



Jersey  
L.37/2005

## COMPANIES (AMENDMENT No. 8) (JERSEY) LAW 2005

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Jersey

## COMPANIES (AMENDMENT No. 8) (JERSEY) LAW 2005

A LAW to amend further the Companies (Jersey) Law 1991 to permit the incorporation of incorporated cell companies and protected cell companies, and in relation to the winding up of companies, and for connected purposes.

*Adopted by the States*

*21st July 2005*

*Sanctioned by Order of Her Majesty in Council*

*15th November 2005*

*Registered by the Royal Court*

*16th December 2005*

**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 Companies (Jersey) Law 1991.<sup>1</sup>

### **2 Article 1 amended**

(1) Article 1(1) of the principal Law shall be amended by inserting, in their correct alphabetical order, the following definitions –

“ ‘cell’ means a cell of a cell company;

‘cell company’ means a company that is an incorporated cell company or a protected cell company;

‘class of members’, in respect of a protected cell company, includes –

(a) the members of a cell of the company; and

(b) any class of members of a cell of the company;

‘incorporated cell company’ means a company to which Article 3I(1) applies;

‘insolvent’ means unable to pay debts as they fall due;

‘protected cell company’ means a company to which Article 3I(2) applies;

‘special resolution’ has the meaning given to that expression by Article 90;”.

- (2) Article 1(1) of the principal Law shall be further amended by substituting for the definition “share” the following definition –

“ ‘share’ –

(a) means a share in a body corporate or a cell and, unless a distinction between shares and stock is expressed or implied, also means stock; and

(b) in Article 36, also has the meaning assigned to it by paragraph (2A) of that Article,

except that in Article 116(1), it means a share, as defined in subparagraph (a) of this definition, to which Article 116(2) refers;”.

### **3 Article 3 substituted**

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

#### **“3 Method of formation of a company**

- (1) Any 2 or more persons associated for a lawful purpose may apply for the formation of an incorporated public company, with or without limited liability, by signing and delivering to the registrar a memorandum of association that states that the company is to be a public company.
- (2) Any person or 2 or more persons associated for a lawful purpose may apply for the formation of an incorporated private company, with or without limited liability, by signing and delivering to the registrar a memorandum of association that states that the company is to be a private company.
- (3) The registrar shall not grant an application made under paragraph (2) by more than 30 persons unless the Commission notifies the registrar that, on application made to it and on payment of any prescribed fee, it has satisfied itself that by reason of the nature of the company’s intended activities its affairs may properly be regarded as the domestic concern of its members.
- (4) The Commission may give its notification under paragraph (3) subject to such conditions as shall be specified in the approval.
- (5) Where it does so, paragraphs (3), (4), (5) and (6) of Article 16 shall apply to the notification, with the necessary amendments, as if the approval were a written notice given under Article 16(2).
- (6) A person mentioned in paragraph (1) or paragraph (2) must not be a minor or an interdict.

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- (7) A public or private company may be formed –
- (a) having the liability of all or any of its members limited by shares, that is to say limited by its memorandum to the amounts (if any) unpaid on the shares respectively held by them;
  - (b) having the liability of all or any of its members limited by guarantee, that is to say limited by its memorandum to such amounts as those members by the memorandum respectively undertake, by way of guarantee and not by reason of holding any share, to contribute to the assets of the company if it is wound up; or
  - (c) having, in respect of the liability of all or any of its members, no limit.
- (8) A public or private company may be formed as –
- (a) a par value company;
  - (b) a no par value company; or
  - (c) a guarantee company.
- (9) A company shall not have a share capital the shares of which include par value shares and no par value shares.
- (10) Paragraph (9) is without prejudice to Article 127YA(4) (which relates to the types of cells a cell company may create).”.

#### 4 Article 3D substituted

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

##### “3D Unlimited companies

- (1) A company is an unlimited company if –
- (a) it is a par value company or a no par value company;
  - (b) no person is a member of the company by reason of holding a limited share; and
  - (c) no person is a guarantor member of the company.
- (2) Nothing in this Law shall be taken as prohibiting a company –
- (a) from changing any unlimited shares in the company to limited shares in the company; or
  - (b) from changing any limited shares in the company to unlimited shares in the company.”.

#### 5 New Article 3I

After Article 3H of the principal Law there shall be inserted the following Article –

**“3I Cell companies**

- (1) A company is an incorporated cell company if its memorandum provides that it is an incorporated cell company.
- (2) A company is a protected cell company if its memorandum provides that it is a protected cell company.
- (3) A cell company may be –
  - (a) a public or a private company;
  - (b) a par value company, a no par value company or a guarantee company; and
  - (c) a limited company or an unlimited company.”.

**6 Article 4 amended**

At the end of Article 4 of the principal Law there shall be added the following paragraph –

- “(4) If a memorandum is permitted under the Electronic Communications (Jersey) Law 2000<sup>2</sup> to be delivered under paragraph (1) by way of electronic communication, any memorandum so delivered is not required to be printed nor to be signed in the presence of a witness.”.

**7 Article 4A amended**

For Article 4A(2) of the principal Law there shall be substituted the following paragraph –

- “(2) The amount of a par value share may be stated in any unit or part of a unit of any currency.”.

**8 Article 5 amended**

At the end of Article 5 of the principal Law there shall be added the following paragraph –

- “(5) If articles are permitted under the Electronic Communications (Jersey) Law 2000 to be delivered under paragraph (1) by way of electronic communication, any articles so delivered are not required to be printed nor to be signed in the presence of a witness.”.

**9 Article 8 substituted**

For Article 8 of the principal Law there shall be substituted the following Article –

**“8 Registration**

- (1) If, on an application for the formation of a company, the registrar is of the opinion that the formation of the company would not be in the public interest, the registrar must refer the application to the court.
- (2) If an application is referred to the court in accordance with paragraph (1) or if the court calls for an application to be referred to it, the court may –
  - (a) authorize the registration of the memorandum and any articles of the company; or
  - (b) if it considers that the formation of the company would not be in the public interest, refuse to authorize the registration of its memorandum and any articles.
- (3) Where –
  - (a) the registrar is satisfied that all the requirements of this Law in respect of the registration of a company have been complied with; and
  - (b) if the application for the formation of the company has been considered by the court, the registrar has received an Act of the court authorizing the registration,the registrar shall register the memorandum and any articles of the company delivered to the registrar under Article 5.”.

**10 Article 9 amended**

In Article 9 of the principal Law –

- (a) for paragraph (4) there shall be substituted the following paragraph –

“(4) If the memorandum states that the company is a public company or a private company the certificate shall so state and if the memorandum also states that the company is an incorporated cell company or a protected cell company the certificate shall also so state.”;
- (b) for paragraph (5)(c) there shall be substituted the following subparagraph –

“(c) if the certificate states that it is a public company or a private company, or that it is an incorporated cell company or a protected cell company, that it is such a company.”.

**11 Article 13 amended**

Article 13 of the principal Law is amended by adding the following paragraph after paragraph (3) –

- “(4) Where the registrar considers that it would be convenient to do so and not misleading, the registrar may in any reference to a

company in a document issued under this Law use an abbreviation permitted by this Article or Article 127YS.”.

## 12 Article 17 amended

Article 17 of the principal Law shall be amended –

(a) by substituting for paragraph (2) the following paragraph –

“(2) If –

- (a) a private company, otherwise than in accordance with a direction under Article 16(2), enters the name of any person in its register of members so as to increase the number of its members beyond 30, and their number for the time being remains above 30; or
- (b) a private company circulates a prospectus relating to its own securities,

the company shall be subject to this Law as though it were a public company.”;

(b) in paragraph (6), by substituting for the word “breach” the word “action”.

## 13 Article 17C amended

Article 17C of the principal Law shall be amended by substituting for the words “Article 3(2)” the words “Article 3(3)”.

## 14 Article 25 amended

Article 25(2) of the principal Law shall be amended by substituting for the word “Every” the words “Except as provided by Article 127YQ (which relates to the members of protected cell companies), every”.

## 15 Article 38A substituted

For Article 38A of the principal Law there shall be substituted the following Article –

### “38A Alteration of capital of no par value companies

A no par value company may, by special resolution, alter its memorandum –

- (a) to increase or reduce the number of shares that it is authorized to issue;
- (b) to consolidate all or any of its shares (whether issued or not) into fewer shares; or
- (c) to divide all or any of its shares (whether issued or not) into more shares.”.



**16 Article 40 substituted**

For Article 40 of the principal Law there shall be substituted the following Article –

**“40 Power to issue fractions of shares**

- (1) Despite Article 4A(3) (which provides that a person may not subscribe for less than one share), a company registered with shares may issue a fraction of a share if it is authorized to do so by its articles.
- (2) If the holder of a fraction of a share acquires a further fraction of a share of the same class, the fractions shall be treated as consolidated.
- (3) The rights of a member in respect of the holding of a fraction of a share in a company shall be as provided in the articles of the company.
- (3) Except as otherwise provided by this Article and the articles of the company, this Law applies to a fraction of a share in the company as it applies to a whole share in the company.”.

**17 Article 55 substituted**

For Article 55 of the principal Law there shall be substituted the following Article –

**“55 Power to issue redeemable shares**

- (1) Except as otherwise provided by this Article, a company may, if authorized to do so by its articles –
  - (a) issue; or
  - (b) convert existing non-redeemable limited shares, whether issued or not, into,  
limited shares that are to be redeemed, or are liable to be redeemed, either in accordance with their terms or at the option of the company or of the shareholder.
- (2) A company shall not issue redeemable limited shares at a time when there are no issued shares of the company that are not redeemable.
- (3) A company shall not convert existing issued non-redeemable limited shares into redeemable shares if as a result there are no issued shares of the company that are not redeemable.
- (4) The redeemable limited shares of a par value company (not being an open-ended investment company) shall not be capable of being redeemed unless they are fully paid up.

- (5) The redeemable limited shares of a par value company (not being an open-ended investment company) shall not be capable of being redeemed except from the following sources –
- (a) in the case of a payment of the nominal value of the shares on redemption –
    - (i) out of its realised capital and revenue profits less its realised capital and revenue losses,
    - (ii) out of its realised revenue profits less its revenue losses, whether realised or unrealised, or
    - (iii) out of the proceeds of a fresh issue of shares made for the purposes of the redemption,or out of any combination of those sources; and
  - (b) in the case of a payment of a premium on redemption –
    - (i) out of any share premium account,
    - (ii) out of the sources mentioned in sub-paragraph (a), or
    - (iii) if so authorized by a special resolution of the company, out of its unrealised capital or revenue profits less its capital or revenue losses, whether realised or unrealised,or out of any combination of those sources.
- (6) The redeemable limited shares of a no par value company (not being an open-ended investment company) shall not be capable of being redeemed unless they are fully paid up.
- (7) The redeemable limited shares of a no par value company (not being an open-ended investment company) shall not be capable of being redeemed except –
- (a) out of any stated capital account;
  - (b) out of its realised capital and revenue profits less its realised capital and revenue losses;
  - (c) out of its realised revenue profits less its revenue losses, whether realised or unrealised;
  - (d) out of the proceeds of a fresh issue of shares made for the purposes of the redemption; or
  - (e) if so authorized by a special resolution of the company, out of its unrealised capital or revenue profits less its capital or revenue losses, whether realised or unrealised,
- or out of any combination of those sources.
- (8) The redeemable limited shares of a par value company or a no par value company (not being in either case an open-ended investment company) are not capable of being redeemed unless all the directors of the company who authorize the redemption make a statement in the form specified by paragraph (9).
- (9) The statement shall state that the directors of the company authorising the redemption, having made full enquiry into the affairs and prospects of the company, have formed the opinion –

- (a) that, immediately following the date on which the payment is proposed to be made, the company will be able to discharge its liabilities as they fall due; and
  - (b) that, having regard to the prospects of the company and to the intentions of the directors with respect to the management of the company's business and to the amount and character of the financial resources that will in their view be available to the company, the company will be able to continue to carry on business and will be able to discharge its liabilities as they fall due until the expiry of the period of one year immediately following the date on which the payment is proposed to be made or until the company is dissolved under Article 150, whichever first occurs.
- (10) A director who makes a statement under paragraph (8) without having reasonable grounds for the opinion expressed in the statement is guilty of an offence.
- (11) The redeemable limited shares of an open-ended investment company (whether it is a par value company or a no par value company) may be redeemed from any source.
- (12) The redeemable limited shares of an open-ended investment company (whether it is a par value company or a no par value company) shall not be capable of being redeemed unless –
- (a) they are fully paid up;
  - (b) they are redeemed at a price not exceeding their net asset value; and
  - (c) the directors have reasonable grounds for believing that, immediately following the date on which the payment is proposed to be made, the company will be able to discharge its liabilities as they fall due.
- (13) A special resolution passed for the purpose of paragraph (5)(b)(iii) or of paragraph (7)(e) may have effect in relation to a particular redemption of shares or generally but shall not be capable of sanctioning a redemption effected more than 18 months after the date the resolution is passed.
- (14) If limited shares are redeemed wholly or partly out of a par value company's profits, there must be transferred out of profits out of which the company may make a distribution under Article 115 to a capital redemption reserve a sum equal to the amount of profits applied towards the payment of the nominal value of the shares redeemed.
- (15) If limited shares of a par value company are redeemed wholly or partly out of the proceeds of a fresh issue of shares and the aggregate amount of those proceeds is less than the aggregate nominal value of the shares redeemed, the amount of the difference must be transferred out of profits out of which the company may make a distribution under Article 115 to the capital redemption reserve.

