Economy

Consultation: Amendments to Companies (Jersey) Law 1991 and a Proposed Administration Procedure

OCTOBER 2024

Summary

This is a consultation on proposals to amend the Companies (Jersey) Law 1991 (the Law) and on proposed amendments relating to creditors' winding up and administration.

The consultation's purpose if to obtain the views of a wider selection of stakeholders following industry engagement.

The proposals to the Law arise out of engagement with Jersey Finance Limited (JFL) and the Companies Law Working Group, which comprises corporate lawyers, an accountant, and representatives of the Jersey Financial Services Commission (JFSC), Revenue Jersey and the Jersey Association of Trust Companies (JATCo).

The proposals relating to creditors' winding up and administration were developed following discussions between the Association of Restructuring and Insolvency Experts (ARIES) and the Jersey Law Society Financial and Commercial Law Sub-committee (JLS Subcommittee).

About the proposed amendments

The proposed amendments are largely technical in nature and are aimed at maintaining the flexibility of the Law and enhancing the ease of doing business, in the context of evolving industry practice within an appropriate and legitimate framework.

They can be broadly categorised as:

1. Responding to case law and legal developments, both domestic and international.
2. Enhancements to reflect provisions or practices adopted in other jurisdictions.
3. Improving clarity and/or consistency within both the Law and with other legislation.
4. The streamlining of certain processes.
5. Introduction of statutory provisions to enable the Law to reflect how modern companies are operated in practice and to reduce unnecessary administration and associated costs. Many of these also reflect the current customary law and inclusion of proposed statutory amendments should not be automatically read as meaning that such actions are not already legally permissible.
6. Ensuring the Law is user friendly and flexible and maintains its competitive position for ease of doing business.
7. The proposed amendments are viewed as maintenance, clarification, and modernisation with the aim of enhancing competitiveness, rather than as a wholesale restatement or significant change in policy direction.

Rationale for proposed amendments to the Companies Law

The corporate services and capital markets sector is one of the Government's four strategic pillars for the financial services industry.

The Law is the primary piece of legislation in relation to companies. In addition to pure corporate structures and transactions, a company is a key entity within a significant proportion of private wealth structures and transactions, and investment holding vehicles. A large percentage of businesses operating in the local market and owned by Jersey residents use Jersey companies. Companies are also often used for holding property.

The concept of a company with limited liability is familiar across many jurisdictions, both onshore and in other international finance centres (IFCs). Therefore, in order to support business locally and internationally, it is necessary for the legislation governing Jersey companies to be fit for purpose, competitive and modern.

The Law was last amended in 2014 (Amendment No 11). Change has been rapid in that time and an update to the Law is timely so that the Jersey company remains the vehicle of choice for international transactions.

Proposed amendments to connected laws, regulations and orders

Due to the interaction between the Law and other Jersey legislation, consequential amendments will be required to connected laws, regulations and orders. These proposals are contained in Part B of Appendix A and relate to:

- Bankruptcy (Désastre) (Jersey) Law 1990
- Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020
- Companies (Transfer of Shares – Exemptions) (Jersey) Order 2014
- Companies (Demerger) (Jersey) Regulations 2018
- Companies (GAAP)(Jersey) Order 2010

Rationale for amendments to the administration procedure

In addition to amendments to the Law and associated consequential amendments, the Government of Jersey is considering the introduction of an additional insolvency procedure for Jersey and is using this opportunity to gain feedback on the concept.

The administration procedure is considered at Appendix B (from page 46) of this consultation, and we welcome feedback from interested stakeholders. Questions on the proposal can also be found at Appendix B.

Consultation

You are invited to submit your comments by Friday 13 December 2024 to the following:

- Specific questions related to the Companies Law proposed amendments:
    - You can provide responses to 36 specific questions, numbered A1 to A36 (pages 5 to 8 of this document). Please provide the number of the question to which your response relates.
- Amendments to the Law
    - You can comment on the proposed amendments, which are set out in Appendix A – Part A (pages 9 to 41 of this document). Each proposal is listed in a separate row (numbered 1 to 82). Please provide the number of the row to which your response relates.
    - Please note that some rows include a question, or questions, that relate to that row's amendment. *The questions are underlined and italicised.* We would be particularly grateful for comments in relation to those questions.
- Consequential amendments to connected laws, regulations and orders
    - You can comment on the proposed amendments, which are set out in Appendix A – Part B (page 42 to 45 of this document). Each proposal is listed in a separate row (numbered 83 to 93). Please provide the number of the row to which your response relates.
- Questions on the proposed additional insolvency procedure
    - An outline of the new regime is set out from page 46 of this document in sections, with related questions at the end of each section. The questions are numbered B1 to B21. Please provide the number of the question, or questions, to which your response relates.

You can submit your comments:.

- by email: Economy@gov.je (with the subject line FAO Miguel Zaragoza)
- in writing:
  FAO Miguel Zaragoza,
  Department for the Economy,
  19-21 Broad Street,
  St Helier,
  Jersey JE2 3RR

Jersey Finance will also be collating an industry response, to which you can contribute:

- by email: Sally.Edwards@jerseyfinance.je **and** lisa.springate@jerseyfinance.je
- in writing to:
  Sally Edwards,
  Jersey Finance Limited,
  4th Floor, Sir Walter Raleigh House,
  48-50 Esplanade,
  St Helier, Jersey,
  JE2 3QB

Questions on Companies Law Proposed Amendments

A1

Are you aware of any compelling reason for retaining the authorised share capital requirements for par value companies? Please provide comments.

A2

Do you agree with the proposal to amend Article 17 to reflect the changes made to the definition of “prospectus” in 2021 through the Companies (Amendment of Law) (No.2) (Jersey) Order 2021? Please provide any comments.

A3

In relation to proposals to amend Article 38 of the Law, do you consider that the proposals could give rise to any concerns, and if so, please provide any comments as to how such concerns might be addressed?

A4

Amendments are proposed to Article 38A of the Law – do you consider that these proposals give rise to any issues and, if so, how might these issues be addressed?

A5

Do you consider there to be any undesirable consequences with the proposed approach to Article 39? Please provide comments.

A6

Do you consider that the proposals to amend Article 42(1)(a) give rise to any concerns? Please provide comments.

A7

There is a proposal for an amendment relating to electronic registers and compliance with Article 44. Do you consider that this proposal would be helpful and are there any other amendments that might assist.

A8

In relation to the proposal to amend Article 47 of the Law, do you consider that this proposal could give rise to any concerns and if so, please provide any comments as to how such concerns might be addressed.

A9

Government does not propose to make any changes to Article 48 of the Law (trusts not to be entered on register). Should you disagree with this position, please provide reasons for your response.

A10

It is proposed that Article 51(1) be amended to enable other persons authorised by the directors to sign a share certificate. Are there any persons that should be prohibited from the signing of a share certificate? Please provide reasons for your response.

A11

Do you anticipate any concerns if the requirement for shares to be fully paid up to be redeemable (proposed amendment to Article 55(4) and 55(5) of the Law) is removed? Please provide reasons for your response.

