

# ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 28th day of February, 1995 before Sir Graham Dorey, Bailiff; present:—Harry Wilson Bisson, Stanley Walter John Jehan, Raymond Arthur Heaume, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley, Lawrence Oscar Ozanne, John Richard Rowe Henry, David Charles Lowe, Esquires, Mrs. Eileen May Glass and Laurence Lenfestey Guille, Esquire, Jurats.*

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 14th day of December, 1994, approving and ratifying a *Projet de Loi* entitled "The Companies (Alderney) Law, 1994", THE COURT, after the reading of the said Order in Council and after having heard Her Majesty's Procureur thereon, ORDERED:

1. That the said Order in Council be registered on the records of this Island; and
2. That an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty's Greffier to the Clerk of the Court of Alderney for registration on the records of that Island of which Order in Council the tenor followeth:—

# **At the Court at Buckingham Palace**

The 14th day of December 1994

PRESENT.

## **The Queen's Most Excellent Majesty in Council**

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the affairs of Guernsey and Jersey dated the 30th day of November 1994 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee a humble petition of George W. Baron, Esquire, President of the States of Alderney, setting forth:—

‘That at a meeting of the States of Alderney held on the 20th day of July 1994, the States adopted a Resolution that a Projet de Loi entitled “The Companies (Alderney) Law, 1994” be approved: That at the meeting of the States aforesaid Your Humble Petitioner was authorised to present to Your Majesty in Council a Petition that the said Projet de Loi be sanctioned: That the said Projet de Loi is set forth in the Schedule hereunto annexed: And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Projet de Loi entitled “The Companies (Alderney) Law, 1994” and order that the same shall have force of Law within the Island of Alderney.”

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty’s said Order of Reference, have taken the said Petition and the Projet de Loi annexed thereto into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and to ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of Law within the Island of Alderney.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being, of the said Island of Guernsey, and also the Jurats of the said Island of Alderney, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

(No.XXXIV - 1994)  
PROJET DE LOI

ENTITLED

**The Companies (Alderney) Law, 1994**

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Projet de Loi  
entitled

**The Companies (Alderney) Law, 1994**

**THE STATES**, in pursuance of their Resolution of the 4th day of May, 1994, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Alderney.

PART I  
COMPANY FORMATION

**One person may form a company.**

1. (1) Any number of persons may associate for any lawful purpose and, by subscribing their names to a memorandum of association and by otherwise complying with the requirements of this Law as to registration, may form a body corporate (hereinafter referred to as a "company") and thereby establish the limits of their individual liability as members of the company.

(2) The number of persons who, under subsection (1), may form a company may be one or any greater number.

**Memorandum of association.**

2. A company's memorandum of association shall state-

- (a) the company's name, the word "limited" being added at the end of the name and forming part thereof;
- (b) that the company's objects are to be unlimited or alternatively (in cases where it is wished to specify the company's objects) what the company's objects are to be;
- (c) the amount of the company's share capital;

- (d) the number of shares in the company and the value of each of them;
- (e) the terms of payment of such shares;
- (f) that the liability of the company's members is to be limited;
- (g) the common signature;
- (h) where the company is a public company, that it is such a company; and
- (i) that the company is to be incorporated in Alderney.

**Registration of memorandum.**

3. A company's memorandum of association shall be registered by the Registrar in the Register of Companies.

**Conditions for registration.**

4. (1) The Registrar shall not register a company's memorandum unless-
- (a) a written application for registration, signed by an Advocate, is made to him in the name of all the company's founder members;
  - (b) the application is accompanied by-
    - (i) a certificate, signed by an Advocate and in the form set out in Schedule 1 (or in such other form as may be prescribed by regulations of the Committee), stating that all requirements of law for the incorporation of the company have been complied with;

- (ii) the appropriate fee specified in section 159;
  - (iii) written notice signed by an Advocate of the situation of the company's first registered office; and
  - (iv) written notice signed by an Advocate of the company's first directors, stating in relation to each director his full name, his usual residential address (or, in the case of a body corporate, its registered office or, if it has no registered office, its principal office) and that he has consented to act as director;
- (c) the memorandum is signed by the founder members with a statement of their full names and addresses, the signatures being made in the presence of and attested by a witness whose name and address shall also be stated;
- (d) each founder member is the owner of at least one share in the company;
- (e) the number of shares owned by each founder member is written opposite his signature at the foot of the memorandum;
- (f) the company's articles are annexed to the memorandum in accordance with section 7; and
- (g) the Registrar is satisfied that, in relation to the company's proposed name, none of the provisions of subparagraphs (i) to (vi) of section 31(1) apply.

(2) The requirements of this Law in respect of registration are in addition to the requirements of the Document Duty (Guernsey) Law, 1973(a) and of any Ordinance thereunder.

**Rectification of errors in memorandum.**

5. The Court may, in its absolute discretion and on such terms and conditions as it thinks fit, on an application by or on behalf of a company's members or directors, by order authorise the rectification of any error or formal defect, in each case of a minor and obvious nature, in the company's memorandum as registered in the Register of Companies.

**Preliminary clearance of names by Court.**

6. (1) If, whether after receipt of or at any time prior to the making of an application under section 4 for the registration of a company's memorandum, the Registrar states that he is satisfied that, in relation to the company's proposed name, any provision of subparagraphs (i) to (vi) of section 31(1) applies, and that accordingly he will not permit the registration of the company's memorandum under that name, an application may be made to the Court (to which the Registrar shall be the respondent) by or on behalf of any person proposing to incorporate the company for a declaration as to whether or not, in relation to the company's proposed name, any such provision applies.

(2) Upon the making of such an application-

- (a) the Court shall declare whether or not, in its opinion, any provision of subparagraphs (i) to (vi) of section 31(1) applies in relation to the company's proposed name; but
- (b) whatever the outcome of the application, no award of costs shall be made against the Registrar unless the Court is satisfied that he has acted in bad faith.

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(a) Ordres en Conseil Vol. XXIV, p. 74; there are amendments not relevant to this enactment. The Law was applied to Alderney by Recueil d'Ordonnances Tome XIX, p. 111.

**Articles of association.**

7. (1) A company's articles of association prescribing regulations for the conduct of the company shall be registered by the Registrar in the Register of Companies in accordance with this section.

(2) The company's articles shall be annexed to the memorandum when the application is made to the Registrar for the registration of the memorandum, and shall be registered with the memorandum.

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

8. (1) The Committee may, after consultation with the Commission, by regulation prescribe a standard table of articles.

(2) The standard table of articles and any amendment thereof effected by regulations of the Committee-

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

**Incorporation of company upon registration.**

9. (1) Upon the registration of a company's memorandum and articles in the Register of Companies in accordance with the provisions of this Law, the company shall be incorporated under the name set out in the memorandum; and a company thus incorporated-

- (a) shall have a continuous and successive existence in the persons of its members present and future until its dissolution;
- (b) may have a common seal;

- (c) may sue and be sued in its name and may exercise all the functions of an incorporated company, including the power to hold land; and
- (d) shall, subject to the provisions of section 25, be entitled to commence business.

(2) Upon registration as aforesaid, the persons named as directors in the notice of the company's first directors referred to in section 4(1)(b)(iv) shall be deemed to have been appointed as the company's first directors.

**Memorandum and articles to bind members.**

10. Subject to the provisions of this Law, the memorandum and articles of a company shall, from the time of registration, bind the company and its members in all respects as if the memorandum and articles-

- (a) were comprised in an agreement duly executed by the company and each member; and
- (b) contained covenants on the part of the company and each member to observe all provisions thereof;

and any reference in this subsection to a company's memorandum and articles is a reference thereto as from time to time amended in accordance with the provisions of this Law.

**Disapplication of ultra vires rule.**

11. (1) Where a company's memorandum provides that the company's objects are to be unlimited, and the memorandum contains no limitation upon the company's powers, then accordingly the company's objects shall be unlimited and the company shall have power to do anything that a body corporate with unlimited objects and powers has capacity to do.

(2) Where a company's memorandum states that the object or one of the objects of the company is to carry on business as a general commercial company-

- (a) that object shall be to carry on any trade or business whatsoever; and
- (b) the company shall have power to do anything incidental or conducive to the carrying on by it of any trade or business.

**Members' liability.**

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

(2) From the date on which the nominal value of a share is fully paid up for the benefit of the company, the owner of the share and all other persons who are guarantors or liable in any way whatsoever in respect of that share shall, subject as aforesaid, be relieved of all liability to contribute towards the company's debts in right of that share.

**Certificate of registration and registration number.**

13. (1) Upon the registration of a company's memorandum and articles in the Register of Companies in accordance with the provisions of this Law, the Registrar shall-

- (a) give a certificate of registration in respect of the company; and
  - (b) allocate a registration number to the company.
- (2) The certificate of registration shall state-
- (a) that the company is a public company, in cases where the memorandum so states;

- (b) that the company is a private company, in cases where the memorandum does not so state.

(3) A certificate of registration shall be conclusive evidence that the company is duly registered.

**Copies of company documents for members.**

14. (1) A company shall, if so requested by any member, within a period of 7 days beginning on the day of receipt of the request, provide the member with a copy of-

- (a) the memorandum and articles;
- (b) the special resolutions of any general meeting;

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

(2) A company which fails to comply with any provision of this section shall be guilty of an offence.

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

15. No minor or person under legal disability-

- (a) may be a founder member of a company;
- (b) may become a shareholder of a company, except by acquisition of the shares in question by inheritance or by operation of law; but in such a case the minor or other person shall not count towards the number of members which this Law requires for the continuity of the company.

PART II  
PUBLIC AND PRIVATE COMPANIES

**Public companies and private companies.**

16. (1) A public company is a company the memorandum of which states or is deemed to state that it is a public company.

(2) The memorandum of a company which, when section 17 comes into force, has more than 20 members shall be deemed to state that it is a public company.

(3) A public company which has less than 21 members may become a private company by altering its memorandum to that effect by special resolution.

(4) A private company is one which is not a public company.

(5) A private company may become a public company by altering its memorandum to that effect by special resolution.

(6) In determining for the purposes of this Part of this Law the number of members of a company, no account shall be taken of-

(a) directors;

(b) persons in the employment of the company; or

(c) persons who, having formerly been directors or persons in the employment of the company-

(i) were, whilst directors or in such employment, members of the company; and

(ii) have continued after the determination of their office or employment to be members of the company.

(7) Where two or more persons hold shares in a company jointly they shall, for the purposes of this Part of this Law, be treated as a single member.

(8) Where a company becomes a private or public company in accordance with subsection (3) or (5), the Registrar shall, upon delivery to him of a copy of the special resolution altering the memorandum, issue a fresh certificate of registration appropriate to the altered status.

**Restrictions on certain actions of private companies.**

17. (1) A private company shall not-

- (a) enter the name of any person in its register of members so as to increase the number of its members beyond 20 (excluding any person described in section 16(6)); or
- (b) offer its shares to the public by means of a prospectus, advertisement or other offer for subscription or sale.

(2) A private company which contravenes any provision of subsection (1) shall become subject to the provisions of this Law in all respects as if it were a public company.

(3) Where in relation to a company there is a contravention of subsection (1)(a) the Court may, on the application of the company or of any other interested person, if satisfied that it is just and equitable to relieve the company of all or any of the consequences of the contravention, grant relief on such terms and conditions as it thinks fit.

(4) If on the application of a private company or a public company desirous of becoming a private company the Court is satisfied that, by reason of the nature of the company's activities, its affairs may properly be regarded as being the domestic concern of its members, the Court may by order direct, on such terms and conditions as it thinks fit, that subsection (1) shall apply to the company subject to such modifications as may be specified in the order.

(5) Where an order under subsection (3) or (4) is made in relation to a company, the Registrar shall, on the written application of the company, enter a copy of the order as soon as is reasonably practicable in the Register of Companies; and a company which fails to make such an application within 14 days of the date of the order shall be guilty of an offence.

(6) Where in relation to a company there is a contravention of subsection (1)(b) then, without prejudice to any other consequence of or remedy in respect of the contravention, the company shall be guilty of an offence.

### PART III COMPANIES LIMITED BY GUARANTEE

#### **Incorporation of companies limited by guarantee.**

18. (1) A company may be incorporated in Alderney with the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up.

(2) Such a company is referred to in this Law as a company limited by guarantee.

(3) The provisions of this Law shall, subject to the modifications set out in Schedule 6, apply in relation to a company limited by guarantee as they apply in relation to a company limited by shares; and the provisions of Schedule 6 shall have effect accordingly.

### PART IV CORPORATE CAPACITY

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

19. (1) The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything contained in or omitted from the company's memorandum.

(2) It remains the duty of a company's directors to observe any limitation on their powers imposed by or deriving from the company's memorandum.

(3) Any act of the directors which, but for subsection (1), would be beyond the company's capacity may only be ratified by the company by special resolution.

(4) A special resolution ratifying any act of the directors shall not affect any liability incurred by them or by any other person; but relief from such liability may be conferred separately by special resolution.

### **Execution of documents.**

20. (1) Under the law of Alderney the following provisions shall have effect in relation to the execution of documents by a company.

(2) A document is executed by a company by the affixing of its common seal.

(3) A company need not have a common seal, however, and the following subsections apply whether it does or not.

(4) A document signed by a director and the secretary of a company, or by two directors thereof, and expressed in whatever form of words to be executed by the company, has the same effect as if executed under the common seal of the company.

(5) A document shall be deemed to have been duly executed by a company-

(a) if it purports to be signed by a director and the secretary of the company or by two directors thereof; or

(b) if its common seal is affixed thereto in the presence of, and attested by, a director and the secretary of the company or two directors thereof; and where a seal purporting to be the common seal of the company has been affixed to a document attested by persons purporting to hold such

offices, the document shall be deemed to have been duly executed by the company.

(6) Subsection (5) shall only operate in favour of a person acting in good faith and without notice of any defect in the execution of the document in question.

**Company may give power of attorney.**

21. (1) A company may, by power of attorney under its common seal, empower any person, either generally or in respect of any specified matter, to represent it, act in its name and execute documents on its behalf; and such a power shall, unless it states otherwise, be capable of use in any place in Alderney or elsewhere.

(2) A document executed by such an attorney on behalf of the company has the same effect as if executed under the company's common seal.

**Directors' powers to bind a company.**

22. (1) In favour of a person dealing with a company in good faith, the power of the company's directors to bind it, or authorise others to do so, is deemed to be free of any limitation imposed by or deriving from-

- (a) the company's memorandum or articles;
- (b) any resolution of the company or of any class of shareholders;
- (c) any agreement between the company's members or any class of shareholders;

and for the purposes of this subsection-

- (d) a person deals with a company if he is a party to any transaction or other act to which the company is a party;
- (e) a person is presumed to have acted in good faith unless the contrary is proved.

(2) Subsection (1) does not affect any liability incurred by reason of the directors having exceeded their powers.

**No duty to enquire.**

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

**Pre-incorporation contracts.**

24. (1) A contract which purports to be made by or on behalf of a company before the company is incorporated has effect, subject to any agreement to the contrary, as one made with the person purporting to act for the company or as agent for it, and he is, subject to subsection (2), personally liable on the contract accordingly.

(2) If a company, within the time stipulated in the transaction or (if none) within a reasonable time of incorporation, signifies by act or conduct its intention to be bound by the transaction, the company shall be bound thereby and the person described in subsection (1) shall cease to be so bound.

**Restriction on public companies commencing business.**

25. (1) A public company offering its shares to the public by means of a prospectus or other offer for subscription or sale shall not be entitled to commence business or exercise borrowing powers until-

- (a) in relation to shares which are to be paid up in cash, the minimum subscription, if any, stipulated in the company's memorandum or articles has been allotted;
- (b) every director has paid in respect of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, an amount equal to the amount payable on an application for and allotment of the shares offered for public subscription;

- (c) the secretary or a director has deposited with the Registrar
  - (i) a declaration that the conditions set out in paragraphs (a) and (b) have been complied with; and
  - (ii) such fee as may be prescribed for the purposes of this paragraph by Ordinance of the States; and
- (d) the Registrar has certified that the company is entitled to commence business.

(2) The Registrar shall give his certificate under subsection (1)(d) upon receipt of the declaration described in subsection (1)(c)(i).

(3) The said certificate shall be evidence that the company is entitled to commence business.

#### PART V ALTERATION OF MEMORANDUM & ARTICLES

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

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

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

**27.** (1) A company may, by special resolution, alter the objects stated in its memorandum; and, without prejudice to the generality of the foregoing, such an alteration may provide that the company's objects are henceforth to be unlimited.

(2) An application may be made to the Court for the annulment of an alteration of a company's objects; and, where such an application is made, the alteration shall not have effect except in so far as it is confirmed by the Court.

(3) An application under this section-

- (a) may be made by the holders of not less than 15% in the aggregate of the company's issued share capital;
- (b) shall not be made by or on behalf of any person who consented to or voted in favour of the alteration;
- (c) may be made on behalf of the persons entitled to make the application by such one or more of their number as they may appoint in writing for the purpose;
- (d) shall be made within a period of 21 days immediately following the day upon which the resolution altering the company's objects was passed;
- (e) shall not be heard unless the Court is satisfied that the company has been notified of the date, time and place of the application.

(4) On an application under this section the Court may, on such terms and conditions as it thinks fit-

- (a) annul or confirm the alteration in whole or in part;
- (b) adjourn the proceedings to enable an arrangement to be made to the satisfaction of the Court for the purchase of the interests of dissentient members, in which case the Court may give such directions for facilitating or implementing the arrangement as the Court thinks fit.