- (16) The provisions of Article 61 shall apply as if the capital redemption reserve were paid up share capital of the company except that the reserve may be applied in paying up unissued shares to be allotted as fully paid bonus shares.
- (17) Upon the redemption of limited shares of a par value company under this Article, the amount of the company's issued share capital shall be diminished by the nominal value of those shares but the redemption shall not be taken as reducing the authorized share capital of the company.
- (18) Where pursuant to this Article a par value company is about to redeem limited shares, it may issue shares up to the nominal amount of the shares to be redeemed as if those shares had never been issued.
- (19) Limited preference shares issued by a company before Article 223 came into force that could but for the repeal of Article 5 of the Companies (Supplementary Provisions) (Jersey) Law 1968<sup>3</sup> have been redeemed under that Article shall be subject to redemption either in accordance with that Article or in accordance with this Law.
- (20) Any capital redemption reserve fund established by a company before Article 223 came into force for the purposes of Article 5 of the Companies (Supplementary Provisions) (Jersey) Law 1968 shall be treated as if it had been established as a capital redemption reserve for the purposes of this Article, and any reference in any existing enactment or in the articles of any company or in any other instrument to a company's capital redemption reserve fund shall be construed as a reference to a capital redemption reserve for the purposes of this Article."

## 18 Article 58 amended

For Article 58(3)(b) of the principal Law there shall be substituted the following sub-paragraph –

- “(b) the directors of the company who are to authorize the giving of the assistance make a prior statement that, having made full enquiry into the affairs and prospects of the company, they have formed the opinion –
  - (i) that, immediately following the date on which the assistance is proposed to be given, the company will be able to discharge its liabilities as they fall due, and
  - (ii) that, having regard to the prospects of the company and to the intentions of the directors with respect to the management of the company's business and to the amount and character of the financial resources that will in their view be available to the company, the company will be able to continue to carry on business and will be able to discharge its liabilities as they fall due until the expiry of the period of one year immediately following the date on which the

assistance is proposed to be given or until the company is dissolved under Article 150, whichever first occurs.”.

**19 Article 59 substituted**

For Article 59 of the principal Law there shall be substituted the following Article –

**“59 Power of States to amend Part 11**

The States may amend this Part by Regulations.”.

**20 Article 61 amended**

For Article 61(4) and (5) of the principal Law there shall be substituted the following paragraphs –

“(4) A reduction of capital by extinguishing or reducing a capital account maintained in respect of unlimited shares shall not be subject to confirmation by the court.

(5) A reduction of capital by reducing a share capital account or stated capital account that is, in either case, maintained in respect of limited shares shall not be subject to confirmation by the court if –

- (a) the reduction does not extinguish or reduce the liability on any share in respect of capital that is not paid up; and
- (b) the reduction does not reduce the net assets of the company, and the amount of the reduction is credited to a capital redemption reserve that may be applied only in paying up unissued shares that are to be allotted to members as fully paid bonus shares.”.

**21 Article 68 repealed**

Article 68 of the principal Law shall be repealed.

**22 Article 73 substituted**

For Article 73 of the principal Law there shall be substituted the following Article –

**“73 Directors**

- (1) A private company must have at least one director.
- (2) A public company must have at least 2 directors.
- (3) A person may not be a director of a company if the person –
  - (a) has not attained the age of 18 years;

- (b) is an interdict; or
  - (c) is disqualified for being a director under this or any other enactment.
- (4) A body corporate may not be a director of a company.
  - (5) The States may, by Regulations, amend this Article.”.

### **23 Article 74 amended**

For Article 74(2)(b) of the principal Law there shall be substituted the following sub-paragraph –

- “(b) after the act or omission the company will be able to discharge its liabilities as they fall due.”.

### **24 Article 78 substituted**

For Article 78 of the principal Law there shall be substituted the following Article –

#### **“78 Disqualification orders**

- (1) If it appears to the Committee or the Commission, or to the Attorney General, that it would be in the public interest that a person should not without the leave of the court –
  - (a) be a director of a company;
  - (b) be in any other way directly or indirectly concerned or take part in the management of a company;
  - (c) be in Jersey in any way directly or indirectly concerned or take part in the management of a body incorporated outside Jersey,the Committee, the Commission or the Attorney General may apply to the court for an order to that effect against that person.
- (2) Where the application arises in respect of a winding up of a company in the public interest or a creditors’ winding-up of a company of which, in either case, the relevant person was a director, there may be included in the application a recommendation that the court should include in the order a provision forbidding the person without the leave of the court from holding –
  - (a) a private office; or
  - (b) in an application made by the Attorney General or joined by the Attorney General for the purpose of making the recommendation, a private office, a public office or both.
- (3) If, on an application made under paragraph (1), the court is satisfied that the person’s conduct in relation to a body corporate (wherever it is incorporated and wherever it carries on business) makes the person unfit –

- (a) to be concerned in the management of a company; or
- (b) to be concerned in the management, in Jersey, of a body incorporated outside Jersey,

it may make the order and such other order providing for transitional arrangements as the court considers necessary to give effect to the order in an orderly manner.

- (4) If a recommendation mentioned in paragraph (2) has been made, the court may provide in the order that the person should not, without the leave of the court, hold any private office or, as the case may be, any private or public office, or any private or public office specified in the order.
- (5) An order under paragraph (3) shall be for such period, not exceeding 15 years, as the court thinks fit, and where the court has provided in the order that a person should not hold a private or public office it may specify different periods for different offices.
- (6) A person who acts in contravention of an order made under this Article is guilty of an offence.
- (7) In this Article –

‘private office’ means the office of curator, ‘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 Centenier, Vingtenier, Constable’s Officer, ‘Procureur du Bien Public’ or member of an Assessment Committee constituted under the Parish Rate (Administration) (Jersey) Law 2003.<sup>47</sup>.

## 25 Part 17 substituted

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

### **“PART 17 DISTRIBUTIONS**

#### **114 Construction of terms used in Part 17**

- (1) This Article applies to the interpretation of this Part.
- (2) ‘Capitalization’, in respect of a company, means –
  - (a) applying profits in wholly or partly paying up unissued shares in the company to be allotted to members as fully or partly paid bonus shares; or
  - (b) transferring profits of the company to a capital redemption reserve or a stated capital account of the company.

- (3) 'Distribution', in respect of a company, means every description of distribution of the company's assets to its members as members, whether in cash or otherwise but does not include a distribution by way of –
  - (a) an issue of shares as fully or partly paid bonus shares;
  - (b) the redemption or purchase of any of the company's shares;
  - (c) the reduction of capital by extinguishing or reducing the liability of any of the members on any of the company's shares in respect of capital not paid up or by paying off any amount standing to the credit of any capital account; or
  - (d) a distribution of assets to members of the company on its winding up.
- (4) A reference to profits of any description is to accumulated profits of that description made at any time so far as not previously utilized by distribution or capitalization.
- (5) A reference to losses of any description is to accumulated losses of that description made at any time so far as not previously written off in a reduction or reorganization of capital duly made.
- (6) A reference to profits and losses of any description is to profits and losses of that description ascertained in accordance with generally accepted accounting principles.

#### **115 Restrictions on distributions**

- (1) A company shall not make a distribution except in accordance with this Article.
- (2) A company may make a distribution at any time –
  - (a) out of its realized profits less its realized losses; or
  - (b) out of its realized revenue profits less its revenue losses, whether realized or unrealized, if the directors who are to authorize the distribution reasonably believe that immediately after the distribution has been made the company will be able to discharge its liabilities as they fall due.
- (3) A company may, with the sanction of a special resolution, make a distribution out of its unrealized profits less its losses, whether realized or unrealized, if the directors who are to authorize the distribution make a prior statement that, having made full enquiry into the affairs and prospects of the company, they have formed the opinion –
  - (a) that, immediately following the date on which the distribution is proposed to be made, the company will be able to discharge its liabilities as they fall due; and
  - (b) that, having regard to the prospects of the company and to the intentions of the directors with respect to the management of the company's business and to the amount and character of the financial resources that will in their



view be available to the company, the company will be able to continue to carry on business and will be able to discharge its liabilities as they fall due until the expiry of the period of one year immediately following the date on which the distribution is proposed to be made or until the company is dissolved under Article 150, whichever first occurs.

- (4) Despite any other provisions of this Law an open-ended investment company to which this paragraph applies may make a distribution at any time if the directors who are to authorize the distribution reasonably believe that immediately after the distribution has been made the company will be able to discharge its liabilities as they fall due.
- (5) A distribution made in accordance with paragraph (4) shall be debited to the capital or revenue profit and loss account of the company.

#### **115A Consequences of unlawful distribution**

If a distribution or part of a distribution made by a company to one of its members is made in contravention of Article 115 and at the time of the distribution the member knows or has reasonable grounds for believing that it is so made, the member is liable –

- (a) to repay it or the part of it to the company; or
- (b) if a distribution was made otherwise than in cash, to pay to the company a sum equal to the value of the distribution or the part of it at that time.”.

#### **26 New Article 124A**

Immediately after Article 124 of the principal Law there shall be inserted the following Article –

##### **“124A Power of States to amend Part 18**

The States may amend this Part by Regulations.”.

#### **27 Article 125 amended**

For Article 125(2) of the principal Law there shall be substituted the following paragraph –

- “(2) If a majority in number representing 3/4ths in value of the creditors or class of creditors, or members or class of members (as the case may be), present and voting either in person or by proxy at the meeting agree to a compromise or arrangement, the compromise or arrangement, if sanctioned by the court, is binding on all creditors or the class of creditors or on the members or class of members, and also on the company or, in the case of a company in the course

of being wound up, on the liquidator and contributories of the company.”.

## 28 Article 127F amended

For Article 127F(2) there shall be substituted the following paragraph –

- “(2) Each declaration shall state that the directors of the company by whom it is made each believe on reasonable grounds –
- (a) that the merging company of which he or she is a director is able to discharge its liabilities as they fall due;
  - (b) that immediately after the merger, the merged company will be able to discharge its liabilities as they fall due;
  - (c) that there are no creditors (of any of the merging companies) whose interests will be unfairly prejudiced by the merger;
  - (d) that the merger has been approved in accordance with this Part;
  - (e) that notice has been given to creditors in accordance with Article 127D; and
  - (f) that the making of the declaration has been authorized by the directors of the company on whose behalf it is made.”.

