –

“ ‘Committee’ means the Economic Development Committee;

‘Companies Law’ means the Companies (Jersey) Law 1991<sup>2</sup>;”;

- (b) for the definition of “company” there shall be substituted the following definition –

“ ‘company’ means –

(a) a company as defined by the Companies Law;

(b) a cell as defined by the Companies Law;

(c) a body corporate incorporated outside Jersey;

- (d) a corporation constituted under Article 4 of the ‘Loi (1862) sur les teneurs en fidéicomis et l’incorporation d’associations’<sup>3</sup>; and
  - (e) any association constituted by Act of the States,  
and references to directors and other officers of a company and to voting power at a general meeting of a company shall have effect with any necessary modifications;”;
- (c) in the definition of “the court” the words “the Inferior Number of” shall be omitted;
- (d) at the end of the definition of “debtor” there shall be added the following paragraph –
  - “(c) in relation to a reference to anything done by a debtor before a declaration was made, means the person who became the debtor on the declaration being made although the person may not have been insolvent at the time the thing was done;”;
- (e) for the definition of “prescribed” there shall be substituted the following definitions –
  - “ ‘prescribed by the Committee’ means prescribed by the Committee by Order;
  - ‘prescribed by the court’ means prescribed by the court by Rules made under Article 2;”;
- (f) in the definition of “registrar” in paragraph (a) for the words “Companies (Jersey) Law 1991” there shall be substituted the words “Companies Law”.

### 3 Article 2 amended

In Article 2 of the principal Law –

- (a) in paragraph (2) sub-paragraph (c) shall be omitted;
- (b) in paragraph (2)(i) for the words “such matters” there shall be substituted the words “subject to Article 49A, such matters”;
- (c) the following paragraphs shall be added after paragraph (2) –
  - “(3) The Rules may authorize the Viscount to exercise a discretion including a discretion to extend or abridge the period within which a person is required or authorized to do any act in pursuance of the Rules.
  - (4) The Rules may authorize the Viscount to grant an extension referred to in paragraph (3) although the application for the extension was not made until after the period prescribed by the Rules or any extension of that period.”.

**4 Article 3 substituted**

For Article 3 of the principal Law there shall be substituted the following Article –

**“3 Application for a declaration**

- (1) An application for a declaration may be made by –
  - (a) a creditor of the debtor with a claim against the debtor of not less than such liquidated sum as shall be prescribed by the Committee;
  - (b) the debtor; or
  - (c) the Commission, in the case of a person who –
    - (i) holds or has held a permit under the Insurance Business (Jersey) Law 1996<sup>4</sup> or the Collective Investment Funds (Jersey) Law 1988<sup>5</sup>, or
    - (ii) is or was registered under the Banking Business (Jersey) Law 1991<sup>6</sup> or the Financial Services (Jersey) Law 1998<sup>7</sup>.
- (2) An application may not be made by –
  - (a) a creditor to the extent that the creditor has agreed not to make an application; or
  - (b) a creditor whose only claim is one for the repossession of goods.
- (3) Except as provided by paragraph (4), an application must be made in the form prescribed by the court and must be accompanied by an affidavit verifying the contents of the form.
- (4) Paragraph (3) does not apply to an application made by the Commission under paragraph (1)(c).”.

**5 Article 4 amended**

For Article 4(1)(d) of the principal Law there shall be substituted the following sub-paragraph –

- “(d) who, being a company, is registered under the Companies Law or has been dissolved pursuant to that Law; or”.

**6 New Article 8A**

After Article 8 of the principal Law there shall be inserted the following Article –

**“8A Rights under approved pension arrangements excluded**

- (1) The States may, by Regulations, make provision for or in connection with enabling rights of a person under an approved

pension arrangement to be excluded, in the event of a declaration being made in respect of that person, from the person's property for the purposes of this Law.

- (2) Regulations under this Article may, in particular, make provision –
- (a) for rights under an approved pension arrangement to be excluded from a person's property –
    - (i) by an order made by the court on the person's application, or
    - (ii) in accordance with a qualifying agreement made between the person and the Viscount;
  - (b) for the court's decision whether or not to make such an order in relation to a person to be made by reference to –
    - (i) future likely needs of the person and the person's family, and
    - (ii) whether any benefits (by way of pension or otherwise) are likely to be received by virtue of rights of the person under other pension arrangements and (if so) the extent to which they appear to be likely to be adequate for meeting any such need;
  - (c) for the prescribed persons, in the case of any prescribed pension arrangement, to provide a person or the Viscount on request with information reasonably required by that person or the Viscount for or in connection with the making of such applications and agreements as are mentioned in subparagraph (a);
  - (d) for rights under an approved pension arrangement to be excluded from a person's property to an approved extent.

- (3) Regulations made under this Article –
- (a) may make different provisions in relation to different cases;
  - (b) may exempt specified cases from any provision of the Regulations;
  - (c) may contain provisions that are incidental or supplementary.

- (4) In this Article –
- ‘approved pension arrangement’ means a pension arrangement of a prescribed type;
- ‘prescribed’ means prescribed by Regulations made under this Article;
- ‘qualifying agreement’ means an agreement entered into in such circumstances and satisfying such requirements as may be prescribed.”.

## 7 Article 10 substituted

For Article 10 of the principal Law there shall be substituted the following Article –

**“10 Prohibition on pursuing alternative remedies, etc. after declaration**

- (1) With effect from the date of the declaration a creditor to whom the debtor is indebted in respect of a debt provable in the ‘désastre’ shall not –
  - (a) have any other remedy against the property or person of the debtor in respect of the debt;
  - (b) commence any action or legal proceedings to recover the debt; or
  - (c) except with the consent of the Viscount or by order of the court, continue any action or legal proceedings to recover the debt.
- (2) Consent under paragraph (1)(c) may be given on such terms as the Viscount or the court thinks fit.
- (3) If the debtor is a company –
  - (a) a transfer of shares in the debtor not being a transfer made to or with the sanction of the Viscount; or
  - (b) an alteration in the status of the company’s members, made after the declaration is void.”.