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

- (a) provide for the purchase by the company of the shares of any member;
- (b) provide for a reduction of the company's share capital by declaring that the company shall be deemed to have passed a resolution for reducing share capital; and in such a case Part X of this Law shall apply as if the company had, on the date of the order under this section, made an application to the Court under section 64 for an order confirming the reduction;

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

(6) Notwithstanding any other provision of this Law, where an order of the Court under this section-

- (a) annuls an alteration of a company's memorandum in whole or in part, the company may not, without the leave of the Court, make any alteration to its memorandum in contravention of the order;
- (b) makes an alteration of a company's memorandum or articles, or confirms an alteration of a company's memorandum in whole or in part, any alteration made by or pursuant to the order shall be of the same effect as if duly made by special resolution of the company, and the provisions of this Law shall apply accordingly to the memorandum or articles as so altered.

(7) A copy of every order of the Court under this section making an alteration of a company's memorandum or articles or annulling or confirming an alteration of a company's memorandum in whole or in part shall, on the written application of the company, be entered by the Registrar as soon as is reasonably practicable in the Register of Companies; and a company which fails to make such an application within 14 days of the date of the order shall be guilty of an offence.

(8) The validity of an alteration of a company's objects shall not be questioned on the ground that it was not authorised in accordance with subsection (1) except in proceedings taken for the purpose (whether under this section or otherwise) within a period of 21 days immediately following the day upon which the resolution in question was passed; and where any such proceedings are taken otherwise than under this section, subsections (4) to (7) shall so far as appropriate apply in relation to an order of the Court pursuant to such proceedings as they would apply in relation to an equivalent order under this section.

#### **Provisions of memorandum which could have been in articles.**

28. A provision contained in a company's memorandum which could instead lawfully have been contained in the articles may be altered by the company by special resolution in all respects as if the provision were contained in the articles; and the provisions of section 29 shall apply in relation to such a provision accordingly.

#### **Alteration of articles.**

29. (1) Subject to the provisions of this Law and of its memorandum, a company may by special resolution alter its articles.

(2) Any alteration so made in respect of a company's articles shall, subject to the provisions of this Law, have the same effect as if originally contained therein and shall be subject in like manner to alteration by special resolution.

(3) The power of a company under this section to alter its articles includes power to add to them, modify any of them, rescind them in whole or in part and substitute other articles.

(4) Where a company by special resolution alters its articles, a copy of the resolution stating the exact terms of the alteration shall be delivered by or on behalf of the company to the Registrar for registration in the Register of Companies; and until this requirement is complied with, the alteration shall be of no effect.

PART VI  
NAME, OFFICE AND SEAL

**Power of company to change name.**

30. (1) A company may by special resolution change its name.

(2) A change of name by a company under this Law-

(a) shall not be effective until confirmed by order of the Court;

(b) shall not affect the rights of any person or any obligation or liability of the company or render defective any legal proceedings by or against the company, which proceedings may be continued in the new name.

(3) An application to the Court for an order confirming a change of company name shall not be granted unless, prior to the hearing thereof, the company has, on two occasions falling in successive weeks, placed a notice in the Gazette giving details of the proposed change of name and of the date, time and place of the hearing.

**Powers of Court in relation to company names.**

31. (1) The Court may-

(a) direct a company to change the name by which it is registered within such period and subject to such penalty as the Court may direct;

- (b) refuse an application under section 30 for an order confirming a change of company name;

if satisfied in either case that-

- (i) the name or proposed name is such as to induce the public to confuse the company with some other person or body previously established in Alderney or elsewhere;
- (ii) the name does not end with the word "limited";
- (iii) the name is the same as a name appearing in the Register of Companies;
- (iv) the use of the name constitutes a criminal offence or is offensive, misleading or inappropriate in relation to the company concerned;
- (v) the name includes any word such as "Imperial", "Royal", "Queen" or "Crown" which implies or might be taken to imply royal or government connection, support or patronage, unless Her Majesty's Procureur has given written permission for the use of that word; or
- (vi) the use of the name would be unsafe, unsatisfactory or not in the public interest.

(2) For the removal of doubt it is hereby provided that the Court may exercise its powers under subsection (1)(a) or (b) notwithstanding the fact that-

- (a) the company was originally incorporated under the name in question (whether with or without the name being cleared by the Court under section 6); or
- (b) the Court has previously made an order under section 30 confirming a change of company name to the name in question.

(3) In considering for the purposes of subsection (1)(iv) whether any name would be misleading or inappropriate, the Court shall have regard to the representations (if any) of the Committee and the Commission.

(4) A company which contravenes any provision of a direction under subsection (1)(a) is, without prejudice to any penalty specified in the direction-

- (a) guilty of an offence; and
- (b) liable to be wound up under section 125.

**Registered office.**

32. (1) A company shall at all times have a registered office in Alderney where all legal process concerning the company may be served and to which all other communications and notices to be given to the company may be delivered or posted.

(2) All legal process and other communications and notices served at the registered office shall be deemed to have been duly served on the company.

(3) Written notice signed by an Advocate of the situation of a company's first registered office shall be given to the Registrar when the application for registration of the company's memorandum is made under section 4.

(4) A company may at any time change the situation of its registered office; but the change shall not be effective until written notice thereof is given to the Registrar by or on behalf of the company.

(5) The Registrar shall draw up a list of the registered offices of all companies and display the list or otherwise make it available for inspection at his office.

(6) A company's name shall be displayed, in letters which are easily legible, outside its registered office or in a conspicuous position in a place within its registered office to which members of the general public have unrestricted access during ordinary business hours.

(7) A company in relation to which there is a contravention of any provision of subsection (1) or (6) shall be guilty of an offence.

**Court may remove company from registered office.**

33. (1) The Court may by order direct that any premises specified in the order shall cease to be the registered office of a particular company; and upon the making of such an order-

(a) the Registrar shall enter a copy of the order in the Register of Companies; and

(b) the company shall, within a period of 7 days beginning on the date of the order, give written notice to the Registrar of the situation of its new registered office (which notice shall be entered by the Registrar as soon as is reasonably practicable in the Register of Companies).

(2) An application for an order under subsection (1) may be made by the owner, landlord or tenant of the premises in question, by the Registrar or by any other person who proves to the satisfaction of the Court that he has a legitimate and substantial interest in making the application.

- (3) A company which contravenes subsection (1)(b)-
- (a) shall be liable to be struck off the Register of Companies in accordance with section 107, the provisions of which shall apply accordingly;
  - (b) shall be liable to be wound up under section 125; and
  - (c) shall be guilty of an offence.
- (4) An order under subsection (1)-
- (a) may be made whenever the Court thinks fit (and whether or not the Court has granted an order in respect of the eviction of the company from the premises);
  - (b) may be made on such terms and conditions as the Court thinks fit; and
  - (c) may direct that, until written notice is given to the Registrar of the situation of the company's new registered office, all legal process concerning the company may be served at, and all other communications and notices to be given to the company may be delivered or posted to, such address as may be specified in that behalf in the Court's order; and, where the Court so directs, all legal process and other communications and notices served at the specified address in accordance with the Court's order shall be deemed to have been duly served on the company.

**Company may have common seal.**

**34.** (1) A company may have a common seal upon which its name is engraved in legible characters.

(2) An officer of a company or other person acting or purporting to act on its behalf who uses or authorises the use of a seal purporting to be the common seal of the company on which its name is not engraved in legible characters shall be guilty of an offence.

(3) A person affixing a common seal to a document shall certify thereon the date upon which and the place at which it is affixed.

**Official seal for use abroad.**

**35.** (1) A company whose objects require or comprise the transaction of business outside Alderney may have for use in any place outside Alderney an official seal in addition to the common seal referred to in section 34(1).

(2) The official seal shall be a facsimile of the common seal of the company.

(3) The official seal when duly affixed to a document has the same effect as the company's common seal.

(4) A company having an official seal for use in any place outside Alderney may, by writing under its common seal, authorise any agent there to affix the official seal to documents to which the company is a party there.

(5) As between the company and any person dealing with such an agent, the agent's authority continues during the period (if any) specified in the instrument conferring his authority or, if no period is so specified, until notice of the revocation or determination of the agent's authority is given to the person dealing with him.

(6) A person affixing an official seal to a document shall certify thereon the date upon which and the place at which it is affixed.

**Name and registered office to appear on company documents.**

**36. (1)** A company's name and registered office shall appear in legible characters upon its-

- (a) business letters, statements of account, bills, receipts, invoices and order forms;
- (b) notices and other official publications; and
- (c) negotiable instruments, letters of credit, bills of exchange, endorsements and other obligations or promises to pay purporting to be signed or issued by or on behalf of the company.

(2) An officer of a company or other person acting or purporting to act on its behalf who signs or issues any document described in subsection (1)(c) upon which the company's name does not appear in legible characters shall, if the company defaults thereunder, be personally liable thereon.

(3) A company in relation to which there is a contravention of subsection (1) shall be guilty of an offence.

**PART VII  
ANNUAL RETURN**

**Annual return.**

**37. (1)** Every company shall, in each calendar year before the 31st January-

- (a) complete an annual return under the company's common seal containing information current on the 1st January in that year;
- (b) deliver a copy of the return to the Registrar; and

(c) file the original return in a register kept by it for the purpose.

(2) Every company shall, subject to the provisions of subsections (3) and (4), state in its annual return-

- (a) the address of the company's registered office;
- (b) the names and addresses of the company's directors;
- (c) the names and addresses of the company's members;
- (d) the number of shares issued to each member and the amount paid up thereon;
- (e) the company's share capital and the number of shares into which it is divided;
- (f) the number of shares issued since the formation of the company;
- (g) the number of calls made by the company on its members, the amount per share of each call, the total amount of capital called up for payment by means of such calls, the amount received by the company in respect of those calls and the amount still payable to the company on further calls; and
- (h) where appropriate, the particulars required by section 52;

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

- (i) the number of shares which have been declared confiscated;
- (j) the total amount received by the company on such shares before confiscation; and
- (k) the amount received by the company from the sale of such shares after confiscation.

(3) The annual return may, if any previous annual return of the company has given the full particulars required to be stated by subsection (2), be in abbreviated form if none of those particulars has changed since the 1st January in the preceding year.

(4) An annual return in abbreviated form completed for the purposes of subsection (3)-

- (a) shall state the company's name, registered office and registration number; and
- (b) shall contain a declaration that, since the 1st January in the preceding year, none of the particulars required to be stated by subsection (2) has changed.

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

- (a) shall be guilty of an offence;
- (b) shall be liable to be struck off the Register of Companies in accordance with section 107, the provisions of which shall apply accordingly;
- (c) shall be liable to be wound up under section 125; and
- (d) in the case of a contravention of subsection (1)(b), shall be liable to pay to the Registrar the appropriate penalty for

each calendar month or part of a calendar month between the date by which it should have delivered its annual return and the date when it in fact did so; and for the purposes of this paragraph-

- (i) the expression "the appropriate penalty" has the meaning given by section 107(7); and
- (ii) when the appropriate penalty has become payable, the Registrar shall not thereafter accept delivery of the company's annual return, and the company shall be deemed not to have complied with subsection (1)(b), unless and until the penalty is paid.

#### PART VIII SHARE CAPITAL

##### **Allotment of shares by public companies.**

**38. (1)** No allotment of any share capital of a public company which has offered its shares to the public by means of a prospectus, advertisement or other offer for subscription or sale shall be made unless-

- (a) the minimum subscription has been subscribed; and
- (b) the sum payable on application for the minimum subscription has been received by the company.

(2) In determining whether subsection (1)(a) or (b) has been complied with, no account shall be taken of any amount payable otherwise than in cash.

(3) The expression "the minimum subscription" means-

(a) the number of shares (if any) stated by the memorandum or articles and the prospectus to be the minimum subscription upon which the directors may proceed to allotment; or

(b) if no such number is so stated, the whole of the share capital so offered for subscription.

(4) The amount payable by each subscriber on each share shall not be less than 5% of the nominal amount of the share.

(5) The conditions of this section shall be complied with within a period of 40 days beginning on the date of the offer of the company's shares to the public, in default of which all money received from subscribers shall be refunded to them, without interest, within a further period of 8 days immediately following the expiration of that period.

(6) If the refund referred to in subsection (5) is not made within the further period mentioned in that subsection, the directors of the company shall, subject to subsection (7), be jointly and severally liable to repay the monies together with interest at the rate of 5% per annum (or such other rate as the States may determine by Ordinance) from the expiration of that further period.

(7) No director shall be liable pursuant to subsection (6) in respect of any loss of money if he proves that the loss was not due to any misconduct or negligence on his part.

(8) Any term, condition or agreement pursuant to which an applicant for shares waives or purports to waive any requirement of this section shall be void.

(9) This section does not apply to an allotment of shares which follows the first allotment of shares offered to the public for subscription.

**Effect of irregular allotment by public companies.**

39. (1) An allotment made by a public company to an applicant in contravention of any provision of section 38 is voidable at the instance of the applicant within a period of one month beginning on the date of the company's first annual general meeting, and not later; and the allotment is so voidable notwithstanding that the company is in the course of being wound up.

(2) An officer of a company who knowingly contravenes, or causes, permits or authorises the contravention of, any provision of section 38 in respect of an allotment shall be personally liable to indemnify the company and its shareholders for any costs, loss or damage incurred or sustained as a result of the contravention.

(3) Proceedings for the recovery of compensation in respect of any such costs, loss or damage shall not be commenced after the expiration of 2 years from the date of the allotment.

**Return of allotments to Registrar by public companies.**

40. (1) When a public company makes an allotment of its shares it shall within a period of one month immediately thereafter deliver to the Registrar for registration-

- (a) a return of the allotments, stating-
  - (i) the number and nominal amount of the shares comprised in the allotment;
  - (ii) the names and addresses of the allottees; and
  - (iii) the amount (if any) paid or due and payable on each share; and
- (b) in the case of shares allotted as fully or partly paid up otherwise than in cash-

(i) a document stating the title of the allottee to the allotment, whether a contract for sale or for services or other consideration or otherwise; and

(ii) a return stating the number and nominal amount of the shares comprised in the allotment and the extent to which they are to be treated as paid up.

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

**Commissions and discounts on shares.**

41. (1) No company shall-

(a) subject to subsection (2), pay a commission to any person;  
or

(b) apply its shares or capital money directly or indirectly in payment of any commission, discount or allowance to any person;

in consideration of his subscribing or agreeing to subscribe (absolutely or conditionally) for shares in the company or procuring or agreeing to procure subscriptions (absolute or conditional) for such shares.

(2) Subsection (1)(a) does not apply if the payment of the commission and the amount or percentage rate thereof is authorised by the company's articles and disclosed in the prospectus.

(3) Subsection (1) applies whether the shares or money be so applied by being added to the purchase price of any property acquired by the company or to the contract price of any work to be executed for the company, or whether the money be paid out of the nominal purchase or contract price, or otherwise.

(4) Nothing in this section affects the power of a company to pay brokerage.

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

42. A company may, if so authorised by its articles-

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

**Reserve liability of company.**

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

**Power of company to purchase own shares.**

44. (1) A company may purchase its own shares (including any redeemable shares) in accordance with the provisions of this section.

(2) A purchase under this section shall, unless the company is a wholly-owned subsidiary, be sanctioned by a special resolution.

(3) If the shares are to be purchased otherwise than on a stock exchange, they shall not carry the right to vote on the resolution sanctioning the purchase.

(4) If the shares are to be purchased on a stock exchange, the resolution sanctioning the purchase shall specify-

- (a) the maximum number of shares to be purchased;
- (b) the maximum and minimum prices which may be paid; and
- (c) a date, not falling more than 18 months after the date of the passing of the resolution, on which the authority to purchase is to expire.

(5) Sections 46 and 54 apply in relation to the purchase by a company of its own shares under this section as they apply in relation to the redemption of redeemable preference shares.

(6) A company may not purchase its own shares under this section if as a result of the purchase there would no longer be any member of the company holding shares other than redeemable shares.

**Financial assistance by company for purchase of own shares.**

45. (1) Subject to the provisions of this section, a company may not give financial assistance directly or indirectly for the purposes of or in connection with the acquisition by any person of any shares in the company or, where the company is a subsidiary, in any holding company of it.

(2) This section does not prohibit-

- (a) assistance given in the ordinary course of the company's business;
- (b) assistance given by means of any distribution of the company's assets to its members, lawfully made;

- (c) the provision by the company, in good faith and in the interests of the company, of assistance for the purposes of an employees' share scheme;
- (d) the making by a company of loans to persons other than directors employed in good faith by the company with a view to enabling those persons to acquire fully paid shares in the company or its holding company to be held by them by way of beneficial ownership; or
- (e) the giving of financial assistance if-
  - (i) the giving of the assistance is sanctioned by a prior special resolution of the company proposing to give it and, where the company is a wholly-owned subsidiary, by a prior special resolution of any holding company of it which is not itself a wholly-owned subsidiary; and
  - (ii) the directors of the company reasonably believe that, immediately after the assistance has been given, the company will be able to discharge its liabilities as they fall due and the value of the company's assets will not be less than the aggregate of its liabilities, the nominal amount of its issued shares and any amounts standing to the credit of its share premium account and capital redemption reserve fund.

(3) For the purposes of this section, an employees' share scheme is a scheme for encouraging or facilitating the holding of shares or debentures in a company by or for the benefit of-

- (a) the bona fide employees or former employees of the company, the company's subsidiary or holding company or a subsidiary of the company's holding company; or
- (b) the wives, husbands, widows, widowers, minor children or minor step-children of such employees or former employees.

(4) A company which gives financial assistance in contravention of any provision of this section shall be guilty of an offence.

**Shares issued at a premium.**

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

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

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

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

(4) Sections 47 and 48 give relief from the requirements of this section, and in those sections references to the issuing company are references to the company issuing shares as above mentioned.

**Merger relief.**

47. (1) With the exception made by section 48(7), this section applies where the issuing company has secured at least a 90 per cent equity holding in another company in pursuance of an arrangement providing for the allotment of equity shares in the issuing company on terms that the consideration for the shares allotted is to be provided-

- (a) by the issue or transfer to the issuing company of equity shares in the other company; or
- (b) by the cancellation of any such shares not held by the issuing company.