A12

In connection with Article 55, would it be desirable to include a provision to allow the directors to ratify a redemption or repurchase of shares where there was a requirement for a solvency statement and the directors failed to make such statement at the relevant time? This could be on similar terms to the proposal for allowing rectification for distributions made without a solvency statement under Article 115 below. This would only apply where the company was solvent and would not permit directors to change the classification of a transaction after the event. Are there any unintended consequences?

A13

An amendment is being considered to propose that where a sole member and director dies and there is no other provision in the Articles then the deceased's executor or personal representative would have the ability to appoint a new director. Do you support this amendment or are there any alternatives? Are there any unintended consequences of this approach or should any other third party be given this power? Should a similar provision apply in any other situation where someone ceases to be a director or is unable to act as a director? Should Table A be amended to provide for such a provision?

A14

Proposals to amend Article 77 of the Law are included. Do you consider that these give rise to any concerns? Please provide details.

A15

It is proposed that Articles 102 -113Q are amended to enable auditors qualified to act under the stock exchange rules and accounts that meet stock exchange accounts requirements would also be acceptable for Jersey public company filing requirements. In addition to the exchanges subject to regulatory oversight in the United States of America, Canada and Australia, please list any additional stock exchanges that you would like to be considered for this proposed new scheme?

A16

In relation to Article 108(2):

a. For public companies, where there has been a change in circumstances such as a company entering into summary winding up, a continuance in or out, a merger, or a de-merger, should the Law be clarified regarding the obligation for the company to file accounts where the change in circumstances occurs subsequent to the public company's financial period end, but prior to the accounts having been filed?

b. Do you agree with the change in circumstances suggested?

c. Are there any other changes in circumstances which should be considered?

d. What is the rationale for this and what change of circumstances should be covered?

e. Are there any other suggestions for clarification or amendment to the Law in this area?

f. Are there any downsides to changing the current Law?

A17

In relation to the proposal to amend Article 108(3):

a. When a public company converts to a private company part way through its financial year, should the requirement to produce and deliver audited accounts only apply if the company was public for a certain period of that time (e.g. six months).
b. Are there any other suggestions for clarification or amendment to the Law on this scenario?

A18

It is proposed that the headcount test for members' schemes of arrangements is abolished as this can result in the blocking of a scheme even where holders of 75% of the voting rights of scheme shareholders have voted in favour. Do you anticipate any challenges with this proposal? Please provide reasons for your response.

A19

Do you consider that the proposed changes to Article 127D regarding merger agreements give rise to any concerns? Please provide comments.

A20

It is proposed that the requirement for separate class consent is removed in Article 127F (1). Do you consider this causes any issues? Should this be subject to the articles of association? Please provide details.

A21

Do the proposed changes to notices to creditors (Article 127FC) give rise to any concerns? Please explain fully.

A22

In relation to Article 127FJ(3)(a), if a member objects to a merger, do you think it is appropriate that the member may make an unfair prejudice application to court which prevents the merger completing until the application is disposed of? Would it be beneficial to provide for a different regime under which the merger is completed but the objecting member has a statutory right to be paid a fair value for the relevant shares (similar to the merger provisions in the Cayman Islands)?

A23

In relation to Article 127FJ(4)(d)(ii), if a materiality threshold were to be introduced for creditor consent, what would the appropriate figure be?

A24

Do you anticipate any undesirable consequences with the proposed approach to amend Article 127Q? Please provide reasons for your response.

A25

Do you consider that the proposals to amend Articles 127R and 127T give rise to any concerns. Please provide details and any suggestions to mitigate the concerns.

A26

Do you consider there should be amendment of Article 157A(1) of the Law in light of the decision in Representation of HWA 555 Owners, LLC 13-Jun-2023. Please provide your views on this approach.

A27

It is proposed that clarificatory amendments are made to Article 159(4). Do you consider this appropriate. Please provide views.

A28

Do you consider the proposed amendments to Article 161 and 163 of the Law to be appropriate? Please provide comments.

A29

A new provision is proposed at Article 163 regarding cesser of directors' powers. Please provide views on the proposed approach.

A30

It is proposed that Article 185A is amended to clarify that the provision applies only to a creditors' winding up not ordered by the Court. Do you consider the proposals to be appropriate? Please provide comments.

A31

Consideration is being given as to whether it is necessary to include a schedule to the Law of liquidator's powers. Please provide views on this suggestion.

A32

It is proposed that the Financial Services (Disclosure and Provision of Information (Jersey) Law 2020 is amended to provide the Comptroller of Revenue with standing to reinstate a company under that law. Are there any other categories of person who should have standing, e.g. a member or UBO? Please provide any rationale.

A33

Should there be general alignment of the mechanisms for and provisions in the Financial Services (Disclosure and Provision of Information (Jersey) Law 2020 for reinstatement of companies with those for reinstatement of a company under the Law?

A34

Consideration has been given to the definition of 'approved stock exchange in the Companies (Transfer of Shares – Exemptions) (Jersey) Order 2014.

a. Should Article 1 be expanded to extend the list of approved stock exchanges to increase flexibility?
b. If so, then how should this be amended?

A35

Please provide any general comments on the proposals.

A36

Do you consider that any further amendments are necessary at this time? Please provide details.

Appendix A – Part A: Proposed amendments to the Companies (Jersey) Law 1991

Amendments to the Law

- You are invited to comment on the proposed amendments, which are set out in below. Each proposal is listed in a separate row. Please provide the number of the row to which your response relates.
- Please note that some rows include a question, or questions, that relate to that row's amendment. ***The questions are underlined and italicised.*** We would be particularly grateful for comments in relation to those questions.

	PART A – Proposed amendments to the Companies (Jersey) Law 1991 (the Law)			
Row	**Article reference**	**Subject**	**Proposed amendment / request for feedback**	**Comment**
	PART 1 – PRELIMINARY			
1.	Article 1(1)	Definition of prospectus	**Amend** the definition of prospectus in Article 1(1) to clarify that "securities" only refers to securities of a Jersey company.	Clarification.
	PART 2 - COMPANY FORMATION AND REGISTRATION			
2.	Articles 3(1), 17(1) and 27	Requirement for public companies to have at least two members	**Amend** Article 3(1), Article 17(1) and **delete** Article 27 to remove the requirement for public companies to have two members.	This will harmonise Jersey law with UK law in this area (see section 7 of the UK Companies Act 2006).
3.	Article 4A	Requirement for par value companies to have a specified authorised share capital	**Amend** Article 4A to remove the requirement for par value companies to specify a maximum authorised share capital in their memoranda of association.	The abolition of authorised share capital in the sense of there being a statutory requirement on par value companies to include in their memoranda of association would bring a par value company in line with a no par value company (whose memorandum of association can state it may issue an unlimited number of shares).

				It is noted that it will remain possible for shareholders to set such a limit if desired. *<u>Is there any compelling argument for retaining the authorised share capital as a statutory requirement for par value companies?</u>*
4.	Article 10(1)	Validity of powers of attorney contained in articles of association	**Amend** Article 10(1) to clarify that powers of attorney purported to be granted in a company's articles of association shall be deemed to have been witnessed in accordance with the requirements of the Powers of Attorney (Jersey) Law 1995 (the **POA Law**).	Powers of attorney are customarily purported to be given in articles of association (for example, in support of compulsory share transfer provisions). A Jersey law power of attorney must, if given by an individual, be signed in the presence of a witness who is not party to the power of attorney (Article 2(3) of the POA Law) in order to be valid. Article 10(1) currently provides that the articles are deemed to be signed and sealed by the company and the members but does not deem any such signature to have been witnessed. Accordingly, it is not certain that powers of attorney purported to be granted by individuals in a company's articles of association are validly executed within the requirements of the POA Law. The purpose of this amendment is to bring certainty in practice.