**8 Article 11 amended**

For Article 11(4) of the principal Law there shall be substituted the following paragraphs –

- “(4) If, immediately prior to a declaration, the debtor is beneficially entitled to immovable property as a joint owner (‘conjointement par ensemble’) the title to the property shall, as from the date of the declaration, be taken to have been converted into an ownership in common in equal shares (‘en indivis en parts égales’) and any hypothecs to which the immovable property is subject shall, with the debts secured by it, be apportioned equally between those shares.
- (5) If, after a conversion and any apportionment under paragraph (4) has taken place, the court, on an application made under Article 7(1), makes an order recalling the declaration, the court may also make such order as the court thinks fit for restoring the position to what it would have been if the declaration had not been made or as nearly thereto as the court thinks practicable.”.

**9 Article 15 amended**

For Article 15(1) and (2) of the principal Law there shall be substituted the following paragraphs –

- “(1) For the purpose of this Article ‘onerous property’ means –
  - (a) movable property;
  - (b) a contract lease;

(c) other immovable property if it is situated outside Jersey, that is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act, and includes an unprofitable contract.

- (2) The Viscount may, within 6 months of the declaration, and by giving the notice prescribed by the court, disclaim any onerous property of the debtor vested in the Viscount, and may do so notwithstanding that the Viscount has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in respect of it.”.

## 10 New Article 15A

After Article 15 of the principal Law there shall be inserted the following Article –

### “15A Disclaimer of contract leases

- (1) The disclaimer of a contract lease does not take effect unless a copy of its disclaimer has been served (so far as the Viscount is aware of their addresses) on every person claiming under the debtor as a hypothecary creditor or under the lessee and either –
- (a) no application under Article 16 is made with respect to the contract lease before the end of the period of 14 days beginning with the day on which the last notice under this paragraph was served; or
  - (b) where such an application has been made, the court directs that the disclaimer is to have effect.
- (2) Where the court gives a direction under paragraph (1)(b) it may also, instead of or in addition to any order it makes under Article 16, make such orders with respect to fixtures, tenant’s improvements and other matters arising out of the lease as it thinks fit.”.

## 11 Article 16 amended

For Article 16(2) of the principal Law there shall be substituted the following paragraph –

- “(2) An application may be made to the court under this Article by –
- (a) any person who claims an interest in the disclaimed property (which term shall be taken to include, in the case of the disclaimer of a contract lease, a person claiming under the debtor as a hypothecary creditor or an under lessee); or
  - (b) any person who is under any liability in respect of the disclaimed property (which term shall be taken to include a guarantor), not being a liability discharged by the disclaimer.”.



**12 Article 17 substituted**

For Article 17 of the principal Law there shall be substituted the following Articles –

**“17 Transactions at an undervalue**

- (1) If a debtor has at a relevant time entered into a transaction with a person at an undervalue the court may, on the application of the Viscount, make such an order as the court thinks fit for restoring the position to what it would have been if the debtor had not entered into the transaction.
- (2) The court shall not make an order under paragraph (1) if it is satisfied –
  - (a) that the debtor entered into the transaction in good faith for the purpose of carrying on a business or, in the case of a company, its business; and
  - (b) that, at the time the debtor entered into the transaction, there were reasonable grounds for believing that the transaction would be of benefit to the debtor.
- (3) Without prejudice to the generality of paragraph (1) but subject to paragraph (5), an order made under paragraph (1) may do all or any of the following things, namely –
  - (a) require property transferred as part of the transaction to be vested in the Viscount;
  - (b) require property to be so vested if it represents in a person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;
  - (c) release or discharge (in whole or in part) security given by the debtor;
  - (d) require a person to pay in respect of a benefit received by him or her from the debtor such sum to the Viscount as the court directs;
  - (e) provide for a surety or guarantor whose obligation to a person was released or discharged (in whole or in part) under the transaction to be under such new or revived obligation to that person as the court thinks appropriate;
  - (f) provide –
    - (i) for security to be provided for the discharge of an obligation imposed by or arising under the order,
    - (ii) for the obligation to be secured on any property, and
    - (iii) for the security to have the same priority as the security released or discharged (in whole or in part) under the transaction;
  - (g) provide for the extent to which a person –

- (i) whose property is vested in the Viscount by the order, or
  - (ii) on whom an obligation is imposed by the order,is to be able to prove in the 'désastre' of the debtor for debts or other liabilities that arose from, or were released or discharged (in whole or in part) under or by, the transaction.
- (4) Except to the extent provided by paragraph (5), an order made under paragraph (1) may affect the property of or impose an obligation on any person, whether or not he or she is the person with whom the debtor entered into the transaction.
- (5) An order made under paragraph (1) –
  - (a) shall not prejudice an interest in property that was acquired from a person other than the debtor and was acquired in good faith and for value, or prejudice any interest deriving from such an interest; and
  - (b) shall not require a person who in good faith and for value received a benefit from the transaction to pay a sum to the Viscount, except where the person was a party to the transaction.
- (6) In considering for the purposes of this Article whether a person has acted in good faith, the court may take into consideration –
  - (a) whether the person was aware –
    - (i) that the debtor had entered into a transaction at an undervalue, and
    - (ii) that the debtor was insolvent or would as a likely result of entering into the transaction become insolvent; and
  - (b) whether the person was an associate of or was connected with either the debtor or the person with whom the debtor had entered into the transaction.
- (7) For the purposes of this Article, a debtor enters into a transaction with a person at an undervalue if –
  - (a) he or she makes a gift to that person;
  - (b) he or she enters into a transaction with that person –
    - (i) by way of a marriage settlement, or
    - (ii) on terms for which there is no 'cause', or
    - (iii) for a 'cause' the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the 'cause' provided by the debtor.
- (8) Subject to paragraphs (9) and (10), the time at which a debtor entered into a transaction at an undervalue is a relevant time for the purpose of paragraph (1) if the transaction was entered into during the period of 5 years immediately preceding the making of the declaration.