(2) If the equity shares in the issuing company allotted in pursuance of the arrangement in consideration for the acquisition or cancellation of equity shares in the other company are issued at a premium, section 46 does not apply to the premiums on those shares.

(3) Where the arrangement also provides for the allotment of any shares in the issuing company on terms that the consideration for those shares is to be provided by the issue or transfer to the issuing company of non-equity shares in the other company or by the cancellation of any shares in that company not held by the issuing company, relief under subsection (2) extends to any shares in the issuing company allotted on those terms in pursuance of the arrangement.

(4) Subject to subsection (5), the issuing company is to be regarded for the purposes of this section as having secured at least a 90 per cent equity holding in another company in pursuance of such an arrangement as is mentioned in subsection (1) if in consequence of an acquisition or cancellation of equity shares in that company (in pursuance of that arrangement) it holds equity shares in that company (whether all or any of those shares were acquired in pursuance of that arrangement or not) of an aggregate

nominal value equal to 90 per cent or more of the nominal value of that company's equity share capital.

(5) Where the equity share capital of the other company is divided into different classes of shares, this section does not apply unless the requirements of subsection (1) are satisfied in relation to each of those classes of shares taken separately.

(6) Shares held by a company which is the issuing company's holding company or subsidiary, or a subsidiary of the issuing company's holding company, or by its or their nominees, are to be regarded for the purposes of this section as held by the issuing company.

(7) In relation to a company and its shares and capital, the following definitions apply for the purposes of this section-

- (a) "equity shares" means shares comprised in the company's equity share capital;
- (b) "non-equity shares" means shares (of any class) not so comprised; and
- (c) "arrangement" means any agreement, scheme or arrangement.

(8) The relief allowed by this section does not apply if the issue of shares took place before the date of the coming into force of this section.

**Relief in respect of group reconstructions.**

48. (1) This section applies where the issuing company -

- (a) is a wholly-owned subsidiary of another company ("the holding company"); and

(b) allots shares to the holding company or to another wholly-owned subsidiary of the holding company in consideration of the transfer to the issuing company of assets other than cash, being assets of any company ("the transferor company") which is a member of the group of companies which comprises the holding company and all its wholly-owned subsidiaries.

(2) Where the shares in the issuing company allotted in consideration of the transfer are issued at a premium, the issuing company is not required by section 46 to transfer any amount in excess of the minimum premium value to the share premium account.

(3) In subsection (2) the "minimum premium value" means the amount (if any) by which the base value of the consideration for the shares allotted exceeds the aggregate nominal value of those shares.

(4) For the purposes of subsection (3), the base value of the consideration for the shares allotted is the amount by which the base value of the assets transferred exceeds the base value of any liabilities of the transferor company assumed by the issuing company as part of the consideration for the assets transferred.

(5) For the purposes of subsection (4)-

- (a) the base value of the assets transferred is to be taken as-
- (i) the cost of those assets to the transferor company; or
  - (ii) the amount at which those assets are stated in the transferor company's accounting records immediately before the transfer;

whichever is the less; and

(b) the base value of the liabilities assumed is to be taken as the amount at which they are stated in the transferor company's accounting records immediately before the transfer.

(6) The relief allowed by this section does not apply if the issue of shares took place before the date of the coming into force of this section.

(7) Section 47 does not apply in a case falling within this section.

**Provisions supplementing sections 47 and 48.**

49. (1) An amount corresponding to one representing the premiums or part of the premiums on shares issued by a company which by virtue of section 47 or 48 is not included in the company's share premium account may also be disregarded in determining the amount at which any shares or other consideration provided for the shares issued is to be included in the company's balance sheet.

(2) References in this Part of this Law (however expressed) to-

(a) the acquisition by a company of shares in another company;  
and

(b) the issue or allotment of shares to, or the transfer of shares to or by, a company;

include (respectively) the acquisition of any of those shares by, and the issue or allotment or (as the case may be) the transfer of any of those shares to or by, nominees of that company; and the reference in section 48 to the company transferring the shares shall be construed accordingly.

(3) References in this Part of this Law to the transfer of shares in a company include the transfer of a right to be included in the company's Register of Members in respect of those shares.

(4) In sections 47 to 49 the expression "company", except in references to the issuing company, includes any body corporate.

**Power to extend or restrict relief from section 46.**

50. The Committee may by regulations make such provision as appears to it to be appropriate-

- (a) for relieving companies from the requirements of section 46 in relation to premiums other than cash premiums; or
- (b) for restricting or otherwise modifying any relief from those requirements provided by this Part of this Law.

**Shares issued at a discount.**

51. (1) Notwithstanding the provisions of section 41, a company may issue its shares at a discount if-

- (a) the shares are of a class already issued;
- (b) the issue at a discount is authorised by special resolution passed in general meeting of the company and is sanctioned by order of the Court;
- (c) the resolution specifies the maximum rate of discount at which the shares are to be issued;
- (d) the shares are issued-
  - (i) not less than one year after the date on which the company was entitled to commence business; and

- (ii) within a period of one month immediately following the date of the Court's order under paragraph (b) or such other period as the Court may allow.

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

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

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

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

52. (1) Where a company pays commission or allows a discount on the issue of any of its shares, the company shall include in its annual return under section 37 the following additional particulars-

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

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

**Power of company to alter its share capital.**

53. (1) A company may, if so authorised by its articles, by resolution passed in general meeting alter its memorandum so as to-

- (a) increase its share capital by creating new shares of such amount, class and description, and carrying such rights, liabilities and other attributes, as it thinks expedient;
- (b) consolidate and divide all or any of its share capital into shares of larger amounts than its existing shares;
- (c) convert all or any of its fully paid shares into stock, and reconvert that stock into paid-up shares of any denomination;
- (d) subject to subsection (2), subdivide all or any of its shares into shares of a smaller amount than is fixed by the memorandum;
- (e) cancel shares which, at the date of the passing of the resolution, have not been taken up or agreed to be taken up by any person, and diminish the amount of its share capital by the amount of the shares so cancelled;
- (f) convert all or any of its fully paid shares the nominal amount of which is expressed in a particular currency into fully paid shares of a nominal amount of a different currency, the conversion being effected at the rate of exchange (calculated to not less than three significant figures) current on the date of the resolution or on such other date as may be specified therein, the rate of exchange being stated in the resolution.

(2) In any subdivision under subsection (1)(d), the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as that proportion in the case of the share from which the reduced share was derived.

(3) No resolution under this section shall be valid unless and until a copy thereof is lodged by or on behalf of the company with the Registrar who shall as soon as reasonably practicable enter the resolution in the Register of Companies.

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

**Redeemable preference shares.**

**54.** (1) A company may, if so authorised by its articles-

(a) subject to the provisions of this section, issue preference shares which are, or at the option of the company or the shareholder are liable, to be redeemed;

(b) subject to the provisions of section 58, convert all or any class of its preference shares into redeemable preference shares, provided that-

(i) no such shares shall be redeemed except out of the profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;

(ii) no such shares shall be redeemed unless they are fully paid;

(iii) any premium payable on redemption shall, before the shares are redeemed, be provided for out of the profits of the company, out of the company's share premium account or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;

(iv) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue of shares made for the purposes of the redemption, there shall, out of the profits of the company which would otherwise have been available for dividend, be transferred to a reserve fund, to be called the "**capital redemption reserve fund**", a sum equal to the nominal amount of the shares redeemed, and the provisions of this Law relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company.

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

(a) shall, subject to the provisions of this section, be effected on such terms and in such manner as may be provided for by the company's articles; and

(b) shall not be deemed to have reduced the amount of the company's authorised share capital.

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

(4) Where a company issues shares pursuant to subsection (3), the share capital of the company shall not, for the purposes of any enactment relating to duty payable on documents registered with the Registrar, be deemed to have been increased by the new issue provided that, where the new shares are issued before redemption, the preference shares are redeemed within a period of one month immediately following the issue of the new shares.

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

(6) A company which contravenes any provision of subsection (5) shall be guilty of an offence.

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

**Fractional shares and low value shares.**

55. (1) A company may, if so authorised by its articles, issue fractions of a share, which shall, except to the extent that the company's articles provide otherwise, carry the corresponding proportion of rights, liabilities and other attributes of whole shares of the same class; and in this Law the word "share" includes fractions of a share so issued, and cognate expressions shall be construed accordingly.

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

**Issue of non-voting shares.**

56. Notwithstanding the provisions of section 100, a company may, if its articles so provide, issue shares which-

- (a) do not entitle the holder to voting rights in any general meeting of the company; or
- (b) entitle the holder to restricted voting rights in any such meeting.

**Issue of shares with no par value.**

57. (1) A company may, if its articles so provide, issue shares which have no nominal or par value.

(2) The provisions of this Law shall, subject to the modifications set out in Schedule 7, apply in relation to shares which have no nominal or par value and to the companies which issue them.

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

58. (1) This section applies if, in the case of a company whose share capital is divided into different classes of shares-

- (a) provision is made by the memorandum or articles, or by the terms of issue of the shares, for the variation of the rights attached to any class of the company's shares, subject to-
  - (i) the consent of any specified proportion of the holders of issued shares of that class; or
  - (ii) the sanction of a resolution passed at a separate meeting of the holders of such shares; and
- (b) in pursuance of that provision, the rights attached to any class of the company's shares are at any time varied.

(2) The holders of not less than 15% in the aggregate of the issued shares of the class in question (being persons who did not consent to or vote in favour of the resolution for the variation) may apply to the Court to have the variation annulled; and if such an application is made, the variation shall have no effect unless and until confirmed by the Court.

(3) An application to the Court under subsection (2)-

(a) shall be made within a period of 21 days immediately following the date upon which the consent was given or the resolution was passed (as the case may be); and

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

(4) The Court, after hearing the applicant and any other person appearing to the Court to be interested in the application-

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

(b) shall confirm the variation, if not so satisfied.

(5) The decision of the Court on an application under subsection (2) shall be final.

(6) "Variation" in this section includes abrogation, and cognate expressions shall be construed accordingly.

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

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

(a) are personal estate; and

(b) shall be transferable in the manner prescribed by the company's articles.

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

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

(4) The requirement imposed by section 71(1)(a) that the distinguishing number of any share in a company shall be inscribed in the Register of Members shall not apply in relation to a share which is not for the time being required to have a distinguishing number by virtue of subsection (3).

**Transfer of shares of deceased member.**

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

PART IX  
DISTRIBUTIONS

**Restrictions on distributions.**

61. (1) A company shall not make a distribution except in accordance with this section.

- (2) A company may make a distribution at any time-
- (a) out of its realised profits less its realised losses;
  - (b) out of its realised revenue profits less its revenue losses, whether realised or unrealised, provided that the directors reasonably believe that, immediately after the distribution has been made-

- (i) the company will be able to discharge its liabilities as they fall due; and
- (ii) the value of the company's assets will not be less than the amount of its liabilities.

(3) A company may, with the sanction of a special resolution, make a distribution out of its unrealised profits less its losses, whether realised or unrealised, provided that the directors reasonably believe that immediately after the distribution has been made-

- (a) the company will be able to discharge its liabilities as they fall due; and
- (b) the value of the company's assets will not be less than the aggregate of-
  - (i) its liabilities;
  - (ii) the nominal amount of its issued shares;
  - (iii) any amount standing to the credit of its share premium account; and
  - (iv) any amount standing to the credit of its capital redemption reserve fund.

(4) In this Part of this Law-

- (a) **"distribution"** means every description of distribution of a company's assets to its members in their characters of members, whether in cash or otherwise, except a distribution by way of-

- (i) an issue of shares as fully or partly paid bonus shares;
  - (ii) the redemption or purchase of any of the company's shares out of the proceeds of a fresh issue of shares or the share premium account;
  - (iii) the reduction of share capital by extinguishing or reducing the liability of any of the members on any of the company's shares in respect of share capital not paid up, or by paying off paid-up share capital; or
  - (iv) a distribution of assets to members of the company on its winding up;
- (b) references to "profits" of any description are to accumulated profits of that description made at any time so far as not previously utilised by distribution or capitalisation;
- (c) references to "losses" of any description are to accumulated losses of that description made at any time so far as not previously written off in a reduction or reorganisation of capital duly made;
- (d) references to profits and losses of any description are to profits and losses of that description ascertained in accordance with generally accepted accounting principles;
- (e) "capitalisation" means-
- (i) 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

(ii) transferring the profits to the capital redemption reserve fund.

(5) A company shall not apply an unrealised profit in paying up debentures.

(6) Where the directors of a company are, after making all reasonable inquiries, unable to determine whether a particular profit made before this section came into force is realised or unrealised, they may treat it as realised; and where, after making such inquiries, they are unable to determine whether a particular loss so made is realised or unrealised, they may treat it as unrealised.

#### **Consequences of unlawful distributions.**

62. Where a distribution or part of a distribution made by a company to any of its members is made in contravention of section 61 and, at the time of the distribution, the member knows or has reasonable grounds for believing that it is so made, he is liable to repay the distribution or that part of it to the company or, in the case of a distribution made otherwise than in cash, to pay the company a sum equal to the value of the distribution or that part of it at that time.

### PART X

#### REDUCTION OF SHARE CAPITAL

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

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

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

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

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

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

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

**64.** (1) Where a company has passed a resolution for reducing share capital, it shall apply to the Court for an order confirming the reduction.

(2) An application under subsection (1) shall not be entertained unless, prior to the hearing thereof, the company has, on two occasions in successive weeks, placed a notice in the Gazette setting out the terms of the application and the date, time and place of the hearing.

(3) If the proposed reduction of share capital involves-

- (a) a diminution of liability in respect of unpaid share capital; or
- (b) the payment to any shareholder of any paid-up share capital,

and in any other case in which the Court so directs, the next three subsections have effect, but subject throughout to subsection (7).

(4) Every creditor of the company who, at the date of the hearing of the application, is entitled to a debt or claim which, if that date were the date of the commencement of the company's winding up, would be admissible in proof against the company, shall be entitled to object to the reduction of share capital.

(5) At the hearing of the application the company shall furnish to the Court a list, signed and certified to be true and complete by a director or secretary of the company, of the names and addresses of all creditors of the company and the amounts respectively due to them.

(6) If a creditor entered on the list whose debt or claim has not determined or has not been settled or discharged does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor upon the company securing payment of his debt or claim by appropriating (as the Court may direct) the following amount-

- (a) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim; or
- (b) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

(7) If a proposed reduction of share capital involves a diminution of liability in respect of unpaid share capital or the payment to a shareholder of paid-up share capital, the Court may, if it thinks it proper to do so having regard to any special circumstances of the case, direct that subsections (4) to (6) of this section shall not apply as regards any class of creditor.

(8) Where the list furnished to the Court under subsection (5) contains any material error or omission, the company and the person who signed the list (unless the latter proves that such error or omission occurred without his knowledge and that he exercised all due diligence to prevent it) shall be guilty of an offence.

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

65. (1) If the Court is satisfied that, in respect of every creditor of the company who under section 64(4) is entitled to object to the reduction of capital-

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

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

(2) Where the Court so orders, the Court may also-

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

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

**Act of Court to form part of memorandum and to be registered.**

66. (1) The Act of Court containing an order confirming a resolution for reducing share capital in respect of a company-

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

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

(2) Where the Court makes an order confirming a resolution for reducing share capital in respect of a company, the Registrar shall, upon the written application of the company, enter a copy of the order in the Register of Companies as soon as is reasonably practicable; and a company which fails to make such an application within 14 days of the date of the order shall be guilty of an offence.

**Liability of members in respect of reduced shares.**

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

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

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

(a) a creditor entitled under section 64(4) to object to the reduction of share capital has been, without neglect or default on his part, omitted from the list of creditors furnished to the Court by the company under section 64(5); and

(b) after the reduction of capital, the company is unable within the meaning of section 126 to pay the amount of his debt or claim.

(3) Every person who was a member of the company at the date of the said Act of Court shall be liable to contribute, towards payment of the debt or claim in question, an amount not exceeding that which he would have been liable to contribute if the winding up of the company had commenced on the day before that date.

(4) If the company is wound up, the Court, on the application of the creditor in question and upon proof of his omission from the list of creditors as aforesaid, may if it thinks fit settle a list of persons accordingly so liable to contribute, and may make and enforce calls and orders against the contributories settled on the list as if they were ordinary contributories in a winding up.

(5) Nothing in this section shall affect the rights of the contributories among themselves.

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

**68.** Any officer of a company who-

(a) wilfully conceals the name of a creditor entitled under section 64(4) to object to a reduction of the company's share capital;

(b) wilfully misrepresents the nature or amount of the debt or claim of a creditor so entitled; or

- (c) aids, abets, connives in or is privy to any such concealment or misrepresentation as is described in paragraph (a) or (b);

shall be guilty of an offence.

## PART XI COMPANY RECORDS AND ACCOUNTS

### Minute books.

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

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

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

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

(4) A company in relation to which there is a contravention of any provision of subsection (1) or (2) shall be guilty of an offence.

**Register of directors and company secretaries.**

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

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

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

and, in either case, the dates upon which the individual or body corporate-

- (c) became a director; and
- (d) if appropriate, ceased to be a director.

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

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

and, in either case, the dates upon which the individual or body corporate-

- (c) became the company secretary; and

(d) if appropriate, ceased to be the company secretary.

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

(5) For the purposes of this section-

(a) in the case of a peer or person bearing a title different from his surname, the expression "surname" means that title;

(b) references to a previous name do not include a name which-

(i) was changed or disused before the person concerned attained the age of 18 years; or

(ii) has been changed or disused for a period of at least 20 years.

### **Register of Members.**

71. (1) Every company shall keep a Register of Members and shall enter in it the names and addresses of all persons who are or who have since the formation of the company been shareholders therein together with a statement, in relation to each such person, of-

(a) the number of shares attributed to him, together with, subject to section 59(4), the distinguishing numbers of such shares;

(b) the amount paid up on the shares and the date of each payment;

(c) the date on which his name was inscribed in the Register of Members;

(d) the date on which he ceased to be the holder of any share.

