909 (1)

STATES OF JERSEY

9th October 1990

Companies (Jersey) Law 1990. P.114/90 and P.137/90

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, adopted a Law entitled the Companies (Jersey) Law 1990.

R. J. Gray.

Deputy Greffier of the States

909(1)

FINANCE AND ECONOMICS COMMITTEE

17th September 1990

Companies (Jersey) Law 199 . Amendment. 909(1)

T.O.S.
C.R.O.
E.A.
C.I.Aud.
St.Aud.
L.D.
States(2)
Printer

3. The Committee considered an Amendment to the draft Companies (Jersey) Law 199 , (P.114/90) which had been lodged "au Greffe" on 7th August 1990, and which the President had asked to be debated on 9th October 1990.

The Committee noted that the Amendment referred to paragraphs 64 and 183 of the draft Law, and dealt with purely drafting matters.

The Committee approved the Amendment and decided to lodge it "au Greffe" on 25th September 1990, and requested the President to ask that it be taken into consideration on 9th October 1990, when the draft Law was to be debated.

Greffier of the States

file 909(1)

States of Jersey

Senator R.R. Jeune, O.B.E.
President,
Finance and Economics Committee.

States Greffe,
Jersey, Channel Islands.
Telephone (0534) 73060.

909(1)

22nd August, 1990

To all States Members

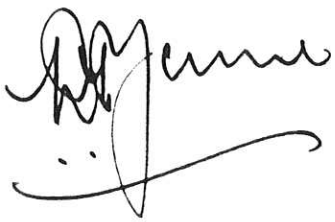
Dear Member,

DRAFT COMPANIES (JERSEY) LAW, 199 . (P.114/90)

I refer to the Statement I made in the House yesterday regarding the above which I have asked to be debated on 9th October, 1990.

In order to assist Members with this comprehensive and complex legislation I thought it would be helpful to give you the opportunity of discussing it and/or raising questions on particular aspects prior to the debate. Therefore, with the permission of the Bailiff, I will be in the States' Chamber, together with Mr. Richard Syvret, Commercial Relations Officer, between 10.00 a.m. and 12 noon on Tuesday, 4th September during which time we will be pleased to see you.

Yours sincerely



DRAFT COMPANIES (JERSEY) LAW 199 (P.114/90): AMENDMENT

Lodged au Greffe on 25th September 1990
by the Finance and Economics Committee

STATES OF JERSEY

STATES GREFFE

160 1990 P.137

Price : 50p

Adopted 9/10/90

AMENDMENT TO THE DRAFT COMPANIES (JERSEY) LAW 199 (P.114 of 1990)

PAGE 112. Article 64

For sub-paragraph (a) of paragraph (3) substitute the following sub-paragraph -

(a) shall be signed by the registrar and sealed with his seal;

PAGE 216. Article 183

After paragraph (4) insert the following paragraph -

(5) Sub-paragraph (d) of paragraph (3) shall cease to have effect on the expiration of 18 months from the date on which Article 73 comes into force.

FINANCE AND ECONOMICS COMMITTEE

Explanatory Note

Amendment to Article 64 of draft Law

Sub-paragraph (a) of paragraph (3) of this Article provides that the certificate to be given by the registrar shall be either signed by the registrar, or sealed with his seal, or both signed and sealed. However, under corresponding provisions elsewhere in the draft Law the requirement is for a certificate to be signed by the registrar and sealed with his seal.

The purpose of the amendment is simply to ensure consistency throughout the draft Law.

Amendment to Article 183 of draft Law

Paragraph (2) of this Article lists those who have a duty to co-operate with the liquidator during the course of a creditors' winding up. Included in this list (sub-paragraph (d) of paragraph (2)) are those who are, or have within the year before the commencement of the winding up been, officers of, or in the employment of, another company which is, or was within that year, an officer (in this context, a director) of the company being wound up.

Since, under Article 73 of the draft Law, after a grace period of six months it will no longer be possible for a body corporate to be a director of a company, sub-paragraph (d) of paragraph (2) of Article 183 can only have application for a limited period, and the purpose of the amendment is to provide that it will cease to have effect 18 months after the coming into force of Article 73.

909 (1)

FINANCE AND ECONOMICS COMMITTEE

9th July 1990

Draft Companies (Jersey) Law, 199-. 909(1)

T.O.S.
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16. The Committee, with reference to its Act No. 18 of 11th June, 1990, recalled that it had received the draft Companies (Jersey) Law, 199- which was to replace the Companies (Jersey) Laws, 1861 to 1968 with new provision for the incorporation, regulation and winding up of limited liability companies, and had decided to discuss the Law in greater depth when Mr. H.W. Higginson, C.B.E., M.C., the legal consultant who had been closely involved in its preparation, could be present.

The Committee welcomed to the meeting Mr. H.W. Higginson, the Commercial Relations Officer, the Assistant Commercial Relations Officer, Mr. W. McGregor, Assistant Law Draftsman and Advocate S.C.K. Pallot, having received in advance revised Articles 95, 109 and 111 of the draft Law and a Report of the Committee on the subject.

Mr. Higginson explained that the draft Law was based on United Kingdom legislation although it had only 224 sections compared with 1456 in the U.K. version. The Law introduced new facilities not available under the existing Law, one of which was that meetings could be held over the telephone as long as each party could hear what was said by all the other participants and another was that fractions of shares could be issued. Mr. Higginson pointed out that the Law did not introduce controls on external companies but enabled the States to introduce controls by Regulation, it also provided for a great deal of delegated legislation which would make the Law more flexible and allow alterations to be made to meet changing circumstances; there was a more detailed requirement for companies to keep accounting records; there were more provisions with regard to audit, public companies would have to have auditors, or, if not a public company, if the shareholders decided that there should be auditors.

After further discussion of the purposes of the Law, the meeting then discussed the Law Article by Article and agreed certain minor amendments as well as requesting Advocate Pallot and the Commercial Relations Officer to check on other points which were raised.

The Committee noted that the final version of the Law would be available at its next meeting on 23rd July, with a view to lodging 'au Greffe' on 31st July, 1990.

The President, speaking on behalf of the Committee, expressed his appreciation to Mr. Higginson for his valuable assistance in the formulation of the Law and the delegation withdrew from the meeting.

STATES GREFFE
REGISTERED
17 JUL 1990

Greffier of the States

909 (1)

H W Higginson Esq
Little Portobello
Brenchley
Kent
TN12 7NP

Our Ref: RCAS/smb/G19A

29 June 1990

Dear Mr Higginson

COMPANY LAW

I am enclosing a copy of a letter which I have received from Deputy D R Maltwood who is a member of the Finance and Economics Committee. I thought you might be interested in this as it contains a number of matters which he intends to raise at the meeting planned for Monday 9th July.

I have been through the letter with him and managed to dispose of most of the points. I would however particularly draw your attention to the following matters.

I	Article 9(2)	It seems to me that there should perhaps be a standard format as suggested.
II	Article 29(4)(b)	mentions debentures. Does this include debenture stock? It seems to me that we may need to have a definition of 'debenture' much on the lines of that contained in section 744 of the 1985 Act.
III	Article 42	I believe that the law allows for bearer debentures but would be grateful if you could check this. They are certainly required.
IV	Article 82(1)(d)	would not seem to allow for corporate secretaries of public companies. There are quite a number of fund companies at present which have such corporate secretaries. I will be pleased to hear your views on this matter.

V	Article 84(2)(b)(iii)	should perhaps be deleted. It would seem possible for a single lady to be disqualified from being a director, to then marry and for the disqualification to be 'lost'.
VI		Deputy Maltwood's point regarding Article 86(1) is likely to be raised by him at the meeting.
VII	Article 104(3)	requires only one director to sign the accounts. Deputy Maltwood feels that this should be two and I tend to agree with him. Perhaps we need something on the lines of section 238(1) of the 1985 Act. There will be a consequential amendment to article 106(1)(a).
VIII	Article 132(2)	I have attempted to find out whether a person acting under the authority of a Bailiff's warrant is able to use force or not and my understanding is that there is probably no implied right to use such force. It seems to me that reasonable force should be permitted. Perhaps the articles should state this. I shall be pleased to have your views.

One point which has arisen of recent days which has not been discussed by us before relates to article 27(2) of the law. An individual can be a nominee for a holding company. That being the case it will not be possible to know whether article 27(1) applies or not merely by looking at the register. Also, companies are often the nominee shareholders for the true individual beneficial owner. That being the case virtually all companies could only have one shareholder being a company. The question then arises as to why one requires two persons to incorporate a company. It seems to me that it might be more sensible for article 27(2) to be deleted.

The final question relates to article 145. If a company is not able to discharge its liabilities within six months of the commencement of the winding up it will have to be wound up by a creditors winding up. It seems to me that the six month period may be too short. I believe that the equivalent period in the United Kingdom (section 89 of the 1986 Insolvency Act) is 12 months. If we altered this there would be consequential

alterations to article 150(3) and 151(1) and (8).

I look forward to seeing you on Monday July 9th.

Kind regards.

Yours sincerely

R C A Syvret
Commercial Relations Officer

FROM

Westaway Chambers,
39, Don Street,
St. Helier,
Jersey.

States of Jersey

22 June, 1990

R. C. A. Syvret Esq.,
Commercial Relations Department,
Cyril Le Marquand House,
The Parade,
St. Helier,
Jersey.

Dear Richard,

Company Law

I have now read all of the 180 pages and am suffering from legal indigestion. As promised, I am forwarding my comments to you ahead of our meeting on 8th July.

Article 1	(i)		Definition of officer. I always believed that the Secretary was an officer of the company.
1	(i)		Personal Representative. Can this include the Tuteur of a tutelle?
Article 2	(i)	(a)	Is this the so called 'Golden share'?
2	(i)	(a) (ii)	Non voting shares can be part of the equity capital.
Article 4	(i)	(e)	Should this include a reference to its intention to become a public company? It is rare for any public company to start on day one with over 30 members.
Article 4	(2)	(c)	Signature on each page or just at the end. Perhaps pages should be initialled by each subscriber.
Article 6	(1)		Why has the Standard Table not been included as a schedule?
6	(3)		If circumstances change and the alteration is considered advisable, is there any way that a change can be imposed on companies formed before the relevant date? This clause appears to prevent this.
Article 9	(2)		Why the choice? There should be a standard format.

States of Jersey

9 (5)	Is a new certificate issued when a company becomes public after the allotment of shares?
Article 23 & 24	Is there a need for different types of seal, when duplicates should be permissible without additional words?
Article 25 (2)	Can Bearer shares be issued and can a holder of a bearer shares be considered to be a member? Dematerialisation/Taurus will introduce a new concept, has this been considered?
Article 28	Is it right that a minor can inherit shares and become a member or does a trust have to be created, in which case the trustees or tuteurs become the members.
Article 29 (4) (b)	Is a Loan Stock, unsecured or not, considered as a security?
Article 38 (1) (d)	Insert on line 1 after shares "its stock" and in line 2 similar to avoid going through 38 (1) (c) twice.
Article 47	Provides for rectification which may be desirable as a result of Article 41 (5). Should there be a first line of appeal to the Registrar before involving the panoply of the law?
Article 42 (1)	What about electronic transfers etc. subsequent to dematerialisation and Taurus?
42 (5)	Is this period too long? Public companies are required to register in 2 weeks under their undertaking to The Stock Exchange.
Article 46 (1)	Is this too restrictive? The person may want to acquire a stake in a company and not necessarily all of the shares.
46 (1) (d)	What are the prescribed purposes?
Article 50	What about dematerialisation and bearer shares?

FROM

States of Jersey

Article 53 (2)	Is 14 days too short?
Article 58 (4)	Line 3 inclusion of Loan Stock.
Article 70 (1)	Should the principle place of business also be required, if different from the Registered Office.
Article 71	Annual returns should be in by the end of January to be meaningful.
71 (1) (a) (i)	Is it appropriate not to include all shareholders?
71 (3)	Does this conflict with Article 202 and should not 202 prevail? Article 83 (3) provides for public inspection of the register.
Article 72 (c) (i)	How can he do this if he has not delivered a declaration?
Article 82	What about Corporate Secretaries?
Article 84 (1) (c)	Can a corporation be a director?
84 (2) (b) (iii)	Why not include former names of married women, thus making the person more readily indentifiable.
Article 86 (1)	Line 3 after the words can hear insert " all of what is said "(there are mute buttons on phones etc.).
Article 89 (4)	Is this number for requisitioning a meeting too large?
Article 90	The Jersey norm is 2/3 unless otherwise specified. Should this not be the same as in the UK - 75 per cent. This reduces the member required to block a resolution and increases the safeguard.
Article 92 (7)	Many local companies have peculiar voting rights. Will these be illegal or will this archaic structure be allowed to continue? Jersey Gas for example.

FROM

States of Jersey

Article 98 (2)	Line 2 is the word had correct?
98 (3)	Line 3 & 4 is the word had correct?
Article 103 (3)	Insert "after which time it shall be lawful to dispose of or destroy such accounting records."
Article 104 (3)	Why not two directors. This may prevent an individual doing everything and ensures that another director, who is not perhaps the Finance Director, also approves the accounts.
Article 106 (1) (a)	As per 104.
Article 118	What does the Viscount do with it? This is an interest point not to do with the law.
Article 132 (2)	Is force permitted and should it be stated or excluded?

This little lot will keep you occupied for a few minutes. At least it shows that I have read as far as Article 202!

Kind regards,

Yours sincerely,

D. R. Maltwood.

909(1)

ESTABLISHMENT COMMITTEE

19th June 1990

Finance and Economics Committee: Draft Companies (Jersey) Law, 19 . 909(1)

S.P.D.
T.O.S.
C.R.O.
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St.Aud.
S.F.E.C.
States(2)
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2. The Committee, having previously considered a memorandum dated 13th June, 1990, recalled that the Finance and Economics Committee was currently considering the draft Companies (Jersey) Law, 19 . This was a complete review of the present Laws which were substantially out of date.

The Committee, in accordance with an Act of the States dated 3rd April, 1979, decided to comment on the draft law as follows -

> "The Establishment Committee agrees that there is a need for one additional junior clerical post, but it is hoped that that need will be obviated by the result of the Computer Strategy Study of the Commercial Relations Department to be undertaken in 1990. However, there is a possibility that an element of additional staffing might be required after 1991 to deal with new investigatory and inspection processes under the new law."