	PART 3 - NAMES			
5.	Article 14	Change of name	**Amend** Article 14 to allow a change of name to be effected by any means provided for by the company's articles of association rather than only by way of special resolution. Consequential amendments will be required elsewhere in the Law, such as Article 13(1).	This will harmonise Jersey law with UK law in this area (see section 77 of the UK Companies Act 2006). It is noted that the proposed amendment should not alter the requirement for companies to notify the registrar of the change and for the name change only to be effective once the registrar issues an altered certificate of incorporation.
	PART 4 - PUBLIC COMPANIES AND PRIVATE COMPANIES			
6.	Articles 16, 17, 17A(1), 17C and 17D	Abolition of 30-member rule so that a private company will no longer be deemed to be a public company due to it having more than 30 members and a public company with more than 30 members can become a private company	**Amend** Article 16(1) to remove the reference to the 30 member rule. **Delete** Articles 17(2)(a), 16(2) to (10) inclusive, 17(3) to (11) inclusive, 17A(1) and (2), 17C and 17D. **Include** a new Article 17[E] to deal with those companies which will cease to be deemed public companies by operation of the removal of the 30 member rule.	This change will reduce the administrative burden on companies and reflect that the use of such a 30 member limit may not serve a current day purpose. An effect of this amendment on companies which are currently deemed public by virtue of having more than 30 members, but which will not be deemed public companies under the new provisions is that such companies (i) will cease to be deemed public companies with effect from adoption of the new provisions; and (ii) will cease to be subject to a requirement to have their accounts audited pursuant to Article 113(1) and/or be subject to the accounts filing requirements in Article 108(1). Such companies could still elect to be public companies under the new

				approach regardless of number of members. Are there likely to be any undesirable consequences with assuming this approach?
7.	Article 17	Change of status of public company	**Amend** Article 17 to clarify that a company which was deemed to be a public company because it circulated a prospectus under the 'old definition' (i.e. prior to 19 October 2021) will not be treated as a public company had the status of the prospectus been assessed using the 'new definition'. **Amend** Article 17 to the effect that if a company is deemed public by virtue of issuing a prospectus under the current definition in respect of securities and those securities are subsequently repaid or redeemed, then the company should cease to be 'deemed a public' company for the purposes of Article 17(2)(b) from the point of repayment or redemption.	The definition of "prospectus" was substituted by the Companies (Amendment of Law) (No. 2) (Jersey) Order 2021. This order came into force on 19 October 2021. Under Article 17(2)(b), a company is deemed to be a public company if it circulates a prospectus. The status of a company which issued a prospectus under the 'old definition' but which would not be a prospectus under the "new definition" is unclear. It is proposed to apply the 'new definition' to all companies, so that a company which was deemed to be a public company because it circulated a prospectus under the 'old definition' will not be treated as a public company had the status of the prospectus been assessed using the 'new definition'. The amendment will bring clarity as to how companies will be treated if they have circulated an historical prospectus.

				In addition, it may be the case that the securities to which a prospectus relates cease to exist (because the securities have been fully repaid or redeemed). In such a case, it is considered that the company should no longer be treated as a public company. The relevant securities are no longer in issue and so public company protections are not needed.
	PART 5 – CORPORATE CAPACITY AND TRANSACTIONS			
8.	Article 22	Company seals	**Amend** Article 22 to allow for electronic company seals, with consequential amendments to Articles 23 and 24.	The Electronic Communications (Jersey) Law 2000 envisages the use of electronic seals and this amendment would be a modernising provision. A clear statement in the Law would also clarify the situation. The use of electronic seals is particularly common with public companies.
	PART 8 - SHARE CAPITAL			
9.	Articles 38 and 38(1A)	Alteration of capital of par value companies	**Amend** Article 38(1) to state that a company can alter its share capital by special resolution in any manner. This would negate any suggestion that the list of alterations referred to in Article 38(1) is exhaustive. **Amend** sub-paragraph (1)(d) (relating to subdivision of shares) for consistency with sub-paragraphs (1)(b) and (ea) to clarify that a company can sub-divide any of its issued	Self-explanatory and clarificatory and make mechanisms simpler. This would also formalise current customary law positions for which there are currently no statutory provisions. The intention of these amendments would not be to permit a return of capital.

			and unissued shares and align the wording with the wording in sub-paragraph 1(b). **Amend** Article 38(1) to expressly state that shares of one class can be converted into shares of another class (without prejudice to any provision in its articles as to the manner in which shares can be converted). **Amend** sub-paragraph 1(e) (relating to currency conversion) for consistency with other sub-paragraphs of 38(1) to remove the requirement for shares to be fully paid. **Include** a new sub-paragraph of Article 38(1) confirming that it is possible to convert non-convertible shares into convertible shares. This is often done in practice but there are currently no statutory provisions as to how this may be effected. **Include** that, where shares are converted into shares of another class with a higher aggregate nominal value, the new shares will be treated as fully paid. **Include** that, where shares are converted into shares of another class with a lower aggregate nominal value, the difference may be credited to the share premium account.	*Do these proposals otherwise give rise to any potential concerns and, if so, how would they best be dealt with?*
10.	Article 38A	Alteration of capital of no-par value companies	**Amend** Article 38A so that consolidation under sub-paragraph (b) and subdivision under sub-paragraph (c) can be undertaken without changing the memorandum of	Self-explanatory and reflects the current position.

			association (which, for a no-par value company, does not generally contain the details of shares so does not typically require amendment on consolidation/ subdivision). **Amend** 38A(1) to state that a company can alter its share capital by special resolution in any manner. This would negate any suggestion that the list of alterations referred to in Article 38A is exhaustive.	Do these proposals otherwise give rise to any potential concerns and, if so, how would they best be dealt with?
11.	Article 38B	Rate of exchange for currency conversion	Amend Article 38B to remove the requirement for the rate of exchange for currency conversions to be specified within 40 days before the conversion takes effect.	This will increase flexibility.
12.	Article 39(1)	Share premium accounts for par value companies	**Amend** sub-paragraph (a) to read 'where the premiums arise as a result of the issue of a class of limited shares, a sum equal to the aggregate amount or value, *as determined by the directors,* of those premiums shall be transferred, as and when the premiums are paid up, to a share premium account for that class; and'. **Amend** sub-paragraph (b) to read 'where the premiums arise as a result of the issue of a class of unlimited shares, a sum equal to the aggregate amount or value, *as determined by the directors,* of those premiums shall be transferred, as and when those premiums are paid up, to a separate share premium account for that class.'	This will align this article with Article 39A(3)(b) to clarify that the value is as determined by the directors.