- (9) The time to which paragraph (8) refers is not a relevant time unless –
  - (a) the debtor was insolvent when he or she entered into the transaction; or
  - (b) the debtor became insolvent as a result of the transaction.
- (10) If the transaction at an undervalue was entered into with a person connected with the debtor or with an associate of the debtor, paragraph (9) does not apply and the time to which paragraph (8) refers is a relevant time unless it is proved that –
  - (a) the debtor was not insolvent when he or she entered into the transaction; and
  - (b) the debtor did not become insolvent as a result of the transaction.
- (11) For the purposes of this Article ‘cause’ has the meaning assigned to it by the customary law of Jersey.

#### **17A Giving of preferences**

- (1) If a debtor has at a relevant time given a preference to a person the court may, on the application of the Viscount, make such an order as the court thinks fit for restoring the position to what it would have been if the preference had not been given.
- (2) Without prejudice to the generality of paragraph (1) but subject to paragraph (4), an order made under paragraph (1) may do all or any of the following things, namely –
  - (a) require property transferred in connection with the giving of the preference to be vested in the Viscount;
  - (b) require property to be vested in the Viscount if it represents in any person’s hands the application either of the proceeds of sale of property so transferred or of money so transferred;
  - (c) release or discharge (in whole or in part) security given by the debtor;
  - (d) require a person to pay in respect of a benefit received by him or her from the debtor such sum to the Viscount as the court directs;
  - (e) provide for a surety or guarantor whose obligation to a person was released or discharged (in whole or in part) by the giving of the preference to be under such new or revived obligation to that person as the court thinks appropriate;
  - (f) provide –
    - (i) for security to be provided for the discharge of any obligation imposed by or arising under the order,
    - (ii) for such an obligation to be secured on any property, and

- (iii) for the security to have the same priority as the security released or discharged (in whole or in part) by the giving of the preference; and
  - (g) provide for the extent to which a person –
    - (i) whose property is vested by the order in the Viscount, or
    - (ii) on whom obligations are imposed by the order, is to be able to prove in the ‘désastre’ of the debtor for debts or other liabilities that arose from, or were released or discharged (in whole or in part) under or by the giving of the preference.
- (3) Except as provided by paragraph (4), an order made under paragraph (1) may affect the property of, or impose an obligation on, any person whether or not he or she is the person to whom the preference was given.
- (4) An order made under paragraph (1) shall not –
  - (a) prejudice an interest in property that was acquired from a person other than the debtor and was acquired in good faith and for value, or prejudice any interest deriving from such an interest; or
  - (b) require a person who in good faith and for value received a benefit from the preference to pay a sum to the Viscount, except where the payment is in respect of a preference given to that person at a time when he or she was a creditor of the debtor.
- (5) In considering for the purpose of this Article whether a person has acted in good faith the court may take into consideration –
  - (a) whether the person had notice –
    - (i) of the circumstances that amounted to the giving of the preference by the debtor, and
    - (ii) of the fact that the debtor was insolvent or would as a likely result of giving the preference become insolvent; and
  - (b) whether the person was an associate of or was connected with either the debtor or the person to whom the debtor gave the preference.
- (6) For the purposes of this Article, a debtor gives a preference to a person if –
  - (a) the person is a creditor of the debtor or a surety or guarantor for a debt or other liability of the debtor; and
  - (b) the debtor –
    - (i) does anything, or
    - (ii) suffers anything to be done,that has the effect of putting the person into a position which, in the event of a declaration being made in respect of that debtor’s

property, will be better than the position he or she would have been in if that thing had not been done.

- (7) The court shall not make an order under this Article in respect of a preference given to a person unless the debtor, when giving the preference, was influenced in deciding to give the preference by a desire to put the person into a position which, in the event of a declaration being made in respect of the debtor's property, would be better than the position in which the person would be if the preference had not been given.
- (8) A debtor who gave a preference to a person who was, at the time the preference was given, an associate of or connected with the debtor (otherwise than by reason only of being the person's employee) shall be presumed, unless the contrary is shown, to have been influenced in deciding to give the preference by the desire mentioned in paragraph (7).
- (9) Subject to paragraphs (10) and (11), the time at which a debtor gives a preference is a relevant time for the purpose of paragraph (1) if the preference was given during the period of 12 months immediately preceding the making of the declaration.
- (10) The time to which paragraph (9) refers is not a relevant time unless –
  - (a) the debtor was insolvent at the time the preference was given; or
  - (b) the debtor became insolvent as a result of giving the preference.
- (11) If the preference was given to a person connected with the debtor or to an associate of the debtor, paragraph (10) does not apply and the time to which paragraph (9) refers is a relevant time unless it is proved that –
  - (a) the debtor was not insolvent at the time the preference was given; and
  - (b) the debtor did not become insolvent as a result of the preference being given.