Greffier of the States

909 (1)

STATES GREFFE REGISTERED 11 JUN 1990

T.O.S.

FINANCE AND ECONOMICS COMMITTEE

11th June 1990

Draft Companies (Jersey) Law, 19 . 909(1)

T.O.S.
C.R.O.
E.A.
C.I.Aud.
St.Aud.
L.D.

18. The Committee received a Paper, dated 25th May, 1990, prepared by the Commercial Relations Officer, together with -

(a) the draft Companies (Jersey) Law, 19 ;
(b) Explanatory Note; and
(c) draft Committee Report to the States

The Committee noted that the draft Law, Explanatory Note and draft Committee Report were to be considered at its meeting on 9th July, 1990, when Mr. H.W. Higginson, who had been greatly involved in the formulation of this draft Law would be present.

The Committee noted that Mr. Higginson had been paid an initial sum of £10,000 as an ex gratia payment, and now that the law was complete, authorised the Commercial Relations Officer to pay Mr. Higginson a further ex gratia payment of £40,000 for his services.

The Committee noted that the staffing implications of the introduction of the new Law had been the subject of review by the States Personnel Department. It was believed that an additional clerical post would need to be created in 1991, but a strategic study of the Commercial Relations Department to be undertaken by the Computer Services Division in 1990 would have as part of its objectives the identification, if possible, of technical options to produce savings in clerical work load. There was a possibility also that an element of additional staffing might be required after 1991 to deal with the new investigatory and inspection processes under the new Law. The Committee authorised the Commercial Relations Officer to forward the draft Law and relevant papers to the Establishment Committee and to request its urgent formal comment on the staffing implications, as required by an Act of the States dated 3rd April, 1979.

The Committee noted that, apart from staff costs likely to be in the region of £12,000 a year, it was not envisaged that the operation of this new Law would greatly affect the existing levels of States expenditure and income attributable to company registrations.

The Committee noted that the draft Law allowed a "Standard Table" to be established by Order under the Law. The Table would be a standard set of articles of association and would be capable of being adopted in whole or in part by any new or existing Jersey company thereby significantly reducing paperwork. A draft Standard Table had been produced that the Committee agreed that it might be released purely as a consultative document for interested parties when the draft Law was lodged "au Greffe".

The Committee noted that the President and the Commercial Relations Officer proposed to invite States Members and other interested parties to discuss the draft Law at separate 'surgeries' (after it had been lodged "au Greffe"). The President would also request the Bailiff to ask the States if the Commercial Relations Officer could be present in the States' Chamber during the consideration of the draft Law, in view of its complexity.

STATES GREFFE 14 JUN 1990 FORWARDED

Finally, the Committee noted that it was proposed to ask for a date in early October, 1990, for the draft Law to be considered.

Greffier of the States

H W Higginson Esq
Little Portobello
Brenchley
Kent
TN12 7NP

Our Ref: RCAS/smb/G19A

12 June 1990

Dear Mr Higginson

DRAFT COMPANIES (JERSEY) LAW

I received yesterday a letter from the Jersey Society of Chartered and Certified Accountants which made reference to a number of specific points but particularly addressed the appointment, rights and duties of auditors. The Society was satisfied that most of the necessary items were covered under articles 108 to 112 of the latest draft but were concerned about the lack of articles covering the removal and resignation of auditors. They were concerned also that a finance centre such as Jersey should be seen within the law itself as opposed to by regulation to cover such matters. I had pointed out to them that article 108(2) allowed the States to make regulations regarding the appointment, remuneration, removal, resignation, rights and duties of auditors. They were not however satisfied that this was sufficient and felt that the law itself should contain the necessary articles "requiring an extraordinary general meeting to be held to remove an auditor and also for a retiring auditor to give a positive statement regarding his resignation".

I have spoken with a representative of the Society and he tells me that they have three main concerns. First they would wish that an auditor should be removed only by resolution of a company. Second that the auditor so removed should have the ability to attend relevant meetings. Third that an auditor who resigns should be able to have notice of the reasons for his resignation circulated to the shareholders.

We have been through the relevant provisions of the Companies Act 1985 which are in particular contained in sections 386(1) and (3), 387(2) and 390(1)(2)(3) and (7). Our suggestion would be to alter article 109 as follows:-

"(7) A company may by resolution remove an auditor before the expiration of his term of office, notwithstanding anything in any agreement between it and him.

(8) Nothing in this article is 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 auditor.

(9) As existing (7)."

We envisage altering article 111 as follows:-

"(5) An auditor of a company who has been removed is entitled to attend

(a) the general meeting at which his term of office would otherwise have expired, and

(b) any general meeting at which it is proposed to fill the vacancy caused by his removal,

and to receive all notices of, and other communications relating to, any such meeting which any member of the company is entitled to receive, and to be heard at any such meeting which he attends on any part of the business of the meeting which concerns him as former auditor of the company.

(6) As existing (5).

(7) An auditor of a company may resign his office by depositing a notice in writing to that effect at the company's registered office; and any such notice operates to bring his term of office to an end on the date on which the notice is deposited, or on such later date as may be specified in it.

(8) An auditor's notice of resignation is not effective unless it contains either

(a) a statement to the effect that there are no circumstances connected with his resignation which he considers should be brought to the notice of the members or creditors of the company; or

(b) a statement of any circumstances as are mentioned above.

(9) Where a notice under paragraph (8) is deposited at a company's registered office and the notice contains a statement under sub-paragraph (b) of paragraph (8), the company shall within 14 days send a copy of the notice to every person entitled to receive notice of general meetings.

(10) Delete existing (7) and replace it with - If a company fails to comply with paragraphs (1) or (9), the company and every officer of it who is in default is guilty of an offence."

It seems to me on reflection that the penalty for the offence of non-compliance with paragraph 1 of article 109, at £500, is too low and should be an unlimited fine whereas the penalty for the newer offence under paragraph (9) should be £500.

I shall be pleased to have your views regarding the above - if possible by telephone.

Yours sincerely

R C A Syvret
Commercial Relations Officer

G19

WATLING HOUSE
35-37 CANNON STREET,
LONDON EC4M 5SD
Tel. 01-489 8000

16th January, 1990

R.C.A.Syvret, Esq.
Commercial Relations Department
Cyril Le Marquand House,
P.O.Box No.267
The Parade,
St.Helier,
JERSEY

Dear Mr.Syvret,

DRAFT COMPANIES (JERSEY) LAW - PROSPECTUSES

With reference to your letter of 5th January to Mr.McGregor and our conversation over the telephone, I offer the following for consideration.

Amend the subparagraphs of Article 29(1) to read as follows -

"(a) the circulation of a prospectus in the Island;

(b) the circulation of a prospectus, in the Island or elsewhere, by a company."

Add at the end of the Article -

"(6) An invitation to the public to acquire or apply for securities in a company 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."

Yours sincerely,

H W Higginson

WATLING HOUSE
35-37 CANNON STREET,
LONDON EC4M 5SD
Tel. 01-489 8000

11th December, 1989

R.C.A.Syvret, Esq.
Commercial Relations Department
Cyril Le Marquand House,
P.O.Box No.267,
The Parade,
St.Helier,
JERSEY

Dear Mr.Syvret,

DRAFT COMPANIES (JERSEY) LAW - COMPANIES ACT 1989

I have had a look at the new Companies Act. For consideration, I suggest the following changes in the draft Law. References to sections etc. are to those in that Act.

Article 41

Following section 207, I suggest the addition of the following at the end of paragraph (6) -

"(c) the transfer of securities of any description and of any interest therein without a written instrument."

Article 76

Section 137 extends section 310 of the 1985 Act. This Article will be less liberal. I suggest adding -

"(4) This Article does not prevent a company from purchasing and maintaining for any such officer insurance against any such liability."

Article 83

Paragraph 6 of Schedule 19 adds date of birth to the particulars of directors. Should that be added in this Article?

Yes

Article 107

Section 20 introduces new provisions about the power to alter accounting requirements which appear wider than those in this Article.

Article 131

Section 64 amends and extends section 448 of the 1985 Act including, in subsection (7), the creation of an offence for obstruction. Should such a provision be added in Article 131?

Article 136

Section 59 amends section 439 of the 1985 Act to include, in expenses, sums in respect of general staff costs and overheads. Should this be added in Article 136?

Article 139

Section 70 introduces into section 453 of the 1985 Act the exclusion (inter alia) of the power (following an investigation of an external company) to bring proceedings on behalf of the company. I do not think this calls for any change in the Law. Modifications can be specified in Regulations.

Article 198

Paragraph 14 of Sch. 19 substitutes a new section 705 of the 1985 Act which is somewhat wider than this Article.

Article 208(4)

Paragraph 17 of Sch.19 amends section 730 of the 1985 Act. I think that a corresponding amendment should be made in paragraph (4) of this Article (a) by substituting "under or pursuant to this Law" for "whereby" in the first line, and (b) adding "or other body corporate" after "company" in lines 2 and 3. An officer of an external company may be fined for an offence against regulations made under Article 196.

Yours sincerely,

H W Kiggins

WATLING HOUSE
35-37 CANNON STREET,
LONDON EC4M 5SD
Tel. 01-489 8000

11th December, 1989

R.C.A.Syvret, Esq.
Commercial Relations Department
Cyril Le Marquand House,
P.O.Box No.267,
The Parade,
St.Helier,
JERSEY

Dear Mr.Syvret,

DRAFT COMPANIES (JERSEY) LAW - AUDITORS

The Companies Act 1989 provides, in section 25(1), that a person is eligible for appointment as auditor only if (a) he is a member of a recognised supervisory body, and (b) he is eligible for the appointment under the rules of that body. Paragraph (b) deals with the possibility that the rules of a supervisory body may prohibit some of their members from being appointed auditors.

Section 25(2) says that an individual or a firm may be appointed auditor. Section 53(1) says that "firm" means a body corporate or a partnership. That looks forward to the possibility that there may be corporate members of a recognised supervisory body. Section 26 deals with the appointment of a partnership as auditor.

The effect of Article 112 of the Sixth Draft is that a "person" is qualified for appointment as auditor if he is a member of the bodies specified or is authorised under paragraph (1)(b).

Under Article 3 of your Interpretation Act, "person" includes a body corporate unless a contrary intention appears. Article 112(7) empowers the Committee to amend paragraph (1)(a) by adding or removing bodies therein and to amend paragraph (2) by adding or removing descriptions of persons.

Although it has been the practice for many years to appoint partnership firms as auditors, the Companies Acts have not previously authorised this expressly. That now appears in section 25 (1) with consequential provisions in section 26.

I suggest that Article 112 be amended as follows.

In paragraph (5) omit "Scottish firm" and substitute "a partnership".

Amend paragraph (7) to read -

"The Committee may by Order -

(a) amend paragraph (1)(a) by adding, deleting or substituting bodies therein,;

(b) amend paragraph (2) by adding, deleting, substituting or qualifying descriptions of persons therein, and

(c) amend this Article so as to allow a body corporate, subject to such conditions as are specified in the Order, to be a person qualified for appointment as auditor of a company."

The addition of "qualifying" in paragraph (7)(b) will allow the introduction of the condition in section 25(1)(b).

Although paragraph (1) of Article 112 refers to the appointment of an auditor under Article 108, the remaining paragraphs, read literally, apply to any auditors. To avoid doubt, I suggest the following further amendments.

In paragraph (2), add "so" before "qualified" in the first line and omit "for appointment as auditor of a company". Make the same amendment in paragraph (3). In paragraph (4), add "appointed under Article 108" after "~~act~~" in the first line. In paragraph (5), add "so" before "qualified" in lines 2 and 3, delete "for appointment as auditor of a company" in line 2 and "for appointment as auditors of the company" in lines 3 and 4.

Yours sincerely,

H W Higginson

WATLING HOUSE
35-37 CANNON STREET,
LONDON EC4M 5SD
Tel. 01-489 8000

8th August, 1989

R.C.A.Syvret, Esq.
Commercial Relations Department
Cyril Le Marquand House
P.O.Box No.267,
The Parade,
St.Helier,
JERSEY

Dear Mr.Syvret,

DRAFT COMPANIES (JERSEY) LAW

I am writing with reference to your letters of 2nd August to Mr.McGregor, of which you sent me copies and to make some corrections and additions to my revised comments on the Fourth Draft.

As regards your letter following your meeting with the Judicial Greffier -

(a) Article 65 (following section 138 of the 1985 Act) does not require the company to produce the order (or Act) of the court to the registrar. It merely says that the reduction of capital takes effect when it is delivered. It would not be appropriate to provide a penalty for failure to register when there is no obligation to do so.

(b) I agree that, if a company fails to comply with Article 159(4), it and every officer in default should be liable to a fine.

As regards your suggested omission of references to prescribed forms -

(a) I suggest the addition of a paragraph to Article 207 saying that, unless otherwise provided, every document required to be delivered by a company to the registrar shall be signed by a director or the secretary of the company. That would avoid repeating the statement in each Article which requires a document to be delivered. I think the signature of a director or the secretary should be sufficient.

(b) Article 68(2) is to be omitted.

(c) I see no objection to the use of "prescribe" in Article 96(1). It is the word used in section 371 of the 1985 Act and in other relevant legislation.

(d) A requirement that the statement of affairs required by Article 164 shall be signed by all the directors may sometimes be difficult to comply with. Section 99(2) of the Insolvency Act requires the statement to be verified by the affidavit of some or all of the directors.

I enclose a note of corrections and additions which should be made to my revised comments on the Fourth Draft.

Yours simcerely,

H.W.S. Higginson

P.S. If the fifth draft should become available by 26th August perhaps you could post a copy to me at Deffends, Route St.Trinit, 84390 Sault, Vaucluse, France. But, even if that is possible, please send another to me at my home address least the first goes astray.

HWSH

Enc.

DRAFT COMPANIES (JERSEY) LAW

CORRECTIONS AND ADDITIONS TO COMMENTS OF H.W.H. ON FOURTH DRAFT

Para.

9 Omit the definition of "office copy"

ARTICLE 14(2)

26A Substitute "Public Registry" for "Register" and omit "kept by the Judicial Greffier".

45 "are" should be omitted after "43"

52 The words substituted in paragraph (1) should also be substituted in paragraph (2).

54A Omit "generally" in paragraph (3)(b) and all words after "shall" in paragraph (4) and substitute "direct the company to forward the relevant Act of the court to the registrar".

61A Omit "a copy of the order" and substitute "the relevant Act of the court".