13.	Article 39	Optional ‘merger relief’	**Introduce** an optional ‘merger relief’ similar to section 612 and 615 of the UK Companies Act 2006, to restrict the requirement for share premium for par value companies or stated capital account for no par value companies in respect of certain share-for-share exchanges. It is not anticipated that the relief would be mandatory (as it is in the UK); rather, a company should be permitted to elect whether or not relief shall be applied.	Addresses issues of sensitivities around valuation of the group at the point of share exchange.
14.	Article 39/Part 8	Contributions of assets to companies other than in respect of an issuance of shares	**Amend** Part 8 of the Law to expressly permit contributions of assets to be made to a company other than in respect of an issuance of shares and permit the transfer of the amount or value of that contribution to (i) the share premium account or stated capital account (as appropriate) or (ii) to any other account of the company (other than the nominal capital account).	Currently market practice is that such contributions can be made to a company essentially comprising a gift or donation with no terms for repayment (commonly called "capital contributions") but under the Law as it stands, to put a “capital contribution” into a company's share premium / stated capital account it must first be in a non-capital account pursuant to Articles 39(1A) and 39A(3A). This position is already more flexible than English law but it is proposed that being able to make a “capital contribution” direct rather than via a non-capital account will enhance this advantage. In addition, if it is desirable for the contribution not to be transferred to a capital account, the amendment would propose to expressly recognise that and allow it to be transferred to any

				other account of the company (other than the nominal capital account). Jersey law differs from English law with regards to restrictions on when contributions can be treated as capital and capital maintenance rules. This amendment aims to provide flexibility but also certainty in this area and to limit the risk that in the absence of express statutory provision, reference to the laws of other jurisdictions could be made where the approach in this area may be fundamentally different. *Are there likely to be any undesirable consequences with adopting this approach?*
	PART 9 - REGISTER OF MEMBERS AND CERTIFICATES			
15.	Article 42(1)(a)	Transfer and registration	**Amend** Article 42(1)(a) to allow shares to be transferred by any means of transfer as set out in the company's articles of association. Currently an instrument of transfer in writing is normally required.	This would provide extra flexibility that may be useful for companies which have a relatively high volume of share movements but do not fall within the relevant exemptions (such as companies operating incentive share plans). *Are there likely to be any undesirable consequences with assuming this approach?*
16.	Article 42	Transfer and registration	**Amend** Article 42 to provide that an instrument of transfer is not required where a	Under Article 57(3), a repurchase contract is required for off-market

			company is purchasing its own shares otherwise than on a stock exchange.	purchases and therefore there should be no need for an additional instrument of transfer. In practice, the repurchase contract may be treated as being the instrument of transfer and therefore this change will reflect what is happening already in practice. The current position regarding purchases on a stock exchange would continue.
17.	Article 44	Electronic Registers	**Amend** Article 44 to clarify that a physical or electronic register accessible in Jersey meets the requirements of Article 44 and shall not be deemed to be kept elsewhere.	This is for clarification and reflect modern practices. *Do you consider that this proposal would be helpful and are there any other amendments that might assist?*
18.	Article 47	Rectification of register of members for manifest errors	**Amend** Article 47 to give the directors an express power to rectify a manifest error without a court order with consent from all parties impacted by the change. This would be without prejudice to any relevant provisions of Article 42 which would continue to be applicable e.g. the requirement for an LTT receipt.	This will save court time and costs and will avoid having to go to court to correct genuine errors when there is no protection required. This change will reflect what is already considered to be the current position. However it has been suggested that it would be helpful to have this set out expressly in the Law.
19.	Article 48	Trusts not to be entered on register	**Amend** Article 48 to add a provision clarifying that if a notice of a trust is entered on the register of members, this will be read as though no such notice had been entered on the register.	Consideration has been given to the need to amend Article 48. On balance the Government does not propose to make any changes at this time.

20.	Article 50(1)	Share certificates	**Amend** Article 50(1) to clarify that the articles of association may validly disapply the requirement to issue share certificates.	This change will reflect what is happening already in practice and will reduce administrative costs. *Are there any consequences for members in not having the right to a share certificate?*
21.	Article 51(1)	Signing requirements for share certificates	**Amend** Article 51 to relax the signing requirements of a share certificate so that a share certificate could be signed (including by e-signature) by any one of the directors, or by the secretary or by any other person authorized by the directors subject to the articles of association.	This will address practical issues when there are directors' availability issues and/or if the director(s) and secretary are not in the same place.
	PART 10 - CLASS RIGHTS			
22.	Article 52(4)	Variation of class rights	**Delete** Article 52(4)(c) in its entirety and add to Article 52 a provision to state that the articles of association may specify what is, or is not to be, regarded as a variation of class rights.	This will promote certainty and the freedom for shareholders to regulate their internal affairs.
	PART 11 - REDEMPTION AND PURCHASE OF SHARES			
23.	Articles 55(2), 55(3) and 57(7)	Prohibition on redeemable only shares	**Delete** Articles 55(2) and Article 55(3), each in its entirety, to remove the prohibition on a company only having redeemable shares in issue, subject to the requirement that shares cannot actually be redeemed if this would result in there being no shares in issue. Consequential amendments will be required elsewhere in the Law, such as Article 57(7).	This will permit a company to have only redeemable shares in issue (if so preferred) while ensuring that the company has a shareholder at all times. This reflects the position in various other jurisdictions.

24.	Articles 55(4) 55(5) and 55(8) and Article 57	Fully paid-up requirement for the redemption of shares and the repurchase of shares. Requirement for a solvency statement when buying back/redeeming fully paid up shares for nil consideration and requirement for the sanction of such a buy back by a resolution of the company	**Amend** Articles 55(4) and 55(5) to remove the fully paid-up requirement for the redemption of shares. It is noted that by virtue of this amendment the fully paid-up requirement will also be removed for the repurchases of shares under Article 57. **Amend** Article 55 to remove the need for a solvency statement when redeeming shares for nil consideration. It is noted that by virtue of this amendment the need for a solvency statement will also be removed for the repurchases of shares under Article 57 for nil consideration. **Amend** Article 57 to remove the need for shareholder resolutions approving the buyback and buyback contract when buying back shares for nil consideration.	Self-explanatory. Would it also be desirable to include a provision to allow the directors to ratify a redemption or repurchase of shares where there was a requirement for a solvency statement and the directors failed to do so at the relevant time. This could be on similar terms to the proposal for allowing rectification for distributions made without a solvency statement under Article 115 in row 50 below. This would only apply where the company was solvent and would not permit directors to change the classification of a transaction after the event. Are there any unintended consequences?
25.	Article 57(2)	Power of company to purchase its own limited shares	**Amend** Article 57(2) so that only an ordinary resolution be required to sanction a purchase of shares (as opposed to a special resolution which is currently required).	This will harmonise Jersey law with UK law in this area (see section 694(2) of UK Companies Act 2006 re off-market purchases and section 701(1) of the UK Companies Act 2006 re market purchases).
26.	Article 57	Solvency statement for share repurchases on a stock exchange	**Amend** Article 57 to provide that in the circumstances when shares are being purchased on a stock exchange and pursuant to a contract with a broker/bank, the solvency statement is only required to be given when the public listed company (a)	This will enable the Law to meet the expectations of public listed companies.