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

(3) No notice of a trust shall be entered in the Register of Members.

(4) The Register of Members shall be prima facie evidence of any matter directed or authorised by this Law to be inserted therein.

(5) If in relation to any person any information described in subsection (1) is, without sufficient reason, entered in or omitted from the company's Register of Members, that person or the company or any member thereof may apply to the Court for an order for the rectification of the Register; and on such an application the Court may determine any question which it is necessary or expedient to decide in relation to the issue of rectification.

(6) The company shall comply with an order for rectification within a period of 14 days beginning on the date thereof.

(7) A company which contravenes subsection (6) shall be guilty of an offence.

### **Member's addresses.**

72. (1) The address of a member entered in the Register of Members shall be deemed to be his actual address.

(2) Whenever a member changes his address he shall give written notice of the new address to the company at its registered office.

(3) Upon receipt of such a notice, the company shall cause the change of address to be entered in the Register of Members within a period of 14 days beginning on the day of receipt.

(4) A company which contravenes subsection (3) shall be guilty of an offence.

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

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

- (a) its minute books;
- (b) its Register of Members;
- (c) its register of annual returns required to be kept by section 37(1)(c); and
- (d) its register of directors and company secretaries required to be kept by section 70(1).

(2) Subsection (1) is deemed to be complied with in the case of a minute book if the original book, or a photocopy of it certified as being a true copy by a director or the secretary of the company, is kept at the company's registered office.

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

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

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

(5) "The appropriate fee" means-

- (a) in the case of an inspection under subsection (3), £5 or such other sum as may be prescribed by regulations of the Committee;
- (b) in a case where a copy is requested under subsection (4), £1 for each page copied or such other sum as may be prescribed by regulations of the Committee; or
- (c) such lesser sum as the company may stipulate;

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

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

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

#### Accounting records.

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

- (a) disclose with reasonable accuracy, at any time, the financial position of the company at that time; and
- (b) enable the company's directors to ensure that its balance sheet and profit and loss account are prepared properly and in accordance with any relevant enactment for the time being in force.

(2) In the case of a public company, the accounting records shall in particular contain-

- (a) day to day entries of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place; and
- (b) a record of the assets and liabilities of the company.

(3) If a public company's business involves dealing in goods, the company's accounting records shall contain-

- (a) statements of stock held by the company at the end of each of its financial years;
- (b) all statements of stocktakings from which any statement described in paragraph (a) has been or is to be prepared;
- (c) except in the case of goods sold by ordinary retail trade, statements of all goods sold and purchased, showing the goods, buyers and sellers in sufficient detail to enable them to be identified.

(4) The accounting records shall be-

- (a) kept at the registered office of the company or such other place as its directors think fit; and

- (b) open at all reasonable times to inspection by any director or secretary of the company.

(5) If in the case of a public company accounting records are kept at a place outside Alderney, accounts and returns in respect of the business dealt with in the accounting records so kept shall be sent to, and kept at, a place in Alderney, where they shall at all reasonable times be open to inspection by any director or secretary of the company.

(6) The accounts and returns of a public company to be sent to and kept in Alderney in accordance with subsection (5) shall be such as to-

- (a) disclose with reasonable accuracy the financial position of the business in question at intervals not exceeding 6 months; and
- (b) enable the company's directors to ensure that its balance sheet and profit and loss account are prepared properly and in accordance with any relevant enactment for the time being in force.

(7) Any accounting records which a company is required by this section to keep shall be preserved by it for a period of at least 6 years from the date on which they are made.

(8) If in respect of a company there is a contravention of any provision of subsections (1) to (7)-

- (a) the company shall be guilty of an offence; and
- (b) any officer of the company who would otherwise be guilty of an offence by virtue of section 157 shall be so guilty unless he shows that he acted honestly and that, in the

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

(9) Any officer of a company who fails to take all reasonable steps for securing compliance by the company with subsection (7), or who intentionally causes any default by the company thereunder, is (without prejudice to the provisions of section 157) guilty of an offence.

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

75. (1) Any minute book, register or accounting record required by this Law to be kept by a company may be kept either by making entries in bound or loose-leaf books or by recording the matters in question in any other manner including, without prejudice to the generality of the foregoing, a non-legible form.

(2) If any such minute book, register or accounting record is kept not by making entries in a book but in some other manner-

(a) it is deemed for the purposes of this Law to be kept at a place if access to it and written copies of it can be obtained at that place;

(b) adequate measures shall be taken for guarding against its falsification and for facilitating its discovery and production; and

(c) if the matters in question are recorded in a non-legible form, the recording shall be capable of being reproduced in a legible and documentary form within a reasonable time and, in any case, within 7 days.

(3) If default is made in complying with any provision of subsection (2)(b) the company shall be guilty of an offence.

(4) Any duty imposed by law to allow inspection, or to furnish a copy, of any part of a minute book, register or accounting record required by this Law to be kept by a company shall be treated, where the matters in question are recorded in a non-legible form, as a duty to allow inspection, or to furnish a copy, of the relevant part of the recording in a legible form.

**Use of registration number.**

76. (1) A company's registration number shall be stated upon all returns, records and other documents required to be submitted by or in relation to the company to the Registrar under or for the purposes of this Law.

(2) A company in relation to which there is a contravention of subsection (1) shall be guilty of an offence.

PART XII

AUDIT

**Appointment and remuneration of auditors.**

77. (1) Every company except an unaudited company shall, subject to subsection (2), at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(2) If the company's first general meeting is not held within a period of 3 months immediately following the day on which the company was incorporated, the directors shall appoint the first auditors as soon as possible after the expiry of that period.

(3) If auditors are not appointed at an annual general meeting, the Court may, on the application of a member or creditor of the company, appoint an auditor of the company for the current year.

(4) The first auditors of the company may be appointed by the directors before the first general meeting of the company; and auditors so appointed shall hold office until the first annual general meeting unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at that meeting may appoint the auditors.

(5) The directors of a company may fill a casual vacancy in the office of auditor; and for the duration of such a vacancy any surviving or continuing auditors may continue to act.

(6) The remuneration of auditors appointed by-

(a) the company in general meeting, shall be fixed by the company in general meeting;

(b) the directors or the Court, shall be fixed by the directors or the Court, as the case may be.

**Qualification for appointment as auditor.**

78. (1) A person is not qualified for appointment as an auditor under this Law unless he is-

(a) a member of-

(i) the Institute of Chartered Accountants in England and Wales, of Scotland or in Ireland;

(ii) the Chartered Association of Certified Accountants; or

(b) for the time being authorised by the Committee to audit the accounts of companies as having similar qualifications obtained outside the United Kingdom.

(2) An officer or servant of a company, or a partner or employee of an officer or servant of a company, is disqualified from appointment by that company as an auditor.

(3) Subsections (1) and (2) are without prejudice to any other enactment for the time being in force; and in this section the words "qualified" and "disqualified" are to be construed accordingly.

(4) An auditor of a company who becomes disqualified during his term of office shall forthwith cease to act as auditor and notify the company accordingly in writing.

(5) A person who-

- (a) acts as auditor of a company when he knows that he is disqualified; or
- (b) fails without reasonable excuse to give a notification in accordance with subsection (4);

shall be guilty of an offence.

**Auditors' report.**

79. (1) A company's auditors shall make a report (an "auditors' report") to the company's members on the accounts examined by them and on every balance sheet and profit and loss account laid before the company in general meeting during their term of office; and that report shall be laid before the company in general meeting.

(2) The auditors' report shall state-

- (a) whether in the auditors' opinion the balance sheet and profit and loss account have been prepared properly and in accordance with any relevant enactment for the time being in force; and
- (b) without prejudice to the foregoing, whether in their opinion a true and fair view is given-
  - (i) in the balance sheet, of the state of the company's affairs at the end of the financial year to which it relates; and

- (ii) in the profit and loss account, of the company's profit or loss for that financial year.

(3) This section does not apply in relation to an unaudited company.

**Auditors' powers and duties.**

80. (1) A company's auditors shall, in preparing their report, carry out such investigations as will enable them to form an opinion as to-

- (a) whether proper accounting records have been kept by the company in accordance with section 74; and
- (b) whether the company's balance sheet and profit and loss account are in agreement with its accounting records.

(2) Every auditor of a company has a right of access at all times to the company's books, accounts and vouchers and may require from the company's officers such information and explanations as he thinks necessary for the performance of his duties.

(3) If a company's auditors are of the opinion that-

- (a) proper accounting records in accordance with section 74 have not been kept;
- (b) the balance sheet or the profit and loss account is not in agreement with the accounting records;
- (c) the directors' report is inconsistent with the balance sheet or the profit and loss account; or
- (d) they have failed to obtain all access, information and explanations necessary for their audit;

they shall state that fact in their report.

PART XIII  
DIRECTORS AND COMPANY SECRETARIES

**Directors.**

81. (1) A private company shall have at least one director.
- (2) A public company shall have at least two directors.
- (3) A person shall not be a director if he is-
- (a) a minor or person under legal disability; or
  - (b) subject to a disqualification order or a renewal thereof under section 88.

**Duties of directors.**

82. (1) A director shall, in the exercise of his functions-
- (a) act honestly and in good faith and in the best interests of the company; and
  - (b) exercise the care, diligence and skill that a reasonable and prudent person would exercise in that position.
- (2) No act or omission of a director shall be treated as a contravention of subsection (1) if-
- (a) all members of the company authorise or ratify the act or omission; and
  - (b) at the time of the act or omission and immediately thereafter-

(i) the company was able to discharge its liabilities as they fell due; and

(ii) the value of the company's assets was not less than its liabilities.

(3) The provisions of subsection (2) are without prejudice to the operation of any other rule of law empowering the members of a company or any of them to authorise or ratify an act or omission which would constitute a contravention of subsection (1).

**Duty of directors to declare interests.**

83. (1) A director of a company who is in any way, whether directly or indirectly, interested in a transaction entered into or proposed to be entered into by the company or a subsidiary thereof shall declare the nature and extent of his interest to the company.

(2) A declaration under subsection (1) shall be made-

(a) in the case of a proposed transaction-

(i) at the time of the meeting of the directors at which the question of entering into the transaction is first considered; or

(ii) if the director was not at the date of that meeting interested in the proposed transaction, at the time of the next meeting of the directors held after he becomes so interested;

(b) in a case where the director becomes interested in a transaction after it is entered into, at the time of the first meeting of the directors held after he becomes so interested.

(3) A notice in writing given to the company by a director that he is to be regarded as interested in any transaction with a specified person is a sufficient declaration of his interest in any such transaction entered into after the notice is given.

(4) Where a director fails to make a declaration under subsection (1), the company or any member thereof may apply to the Court for an order setting aside the transaction and instructing the director-

- (a) to account to the company for any profit or gain accruing to him directly or indirectly from the transaction;
- (b) to compensate the company for any loss, damage or expense sustained by the company as a direct or indirect result thereof.

(5) A transaction shall not be set aside, and a director shall not be held accountable, under subsection (4) where-

- (a) the transaction is confirmed by special resolution of the company in general meeting; and
- (b) the nature and extent of the director's interest in the transaction were declared in the notice convening that meeting.

(6) Without prejudice to the Court's power to instruct a director to account to a company for any profit or gain accruing to him from a transaction, or to compensate a company for any loss, damage or expense sustained by it as a result thereof, a transaction shall not be set aside under subsection (4) if in the Court's opinion-

- (a) the interests of third parties who have acted in good faith would thereby be unfairly prejudiced; or

- (b) the transaction was in the best interests of the company when entered into.

(7) The provisions of this section are without prejudice to the operation of any other rule of law restricting the directors of a company from having an interest in transactions with the company.

**Indemnity of directors and other officers.**

84. (1) Any provision, whether contained in a company's articles or in any contract with the company or otherwise, for exempting any officer or auditor of a company from, or indemnifying him against, any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company shall, subject to subsections (2) and (3), be void.

(2) Subsection (1) does not prevent a company-

- (a) from purchasing and maintaining for any such officer or auditor insurance against any such liability; or

- (b) from indemnifying any such officer or auditor against any liability incurred by him-

- (i) in defending civil or criminal proceedings in which judgment is given in his favour or in which he is acquitted; or

- (ii) in connection with any application under section 154 in which relief is granted to him by the Court.

(3) Subsection (1) shall not deprive any person of any exemption or indemnity to which he was lawfully entitled before the date of the coming into force of that subsection.

**Share qualification of directors.**

85. (1) Every director who is required by the company's articles to hold a qualifying number of shares, and who is not already so qualified, shall obtain his qualification within a period of 2 months immediately following the date of his appointment or such shorter period as may be specified by the articles.

(2) The office of director of a company shall be determined forthwith if the director-

(a) does not comply with subsection (1); or

(b) at any time after the expiration of the appropriate period specified in subsection (1), ceases to hold the requisite share qualification.

(3) A person whose office as director of a company is determined under subsection (2) may not be reappointed until he has obtained the requisite share qualification.

(4) If after the expiration of the appropriate period specified in subsection (1) a person who does not hold the requisite share qualification acts as director of a company, he shall be guilty of an offence.

(5) For the purposes of any provision of a company's articles requiring a director or other officer to hold a specified share qualification, the bearer of a share warrant shall not be deemed to be the holder of the shares specified in the warrant.

**Resolution to remove director.**

86. (1) A company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him.

(2) Such notice as is required in relation to a special resolution shall also be required of a resolution to remove a director under this section or to appoint somebody instead of a director so removed at the meeting at which he is removed.

(3) A vacancy created by the removal of a director under this section, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.

(4) A person appointed director in place of a person removed under this section shall be treated, for the purpose of determining the time at which he or any other director is to retire, as if he had become director on the day on which the person in whose place he is appointed was last appointed a director.

(5) This section is not to be taken as depriving a person removed under it of compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director, or as derogating from any power to remove a director which may exist apart from this section.

**Director's right to protest removal.**

87. (1) On receipt of notice of an intended resolution to remove a director under section 86, the company shall forthwith send a copy of the notice to the director concerned; and he (whether or not a member of the company) is entitled to be heard on the resolution at the meeting.

(2) Where notice is given of an intended resolution to remove a director under section 86, and the director concerned makes with respect to it representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall, unless the representations are received by it too late for it to do so-

- (a) in any notice of the resolution given to members of the company, state the fact of the representations having been made; and
- (b) send a copy of the representations to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representations by the company).

(3) If a copy of the representations is not sent as required by subsection (2)(b) because received too late or because of the company's default, the director may (without prejudice to his right to be heard orally) require that the representations shall be read out at the meeting.

(4) However, copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the application of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter.

(5) The Court may order the company's costs on an application under this section to be paid in whole or in part by the director, notwithstanding that he is not a party to the application.

#### **Disqualification orders.**

88. (1) Where the Court considers that, by reason of a person's conduct in relation to any body corporate or otherwise, that person is unfit to be concerned in the management of a company, the Court may, if satisfied that it is desirable in the public interest to do so, make and subsequently renew (on one or more occasions) an order against him (a "disqualification order") prohibiting him, without the leave of the Court-

- (a) from being a director or other officer of any company or any specified company;
- (b) from participating in, or being in any way concerned in, directly or indirectly, the management, formation or promotion of any company or any specified company.

(2) A disqualification order and any renewal thereof shall have effect for such period not exceeding 5 years as shall be specified therein.

(3) A disqualification order and any renewal thereof may contain such incidental and ancillary terms and conditions as the Court thinks fit.

(4) An application for a disqualification order or for a renewal thereof may be made by the Committee, by Her Majesty's Procureur, by any body corporate of which the person in question is, or has been, an officer or by any member or creditor of such a body corporate.

(5) A person who contravenes any provision of a disqualification order or a renewal thereof-

(a) shall be guilty of an offence; and

(b) shall be personally liable for any debts and liabilities of the company in relation to which the contravention was committed which were incurred at any time when he was acting in contravention of the disqualification order or the renewal thereof.

(6) A person's liability pursuant to subsection (5)(b) is joint and several with that of the company and of any other person so liable in relation to that company.

(7) In determining whether or not a person is unfit to be concerned in the management of a company, the Court shall have regard to the provisions of Schedule 5, which shall have effect accordingly.

(8) A disqualification order may be renewed at any time before, or within a period of one month immediately succeeding, the date of the expiration of the order.

**Validity of director's acts.**

89. (1) A director's acts are valid notwithstanding any defect subsequently found in his appointment or qualification.

(2) Subsection (1) shall only operate in favour of a person acting in good faith and without notice of the defect in question.

**Acts done in dual capacity.**

90. Any provision requiring or authorising something to be done by or in relation to a director of a company and the company secretary is not satisfied by its being done by or in relation to the same person acting both as director and as, or in the place of, secretary.

**Company secretary.**

91. (1) Every company shall have a secretary.

(2) A sole director of a company shall not also be the secretary thereof.

(3) No company shall have as secretary a body corporate the sole director of which is a sole director of the company.

(4) Anything required or authorised to be done by or in relation to the secretary of a company may, if the office is vacant or there is for some other reason no secretary capable of acting, be done by or in relation to an assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, any other officer of the company authorised generally or specifically in that behalf by the directors.

**Qualifications of secretary of public company.**

92. (1) The directors of a public company shall take all reasonable steps to secure that the company secretary or each joint company secretary is a person who appears to them to have the requisite knowledge and experience to discharge the functions of company secretary and who-

- (a) on the date of the coming into force of this section was the secretary or assistant or deputy secretary of the company;
- (b) is a member of any professional body specified in subsection (2);
- (c) is an Advocate;

- (d) is a solicitor, barrister or advocate called or admitted in any part of the United Kingdom; or
- (e) is a person who, by virtue of his holding or having held any other position or his being a member of any other body, appears to the directors to be capable of discharging those functions.