ARTICLE 65

67A In paragraph (1), omit "production to him of an order" and substitute "delivery to him of the Act": omit "and the delivery to him of a copy of the order" and substitute "Act" for "order" in the last line.

68 Add that "Act" is to be substituted for "order" in paragraph (2).

69 Add that "Act" is to be substituted for "order" in paragraph (4)(a).

ARTICLE 66

69A In paragraph (3), substitute "Act" for "order".

86 The word "section" should be "Article".

97 The first addition should be "secretary" not "or, secretary", the second should be "or secretary".

104 "company" should have a small "c".

120 The addition should be "and the secretary".

ARTICLE 119

125A Omit all words before "when" in line 2 and "in the prescribed form".

ARTICLE 121(5)

125B Substitute "119" for "116"

ARTICLE 129(4)

125C Omit "an office copy of the order" and substitute "the relevant Act of the court".

ARTICLE 152(5)

1 Omit this paragraph (5).

ARTICLE 159

130A In paragraph (4), substitute "The relevant Act of the court" for "a copy of an order"

130B Add a new paragraph -

"(5) If the company fails to comply with paragraph (4), the company and every officer of it in default shall be guilty of an offence and liable to a fine not exceeding £_____ and, for continued contravention, to a default fine."

ARTICLE 164(2)

130C In paragraph (2)(a), omit "in the prescribed form" and add at the end "verified by affidavit by some or all of the directors."

132A Omit "in the prescribed form" in paragraph (2) and substitute "signed by him".

ARTICLE 172(7)

132B Omit "an office copy of the order" and substitute "a copy of the relevant Act of the court".

133A In line 3 of paragraph (1) omit "the prescribed" and, after "notice", add "signed by him to each person who is interested in or under liability in respect of the property disclaimed".

137 Add the following -

(a) omit "and are to be observed" in line 1

(b) add, after the first "to" in line 4, "the time and manner of proving debts, to the admission and rejection of proofs of debts, to";

(c) omit all words between the second "debts" in line 4 and "made" in line 8;

(d) add "with the substitution of references to the liquidator for references to the Viscount"; after "Law" in line 8;

ARTICLE 179

137A Omit this Article

138 Omit this comment - see Article 21 of Desastre.

ARTICLE 181

140A In paragraph (1) substitute "a declaration had been made in relation to the company" for "if the company were being wound up".

140B In paragraph (3), substitute "The Act of the court recording the making of an order" for "A copy of an order made".

ARTICLE 183

140A Omit "in a creditors' winding up" in paragraph (1).

142B Omit paragraph (9).

ARTICLE 193

155A Should "cause" be substituted for "consideration".

ARTICLE 198

158A In paragraph (3) -

(a) in the first line, substitute "direct that" for "by Order, make provision";

(b) in subparagraph (a), omit "to prevent" and "the destruction of" and substitute "shall not be destroyed" for ";and";

(c) Omit subparagraph (3)(b).

(d) In paragraph (4), substitute "a direction" for "an Order" and omit "or of a direction of the Committee under it".

160A In paragraph (3), substitute "the relevant Act of the court" for "an office copy of the order".

ARTICLE 205(1)

164A Regarding "any enactment" in line 2, are there any other Laws requiring documents to be delivered to the registrar?

165B Add at the end of paragraph (4), "and the manner in which any document required to be delivered to the registrar is to be authenticated".

165C Add the following new paragraph -

"(5) Unless otherwise provided by or pursuant to this Law, every document delivered to the registrar by a company under this Law shall be signed by a director or by the secretary of the company".

174 In the proposed paragraph (1), omit all words between "prescribe" in line 4 and "other" in line 6 and substitute "any". The power to prescribe forms is in Article 207(4).

176 In (a) under Paragraph 3, omit "less than" and, substitute "be treated" for "have effect" in the antepenultimate line.

In paragraph 4A, substitute ",(3)(6) and (7)" for "and (3)".

For paragraph 5, substitute the following

"Where, under any provision of the former Laws, an obligation to register a document with the Judicial Greffier is outstanding on the appointed day or where, after the appointed day, such an obligation arises under any provision of the former Laws which continues to have effect by virtue of Article 19 of the Interpretation (Jersey) Law 1954, the obligation shall have effect with the substitution of a requirement to register the document with the registrar for the requirement to register it with the Judicial Greffier."

H.W.H. 8.8.89

909(1)

WATLING HOUSE
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Tel. 01-489 8000

2nd August, 1989

R.C.A.Syvret, Esq.
Commercial Relations Department
Cyril Le Marquand House,
P.O.Box No.267,
The Parade,
St.Helier,
JERSEY

Dear Mr.Syvret,

DRAFT COMPANIES (JERSEY) LAW

I enclose revised comments on the 4th Draft for consideration. I will arrange to come to Jersey on the evening of September 25th returning on the evening of 27th.

If there are any points you wish to discuss over the telephone, I am not leaving for France until 15th August.

Yours sincerely,

H W Higginson

Encs.

Comments on Fourth Draft of Companies (Jersey) Law

Generally

1. Suggested drafting amendments are made for consideration by the Law Draftsman.

2. Wherever there is a provision that a company or an individual failing to comply with a provision of the Law shall be liable to a penalty, precede the provision by a statement that it or he shall be guilty of an offence. Alternatively, add a general statement to that effect.

3. Provide (a) that, except where it is to be unlimited, the fine for each offence shall not exceed the maximum amount suggested by the Attorney-General, and (b) how the amounts of default fines are to be calcualted.

4. Define "cause" as in Article 17(9) of the draft Desastre Law.

5. In the definitions of "company" and "existing company", omit "formed and".

Article 1(1)

6. In the definition of "director" substitute "means" for

"includes".

7. In the definition of "dissolved", substitute "any other law of the Island" for "the Desastre Law".

8. In the definition of "interdict" the word "Law" should not have a capital letter. Check that the definition is consistent with that in the Mental Health Law.

9. Consider the definition of "office copy".

10. Omit the definition of "official seal" and substitute - "his seal", in relation to the registrar, means a seal prepared under Article 203;

11. In the definition of "private company", the reference should be to Article 17(3).

Article 1(2)(a)

12. Omit all words before "include" in line 2.

Article 2(7)

13. Substitute "Committee may be Order" for "States may by Regulations".

Article 3

14. Add "of" before "20".

Article 4

15. Subparagraph (1)(e) should end in a semi-colon, not a full stop.

16. Add "or on behalf of" after "by"" in the first line of paragraph (3).

Article 5(2)(c)

17. If Article 4(3) is amended as suggested above, add "or on behalf of" after "signed by".

Article 6(1)

18. Omit "by Order".

Article 7(1)

19. Omit "in the prescribed form" in line 2 and where appropriate make this amendment wherever those words occur in the draft.

Article 8

20. Omit all words between "Law" and "have been".

Article 9(2)

21. Amend to read "The certificate shall be signed by the registrar or sealed with his seal or both signed and sealed".

Article 9(3)

22. Omit all words after "wound up".

Article 9(5)

23. The comma after "company" in line 2 should be after "and".

Article 11(4)

24. Omit this paragraph.

Part III

25. The headings "Part III" and "Names" should appear after Article 12.

Article 12(1)

26. In paragraph (1), substitute "such sum (if any) as the company may require not exceeding the prescribed maximum" for the last 3 words.

Article 15

27. Add a comma after "If" in paragraph (1).

28. Omit "think fit" in line 4 of paragraph (2).

Article 16

29. Omit this Article.

Article 17

30. In paragraph (1), add ", or is deemed to state," after

"states".

Article 18

31. Substitute the following for paragraph (2) -

> "If the court, on the application of a company which has failed to comply with paragraph (1)(a) or of any other person interested, is satisfied that it is just to relieve the company from all or any of the consequences of the breach, it may grant relief on such terms as seem to it expedient".

32. In paragraph (4) add, "or after the making of any such order" after "direction".

33. Transfer the words after "fine" in line 4 of paragraph (5) to the end of paragraph (4).

Article 19

34. In the heading, omit "to be unlimited".

Article 22

35. In the heading, substitute "Transactions entered into" for "Contracts made".

36. In line 1 of paragraph (1), substitute "entered into"" for "made".

37. In paragraph (1), substitute "transaction" for "contract" wherever the latter word appears.

38. In paragraph (2) substitute "terms of the transaction" for "contract" in line 2 and substitute "transaction" for "contract" in lines 4 and 6.

Article 28

39. In paragraph (5), substitute "Committee may by Order" for "States may by Regulations".

Article 29(1)

40. Omit "after this Article comes into force" in line 1, substitute "2" for "two" in line 2 and add "(whether or not the period began before this Article came into force)" after "months" in line 3.

Article 31(3)

41. Omit "imprisonment for a term not exceeding 2 years or to" and "or both".

Article 32

42. Add the following paragraph (3) -

"This Article applies only to a prospectus first circulated after the Article comes into force".

Article 34

43. Amend the heading to read "Criminal liability in relation to prospectuses".

44. Between "If" and "a prospectus" add ",after this Article comes into force,".

Article 35(1)

45. Omit sub-paragraph (a) and substitute "are" for "(b)".

46. Add a comma after "43".

Article 35(2)(a)

47. Omit "up".

Article 39(1)

48. The comma in line 1 should be after "may".

49. Substitute "fully paid" for "paid up" in line 2 of paragraph (1)(c).

Article 40(4)

50. Substitute "Committee may by Order" for "States may by Regulations".

Article 45(3)

51. Substitute "given" for "sent" in the first line.

Article 46

52. In paragraph (1), substitute "such sum (if any) as the company may require not exceeding the prescribed maximum" for "the appropriate charge".

Article 47(1)

53. The reference in the first line should be to Article 46(2).

Article 48

54. In paragaraph (3) omit sub-paragraph (a), "(b)" and "by its order" in paragraph (4).

Article 50

55. Substitute "Committee may by Order" for "States may by Regulations".

Article 51(6)

56. In line 1, substitute "to" for "on" and "given" for "served".

Article 53(5)

57. The reference in the first line should be to Article 54.

58. Substitute "by" for "contained in" in line 3.

Article 54(1)

59. Omit the comma at the end of the first line.

60. Omit "and the company" in paragraph (3).

61. Omit paragraph (5).

Article 56

62. In the third line of paragraph (2), substitute "shares" for "share" and substitute "into" for "to".

63. Substitute a semi-colon for the full stop at the end of paragraph (3)(a).

Article 56(8)

64. Omit this paragraph and all words after "shares" in line 3 of Article 58(5).

Article 56(10)

65. Add "the" at the end of the second line.

Article 59

66. Substitute the following for paragraph (2)(c) -

> "the provision by a company in good faith in the interests of the company of assistance for the purposes of an employees' share scheme; or"

Article 61

67. Add "of its" at the end of the first line.

Article 65

68. In paragraph (2), omit, "and not before", and substitute "shall take" for "so registered takes".

69. In paragraph (4)(a) omit "official" and in paragraph (5) omit all words after "memorandum".

Article 66

70. Add "a declaration is made under" after "or" in line 1 of paragraph (4).

Article 68

71. Add ",unless and until changed," after "and" in line 5 of paragraph(1).

72. Substitute the following for paragraph (2) -

> "The address of the registered office may be changed by delivering to the registrar notice of change and on receipt of the notice the registrar shall record the new address"

and omit paragraph (3).

Article 72

73. In line 2 of paragraph (1), add "after the year in which it is incorporated".

74. Omit "be in the prescribed form," in paragraph (2).

75. In paragraph (4), add "required by this Article" after "return" in line 1, omit "as required by this Article" and substitute "within 4 months after it is due to be delivered" for "as required by this Article".

Article 76(4)

76. Substitute "transactions" for "contracts" in the last line.

Article 77

77. Substitute "transaction" for "contract" in the first line of paragraph (2) and omit "contract or" and "made or" in paragraph (3)(b).

Article 78

78. In paragraphs (1) and (2)(a)(ii), substitute "some cause" for "consideration" and, in sub-paragraph (2)(a)(iii), substitute "cause" for "consideration".

79. At the end of paragraph (2)(a)(iii), substitute a semi-colon for the comma.

80. Add "to which he was lawfully entitled" after "indemnity" in paragraph (3).

Article 79

81. Substitute "any person" for "a director of a company" in paragraph (1) and for "director" in the last line of paragraph (1) and in paragraph (2).

82. Add, "without the leave of the court", after "not" in line 3.

83. In paragraph (2) the comma at the end of the first line should be after the first word of the second line.

84. In line 3 of paragraph (2), substitute "a" for "the".

Article 80

85. In paragraphs (1) and (2), omit "debts and other" and add "those" before "liabilities" in line 3 of paragraph (2).

86. Add ",whether under this section or otherwise," after "who" in line 4 of paragraph (2).

Article 81

87. Omit this Article.

Article 84

88. In paragraphs (1)(b) and (2), add "professional" before "bodies".

89. In paragraph (3), substitute "Committee may by Order" for "States may by Regulations".

Article 85

90. The references in paragraph (1) should be to Articles 86 and 87.

91. In line 5 of paragraph (2), "director" should be added after "member or". The words "director of" should be omitted from line 6.

92. In paragraph (2), omit "£1 or such smaller sum as the company may specify" and substitute "such sum (if any) as the company may require, not exceeding the prescribed maximum".

Article 86

93. In the first line of paragraph (2), add "and in Article 87" after "(1)".

Article 87

94. Omit paragraph (2).

Article 89

95. Amend this Article as follows -

(a) in paragraph (1) substitute "(6)" for "(7)";

(b) add ";or" at the end of sub-paragraph 5(b) and the following additional sub-clause -

"(c) if the company ceases to be a private company";

(c) omit paragraphs (6) and (7) and substitute the following -

"(6) If such an agreement ceases to have effect, whether pursuant to paragraph (5) or otherwise, more than 3 months before the end of a year and an annual general meeting has not previously been held in that year, the directors shall forthwith call an annual general meeting to be held within 3 months after the agreement ceases to have effect"; and

(d) renumber paragraph (8).

Article 90

96. The reference to Article 87 in paragraph (1) should be to

Article 89.