			enters into the contractual agreement with the broker/bank or (b) enters into or agrees to any amendment of or variation to such a contractual agreement the effect of which is to extend the duration, volume limit or price ceiling applicable to purchases under it.	
27.	Article 58A	Removal of requirement for a shareholders' resolution to permit the holding of treasury shares and allow treasury shares to be transferred for any purpose	**Amend** Article 58A(1) to remove the requirement for an ordinary resolution under Article 58A(1)(b). **Amend** Article 58A(2) to allow for the treasury shares to be transferred for any purpose with or without consideration.	The deletion of Article 58A(1)(b) will permit companies to hold any repurchased or redeemed shares in treasury, unless the articles expressly prohibit the holding of treasury shares. This will simplify transactions. Amendment of Article 58A(2) will add flexibility and it will make it clear that shares can be transferred for any purpose and that they can be transferred without consideration.
	PART 12 - REDUCTION OF CAPITAL			
28.	Article 61(3)(a)	Reduction of capital accounts	**Amend** Article 61(3)(a) to clarify that the solvency statement provided to support the reduction of capital be signed and filed.	Clarification.
29.	Article 61B	Registration of solvency statement and minute of reduction	**Amend** Article 61B(1) to extend the filing period of the solvency statement from 15 days to 21 days (aligning with the filing period of special resolutions under Article 100(1)). **Amend** Article 61B(3) to provide that the reduction of capital is effective from the effective date of the special resolution.	These amendments are to achieve consistency and also to enable complex transactions to be carried out more efficiently.

	PART 14 - DIRECTORS AND SECRETARY			
30.	Article 73	Death of sole director	**Amend** Article 73 to include a new sub clause to provide that in the event of the death of a sole member and director and in the absence of any provision in the Articles to cover the situation, the deceased's executor or personal representative shall have the power to appoint a new director.	This amendment is to prevent the situation where the death of a sole member and director results in there being no one able to appoint a director, so resulting in the need to make a Court application. *Are there any unintended consequences of this approach or should any other third party be given this power?* *Should a similar provision apply in any other situation where someone ceases to be a director or is unable to act as a director?* *Should Table A be amended to provide for such a provision?*
31.	Article 75	Duty of directors to disclose interests	**Amend** Article 75 to provide that general notice of a director's interest or connection with a specified body corporate or firm is sufficient disclosure of any transaction or arrangement that may, after the date of the notice, be made with that person. **Include** an equivalent of section 182(6) of the UK Companies Act 2006 which relieves a director from declaring any interest (i) that cannot reasonably be regarded as likely to give rise to a conflict of interest; (ii) that the other directors already know about, or ought reasonably to know about; or (iii) that concerns the terms of his service contract,	This is to provide clarity and consistency with the UK law (see sections 185(2) and 182(6) of the UK Companies Act 2006) and to remove unnecessary complexity.

			considered (or to be considered) by a meeting of directors or by the relevant committee of directors. **Delete:** Article 75(2B) to remove the requirement to record the directors' disclosures in the minutes. This would not preclude a disclosure of interests but removes an additional administrative burden and aligns with the UK position.	
32.	Article 76	Consequences of failure to comply with Article 75	**Amend** Article 76(2) to include an additional ratification procedure which would allow disinterested directors entitled to vote to approve the transaction upon disclosure of all material facts.	This is to reduce unnecessary administration and to reduce the use of court time where not absolutely necessary. *Are there likely to be any undesirable consequences with assuming this approach?*
33.	Article 77	Indemnity of officers and former officers	**Amend** Article 77 as follows: (i) to align the indemnities provisions with sections 112 and 113 of the Isle of Man Companies Law 2006; and (ii) to permit advancement of expenses similar to regulation 132(3A) of the BVI Business Companies Act 2004.	Do these amendments give rise to any potential concerns? *Would alignment with section 234 of the UK Companies Act 2006 be preferable?*
	PART 15 - MEETINGS			
34.	Article 86(1)	Participation in meetings	**Amend** Article 86(1) to expressly allow telephone and internet voting unless the articles of the company provide otherwise	This will modernize the current drafting of the Law and will reflect what happens in practice.

			and to remove reference to “hear” to allow other ways of communication.	
35.	Article 89	Requisition of meetings	**Amend** Article 89 as follows: (i) to include a provision pursuant to which the requisitioning members can require the directors to circulate a statement similar to Article 95ZB(3); and (ii) to amend the requisite threshold for general meetings from 10% to 5%.	This will harmonise Jersey law with UK law in this area (see section 303 and section 314 of UK Companies Act 2006).
36.	Article 90(1)	Definition of special resolution	**Amend** Article 90(1) to clarify that it applies only to matters which the Law requires to be passed as a special resolution.	Clarification.
37.	Article 90(2)	Threshold for waiving the shareholders’ notice period	**Amend** the threshold regarding waiving the 14 days’ notice period in Article 90(2) from 95% to 90%.	This will align Article 90(2) with Article 91(3).
38.	Article 91	Inclusion of a ‘clear days’ rule	**Amend** Article 91 to include a ‘clear days’ rule similar to section 360 of UK Companies Act 2006.	Clarification
39.	Article 95	Resolutions in writing	**Amend** Article 95 as follows: (i) to clarify that written resolution votes are determined on a poll basis (currently Article 95 is silent) similar to section 284 UK Companies Act 2006; and (ii) to expressly permit non-unanimous written resolutions (currently Article 95(1C) provides that the articles must expressly allow such	This will increase flexibility for companies and will align the Jersey law with the UK law.

			resolutions) and to provide that any provision of the articles which overrides the position in the Law is void similar to section 300 UK Companies Act 2006.	
40.	Article 96(1)	Rights of proxies	**Amend** Article 96(1) to remove the distinction between proxies of private companies and proxies of public companies and allow all proxies to speak at shareholder meetings.	This will align the position between public and private companies.
41.	Article 96(5)	Proxies	**Amend** Article 96(5) to delete the words "in writing" after the words "at the member's request".	This will align Article 96(5) with the UK Companies Act 2006 to reflect the modern UK practice in relation to proxy forms.
42.	New Article	Direct Voting	**Insert** new Article to clarify that direct voting is permitted subject to the Articles. This would reference the ability for a member to send in a voting form which is taken directly as the vote rather than the member having to appoint a proxy who then votes.	Direct voting occurs commonly in some other jurisdictions, such as Australia. Would there be any benefit to including a specific provision to allow this or is the current position already satisfactory and therefore this is just a matter for the drafting of the company's Articles. Would any express amendment to the Law to reference this create any complications?
43.	Article 100	Filing of agreements	**Amend** Article 100 to provide that an agreement, such as a shareholders' agreement, will not have to be filed under Article 100 if it contains a term stating that in the event of a conflict between that agreement and the articles then the agreement will prevail and the shareholders will amend the articles.	To align with market expectation and provide clarity. The amendment could make clear that this is without prejudice to any other rule or provision which would mean that such agreement is not fileable. *Are there any downsides to this or alternatives?*