## 29 New Part 18D

After Article 127Y of the principal Law there shall be inserted the following Part –

### **“PART 18D**

#### **CELL COMPANIES**

##### *Chapter 1 – General provisions*

#### **127YA Cell companies may create cells**

- (1) A cell company may, by special resolution, resolve to create one or more cells.
- (2) Such a special resolution –
  - (a) must assign to the cell a name that complies with this Law; and
  - (b) must specify the terms of a memorandum and articles of the cell that set out, amongst other things, the matters mentioned in Article 4, Article 4A, Article 4B or Article 4C, as the case may be.

- (3) A cell company may provide in the special resolution mentioned in paragraph (1) that a cell it creates shall be wound up and dissolved upon –
  - (a) the bankruptcy, death, expulsion, insanity, resignation or retirement of any cellular member of the cell;
  - (b) the happening of some other event that is not the expiration of a fixed period of time; or
  - (c) the expiration of a fixed period of time.
- (4) A cell company may also provide in the special resolution mentioned in paragraph (1) –
  - (a) that, in respect of the cell it creates, there may be issued par value shares or no par value shares; or
  - (b) that the cell it creates may have a guarantee member or guarantee members.
- (5) There shall be taken to be included in the articles of a cell –
  - (a) a provision that the cell may not own shares in its cell company; and
  - (b) unless the contrary intention appears in the articles, a provision that the cell may own shares in any other cell of its cell company.
- (6) The articles of a cell may be amended –
  - (a) in the manner set out in those articles; or
  - (b) in the absence of such a provision, by special resolution of both the cell and of the company of which it is a cell.

#### **127YB Effect of filing of special resolution creating a cell**

- (1) When a cell company resolves by special resolution to create a cell, it shall file the resolution in accordance with Article 100.
- (2) A special resolution filed in accordance with paragraph (1) shall have effect as if it were a memorandum of association delivered to the registrar in accordance with Article 3 that was signed by a person or persons applying to form a company in accordance with that Article.
- (3) The cell shall be taken to have been created when the registrar issues –
  - (a) in the case of a cell of an incorporated cell company, a certificate of incorporation in respect of the cell; or
  - (b) in the case of a cell of a protected cell company, a certificate of recognition in respect of the cell.

#### **127YC Status of cells**

- (1) Subject to this Article, a cell of a cell company –

- (a) in the case of a cell of an incorporated cell company, is a company; and
  - (b) in the case of a cell of a protected cell company, is to be treated as a company registered under this Law for the purpose of the application to it of this Law.
- (2) Accordingly, save as otherwise provided by this Part, the provisions of this Law shall apply to a cell of a cell company as if a reference in this Law –
- (a) to a company were a reference to the cell;
  - (b) to the directors of a company were a reference to the directors of the cell;
  - (c) to the memorandum or articles of a company were a reference to the memorandum or articles of the cell;
  - (d) to members of a company were a reference to the members of the cell;
  - (e) to shares in a company were a references to shares in the cell;
  - (f) to assets and liabilities of a company were a reference to the assets and liabilities of the cell; and
  - (g) to the share capital of a company were a reference to the share capital of the cell.
- (3) A cell of a cell company shall have the same directors, secretary and registered office as its cell company.
- (4) Despite Article 2, a cell of a cell company is not a subsidiary or wholly owned subsidiary of the company.

#### **127YD Register of members of cells**

- (1) The duties imposed on a company by Part 9 (which relates to the register of members and certificates) shall, in the case of a cell of a cell company, be performed by its cell company.
- (2) Accordingly, a cell company must, in addition to keeping a register of its members, keep a register of the members of each of its cells, which it must keep in accordance with Part 9.
- (3) If a cell company fails to comply with paragraph (2) it and every officer of it who is in default is guilty of an offence.

#### **127YE Annual return in respect of cells**

- (1) Article 71(1) (which requires a company to deliver an annual return to the registrar) shall not apply to a cell of a cell company.
- (2) However, the cell company must –
  - (a) include in its annual return the information required by Article 71 in respect of each cell of the company; and

- (b) in respect of each of its cells – deliver to the registrar a copy of so much its annual return as relates to the cell.
- (3) If a cell company fails to comply with paragraph (2) it is guilty of an offence.

#### **127YF Accounting records of cell companies**

- (1) Article 102 (which requires a company to keep accounting records) shall not apply to a cell of a cell company.
- (2) However, the cell company must keep accounting records in respect of each of its cells that are sufficient to show and explain the cell's transactions and are such as to –
  - (a) disclose with reasonable accuracy, at any time, the financial position of the cell at that time; and
  - (b) enable its directors to ensure that any accounts prepared by the company in respect of the cell comply with the requirements of this Law.
- (3) The accounting records kept by a cell company under Article 102 may include matters included by it in any accounting records kept by the company under paragraph (2).
- (4) If a cell company fails to comply with paragraph (2), the company and, where the company or the cell concerned is a public company, every officer of the company who is in default, is guilty of an offence.

#### **127YG Accounts of cell companies**

- (1) Article 104(1) (which requires a company to prepare regular accounts) shall not apply to a cell of a cell company.
- (2) However, the cell company must prepare separate accounts in accordance with Article 104 that –
  - (a) show a true and fair view of the profit or loss of each cell of the company for the period mentioned in Article 104(1) and of the state of each cell's affairs at the end of that period taking into account only the assets and liabilities solely attributable to the cell; and
  - (b) comply with any other requirement of this Law.
- (3) The accounts of a cell company prepared by it in respect of the company in accordance with Article 104(1) need not include matters included by it in any accounts prepared by it in accordance with paragraph (2).
- (4) Subject to any provision in the articles of a cell of a cell company or of the company to the contrary –
  - (a) a member of the cell company who is not a member of the cell shall only be entitled to be provided with so much of the

- accounts of the company as is mentioned in Article 104(1);  
and
- (b) a member of a cell of the company shall only be entitled to be provided with so much of the accounts as is mentioned in paragraph (2) as relate to the cell of which the member is a member.
- (5) If a cell company fails to comply with paragraph (2), the company and, where the company or the cell concerned is a public company, every officer of the company who is in default, is guilty of an offence.

#### **127YH Incorporation of a cell independent of a cell company**

- (1) A cell of a cell company may apply to the registrar to be incorporated as a company independent of that company.
- (2) If the articles of the cell are silent or do not provide otherwise, the application must be approved by a special resolution of the members of the cell or, if the cell has more than one class of members, a special resolution of each class of members.
- (3) The application must include the information that would be required under Part 2 were the cell being incorporated under this Law otherwise than by virtue of this Article.
- (4) In respect of an application under this Article the registrar has all the powers given under Part 2.
- (5) Where a cell has made an application under this Article, a member of the cell who objects to the cell being incorporated as a company independent of its cell company may apply to the court for an order under Article 143 on the grounds that the incorporation or the terms of the incorporation unfairly prejudice his or her interests.
- (6) An application may not be made under paragraph (5) after the expiration of the period of 30 days following the application being made under paragraph (1).
- (7) When a cell is registered as a separate company by virtue of this Article –
- (a) where the cell was a cell of an incorporated cell company, all property and rights to which the cell was entitled immediately before its registration remain the property and rights of the separate company;
- (b) where the cell was a cell of a protected cell company, all property and rights of that company in respect of the cell immediately before its registration become the property and rights of the separate company;
- (c) where the cell was a cell of an incorporated cell company, the separate company remains subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which the cell was subject immediately before its registration;

- (d) where the cell was a cell of a protected cell company, all contracts, debts and other obligations of that company in respect of the cell, to which the protected cell company was subject immediately before the registration of the separate company, become the contracts, debts and other obligations of the separate company;
  - (e) where the cell was a cell of an incorporated cell company, all actions and other legal proceedings which, immediately before the registration of the separate company, were pending by or against the cell may be continued by or against the separate company; and
  - (f) where the cell was a cell of a protected cell company, all actions and other legal proceedings which, immediately before the registration of the separate company, were pending by or against the protected cell company in respect of the cell may be continued by or against the separate company.
- (8) The operation of paragraph (7)(b) and (d) shall not be regarded –
- (a) as a breach of contract or confidence or otherwise as a civil wrong;
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities; or
  - (c) as giving rise to any remedy by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument, or of any obligation or relationship.

#### **127YI Transfer of cells of cell companies**

- (1) A cell of a cell company may be transferred to another cell company.
- (2) The companies shall enter into a written agreement that sets out the terms of the transfer (in this Article referred to as the “transfer agreement”).
- (3) A transfer of a cell is approved when the directors of each cell company who authorized the transfer have approved the transfer agreement and the agreement is approved by a special resolution of the cell company to which the cell is being transferred and –
  - (a) when the transfer agreement is authorized by a special resolution of the cell being transferred and sanctioned by the court as an arrangement in accordance with the provisions of Article 125 of the Law;
  - (b) when the transfer agreement is consented to by all the members of the cell being transferred and all the creditors (if any) of that cell; or

- (c) if the agreement of all the creditors of the cell cannot be obtained, when the transfer is authorized by a special resolution of the cell and sanctioned by the court on it being satisfied that no creditor of the cell will be materially prejudiced by the transfer.
- (4) Within 21 days of a transfer agreement being approved, the cell company to which the cell is being transferred must deliver to the registrar in accordance with Article 100 a copy of the special resolution of that company approving the transfer agreement together with –
  - (a) a copy of the transfer agreement;
  - (b) a copy of any new articles of the cell being transferred; and
  - (c) a declaration made in accordance with paragraph (5), signed by each director of the cell company transferring the cell who authorized the transfer.
- (5) The declaration must state that each such director believes on reasonable grounds that –
  - (a) the cell being transferred is able to discharge its liabilities as they fall due;
  - (b) there are no creditors of the cell company from which the cell is being transferred whose interests will be unfairly prejudiced by the merger; and
  - (c) the transfer agreement has been approved in accordance with this Article.
- (6) If a cell company fails to deliver the documents mentioned in paragraph (4) within the period also mentioned in that paragraph, the company and every officer of it in default is guilty of an offence.
- (7) A director who makes a declaration under paragraph (5) without having the grounds to do so is guilty of an offence.
- (8) Article 127YB(2) shall apply in respect of the documents delivered to the register in accordance with paragraph (4) as if the documents were a special resolution filed in accordance with Article 127YB(1).
- (9) Upon delivery to the registrar of the documents referred to in paragraph (4), the registrar shall, if those documents comply with this Article –
  - (a) register the transfer of the cell and any new articles of the cell;
  - (b) issue to the cell a new certificate of incorporation or recognition in accordance with Article 127YB; and
  - (c) record that the cell has ceased to be a cell of the company that transferred the cell.
- (10) Upon the issue of the new certificate of incorporation or recognition –



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- (a) the cell ceases to be a cell of the cell company that transferred it;
  - (b) the cell becomes a cell of the company to which it has been transferred;
  - (c) the articles of the cell shall be as provided for in the transfer agreement;
  - (d) where the cell was a cell of an incorporated cell company, all property and rights to which the cell was entitled immediately before the issue of the new certificate remain the property and rights of the cell if the transfer is to an incorporated cell company or, if the transfer is to a protected cell company, become the property and rights of that company in respect of the cell;
  - (e) where the cell was a cell of an incorporated cell company, the liabilities, and all contracts, debts and other obligations to which the cell was subject immediately before the issue of the new certificate remain the liabilities, contracts, debts and other obligations of the cell if the transfer is to an incorporated cell company or if the transfer is to a protected cell company, become the liabilities, contracts, debts and other obligations of that company in respect of the cell;
  - (f) where the cell was a cell of an incorporated cell company, all actions and other legal proceedings which, immediately before the issue of the new certificate were pending by or against the cell may be continued by or against the cell if the transfer is to an incorporated cell company or, if the transfer is to a protected cell company by or against that company in respect of the cell;
  - (g) where the cell was a cell of a protected cell company, all property and rights of that company in respect of the cell immediately before the issue of the new certificate become the property and rights of the cell if the transfer is to an incorporated cell company or, if the transfer is to a protected cell company, the property and rights of that company in respect of that cell;
  - (h) where the cell was a cell of a protected cell company, all liabilities, contracts, debts and other obligations of that company in respect of the cell, to which the protected cell company was subject immediately before the issue of the new certificate, become the contracts, debts and other obligations of the cell if the transfer is to an incorporated cell company or, if the transfer is to a protected cell company, the liabilities, contracts, debts and other obligations of that company in respect of the cell; and
  - (i) where the cell was a cell of a protected cell company, all actions and other legal proceedings that, immediately before the issue of the new certificate, were pending by or against the protected cell company in respect of the cell may be

continued by or against the cell if the transfer is to an incorporated cell company or, if the transfer is to a protected cell company, against that company in respect of the cell.