97. Add "or secretary" after "officer" in line 2 of paragraph (1) and in line 2 of paragraphs (3).

Article 91(1)

98. Add "the deposit of" after "date of" in line 5.

Article 93

99. Add a comma after "meeting" in the first line of paragraph (1)(b) and in the first line of paragraph (2)(b).

Article 95(1)

100. Add a comma ater "company" in line 6.

Article 100(1)

101. Substitute "at" for the first "of" in line 2.

Article 101

102. Omit "the prescribed charge" in line 2 of paragraph (2) and substitute "such sum (if any) as the company may require not exceeding the prescribed maximum".

103. Omit paragraph (3).

Article 102

104. In paragraph (2), substitute "such sum (if any) as the

Company may require not exceeding the prescribed maximum" for "not more than 25 pence".

105. In the second and seventh lines of paragraph (3)(c), substitute "holders of some class of shares" for "members of some class of shareholders" and "holders" for members in the last line of that sub-paragraph.

106. Add at the end of paragraph (3), "which are passed, agreed to or entered into after this Article comes into force".

107. Add at the end of line 2 of paragraph (4) "within 21 days after the due date".

108. Omit all words in paragraph (4)(a) after "fee" and sub-paragraph (4)(b).

Article 104

109. In the first line add "shall" after "company".

Article 105(3)

110. Omit the comma after "104" and substitute "6" for "10".

Article 106

111. Amend this Article as follows:-

(a) In paragraph (1) substitute the following for all the words after "has" in line 4 -

"... previously prepared a profit and loss account, beginning at the end of the period covered by the most recent such account:

Provided that an existing company which has not prepared a profit and loss account for a period ending within 12 months before the date on which this Article comes into force shall not be required to prepare accounts for a period beginning earlier than that date".

(b) In paragraph (4)(b), substitute "paragraph (5)" for "Article 89(7)" and "a" for "an annual".

(c) Add the following paragraph after paragraph (4) -

"(5) If, at the end of any financial period of a company, an agreement under Article 89(4) dispensing with the holding of an annual general meeting has effect -

(a) the company shall not be obliged to lay the accounts for that period or a copy of any auditors' report thereon before a general meeting; but

(b) if any member of the company, not later than 11 months after the end of that period, by written notice given to the company so requires, those accounts and a copy of any auditors' report thereon shall be laid before a general meeting which shall be held within 28 days after receipt of the notice by the company or after approval of the accounts by the directors, whichever shall last occur".

112. Omit paragraph (6).

Article 108

113. In paragraph (2), substitute "documents referred to in" for "copy of the accounts under".

114. In paragraph (3), substitute" (4) or (5)" for "or (4)".

Article 109

115. Omit paragraph (2).

116. Add "a" at the end of the second line of paragraph (3).

Article 110

117. Add "(2)" at the beginning of the second paragraph.

118. In paragraph (3), substitute "fines" for "penalties".

Article 113(2)

119. Add "if the" before "accounts" in line 4.

Article 114(1)

120. Add "or the secretary" after "company" in line 2.

Article 115

121. Add a new paragraph (8) -

"(8) Paragraphs (4) and (6) shall not apply to an existing company until the expiration of 6 months from the date on which this Article comes into force".

Article 116

122. In paragraph (2)(b)(ii), substitute "than" for "then".

123. Add "immediately" after "that" in line 4 of paragraph (3).

124. Add "s" at the end of "profit" in paragraph (4)(e)(ii).

Articles 118, 119, 120, 122, 123, 124

125. For the references to "consideration" in these Articles substitute references to "cause".

Article 134

126. Add a comma after "material" in line 3 of paragraph (4).

Article 141

127. This differs from Article 20(6) of Desastre in allowing a lawyer to be required to disclose the name and address of his client and a banker to be required to disclose information relating to the company or other bodies corporate under investigation.

Article 143

128. Should paragraph (2) say also that the Article applies whether or not the company is the subject of a declaration under Desastre? Or should be Article be omitted? If not omitted, should it be in a separate Part?

Article 144(1)

129. After "members" in line 5, add "(including at least himself)."

Article 152(4)

130. Omit this paragraph and Article 169 and add a new Article in Chapter 8 requiring notice to be given to the registrar when a liquidator is appointed or ceases to hold office.

Article 167

131. Add the following paragraph after paragraph (2) -

"(3) The creditors may remove a liquidator".

Article 169

132. Take in Article 177, 178 and 179 after Article 169.

Article 174

133. At the end of line 3 in paragraph (1), add "any onerous".

134. After "other" in paragraph (2)(a)(ii), add "movable".

Article 175(3)

135. In sub-paragraphs (a) and (b), substitute "such a" for "that".

Article 176

136. Substitute "a" for "the" in line 2

Article 178(1)

137. Omit the words after "but" in line 8 and substitute "any surplus remaining after payment of the debts proved in the winding up, before being applied for any other purpose, shall be applied in paying interest on those debts which bore interest prior to the commencement of the winding up in respect of the period during which they have been outstanding since the commencement of the winding up and at the rate of interest applicable apart from the winding up".

Article 180(2)

138. This does not appear in Desastre. Consult with the

Attorney-General.

Chapter 6

140. The heading should be in capitals.

Article 183

141. In paragraph (5)(a), substitute "5" for "five".

142. In paragraph (6)(a) omit "insolvent" and, after "time", add "unable to pay its debts as they fall due" and, in paragraph (6)(b) substitute "unable to pay its debts as they fall due" for "insolvent".

143. Add a new paragraph (10) -

"(10) This Article shall not apply to a transaction entered into or a preference given before the Article comes into force".

Article 184(2)

144. Add "and" at the end of subparagraph (a)(ii).

Article 185

145 In the first line of paragraph (1), omit "creditors".

146. In paragraph (2), add "or the Viscount" after "liquidator".

147. In paragraph (5), subsitute "184" for "185".

Article 186

148. In paragraph (1), omit "creditors".

149. At the beginning of paragraph (2), add "Subject to paragraph (5)," and add a new paragraph -

"(5) This Article shall not apply to a transaction entered into before the Article comes into force".

Article 189(1)

150. Add (a) before the first sub-paragraph and a comma after "formation" in the second line.

Article 191(2)

151. Substitute "190" for "195".

Article 192

152. Amend heading to read "Qualifications of liquidator".

153. Omit "for appointment as" in paragraph (1) and substitute "to act as a".

154. In paragraph (2) add "s" at the end of "qualification" and substitute "act as" for "become".

155. Add -

"(4) A liquidator shall vacate office if he ceases to be a

person qualified to act as a liquidator."

Article 194(1)

156. Add "or services" after "goods" in line 2.

Article 195

157. Amend this Article as follows:-

(i) Add "(1)" at the beginning of the Article.

(ii) Add the following subparagraph before subparagraph (a) -

"(a) a member, past or present, is not liable under this Article to contribute in respect of any shares allotted before this Article comes into force;"

(iii) Re-letter the subsequent subparagraphs.

(iv) Add the following paragraph -

"(2) The liability imposed on contributories by the Laws repealed by Article 224(1) shall continue to apply in respect of shares allotted before this Article comes into force".

or include it in transitional provisions.

Article 197

158. Substitute "apply for a declaration" for "have it wound up" and omit "by the court".

Article 200

159. In paragraph (1), omit "under this Law or the Desastre Law".

160 Add " such" before "proceedings" in paragraph (2).

Article 202

161. Omit "by leaving it at, or sending it by post, to that address" in paragraph (2)(a)(iv).

Article 203

162. Should provision be made for the registrar to receive notice if a declaration or other relevant order is made in relation to a company under Desastre?

163. In paragraph (1) omit "a deputy registrar, assistant registrars".

164. In paragraph (2), omit the words after "companies".

Article 207(1)(b)

165. Add at the end, "or by the Judicial Greffier under the Laws repealed by Article 224(1)".

Article 208(1)(a)

166. Substitute "Article 72(3)" for "Article 70(3)".

Article 212

167. Omit this Article.

Articles 213, 214

168. These Articles should be in Part XXIV.

Article 215

169. In paragraph (2), substitute "penalty" for "fine".

Article 216(1)

170. In line 6, substitute "the court may make an order" for "an order may be made".

Article 217

171. In line 4, substitute "to" for "and".

Article 218

172. Should "questions" be in the singular and "Law" in the last line have a small letter?

Article 221

173. Substitute "relates" for "applies" in the last line of paragraph (2).

Article 222

174. Substitute the following for paragraph (1) -

"(1) The Committee may by Order make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, prescribe such requirements in relation to documents to be delivered to the registrar under this Law as the Committee may consider appropriate and any other matter which may be prescribed under this Law".

Article 224

175. Omit the reference to the Companies (Supplementary Provisions) (No.2) (Jersey) Law.

Transitional Provisions

176. Consider the following revised paragraphs 2, 3, 4A and 5.

Paragraph 2

Where, within 6 months before the appointed day, a memorandum of association of a company has been registered under Article 3 of the 1861 Law but no articles of association of the company have been presented for registration under Article 5 of that Law before the appointed day, the memorandum of association shall be null and the company shall not be incorporated under that Law.

Paragraph 3

Where -

(a) within less than 30 days before the appointed day, the shareholders of a company have adopted a resolution in respect of which the conditions specified in paragraphs 1 and 2 of Article 27 of the 1861 Law have been complied with; but

(b) the resolution has not, before the appointed day, been confirmed in accordance with paragraph 3 of that Article;

the resolution, if confirmed on or after the appointed day in the manner provided for in paragraph 3 of that Article, shall have effect as a special resolution passed under this Law on the date when the resolution is confirmed and Article 102 shall apply accordingly.

Paragraph 4A

Where, before the appointed day, the Judicial Greffier has delivered to a company a notice under Article 38A(1) of the 1861 Law, the provisions of paragraphs (2) and (3) of that Article shall continue in force after the appointed day for the purposes of giving effect to the notice.

Paragraph 5

(1) Where, before the appointed day, -

(i) a special resolution for the reduction of the capital of a company under Article 3 of the 1968 Law has been adopted and confirmed in accordance with the 1862 Law; or

(ii) consent or sanction to the variation of the rights attached to a class of shares has been given in accordance with Article 6 of the 1968 Law,

the provisions of those Articles, including those requiring the registration of documents with the court or the delivery of documents to the Judicial Greffier, shall continue to apply.

(2) Save as aforesaid, where under any provision of the former Laws, an obligation to register a document with the court or to deliver a document to the Judicial Greffier is outstanding on the appointed day, the provisions shall continue to have effect thereafter with the substitution of a requirement to deliver the document to the registrar for the requirement to register it with the court or, as the case may be, to deliver it to the Judicial Greffier.

Paragraph 8(2)

177. Substitute "3 months" for "21 days".

Paragraph 10

178. Add "which is replaced by a corresponding provision of this Law" after Laws "in line 3 and omit "by which it is replaced in this Law".

H.W.H. 2.8.89

WATLING HOUSE
35-37 CANNON STREET,
LONDON EC4M 5SD
Tel. 01-489 8000

20th June, 1989

R.C.A.Syvret, Esq.
Commercial Relations Department
Cyril Le Marquand House,
P.O.Box No.267,
The Parade,
St.Helier,
JERSEY

Dear Mr.Syvret,

DRAFT COMPANIES (JERSEY) LAW - SPECIAL RESOLUTIONS

Thank you for your letter of 15th June.

A resolution of the kind to which you refer would not have to be registered unless (exceptionally) it fell within the definition of special resolution in Article 89 of the draft.

If it is considered that such resolutions should continue to be required to be registered, it will be necessary to add to paragraph (3) of Article 99 resolutions satisfying the conditions in Article 27 of the 1861 Law.

The same question must have arisen when the 1929 Act removed the requirement for confirmation of a special resolution at a second meeting. But no provision was made for the case to which you refer. It may be that this was because Table A from 1906 onwards gave expressions used in the Table the meanings defined in the Companies Act for the time being in force and this practice was usually followed where full articles were adopted.

I doubt whether an amendment to the draft Law is necessary. Where articles require a special resolution passed in accordance with the 1861 Law I would expect them to be altered so as to avoid the need for the resolution to be confirmed at a second meeting. And is it necessary to require such a resolution to be registered? It can only be of domestic concern.

Yours sincerely,

A.W.Higginson

H. W. Higginson, Esq.,
Little Portobello,
Brenchley,
Kent.
TN12 7NP

RCAS/smb/G.19A

28th April, 1989

Dear Mr Higginson,

Companies (Jersey) Law

Michael Fox and I have been working on transitional provisions with regard to the above draft. We have prepared a document - copy attached - and would be most grateful if you could examine this and let us have your views and also make suggestions regarding additional items to be included on the list.

Kind regards.

Yours sincerely,

R. C. A. Syvret
Commercial Relations Officer

DRAFT COMPANIES (JERSEY) LAW 198

TRANSITIONAL PROVISIONS

1 On the date of repeal of the 1861-1968 laws, existing companies incorporated under those laws whose memorandum does not comply with the requirements of Article 2 of the 1861 law should nevertheless be deemed to be registered under the new law (see 16 below) and any defects in their memoranda should be capable of being corrected by special resolution of the company under Article 11 of the new law.

2 On the date of repeal of the 1861-1968 laws, an existing company whose Memorandum of Association only has been registered, without Articles of Association being registered, should be able to register those Articles under the new law. If Articles are not registered within six months of the date of registration of the Memorandum, such a company should be dissolved by operation of law - as at present (Article 5 of the 1861 Law).

3 The liability of a tranferor of shares in an existing company, in the event of the default of the transferee, is to continue for two years from the date of the transfer despite the new law coming into force - as Article 12 of the 1861 Law.

4 The liabilities of the shareholders of a company dissolved under the 1861 Law, for the actions of a company after its dissolution except those essential to the winding up and liquidation of its affairs should continue [Article 39 of the 1861 Law] despite the new law coming into force - see 14 below.

5 A company dissolved by the Judicial Greffier under Article 38A of the 1861 Law should be able to be reinstated under Article 210 of the new law, either within twenty years of the date of its dissolution or within ten years from the date when Article 210 came into force, which ever occurs the sooner.

6 For the purpose of giving an "unqualified" auditor an opportunity to remedy any defect in his appointment, Article 112 (4) and (6) of the new law should come into force for existing companies 6 months after the commencement date.

7 Articles 36 and 37 of the 1861 Law are to continue in force so that any obligations of inspectors appointed shall continue under that Law. Where the first 'special resolution' meeting under Article 35 takes place prior to the coming into force of the new law, Articles 36 & 37 of the 1861 Law should remain the applicable law.

8 Article 42 of the 1861 Law is to continue in force in respect of any accounting period which commenced before the commencement date of the new law.