#### **17B Certain definitions in respect of Articles 17 and 17A**

- (1) For the purposes of Articles 17 and 17A, a person is connected with a company if the person is –
  - (a) a director of the company; or
  - (b) an associate of a director of the company; or
  - (c) an associate of the company.
- (2) For the purposes of Articles 17 and 17A and of this Article –
  - (a) a person is an associate of an individual if that person is the individual's husband or wife, or is a relative, or the husband

- or wife of a relative, of the individual or of the individual's husband or wife;
- (b) a person is an associate of any person with whom he or she is in partnership, and of the husband or wife or a relative of any individual with whom he or she is in partnership;
  - (c) a person is an associate of any person whom he or she employs or by whom he or she is employed;
  - (d) a person in his or her capacity as a trustee of a trust is an associate of another person if –
    - (i) the beneficiaries of the trust include that other person or an associate of that other person, or
    - (ii) the terms of the trust confer a power that may be exercised for the benefit of that other person or an associate of that other person;
  - (e) a company is an associate of another company –
    - (i) if the same person has control of both companies, or a person has control of one company and either persons who are his or her associates, or he or she and persons who are his or her associates, have control of the other company, or
    - (ii) if each company is controlled by a group of 2 or more persons and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he or she is an associate;
  - (f) a company is an associate of another person if that person has control of the company or if that person and persons who are his or her associates together have control of the company; and
  - (g) a provision that a person is an associate of another person shall be taken to mean that they are associates of each other.
- (3) For the purposes of this Article a person is a relative of an individual if he or she is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, for which purpose –
- (a) any relationship of the half blood shall be treated as a relationship of the whole blood and the stepchild or adopted child of a person as his or her child; and
  - (b) an illegitimate child shall be treated as the legitimate child of his or her mother and reputed father.
- (4) References in this Article to a husband or wife include a former husband or wife and a reputed husband or wife.
- (5) For the purposes of this Article, a director or other officer of a company shall be treated as employed by the company.

(6) For the purposes of this Article, a person shall be taken as having control of a company if –

(a) the directors of the company or of another company that has control of it (or any of them) are accustomed to act in accordance with his or her directions or instructions; or

(b) he or she is entitled –

(i) to exercise, or

(ii) to control the exercise of,

more than one third of the voting power at any general meeting of the company or of another company which has control of it,

and where 2 or more persons together satisfy either of the above conditions, they shall be taken as having control of the company.

### **17C Extortionate credit transactions**

(1) This Article applies where a debtor is, or has been, a party to a transaction for, or involving, the provision of credit to the debtor.

(2) The court may, on the application of the Viscount, make an order with respect to the transaction if the transaction is or was extortionate and was entered into in the period of 3 years ending with the declaration.

(3) For the purposes of this Article, a transaction is extortionate if, having regard to the risk accepted by the person providing the credit –

(a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or

(b) it otherwise grossly contravened ordinary principles of fair dealing.

(4) It shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this Article is or, as the case may be, was extortionate.

(5) An order under this Article with respect to a transaction may contain one or more of the following as the court thinks fit –

(a) provision setting aside the whole or part of an obligation created by the transaction;

(b) provision otherwise varying the terms of the transaction or varying the terms on which a security for the purposes of the transaction is held;

(c) provision requiring a person who is or was a party to the transaction to pay to the Viscount sums paid to that person, by virtue of the transaction, by the debtor;

- (d) provision requiring a person to surrender to the Viscount property held by him or her as security for the purposes of the transaction;
- (e) provision directing accounts to be taken between any persons.

#### **17D Recovery of excessive approved pension arrangement contributions**

- (1) Where a debtor has excluded rights under an approved pension arrangement, the Viscount may apply to the court for an order under this Article.
- (2) If the court is satisfied –
  - (a) that the rights under the arrangement are to any extent, and whether directly or indirectly, the fruits of relevant contributions; and
  - (b) that the making of any of the relevant contributions ('the excessive contributions') has unfairly prejudiced the debtor's creditors,the court may make such order as it thinks fit for restoring the position to what it would have been had the excessive contributions not been made.
- (3) In paragraph (2) 'relevant contributions' means contributions to the approved pension arrangement or any other pension arrangement –
  - (a) that the debtor has at any time made on his or her own behalf; or
  - (b) that have at any time been made on his or her behalf.
- (4) The court shall, in determining whether it is satisfied under paragraph (2)(b), consider in particular –
  - (a) whether any of the contributions were made for the purpose of putting assets beyond the reach of the debtor's creditors or any of them; and
  - (b) whether the total amount of any contributions –
    - (i) made by or on behalf of the debtor to pension arrangements, and
    - (ii) represented (whether directly or indirectly) by excluded rights under the approved pension arrangement,is an amount which is excessive in view of the debtor's circumstances when those contributions were made.
- (5) For the purposes of this Article, rights of a debtor under an approved pension arrangement are excluded rights if they are rights which are excluded from forming part of his or her property by virtue of Regulations made under Article 8A.
- (6) Without prejudice to the generality of paragraph (2), an order under that paragraph may include provision –



- (a) requiring the person responsible for the approved pension arrangement to pay an amount to the Viscount;
  - (b) adjusting the liabilities of the arrangement in respect of the debtor;
  - (c) adjusting any liabilities of the arrangement in respect of any other person that derive, directly or indirectly, from rights of the debtor under the arrangement;
  - (d) for the recovery by the person responsible for the arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that person in complying in the debtor's case with any requirement under paragraph (12) or in giving effect to the order.
- (7) In paragraph (6), references to adjusting the liabilities of the arrangement in respect of a person include (in particular) reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.
- (8) The maximum amount which the person responsible for an arrangement may be required to pay by an order under paragraph (2) is the lesser of –
- (a) the amount of the excessive contributions; and
  - (b) the value of the debtor's rights under the approved pension arrangement.
- (9) An order under paragraph (2) that requires the person responsible for an arrangement to pay an amount ('the restoration amount') to the Viscount must provide for the liabilities of the arrangement to be correspondingly reduced.
- (10) For the purposes of paragraph (9), liabilities are correspondingly reduced if the difference between –
- (a) the amount of the liabilities immediately before the reduction; and
  - (b) the amount of the liabilities immediately after the reduction, is equal to the restoration amount.
- (11) An order under paragraph (2) in respect of an arrangement –
- (a) shall be binding on the person responsible for the arrangement; and
  - (b) overrides provisions of the arrangement to the extent that they conflict with the provisions of the order.
- (12) The person responsible for –
- (a) an approved pension arrangement under which a debtor has rights; or
  - (b) a pension arrangement under which a debtor has at any time had rights,

shall, on the Viscount making a written request, provide the Viscount with such information about the arrangement and rights as the Viscount may reasonably require for, or in connection with, the making of applications under paragraph (2).