- (11) The operation of paragraph (10) shall not be regarded –
- (a) as a breach of contract or confidence or otherwise as a civil wrong;
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities; or
  - (c) as giving rise to any remedy by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument, or of any obligation or relationship.
- (12) A cell may not be transferred under this Article if the transfer would be inconsistent with the memorandum or articles of the cell, the cell company transferring the cell or the cell company to which it is to be transferred.
- (13) A company that is not a cell company and a cell company may enter into an agreement to provide that the company that is not a cell company shall become a cell of the cell company.
- (14) Where paragraph (13) applies –
- (a) the agreement mentioned in that paragraph shall have effect for the purpose of this Article as if it were a transfer agreement; and
  - (b) this Article shall otherwise apply in respect of the transfer as if the company that is not a cell company were a cell of an incorporated cell company.

#### **127YJ Application of Part 21 to cell companies**

- (1) Where a cell company with one or more cells is being wound up under Part 21 the company shall not be taken to have no assets and no liabilities while the company continues to have any such cell.
- (2) Accordingly, in the course of the winding up of the company, each cell of the company must –
- (a) be transferred to another cell company;
  - (b) be wound up;
  - (c) be continued as a body corporate or cell under the law of another jurisdiction;
  - (d) be incorporated independently of the cell company; or
  - (e) be merged with another company.

**127YL Names of incorporated cell companies**

- (1) The name of an incorporated cell company must end with the words ‘Incorporated Cell Company’ or with the abbreviation ‘ICC’.
- (2) A company that is registered with a name that ends with the words ‘Incorporated Cell Company’ or the abbreviation ‘ICC’ may, in setting out or using its name for any purpose under this Law, do so in full or in the abbreviated form, as it determines.
- (3) An incorporated cell company must assign a distinctive name to each of its cells that –
  - (a) distinguishes the cell from any other cell of the company; and
  - (a) ends with the words ‘Incorporated Cell’ or with the abbreviation ‘IC’.
- (4) Article 13(2) (which specifies how the name of a limited company must end) shall not apply to a cell of an incorporated cell company where the cell is a limited company.

**127YM Restriction on alteration of memorandum or article**

- (1) The power conferred by Article 11 on a company to alter its memorandum or articles shall not be exercisable by a company to provide for it to be a cell company unless –
  - (a) the alteration is authorized by a special resolution of the company and sanctioned by the court in accordance with Article 125;
  - (b) the alteration is consented to by all the members of the company and all the creditors of the company; or
  - (c) if the consent of all the creditors of the company cannot be obtained, the alteration is authorized by a special resolution of the company and sanctioned by the court on it being satisfied that no creditor will be materially prejudiced by the alteration.
- (2) The power conferred by Article 11 on a cell company to alter its memorandum or articles shall not be exercisable by a cell company to provide for it to cease to be a cell company, or for it to convert from an incorporated cell company to a protected cell company or from a protected cell company to an incorporated cell company, unless –
  - (a) the alteration is authorized by a special resolution of the company and of each cell of the company, and sanctioned by the court in accordance with Article 125;
  - (b) the alteration is consented to by all the members of the company, all the members of each cell of the company, and all the creditors of the company and of each cell of the company; or

- (c) where the consent of all the creditors of the company and of each cell of the company cannot be obtained, the alteration is authorized by a special resolution of the company and of each cell of the company, and sanctioned by the court on it being satisfied that no such creditor will be materially prejudiced by the alteration.
- (3) Where a company seeks to change its status in accordance with paragraph (1) or paragraph (2) the registrar shall issue under Article 9 a certificate of incorporation that is appropriate to the altered status of the company if there is delivered to the registrar –
    - (a) a copy of the special resolution that alters its memorandum and its name; and
    - (b) evidence satisfactory to the registrar that the requirements of paragraphs (1) or paragraph (2), as appropriate, have been met.
  - (4) Where a company changes its status in accordance with paragraph (1) or paragraph (2) the change of status shall take effect when the registrar issues a certificate of incorporation in accordance with paragraph (3).
  - (5) Where a company changes its status in accordance with this paragraph the special resolution required under Article 11 for it to do so must include any change of name of the company necessary for it to comply with this Law.
  - (6) A body that is incorporated outside Jersey may, with the approval of the Commission, change its status in the manner set out in this Article as part of the process of obtaining the issue of a certificate of continuance in accordance with Part 18C.
  - (7) A change of status of a company to which paragraph (6) applies shall have effect on the issue of the certificate of continuance in accordance with Article 127O.

#### **127YN Power of States to amend Part**

The States may amend this Part by Regulations.

#### *Chapter 2 – Protected cell companies*

#### **127YO Interpretation**

In this Chapter –

‘cellular assets’, in respect of a protected cell company, means the assets of the company attributable solely to the cell or cells of the company;

‘cellular liabilities’, in respect of a protected cell company, means the liabilities of the company attributable solely to a cell or cells of the company;

‘non-cellular assets’, in respect of a protected cell company, means its assets that are not its cellular assets;

‘non-cellular liabilities’, in respect of a protected cell company, means its liabilities that are not its cellular liabilities.

#### **127YP Status of cells of protected cell companies**

- (1) A cell of a protected cell company is not a body corporate and has no legal identity separate from that of its cell company.
- (2) However, a cell of a protected cell company may enter into an agreement with its cell company or with another cell of the company that shall be enforceable as if each cell of the company were a body corporate that had a legal identity separate from that of its cell company.
- (3) Where a protected cell company is liable for any criminal penalty, under this Law or otherwise, due to the act or default of a cell of the company or of an officer of a cell of the company, the penalty –
  - (a) may only be met by the company from the cellular assets of the cell; and
  - (b) shall not be enforceable in any way against any other assets of the company, whether cellular or non-cellular.

#### **127YQ Membership of protected cell company**

- (1) In a protected cell company –
  - (a) its non-cell members are members of the company but are not, by virtue of being such members, members of any cell of the company; and
  - (b) the cell members of a cell created by the company are members of that cell but are not, by virtue of being such members, members of the company or of any other cell of the company.
- (2) In paragraph (1) –

‘cell member’, in respect of a protected cell company, means –

  - (a) a registered holder of a share in a cell of the company; or
  - (b) a guarantee member of a cell of the company;

‘non-cell member’, in respect of a protected cell company, means –

  - (a) a registered holder of a share in the company that is not a share in a cell of the company; or
  - (b) a guarantor member of the company who is not a guarantor member of the company by virtue of being a guarantee member of a cell of the company.

**127YR Additional duties of directors of protected cell companies**

- (1) A director of a protected cell company must exercise his or her powers and must discharge his or her duties in such a way as shall best ensure that –
  - (a) the cellular assets of the company are kept separate and are separately identifiable from the non-cellular assets of the company; and
  - (b) the cellular assets attributable to each cell of the company are kept separate and are separately identifiable from the cellular assets attributable to other cells of the company.
- (2) A director of a protected cell company must ensure, when the company enters into an agreement in respect of a cell of the company –
  - (a) that the other party to the transaction knows or ought reasonably to know that the cell company is acting in respect of a particular cell; and
  - (b) that the minutes of any meeting of directors held with regard to the agreement clearly record the fact that the company was entering into the agreement in respect of the cell and that the obligation imposed by sub-paragraph (a) was or will complied with.
- (3) A director who fails to comply with the requirements of paragraph (1) or paragraph (2) shall be guilty of an offence.
- (4) The duties of a director of a protected cell company under this Article are in addition to those under Article 74.

**127YS Names of protected cell companies**

- (1) The name of a protected cell company must end with the words ‘Protected Cell Company’ or with the abbreviation ‘PCC’.
- (2) A company that is registered with a name that ends with the words ‘Protected Cell Company’ or the abbreviation ‘PCC’ may, in setting out or using its name for any purpose under this Law, do so in full or in the abbreviated form, as it determines.
- (3) A protected cell company must assign a distinctive name to each of its cells that –
  - (a) distinguishes the cell from any other cell of the company; and
  - (b) ends with the words ‘Protected Cell’ or with the abbreviation ‘PC’.
- (4) Article 13(2) (which specifies how the name of a limited company must end) shall not apply to a cell of a protected cell company where the cell has the features of a limited company.

**127YT Liability of protected cell company and its cells**

- (1) Where a protected cell company –
  - (a) enters into a transaction in respect of a particular cell of the company; or
  - (b) incurs a liability arising from an activity or asset of a particular cell,a claim by any person in connection with the transaction or liability extends only to the cellular assets of the cell.
- (2) Where a protected cell company –
  - (a) enters into a transaction in its own right and not in respect of any of its cells;
  - (b) incurs a liability arising from an activity of the company in its own right and not in respect of any of its cells; or
  - (c) incurs a liability arising from an asset held by the company in its own right and not in respect of any of its cells,a claim by any person in connection with the transaction or liability extends only to the non-cellular assets of the company.
- (3) Except as provided by paragraphs (4) and (6), a protected cell company has no power –
  - (a) to meet any liability attributable to a particular cell of the company from the non-cellular assets of the company; or
  - (b) to meet any liability, whether attributable to a particular cell or not, from the cellular assets of another cell of the company.
- (4) If –
  - (a) a protected cell company is permitted to do so under its articles; and
  - (b) the requirement set out in paragraph (5) is satisfied,the company may meet any liability attributable to a particular cell of the company from the company's non-cellular assets.
- (5) The requirement mentioned in paragraph (4)(b) is that prior to the protected cell company meeting any liability attributable to the particular cell from the company's non-cellular assets the directors who are to authorize the liability being met in such a way must make a statement that, having made full enquiry into the affairs and prospects of the company, they have formed the opinion –
  - (a) that, immediately following the date on which the liability is proposed to be met by the non-cellular assets of the company, the company will be able to discharge its liabilities as they fall due; and
  - (b) that, having regard to the prospects of the company and to the intentions of the directors with respect to the management of the company's business and to the amount and character of the financial resources that will in their

view be available to the company, the company will be able to continue to carry on business and will be able to discharge its liabilities as they fall due until the expiry of the period of one year immediately following the date on which the liability is proposed to be met by the non-cellular assets of the company or until the company is dissolved under Article 150, whichever first occurs.

- (6) A protected cell company may meet any liability, whether attributable to a particular cell or not, from the cellular assets of another cell if –
- (a) it is permitted to do so by the articles of that other cell; and
  - (b) the requirement set out in paragraph (7) is satisfied.
- (7) The requirement mentioned in paragraph (6)(b) is that prior to the protected cell company meeting any liability from the cellular assets of that other cell the directors who are to authorize the liability being met in such a way must make a statement that, having made full enquiry into the affairs and prospects of that cell, they have formed the opinion –
- (a) that, immediately following the date on which the liability is proposed to be met by the cellular assets of the cell, the cell will be able to discharge its liabilities as they fall due; and
  - (b) that, having regard to the prospects of the cell and to the intentions of the directors with respect to the management of the cell's business and to the amount and character of the financial resources that will in their view be available to the cell, the cell will be able to continue to carry on business and will be able to discharge its liabilities as they fall due until the expiry of the period of one year immediately following the date on which the liability is proposed to be met by the cellular assets of the cell or until the cell is dissolved, as if it were a company, under Article 150, whichever first occurs.
- (8) A director who makes a statement under paragraph (5) or paragraph (7) without having reasonable grounds for the opinion expressed in the statement is guilty of an offence.