9 In respect of existing companies, a financial period should be permitted at the option of the directors to begin before the commencement date of the new law.

10 An 'old style' special resolution in respect of which the first General Meeting has been held before the commencement date, must be confirmed at a second General Meeting (in accordance with the requirements of Articles 8, 9, 27 and 38 of the 1861 law and Articles 2, 3 and 6 of the 1968 Law), and that resolution should be capable of being registered by the registrar within the period specified in the 1861-1968 Laws or within 6 months from commencement of the new law - whichever is the shorter. An 'old style' special resolution where both the first and second meetings have been held before the commencement date but which has not been registered by the commencement date of the new law, should be capable of being registered in the same way.

11 Where an existing company has less than two members on its register of members on the commencement date of the new law but remains undissolved under Article 19 of the 1861 Law, the provisions of Article 29 of the new law should have effect 6 months from the date of the coming into force of the new article.

12 Regarding Article 6 of the 1968 Law, item 10 above applies to any special resolution of the company where the first meeting takes place under the old laws. The item 10 principle should also apply to any special resolution of a class under Article 6. However if the first meeting of a class is held after the commencement of the new law the special resolution procedures should be able to be carried out in accordance with the new law. The right of minorities to apply to the court under Article 6(4) of the 1968 Law should be continued where

(a) the first meeting of the company took place before the old law was repealed, or

(b) the first or only meeting of the class took place before the old law was repealed, or

(c) the special resolution of the company was dealt with under the item 10 provisions above.

In those cases also, registration of any court Order and any class resolution or company declaration under Article 6(7) should be by the new registrar and not the Judicial Greffier - but under the old laws.

13 A special resolution for the reduction of capital which has been adopted and confirmed under the 1861 to 1968 laws, and which is under consideration by the Court under Article 3 of the 1968 law, and not yet registered, should be capable of being treated by the Court according to the provisions of Articles 60 to 65 of the new law. The same is to apply where the first meeting of such a special resolution takes place under the old laws - see 10 above.

14 Procedures leading to the dissolution of existing companies which have

been commenced by the Judicial Greffier under the provisions of Article 38A of the 1861 law are to be able to be continued and completed under the provisions of that Article.

15 The liquidation or winding up, without dissolution, of an existing company which had been commenced but not completed, should be able to be continued. However, its dissolution on completion of the winding up shall be by special resolution in accordance with the provisions of Article 89 of the new law. But the provisions of Article 39 of the 1861 law shall continue to apply in respect of such companies. Where the relevant special resolution to dissolve cannot be registered within a 6 month period from the coming into force of the new law the company should be obliged to be wound up under the provisions of the new law. Article 39 would not then apply. Also Article 187 of the new law should not affect liquidators appointed before the coming into force of the new law.

16 The registers and documents held by the Court or the Judicial Greffier by virtue of the provisions of Articles 3, 15, and 17 of the 1861 Law should be transferred formally to the new registrar. The new registrar should also be able to receive and hold late filed documents under Article 15 - which are to be accompanied by the old fee. The new law should also contain a requirement for an existing company which has not notified the Greffier of its registered office to notify the Registrar - see Article 17 of the 1861 Law and Article 66 (2) of the new law which refers only to the notification of changes of a registered office. Article 66(3) should apply in such cases.

17 The transitional provisions should include statements to the effect that

(a) Existing companies continue to be of full and continuous effect;

(b) Any contracts entered into by or with existing companies continue to be fully effective etc.;

under the new law.

18 The Limited Liability Companies (Registration Fees) (Jersey) Law 1967, as amended, will need to be repealed and re-enacted as the following draft (perhaps in the new company law).

"The States subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law:-

Article 1

(1) Every application to the Registrar for the registration of the Memorandum of Association of a company to which the Companies (Jersey) Law, 19 applies and for the registration of any increase in the nominal authorised capital of such a company shall be accompanied by the appropriate fee required by virtue of the provisions of this law.

(2) The appropriate fee referred to in paragraph (1) of this Article shall be one half of one percentum of the total nominal authorised capital or the increase therein as the case may be, with a minimum fee of £5Ø.

(3) Where an application for registration of a type mentioned in paragraph (1) of this Article is refused by the Registrar or is withdrawn by the applicant, the amount of the fee paid by or on behalf of the applicant shall be refunded to him.

(4) The States may by regulation vary the fee set out in paragraph (2) of this Article.

Article 2

The "Limited Liability Companies (Registration Fees) (Jersey) Law 1967" is hereby repealed.

Article 3

This law may be cited as the "Companies (Capital Duty)(Jersey) Law, 19 , and shall come into force on such date as the States may by Act decide."

19 The Article numbered 12B of the Depositors and Investors (Prevention of Fraud) (Jersey) Law, 1967, - copy of extract attached - will have to be amended to substitute references to the "Registrar" in place of the references to the "Royal Court", and to substitute a reference to the new law in place of the reference to the "Companies (Jersey) Laws 1861-1968". The 1967 Law mentioned above is due for replacement by the new draft Banking (Jersey) Law 19 .

2Ø Article 123A of the Income Tax (Jersey) Law, 1961, as amended by Article 5 of the Finance (Jersey) Law, 1989 will also require amendment to include a reference to companies incorporated under the new law.

21 References to the "Loi (1861) sur les Societes a responsabilite limitee" in the Insurance Business (Jersey) Law 1983 (Article 3 (2)) and to the "Companies (Jersey) Laws, 1861 to 1968" in the Drug Trafficking Offences (Jersey) Law 1988, (Article 1(1)), will need to be amended to include a reference to the new Law. There may be other cases.

22 On the assumption that the draft Bankruptcy (Desastre)(Jersey) Law, 198 is enacted and in force before the new Companies Law, the former law will require amendment as follows, the references being to the Articles as set out in the 13th draft of the law:-

1. Article 1. The definition of a "Company" will have to include a company registered under the new Companies Law;

2. Article 4 (d) will need to include a reference, in both sub-paragraphs to the new Companies Law.

3. Articles 36 and 38 will have to be amended to include reference to the new Companies Law, a requirement for the Viscount to notify the Registrar (which will need to be defined) of the date of the payment of the final dividend, and to provide that such a company shall be dissolved with effect from the date on which the Registrar receives the Notice (of completion) which Notice the Registrar shall record in the Register of Companies. Article 38 will also require amendment so that the dissolution referred to above does not apply where the Attorney General has notified the Registrar that Criminal proceedings are instituted or pending against the company.

23 Could the transitional provisions or the main law itself include an article empowering the Court to decide, upon application by the company or a member or director thereof or by the registrar, a question on any matter which is not dealt with in the law and which relates to a specific company?

RCAS
27.4.89

FINANCE AND ECONOMICS COMMITTEE

11th July, 1988

Company Law Revision: Mr. H.W. Higginson, C.B.E., M.C. Honorarium. 909(1)

12. The Committee received an oral report from Mr. R.C.A. Syvret, Commercial Relations Officer concerning the payment of an honorarium to Mr. H.W. Higginson, C.B.E., M.C., for the work he had undertaken to-date on the new draft Companies Law.

The Committee noted that the Committee as previously constituted by Act No. 20 of 19th August, 1985, had agreed in principle to pay an honorarium to Mr. Higginson.

The Committee decided to pay an honorarium of £10,000 to Mr. Higginson without prejudice of a further payment at a later date, and noted that this would be met out of existing funds in the Commercial Relations Department and would not result in a request for a supplementary vote of credit.

C.R.O.
T.O.S.
E.A.
C.I.Aud.

The Commercial Relations Officer was requested to take the necessary action.

Greffier of the States

FINANCE AND ECONOMICS COMMITTEE

13th June, 1988

Draft Companies (Jersey Law, 198 : consultative document. 112(6)

E.A.
T.O.S.
C.I.Aud.
St.Aud.
C.R.O.

33. The Committee, with reference to its Act No. 28 of 4th August, 1986, discussed with the Commercial Relations Officer his paper, dated 18th May, 1988 on the consultative document relating to the draft Companies (Jersey) Law, 198 .

The Committee recalled that the consultative document had been released in April 1986 for consultation and that this consultation, during which various concessions and adjustments had been made, was completed in 1987. The document instructing the law draftsman to make amendments to the consultative document was circulated to the professional bodies in order that they could appreciate the nature and scope of the amendments to the draft which had been agreed with various parties.

Following this various submissions had been made and dealt with. However two items on which it had not been possible to reach agreement with the professional bodies remained outstanding, first a difference of viewpoint between the authorities and the Jersey Law Society regarding the production of accounts by private companies and secondly, a dispute with the Jersey Society of Chartered and Certified Accountants regarding the inclusion in the Law of powers for the States by Regulations to create a register of non-Jersey companies operating from addressed in the Island.

With regard to the production of accounts by private companies, the consultative document had originally provided that accounts would have to be laid before the shareholders of a private company at each annual general meeting and that those accounts would have to show a true and fair view and contain, if required, an auditor's report. The penalty for a failure to produce accounts would be a fine or imprisonment and this would be imposed on officers of the company as well as the company itself.

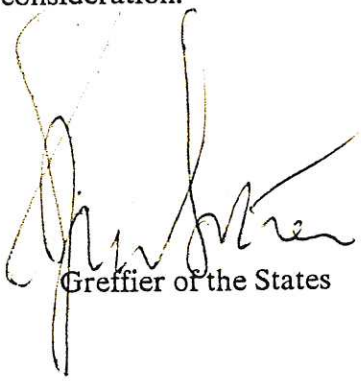
The Committee noted that the Law Society had commented to the effect that the Society felt it was wrong for default in the case of a private company to amount to a criminal offence and that it was up to the shareholders to take action against the directors by taking them to Court or dismissing them if accounts were not produced. The Society felt that Article 106 should apply only to public companies and that in such a case, the presumption in favour of guilt should be replaced by the normal presumption of innocence.

The Commercial Relations Officer was of the opinion that to ignore the accounting requirements would not be in the best interest of creditors and that a company should be obliged to produce accounts and maintain accounting records, a view with which the Committee concurred. The Committee requested the Commercial Relations Officer to produce appropriate wording for the Article for its consideration and, at the same time, to produce the relevant wording used by Guernsey and the Isle of Man. The Commercial Relations Officer was also requested to address himself to the questions as to how such accounting requirements could be enforced and how accounts could be called upon and by whom.

The second outstanding point related to the question of non-Jersey companies which were administered in the Island, and the original consultative document had included an article defining an external company fairly widely and allowing the States to make regulations with regard to the register of such companies. The Jersey Society of Chartered and Certified Accounts had expressed the view that this particular article should be excluded from the draft Law as it felt that the

issue was too controversial and should not be included in the company law provisions but should be the subject of a separate Act. The Society had also not been in favour of a registration fee in respect of external companies as it felt that this would act as a deterrent for people considering Jersey as a financial centre from which to base the administration of their companies.

The Committee noted the view of the Commercial Relations Officer that the new Law should contain an ability by the States by Regulations to provide for the administration of non-Jersey companies utilising a business address in the Island, and requested him to raise the matter again for further consideration.



Greffier of the States

MEMORANDUM

To: President and Members
of the Finance and Economics
Committee

From: Mr R C A Syvret
Commercial Relations Officer

RCAS/smb/G.19

18th May, 1988

DRAFT COMPANIES (JERSEY) LAW - CONSULTATIVE DOCUMENT

The above consultative document was released in April 1986 for consultation and this consultation, during which various concessions and adjustments were made, was completed during the first half of 1987. So that the professional bodies could appreciate fully the nature and scope of the amendments to the draft which had been agreed with various parties, the document instructing the law draftsman to make amendments to the consultative document was itself circulated to the professional bodies for information. Arising from that a number of extra submissions were received and dealt with. There are however two items on which it has not been possible to reach agreement with the professional bodies. The first is a difference of view point between the authorities and the Jersey Law Society regarding the production of accounts by private companies and the second is a dispute with the Jersey Society of Chartered and Certified Accountants

regarding the inclusion in the Law of powers for the States by regulations to create a register of non-Jersey companies operating from addresses in the Island.

ACCOUNTS OF PRIVATE COMPANIES

With regard to the production of accounts by private companies, the consultative document originally provided that accounts would have to be laid before the shareholders of a private company at each annual general meeting and that those accounts would have to show a true and fair view and contain, where any one shareholder or the articles required it (and not otherwise) an auditors report. The penalty for a failure to produce accounts was a fine or imprisonment and this penalty was imposed on officers of the company as well as (with regard to the fine) on the company itself.

The Law Society commented as follows:

> "We think it is wrong for default in the case of a private company to amount to a criminal offence (including imprisonment). It is really up to the shareholders to take action against the directors either by taking them to Court or dismissing them if they do not produce accounts the shareholders wish to see.
>
> Many of the Jersey companies which simply own a property, yacht, etc. for the use of the beneficial owner do not prepare formal accounts and it is unnecessary to make them do so. They do not wish to have them prepared. Such companies, unlike trading companies, are unlikely to go bankrupt or give rise to undesirable publicity. Furthermore they produce

reasonable fees for little labour and this would drive them away.

Accordingly we think that Article 106 [the article which imposes penalties for non-production of accounts] should apply only to public companies and that in such a case the presumption in favour of guilt, (implicit in the present wording) should be replaced by the normal presumption of innocence."

The response to this in negotiation was to provide that the penalties on officers should only apply to public companies but the penalty of a fine should apply to private companies but only to the company itself upon a failure to produce accounts and not to officers.

The Law Society responded to that as follows:-

"We note that the criminal sanction against officers of the company has been removed in relation to private companies. However in our view this does not go far enough and the criminal sanction against the company itself must also be removed for a private company. As suggested in our earlier submission there are probably thousands of companies incorporated in Jersey that own one non-income producing asset such as a property, a yacht, etc. The beneficial owner does not wish to go to the expense of preparing accounts and accordingly so instructs the Jersey administrators. If the company may be liable to fine in such circumstances, the beneficial owner will be advised of this and will therefore have to prepare accounts. This will have one of two consequences. Either he will use another jurisdiction which

does not require accounts or he will agree to the preparation of accounts in which case extra expense will be incurred and, more importantly, very scarce labour resources in Jersey will be taken off other work and will be used to prepare information which nobody wants and probably cannot be commercially charged for. Again in the present climate where the Island wishes scarce resources to be used in the most productive manner, this seems a most undesirable requirement to produce.