- (13) Where any sum is required by an order under paragraph (2) to be paid to the Viscount that sum shall form part of the debtor's property.
- (14) References in this Article to the person responsible for an approved pension arrangement are to –
- (a) the trustees, managers or provider of the arrangement; or
  - (b) the person having functions in relation to the arrangement corresponding to those of a trustee, manager or provider.
- (15) In this Article 'approved pension arrangement' means a pension arrangement prescribed by Regulations made under Article 8A."

### 13 Article 18 amended

In Article 18 of the principal Law –

- (a) for paragraph (1)(d) there shall be substituted the following subparagraph –
- “(d) supply such information regarding his or her expenditure and sources of income after the declaration as the Viscount may require;”;
- and
- (b) for paragraph (2) there shall be substituted the following paragraphs –
- “(2) Where the debtor is a company any person who is a director of the company or at the time of the declaration was a director of the company shall notify the Viscount immediately in writing of any change of his or her address, employment or name.
  - (2A) If a person without reasonable excuse fails to comply with a requirement of paragraph (1) or (2) he or she commits an offence and is liable to imprisonment for a term of 6 months and a fine.”.

### 14 Article 21 substituted

For Article 21 of the principal Law there shall be substituted the following Article –

#### “21 Unenforceability of liens on records

- (1) Subject to paragraph (2), a lien or other right to retain possession of a record of the debtor shall be unenforceable to the extent that its enforcement would deny possession of the record to the Viscount.
- (2) Paragraph (1) does not apply to a lien on a document that gives a title to property and is held as such.”.

**15 Article 24 substituted**

For Article 24 of the principal Law there shall be substituted the following Article –

**“24 Debtors prohibited from acting in certain capacities**

(1) In this Article –

‘person to whom this Article applies’ means –

- (a) a debtor during the course of the ‘désastre’;
- (b) a person who is or has the status of an undischarged bankrupt (by whatever name called) under the laws of any other jurisdiction;

‘private office’ means the office of curator, director of a company, ‘electeur’, liquidator of a company, trustee, ‘tuteur’, executor or administrator of a deceased person’s estate or the donee of a power of attorney;

‘public office’ means the office of Connétable, Centenier, Vingtenier, Constable’s Officer, ‘Procureur du Bien Public’, member of the Assessment Committee constituted under the Parish Rate (Administration) (Jersey) Law 2003<sup>8</sup>.

(2) A person to whom this Article applies shall not hold a public or private office.

(3) A person who at the time of becoming a person to whom this Article applies is the holder of a public or private office shall resign from the office forthwith.

(4) Subject to paragraph (5), a person to whom this Article applies is not qualified to sit on a jury.

(5) If a person who is sitting on a jury becomes a person to whom this Article applies the person is qualified to continue to sit on that jury until his or her services on the jury are no longer required.

(6) A person who –

- (a) contravenes paragraph (2); or
- (b) fails to comply with paragraph (3); or
- (c) sits on a jury when he or she is not qualified to do so by virtue of paragraph (4),

commits an offence and is liable to imprisonment for a term of 6 months and a fine.

(7) Where the debtor is a company, the Court may, on the application of the Viscount, make any order in respect of a person who is or was a director of the company that it would be permitted to make under Article 78 of the Companies Law in respect of such a person.”.

**16 Article 31 substituted**

For Article 31 of the principal Law there shall be substituted the following Article –

**“31 Proofs of debts to be examined and admitted or rejected**

- (1) The Viscount may admit or reject proof of a debt in whole or in part.
- (2) Before admitting or rejecting proof of a debt the Viscount shall examine the proof and any statement opposing the admission of the debt.
- (3) Before admitting or rejecting proof of a debt the Viscount may require further evidence in support of, or in opposition to, its admission.
- (4) The Viscount may reject in whole or part any claim for interest on a debt if the Viscount considers the rate of interest to be extortionate.
- (5) If the Viscount rejects proof of a debt in whole or in part the Viscount shall serve notice of rejection in the manner prescribed by the court on the person who provided the proof.
- (6) If the Viscount rejects a statement opposing admission of a debt in whole or in part the Viscount shall serve notice of rejection in the manner prescribed by the court on the person who provided that statement.
- (7) If a person upon whom notice has been served in accordance with paragraph (5) or paragraph (6) is dissatisfied with the decision of the Viscount and wants the decision reviewed by the court he or she must, within the time prescribed by the court, request the Viscount to apply to the court for a date to be fixed for the court to review the decision.
- (8) The Viscount shall comply with a request made in accordance with paragraph (7).”.