#### **127YU Protection of cellular and non-cellular assets of protected cell companies**

- (1) Where a creditor of a protected cell company has a claim against the company in respect of a particular cell of the company (in this Article called “the relevant cell”) by virtue of a transaction to which Article 127YT(1) applies, only the cellular assets of the company held by it in respect of the relevant cell shall be available to the creditor.
- (2) Where a creditor of a protected cell company has a claim against the company by virtue of a transaction to which Article 127YT(1) does not apply, the cellular assets of the company shall not be available to the creditor.



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- (3) Accordingly –
    - (a) a creditor of the company to whom paragraph (1) applies only has the right to seek by proceedings or by any other means, whether in Jersey or elsewhere, to make or attempt to make the cellular assets of the company held by it in respect of the relevant cell available for all or any part of the amount owed to the creditor; and
    - (b) a creditor of the company to whom paragraph (2) applies has no right to seek by proceedings or by any other means, whether in Jersey or elsewhere, to make or attempt to make the cellular assets of the company available for all or any part of the amount owed to the creditor.
  - (4) If a creditor of a protected cell company to whom paragraph (1) applies succeeds, whether in Jersey or elsewhere, in making available for all or any part of the amount owed to the creditor any assets of the company that are not its cellular assets held by it in respect of the relevant cell, the creditor shall be liable to pay to the company an amount equal to the benefit so obtained.
  - (5) If a creditor of a protected cell company to whom paragraph (2) applies succeeds, whether in Jersey or elsewhere, in making available for all or any part of the amount owed to the creditor any cellular assets of the company, the creditor shall be liable to pay to the company an amount equal to the benefit so obtained.
  - (6) Any amount recovered by a protected cell company in respect of a cell of the company by virtue of paragraph (4) or paragraph (5), and the right to claim that amount, shall form part of the cellular assets of the company held by it in respect of the cell.
  - (7) If a creditor of a protected cell company to whom paragraph (1) applies succeeds, whether in Jersey or elsewhere in seizing or attaching or otherwise levying execution against any assets of the company, that are not its cellular assets held by it in respect of the relevant cell, for all or any part of the amount owed to the creditor, the creditor shall hold those assets or their proceeds on trust for the company or, as the case may be, the cell of the company whose cellular assets were wrongfully seized or attached.
  - (8) If a creditor of a protected cell company to whom paragraph (2) applies succeeds, whether in Jersey or elsewhere in seizing or attaching or otherwise levying execution against any cellular assets of the company for all or any part of the amount owed to the creditor, the creditor shall hold those assets or their proceeds on trust for the cell of the company whose cellular assets were wrongfully seized or attached.
  - (9) Where paragraph (7) or paragraph (8) applies, the creditor must –
    - (a) keep the assets so held on trust separated and identifiable as trust property; and
    - (b) pay or return them on demand to the protected cell company,
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and shall be guilty of an offence if he or she fails to do so.

- (10) Any amount recovered by a protected cell company by virtue of a trust mentioned in paragraph (7) shall form part of the non-cellular assets of the company or, as the case may be, the cellular assets of the cell of the company whose cellular assets were wrongfully seized or attached.
- (11) Any amount recovered by a protected cell company by virtue of a trust mentioned in paragraph (8) shall form part of the cellular assets of the cell of the company whose cellular assets were wrongfully seized or attached.
- (12) If a creditor becomes liable to pay an amount or to return assets to a protected cell company under paragraph (4), paragraph (5) or paragraph (9)(b) and no amount or an insufficient amount is received, or no assets or less than all the assets are recovered, the company must cause or procure an auditor, acting as an expert and not as an arbitrator, to certify the loss suffered by the company and then, as the case may be –
  - (a) transfer to the company from the cellular assets of the relevant cell, if the liability was attributable to it, an amount sufficient to make good the loss suffered by the company's cellular or non-cellular assets, as the case may be; or
  - (b) transfer from its non-cellular assets, if the liability was attributable to them an amount sufficient to make good the loss suffered by its the cellular assets.
- (13) Where an amount transferred by virtue of paragraph (12)(a) was in respect of a loss suffered by the company's cellular assets, the amount transferred shall be transferred to the cell of the company whose cellular assets were wrongfully made available to a creditor or seized, attached or executed against.
- (14) An amount transferred by virtue of paragraph (12)(b) shall be transferred to the cell of the company whose cellular assets were wrongfully made available to a creditor or seized, attached or executed against.
- (15) If a company fails to comply with paragraph (12), (13) or (14) the company and every officer of it who is in default is guilty of an offence.
- (16) Paragraphs (4) to (14) do not apply to any payment made to a creditor by a protected cell company in accordance with Article 127YT(4) or Article 127YT(6).

#### **127YV Effect of commencement of summary winding up of protected cell company**

- (1) Where a protected cell company is being wound up, Article 148(2) shall not apply in respect of any cell of the company.

- (2) Where a cell of a protected cell company is being wound up, Article 148(2) shall not apply in respect of the company or any other cell of the company.

**127YW Court may determine liability of protected cells companies**

The court, on the application of a protected cell company, may determine, in accordance with this Part, if a liability of the company is to be met by its non-cellular assets, by the cellular assets of a specific cell of the company or by a combination of those assets.”.

**30 Article 129 amended**

Article 129 of the principal Law is amended by adding after paragraph (2) the following paragraph –

- “(3) Where, for the purposes of paragraph (1) –
- (a) the company is a cell company, that paragraph shall extend to any cell of the company, whether present or past; or
  - (b) the company is or was a cell of a cell company, that paragraph shall extend to its cell company and to any other cell of the cell company, whether past or present.”.

**31 Chapters 2 and 3 of Part 21 substituted**

For Chapters 2 and 3 of Part 21 of the principal Law there shall be substituted the following Chapters –

*“Chapter 2 - Summary winding up*

**145 Application of this Chapter**

- (1) This Chapter applies to the winding up of a company that –
- (a) has no liabilities;
  - (b) has liabilities that have already fallen due or that fall due within 6 months after the commencement of the winding up, that it will be able to discharge in full within 6 months of the commencement of the winding up;
  - (c) has liabilities that will arise more than 6 months after the commencement of the winding up that it will be able to discharge in full as they fall due; or
  - (d) has a combination of the liabilities mentioned in subparagraph (b) and (c).
- (2) A winding up under this Chapter is a summary winding up.

**146 Procedure**

- (1) A company, not being a company in respect of which a declaration has been made and not recalled under the Désastre Law, may be wound up under this Chapter –
  - (a) in accordance with Article 144;
  - (b) in accordance with Article 144A; or
  - (c) in the manner set out in paragraphs (2) and (3).
- (2) That manner is firstly for the directors of the company to make a statement of solvency signed by each director that states that, having made full enquiry into the company's affairs, each director is satisfied that –
  - (a) the company has no assets and no liabilities;
  - (b) the company has assets and no liabilities;
  - (c) the company will be able to discharge its liabilities in full within the 6 months after the commencement of the winding up;
  - (d) the company has liabilities that will fall due more than 6 months after the commencement of the winding up that it will be able to discharge in full as they fall due; or
  - (e) both (c) and (d) apply to the company,as the case may be.
- (3) And secondly –
  - (a) for the company to pass, within 28 days after the statement of solvency has been signed by the directors, a special resolution that the company be wound up summarily; and
  - (b) for a copy of the special resolution to be delivered to the registrar in accordance with Article 100 together with the directors' statement of solvency.
- (4) A director is guilty of an offence if –
  - (a) he or she signs a statement of solvency when having no reasonable grounds for making the statement; and
  - (b) the statement is subsequently delivered to the registrar.

**147 Commencement of summary winding up**

A summary winding up under which assets of a company are to be distributed commences –

- (a) where a limited life company has under Article 144(1) been deemed to pass a special resolution for winding up, upon its being deemed to have passed that resolution;
- (b) where a company (other than a limited life company) whose existence is limited by a period of time is wound up pursuant to Article 144A, when a requirement of Article 144A(4) is complied with; and

- (c) in any other case, when the requirement of Article 146(3)(a) is complied with.

#### **148 Effect on status of company**

- (1) The corporate state and capacity of a company continues after the commencement of the company's summary winding up until the company is dissolved.
- (2) However, the company's powers shall not be exercised except so far as may be required –
  - (a) to realise its assets;
  - (b) to discharge its liabilities; and
  - (c) to distribute its assets in accordance with Article 150.
- (3) Paragraph (2) is subject to Articles 154 and 186A.

#### **149 Appointment of liquidator**

- (1) A company may, on or after the commencement of its summary winding up, by special resolution, appoint a person to be liquidator for the purposes of the winding up.
- (2) On the appointment of a liquidator the directors cease to be authorized to exercise their powers in respect of the company and those powers may be exercised by the liquidator.
- (3) Paragraph (2) is subject to –
  - (a) the resolution appointing the liquidator or any subsequent special resolution of the company providing otherwise; and
  - (b) Article 150.
- (4) Article 83 applies to a liquidator appointed under this Article as it applies to a director.

#### **150 Application of assets and dissolution**

- (1) The registrar shall register a statement delivered under Article 146 or paragraph (5) of this Article.
- (2) On the registration by the registrar of a statement delivered under Article 146 that the company has no assets and no liabilities the company is dissolved.
- (3) Where the statement delivered under Article 146 states that the company has assets and no liabilities the company shall, on the registration of the statement by the registrar, distribute its assets among its members according to their rights or otherwise as provided by its memorandum or articles.

- (4) Where the statement delivered under Article 146 states that the company has liabilities, the company, after the registration of the statement by the registrar –
  - (a) shall satisfy those liabilities as they become due or within 6 months of that commencement, as the case may be; and
  - (b) if the directors of the company reasonably believe that the company is able to pay any remaining liabilities as they fall due, may then distribute its remaining assets among its members according to their rights or otherwise as provided by its memorandum or articles.
- (5) As soon as a company has completed the distribution of its assets in accordance with paragraph (3) or paragraph (4), it shall deliver to the registrar a statement signed by each of the directors or, if the distribution has been completed by a liquidator appointed under Article 149, by the liquidator, stating that each director or the liquidator, having made full enquiry into the company's affairs, is satisfied that the company has no assets and no liabilities.
- (6) The company is dissolved on the registration of that statement.
- (7) A director or liquidator who signs a statement delivered to the registrar under paragraph (5) without having reasonable grounds for stating that the company has no assets and no liabilities is guilty of an offence.

#### **151 Effect of insolvency**

- (1) This Article applies if, after the commencement of a summary winding up of a company –
  - (a) a liquidator appointed in accordance with Article 149 forms the opinion; or
  - (b) no liquidator having been appointed under Article 149, the directors of the company form the opinion,that the company has liabilities that it will be unable to discharge within 6 months of the commencement of the winding up or, if they fall due after that date, as they fall due.
- (2) The liquidator or directors shall record the opinion –
  - (a) in the case of a liquidator, in his or her records of the administration of the affairs of the company; or
  - (b) in the case of directors, in the minutes of a meeting of the directors.
- (3) The liquidator or directors shall give each creditor of the company notice by post calling a meeting of the creditors to be held in Jersey not less than 14 days after the service of the notice and not more than 28 days after the opinion was recorded in accordance with paragraph (2).
- (4) The notice shall contain the name of a person nominated as liquidator of the company for a creditors' winding up.

- (5) The liquidator or directors shall deliver a copy of the notice to the registrar.
- (6) The liquidator or directors shall also give notice of the meeting of the creditors of the company by advertisement in the Jersey Gazette not less than 10 days before the day for which the meeting is called.
- (7) Before the meeting the liquidator or directors shall furnish any creditor free of charge with such information concerning the affairs of the company as the creditor may reasonably request.
- (8) At the meeting the liquidator or directors shall provide a statement as to the affairs of the company.
- (9) The statement shall be verified by affidavit by the liquidator or by some or all of the directors.
- (10) At the creditors' meeting the liquidator shall preside if one has been appointed but otherwise a director nominated by the directors shall preside.
- (11) From the day of the creditors' meeting the winding up becomes a creditors' winding up and this Law has effect as if the meeting were the meeting of creditors mentioned in Article 160 and Article 162 shall apply accordingly.
- (12) A liquidator or director who, without reasonable excuse, fails to comply with any of his or her obligations under this Article is guilty of an offence.