	PART 16 - ACCOUNTS AND AUDITS			
44.	Article 102 to 113Q.	Amend accounts and audit requirements for companies with securities listed on certain overseas exchanges (excluding EU/UK regulated exchanges)	**Amend** requirements contained in Articles 102 to 113Q for companies with securities listed on certain approved non-EU/UK regulated exchanges (i.e. non MTCs) which are subject to stringent overseas regulatory oversight, that for such companies: • The qualifications for an "Auditor" be amended to allow any auditor that is acceptable to the relevant stock exchange and regulator be eligible to audit such a Jersey company; • Remove certain accounts and audit requirements (e.g. the requirement in the auditor's report to refer to compliance with the law under Article 113A(2)(a)).	The intention of the proposed changes are that auditors qualified to act under the stock exchange rules and accounts that meet stock exchange accounts requirements would also be acceptable for Jersey public company filing requirements. **Proposed stock exchanges** It is initially proposed that the following stock exchanges subject to the following regulatory oversight be included in this new regime: 1. United States of America – US SEC; 2. Australia – ASIC; 3. Canada – Ontario Securities Commission. It is envisaged that additional Stock Exchanges subject to other regulatory oversight may be considered in the future. *In addition to the exchanges subject to regulatory oversight in the United States of America, Canada and Australia, please list any additional stock exchanges that you would like to be considered for this proposed new scheme?*
45.	Article 108(2)	Delivery of accounts to registrar		*For public companies, where there has been a change in circumstances such as a company entering into summary winding up, a continuance in or out, a*

				merger, or a de-merger, should the Law be clarified regarding the obligation for the company to file accounts where the change in circumstances occurs subsequent to the public company's financial period end, but prior to the accounts having been filed? *Do you agree with the change in circumstances suggested?* *Are there any other changes in circumstances which should be considered?* *What is the rationale for this and what change of circumstances should be covered?* *Are there any other suggestions for clarification or amendment to the Law in this area?* *Are there any downsides to changing the current Law?*
46.	Article 108(3)	Introduction of a minimum qualifying period to produce and deliver audited accounts		When a public company converts to a private company part way through its financial year, should the requirement to produce and deliver audited accounts only apply if the company was public for a certain period of that time (e.g. six months).

				Are there any other suggestions for clarification or amendment to the Law on this scenario?
47.	Article 113/Article 113A/Companies (Exemptions) (Jersey) Order 2014	Disapplication of the audit requirement for a company that has entered into a summary winding up	**Amend** the inconsistency between Articles to disapply the audit requirement for a company that has entered into a summary winding up by extending Article 3 of the Companies (Exemptions) (Jersey) Order 2014 to companies that have entered into a summary winding up regardless of whether or not a liquidator has been appointed.	To provide consistency with the powers of directors on the appointment of a liquidator. This also reflects the position in Guernsey.
48.	Article 113A(4)(b)	Article 113A(4)(b)	**Amend** Article 113A(4)(b) to require that the name of the signatory on the auditor's report must also be clearly stated.	Clarification.
	PART 17 - DISTRIBUTIONS			
49.	Articles 115, 55, 61A and 127YT	Signing of solvency statement	**Amend** Articles 115, 55, 61A and 127YT to add clarity to the Law to the effect that only those directors who remain as directors of the company and authorised the distribution/reduction of capital/purchase of own shares must make the solvency statement.	Under current Law the directors who authorise a distribution/reduction of capital/purchase of own shares must make a solvency statement in a prescribed form. An issue arises in practice when a director who authorised the distribution/reduction of capital/repurchase of shares ceases to be a director of the company before the time when the solvency statement is made. The aim of the amendments is to address this from a practicality perspective.

50.	Article 115	Ratification of distributions	**Amend** Article 115 to permit directors to ratify a distribution without a court order where a distribution has been made and there has been a technical breach and where the company is solvent. This will not permit directors to change the classification of a payment after the event and convert it into a distribution where there was no such intention at the time of making the payment.	This will reduce cost and the administrative burden associated with court applications Are there any unintended consequences of this? *Should there be any alteration to the clawback position currently in place where there is a failure to comply with the requirements for a distribution?* *Should the equivalent also apply to repurchase and redemption of shares as mentioned in row 24 in relation to Article 55 above?*
	PART 18 - TAKEOVERS			
51.	Articles 116, 117 and 121	Takeovers	**Amend** Articles 116, 117 and 121 to align with equivalent sections of the UK Companies Act 2006 on whether shares that an offeror has conditionally contracted to acquire should count towards and be treated as shares already held by the offeror for compulsory acquisition purposes. **Amend** Article 116(2C) to bring the publication of a notice of the takeover (if required by Article 116(2C)) into line with the options that are available in other parts of the Law.	This will harmonise Jersey law with UK law in this area.

	PART 18A - COMPROMISES AND ARRANGEMENTS			
52.	Article 125(2)	Removal of headcount test for members' schemes of arrangement	**Amend** Article 125(2) to abolish the headcount test for members' schemes of arrangement. It is noted that the headcount test will remain in place for creditors' schemes of arrangement.	The current test might have the potential to result in the blocking of a scheme even where the holders of 75% of the voting rights of scheme shareholders have voted in favour. It has been suggested that this is particularly acute in public companies listed in the US or on other international markets which may only have a handful of shareholders on the register due to the bulk of the shares being held by a nominee entity. In addition, in 2019, when giving reasons for directions concerning a potential scheme of arrangement relating to Atrium European Real Estate ([2019] JRC198), it was noted in relation to the headcount test "*that the sooner this provision is given some attention by the legislature, the better. We are told that some jurisdictions have removed the headcount test from their equivalent of Article 125(2) and in our view that would be very desirable, assuming it to be necessary.*" It is also noted that the headcount test was abolished in relation to members' schemes for Cayman companies in August 2022.

	PART 18B – MERGERS			
53.	Article 127A(1)	Definition of 'relevant Jersey company'	**Amend** the definition of "relevant Jersey company" in Article 127A(1) to permit unlimited and guarantee companies to merge.	Self-explanatory.
54.	Article 127D	Merger agreement	**Amend** Article 127D to remove the requirement for a member to receive something as part of the merger.	It is noted that this is often problematic in practice and there are many instances when this is not commercially necessary. The merger agreement is required to be approved by the members so there should be no need for additional shareholder protection. *Do these amendments give rise to any potential concerns?*
55.	Article 127F	Approval of merger agreement	**Amend** Article 127F to remove the requirement for separate class consent from Article 127F(1). It is noted that the individual class members will retain their general objection rights under Article 127FB.	This will reduce the administrative burden in obtaining class consents and to prevent disproportionate rights and protections arising for non-voting shares and minority holdings. *Should this be subject to the articles of association?* *Are there likely to be any undesirable consequences with assuming this approach?*
56.	Article 127FC	Notice to creditors	**Amend** Article 127FC as follows:	Self-explanatory.