**17 Article 32 substituted**

For Article 32 of the principal Law there shall be substituted the following Article –

**“32 Order of payment of debts**

- (1) Except as otherwise provided by this Article, the Viscount shall apply money the Viscount receives by the realization of the property of a debtor in the following order –
  - (a) in payment of the Viscount’s fees and emoluments and all costs, charges, allowances and expenses properly incurred by or payable by the Viscount in the ‘désastre’;

- 
- (b) in payment to any employee of the debtor of any amount due to the employee at the date of the declaration in respect of arrears of –
    - (i) wages or salary for services rendered to the debtor during the 6 months immediately preceding the declaration, and
    - (ii) holiday pay and bonuses,but not exceeding in either case such amount as may be prescribed by the Committee;
  - (c) in payment of –
    - (i) all sums payable to the Health Insurance Fund under Article 25 of the Health Insurance (Jersey) Law 1967<sup>9</sup>, to the Social Security Fund under Article 41 of the Social Security (Jersey) Law 1974<sup>10</sup> and to the Comptroller of Income Tax under Article 45 of the Income Tax (Jersey) Law 1961<sup>11</sup>,
    - (ii) an amount due by the debtor to his or her landlord for the payment of rent due to the extent, if any, that his or her claim qualifies for preference by virtue of customary law,
    - (iii) parochial rates due to any parish in Jersey for a period not exceeding 2 years;
  - (d) in payment of all other debts proved in the ‘désastre’.
- (2) The debts referred to in paragraphs (1)(b) and(c) shall rank equally between themselves and shall be paid in full, unless the property of the debtor is insufficient to meet them, in which case they shall abate in equal proportions between themselves.
  - (3) Debts provable in the ‘désastre’, other than those referred to in paragraph (2), shall be paid on an equal footing.
  - (4) Except as provided by paragraph (5), hypothecary creditors shall be entitled to preference in the order of the date of creation of their respective judicial or conventional hypothecs upon the proceeds of sale of any ‘hereditament, corporeal or incorporeal’ upon which their respective judicial or conventional hypothecs are secured.
  - (5) If the Viscount sells a corporeal hereditament that is subject to a judicial or conventional hypothec the proceeds of sale shall be applied first in payment of the costs, disbursements and other charges necessarily incurred by the Viscount in connection with the sale and the Viscount’s fees in connection with the sale.
  - (6) If the proceeds of sale of a ‘hereditament, corporeal or incorporeal,’ upon which a judicial or conventional hypothec is secured is insufficient to meet in full the claim of a hypothecary creditor the balance shall rank for payment on the same footing as other debts mentioned in paragraph (1)(d).
  - (7) Where any property of the debtor is subject to a security interest the proceeds of sale of the collateral shall be applied in the manner
-

provided by Article 8(6) of the Security Interests (Jersey) Law 1983<sup>12</sup>.

- (8) If the debtor at any time before the realisation in accordance with this Law of his or her property has made application to the court to place his or her property in its hands (remettre son bien entre les mains de la Justice) the reference in paragraph (1)(a) to the Viscount's costs, charges, allowances and expenses shall be taken to include a reference to the costs (frais) of the Autorisés des Justice payable by virtue of Article 10 of the Loi (1839) sur les remises des biens<sup>13</sup>.
- (9) In this Article –
- (a) 'corporeal hereditament' has the meaning assigned to 'corps de bien-fonds' in Article 1 of the Loi (1880) sur la propriété foncière<sup>14</sup>;
- (b) 'incorporeal hereditament' has the meaning assigned to 'bien-fonds incorporeal' in Article 1 of the Loi (1996) sur l'hypothèque des biens-fonds incorporels<sup>15</sup>."

## 18 Article 36 substituted

For Article 36 of the principal Law there shall be substituted the following Article –

### **"36 Duty of Viscount to report to creditors and pay final dividend**

- (1) When the Viscount has realised all the debtor's property, or as much of it as in the Viscount's opinion can be realised without needlessly protracting the 'désastre', the Viscount must –
- (a) supply all the creditors of the debtor with a report and accounts relating to the 'désastre'; and
- (b) pay whatever final dividend is due.
- (2) If the debtor is a company registered under the Companies Law the Viscount must notify the registrar in writing of the date of payment of the final dividend.
- (3) If the debtor is a limited liability partnership, the Viscount must notify the registrar in writing of the date of payment of the final dividend."

## 19 Article 37 amended

For Article 37(6) of the principal Law there shall be substituted the following paragraph –

- "(6) If a surplus remains after payment in full of interest referred to in this Article the Viscount must –
- (a) if the debtor is a company and the memorandum or articles of the company do not otherwise provide, distribute the

- surplus among the members of the company according to their rights and interests in the company; and
- (b) in any other case, pay the surplus to the debtor.”.

## 20 Article 42 amended

Article 42(1) of the principal Law shall be amended by substituting a semi-colon for the full stop at the end and adding the following sub-paragraph –

- “(c) any debt or liability under a maintenance order (as that term is defined by the Maintenance Orders (Facilities for Enforcement) Jersey) Law 2000<sup>16</sup>) that is enforceable in Jersey or elsewhere by virtue of that Law or the Maintenance Orders (Enforcement) (Jersey) Law 1999<sup>17</sup>.”.

## 21 Part 10 substituted

For Part 10 of the principal Law there shall be substituted the following Part –

### “PART 10

#### ADDITIONAL PROVISIONS WHERE DEBTOR IS A COMPANY

##### 42A Interpretation - Part 10

Words and expressions used in this Part and defined in the Companies Law have the same meaning in this Part as they have in the Companies Law.

##### 43 Viscount to report possible misconduct

- (1) The Viscount in the case of a ‘désastre’ in respect of a company shall take the action specified in paragraph (2) if it appears to the Viscount in the course of the ‘désastre’ –
  - (a) that the company has committed a criminal offence;
  - (b) that a person has committed a criminal offence in relation to the company; or
  - (c) in the case of a director, that for any reason (whether in relation to the company, or to a holding company of the company or to any subsidiary of such a holding company) his or her conduct has been such that an order should be sought against him or her under Article 78 of the Companies Law.
- (2) The Viscount shall –
  - (a) forthwith report the matter to the Attorney-General; and
  - (b) furnish the Attorney-General with information and give him or her access to, and facilities for inspecting and taking

copies of, documents (being information or documents in the possession or under the control of the Viscount and relating to the matter in question) as the Attorney-General requires.