#### **152 Remuneration of liquidator**

A liquidator appointed under Article 149 is entitled to receive from the company the remuneration –

- (a) agreed between the liquidator and the company before his or her appointment;
- (b) subsequently approved by the company in general meeting; or
- (c) subsequent determined by the court.

#### **153 Cesser of office by liquidator**

A liquidator appointed under Article 149 –

- (a) may be removed from office by a special resolution of the company; and
- (b) shall vacate office if he or she ceases to be qualified to hold the office.

#### **154 Termination of summary winding up**

- (1) Where –

- (a) the summary winding up of a company has commenced;
- (b) the company has not received any contribution from any present or past member pursuant to Article 192;
- (c) the company has not for the purposes of the winding up distributed any of its assets among its members;
- (d) the company is able to discharge its liabilities as they fell due; and
- (e) termination of the winding up has been approved by a special resolution of the company,

the documents described in paragraph (2) may be delivered to the registrar and thereupon the winding up shall forthwith terminate.

- (2) The documents to be delivered to the registrar pursuant to paragraph (1) are –
  - (a) a certificate signed by all the directors of the company stating that –
    - (i) the company has received no contribution of the type mentioned in paragraph (1)(b),
    - (ii) the company has made no distribution of the type mentioned in paragraph (1)(c), and
    - (iii) the company is able to discharge its liabilities as they fell due; and
  - (b) a copy of the special resolution approving the termination of the winding up.
- (3) Upon the termination of a winding up pursuant to paragraph (1) –
  - (a) any liquidator appointed for the purpose of the winding up shall cease to hold office; and
  - (b) the company and all other persons shall be in the same position, subject to paragraph (4), as if the winding up had not commenced.
- (4) The termination of a winding up pursuant to paragraph (1) shall not affect the validity of anything duly done by any liquidator, director or other person, or by operation of law, before its termination.
- (5) A director who signs a certificate delivered to the registrar pursuant to paragraph (1) without having reasonable grounds for believing that the statements in it are true is guilty of an offence.

#### **154A Declaration under Désastre Law**

- (1) If –
  - (a) a summary winding up of a company has commenced; and
  - (b) a declaration is made in respect of the company under the Désastre Law,the winding up shall forthwith terminate.
- (2) Upon the termination of the winding up pursuant to paragraph (1) –



- (a) any liquidator appointed for the purpose of the winding up shall cease to hold office; and
  - (b) the company and all other persons shall be in the same position, subject to paragraph (3), as if the winding up had not commenced.
- (3) The termination of a winding up pursuant to paragraph (1) shall not affect the validity of any thing duly done by any liquidator, director or other person, or by operation of law, before the termination.

*Chapter 3 – Winding up on just and equitable grounds*

**155 Power for court to wind up**

- (1) A company, not being a company in respect of which a declaration has been made (and not recalled) under the Désastre Law, may be wound up by the court if the court is of the opinion that –
- (a) it is just and equitable to do so; or
  - (b) it is expedient in the public interest to do so.
- (2) An application to the court under this Article on the ground mentioned in paragraph (1)(a) may be made by the company or by a director or a member of the company or by the Committee or the Commission.
- (3) An application to the court under this Article on the ground mentioned in paragraph (1)(b) may be made by the Committee or by the Commission.
- (4) If the court orders a company to be wound up under this Article it may –
- (a) appoint a liquidator;
  - (b) direct the manner in which the winding-up is to be conducted; and
  - (c) make such orders as it sees fit to ensure that the winding-up is conducted in an orderly manner.
- (5) The Act of the court ordering the winding up of a company under this Article –
- (a) must be delivered by the company to the registrar within 14 days after it is made; and
  - (b) shall be recorded by the registrar when he or she receives it.
- (6) If the company fails to comply with paragraph (5)(a), it and every officer of it in default is guilty of an offence.”

**32 Articles 158 and 159 substituted**

For Articles 158 and 159 of the principal Law there shall be substituted the following Articles –

**“158 Notice of winding up**

- (1) If a company has passed a resolution for a creditors’ winding up, or is deemed under Article 144(4) or Article 144A(5) to have done so, the company must within 14 days give notice of that fact by advertisement in the Jersey Gazette.
- (2) If the company fails to comply with paragraph (1), it and every officer of it in default are guilty of an offence.

**159 Commencement and effects of creditors’ winding up**

- (1) A creditors’ winding up is deemed to commence –
  - (a) at the time the resolution for winding up is passed, or is deemed under Article 144(4) or Article 144A(5) to have been passed; or
  - (b) where Article 151 applies, at the time the winding up becomes a creditors’ winding up,as the case may be, and where Article 148 has not previously had effect, the company must from the commencement of the winding up cease to carry on its business, except so far as may be required for its beneficial winding up.
- (2) The corporate state and capacity of the company continue until the company is dissolved.
- (3) A transfer of shares, not being a transfer made to or with the sanction of the liquidator, and an alteration in the status of the company’s members made after the commencement of the winding up, is void.
- (4) After the commencement of the winding up no action shall be taken or proceeded with against the company except by leave of the court and subject to such terms as the court may impose.”.

**33 Article 166 amended**

In Article 166(1) of the principal Law for the words “the substitution of references to” there shall be substituted the words “the substitution of references to the winding up for references to the *désastre* and references to”.

**34 New Article 169A**

After Article 169 of the principal Law there shall be inserted the following Article –

**“169A Procedure at creditors’ meeting**

- (1) Except as otherwise provided by this Article, a creditor who has been given notice of a creditors’ meeting is entitled to vote at the meeting (either in person or by proxy) and any adjournment of it.
- (2) The value of a creditor’s vote shall be calculated according to the amount of the creditor’s debt at the date of the commencement of the winding up.
- (3) A debt for an unliquidated amount or a debt the value of which has not been ascertained does not give a creditor the right to vote at a creditors’ meetings but the chairman of the meeting may put upon the debt an estimated minimum value that entitles the creditor to vote.
- (4) For a resolution to pass at a creditors’ meeting it must be supported by creditors the values of whose votes are at least half the value of the votes of the creditors who vote on the resolution.
- (5) A creditors’ meeting is not competent to act unless there are present 3 creditors (or their proxies) or, if there are less than 3 creditors, all of the creditors (or their proxies), being in either case creditors entitled to vote.”.

**35 Articles 171 – 186 and Chapter heading substituted**

For Articles 171 to 186 (inclusive) of the principal Law and the heading **“Chapter 5 – Provisions of general application”** there shall be substituted the following Articles and heading –

**“171 Power to disclaim onerous property**

- (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 liquidator in a creditors’ winding up may, within 6 months after the commencement of the winding up, by the giving of notice, signed by him or her and referring to this Article and Article 173, to each person who is interested in or under any liability in respect of the property disclaimed, disclaim on behalf of the company any onerous property of the company.
- (3) A disclaimer under this Article shall –
  - (a) operate so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; and

(b) discharge the company from all liability in respect of the property as of the date of the commencement of the creditors' winding up,

but shall not, except so far as is necessary for the purpose of releasing the company from liability, affect the rights or liabilities of any other person.

- (4) A person sustaining loss or damage in consequence of the operation of a disclaimer under this Article shall be deemed to be a creditor of the company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

#### **172 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 liquidator is aware of their addresses) on every person claiming under the company as a hypothecary creditor or under lessee and either –
- (a) no application under Article 173 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 173, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

#### **173 Powers of court in respect of disclaimed property**

- (1) This Article applies where the liquidator of a company has disclaimed property under Article 171.
- (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 company 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.
- (3) Subject to paragraph (4), the court may, on an application under this Article, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to –
- (a) a person entitled to it or a trustee for such a person; or
  - (b) a person subject to a liability mentioned in paragraph (2)(b) or a trustee for such a person.

- (4) The court shall not make an order by virtue of paragraph (3)(b) except where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.
- (5) The effect of an order under this Article shall be taken into account in assessing for the purpose of Article 171(4) the extent of loss or damage sustained by a person in consequence of the disclaimer.

#### **174 Unenforceability of liens on records**

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

#### **175 Appointment or removal of liquidator by the court**

- (1) The court may appoint a liquidator if for any reason there is no liquidator acting in a creditors' winding up.
- (2) The court may, on reason being given, remove a liquidator in a creditors' winding up and may appoint another.

#### **176 Transactions at an undervalue**

- (1) If a company has at a relevant time entered into a transaction with a person at an undervalue the court may, on the application of the liquidator in a creditors' winding up, make such an order as the court thinks fit for restoring the position to what it would have been if the company had not entered into the transaction.
- (2) The court shall not make an order under paragraph (1) if it is satisfied –
  - (a) that the company entered into the transaction in good faith for the purpose of carrying on its business; and
  - (b) that, at the time it entered into the transaction, there were reasonable grounds for believing that the transaction would be of benefit to the company.
- (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 company;
  - (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 company;
  - (d) require a person to pay in respect of a benefit received by him or her from the company such sum to the company 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 company by the order, or
    - (ii) on whom an obligation is imposed by the order,is to be able to prove in the winding up of the company 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 company 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 company 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 company, 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 company had entered into a transaction at an undervalue, and
    - (ii) that the company 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 company or the person with whom the company had entered into the transaction.
- (7) For the purposes of this Article, a company enters into a transaction with a person at an undervalue if –
- (a) it makes a gift to that person;
  - (b) it enters into a transaction with that person –
    - (i) on terms for which there is no ‘cause’, or
    - (ii) 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 company.
- (8) Subject to paragraphs (9) and (10), the time at which a company 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 date of commencement of the winding up.
- (9) The time to which paragraph (8) refers is not a relevant time unless –
- (a) the company was insolvent when it entered into the transaction; or
  - (b) the company became insolvent as a result of the transaction.
- (10) If the transaction at an undervalue was entered into with a person connected with the company or with an associate of the company, paragraph (9) does not apply and the time to which paragraph (8) refers is a relevant time unless it is proved that –
- (a) the company was not insolvent when it entered into the transaction; and
  - (b) it did not become insolvent as a result of the transaction.

#### **176A Giving of preferences**

- (1) If a company has at a relevant time given a preference to a person the court may, on the application of the liquidator in a creditors’ winding up, 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 company;
  - (b) require property to be vested in the company 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 company;
  - (d) require a person to pay in respect of a benefit received by him or her from the company such sum to the company 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;
  - (g) provide for the extent to which a person –
    - (i) whose property is vested by the order in the company, or
    - (ii) on whom obligations are imposed by the order,is to be able to prove in the winding up of the company 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 company 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 company, 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 company.
- (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 company, and



- (ii) of the fact that the company 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 company or the person to whom the company gave the preference.
- (6) For the purposes of this Article, a company gives a preference to a person if –
- (a) the person is a creditor of the company or a surety or guarantor for a debt or other liability of the company; and
  - (b) the company –
    - (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 the winding up of the company, 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 company, 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 the winding up of the company, would be better than the position in which the person would be if the preference had not been given.
- (8) A company that gave a preference to a person who was, at the time the preference was given, an associate of or connected with the company (otherwise than by reason only of being the company'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 company 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 commencement of the winding up.
- (10) The time to which paragraph (9) refers is not a relevant time unless –
- (a) the company was insolvent at the time the preference was given; or
  - (b) the company became insolvent as a result of giving the preference.
- (11) If the preference was given to a person connected with the company or to an associate of the company, paragraph (10) does not apply and the time to which paragraph (9) refers is a relevant time unless it is proved that –

- (a) the company was not insolvent at the time the preference was given; and
- (b) it did not become insolvent as a result of the preference being given.

**176B Definitions relating to transactions at an undervalue and preferences**

- (1) For the purposes of Articles 176 and 176A, a person is connected with a company if –
  - (a) he or she is a director of the company;
  - (b) he or she is an associate of a director of the company; or
  - (c) he or she is an associate of the company.
- (2) For the purposes of Articles 176 and 176A 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.
- (7) For the purposes of this Article “company” includes a company incorporated outside Jersey.