The only reason for wanting to have a criminal sanction must be to ensure that, if there is a desastre, there are more likely to be accounts to assist the Viscount. However there is already provision in the draft desastre law so that if any company decides not to produce accounts, it does so in the knowledge that, if it is subsequently declared en desastre, the criminal penalties may apply. Accordingly it seems to us that the position is adequately dealt with. Where there is a single non-income producing asset, the risk of desastre is remote and accordingly shareholders should be left to decide for themselves whether they wish to incur the expense of preparing accounts."

Our written response to this was as follows:

"If there is no criminal sanction many companies will ignore the accounting requirements. The nub of the comment (which you have made) is that private companies ought not to be required to keep accounting records or produce annual accounts. The expense of producing accounts for a company which has one asset which produces no income is minimal.

Article 17 of the draft desastre law creates an offence where a debtor engaged in business has failed to keep accounting records. That will not apply to a company which merely owns an asset."

It is believed that the concept that the law should provide that a company need not produce accounts or that a failure to produce accounts would not lead to sanctions is conceptually incorrect. Mr Higginson is against any further relaxation in the draft and believes that as a result of having the privilege of limited liability, a company should be obliged to produce accounts and to maintain the accounting records that would be necessary for this to happen. The Committee is therefore now asked for its views.

EXTERNAL COMPANIES

The original consultative document included an article defining an external company fairly widely and allowing the States to make regulations with regard to a register of such companies. The draft article was phrased as widely as possible so as to give a fair degree of flexibility.

The Jersey Society of Chartered and Certified Accountants commented as follows:

"The Society and the Executive Committee would wish to see this particular article excluded completely from the new draft company law.

It would appear merely to be an enabling act and does not in itself make any regulations whatsoever. We feel that this issue is too controversial to be mixed with the draft company law provisions and should be brought under a separate act

after due consideration and consultation with the finance industry.

It is accepted that a company using Jersey as an administrative base should indeed be registered to enable the general public to be able to serve notices or legal documents. This is, however, viewed as the thin end of a very large wedge which could damage Jersey as a finance centre where many people wish to have their funds managed, but where for practical reasons they do not wish to register their companies, eg. it is common for a Spanish property to be purchased using a Panamanian company administered in Jersey as the use of a Panamanian company negates the need for the costly translation of Memorandum and Articles of Association.

The definitions of an external company having an established place of business in Jersey are two wide and could necessitate the registration of international public companies where a Jersey resident is a member of the board of directors.

It is also considered that once such a register is available the local income tax department may require details of beneficial ownership to ensure that Jersey residents are not sheltering behind external companies. Thus details of beneficial ownership of external companies could then be available under the double taxation treaty.

Once again this provision will necessitate additional staff in both the Commercial Relations Department and in the

finance industry, thus placing an additional burden on the resources of the community.

We understand that it is the intention of the Finance and Economics Committee to levy a registration fee in respect of external companies. In our opinion any such fee would act as a deterrent for people considering Jersey as a financial centre from which to base the administration of their company. It is often said that people who do not wish to accept such fees are not the people that Jersey should be wishing to attract. In our experience many wealthy people have become wealthy by considering relative costs and whereas a fee may not deter a person wishing to use Jersey for illegal purposes it may well deter the genuine investor."

The response to this was to alter the relevant article in two ways. First, the amount of information which the States could by regulation require from external companies was reduced and, second, the definition of an external company was also reduced to being a company which uses an address in Jersey for the purposes of its business. The Jersey Society of Chartered and Certified Accountants responded to that as follows:

"On presenting our report on the instructions to the law draftsman, to the main committee, they voiced strong opposition to this article. In view of the numerous representations from members, the main committee referred the matter back to us and requested the sub-committee to voice our members' opposition to the introduction of this article.

The proposed legislation would appear to create more problems than it can solve and it has been likened to using "a

sledgehammer to crack a nut".

It is accepted that several companies who are not Jersey registered companies have held themselves out, either by implication or otherwise, to be Jersey registered companies. It is accepted that most of these companies have come to light because of adverse publicity or, in the main, illegal acts.

We do not feel that the proposed legislation will encourage the illegal users of such companies to register and indeed non-registration will probably be the least of their concerns. We are, however, certain that the law will ensure that non-resident companies, which are trading legally but which could attract the attention of the press, be registered. Thus, in our opinion, the implementation of this law will only give the Island a higher profile than at present and the maintenance of such a register will encourage investigative journalists to search the register in case a Liberian or Panamanian company has an administrative office in the Island.

Almost all non-resident companies administered in Jersey are using the Island for totally legitimate reasons, normally to take advantage of the English speaking financial services available within the Island. Such a law has already been described by many clients as the thin end of a wedge and, with the possible introduction of registration fees, many would be clients would be detered from utilising the Island's facilities.

909(1)

FINANCE AND ECONOMICS COMMITTEE

6th July, 1987

Draft Companies (Jersey Law, 198 . Qualifications of Company Secretaries by public companies. 112(6)

C.R.O.
E.A.
T.O.S.

12. The Committee discussed with Mr. R.C.A. Syvret, Commercial Relations Officer a paper from the Institute of Chartered Secretaries and Administrators, Jersey Branch, regarding professional qualifications for company secretaries of public companies in Jersey under Article 84 of the draft Companies (Jersey) Law, 198 .

The Committee was informed that the Institute wished to see in Jersey an equivalent of what was now Section 286 of the United Kingdom Companies Act, 1985, which stated that the directors of public companies should 'take all reasonable steps to ensure that the secretary' was a person who appeared to be suitably knowledgeable and a member of certain bodies. The Committee noted that the wording of the Section did not impose a statutory obligation to employ a qualified person.

The Committee decided that it was minded to concur with the submission from the Institute of Chartered Secretaries, except that in relation to Section (1)(d) of the United Kingdom Companies Act, it should refer only to Jersey advocates and solicitors and not to English solicitors and that the list of bodies in Section 286(2) of the Act should be capable, in Jersey, of being altered by Regulations made by the States

The Commercial Relations Officer was authorised to take the appropriate action.

Greffier of the States

ITEM 16

MEMORANDUM

To:- The President and Members of the Finance and Economics Committee

From:- Mr R.C.A. Syvret
Commercial Relations Officer

G.19

1st July, 1985.

Date.....

COMPANY LAW REFORM

Attached to this paper is the Report dated 20th June, 1985, of Mr H.W. Higginson, C.B.E. M.C. on the above subject. At its meeting on Monday 24th June, 1985, the Committee asked me to prepare a review of that Report.

Certain Members of the Committee may recall that in 1981 there was compiled a list of major points requiring attention in Jersey's company legislation. This list was prepared at the instance of the then President of the Committee and was discussed with the present President, Advocate K.S. Baker and Mr D. St. C. Morgan and finally a settled version was passed to the Law Draftsman in June, 1981. Mr Higginson's Report has been compared with this list. Generally speaking, virtually all of the points on the list have been the subject of similar recommendations by Mr Higginson. One or two items on the list have not been addressed by him and he has also raised several matters which were not previoiusly brought to light. These are dealt with below together with two additional matters concerning which Mr Higginson has indicated that further consideration would be required.

Items on the 1981 list but not addressed in the present Report

I. Notification of proposed registered office address to be submitted to the Registrar at the time of incorporation.

II. Companies (whether incorporated in Jersey or operating from a Jersey address) to publish place of incorporation and number on all letters, invoices etc.

III. Penalties to be imposed for giving incorrect impression of being incorporated under the Jersey Law.

V. Issue of fractions of shares to be permitted.

IV. Directors and others to be responsible civilly and criminally for statements in prospectuses relating to public offers of shares or debentures. It is recommended that Mr Higginson's views be obtained regarding the above matters. It is anticipated that he would concur with the proposals.

New matters covered by the Report

VI. Paragraph 24-Commission payments in consideration of a person subscribing or agreeing to subscribe shares to be allowed by statute.

VII. Paragraphs 27 to 31-Provisions regarding redemption of shares and purchase by a company of its own shares to be included.

VIII. Paragraph 45-Non voting shares to be allowed and all shareholders to have the statutory right to vote by proxy.

IX. Paragraph 45-Provisions facilitating takeovers and amalgamations, including rights of minorities holding less than 10% to require those shares to be purchased in such circumstances, to be included.

X. Paragraph 33-The Registrar to be empowered, either in primary legislation or by regulation, to require disclosure of share interests.

The Committee's attention is especially drawn to this paragraph which I consider should only apply to public companies, if at all. The position in the United Kingdom is that a public company (not the Registrar) may in certain circumstances require disclosure of substantial interests in its share capital.

Matters requiring further consideration

XI. Paragraph 19 states that it is for consideration whether the distinction between the Memorandum and the Articles of a company should be abolished so that there would be only one public document.

(I consider that this would be largely cosmetic and would not be desirable inasmuch as it would involve a move away from arrangements known and understood by the professionals and institutions on the Island.)

XII. Paragraph 32 states that it is for consideration whether creditors should be given further protection than that envisaged in the present Law and the Report by providing that, if a company is wound up within a year after any amount has been applied out of share premium account in the redemption or purchase of shares and the assets are insufficient to meet the liabilities, the Directors shall be jointly and severally liable to make good the deficiency, up to the amounts so applied.

(It is my view that this would be an appropriate and necessary provision.)

Conclusion

In the final paragraph of his Report Mr Higginson states that in many respects his recommendations are in general terms and that, if they were accepted, it would be necessary to consider in detail the legislation which would be required to carry them into effect. In this connection the Committee is reminded of the difficulties experienced in translating the list produced in 1981 into a draft statute.

There are two further stages assuming that the Committee finally approves the report with whatever modifications are required. First the preparation of a specification which would set out what the report means in terms of legislation and would deal with numerous policy and other aspects not covered by the report and secondly, the drafting of the law on the basis of the specification. Mr Higginson may be able to assist probably not by undertaking either of those tasks but by identifying people (possibly in London) qualified to deal with them.

On a separate matter, Mr Higginson has made it clear that he would only be charging expenses in respect of the preparation of his Report. The Committee is therefore asked if it would be minded to pay him an honorarium at this or a later stage.

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R.C.A. Syvret

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Senator R. R. Jeune, O.B.E.,
President,
Finance and Economics Committee,
States of Jersey,

20th June, 1985

Sir,

Company Law Reform

1. I have been asked:-

> To review generally the present statutes in Jersey relating to limited liability companies and to recommend, after consultation with local professional and other bodies and the States of Jersey, a course of action which will lead to the Island having Company Laws appropriate to present and future requirements arising from both local trade and from the Island's position as an international finance centre.

2. On 9th and 10th of April, 1985 I attended meetings in Jersey with the -

> Finance and Economics Committee,
> Deputy Bailiff,
> Attorney General,

Deputy Law Draftsman,

Commercial Relations Officer.

and with representatives of -

The Jersey Law Society,

The Jersey Society of Chartered and Certified Accountants,

The Jersey Branch of the Institute of Directors,

The Confederation of Jersey Industry,

The Jersey Bankers' Association, and

The Jersey Fund Managers' Association.

At these meetings I heard the views of the various interests represented.

3. The present company law of Jersey is contained in the Law of 1861 as amended ("the Law"). The original Law appears to have been based to some extent on the United Kingdom Companies Act 1856. The amendments which have been made to the Law of 1861 have not been extensive. As amended, it effectively comprises 54 Articles in comparison with the 747 sections and 25 Schedules of the Companies Act 1985 of Great Britain. The existing law is in some respects archaic and it does not include many provisions now commonly found in the company laws of other countries.

4. I understand that the Royal Court applies the common law of England for the purpose of interpreting the Law but it is not free to apply English company law generally.

5. There has been separate legislation in Jersey governing particular kinds of companies, e.g. deposit taking companies. I recommend that this practice should continue

and that any reform of the existing law should only contain provisions which apply to companies generally.

6. I also understand that there is in the course of preparation a law which will supplement and amend the existing law of "Désastre" and that it will apply to the winding up of insolvent companies by the Court. Accordingly, my recommendations in relation to winding up are limited to the winding up of companies otherwise than by order of the Court.

7. In framing my recommendations, I have borne in mind -

(a) the special conditions which apply in Jersey, including the fact that there are (i) few locally incorporated companies with securities dealt in on a stock exchange, (ii) many small companies, and (iii) many companies formed by non-Jersey interests in order to benefit from the fiscal advantages, political stability and financial standing of the Island;

(b) that any new law which makes it more difficult for companies to do what they wish to do must be shown to be required for the protection of creditors, shareholders or prospective investors and not unnecessarily to deter foreign interests of repute from using Jersey as a finance centre;

(c) that the existing company law and practice in Jersey is closely related to that of Great Britain, so that it would be undesirable to make changes which depart radically from the existing system; and

(d) that the controls which are exercised over the establishment and activities of companies in the Island makes it less necessary to impose many of the restrictions and burdens which are appropriate elsewhere.

8. These factors, together with my belief that the company laws of many countries have become over-elaborate, lead me to recommend that a new law should be as short and simple as possible. Such a law will omit many provisions to be found elsewhere. That may give rise to criticism but I consider it would be a mistake to include provisions for which there is no demand in the Island unless their absence will make Jersey less attractive as an international finance centre. The framework of the new Law which I suggest omits many provisions which appear in the Companies Act 1985 of Great Britain with regard to directors and the disclosure of information. These include provisions -

(a) prohibiting loans by a company to its directors or to directors of its holding company and certain other transactions with directors;

(b) requiring certain other transactions between a company and its directors, e.g. service agreements for more than five years, to be approved by the shareholders;

(c) requiring a director to disclose to the company any interest which he or his spouse has in the shares or debentures of the company or of any other company in

the same group, the interest being entered in a register open to the public;

(d) requiring a company's accounts to include particulars of transactions in which a director has a material interest; and

(e) requiring a public company to be notified of interests in its share capital, see paragraph 33 below.

Time may show a need to develop the Law with regard to such matters. To provide for that possibility it would be prudent that the Law should confer power to make regulations imposing further requirements so that the ambit of the Law may be extended without primary legislation.

9. In the following paragraphs, I make recommendations in general terms for amendments of the Law. My views have been formed after a very short period of consultation with local interests and without any knowledge of the general law of the Island. My recommendations may well require further discussion and consideration before detailed proposals for legislation are prepared.