- (3) Where a report is made to the Attorney General under paragraph (2), the Attorney-General may refer the matter to the Committee or the Commission for further enquiry.
- (4) Where a matter is referred to the Committee or the Commission under paragraph (3) it shall have effect as if it were a matter referred to the Committee or the Commission under Article 184(4) of the Companies Law.
- (5) Where criminal proceedings are instituted by the Attorney-General following a report or reference under this Article the Viscount shall give the Attorney-General any assistance in connection with the prosecution which the Viscount is reasonably able to give.

#### **44 Responsibility of persons for wrongful trading**

- (1) Subject to paragraph (3), if in the course of a 'désastre' in respect of a company it appears that paragraph (2) applies in relation to a person who is or has been a director of the company, the court on the application of the Viscount may, if it thinks it proper to do so, order that that person be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company arising after the time referred to in paragraph (2).
- (2) This paragraph applies in relation to a person if at a time before the date of the declaration that person as a director of the company –
  - (a) knew that there was no reasonable prospect that the company would avoid a declaration or a creditors' winding up; or
  - (b) on the facts known to him or her was reckless as to whether the company would avoid a declaration or such a winding-up.
- (3) The court shall not make an order under paragraph (1) with respect to a person if it is satisfied that after either condition specified in paragraph (2) was first satisfied in relation to him or her the person took reasonable steps with a view to minimising the potential loss to the company's creditors.
- (4) On the hearing of an application under this Article, the Viscount may himself or herself give evidence or call witnesses.

#### **45 Responsibility for fraudulent trading**

- (1) If, in the course of a désastre in respect of a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of another person, or for a fraudulent purpose, the court may, on the application of the Viscount, order that persons who were knowingly parties to the carrying on of the business in that manner are to be liable to make



such contributions to the company's assets as the court thinks proper.

- (2) On the hearing of the application the Viscount may himself or herself give evidence or call witnesses.
- (3) Where the court makes an order under this Article or Article 44, it may give such further directions as it thinks proper for giving effect to the order.
- (4) Where the court makes an order under this Article or Article 44 in relation to a person who is a creditor of the company, it may direct that the whole or part of a debt owed by the company to that person and any interest thereon shall rank in priority after all other debts owed by the company and after any interest on those debts.
- (5) This Article and Article 44 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the order under paragraph (1) is to be made.

#### **45A Liability in respect of purchase or redemption of shares**

- (1) This Article applies where a declaration has been made in respect of a company (other than an open-ended investment company) and –
  - (a) it has within 12 months before the declaration made a payment under Article 55 or Article 57 of the Companies Law or under Regulations made under Article 59 of that Law in respect of the redemption or purchase of its own shares;
  - (b) the payment was not made wholly out of profits available for distribution or out of the proceeds of a fresh issue of shares made for the purpose of the redemption or purchase; and
  - (c) the aggregate realisable value of the company's assets and the amount paid by way of contribution to its assets (apart from this Article) is not sufficient for the payment of its liabilities and the expenses in connection with the 'désastre'.
- (2) In this Article, the amount of a payment that has not been made wholly out of profits available for distribution or out of the proceeds of a fresh issue of shares made for the purpose of the redemption or purchase is referred to as 'the relevant payment'.
- (3) Subject to paragraphs (5) and (6), the court on the application of the Viscount may order –
  - (a) a person from whom the shares were redeemed or purchased; or
  - (b) a director,to contribute in accordance with this Article to the company's assets so as to enable the insufficiency to be met.

- (4) A person from whom any shares were redeemed or purchased may be ordered to contribute an amount not exceeding so much of the relevant payment as was made in respect of his or her shares.
- (5) A person from whom shares were redeemed or purchased shall not be ordered to contribute under this Article unless the court is satisfied that, when the person received payment for his or her shares –
  - (a) the person knew; or
  - (b) the person ought to have concluded from the facts known to him or her,  
that immediately after the relevant payment was made the company would be unable to discharge its liabilities as they fell due, and that the realisable value of the company's assets would be less than the aggregate of its liabilities.
- (6) A director who has expressed an opinion under Article 55(9) of the Companies Law may be ordered, jointly and severally with any other person who is liable to contribute under this Article, to contribute an amount not exceeding the relevant payment, unless the court is satisfied that the director had grounds for the opinion expressed.
- (7) Where a person has contributed an amount under this Article, the court may direct any other person who is jointly and severally liable to contribute under this Article to pay to him or her such amount as the court thinks just and reasonable.
- (8) Article 45B does not apply in relation to liability accruing by virtue of this Article.
- (9) The States may by Regulations extend or modify the provisions of this Article in such ways as may appear to be reasonably necessary in consequence of any Regulations made under Article 59 of the Companies Law.