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

- (1) Subject to paragraph (3), if in the course of a creditors' winding up 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 liquidator 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 commencement of the creditors' winding up of the company that person as a director of the company –
- (a) knew that there was no reasonable prospect that the company would avoid a creditors' winding up or the making of a declaration under the Désastre Law; or

- (b) on the facts known to him or her was reckless as to whether the company would avoid such a winding-up or the making of such a declaration.
- (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 liquidator may himself or herself give evidence or call witnesses.

### **178 Responsibility for fraudulent trading**

- (1) If, in the course of a creditors' winding up, 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 liquidator, 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 liquidator may himself or herself give evidence or call witnesses.
- (3) Where the court makes an order under this Article or Article 177, 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 177 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 177 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.

### **179 Extortionate credit transactions**

- (1) This Article applies in a creditors' winding up where the company is, or has been, a party to a transaction for, or involving, the provision of credit to the company.
- (2) The court may, on the application of the liquidator, make an order with respect to the transaction if the transaction –
  - (a) is or was extortionate; and
  - (b) was entered into in the period of 3 years ending with the commencement of the creditors winding up.

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

### **180 Delivery and seizure of property**

- (1) Where a person has in his or her possession or control property or records to which a company appears in a creditors' winding up to be entitled, the court may require that person forthwith (or within a period which the court may direct) to pay, deliver, convey, surrender or transfer the property or records to the liquidator.
- (2) Where –
  - (a) the liquidator seizes or disposes of property that is not property of the company; and
  - (b) at the time of seizure or disposal the liquidator believes, and has reasonable grounds for believing, that he or she is entitled (whether in pursuance of an order of the court or otherwise) to seize or dispose of that property,the liquidator –
  - (c) is not liable to any person in respect of loss or damage resulting from the seizure or disposal except in so far as the

loss or damage is caused by the negligence of the liquidator;  
and

- (d) has a lien on the property, or the proceeds of its sale, for expenses incurred in connection with the seizure or disposal.

### **181 Liability in respect of purchase or redemption of shares**

- (1) This Article applies where a company (other than an open-ended investment company) is being wound up in a creditors' winding up and –

- (a) it has within 12 months before the commencement of the winding up made a payment under Article 55 or Article 57 or under Regulations made under Article 59 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 of the winding up.

- (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 liquidator 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 he or she received payment for his or her shares –

- (a) he or she knew; or
- (b) he or she 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) 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 192 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.

### **182 Resolutions passed at adjourned meetings**

Any resolution passed at an adjourned meeting of a company's creditors shall be treated for all purposes as having been passed on the date on which it was in fact passed, and not as having been passed on any earlier date.

### **183 Duty to co-operate with liquidator**

- (1) In a creditors' winding up each of the persons mentioned in paragraph (2) shall –
  - (a) give the liquidator information concerning the company and its promotion, formation, business, dealings, affairs or property which the liquidator may at any time after the commencement of the winding up reasonably require;
  - (b) attend on the liquidator at reasonable times and on reasonable notice when requested to do so; and
  - (c) notify the liquidator in writing of any change of his or her address, employment, or name.
- (2) The persons referred to in paragraph (1) are –
  - (a) those who are, or have at any time been, officers of or the secretary to the company;
  - (b) those who have taken part in the formation of the company at any time within 12 months before the commencement of the winding up;
  - (c) those who are in the employment of the company, or have been in its employment within those 12 months, and are in the liquidator's opinion capable of giving information which he or she requires; and
  - (d) those who are, or within those 12 months have been, officers of, or in the employment of, a body corporate that is, or

within those 12 months was, secretary to the company in question.

- (3) For the purposes of paragraph (2) 'employment' includes employment under a contract for services ('contrat de louage d'ouvrage').
- (4) A person who, without reasonable excuse, fails to comply with an obligation imposed by this Article, is guilty of an offence.

#### **184 Liquidator to report possible misconduct**

- (1) The liquidator in a creditors' winding up shall take the action specified in paragraph (2) if it appears to the liquidator in the course of the winding up –
  - (a) that the company has committed a criminal offence;
  - (b) that a person has committed a criminal offence in relation to the company being wound up; or
  - (c) in the case of a director, that for any reason (whether in relation to the company being wound up, or to a holding company of the company being wound up 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.
- (2) The liquidator 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 liquidator 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) The Committee or the Commission –
  - (a) shall thereupon investigate the matter; and
  - (b) for the purpose of the investigation may exercise any of the powers that are exercisable by inspectors appointed under Article 128 to investigate a company's affairs.
- (5) If it appears to the court in the course of a creditors' winding up –
  - (a) that the company has committed a criminal offence;
  - (b) that a person has committed a criminal offence in relation to the company being wound up; or
  - (c) in the case of a director, that for any reason (whether in relation to the company being wound up, or to a holding company of the company being wound up or of any subsidiary of such a holding company) his or her conduct



has been such as to raise a question whether an order should be sought against him or her under Article 78,

and that no report with respect to the matter has been made by the liquidator to the Attorney-General under paragraph (2), the court may (on the application of a person interested in the winding up or of its own motion) direct the liquidator to make such a report.

### **185 Obligations arising under Article 184**

- (1) For the purpose of an investigation by the Committee or the Commission under Article 184(4), an obligation imposed on a person by a provision of this Law to produce documents or give information to, or otherwise to assist, inspectors appointed as mentioned in that paragraph is to be regarded as an obligation similarly to assist the Committee or the Commission in its investigation.
- (2) Article 130(4) shall apply in respect of an answer given by a person to a question put to him or her in exercise of the powers conferred by Article 184(4).
- (3) Where criminal proceedings are instituted by the Attorney-General following a report or reference under Article 184, the liquidator and every officer and agent of the company past and present (other than the defendant) shall give the Attorney-General any assistance in connection with the prosecution which he or she is reasonably able to give.
- (4) In paragraph (3) 'agent' includes a banker, advocate or solicitor of the company and a person employed by the company as auditor, whether or not that person is an officer of the company.
- (5) If a person fails to give assistance as required by paragraph (3), the court may, on the application of the Attorney-General –
  - (a) direct the person to comply with that paragraph; and
  - (b) if the application is made with respect to a liquidator, direct that the costs shall be borne by the liquidator personally unless it appears that the failure to comply was due to the fact that the liquidator did not have sufficient assets of the company in his or her hands to enable him or her to do so.

### **185A Termination of creditors' winding up**

- (1) The liquidator of a company that is in the course of being wound up by a creditors' winding up may apply to the court for an order terminating the winding up, and the members may, by special resolution, authorize the company to make such an application.
- (2) The court shall refuse the application unless it is satisfied that the company is then able to discharge its liabilities in full as they fall due.

- (3) In considering the application the court shall have regard to the interests of the creditors of the company.
- (4) If the application for winding up the company was made by the Commission under Article 155(2) or (3) the court shall also have regard to the views of the Commission.
- (5) If the court makes an order under this Article it may make such order as to costs as it thinks fit.
- (6) Upon the termination of a creditors' winding up pursuant to paragraph (1) any liquidator appointed for the purpose of the creditors' winding up shall cease to hold office.
- (7) The termination of a creditors' winding up pursuant to paragraph (1) shall not prejudice the validity of any thing duly done by any liquidator, director or other person, or by operation of law, before its termination.

#### **185B Declaration under Désastre Law**

- (1) If –
  - (a) a creditors' winding up of a company has commenced; and
  - (b) a declaration is made in respect of the company under the Désastre Law,the winding up shall forthwith terminate.
- (2) Upon the termination of the winding up pursuant to paragraph (1) –
  - (a) any liquidator appointed for the purpose of the winding up shall cease to hold office; and
  - (b) the company and all other persons shall be in the same position, subject to paragraph (3), as if the winding up had not commenced.
- (3) The termination of a winding up pursuant to paragraph (1) shall not affect the validity of any thing duly done by any liquidator, director or other person, or by operation of law, before the termination.

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

- (1) Subject to –
  - (a) any enactment as to the order of payment of debts; and
  - (b) in respect of protected cells companies, the provisions of Part 18D,a company's property shall on a winding up be applied in satisfaction of the company's liabilities *pari passu*.
- (2) Unless the memorandum or articles otherwise provide any remaining property of the company shall be distributed among the members according to their rights and interests in the company.

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*Chapter 5 – Provisions of general application***186A References to the Court**

- (1) The following persons, namely –
  - (a) the company, in a summary winding up;
  - (b) the liquidator or a contributory or creditor of the company, in a creditors' winding up,may apply to the court for the determination of a question arising in the winding up, or for the court to exercise any of its powers in relation to the winding up.
- (2) The court, if satisfied that it will be just and beneficial to do so, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or make such other order on the application as it thinks just.
- (3) The court may exercise all or any of the powers that would have been exercisable by it or by the Viscount if a declaration had been made in relation to the company under the Désastre Law and may make an order terminating the winding up.”.

**36 Article 192 substituted**

For Article 192 of the principal Law there shall be substituted the following Article –

**“192 Liability as contributories of present and past members**

- (1) Except as otherwise provided by this Article, where a company is wound up, 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 winding up, 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 ceased to be a member of that class for 12 months or more before the commencement of the winding up; 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.”.

### **37 Article 205 amended**

Article 205 of the principal Law is amended by adding after paragraph (10) the following paragraph –

- “(11) Where –
- (a) the name of a company is struck off the register under paragraph (7); and
  - (b) the company is a protected cell company,
- the registrar must also strike off the register the name of each cell (if any) of the company.”.

### **38 Article 213 substituted**

For Article 213 of the principal Law there shall be substituted the following Article –

#### **“213 Power of court to declare dissolution of company void**

- (1) Where a company has been dissolved under this Law or the Désastre Law, the court may at any time within 10 years of the date of the dissolution, on an application made for the purpose by –
  - (a) a liquidator of the company; or
  - (b) any other person appearing to the court to be interested,

make an order, on such terms as the court thinks fit, declaring the dissolution to have been void and the court may by the order give such directions and make such provisions as seem just 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.

- (2) Thereupon such proceedings may be taken which might have been taken if the company had not been dissolved.
- (3) The person on whose application the order was made shall within 14 days after the making of the order (or such further time as the court may allow), deliver the relevant Act of the court to the registrar for registration.
- (4) A person who fails to comply with paragraph (3) is guilty of an offence.
- (5) Paragraph (6) applies where –
  - (a) an order is made under this Article that declares that the dissolution of a company dissolved under Article 150 is void; and
  - (b) the company's assets (if any) at the time of its dissolution were not sufficient for the discharge of all its liabilities at that time.
- (6) The court on the application of a creditor of the company may order –
  - (a) a person to whom any assets were distributed under Article 150; and
  - (b) any director or liquidator who signed a statement delivered to the registrar under Article 146 or 150 that the company had no liabilities,  
to contribute to the company's assets so as to enable the insufficiency mentioned in paragraph (5)(b) to be met.
- (7) Paragraph (6)(b) does not include a person who shows that he or she had reasonable grounds for being satisfied when signing the statement mentioned in that paragraph that the company had no liabilities.
- (8) A person mentioned in paragraph (6)(a) is liable to contribute an amount not exceeding the amount or value of the assets that were distributed to the person.
- (9) A directors or liquidator mentioned in paragraph (6)(b) 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 insufficiency mentioned in paragraph (5)(b).
- (10) 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.

- (11) Article 192 does not apply in relation to liability accruing by virtue of this Article.”.

**39 Article 222 and Schedule 3 repealed**

Article 222 of, and Schedule 3 to, the principal Law shall be repealed.

**40 Schedule 1 replaced**

For Schedule 1 to the principal Law there shall be substituted the Schedule set out in the Schedule to this Law.

**41 Machinery of government amendments**

In the following provisions of the principal Law for the word “Committee” there shall be substituted the word “Minister” –

- (a) Article 78;
- (b) Article 155;
- (c) Article 184;
- (d) Article 185;
- (e) Schedule 1, column 2 in relation to Article 29(3) of the principal Law;
- (f) Schedule 1, column 2 in relation to Article 143(5) of the principal Law.