(2) The professional bodies referred to in subsection (1)(b) are-

- (a) the Institute of Chartered Accountants in England and Wales, of Scotland or in Ireland;
- (b) the Chartered Association of Certified Accountants;
- (c) the Institute of Chartered Secretaries and Administrators;
- (d) the Chartered Institute of Management Accountants;
- (e) the Chartered Institute of Public Finance and Accountancy.

**Notice of change of director or company secretary.**

93. (1) Where a person becomes or for any reason ceases to be a director or secretary of a company, the company shall, within a period of 14 days beginning on the day of that event, give written notice thereof to the Registrar who shall, as soon as is reasonably practicable, enter the notice in the Register of Companies.

(2) A notice under subsection (1) shall state the date upon which the person concerned became or ceased to be director or company secretary and shall also state, in relation to that person-

- (a) in the case of an individual, his present and previous forenames and surnames and usual residential address;

- (b) in the case of a body corporate, its corporate name and its registered office (or, if it has no registered office, its principal office).
  
- (3) A company which contravenes any provision of this section shall be guilty of an offence.

PART XIV  
MEETINGS

**Annual general meeting.**

94. (1) Every company shall hold a general meeting of its shareholders-
- (a) firstly, within a period of 18 months beginning on the date on which it is incorporated; and
  - (b) thereafter, at least once in every calendar year.
- (2) No more than 15 months may elapse between one annual general meeting and the next.
- (3) If default is made in holding a meeting in accordance with subsection (1) or (2), the company shall be guilty of an offence.

**Directors' report.**

95. (1) The directors shall, 10 days prior to the annual general meeting, send every member a copy of a report (the "directors' report") which shall include-
- (a) the company's profit and loss account during the relevant financial year and balance sheet showing the state of its affairs at the end of that year;
  - (b) in the case of an unaudited company, the statement required by paragraph 3 of Schedule 3.

(2) The relevant financial year is the company's last complete financial year before the date of the annual general meeting.

(3) The directors' report shall be countersigned by not less than two directors of the company or, if there are less than two directors, by the sole director.

**Power of Court to require AGM or directors' report.**

96. (1) If section 95 is not complied with in respect of any meeting, or if default is made in holding an annual general meeting in accordance with section 94(1) or (2), any member may, not less than 14 days after-

(a) the date upon which the meeting was held; or, as the case may be,

(b) the last date upon which the meeting ought to have been held;

apply to the Court under this subsection.

(2) Upon hearing an application under subsection (1), the Court may direct that the company be wound up, or that a report be presented, or that a meeting be held, or may make such other order as it thinks fit.

(3) The Court may order that the costs of an application under subsection (1) be paid by any person who, in the opinion of the Court, is responsible for the default.

(4) The provisions of Part XVIII of this Law shall, subject to the provisions of subsections (1), (2) and (3) above, apply in relation to the winding up of a company pursuant to this section.

**Power of private companies to dispense with AGM.**

97. (1) Notwithstanding the provisions of section 94, all members of a private company may agree in writing that an annual general meeting shall not be held; and in that case the provisions of section 94 shall apply accordingly.

(2) An agreement under subsection (1) may relate to a particular annual general meeting of the company or to such meetings generally.

(3) While an agreement under subsection (1) has effect, it shall not be necessary for the company to hold an annual general meeting.

(4) An agreement under subsection (1) shall cease to have effect-

(a) if any person becomes a member of the company while the agreement is in force and does not within two months of becoming a member accede in writing to the agreement; or

(b) if any member of the company gives written notice to the company determining the agreement.

(5) Where an agreement under subsection (1) ceases to have effect, whether pursuant to subsection (4) or otherwise, and an annual general meeting has not previously been held in the calendar year in which the cessation takes place, the directors shall convene an annual general meeting which shall be held within a period of three months immediately following the date of cessation; and in the event of any default in this respect, the provisions of sections 51(3) and 53 shall apply accordingly.

**General provisions as to meetings.**

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

(a) the meeting may, unless the company's articles provide otherwise, be held at any place in Alderney or elsewhere;

(b) unless the company's articles provide otherwise, a person may attend the meeting in person or by proxy;

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

- (k) any resolution of the meeting other than a special resolution shall require a simple majority of the votes cast;
- (l) the chairman may at his option, subject to paragraph (m) below, take a vote on a show of hands or on a poll; and in the case of a vote on a show of hands the declaration of the chairman that a resolution has been carried or rejected shall be deemed to be the decision of the meeting;
- (m) any five members present, or any one or more of the members present holding at least one tenth of the issued share capital between them, may, before a proposition is put to the vote or immediately after a vote has been taken on a show of hands, demand a poll;
- (n) for the purpose of ascertaining the number of votes cast-
  - (i) on a show of hands, every member present in person has one vote;
  - (ii) on a poll, every member present in person or (unless voting by proxy is prohibited by the articles) represented by proxy shall have the number of votes to which, having regard to the company's articles, he is entitled by reason of the number of shares held by him; and if he votes (whether in person or by proxy), he need not use all his votes or cast all the votes he uses in the same way;
  - (iii) a member who has not paid any call for capital on any of his shares may not vote in right of those shares;

- (iv) in the case of an equality of votes, the chairman shall have a second vote;
- (o) the meeting may adjourn from time to time;
- (p) at any such adjourned meeting, any resolution for which notice has been given in accordance with the articles, whether before or after the former meeting, may be passed;
- (q) the adjourned meeting shall have the same powers as an original meeting;
- (r) any resolution passed at the adjourned meeting shall be deemed to be passed when it is actually passed and not on the date of the original meeting.

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

99. (1) The members of a company may, by serving a members' requisition on the company, require the convening of an extraordinary general meeting.

(2) A members' requisition is a requisition of one or more of the members holding at least one tenth of the issued shares between them.

(3) The members' requisition-

- (a) shall state the objects of the meeting;
- (b) shall be dated, and shall be signed by all requisitionists; and
- (c) may require the meeting to be held in Alderney.

(4) If the directors do not, within a period of 21 days beginning on the date of service on the company of the members' requisition, duly convene a meeting in accordance with the provisions of the requisition, the requisitionists may, within a period of 3 months beginning on that date, themselves convene a meeting.

(5) The provisions of this section are without prejudice to any powers the directors may have apart from this section to convene an extraordinary general meeting.

**Voting rights.**

100. (1) Every member of a company shall, subject to the provisions of the company's articles, have at least one vote in general meetings of the company.

(2) Any member entitled to attend and vote at a general meeting may, subject to the provisions of this section, and provided that voting by proxy is not prohibited by the articles, appoint another person to attend and vote in his place.

(3) Where several persons are joint holders of shares, they shall not each have a vote in right of those shares, but shall elect one of their number to represent them and vote in their name.

(4) In default of an election under subsection (3), the person whose name appears first on the Register of Members shall be the one entitled to vote.

(5) Guardians in the names of their wards and attorneys in the names of their principals may vote at general meetings.

(6) A body corporate may, by resolution of its directors or other governing body, authorise any person to act as its representative at any meeting of a company or of the holders of any class of shares in a company.

(7) A person so authorised may exercise the same powers on behalf of the body corporate as the body corporate could exercise if it were an individual member of the company.

**Convening of meetings.**

101. (1) The general meetings of a company shall be convened by the directors or by persons authorised by them for the purpose.

(2) Written notice of the date, time and place of any general meeting, signed by the persons convening the meeting, shall, subject to the provisions of subsection (3), be given to every member of the company at least 10 days before the day of the meeting; and such a notice is referred to in this Law as a "convening notice".

(3) All members of a company entitled to attend and vote at a general meeting may in any particular case agree that-

(a) a general meeting shall be deemed to have been duly called; and

(b) notice of the intention to propose any special resolution shall be deemed to have been duly given,

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

### **Special resolutions.**

102. (1) Subject to the provisions of section 101(3), a special resolution is not effective as such unless passed by a majority of not less than three-quarters of the votes recorded (including, where there is a poll, any votes cast by proxy) at a general meeting of which notice, specifying the intention to propose the resolution, has been duly given.

(2) A copy of every special resolution of a company shall be delivered by or on behalf of the company to the Registrar within the following period-

(a) if it is a resolution under section 27 altering the company's objects, and no application for its annulment has been made to the Court within the 21 day period specified in section 27(3)(d), a period of 15 days immediately following the expiration of that 21 day period;

- (b) in any other case, a period of 21 days immediately following the day upon which it was passed;

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

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

- (a) the resolution shall be void ab initio; and

- (b) the company shall be guilty of an offence.

**Written resolutions of private companies.**

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

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

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

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

(5) Sections 69 and 73 (minutes and inspection of minutes) apply in relation to a resolution in writing as if it had been passed at a meeting.

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

**Participation in meetings.**

104. (1) Subject to the provisions of a company's articles, if a member is, by any means, in communication with one or more other members so that each member participating in the communication can hear what is said by any of the others, each member so participating is deemed to be present at a meeting with the other members so participating.

(2) Subsection (1) applies in relation to meetings of directors or committees of directors as it applies in relation to meetings of members.

PART XV  
PROTECTION FOR MEMBERS

**Restraint of excess powers.**

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

- (a) which would, but for section 19(1), be beyond the company's capacity; or
- (b) which is beyond the powers of the directors by virtue of any limitation mentioned in section 22(1);

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

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

**Relief for members unfairly prejudiced.**

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

- (a) the affairs of the company are being or have been conducted in a manner which is unfairly prejudicial to the interests of some part of the members (including at least himself); or
- (b) any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.

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

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

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

- (a) regulate the conduct of the company's affairs in the future;
- (b) require the company-
  - (i) to refrain from doing or continuing to do an act complained of by the applicant; or
  - (ii) to do any act which the applicant has complained it has omitted to do;
- (c) authorise civil proceedings to be brought in the name and on behalf of the company by such persons and on such terms as the Court may direct;

- (d) provide for the purchase of the shares of any member of the company by other members or by the company itself; and
- (e) in the case of a purchase of shares by the company itself, provide for a reduction of the company's share capital by declaring that the company shall be deemed to have passed a resolution for reducing share capital; and in such a case Part X of this Law shall apply as if the company had, on the date of the order under this section, made an application to the Court under section 64 for an order confirming the reduction;

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

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

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

(7) The Registrar shall, upon the written application of the company, enter as soon as is reasonably practicable in the Register of Companies a copy of any order of the Court-

- (a) under which the company is deemed to have passed a resolution for reducing share capital; or

- (b) making any alteration to the company's memorandum or articles;

and a company which fails to make such an application within 14 days of the date of the order shall be guilty of an offence.

(8) This section applies to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law as it applies to a member, and references to a member shall be construed accordingly.

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

## PART XVI STRIKING OFF

### **Striking a company off the Register.**

**107. (1)** This section applies whenever-

- (a) a company has failed to deliver to the Registrar an annual return in accordance with the requirements of section 37 before the end of January in any year;
- (b) the Registrar has reasonable cause to believe that a company is not carrying on business or in operation;
- (c) the Registrar has reasonable cause to believe, in the case of a company which is being wound up, that-
  - (i) no liquidator is acting; or
  - (ii) the affairs of the company are fully wound up;  
or

- (d) a company has failed to give written notice to the Registrar of the situation of its new registered office in accordance with section 33(1)(b).

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

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

(3) A notice under subsection (2) shall be published in the Gazette and shall be sent, by recorded delivery service or in such other manner as may be prescribed by regulations of the Committee-

- (a) when this section applies by virtue of subsection (1)(c)(ii), to the liquidator at his last known place of business;
- (b) in any other case-
  - (i) to the company at its registered office;
  - (ii) if no office has been registered or if notice of the situation thereof has not been given, to any officer of the company; or
  - (iii) if there is no officer whose name and address are known to the Registrar, to each founder member at the address stated in the memorandum.

(4) At the expiration of the period mentioned in subsection (2)(b) the Registrar may, unless cause to the contrary is previously shown, strike the name of the company concerned off the Register of Companies, and upon his publishing notice of such striking off in the Gazette the company shall be dissolved.

(5) Notwithstanding the striking-off of a company's name pursuant to subsection (4)-

- (a) the liability, if any, of every officer and member of the company shall continue and may be enforced accordingly; and
- (b) the power of the Court to wind up the company shall not be affected.

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

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

(7) In subsection (6) "the appropriate penalty" means the aggregate of-

- (a) £25 for the first calendar month or part thereof;
- (b) £50 for the second calendar month or part thereof; and
- (c) £100 for each subsequent calendar month or part thereof.

(8) When this section applies in relation to a company by virtue of subsection (1)(d), the company shall not be considered to have shown cause to the contrary within the meaning of this section unless it delivers notice of the situation of its new registered office to the Registrar.

(9) When a company is dissolved under subsection (4) all property and rights then vested in it or held on trust for it (but not property held by it on trust for another person) shall, unless Her Majesty's Receiver-General directs otherwise, become bona vacantia belonging to the Crown.

#### **Restoration to the Register.**

108. (1) Where a company is struck off the Register of Companies pursuant to section 107(4), the Court may, if satisfied-

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

on the application of the company or any member or creditor thereof before the expiration of 6 years beginning on the date of publication of the notice of striking-off referred to in section 107(4), order the name of the company to be restored to the Register.

(2) Upon the restoration of a company's name in accordance with an order under subsection (1), the company shall be deemed to have continued in existence.

(3) An order under subsection (1) may contain such directions and make such provision as the Court thinks fit for placing the company and all other persons in the same position as nearly as may be as if the company had not been dissolved.

(4) The restoration of a company's name pursuant to an order under subsection (1) shall, unless the Court otherwise directs, and without prejudice to any other term of the order, be conditional upon the payment by the applicant to the Registrar of-

(a) all sums which would have been payable by the company if it had not been dissolved and had each year delivered its annual return in accordance with section 37; and

(b) an additional amount of £100.

(5) If a company's name is restored to the Register of Companies before the expiration of 6 years beginning on the date of publication of the notice of striking-off referred to in section 107(4), the company shall be entitled, subject to any order of the Court, to have returned to it-

(a) any property which vested in the Crown upon dissolution;  
or

(b) if any such property has been disposed of, its value at the time of disposal.

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

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

PART XVII  
VOLUNTARY WINDING UP

**Company may be wound up voluntarily by special resolution.**

109. A company may be wound up voluntarily-

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

provided that in each case the company passes a special resolution that it be wound up voluntarily; or

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

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

110. A company which passes a special resolution for voluntary winding up shall, without prejudice to the provisions of section 102, within a period of 7 days beginning on the date of the passing of the resolution, give notice of the resolution in the Gazette.

**Commencement of voluntary winding up.**

111. A voluntary winding up shall be deemed to commence upon the special resolution in that behalf being entered by the Registrar in the Register of Companies in accordance with the requirements of section 102(2).

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

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

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

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

### **No share transfers during winding up.**

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

### **Appointment of liquidator.**

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

(a) appoint a liquidator to wind up the company's affairs and to realise and distribute its assets; and

(b) fix his remuneration.

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

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

### **Power to fill vacancy in office of liquidator.**

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

- (a) the Court; or
- (b) subject to the provisions of any arrangement made with its creditors, the company in general meeting;

may fill the vacancy.

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

**General provisions as to liquidator.**

**116. (1)** The liquidator shall-

- (a) realise the company's assets and discharge the company's liabilities; and
- (b) having done so, distribute any surplus amongst the members according to their respective entitlements in accordance with section 135.

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

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

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

**Appointment of liquidator by the Court.**

117. If for whatever reason no liquidator is appointed in accordance with section 69, the Court may, on the application of any member, appoint a liquidator.

**Calling of general meetings by liquidators.**

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

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

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

**Final meeting prior to dissolution.**

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

(a) prepare an account of the winding up, giving details of the conduct of the liquidation and the disposal of the company's property, and stating whether or not any state of affairs described in section 137 has become apparent; and

(b) call a general meeting of the company at which the account shall be presented and an explanation shall be given of it.

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

(3) On the expiration of a period of 3 months beginning on the date of registration of such notice, the company shall be deemed to be dissolved.

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

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

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

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

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

(3) A creditor or shareholder of a company which has entered into an arrangement described in subsection (2) may, within a period of 21 days beginning on the date of the completion of the arrangement, apply to the Court for an order that the arrangement be set aside; and thereupon the Court may make such order as it thinks fit for the setting aside, amendment, variation or confirmation of the arrangement.

**Power to apply to Court for directions.**

121. A liquidator or shareholder of a company which is being voluntarily wound up may apply to the Court for directions concerning any aspect of the winding up.

**Removal of liquidator.**

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

**Expenses of voluntary winding up.**

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

**Court may order compulsory winding up.**

124. The Court may, notwithstanding the passing of a resolution under section 109 for the voluntary winding up of a company, entertain an application under section 127 for an order for the compulsory winding up of the company.

PART XVIII  
COMPULSORY WINDING-UP

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

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

- (a) the company has by special resolution resolved that the company be wound up by the Court;
- (b) the company does not commence business within a period of one year beginning on the date of its incorporation;
- (c) the company suspends business for a whole year;
- (d) the number of members of the company is reduced to less than one;
- (e) the company is unable to pay its debts;
- (f) the company has failed to comply with a direction of the Court under section 31(1)(a) to change its name;
- (g) the company has failed to give written notice to the Registrar of the situation of its new registered office in accordance with section 33(1)(b);
- (h) the company has failed to deliver to the Registrar an annual return in accordance with the requirements of section 37 before the end of January in any year;

- (i) the company has failed to hold an annual general meeting of its shareholders in accordance with section 94(1) or (2) or there has been a failure to comply with section 95(1) in respect of any meeting of the company, in which case the provisions of this Part of this Law shall apply in relation to the winding up of the company subject to the modifications set out in section 96(1), (2) and (3);
- (j) the Court is of the opinion that it is just and equitable that the company should be wound up;
- (k) the Court is of the opinion that it is desirable that the company should be wound up for the protection of the public or of the reputation of the Bailiwick of Guernsey.