Form of Legislation

10. Any new legislation is bound to amend and extend the existing Law to a considerable extent. The Law is partly in French and partly in English. New legislation will be in English. It is unsatisfactory to have part of the law in one language and part in another. The style of new legislation would sit uneasily alongside provisions drafted over 100 years ago and it is important that a new text

should be in tune with contemporary legislation. For those reasons, I recommend that the existing Law should be repealed and replaced by a new self-contained Law. The Appendix to this Report contains a possible framework of a new Companies Law based on my recommendations.

Functions of the Court

11. Under the present Law, a number of functions which are merely administrative are performed by the Royal Court. I suggest that such functions be transferred to an official of the appropriate Department. References in this Report to "the Registrar" are references to such an official.

Public and Private Companies

12. One of the main questions is whether there should be two types of company and, if so, how they should be distinguished. There is, of course, no point in creating such a distinction unless it is decided that there are to be requirements or restrictions which apply only to what may be described in general terms as larger companies. From the consultations which I have had there appears to be general agreement that certain provisions should be introduced but that they should not apply to smaller companies. That was so particularly in relation to the form, auditing and publication of accounts.

13. There are two ways in which such a distinction may be drawn. The first is to establish two categories of company and to apply the discriminatory provisions across the board so that all companies in each category are treated alike. The alternative is to apply those provisions on a

functional basis so that a company is treated as subject to or exempt from, a provision by reference to criteria appropriate for the particular provision.

14. Which way would be appropriate in a new Law may depend on decisions as to the provisions which are to apply only to larger companies. But it may be helpful to consider the ways in which a distinction might be drawn. Many tests have been adopted or proposed, including the following -

(a) a prohibition in the articles of association against the issue of a prospectus or the listing of securities;

(b) a limitation on the number of shareholders;

(c) a restriction on the transfer of shares;

(d) whether the company is a subsidiary or has subsidiaries;

(e) whether the company has corporate shareholders;

(f) whether a specified proportion of the shares are held by directors;

(g) whether annual turnover, total assets or the number of employees, or one or more of these, exceed specified limits.

15. It would be unwise to have a test which is difficult to apply in practice. The definition of "exempt private company" in the British Act of 1948 proved unworkable and was abandoned. A distinction which depends on the number or type of shareholders can easily be evaded by the use of nominees. I do not think there is a test which is wholly satisfactory but I suggest the following. The distinction

should, for all purposes, be between public and private companies. In order that a company may qualify as private it must satisfy the following conditions -

(a) there must be a restriction on the transfer of shares;

(b) the number of shareholders must not exceed 15 or such other number as may be prescribed by regulation; and

(c) an offer of its shares or other securities to the public must be prohibited.

Corporate Capacity

16. I understand that the doctine of ultra vires applies in Jersey so that a company can act only in order to carry out objects expressly authorised by its memorandum of association and exercise only those powers which are expressly conferred or are reasonably incidental to the accomplishment of authorised objects. The abolition of the doctrine in Great Britain was recommended in 1945 by the Cohen Committee. The report of that Committee described it as an illusory protection for shareholders, a pitfall for third parties and a cause of unnecessary prolixity and vexation. No action has been taken on that recommendation and the Report of the Jenkins Committee in 1962 said that to give companies all the powers of an individual would place too much power in the hands of the directors. But many other countries, e.g. Canada, Australia and New Zealand have abolised the doctrine by providing that a company has all the powers of a natural person. The Ghana Companies Code 1963, following Professor Gower's Report,

has modified the doctrine, on the lines of the American Model Business Corporation Act, so that while no act of a company can be invalid on the ground that it is not authorised by the objects clause of the memorandum, a shareholder or debenture holder may obtain an injunction to prevent an executory contract being carried out, but subject to payment of damages to the third party if that is equitable. I recommend that Jersey should abolish the doctrine of ultra vires and that the relationship between a company and its directors, and between them and third parties with whom they deal, should be governed by the general law of agency. A third party dealing with the agents of a company should be entitled to assume, unless he has express notice to the contrary, that the directors have authority to do anything which the company can do. It should be open to a company to ratify anything done by the directors in excess of their authority. Directors contracting on behalf of their company with a third party should be liable for breach of warranty of authority in the same way as any other agent.

17. In order to effect these changes, legislation should provide that a company has all the powers of a natural person. It should be permissible, but not necessary, to state the objects of the company, or otherwise restrict the powers of the directors, in the memorandum or articles of association and shareholders should be entitled to apply to the Court to restrain a breach of any such restriction. If there are restrictions they should be capable of alteration

by special resolution and there should be no constructive notice of them. This assumes that such provisions would not conflict with the Jersey law of agency.

Names

18. Article 4A of the Law authorises the Court to refuse to register a memorandum of association if it considers that the name of the company is undesirable. Article 8(1)(c) authorises the change of a company's name by special resolution subject to the right to refuse registration of the resolution if the Court considers the new name to be undesirable. I recommend that the Law should confer power to require the alteration of an undesirable company name within six months of incorporation or where the name has become undesirable as a result of a change in the business.

Memorandum and Articles of Association

19. If the doctrine of ultra vires is abolished, there will be no need for the memorandum of association to state the company's objects. If there is to be no constructive notice of documents filed with the registrar it is undesirable that those documents should be required to contain provisions which apply only as between the shareholders, the directors and the company. It is for consideration, therefore, whether the distinction between the memorandum and articles should be abolished so that there would be only one public document and the articles could then become a private contract between the shareholders and the company which need not be registered

and could be available only to shareholders. If that were done, it would be necessary for the memorandum to state only the company's name, its share capital and that the liability of the members is limited to the amounts unpaid on their shares. There is in the Law a requirement that the memorandum shall state the period of existence of the company and a provision that a company shall be dissolved when that period expires. I recommend that a dissolution in that event should be governed by the provisions relating to voluntary winding up.

20. The company laws of a number of countries contain or prescribe a model form of articles or regulations which a company may adopt by reference, in whole or part, and which applies unless expressly excluded. Such a model form has two advantages. It encourages uniformity and it can materially reduce the printing charges which are incurred when a company is formed. It would be undesirable for a company to be without any rules regulating its internal affairs. If it ceases to be necessary to register articles of assocation, there ought to be a model which would apply if the shareholders fail to adopt any internal regulations. There seems to be little demand in Jersey for a Table A but I recommend that new legislation should include power to prescribe such a form by regulation.

Membership of holding company

21. It is common to prohibit, subject to exceptions, the acquisition by a subsidiary of shares in its holding company. Such an acquisition is objectionable for two

reasons. Firstly, the expenditure of money by a subsidiary for that purpose depletes the assets of the group by the amount expended without any corresponding increase in the assets available for creditors in the event of insolvency. Secondly, by placing the company's own shares under the control of the directors, it may enable them to maintain themselves in office against the wishes of the other shareholders. I recommend the introduction of such a provision.

Prospectuses

22. I recommend that new legislation should prohibit the issue of a prospectus by a company incorporated in Jersey unless it contains such information as may be prescribed by regulation.

Shares

23. It would be desirable to require a share certificate to be issued to a shareholder within a specified period after shares (other than inscribed shares) have been issued or transferred to him, to require notice to be given to a shareholder if the transfer of his shares is refused and to empower the Court to rectify the register of shareholders.

Commission for subscribing shares

24. The Law does not contain any provision expressly allowing the payment by a company of commission in consideration of a person subscribing or agreeing to subscribe for its shares. In the absence of such a provision, I understand that there may be doubt whether Jersey Law allows

commission to be paid. I suggest that the legislation should provide that a commission not exceeding 10 per cent. of the issue price may be paid if that is authorised by the articles, but that in other respects the issue of shares at a discount should be prohibited.

Financial assistance

25. It is now common for company legislation to prohibit a company, with exceptions, from giving financial assistance for the acquisition of its own shares. There was a difference of opinion among those whose views I heard whether, in Jersey, it should be expressly allowed or whether it should be prohibited and, if the latter, whether the prohibition should apply to all, or only to public companies. The absence of such a provision in new legislation may be remarked upon but, on balance, I do not think it should be included. I believe the danger it is designed to prevent has been over-estimated and it is a subject which cannot be dealt with satisfactorily without elaborate legislation.

26. Moreover, if a company is to be allowed to purchase its own shares (see paragraph 31 below) there is no reason why, subject to conditions for the protection of creditors, a company should not be expressly allowed to give financial assistance for the acquisition of its own shares. Accordingly, I recommend that legislation should expressly allow such assistance if -

(a) it takes the form of a loan made in the ordinary course of the company's business; or

(b) after the assistance has been given, the company is able to meet its liabilities as they fall due and the realisable value of its assets, after deducting any amount advanced, guaranteed or secured in the giving of the assistance, exceeds the total of its issued capital, undistributable reserves and liabilities.

Redemption and purchase of own shares

27. Article 5 of the Supplementary Law allows the issue of preference shares which are, or at the option of the company are to be liable, to be redeemed subject to conditions to the same effect as those in section 58 of the British Act of 1948. Those conditions require that any premium payable on redemption shall be provided out of profits or out of share premium account. There is a corresponding provision in Article 7 which allows the share premium account to be applied in providing for any premium payable on the redemption of any redeemable preference shares.

28. When consideration was given to an amendment of the British law which would allow a company to purchase its own shares, it was pointed out that it was anomalous to allow a premium payable on the redemption of shares to be provided out of share premium account while requiring a transfer to capital redemption reserve of a sum equal only to the nominal value of the shares redeemed. The result was that a redemption of preference shares could reduce the total of the capital accounts by the amount of any premium paid on redemption, to the possible prejudice of creditors. That anomaly was

removed in 1981 and British law now provides that, with one exception, any premium payable on redemption must be paid out of distributable profits. The exception is that, if the shares being redeemed were issued at a premium, the premium payable on their redemption may be provided out of the proceeds of a fresh issue of shares made for the purposes of the redemption up to the aggregate of the premiums received on the issue of the shares redeemed or the current amount of the share premium account, if that is less.

29. The company law of Jersey, in common with that of Australia, New Zealand and South Africa, continues to allow a premium payable on redemption to be provided out of share premium account. I understand that advantage is taken in Jersey of this anomaly and that companies issue redeemable preference shares of the smallest nominal amount at a very substantial premium and redeem them at the issue price, so that all but a negligible fraction of the redemption moneys is provided out of share premium account. I further understand that the number of issues of redeemable preference shares which have been made in that way and are outstanding preclude a change in the law such as has been made in Great Britain.

30. Having regard to that consideration, I recommend only three changes in the law relating to redeemable shares. Firstly, it should be possible to issue redeemable shares of any class provided that not all the issued shares are redeemable. Secondly, it should be possible to issue

shares that are redeemable at the option of the holder. In the third place, in order that some control should be placed on the practice of issuing shares of a minimal nominal value at a substantial premium, and for consistency with what I propose below with regard to the purchase by a company of its own shares, I recommend that shares may not be redeemed at a premium if any part of the redemption moneys is provided out of share premium account unless, after the redemption has taken place, the company can meet its liabilities as they fall due and the realisable value of its assets is not less than the total of its liabilities and the nominal amount of its issued shares together with any premium payable on those shares on a return of capital.

31. I recommend that a company should be entitled to purchase its own shares provided -

(a) the purchase is authorised by the articles of association and approved by a special resolution on which the shares proposed to be purchased do not carry the right to vote;

(b) that after the purchase the company is able to meet its liabilities as they fall due and the realisable value of its assets is not less than the total of its liabilities and the nominal value of its issued shares plus any premium payable on those shares on a return of capital;

(c) the purchase price is paid out of distributable profits or out of the proceeds of a fresh issue of

shares made for the purpose of the purchase, but so that, where the purchase price exceeds the nominal value of the shares purchased, the excess can be provided out of share premium account; and

(d) that, where shares are purchased otherwise than out of the proceeds of a fresh issue, there is transferred out of profits to capital redemption reserve a sum equal to the nominal amount of the shares purchased.

32. Provisions on the lines suggested above would give less protection for creditors than is required by other countries which allow companies to purchase their own shares but do not permit share premium account, or its equivalent, to be used to any extent for that purpose. A law under which share premium account can be returned to shareholders by way of premium on the redemption or purchase of their shares may be criticised but I see no alternative if the practice of issuing redeemable preference shares in the way described above is to continue and the purchase of shares is to be allowed on the same basis as redemption. It is for consideration whether creditors should be given further protection by providing that, if a company is wound up within a year after any amount has been applied out of share premium account in the redemption or purchase of shares and the assets are insufficient to meet the liabilities, the directors shall be jointly and severally liable to make good the deficiency, up to the amount so applied.

Disclosure of interests in shares

33. The British Companies Act requires any person (or any persons acting in concert) who acquire an interest in 5 per cent. or more of the voting shares in a public company to notify the company of the interest and of any change in it. A person is taken to be interested in any shares in which his spouse or infant children, or any company in which he has one third or more of the voting power, is interested. A public company may require any person whom it knows or has reasonable cause to believe to be or have been interested in its voting shares to state whether that is so and, if it is, to give particulars of the interest. If a person fails to give the information required, the company may apply to the court for an order imposing restrictions on the shares which may (inter alia) prohibit their transfer and deprive them of voting rights. There appears to be no demand in Jersey for similar provisions. Nevertheless, I think it would be useful to empower the Registrar, either in primary legislation or by regulation, to require disclosure of share interests. It would be necessary to provide sanctions for a failure to comply with such a requirement and that can best be done by giving the Court power to impose restrictions on shares in respect of which the requirement is not complied with. It is for consideration whether such a power should apply only to shares in a public company.

Accounting records

34. Article 41 of the Law should be brought up to date. The

requirement to keep copies of letters should be omitted and every company should be required to keep acounting records sufficient to show the financial position of the company, including a record of its assets and liabilities and of its day to day transactions.

Form and contents of accounts

35. Article 20 of the Law requires accounts to be sent to shareholders at least 10 days before the annual general meeting and to be presented to the meeting. All that is required with regard to the contents of the accounts is that they shall show under different headings the gross receipts and expenditure in the year together with an inventory of the assets and liabilities. This contrasts sharply with the detailed requirements to be found in the company legislation of other countries. Such detailed requirements depend very much on current accounting practice and I do not recommend that any attempt should be made to specify in primary legislation the form and contents of accounts. I consider that there should be a general requirement that a profit and loss account and balance sheet should be prepared in respect of each financial year giving a true and fair view of the profit or loss for the year and the state of the company's affairs at the end of the year. The legislation should give power by regulation to impose requirements as to the form and contents of accounts (including group accounts), either directly or by reference to accounting standards, and so that different requirements may apply to companies of

different types or which carry on different classes of business.