**42 Citation and commencement**

- (1) This Law may be cited as the Companies (Amendment No. 8) (Jersey) Law 2005.
- (2) This Law, apart from Article 41, 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 41 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 41 comes into force before Article 42(3) of the States of Jersey Law 2005<sup>5</sup> comes into force, Article 41 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 40)

**SCHEDULE 1 REPLACED****“SCHEDULE 1**

(Article 215)

**PUNISHMENT OF OFFENCES**

<b>Article of Law creating offence</b>	<b>General nature of offence</b>	<b>Punishment</b>	<b>Daily default fine (where applicable)</b>
12(2)	Company failing to send to one of its members a copy of its memorandum or articles, when so required by the member	Level 3	
14(4)	Company failing to deliver to Judicial Greffier copy of altered certificate of incorporation following change of name	Level 3	Level 2
15(5)	Company failing to change name on direction of registrar	Level 3	Level 2
16(5)	Company failing to comply with condition of direction, or to deliver to registrar copy of notice of direction of Commission or of withdrawal or amendment of condition	Level 3	Level 2
17(4)	Private company issuing a prospectus	2 years or a fine; or both	
17(5)	Private company failing to give written notice to registrar of increase of membership beyond 30	Level 3	Level 2
17(8)	Private company failing to deliver to registrar Act of the court relieving company from consequences of increasing the number of its members	Level 3	Level 2

<b>Article of Law creating offence</b>	<b>General nature of offence</b>	<b>Punishment</b>	<b>Daily default fine (where applicable)</b>
	beyond 30		
17(8)	Company failing to deliver to registrar copy of direction by Commission modifying Article 17(2) in its application to the company	Level 3	Level 2
22(1A)	Company failing to have its name engraved on company seal	Level 3	
22(2)	Officer of company etc. using company seal without name engraved on it in legible characters	Level 3	
29(3)	Failure to comply with Order of Committee prohibiting the circulation of a prospectus in Jersey, the circulation of a prospectus outside Jersey by a company, or the procuring by a company (whether in or outside Jersey) of the circulation of a prospectus outside Jersey	2 years or a fine; or both	
33	Circulation of a prospectus with a material statement in it which is untrue or misleading or with the omission from it of the statement of a material fact	10 years or a fine; or both	
36(2)	Public company failing to deliver to registrar statement disclosing the amount or rate per cent of share commission	Level 3	Level 2
41(3)	Company failing to keep a register of members	Level 4	Level 2
44(4)	Company failing to give notice to registrar as to place where register of members is kept	Level 4	Level 2
45(3)	Refusal of inspection of members' register; failure to send copy on requisition	Level 4	
46(3)	Misuse of information obtained from members' register	A fine	



<b>Article of Law creating offence</b>	<b>General nature of offence</b>	<b>Punishment</b>	<b>Daily default fine (where applicable)</b>
47(4)	Company failing to deliver to registrar Act of court ordering rectification of register of members	Level 3	Level 2
49(10)	Company failing to comply with requirements in respect of overseas branch registers	Level 3	Level 2
50(5)	Company default in compliance with Article 50(1) (certificates to be made ready following allotment or transfer of shares)	Level 3	Level 2
53(5)	Company failing to deliver to registrar Act of court when application made to cancel resolution varying members' rights	Level 3	Level 2
54(5)	Company failing to deliver to registrar statement or notice required by Article 54 (particulars of special rights of members)	Level 3	Level 2
55(10)	Director making statement without reasonable grounds for the opinion expressed	2 years or a fine; or both	
58(5)	Company giving financial assistance towards acquisition of its own shares in contravention of Article 58	A fine	
58(5)	Officer of a company contravening Article 58	2 years or a fine; or both	
66	Officer of company concealing name of creditor entitled to object to reduction of capital, or wilfully misrepresenting nature or amount of debt or claim, etc.	2 years or a fine; or both	
69(2)	Company failing to have name on business correspondence, invoices etc.	Level 3	
70(3)	Company failing to comply with Article 70(1) or (2) (matters to be stated on business	Level 3	

<b>Article of Law creating offence</b>	<b>General nature of offence</b>	<b>Punishment</b>	<b>Daily default fine (where applicable)</b>
	correspondence, etc.)		
71(6)	Company failing to comply with requirements for annual returns	Level 3	Level 2
74A(2)	Company failing to record contracts with sole member who is a director	Level 3	
78(6)	Person acting in contravention of disqualification order	2 years or a fine; or both	
83(4)	Default in complying with Article 83 (keeping register of directors and secretaries; refusal of inspection)	Level 3	Level 2
87(8)	Company default in holding annual general meeting	Level 4	
88(3)	Company default in complying with Commission direction to hold company meeting	A fine	
88(5)	Company failing to register resolution that meeting held under Article 88 is to be its annual general meeting	Level 3	Level 2
95A(2)	Sole member failing to provide company with written record of decision	Level 3	
96(3)	Failure to give notice, to member entitled to vote at company meeting, that he or she may do so by proxy	Level 3	
96(5)	Officer of company authorizing or permitting issue of irregular invitations to appoint proxies	A fine	
98(4)	Company failing to keep minutes of proceedings at company and board meetings, etc.	Level 3	Level 2
99(3)	Refusal of inspection of minutes of general meeting; failure to send copy of minutes on member's request	Level 3	

<b>Article of Law creating offence</b>	<b>General nature of offence</b>	<b>Punishment</b>	<b>Daily default fine (where applicable)</b>
100(5)	Company failing to include copy of resolution to which Article 100 applies with memorandum or articles; failing to forward copy to member on request	Level 3	
105(2)	Company failing to supply copy of accounts to member on demand	Level 4	Level 2
107	Company failing to comply with Article 102 (keeping accounting records) 103 (retaining accounting records) 104 (preparing and laying accounts) or 106 (failing to deliver copy of accounts to registrar)	Level 4	For contravention of Article 106, Level 2
107	Liquidator or other officer of public company failing to comply with Article 102, 103, 104 or 106	2 years or a fine; or both	
109(9)	Company failing to appoint auditors when required to do so	A fine	
111(9)	Auditor ceasing to hold office failing to deposit statement as required by Article 111(7)	A fine	
111(10)	Company failing to send notice of auditor's resignation to members and to other persons entitled to receive notice of general meetings	A fine	
112	Company officer or secretary making misleading, false or deceptive statement to auditors	5 years or a fine; or both	
113E(1)	Person acting as company auditor knowing he or she is not qualified;	2 years or a fine; or both	
113E(2)	Person failing to give notice of disqualification	2 years or a fine; or both	

<b>Article of Law creating offence</b>	<b>General nature of offence</b>	<b>Punishment</b>	<b>Daily default fine (where applicable)</b>
117(6)	Offeror failing to send to company whose shares are the subject of the offer notice and declaration required by Article 117(4); making false declaration for purposes of Article 117(4)	2 years or a fine; or both	
119(6)	Offeror failing to give minority shareholder notice of rights exercisable under Article 119(1) or (2)	A fine	
125(4)	Company failing to annex Act of court to memorandum	Level 3	
126(6)	Company failing to comply with requirements of Article 126 (information to members and creditors about compromise or arrangement)	Level 3	
126(7)	Director or trustee for debenture holders failing to give notice to company of such matters relating to himself or herself as are necessary for purposes of Article 126	A fine	
127(4)	Company failing to deliver to registrar Act of court sanctioning compromise or arrangement	Level 3	Level 2
127Y	Person giving false, misleading or deceptive information in respect of application under Part XVIIIIC	2 years or a fine; or both	
127YD(3)	Cell company failing to keep register of members of cell of the company	Level 3	Level 2
127YE(3)	Cell company failing to provide annual return for cell of the company	Level 3	Level 2
127YF(4)	Cell company, and where the company or the cell concerned is a public company an officer of it, failing to keep accounting records for cell of the company	Level 3	Level 2

<b>Article of Law creating offence</b>	<b>General nature of offence</b>	<b>Punishment</b>	<b>Daily default fine (where applicable)</b>
127YG(5)	Cell company, and where the company or the cell concerned is a public company an officer of it, failing to prepare accounts for cell of the company	Level 3	Level 2
127YI(6)	Cell company failing to file transfer document in respect of a cell	Level 3	Level 2
127YI(7)	Director makes a declaration without having the grounds to do so	2 years or a fine; or both	
127YR(3)	Director failing to keep assets of protected cell company separate or failing to make clear the position of company in respect of an agreement by it in respect of a cell	Fine	
127YT(8)	Director making statement without reasonable grounds for the opinion expressed	2 years or a fine; or both	
127YU(9)	Creditor failing to keep cell assets separate and identifiable	Level 3	Level 2
127YU(15)	Company failing to take action in respect of loss wrongly suffered by its cellular or non-cellular assets	Level 3	Level 2
130(3)	Person giving false, misleading or deceptive information etc. to an inspector	2 years or a fine; or both	
133	Obstruction of person acting in execution of search warrant issued under Article 132	2 years or a fine; or both	
143(5)	Company failing to deliver to registrar Act of court altering, or giving leave to alter, company's memorandum or articles following application by member, Committee or Commission	Level 3	Level 2
146(4)	Director giving statement of solvency for the purpose of a	2 years or a fine	

<b>Article of Law creating offence</b>	<b>General nature of offence</b>	<b>Punishment</b>	<b>Daily default fine (where applicable)</b>
	summary winding up	or both	
150(7)	Director or liquidator giving statement that company has no liabilities	2 years or a fine or both	
151(12)	Director or liquidator of company in summary winding up failing to take any required action on forming opinion that company is unable to discharge its liabilities as they fall due	2 years or a fine; or both	
154(5)	Director signs certificate with out having reasonable grounds for belief that the statements in it are true	2 years or a fine; or both	
155(6)	Company and officer in default failing to deliver to registrar Act of court ordering company to be wound up on just and equitable grounds	Level 3	Level 2
158(2)	Company and officer in default failing to advertise resolution for creditors' winding up	Level 3	Level 2
160(3)	Company or director failing to comply with Article 160 in respect of calling or giving notice of creditors' meeting; directors failing to attend and lay statement before creditors' meeting	A fine	
161(6)	Liquidator failing to give notice of appointment	Level 3	Level 2
164(3)	Directors exercising powers in breach of Article 164, where no liquidator	6 months or a fine; or both	
168(2)	Liquidator failing to call company general meeting and creditors' meeting at end of each year	Level 3	
169(4)	Liquidator failing to give registrar notice of final meeting	Level 2	Level 1
169(7)	Failure to deliver to registrar Act	Level 3	Level 2

<b>Article of Law creating offence</b>	<b>General nature of offence</b>	<b>Punishment</b>	<b>Daily default fine (where applicable)</b>
	of court deferring dissolution of company		
169(8)	Liquidator, failing to call final meeting of company or creditors	Level 3	
183(4)	Failure to co-operate with liquidator	6 months or a fine; or both	
188(3)	Person acting as liquidator when not qualified to do so	2 years or a fine; or both	
189	Giving, offering etc. corrupt inducement affecting appointment as liquidator	2 years or a fine; or both	
190(2)	Liquidator failing to give notice of resignation, etc.	A fine	
191(2)	Failing to state on correspondence, etc. that company is in liquidation	A fine	
194(4)	Failing to comply with direction regarding destruction of records of company which has been wound up	Level 4	
195(4)	Person passing off or representing external company as incorporated in Jersey	A fine	
206(2)	Company failing to take reasonable precautions to prevent loss or falsification of company records	Level 3	
213(4)	Failing to deliver to registrar Act of the court declaring dissolution of company void	Level 3	Level 2
Schedule 2, paragraph 8(2)	Failure of existing company to notify registrar that it has more than 30 members	Level 3	Level 2
Schedule 2, paragraph 9(3)	Failure of existing company to notify registrar of address of registered office	Level 3	Level 2

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<sup>1</sup> *chapter 13.125*

<sup>2</sup> *chapter 04.280*

<sup>3</sup> *L.14/1968, repealed by L.30/1991*

<sup>4</sup> *chapter 24.840*

<sup>5</sup> *chapter 16.800*