#### **45B Liability as contributories of present and past members**

- (1) Except as otherwise provided by this Article, where a declaration has been made in respect of a company, each present and past member of the company is liable to contribute to its assets to an amount sufficient for payment of its liabilities, the expenses of the 'désastre', and for the adjustment of the rights of the contributories among themselves.
- (2) A past member of a particular class is not, as a member of that class, liable to contribute –
  - (a) unless it appears to the court that the present members of that class are unable to satisfy the contributions required to be made by them as such members;
  - (b) if he or she ceased to be a member of that class for 12 months or more before the declaration; or

- (c) in respect of a liability of the company contracted after he or she ceased to be a member of that class.
- (3) A past or present guarantor member is not liable in that capacity to contribute unless it appears to the court that the past and present members in their capacity as the holders of limited shares are unable to satisfy the contributions required to be made by them as such members.
- (4) A past or present member in his or her capacity as the holder of an unlimited share is not liable to contribute unless it appears to the court that the past and present members in their capacities as the holders of limited shares or as guarantor members are unable to satisfy the contributions required to be made by them as such members.
- (5) A contribution shall not be required from a past or present member, as such a member, exceeding –
  - (a) any amount unpaid on any limited shares in respect of which he or she is liable; or
  - (b) the amount undertaken to be contributed by him or her to the assets of the company if it should be wound up.
- (6) A sum due to a member of the company, in his or her capacity as a member, by way of dividends, profits or otherwise is not in a case of competition between himself or herself and any other creditor who is not a member of the company, a liability of the company payable to that member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributors among themselves.”.

## 22 Article 49 amended

In Article 49 of the principal Law –

- (a) there shall be substituted for paragraph (1) the following paragraph –
  - “(1) The court may, to the extent it thinks fit, assist the courts of a relevant country or territory in all matters relating to the insolvency of a person, and when doing so may have regard to the extent it considers appropriate to the provisions for the time being of any model law on cross border insolvency prepared by the United Nations Commission on International Trade Law.”;
- (b) in paragraph (2) for the word “prescribed” there shall be substituted the word “relevant”;
- (c) the following paragraph shall be added at the end –
  - “(4) In this Article ‘relevant country or territory’ means a country or territory prescribed by the Committee.”.

**23 New Article 49A**

The following Article shall be inserted after Article 49 of the principal Law –

**“49A Orders**

The Committee may make Orders prescribing any matter that is to be prescribed by the Committee by any provision of this Law.”.

**24 Article 50 substituted**

For Article 50 of the principal Law there shall be substituted the following Article –

**50 Registration in the Public Registry**

The Judicial Greffier shall register in the Public Registry all Acts, orders and notices affecting immovable property made under this Law.

**25 Further amendments**

A provision of the principal Law specified in Column 1 of the Schedule to this Law shall be amended by deleting from it the words specified in Column 2 of that Schedule and substituting the words specified in Column 3.

**26 Machinery of government amendments**

- (1) Article 1(1) of the principal Law is amended –
  - (a) by omitting the definition “Committee”; and
  - (b) by inserting after the definition “limited liability partnership” the following definition –

“ ‘Minister’ means the Minister for Economic Development;”;
- (2) In the following provisions of the principal Law for the word “Committee” there shall be substituted the word “Minister” –
  - (a) Article 1 (in the definition of “prescribed”) (twice occurring);
  - (b) Article 3(1);
  - (c) Article 19(2)(a);
  - (d) Article 25(1);
  - (e) Article 32(1);
  - (f) Article 43(3);
  - (g) Article 43(4) (twice occurring);
  - (h) Article 49(4);
  - (i) Article 49A (twice occurring).

**27 Transitional provision**

An order made under Article 43 of the principal Law and in force immediately before the commencement of this Law shall continue in force after that commencement as if it were an order originally made under Article 78 of the Companies Law.

**28 Citation and commencement**

- (1) This Law may be cited as the Bankruptcy (Désastre) (Amendment No. 5) (Jersey) Law 2006.
- (2) This Law, apart from Article 26, shall come into force on such day as the States may by Act appoint and different days may be appointed for different provisions or different purposes.
- (3) Subject to paragraph (4), Article 26 shall come into force, to the extent that it amends a provision of the principal Law amended by this Law, on the same date as the provision of this Law that amends that provision.
- (4) Where a provision of this Law that amends a provision of the principal Law that is amended by Article 26 comes into force before Article 42(3) of the States of Jersey Law 2005<sup>18</sup> comes into force, Article 26 shall come into force, to the extent that it amends that provision, on the same date as the said Article 42(3).

**M.N. DE LA HAYE**

*Greffier of the States*

**SCHEDULE**

(Article 25)

**ADDITIONAL AMENDMENTS TO PRINCIPAL LAW**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<i>Provision of principal Law</i>	<i>Words to be deleted</i>	<i>Words to be substituted</i>
Article 8(2)	“Subject to paragraph (3)”	“Subject to paragraph (3) and Article 8A”
Article 12(1)	“the spouse of the debtor may”	“the spouse of the debtor, not being a person in respect of whom a declaration has been made and not recalled, may”
Article 19(2)(a)	“prescribed amount”	“amount prescribed by the Committee”
Article 25(1)	“prescribed”	“prescribed by the Committee”
Article 29(1)	“certain debts”	“debts”
Article 30(1)	“at the prescribed time and in the prescribed manner”	“at the time and in the manner prescribed by the court”
Article 38(2)	“ ‘Loi (1861) sur les Sociétés à Responsabilité Limitée’ or the Companies (Jersey) Law 1991”	“Companies Law”

---

1	<i>chapter 04.160</i>
2	<i>chapter 13.125</i>
3	<i>chapter 04.120</i>
4	<i>chapter 13.425</i>
5	<i>chapter 13.100</i>
6	<i>chapter 13.075</i>
7	<i>chapter 13.225</i>
8	<i>chapter 24.840</i>
9	<i>chapter 26.500</i>
10	<i>chapter 26.900</i>
11	<i>chapter 24.750</i>
12	<i>chapter 13.775</i>
13	<i>chapter 04.840</i>
14	<i>chapter 18.495</i>
15	<i>chapter 18.360</i>
16	<i>chapter 12.550</i>
17	<i>chapter 12.500</i>
18	<i>chapter 16.800</i>