			(i) to clarify that the notice to creditors under Article 127FC(1) shall be sent to actual creditors i.e. creditors that have a liquidated claim; (ii) to increase the current de minimis threshold provided in Articles 127FC(1) and (1A) from £5,000 to £10,000; and (iii) to amend Article 127FC so that no creditors' notice or public notice (newspaper notice or Registry notice) be required where all known creditors over £10,000 agree to dispense with such notices or where there are no known creditors.	
57.	Article 127FJ	Pre-registration steps: where all merging bodies are companies	Amend Article 127FJ(3) to remove the restriction that a merger may not be completed until any unfair prejudice application to the court has been disposed of. **Align** Article 127FJ(4)(d)(ii) with Article 127FF(5)(b) for consistency of application and introduce a materiality threshold for creditor consent. **Amend** Article 127FJ to allow the new directors to sign the solvency statement / limit the solvency statement for resigning directors	If a member objects to a merger, is it appropriate that the member may make an unfair prejudice application to court which prevents the merger completing until the application is disposed of? Would it be beneficial to provide for a different regime under which the merger is completed but the objecting member has a statutory right to be paid a fair value for the relevant shares (similar to the merger provisions in the Cayman Islands)?

			to the facts known to them as at the date of the solvency statement.	
58.	Article 127FN(2)(b)	Effect of completion of merger	**Amend** Article 127FN(2)(b) as follows: (i) to clarify that a trustee which merges with another company pursuant to the provisions in the Law shall continue to be a duly appointed trustee of a trust notwithstanding its merger with another company; and (ii) to add wording to the effect that any licence held by either of the merging companies shall not pass to any merged company unless the permission of the relevant licensing or regulatory authority is granted. The Government of Jersey has consulted on this previously and includes the proposal now for completeness.	This proposal has been consulted on previously. This is the current position, however it has been suggested that it would be helpful to have this set out expressly in the Law.
	PART 18C – CONTINUANCE			
59.	Article 127P	Effect of issue of certificate of continuance within Jersey	**Amend** Article 127P to expressly provide that, on a continuance of a foreign body corporate into Jersey, the resultant Jersey company is the same body corporate as the foreign entity.	This is the current position, however it has been suggested that it would be helpful to have this set out expressly in the Law. Section 132E(2) of the Bermudian Companies Act 1981 and section 103 of the Guernsey Law make similar provision.
60.	Article 127Q	Approval by company and members of proposal for continuance overseas	**Amend** Article 127Q to remove the requirement for separate class consent from	This will reduce the administrative burden in obtaining class consents and to prevent disproportionate rights and

			Article 127Q(1) subject to the articles of association. It is noted that the individual class members will retain their general objection rights under Article 127S so a minority protection right would still exist.	protections arising for non-voting shares and minority holdings.
61.	Articles 127R and 127T	Notice to creditors of application to Commission for authorization to seek continuance overseas and Application to Commission for authorization to seek continuance overseas	**Amend** Articles 127R and 127T as follows: (i) to clarify that when there are no known creditors the company should not need to send a creditors' notice or a public notice; (ii) to include a de minimis threshold of £10,000 in a similar manner provided for mergers so that notices to creditors are not required for creditors with claims under this amount; (iii) to allow a company to publish the creditors' notice of proposed continuance by way of Registry notice as similarly provided in Article 127FC(5) applicable to the creditors' notice for mergers; and (iv) so that no creditors' notice or public notice (newspaper notice or Registry notice) be required where all known creditors over £10,000 agree to dispense with such notices.	Self-explanatory.
62.	Articles 127V	Effect of issue of certificate of continuance within Jersey and Effect of continuance overseas	**Amend** Article 127V to clarify that a company which has continued is not treated as having been liquidated / dissolved and that legal personality continues.	Clarification. This is the current position. However it has been suggested that it would be helpful to have this set out

				expressly in the Law. This is also the position in Guernsey.
	PART 21 - WINDING UP OF COMPANIES			
63.	Articles 145(1), 146(2), 150(4) and 151(1)	Summary winding up	**Amend** Articles 145(1), 146(2), 150(4) and 151(1) to simplify these provisions by removing references to the 6-month period.	It is believed that references to the 6-month period are unnecessary and can cause confusion, particularly given the lack of clear consequences in the event that, where directors have stated that the company will be able to discharge its liabilities within 6 months, unforeseen liabilities subsequently arise and fall due after that period.
64.	Articles 148 and 149	Effect on status of company and Appointment of liquidator	**Amend** Articles 148 and 149 to include a provision for a company's assets to be sold to another company in return for shares in the transferee company, if authorized by a special resolution of the company.	It is noted that the protection to shareholders is that a special resolution would be required in order to accept such consideration. It is also noted that a similar provision is contained in UK law (see section 110 of the UK Insolvency Act 1986).
65.	Article 150(4)	Summary winding up	**Amend** Article 150(4) to facilitate interim distributions made under a summary winding up.	Article 150(4) currently permits interim distributions to be made in a summary winding up only after registration of the initial solvency statement by the registrar. It is believed that this requirement creates unnecessary complications where a company being wound up needs to settle its liabilities on the day on which (or shortly after) its winding up commences, because registration

				typically does not happen on the day of filing. As long as the directors reasonably believe that the company is able to settle any remaining liabilities as they fall due, there should be no need to wait until registration (or satisfaction of any liabilities) before making interim distributions. *Are there likely to be any undesirable consequences with assuming this approach?*
66.	Article 157A(1)	Application for creditors' winding up by creditor		Representation of HWA 555 Owners, LLC -13-Jun-2023 (jerseylaw.je) The Court of Appeal (by majority) found that it was not necessary to have a *liquidated* claim in order to apply for a creditors' winding up. There is no need to change the law if this is considered to be a satisfactory position. Please provide your views on whether the Law should be amended following this case.
67.	Article 157A(1)(a) and (2)	Application for creditors' winding up by creditor	**Amend** to add "as they fall due" after 'unable to pay its debts' to sub paras 1(a) and 2 to ensure consistency.	Please state if you consider this is unnecessary. An applicant must be able to show either (a) or (b) or (c). One way of showing (a) is by way of the statutory demand process set out at (2).

68.	Articles 157C(1)(a) 157D(6) and 159(1)(c)	Order of court commencing creditors' winding up	**Amend** Articles 157C(1)(a) 157D(6) and 159(1)(c) to clarify that a court ordered creditors' winding up will ordinarily commence from the date of the order (albeit that the court should be able to provide for another date if the court deems fit).	Clarification.
69.	Article 159(4)	Commencement and effects of creditors' winding up	**Amend** Article 159(4) to replace "no actions" with "no legal proceedings" to clarify that where a creditors' winding up order has been made, a creditor who has security over the whole or part of the assets of a company is entitled to enforce his security without the leave of the court and without reference to the liquidator.	This echoes provisions in other Laws such as the Securities Interest (Jersey) Law. *Do you consider it is, therefore, necessary?*
70.	Article 160	Meeting of creditors in creditors' winding up other than a court ordered creditors' winding up	Move Article 160(1A) so that it precedes Article 160(1) to clarify that Article 160(1) applies only in the case of a creditors' winding up that is not ordered by the court. .	Self-explanatory.
71.	Article 161 and 163	Appointment and removal of liquidator	**Amend** Article 161 to allow creditors to appoint and remove the liquidator by way of written resolution with a threshold of two-thirds (i.e. as a special resolution) provided that a copy of such resolution is circulated to all creditors after it has been passed.	This would add flexibility while retaining appropriate protection and visibility for creditors. *Are there likely to be any undesirable consequences with assuming this approach?*
72.	Article 163(2) and (3) (or potentially in Article 157B instead)	Remuneration of liquidator, cesser of directors' powers, and vacancy in office of liquidator	**Include** a new paragraph (2)(c) in Article 163 as follows (or words to this effect): "On the appointment of a liquidator provisionally under Article 157B(1) all the powers of the directors cease except so far as the court or the liquidator sanction their continuance."	*Should the powers of the director automatically cease on the appointment of a provisional liquidator pursuant to Article 157B?* *The current drafting envisages the court making an order on this as befits the particular situation. Should this change?*