**Meaning of "unable to pay debts".**

126. A company shall be deemed to be unable to pay its debts if-

- (a) a creditor to whom the company owes a sum exceeding £750 then due has served on the company through the office of the Registrar at the company's registered office a written demand for payment; and
- (b) the company has, for a period of 21 days immediately following the date of service, neglected to pay the sum or to secure payment to the reasonable satisfaction of the creditor;

or if it is proved to the satisfaction of the Court (which may have regard to the company's contingent and prospective liabilities) that the company is unable to pay its debts.

**Application for compulsory winding up.**

127. (1) An application for the compulsory winding up of a company may be made to the Court by the company, any member or creditor thereof (including any prospective or contingent creditor), the Committee or any other person who proves to the

satisfaction of the Court that he has a legitimate and substantial interest in making the application.

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

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

128. On the making of an application for the compulsory winding up of a company or at any time thereafter, any creditor of the company, the Committee or any other person who proves to the satisfaction of the Court that he has a legitimate and substantial interest in making such an application may apply to the Court for an order-

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

**Powers of Court on hearing the application.**

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

**Appointment of liquidator in compulsory winding up.**

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

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

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

- (a) require such security as it thinks fit from him; and
- (b) order that monies received by him be paid into an account specified by the Court.

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

- (a) to bring or defend civil actions in the name of and on behalf of the company;
- (b) to carry on the business of the company to the extent necessary for the beneficial winding up of the company;
- (c) to make calls of capital;
- (d) to sign all receipts and other documents in the name of and on behalf of the company, and to do any other act relating to the winding up, and for these purposes to use the company common seal whenever necessary;
- (e) to do any act authorised by the Court.

(5) The appointment of a liquidator by the Court may be made subject to such terms and conditions as the Court thinks fit; and the Court may at any time attach new terms and conditions or vary or rescind any existing terms and conditions.

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

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

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

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

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

(5) A company which contravenes subsection (3) shall be guilty of an offence.

(6) A company's members who cause or permit the company to contravene subsection (3) shall be personally liable in respect of any debt or obligation undertaken.

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

132. In a compulsory winding up-

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

**Appointment and functions of Commissioner.**

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

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

(a) arrange a creditors' meeting for the purpose of examining and verifying the financial statements and creditors' claims and preferences; and

(b) fix a date for the distribution of the company's assets.

(3) If a claim is disputed, the Commissioner shall refer the decision on the claim to the Court; but otherwise the liquidator may, subject to subsection (4), distribute such part of the company's assets as he thinks fit in relation to any claim.

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

(5) If at any time during the course of a compulsory winding up a liquidator considers that an interim distribution of part of the company's assets is necessary or desirable, he may apply to the Court for the appointment of a Commissioner of the Court for that purpose; and the Commissioner shall, for that purpose, act in the manner hereinbefore provided.

(6) The Court may make such rules as it thinks fit containing provision as to the conduct and functions of a Commissioner pursuant to this section and as to the procedures to be followed in relation to creditors' meetings and other matters dealt with by this section; and such rules may make provision for the amendment of this section.

**Expenses of compulsory winding up.**

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

PART XIX  
PROVISIONS OF GENERAL APPLICATION IN WINDING UP

**Distribution of company's property.**

135. (1) Subject to the provisions of-

- (a) any rule of law as to preferential payments; and
- (b) any agreement between the company and any creditor thereof as to the subordination of the debts due to that creditor to the debts due to the company's other creditors;

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

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

**Company not to undertake business once wound up.**

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

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

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

**Remedy against delinquent officers.**

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

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

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

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

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

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

- (a) to repay, restore or account for such money or such property;
- (b) to contribute such sum to the company's assets;
- (c) to pay interest upon such amount, at such rate and from such date,

as the Court thinks fit in respect of the default, whether by way of indemnity or compensation or otherwise; and the Court may make rules containing provision as to the conduct of such examinations.

**Fraudulent trading.**

138. (1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors (whether of the company or of any other person), or for any fraudulent purpose, the following provisions have effect.

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

**Wrongful trading.**

139. (1) Subject to subsection (3), if in the course of the winding up of a company it appears that subsection (2) applies in relation to a person who is or has been a director of the company, the Court, on the application of the liquidator, may declare that that person is to be liable to make such contribution (if any) to the company's assets as the Court thinks proper.

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

- (a) the company has gone into insolvent liquidation;
- (b) at some time before the commencement of the winding up of the company, that person knew or ought to have concluded that there was no reasonable prospect of the company avoiding going into insolvent liquidation; and
- (c) that person was a director of the company at that time;

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

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

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

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

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

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

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

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

(8) This section is without prejudice to the provisions of section 138.

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

140. (1) On the hearing of an application under section 138 or 139, the liquidator may himself give evidence or call witnesses.

(2) Where under section 138 or 139 the Court makes a declaration, it may give such further directions as it thinks proper for giving effect thereto; and in particular, the Court may-

- (a) provide for the liability of any person under the declaration to be a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in a mortgage or charge on assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf; and
  - (b) from time to time make such further orders as may be necessary for enforcing any charge imposed under this subsection.
- (3) For the purposes of subsection (2), the expression "assignee"-
- (a) includes a person to whom or in whose favour, by the directions of the person made liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest created; but
  - (b) does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(4) Where the Court makes a declaration under section 138 or 139 in relation to a person who is a creditor of the company, it may direct that the whole or any part of any debt owed by the company to that person and any interest thereon shall rank in priority after all other debts owed by the company and after any interest on those debts.

(5) Sections 138 and 139 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the declaration under the section is to be made.

**Liquidator's remuneration.**

141. The liquidator's fees shall, subject to the provisions of section 114(1)(b), be fixed by the Court.

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

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

(2) For the purposes of this section-

(a) a company gives a preference to a person if-

(i) that person is one of the company's creditors or is a surety or guarantor for any of the company's debts or other liabilities; and

(ii) the company does anything, or permits anything to be done, which improves that person's position in the company's liquidation;

(b) the relevant date is the earlier of-

(i) the date of any application for the compulsory winding up of the company under section 127;  
or

(ii) the date of the passing by the company of any special resolution mentioned in section 109 for the voluntary winding up of the company.

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

- (a) the company was at the time of giving the preference, or became as a result of giving the preference, unable to pay its debts within the meaning of section 126; and
- (b) the company was influenced in deciding to give a preference by a desire to produce the effect mentioned in subsection (2)(a)(ii);

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

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

- (a) require any property transferred in connection with the giving of the preference to be vested in the company;
- (b) require any property to be so vested if it represents in any person's hands the application of either the proceeds of sale of property so transferred or money so transferred;
- (c) release or discharge (in whole or in part) any security given by the company;
- (d) require any person to pay, in respect of benefits received by him from the company, such sums to the liquidator as the Court may direct;

- (e) provide for any surety or guarantor whose obligations to any person were released, reduced or discharged by the giving of the preference to be under such new or revived obligations to that person as the Court thinks fit;
- (f) provide for security to be provided for the discharge of any obligation imposed by or arising under the order;
- (g) provide for the extent to which any person whose property is vested by the order in the company, or on whom obligations are imposed by the order, is to be able to claim in the liquidation for debts or other liabilities which arose from, or were released, reduced or discharged by, the giving of the preference.

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

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

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

(a) the reference in subsection (1) to 6 months is to be read as a reference to 2 years; and

(b) the company is presumed, unless the contrary is shown, to have been influenced in deciding to give the preference by such desire as is mentioned in subsection (3)(b).

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

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

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

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

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

**Company to be notified of winding up application.**

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

**Liquidator may seek directions.**

144. The liquidator or any contributory or creditor of a company may seek the Court's directions in relation to any matter arising in relation to the winding up of the company; and upon such an application the Court may, if satisfied that the determination

of the matter would be just and beneficial for the purposes of the winding up, make such order as it thinks fit.

PART XX  
INSPECTORS

**Court may appoint inspectors.**

145. (1) The Court may, on the application of any one or more members holding between them not less than one fifth of the company's issued share capital or of the Committee, if satisfied that there are reasonable grounds for the making of an appointment under this section, by order appoint an inspector or inspectors to investigate and prepare a report upon the affairs and financial position of the company.

(2) An application for the appointment of an inspector or inspectors may be made ex parte to the Chairman of the Court or to any Jurat thereof if the circumstances are such that it is desirable that the appointment should be made as a matter of urgency and before a sitting of the Court can be duly convened.

**Company may appoint inspectors by special resolution.**

146. A company may, by special resolution, appoint an inspector or inspectors to investigate and prepare a report upon its affairs and financial position.

**Qualifications of inspectors.**

147. An inspector shall not be appointed for the purposes of this Part of this Law unless approved by, or holding qualifications approved by, the Committee for those purposes.

**Functions of inspectors.**

148. Any inspector appointed by the Court or by a company pursuant to section 145 or 146-

- (a) shall take an oath before the Court well and faithfully to discharge the duties assigned to them;

- (b) may require the officers and members of the company past and present and any other persons who in the opinion of the inspectors may have information relevant to the investigation to provide such information, to answer such questions and to provide such reasonable assistance as the inspectors think necessary for the purposes of their investigation;
- (c) may require the production of documents or other items which in the opinion of the inspectors may be relevant to the investigation from any person in whose possession, power or control the documents or items are reasonably believed by the inspectors to be;
- (d) may, for the purposes of the investigation, administer the oath or affirmation.

**Duty to comply with inspectors' requirements.**

149. (1) A person who without reasonable excuse, proof whereof shall lie on him, fails to produce any document or other item required of him under section 148 or fails to answer any question put to him by an inspector or otherwise to comply with any requirement made of him by an inspector for the purposes of an investigation under this Part of this Law shall be guilty of an offence.

(2) A statement made by a person in compliance with a requirement made of him by an inspector for the purposes of an investigation under this Part of this Law may be used in evidence against him.

(3) Nothing in this section shall compel the production by an advocate or other legal adviser of a document containing a privileged communication made by him or to him in that capacity.

**Inspectors' report.**

150. (1) The inspectors shall prepare a report of their investigation.

(2) Where the inspectors were appointed by the Court, they shall present a copy of the report under their signatures to the Court, which copy shall be lodged with the Registrar, and to the person upon whose application they were appointed.

(3) Where the inspectors were appointed by resolution of the company, they shall present a copy of the report under their signatures to the person nominated in that behalf by the resolution.

(4) The contents of any such copy of an inspectors' report shall, notwithstanding any rule of law relating to the admission of hearsay evidence, be admissible in evidence with regard to the facts stated in it.

(5) A document purporting to be a copy of an inspectors' report under their signatures shall be received in evidence and shall be deemed to be such a copy unless the contrary is shown.

(6) The inspectors' report may contain recommendations as to the payment of the costs described in section 151(1).

**Costs of investigation.**

151. (1) The costs of an investigation under this Part of this Law and of the preparation of the inspectors' report shall, subject to subsection (2), be borne-

(a) where the inspectors were appointed under section 145, by the person or persons who made the application to the Court for the appointment of the inspectors;

(b) where the inspectors were appointed under section 146, by the company.

(2) The Court may, when appointing inspectors or at any other time whatsoever, make such order as it thinks fit as to the payment of all or any of the costs described in subsection (1); and in making such an order the Court shall, without prejudice to its power to take account of any relevant matter, take into consideration the contents of the inspectors' report and any recommendations contained in it as to the payment of costs.

PART XXI  
EXTERNAL COMPANIES

**Ordinances as to registration and control of external companies.**

**152.** (1) This section applies to external companies.

(2) The States may by Ordinance make such provision in relation to the registration and control of external companies and their activities as they think fit including, without prejudice to the generality of the foregoing, provision in respect of all or any of the following matters-

- (a) the delivery to the Registrar by an external company of-
    - (i) notice that it has become or has ceased to be an external company;
    - (ii) particulars of its name, place and date of incorporation and its registered number in that place;
    - (iii) the address of its registered office and principal place of business;
    - (iv) an address for service in Alderney where all legal process concerning the external company may be served and to which all other communications and notices to be given to the company may be delivered or posted;
  - (b) requiring an external company to change the name under which it carries on business in Alderney or which it uses in connection with an address in Alderney for the purposes of its business;
-

- (c) the manner in which a document may be served upon an external company;
- (d) the payment of fees by or in respect of external companies; and
- (e) the imposition of fines and other penalties upon external companies and their officers for contraventions of the Ordinance or of this Law.

(3) A person who passes off or represents, or who causes or permits to be passed off or represented, an external company as a company incorporated in Alderney shall be guilty of an offence.

PART XXII  
MISCELLANEOUS

**Registrar may give certificate of good standing.**

153. (1) The Registrar, upon an application being made to him in that behalf, which application shall be accompanied by the fee prescribed by regulation of the Committee, may issue a certificate to be called a "certificate of good standing" stating, in relation to any company-

- (a) that the company is registered in the Register of Companies;
- (b) the company's name, registered office and registration number;
- (c) that the company has filed its annual return;
- (d) that the Registrar has not given notice in respect of the company under section 107(2) stating his intention to strike the company's name off the Register of Companies;

- (e) that the company has not delivered to the Registrar a copy of a special resolution requiring it to be wound up voluntarily; and
- (f) that no application for the compulsory winding up of the company has been made to the Court under section 127.

(2) If the Registrar is unable to give a certificate of good standing in relation to a company he shall inform the person applying for the certificate of the provision of subsection (1) by virtue of which he is so unable; and in any such case the application fee shall not be reimbursed.

**Power of Court to give relief against personal liability.**

154. (1) If in any proceedings against an officer or auditor of a company for negligence, default, breach of duty or breach of trust it appears to the Court that the officer or auditor is or may be liable in respect thereof but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused, the Court may relieve him, subject to such terms and conditions as the Court thinks appropriate, from all or any part of that liability.

(2) An officer or auditor of a company who has reasonable cause to apprehend that a claim may be made against him in respect of any negligence, default, breach of duty or breach of trust may apply to the Court for such relief as is mentioned in subsection (1); and the Court, if satisfied as therein mentioned, may make an order relieving him, subject to such terms and conditions as the Court thinks appropriate, from all or any part of his liability.

(3) The provisions of this section do not apply to a person's criminal liability.

**Penalties for offences under this Law.**

**155.** (1) A company or other person guilty of an offence-

- (a) under section 14(2), 17(5), 27(7), 32(7), 33(3)(c), 34(2), 36(3), 37(5), 40(2), 52(2), 54(6), 66(2), 69(4), 70(4), 71(2), 72(4), 73(6), 76(2), 85(4), 93(3), 94(3), 102(3) or 106(7), or under paragraph 10(2) of Schedule 7, is liable on summary conviction to a fine not exceeding level 2 on the Alderney uniform scale;
- (b) under section 17(6), 45(4), 51(4), 71(6), 74(8), 74(9), 75(3), 112(3), 114(3), 131(2), 131(5) or 152(3), or under paragraph 3(2) of Schedule 3 or paragraph 10(1) of Schedule 7, is liable on summary conviction to a fine not exceeding level 4 on the Alderney uniform scale;
- (c) under section 31(4), 64(8), 68, 78(5), 88(5), 149(1) or 156, is liable on summary conviction to a fine not exceeding level 4 on the Alderney uniform scale, imprisonment for a term not exceeding 3 months or both.

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

**False statements.**

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

- (a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;

- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular;
- (c) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular; or
- (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular;

shall be guilty of an offence.

**Criminal liability of officers, etc.**

157. (1) Where an offence under this Law committed by a company is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the company or any person purporting to act in any such capacity, he as well as the company shall be guilty of the offence and may be proceeded against and punished accordingly.

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

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

**Applications to the Court.**

158. In any enactment relating to applications to the Court in respect of companies, any reference to an application, petition, demande or requête shall, unless the context requires otherwise, be construed as a reference to an application to the Court

made in such manner as the Court may direct; and cognate expressions shall be construed accordingly.

**Fees.**

**159. (1)** Upon the occurrence in relation to a company of any of the following events, the company or as the case may be the applicant shall pay to the Registrar the following fees-

- (a) upon the making of an application under section 4 for the registration of a company's memorandum, £50;
- (b) for the issue by the Registrar of a fresh certificate of registration under section 16(8), £25;
- (c) for the deposit by a public company with the Registrar of a declaration of compliance under section 25(1)(c), £25;
- (d) for the delivery under section 32(4) or 33(1)(b) of notice of the situation of the company's new registered office, £15;
- (e) for the registration by the Registrar of an order of the Court under section 33(1) removing a company from its registered office, £15;
- (f) upon the delivery to the Registrar of a copy of a company's annual return in accordance with the provisions of section 37, £25;
- (g) upon the delivery to the Registrar of a copy of a company's annual return in abbreviated form in accordance with the provisions of section 37, £15;
- (h) for the delivery under section 102(2) of a special resolution to change the company's name, £25;

- (i) for the giving by the Registrar of notice of intended striking off under section 107(2), £25;
  - (j) in respect of a winding up in consequence of a failure to comply with section 33(1)(b), £15;
  - (k) in respect of a winding up in consequence of a failure to comply with a direction of the Court to change the company name under section 31(1), £15;
  - (l) for the service of a written demand for the payment of a debt under section 126, £25;
  - (m) for an application for a certificate of good standing under section 153, £25;
  - (n) upon or in relation to any such event, circumstance or matter as may be prescribed by Ordinance of the States, such fee as may be so prescribed.
- (2) The States may by Ordinance prescribe fees-
- (a) for the inspection of the Register of Companies or the records in respect of a company which has been struck-off or otherwise dissolved;
  - (b) for the provision by the Registrar of such services or documents, whether in relation to the Register of Companies or the records of the Island of Alderney or otherwise, as may be specified by Ordinance.