Audit of accounts

36. I do not consider it necessary to require that the accounts of every company shall be audited. To do so would impose an unnecessary burden on many small companies in the Island. But it would be appropriate to require accounts to be audited (a) if that is required by the company's articles or by a resolution of the shareholders, and (b) in the case of public companies.

37. If there are to be, as I suggest, cases where an audit is required, it should be carried out by persons with qualifications defined in the legislation. Otherwise the requirement for audit would be ineffective.

Publication of accounts

38. The existing Law contains no requirement that accounts shall be published except by distribution to shareholders as required by Article 20. This is another area where the Island Law falls short of legislation elsewhere. There is general agreement that smaller companies should not be required to make their accounts public, but there is some support for a requirement that this should be so in the case of public companies. A company's accounts ought to be available to shareholders and prospective investors. Persons proposing to give credit to a company can decline to do so unless they are given information about the company's financial position. If a company's shares are dealt in on a market, the rules of the market will require

that the public are kept informed of the financial position. I am doubtful of the value or need for a requirement that a company's annual accounts shall be delivered to the Registrar. They will often be out of date and give a misleading picture of the company's current position. For these reasons, I believe it would be sufficient to require the accounts of every company to be sent to the shareholders for consideration at the annual general meeting but not to require the filing of accounts except by public companies whose shares or securities have been offered to the public.

Dividends

39. Article 42 of the existing Law provides that dividends shall not be paid except from profits resulting from the company's business. Amendments are required in two respects. Firstly, it should not be necessary that distributable profits should arise from the company's business. It should be possible to pay dividends out of other profits, such as capital profits realised on the disposal of fixed assets. Secondly, it should be made clear that dividends may be paid only from accumulated realised profits after making good realised losses. It should be borne in mind that the effectiveness of such provisions will depend on the way in which the accounts arrive at the balance of profit or loss.

Directors

40. The existing Law makes very little reference to directors and I understand that it is uncertain what responsibilities

they have under Jersey law. It is well established under British Law that they owe to their company a duty of a fiduciary character. It seems to me to be desirable to establish that a director of a Jersey company has the same duty. I therefore recommend that new legislation should require a director to observe the utmost good faith towards the company and to exercise his powers accordingly. If that is done, the Court should be given power to relieve a director from liability for breach of duty where he has acted honestly and reasonably. I also recommend that a corporate body should be prohibited from being a director.

41. If the fiduciary duties of a director are clearly established, I do not consider it necessary, with one exception, to prohibit or subject to restrictions transactions between a director and his company. The exception is that a public company should be prohibited from lending money to a director or to a director of its holding company, or to a person closely connected with such a director, unless the loan is made in the ordinary course of business or for specified purposes, such as to provide him with funds to meet expenditure incurred in the interests of the company.

42. The British Companies Act has a number of provisions requiring the disclosure of directors' interests. These include the following -

(a) a director must disclose to the board any interest he has in a contract or proposed contract with the company;

(b) a director's service agreement must be open to inspection by any shareholder;

(c) a director must notify the company of any direct or indirect interest which he or his spouse or infant children have in any shares or debentures of the company and the information must be made available to the public;

(d) every company must maintain a register, open to the public, showing the names, addresses, nationalities, business occupations and other directorships of each of its directors and, if it is a public company, their dates of birth;

(e) the annual accounts of every company (a copy of which has to be filed at the Companies' Registry) must include particulars of any transaction with the company or a subsidiary in which a director of the company or its holding company has a material interest.

I do not recommend that a new Law should require such extensive disclosures of directors' interests but I consider it desirable that a director should be required to disclose to his fellow directors any material interest which he has in any transaction into which the company proposes to enter. I also think that power should be taken to make regulations requiring wider disclosure of a director's interest in transactions with the company or a subsidiary or in the company's share capital.

43. There appears, at present, to be no way in which anyone can ascertain who are the directors of a Jersey company, or indeed any express requirement that a company shall have directors. That is unsatisfactory. I am aware of the view that a requirement that the identity of directors shall be disclosed may lead to the appointment of "nominee" or "dummy" directors who would act on the instructions of de facto directors who wish to conceal their identity. I do not find that a sufficient reason for allowing companies to enjoy the advantages of limited liability without requiring them to make known who is responsible for their management. If, as I recommend, legislation imposes duties on directors it must provide some means of establishing upon whom the duties fall. I consider, therefore, that particulars of the directors of every company should be delivered to the Registrar upon incorporation and when any change is made. Every company should be obliged to maintain a register of directors open to any person. Moreover, it should not be possible for those who in fact control the affairs of a company to avoid their responsibilities by operating through "nominee" directors. Any person occupying the position of a director, including anyone in accordance with whose directions a director is accustomed to act, should be treated as a director for all these purposes. It should also be necessary to name the directors in the annual accounts and in the annual return.

44. There appears to be no way, under the existing law, by which a director can be removed from office except as may

be provided in the articles of association. I do not think it is necessary to give shareholders a statutory right to remove directors irrespective of what the articles provide but I consider that the Court should have power, on the application of shareholders having say 20 per cent of the shares, or on the application of the Attorney-General or the Registrar, to remove and disqualify from holding office as a director any person who is found to be unfit to be a director.

Meetings

45. Article 24 of the Law entitles each shareholder to at least one vote and Article 26 accepts the possibility that voting by proxy may be prohibited by the articles of association. I recommend that it should be possible to issue shares without voting rights, or with the right to vote only in specified circumstances, and that every shareholder should be given the right to cast by proxy any votes to which he is entitled.

Special resolutions

46. Under Article 27 of the Law a special resolution has to be adopted by a two-thirds majority at one meeting and confirmed by a simple majority at a subsequent meeting held not less than 15 days and not more than 30 days after the first meeting. I recommend that this should be amended so that a special resolution may be passed at a single meeting of which at least 21 days notice (or such shorter notice as may be agreed by holders of shares carrying 95 per cent. of the votes exercisable at the meeting) has been given.

Amalgamations

47. I recommend that provisions should be introduced so that if the holders of 90 per cent of the shares in a company, or of any class of its shares, have accepted an offer to acquire their shares, the offeror should be entitled to compel the sale of the remainder of the shares on the same terms. A shareholder who has not accepted the offer, or to whom the offer has not been made, should, within a specified period after the offeror has acquired 90 per cent. of the shares, be entitled to require the offeror to acquire his shares on the same terms. A shareholder who does not wish his shares to be acquired should be entitled to apply to the Court for an order restraining the acquisition.

Debentures

48. The issue of certificates for debentures (unless they are inscribed) within a specified period after issue or transfer should be required. I do not make any other recommendations with regard to debentures or the creation of floating charges. I understand that there is no demand for such provisions which, at all events where a charge is created, would be closely related to the property law of the Island of which I am ignorant. It follows that I make no recommendations with regard to the registration of charges or the appointment of receivers.

Unfair prejudice

49. There are many circumstances in which a shareholder may be unfairly treated by those who control the affairs of a

company. It is not possible to specify all the circumstances where that can happen. The shareholders who are unfairly treated may not be a minority. It is desirable, therefore, that any shareholder who can show that the affairs of the company are being, or have been, conducted in a way that is unfairly prejudicial to him or that anything proposed would be unfairly prejudicial, should have the right to an order from the Court giving him relief. It should also be possible for such an application to be made by the Registrar following an investigation of the company's affairs.

Investigations

50. The provisions of Articles 34 and 35 of the Law should be extended so as to enable the Registrar to apply to the Court for the appointment of inspectors. The Attorney-General should be authorised to bring proceedings on behalf of the company if it appears from the report of inspectors that to do so would be in the public interest. The Court should have power to order the company or the directors to pay the expense of an investigation.

Voluntary winding up

51. I recommend that a procedure be introduced by which a company could be wound up without recourse to the Court. This would apply where under the present law a company is dissolved and where a special resolution is passed for voluntary liquidation, either where the company is solvent or where it cannot, by reason of its liabilities, continue its business. I suggest that the procedure should be based

on that of a members' or creditors' voluntary winding up under British law.

52. The procedure in the case of the voluntary winding up of a solvent company would be as follows -

(a) The directors would file with the Registrar a declaration that they were of the opinion that the company will be able to pay its debts in full within 12 months of the commencement of the winding up.

(b) The winding up would commence upon the passing, within a specified period after the declaration of solvency is filed, of a special resolution that the company be wound up voluntarily.

(c) The company in general meeting would appoint a liquidator for the purpose of winding up the company's affairs and distributing its surplus assets. Upon the appointment of the liquidator the powers of the directors would cease.

(d) As soon as the winding up is completed the liquidator would be required to present an account of the winding up to a general meeting of the company and three months thereafter the company would be dissolved.

53. In the case of the voluntary winding up of an insolvent company -

(a) The company would pass a special resolution to the effect that it cannot by reason of its liabilities continue its business and that it is advisable to wind up.

(b) The company would summon a meeting of creditors to be held shortly after the meeting of shareholders and lay before it a statement of affairs.

(c) The creditors and the company would be entitled to nominate a person to act as liquidator. If they disagree the person nominated by the creditors would be appointed.

(d) The creditors would be entitled to appoint a committee to supervise the liquidator and decide his remuneration.

(e) Upon the appointment of the liquidator the powers of the directors would cease.

(f) The liquidator would wind up the company's affairs, distribute its assets among the creditors and present his account to the company and the creditors.

(g) Three months thereafter the company would be dissolved.

54. I also recommend that the Court be given power to wind up a solvent company if it is so resolved by special resolution or the Court is of the opinion that it is just and equitable that the company be wound up.

55. Power should be taken to specify by regulation the qualifications required by a person who is to be appointed the liquidator of a public company.

Foreign companies

56. There appears to be a general desire for some way of distinguishing between a company incorporated in Jersey and a company incorporated elsewhere which has a presence in

the Island, but no consensus as to how that should be done. There are two aspects to the question. The first is whether foreign companies present in Jersey should be required to file particulars with the Registrar and, if so, what should be the test of presence. The second is whether the country of incorporation should be disclosed on correspondence etc. I appreciate that these are sensitive issues decisions on which may affect the attractiveness of Jersey as a place where foreign companies establish places of business or administration and that I am not in the best position to assess these factors. Subject to that, my inclination is to recommend provisions to the following effect -

(a) A company incorporated outside Jersey which establishes a place of business in the Island should be required to deliver prescribed particulars to the Registrar and to state on its correspondence the country in which it is incorporated.

(b) A company should be treated as having established a place of business in Jersey if -

  (i) it regularly transacts business from a place in the Island, or

  (ii) it has an agent in the Island who has authority to communicate in its name on matters of business, or

  (iii) it uses an address in the Island for the purposes of its business.

(c) The prescribed particulars to be delivered to the Registrar should include -

(i) the name and address of a person resident in the Island authorised to accept communications on behalf of the company, including service of proceedings,

(ii) the place of incorporation,

(iii) the registered or official office of the company, and

(iv) the names and addresses of the directors.

It may well be that, as a first step, the legislation should merely take power to make regulations requiring information to be given to the Registrar with regard to foreign companies present in the Island and defining the circumstances in which such a company is to be treated as present. The obligation to provide information could be imposed on the resident agents.

Conclusion

57. In many respects my recommendations are in general terms. If they are accepted, it will be necessary to consider in detail the legislation which will be required to carry them into effect.

Appendix

Possible Framework of New Law

(Numbers in brackets are those of the corresponding Article in the original or Supplementary (S) Law.)

Company Formation

1. Method of formation. (1)
2. Contents of memorandum of association. (2)
3. Articles of association. (5)
4. Power to prescribe Table A by regulation.
5. Registration. (3)
6. Effect of registration. (6)
7. Alteration of memorandum and articles. (9)
8. Copies of memorandum and articles for shareholders. (10)

Company Names

9. Power to refuse registration with undesirable name. (4A)
10. Power to change name. (8)
11. Power to require change of name.

Corporate Capacity

12. Company to have powers of a natural person.
13. No constructive notice of public documents.
14. Form of contracts. (36)
15. Authentication of documents. (30)

Private and Public Companies

16. Definition of private and public companies.

17. Formation of private companies.

18. Conversion from one type of company to another.

19. Restrictions on private companies.

Shareholders

20. Definition of shareholder.

21. Liability of shareholders. (4S)

22. Membership of holding company.

23. Minimum membership for carrying on business. (19)

24. Prohibition of minors etc. (40)

Shares

25. Nature of shares. (12)

26. Power to pay commissions.

27. Prohibition of issue at a discount.

28. Power by regulation to make provisions with regard to prospectuses.

29. Alteration of share capital. (8)

30. Numbering of shares. (13S)

31. Transfer. (12,13)

32. Share register. (14,16)

33. Rectification of share register.

34. Share certificates.

35. Power by regulation to require information with regard to shareholdings.

36. Class rights. (6S)

37. Share premiums. (7S)

Redeemable shares and Purchase of Own Shares

38. Power to issue redeemable shares. (5S)
39. Power to purchase own shares.
40. Authority for purchase of own shares.
41. Financing of purchase and redemption.

Reduction of capital

42. Procedure. (3S)

Administration

43. Registered office. (17)
44. Publication of name. (18)
45. Annual return (15,16)
46. Service of documents. (31)

Directors

47. Duties of directors.
48. Disqualification of directors.
49. Loans to directors.
50. Register of directors.
51. Particulars of directors.

Meetings

52. Annual general meeting. (20)
53. Requisition of meetings. (21,22)
54. Definition of special resolution. (27)
55. Notices. (25)

56. Votes. (24)

57. Quorum. (25)

58. Proxies.

59. Demand for call-over. (26)

60. Minutes. (28)

61. Filing of resolutions (9, 27, 2S, 3S, 6S)

Accounts

62. Accounting records.

63. Power to make regulations as to the form, contents and audit of the accounts of public companies. (20)

Dividends

64. Restrictions on payment of dividends. (42)

Amalgamation

65. Power to acquire shares of dissenting minority.

66. Dissentients right to compel acquisition of their shares.

Investigations

67. Appointment of inspectors by Court on application of shareholders (34) or Registrar.

68. Appointment of inspectors by special resolution. (35)

69. Powers of inspectors. (36)

70. Inspectors' report. (37)

71. Power to bring proceedings on behalf of company.

Interpretation

87. Definitions.