**Service of documents.**

160. (1) Any document other than a summons to be given or served under or for the purposes of this Law may be given or served-

- (a) on an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode;
- (b) on a body corporate with a registered office in Alderney, by being left at, or sent by post or transmitted to, that office;
- (c) on a body corporate without a registered office in Alderney, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Alderney or, if there is no such place, its registered or principal office outside Alderney;
- (d) on an unincorporated body, by being given to or served on any partner, member, manager or officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Alderney or, if there is no such place, its principal or last known principal place of business elsewhere;
- (e) on the Registrar, by being left at, or sent by post to, his office at the Court House;

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

(2) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served by being posted on the notice board outside the Court House for a period of not less than 7 days and by being published in the Gazette on one occasion.

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

(4) A document sent by post shall, unless the contrary is shown, be deemed for the purposes of this Law to have been received-

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting;

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting;

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

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

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

(a) any specific provision of this Law relating to service;

(b) any other lawful method of service.

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

**Exclusion of liability.**

161. No liability shall be incurred by, or by any Committee of, the States, or by the Commission, or by any member, officer or servant of any of the aforesaid, or by the Registrar, in respect of anything done or omitted to be done after the date of the coming into force of any provision of this Law in the discharge or purported discharge of any function conferred by or under that provision unless the thing was done or omitted to be done in bad faith.

**Registrar may rely upon Advocate's certificate when registering company.**

162. The Registrar, when registering a company's memorandum and articles in the Register of Companies under sections 4 and 7, and when giving a certificate of registration in relation to the company under section 13, may rely upon the Advocate's certificate submitted under section 4(1)(b) in all respects and accordingly shall not be bound to enquire further as to whether, in relation to the company or its memorandum or articles, the provisions of this Law have been complied with.

**Interpretation.**

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

"**Advocate**" means an Advocate of the Royal Court of Guernsey;

"**Alderney**" means the Island of Alderney;

"**annual general meeting**" means the general meeting of the members of a company required to be held by section 94;

"**annual return**" means the document required to be completed in accordance with the requirements of section 37;

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

"**auditor**" means a person appointed as an auditor in accordance with section 77;

**"auditors' report"** has the meaning given by section 79;

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

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

**"capital redemption reserve fund"** has the meaning given by section 54(1)(b)(iv);

**"capitalisation"** has the meaning given by section 61(4);

**"certificate of good standing"** means a certificate given by the Registrar under section 153;

**"Commission"** means the Guernsey Financial Services Commission;

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

**"common seal"** means the common seal a company is permitted to have under sections 9(1)(b) and 34;

**"company"** means a body corporate the memorandum and articles of which are registered in the Register of Companies, and includes a "société anonyme ou à responsabilité limitée" incorporated by registration under the Law of 1894;

**"company limited by guarantee"** shall be construed in accordance with the provisions of section 18 and Schedule 6;

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

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

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

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

**"convening notice"** has the meaning given by section 101(2);

**"the Court"** means the Court of Alderney;

**"deposit-taking business"** has the same meaning as in the Banking Supervision (Bailiwick of Guernsey) Law, 1994(d);

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

**"directors' report"** has the meaning given by section 95(1);

**"disqualification order"** means an order of the Court or a renewal thereof under section 88;

**"distributable profits"** means profits from which a company may make a distribution under section 61;

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(c) Ordres en Conseil Vol. XXX, p. 281.

(d) Orders in Council, 1994.

**"distribution"** has the meaning given by section 61(4);

**"document"** includes any summons, notice, statement, order or other legal process, return, account or register;

**"entitled to commence business"** and like expressions shall be construed in accordance with sections 9(1)(d) and 25;

**"equity share capital"**, in relation to a company, means its issued share capital excluding any part thereof which, as respects neither dividends nor capital, carries a right to participate beyond a specified amount in a distribution;

**"external company"** means a body corporate incorporated outside Alderney which carries on business in Alderney or which has an address in Alderney used regularly for the purposes of its business;

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

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

**"the Gazette"** means the Alderney Official Gazette;

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

**"holding company"** shall be construed in accordance with Schedule 4;

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

**"the Law of 1894"** means the Law entitled "Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée" of 1894(f);

**"the Law of 1962"** means the Companies (Amendment) (Alderney) Law, 1962(g);

**"liabilities"** includes any amount reasonably necessary to be retained for the purposes of providing for any liability or loss which is likely to be incurred or which is certain to be incurred but uncertain as to its amount or as to the date on which it will arise;

**"liquidator"** includes a provisional liquidator appointed under section 128;

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

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

**"minute book"** has the meaning given by section 69(1);

**"number"**, in relation to shares, includes amount where the context admits of the reference to shares being construed so as to include stock;

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

**"official seal"** means a company's official seal for use abroad in accordance with section 35;

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(f) Ordres en Conseil Vol. II, p. 451.

(g) Ordres en Conseil Vol. XIX, p.33.

**"paid up"** includes credited as paid up;

**"private company"** shall be construed in accordance with the provisions of section 16;

**"prospectus"** means an invitation to the public to acquire or apply for any shares or debentures of a body corporate, any interest in any such shares or debentures or any right to acquire any such shares, debentures or interests (such shares, debentures, interests and rights being hereinafter referred to as "securities"); and for the purposes of this definition-

- (a) an invitation is made to the public where it is not addressed exclusively to a restricted circle of persons;
- (b) an invitation shall not be considered to be addressed exclusively to a restricted circle of persons unless-
  - (i) the invitation is addressed to an identifiable category of persons to whom it is directly communicated by the person making the invitation or his agent;
  - (ii) the members of that category are the only persons who may accept the offer and they are in possession of sufficient information to be able to make a reasonable evaluation of the invitation; and
  - (iii) the number of persons (whether in Alderney or elsewhere) to whom the invitation is so communicated does not exceed 50;
- (c) an invitation to the public to acquire or apply for any such securities shall, if the securities are not fully paid or if the invitation is first circulated within 6 months after the

securities were allotted, be deemed to be a prospectus circulated by the company unless it is shown that the securities were not allotted with a view to their being the subject of such an invitation;

**"public company"** shall be construed in accordance with the provisions of section 16;

**"redeemable preference shares"** shall be construed in accordance with section 54;

**"the Register of Companies"** means the register called the "Registre des Sociétés établies avec responsabilité limitée", which forms part of the public records of the Island of Alderney and which was formerly kept under Article III of the Law of 1894;

**"the Register of Members"** means the register kept by a company pursuant to section 71 in which the names of the company's shareholders are entered, and includes a Register kept by a company pursuant to Article XIV of the Law of 1894;

**"registered office"** includes, in cases where the Court has made an order under section 33(1) removing a company from its registered office and the company has not yet given written notice to the Registrar of the situation of its new registered office, the address for service for that company specified in the Court's order pursuant to section 33(4)(c);

**"the Registrar"** means the Clerk of the Court;

**"registration number"**, in relation to a company, means the number allocated thereto by the Registrar under section 13(1)(b);

**"resolution for reducing share capital"** has the meaning given by section 63(3);

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

"**shadow director**" means a person in accordance with whose directions and instructions the directors of the company are accustomed to act: provided that a person shall not be deemed to be a shadow director by reason only of the fact that the directors act on advice given by him in a professional capacity;

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

"**share premium account**" has the meaning given by section 46(1);

"**the States**" means the States of Alderney;

"**subsidiary**" shall be construed in accordance with Schedule 4;

"**unable to pay its debts**" and like expressions in relation to a company shall be construed in accordance with section 126;

"**unaudited company**" means an unaudited company within the meaning of Schedule 3, the provisions of which shall have effect accordingly;

"**voluntary winding up**" means a winding up conducted in accordance with the provisions of Part XVII of this Law;

"**wholly-owned subsidiary**" shall be construed in accordance with Schedule 4.

(2) The provisions of the Interpretation (Guernsey) Law, 1948(h) shall apply to the interpretation of this Law as they apply in Guernsey to the interpretation of an enactment.

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

**Power to make Ordinances.**

**164. The States may by Ordinance-**

- (a) amend the requirements for a company's memorandum set out in section 2;
- (b) amend the conditions for the registration of a company's memorandum set out in section 4;
- (c) amend the provisions of Part II of this Law (public companies and private companies), whether by changing the number of members referred to in sections 16 and 17 or otherwise;
- (d) amend the provisions of Part III of this Law and Schedule 6 thereto (companies limited by guarantee);
- (e) amend the provisions of section 31 (powers of Court in relation to company names);
- (f) amend the provisions of section 37, whether in relation to the matters required to be stated in annual returns and abbreviated forms thereof or otherwise;
- (g) enable companies to redeem or purchase their own shares out of capital, specifying the conditions under which this may be done;
- (h) amend sections 44, 45 and 46 with respect to any of the following matters-

- (i) the circumstances and manner in which a company may redeem or purchase its own shares or give financial assistance for the acquisition of its own shares or shares in its holding company;
  - (ii) the transactions which are or are not to be treated as giving financial assistance for those purposes; and
  - (iii) the authority required for a purchase or redemption by a company of its own shares;
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- (i) amend the provisions of section 57 and Schedule 7 (which relate to shares of no nominal or par value and to the companies which issue them);
  - (j) amend the qualifications for appointment as auditor set out in section 78, whether by adding, deleting or changing the name of any body mentioned therein or otherwise;
  - (k) amend the qualifications for appointment as company secretary set out in section 92, whether by adding, deleting or changing the name of any body mentioned therein or otherwise; and, without prejudice to the generality of the foregoing, an Ordinance under this paragraph may apply all or any of the requirements of section 92 to private companies;
- 
- (l) amend sections 77, 78, 79 and 80-
    - (i) so as to exclude the application of any requirement of those provisions in relation to companies of such descriptions and in such

circumstances as may be specified in the Ordinance;

- (ii) as respects the application of those provisions in any case where a company's auditor is a body corporate or a partnership;
- (m) amend the provisions of section 98 (general provisions as to company meetings);
- (n) amend the provisions of section 107, whether in relation to the cases in which a company may be struck off the Register of Companies or otherwise;
- (o) alter any sum specified in sections 107(7), 108(4)(b) and 126(a);
- (p) amend the provisions of section 125 (circumstances in which a company may be compulsorily wound up by the Court);
- (q) amend the provisions of section 153 (Registrar's certificate of good standing in relation to a company);
- (r) alter any fee specified in or under section 159;
- (s) amend any provision of Schedule 3 (unaudited companies), Schedule 4 (holding companies and subsidiaries) and Schedule 5 (directors to be fit and proper persons);
- (t) amend or otherwise modify or adapt any provision of this Law as regards its application in relation to-
  - (i) private companies and public companies;
  - (ii) companies limited by guarantee;

- (iii) shares with no nominal or par value and the companies which issue them.

**General provisions as to Ordinances, regulations and rules.**

165. (1) Any Ordinance, regulation or rule under this Law may-
- (a) in the case of an Ordinance, empower the Committee or the Commission, in specified circumstances, to make regulations, issue licences or permissions and give directions;
  - (b) in the case of an Ordinance, make provision for its enforcement, including provision as to the creation, trial and punishment of offences;
  - (c) contain incidental, supplemental, savings, transitional and consequential provision;
  - (d) be varied or repealed by a subsequent Ordinance, regulation or rule (as the case may be) hereunder;
  - (e) in the case of an Ordinance, make such other provision as the States may consider necessary or expedient for the implementation of this Law;
  - (f) in the case of an Ordinance, make consequential amendments to this Law and other enactments relating to companies or auditors.
- (2) Any power conferred by this Law to make an Ordinance, regulation or rule may be exercised-

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases;
- (b) so as to make, as respects the cases in relation to which it is exercised-
  - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise);
  - (ii) the same provision for all cases, or different provision for different cases or classes of cases or for different classes of companies, or different provision for the same case or class of case for different purposes;
  - (iii) any such provision either unconditionally or subject to any prescribed conditions;
- (c) so as to prohibit the doing of anything in relation to which provision may be made by Ordinance, regulation or rule (as the case may be) except under the authority of and in accordance with the conditions of a licence granted, subject to the satisfaction of such criteria and the payment of such fee as may be specified in the Ordinance, regulation or rule, by such person or body as may be so specified.

**Power of Registrar to prescribe forms.**

166. The Registrar may by written direction published in the Gazette prescribe the form of any return, declaration, notice or other document (other than an Advocate's certificate under section 4(1)(b)) required or authorised by or under any provision of this Law to be deposited or filed with him, submitted to him, registered by him or otherwise given or delivered to him under or for the purposes of this Law; and any such direction

may contain incidental, supplemental, transitional and consequential provision and may be varied or repealed by a subsequent direction under this section.

**Right reserved to the Crown and States.**

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

**Register to be part of public records.**

168. (1) The Register of Companies shall be part of the public records of the Island of Alderney and (subject to the provisions of any Ordinance under section 159(2) providing for the payment of fees for any inspection of the Register) shall be available for inspection accordingly.

(2) Likewise, the records in respect of a company which has been struck-off or otherwise dissolved shall be deemed to be part of the public records of the Island of Alderney until the expiration of a period of 6 years beginning on the date of publication of the notice of striking-off referred to in section 107(4) or on the date of dissolution, as the case may be.

**Savings and transitional provisions.**

169. Schedule 2 shall have effect for the purpose of making savings and transitional provisions.

**Repeals.**

170. The Companies (Alderney) Laws, 1894 and 1962(i) are repealed.

**Citation.**

171. This Law may be cited as the Companies (Alderney) Law, 1994.

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(i) Ordres en Conseil Vol. II, p. 451; and Vol. XIX, p. 33.

**Commencement.**

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

- (a) appoint different days for different provisions and different purposes;
- (b) include savings and transitional provisions in addition to those contained in Schedule 2.

SCHEDULE 1  
ADVOCATE'S CERTIFICATE FOR REGISTRATION  
OF COMPANY'S MEMORANDUM

**"The Companies (Alderney) Law, 1994**

**Advocate's certificate in support of application for registration  
of company memorandum in Alderney Register of Companies.**

I hereby certify for the purposes of an application made to the Registrar for the registration in the Register of Companies of the memorandum and articles of association of a company called

..... (insert company name)

as follows-

- (a) that all requirements of law for the incorporation of the company, and all formalities in respect of the company's memorandum and articles of association and the registration thereof, have been complied with;
  
- (b) that all necessary consents in respect of such incorporation and registration (including the consent of the States of Guernsey Advisory and Finance Committee under the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959 and of Her Majesty's Procureur) have been obtained and not withdrawn; and

- (c) that accordingly the company is authorised to be incorporated and its memorandum and articles may lawfully be registered in the Register of Companies.

Signed .....

(Advocate of the Royal Court of Guernsey)

Address .....

.....

.....

Dated....."

## SCHEDULE 2

### **Savings and transitional provisions**

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

1. Proceedings in relation to the winding up of a company instituted before the coming into force of Parts XVII and XVIII of this Law may continue as if this Law had not been enacted.

#### **Past and current striking-off.**

2. The provisions of sections 107 and 108 shall apply in relation to a company struck off the Register of Companies under the Law of 1962 as those provisions apply in relation to a company struck off the Register under section 107(4) of this Law.

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

3. The repeal by this Law of Article XLIV of the Law of 1894 does not affect any liability to which a person was subject before that repeal came into force.

#### **Company books.**

4. (1) The repeal effected by this Law of Articles XIV, XV, XXVIII and XLI of the Law of 1894 does not relieve a company or any officer thereof of any duty imposed by those Articles in relation to any period before the repeal came into force.

(2) Article XXVIII of the Law of 1894 shall continue to have effect as respects books kept in accordance with its provisions in relation to any period before the repeal of that Article by this Law in the same way as if that repeal had not been enacted.

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

5. Articles IX and XXVII of the Law of 1894 apply in relation to a resolution passed before the repeal of those Articles by this Law in the same way as if this Law had not been passed.

**Existing auditors.**

6. Section 78 does not apply in the case of a person who satisfies the Committee that at the date of the coming into force of that section he was carrying on the business of auditing the accounts of companies.

**Existing companies and records.**

7. The repeal by this Law of the Companies (Alderney) Laws, 1894 and 1962 shall not affect the incorporation of any company registered or deemed to be registered under those Laws, the validity of any public record kept by the Registrar thereunder or the validity of any record kept by a company thereunder.

**General savings.**

8. (1) Anything done under or for the purposes of the Companies (Alderney) Laws, 1894 and 1962 before the coming into force of this Law shall, to the extent that the same is required or authorised to be done under or for the purposes of this Law, have effect as if done under or for the purposes of the equivalent provision of this Law.

(2) Anything in the process of being done under or for the purposes of the Companies (Alderney) Laws, 1894 and 1962 before the coming into force of this Law may, to the extent that the same is required or authorised to be done under or for the purposes of this Law, be continued to be done under or for the purposes of the equivalent provision of this Law.

(3) Any reference howsoever expressed in any enactment, statutory instrument or rule of court to an enactment or a provision of an enactment repealed and re-enacted (with or without modification) by this Law shall (unless the contrary intention appears) be construed as a reference to the provision re-enacted.

(4) In so far as any subordinate legislation made or other thing done (or having effect as if made or done) under an enactment repealed and re-enacted (with or without modification) by this Law could have been made or done under this Law, it shall (unless the contrary intention appears) have effect as if made or done under this Law.

(5) A company name which, immediately before the date of the coming into force of this Law, contained the words "avec responsabilité limitée" and not the word "limited" shall not, after the commencement of this Law, be deemed to be unlawful by reason of that fact alone.

## SCHEDULE 3

### Unaudited Companies

1. An unaudited company is a private company-
  - (a) the articles of which do not require the company to appoint auditors to prepare an auditors' report; and
  - (b) all the members of which have agreed in writing that auditors shall not be appointed to prepare an auditors' report.
  
2. (1) An agreement under paragraph 1(b) may relate to any particular financial year of the company or to financial years thereof generally.
  - (2) While an agreement under paragraph 1(b) has effect, it shall not be necessary for the company to appoint auditors to prepare an auditors' report, provided that all other conditions of paragraph 1 continue to be met.
  - (3) An agreement under paragraph 1(b) shall cease to have effect-
    - (a) if any person becomes a member of the company while the agreement is in force and does not within two months of becoming a member accede in writing to the agreement; or
    - (b) if any member of the company gives written notice to the company determining the agreement.
  - (4) Where an agreement under paragraph 1(b) ceases to have effect, whether pursuant to subsection (3) or otherwise, and an auditors' report has not previously been made in the financial year in which the cessation takes place, the directors shall, within a period of three months immediately following the date of cessation, appoint auditors to prepare an auditors' report; and the provisions of this Law shall thereafter apply in all respects as if the company were not an unaudited company.

**3. (1) In the case of an unaudited company, the directors' report shall state that the company's balance sheet and profit and loss account-**

- (a) have been prepared properly, in accordance with generally accepted accounting principles, and in accordance with any relevant enactment; and**
- (b) are in agreement with the accounting records, which have been properly kept in accordance with section 74; but**
- (c) have not been audited.**

**(2) If subparagraph (1) is not complied with in all respects in the case of an unaudited company, every officer of the company who is in default shall be guilty of an offence.**

**4. The fact that a company is an unaudited company is without prejudice to-**

- (a) the right of any member or creditor of the company to apply to the Court under section 77 for the appointment of an auditor;**
- (b) any powers of the company or the directors thereof to appoint auditors to prepare an auditors' report;**
- (c) the right of any member of the company to apply to the Court under section 105 or 106;**
- (d) any right of any member of the company under the company's articles;**

- (e) any right of any person (whether a creditor of the company or any other person or body whatsoever, including, without prejudice to the generality of the foregoing, the Commission or the Administrator of Income Tax) to call for audited accounts;
- (f) any provision of or under any other enactment for the time being in force.

5. Notwithstanding the provisions of section 37, a company's annual return shall state, if appropriate, that in the calendar year immediately prior to that in which the return is required to be submitted, the company has become, has continued to be or (as the case may be) has ceased to be an unaudited company.

## SCHEDULE 4

### Meaning of "holding company", "subsidiary" and "wholly-owned subsidiary"

1. For the purposes of this Law a company is, subject to the provisions of paragraph 3, a subsidiary of another if, but only if-

- (a) that other-
  - (i) is a member of it and controls the composition of its board of directors; or
  - (ii) holds more than half in nominal value of its equity share capital; or
- (b) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

2. For the purposes of paragraph 1 the composition of a company's board of directors shall be deemed to be controlled by another company if, but only if, that other company has some power, exercisable without the consent or concurrence of any other person, to appoint or remove the holders of all or a majority of the directorships; and that other company shall be deemed to have power to appoint a person to any directorship in respect of which any of the following conditions is satisfied-

- (a) that a person cannot be appointed thereto without the exercise in his favour by that other company of such a power;
- (b) that a person's appointment thereto follows necessarily from his appointment as director of that other company;
- (c) that the directorship is held by that other company itself or by a subsidiary of it.

3. In determining whether a company is a subsidiary of another-

- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it:
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable-
  - (i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity);
  - (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity;

shall be treated as held or exercisable by that other;

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed for securing any issue of such debentures shall be disregarded;
- (d) any shares held or power exercisable by, or by a nominee for, that other or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

**4. For the purposes of this Law-**

- (a) a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary; and
- (b) a company shall be deemed to be the wholly-owned subsidiary of another if it has no members apart from that other and that other's wholly-owned subsidiaries and its or their nominees.

## SCHEDULE 5

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

1. Every person who is, or is to be, a director of the company shall be a fit and proper person to hold that position.

2. In determining whether a person is a fit and proper person to hold a particular position, regard shall be had to-

- (a) his probity, competence, solvency and soundness of judgement for fulfilling the responsibilities of that position;
- (b) the diligence with which he is fulfilling or likely to fulfil those responsibilities;
- (c) whether the interests of members or creditors or potential members or creditors of the company are, or are likely to be, in any way threatened by his holding that position;
- (d) the rules, standards and guidelines of any relevant professional, governing, regulatory or supervisory authority; and
- (e) any reports, guidelines and other documents published by the Commission.

3. Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that he has-

- (a) committed an offence involving fraud or other dishonesty or violence;

- (b) contravened any provision contained in or made under this Law or any other enactment appearing to the Court (having regard to the views of the Commission) to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts or persons who are otherwise insolvent;
- (c) engaged in any business practices appearing to the Court (having regard to the views of the Commission) to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise reflect discredit on his method of conducting business;
- (d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

SCHEDULE 6

**Companies limited by guarantee.**

**No share capital.**

1. A company limited by guarantee shall not have a share capital.

**Consent of Advisory & Finance Committee required.**

2. Notwithstanding that a company limited by guarantee has no share capital, the consent of the States of Guernsey Advisory and Finance Committee under the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959(j) shall nevertheless be required in relation to the incorporation of the company; and the provisions of the said Ordinance shall accordingly apply in all respects to such a company as if it were a company limited by shares.

**Memorandum of association.**

3. In relation to the requirements of section 2 as they apply to the memorandum of a company limited by guarantee-

- (a) the memorandum shall state (in addition to the matters specified in section 2, but subject to subparagraph (b) below) that each member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within a period of one year after he ceases to be a member, such amount as may be required, not exceeding the amount specified in the memorandum, for the payment of the company's debts and liabilities contracted before he ceases to be a member and of the costs, charges and expenses of winding up and for any adjustment of the rights of the contributories as between themselves;

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(j) Recueil d'Ordonnances Tome XII, p. 105; there are amendments not relevant to this enactment.

- (b) the memorandum shall not be required to state the matters set out in sections 2(c) (amount of share capital), 2(d) (number of shares in company and value of each) and 2(e) (terms of payment of such shares).

**Conditions for registration.**

4. In relation to a company limited by guarantee, sections 4(1)(d) (founder members required to own at least one share) and 4(1)(e) (number of shares so owned to be stated) shall not apply; and instead each founder member must have entered into such an undertaking as is described in paragraph 3(a) above, and the amount undertaken to be so contributed shall be written opposite his signature at the foot of the memorandum.

**Members' liability.**

5. In relation to the provisions of section 12 as they apply to a company limited by guarantee, the liability of each member of the company shall, subject to any express provision of this Law as to personal liability, be limited to the amount specified in the memorandum which he has undertaken to contribute to the assets of the company in the event of its being wound up while he is a member, or within a period of one year after he ceases to be a member, for the payment of the company's debts and liabilities contracted before he ceases to be a member and of the costs, charges and expenses of winding up and for any adjustment of the rights of the contributories as between themselves.

**Annual return.**

6. In relation to a company limited by guarantee, subsections (2)(d), (2)(e), (2)(f) and (2)(g) of section 37 shall not apply; and, instead, the annual return shall state in relation to each member the amount that he has undertaken to contribute to the company's assets in the event of its being wound up while he is a member or within a period of one year after he ceases to be a member.

**Register of Members.**

7. In relation to the provisions of section 71 as they apply to a company limited by guarantee, there shall be inscribed in the Register of Members the names and addresses of all persons who are or who have since the incorporation of the company been members therein.

**Definition of "member".**

8. (1) In relation to the provisions of section 163 as they apply to a company limited by guarantee, there shall be substituted for the definition of "member" the following definition-

"**member**", in relation to a company limited by guarantee, means every person who agrees to become a member of the company and whose name is entered in the company's Register of Members or who is entitled to have his name so entered,".

(2) The subscribers of the memorandum of a company limited by guarantee shall be deemed to have agreed to become members of the company and, upon incorporation, shall be entered as such in the Register of Members.

**Cessation of membership.**

9. (1) A person shall not cease to be a member of a company limited by guarantee except-

- (a) upon his death; or
- (b) by retirement with the consent of the directors; and the directors shall not grant such consent unless and until a new member is admitted to the company and entered as such in the Register of Members.

(2) Such a new member shall, upon entry in the Register of Members, be deemed to have executed such an undertaking as is described in paragraph 3(a) above.

(3) The purported retirement of a member of a company limited by guarantee otherwise than in accordance with the provisions of this paragraph shall be of no effect.

**Participation in profits.**

10. In relation to a company limited by guarantee, any provision in the memorandum or articles thereof or in any resolution thereof purporting to give any person

a right to participate in the divisible profits of the company otherwise than as a member is void.

**Document duty.**

11. The States of Guernsey may by Ordinance modify the provisions of the Document Duty (Guernsey) Law, 1973(k) and of any Ordinance thereunder so as to apply those provisions or any of them, or so as to modify those provisions or any of them in their application, to companies limited by guarantee.

**Penalty provisions.**

12. Any provision of this Law referring or otherwise relating to an offence or penalty shall, in its application to a company limited by guarantee, be construed as if any reference therein howsoever expressed to any other provision of this Law were a reference thereto as modified or substituted by or under this Schedule.

**Consequential changes.**

13. Any provision of this Law referring or otherwise relating to shares or share capital (whether in respect of their value, terms of payment, issue or allotment, amount, numbering or otherwise) shall, subject to the provisions of this Schedule, apply in respect of a company limited by guarantee subject to such modifications as may be necessary to give effect to the provisions of this Schedule and by reason of the fact that such a company has no share capital.

**Power to make Ordinances.**

14. The States may by Ordinance amend any provision of this Schedule or modify any provision of or under this Law in its application to a company limited by guarantee.

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(k) Ordres en Conseil Vol. XXIV, p. 74; there are amendments not relevant to this enactment. The Law was applied to Alderney by Recueil d'Ordonnances Tome XIX, p. 111.

## SCHEDULE 7

### Shares with no par value.

#### Power to issue shares of no par value.

1. A company shall not have power to issue shares of no nominal or par value unless expressly authorised to do so by the terms of its articles.

#### Memorandum of association.

2. In relation to the requirements of section 2 as they apply to the memorandum of a company authorised to issue shares of no nominal or par value, the memorandum shall state, in respect of those shares, and in lieu of the matters required to be stated by sections 2(c), 2(d) and 2(e), the number of shares in the company.

#### Annual return.

3. In relation to a company with power to issue shares of no nominal or par value, section 37 shall apply as if the following were substituted for subsection (2)(d)-

"(d) the number of shares issued to each member, the amount paid up thereon and the price at which the shares were so issued;"

#### Issue of shares on incorporation.

4. A company with power to issue shares of no nominal or par value shall, immediately after incorporation, issue to the founder members the number of shares respectively written opposite their signatures at the foot of the memorandum.

#### Price to be decided by directors.

5. (1) Before a company issues shares of no nominal or par value otherwise than pursuant to paragraph 4, the directors shall-

(a) decide the consideration for which and the terms on which the shares will be issued;

- (b) if the shares are to be issued otherwise than for cash, determine the reasonable present cash value of the consideration for the issue;
- (c) resolve that, in their opinion, the consideration and the terms of issue are fair and reasonable to the company and to all existing members and creditors thereof; and
- (d) if the shares are to be issued otherwise than for cash, resolve that, in their opinion, the present cash value of the consideration to be provided for the issue is not less than the amount to be credited for the issue.

(2) The directors who vote in favour of a resolution required under subparagraph (1) shall sign a certificate-

- (a) stating the consideration for and the terms of the issue;
- (b) describing the consideration in sufficient detail to identify it;
- (c) where a present cash value of the consideration has been determined in accordance with subparagraph (1)(b), stating that value and the basis for assessing it;
- (d) stating that, in their opinion, the consideration for and the terms of issue are fair and reasonable to the company and to all existing members and creditors thereof; and
- (e) if the shares are to be issued otherwise than for cash, stating that the present cash value of the consideration to be provided for the issue is not less than the amount to be credited for the issue.

**Crediting shares as paid up.**

6. (1) Before shares already issued are credited as fully or partly paid up otherwise than for cash, the directors shall-

- (a) determine the reasonable present cash value of the consideration; and
- (b) resolve that, in their opinion, the present cash value of the consideration is-
  - (i) fair and reasonable to the company and to all existing members and creditors thereof; and
  - (ii) not less than the amount to be credited in respect of the shares.

(2) The directors who vote in favour of a resolution required under subparagraph (1) shall sign a certificate-

- (a) describing the consideration in sufficient detail to identify it; and
- (b) stating-
  - (i) the present cash value of the consideration and the basis for assessing it;
  - (ii) that, in their opinion, the present cash value of the consideration is fair and reasonable to the company and to all existing members and creditors thereof; and
  - (iii) that the present cash value of the consideration is not less than the amount to be credited in respect of the shares.

**Exceptions from paragraphs 5 & 6.**

7. Paragraphs 5 and 6 do not apply to-

- (a) the issue of shares in a company on-
  - (i) the conversion of any convertible securities; or
  - (ii) the exercise of any option to acquire shares in the company;

but subject in each case to the provisions of paragraph 8 below;

- (b) the issue of shares that are fully paid up from the reserves of the company to all shareholders of the same class in proportion to the number of shares held by each shareholder;
- (c) the consolidation and division of the shares or any class of shares in the company in proportion to those shares or the shares in that class; or
- (d) the subdivision of the shares or any class of shares in the company in proportion to those shares or the shares in that class.

**Consideration in relation to issue of options and convertible securities.**

8. (1) Before a company issues any securities that are convertible into shares in the company of no nominal or par value or any options to acquire such shares, the directors shall-

- (a) decide the consideration for which the convertible securities or options and, in either case, the shares will be issued and the terms on which they will be issued;

- (b) if the shares are to be issued otherwise than for cash, determine the reasonable present cash value of the consideration for the issue;
- (c) resolve that, in their opinion, the consideration for and the terms of issue of the convertible securities or options and, in either case, the shares are fair and reasonable to the company and to all existing members and creditors thereof; and
- (d) if the shares are to be issued otherwise than for cash, resolve that, in their opinion, the present cash value of the consideration to be provided is not less than the amount to be credited for the issue of the shares.

(2) The directors who vote in favour of a resolution required under subparagraph (1) shall sign a certificate-

- (a) stating the consideration for and the terms of the issue of the convertible securities or options and, in either case, the shares;
- (b) describing the consideration in sufficient detail to identify it;
- (c) where a present cash value of the consideration has been determined in accordance with subparagraph (1)(b), stating that value and the basis for assessing it;
- (d) stating that, in their opinion, the consideration for and the terms of issue of the convertible securities or options and, in either case, the shares are fair and reasonable to the company and to all existing members and creditors thereof; and

- (e) if the shares are to be issued otherwise than for cash, stating that the present cash value of the consideration to be provided for the issue is not less than the amount to be credited for the issue of the shares.

**Copy of certificate to be lodged with Registrar.**

9. The directors shall, within a period of 14 days beginning on the date on which the resolution in question was passed, deliver a copy of the certificate required to be signed under subparagraph (2) of paragraph 5, 6 or 8 to the Registrar who shall, as soon as is reasonably practicable, enter it in the Register of Companies.

**Offences.**

10. (1) If in relation to a company there is a contravention of any provision of paragraph 5, 6 or 8, each director of the company shall be guilty of an offence.

(2) If in relation to a company there is a failure to deliver a copy of a certificate in accordance with the requirements of paragraph 9, each director of the company shall be guilty of an offence.

(3) In proceedings against a person for an offence under subparagraph (1) or (2) it shall be a defence for him to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(4) Where in any such proceedings the defence provided for by subparagraph (3) involves an allegation that the commission of the offence was due to the act or default of another person or to reliance on information supplied by another person, the accused may not, without the leave of the court, rely on the defence unless, not less than 7 clear days before the day of the hearing of the proceedings, he serves notice on the Chief Officer of Police giving such information identifying or assisting in the identification of that other person as is in his possession when he serves the notice.

(5) A person may not rely on the defence provided for by subparagraph (3) by reason of his reliance on information supplied by another person unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular-

- (a) to the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information; and
- (b) to whether he had any reason to disbelieve the information.

**Payment otherwise than in cash.**

11. For the purposes of this Schedule, shares which are or are to be credited as paid up wholly or in part as part of an arrangement involving the transfer of property or the provision of services and an exchange of cash or cheques or other negotiable instruments, whether simultaneously or not, shall be treated as paid up otherwise than in cash to the value of the property or services.

**Document duty.**

12. The States of Guernsey may by Ordinance modify the provisions of the Document Duty (Guernsey) Law, 1973(1) and of any Ordinance thereunder so as to apply those provisions or any of them, or so as to modify those provisions or any of them in their application, to shares of no nominal or par value and to the companies which issue them.

**Penalty provisions.**

13. Any provision of this Law referring or otherwise relating to an offence or penalty shall, in its application to shares of no nominal or par value and to the companies which issue them, be construed as if any reference therein howsoever expressed to any other provision of this Law were a reference thereto as modified or substituted by or under this Schedule.

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(1) Ordres en Conseil Vol. XXIV, p. 74; there are amendments not relevant to this enactment. The Law was applied to Alderney by Recueil d'Ordonnances Tome XIX, p. 111.

**Consequential changes.**

14. Any provision of this Law referring or otherwise relating to shares or share capital (whether in respect of their value, terms of payment, issue or allotment, amount, numbering or otherwise) shall, subject to the provisions of this Schedule, apply in respect of shares of no nominal or par value and the companies which issue them subject to such modifications as may be necessary to give effect to the provisions of this Schedule and by reason of the fact that the said shares have no nominal or par value.

**Consent of Advisory & Finance Committee required.**

15. Notwithstanding that a company has, pursuant to the provisions of section 57 above and of this Schedule, power to issue shares of no nominal or par value, the consent of the States of Guernsey Advisory and Finance Committee under the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959(m) shall nevertheless be required in relation to the incorporation of the company; and the provisions of the said Ordinance shall accordingly apply in all respects to such a company as if it were a company limited by shares without power to issue shares of no nominal or par value.

**Power to make Ordinances.**

16. The States may by Ordinance amend any provision of this Schedule or modify any provision of or under this Law in its application to shares which have no nominal or par value and to the companies which issue them.

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(m) Recueil d'Ordonnances Tome XII, p. 105; there are amendments not relevant to this enactment.