73.	Article 164(1)	No liquidator appointed	**Amend** Article 164(1) to add in "under Article 157(a)" so that it reads 'This Article applies where a creditors' winding up has commenced under Article 157(a) but no liquidator has been appointed.'	Clarification – this clarifies that Article 164(1) only applies in a non-court ordered creditors' winding up.
74.	Article 165	Costs of creditors' winding up	**Amend** Article 165 to add in new para 2 as follows (or words to this effect): '(2) Any costs properly incurred by a creditor in respect of a successful application [, including without limitation]: (a) for an order to commence a creditors' winding up under Article 157A; and (b) to appoint a liquidator under Article 157B, shall be within the costs payable under Article 165(1) notwithstanding the date of the order of the court under article 157C.'	Clarification: to confirm that the costs of the application are costs of the liquidation paid as a priority to all other claims.
75.	Article 185A(1) and 185A(2)	Termination of Creditors' Winding Up	**Amend** Article 185A so that it only applies to CWU not ordered by the court under Article 157C. Then to require that a liquidator can only apply to terminate a creditors' winding up which was commenced by the company passing a special resolution, if a further special resolution is passed by the company. If the members of a company wish for it to be wound up, then it is considered that there should also be a corresponding requirement for a liquidator to have the authority of the members to terminate that winding up. The other point of view is that once the winding up is in place, it is a matter for the liquidator	*Should Article 185A only apply to a CWU by special resolution of the company (ie not one ordered by the court pursuant to Article 157C)?* There would then be a separate provision for termination in a court ordered (Article 157C) winding up. *If Article 185A only applies to non-Article 157C CWU, are the suggested changes (requirement for a special resolution and change to balance sheet test) appropriate and beneficial?*

			to conduct the liquidation as he considers best, albeit in conjunction with the members and creditors. **Amend** Article 185A(2) from a cash flow test to a balance sheet test to ensure consistency with insolvency provisions and Article 157D(2).	
76.	Article 186A	References to the Court	**Amend** Article 186A as follows: (i) to add a new paragraph (c) 'a director, in respect only of such powers the continuance of which have been sanctioned pursuant to either Article 163(2) and/or Article 163(3)'. (ii) to amend the end provision as to read 'may apply to the court for the determination of a question arising in the winding up, or in respect of Article 157B.	(i) A director should be entitled to apply to the court for a determination in relation to a question relating to the powers that continue to be held by the directors (if any). (ii) It is suggested that the power to refer a question to the court should also specifically refer to a situation when a provisional liquidator is appointed pursuant to Article 157B which situation may not be included in the term "winding up". (iii) In addition, if the changes are made as per row 72 above, consequential changes may need to be made here to include any powers retained by the directors in relation to a provisional liquidator appointment.

	PART 23 - REGISTRAR			
77.	Article 201A(1)	Keeping of records by registrar	**Amend** Article 201A(1) to clarify that this relates to information that is required to be delivered to the registrar under the Law, and not any other documents delivered to the registrar.	In some instances, documents are delivered to the registrar, which are not required under the Law. This amendment would clarify the position.
	PART 24 - MISCELLANEOUS AND FINAL PROVISIONS			
78.	Article 221	Transitional provisions	**Amend** Article 221 to clarify in the Law that the companies registered under the Loi (1861) sur les Sociétés à Responsabilité Limitée which became registered under the Law on 30 March 1992 (the date when the Law became effective) shall be conclusively presumed not to have been dissolved under Article 19 of that law.	Clarification.
79.	Schedule of liquidator powers	Potential Addition	To add a schedule to the Law setting out the standard powers given to a Liquidator in a court ordered winding up as a starting point for consideration by the court.	*Please confirm whether or not you consider it necessary to set out these powers and why?* *Please provide examples of the powers you think should be considered as standard.* *Alternatively, you may consider it preferable for the court to issue bespoke directions when making an order. If so, please indicate why.*
80.	Administration	Proposal for new administration regime	Please see separate section in Consultation Paper	
81.	Notices	Proposal to simplify and consolidate requirements for notices	Where external notices are required, such as notices to creditors, there are a variety of mechanisms set out in the Law depending upon the Article under which such notice is	Self-explanatory

			required. For example, some notices are required to be published in a local newspaper whereas others are to be published in the Gazette. It is proposed to simplify the requirements so that all such external notices need only be published in the Gazette. This would not affect notices to be provided to directors, members and known creditors or any filing requirements with the JFSC, the Registry, the States of Jersey or Revenue Jersey.	
82.	Notices to Members	Notices to members	Proposal to allow notices to members to be given via a company's website	This would reflect the position under UK law albeit that members need to be notified that there is a notice on the website. Would this amendment be desirable and should there be a requirement to notify the members about the notice on the website. *Are there any practical benefits or downsides to this?*

Appendix A – Part B: Proposed consequential amendments to other laws, orders and regulations

You are invited to comment on the proposed amendments, which are set out below. Each proposal is listed in a separate row. Please provide the number of the row to which your response relates.

	PART B – Proposed consequential amendments to other laws, orders and regulations			
Row	**Article reference**	**Subject**	**Proposed amendment / request for feedback**	**Comment**
	Bankruptcy (Désastre) (Jersey) Law 1990			
83.	Article 3	Application for a declaration	Article 3(1) sets out the test for a creditor in order for the creditor to make an application for a declaration *en désastre*. The question is whether a creditor must have a liquidated claim or not.	See comments at Row 65 above in relation to Article 157A(1) of the Law. If any change is made to Article 157A(1) of the Law to the effect that a creditor must have a liquidated claim, it is possible that Article 3(1) might also require amendment to ensure the tests remain the same.
84.	Articles 45A and 45AA	Liability in respect of purchase or redemption of shares and Liability in respect of returned contributions	**Amend** Articles 45A and 45AA to replace refences to payments "not made wholly out of profits available for distribution" (which is no longer the applicable test for making payments under the Law) with “lawfully”.	It is noted that this will align Articles 45A and 45AA with Article 181 of the Law.
	Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020			
85.	Article 19(9)	Definition of “person with standing”	**Amend** Article 19 of the Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020 to add the Comptroller of Revenue as a “person with	Are there any other categories of person who should have standing e.g. a member or UBO? Please provide any rationale.

			standing". This will allow the Comptroller to make a reinstatement application regardless of the fact that the Revenue is owed money by a company.	Should there be general alignment of the mechanisms for and provisions in the Financial Services (Disclosure and Provision of Information (Jersey) Law 2020 for reinstatement of companies with those for reinstatement of a company under the Law?
	Companies (Transfer of Shares – Exemptions) (Jersey) Order 2014			
86.	Article 1	Definition of 'approved stock exchange'	Should Article 1 be expanded to extend the list of approved stock exchanges to increase flexibility? If so, then how should this be amended?	
	Companies (Demerger) (Jersey) Regulations 2018			
87.	Regulation 1(1)	Definition of 'relevant Jersey company'	**Amend** the definition of "relevant Jersey company" in Regulation 1(1) to permit unlimited and guarantee companies to merge.	This is consistent with amendments proposed in Part A above in relation to Article 127A(1) of the Law in respect of mergers.
88.	Regulation 3	Demerger instrument	**Amend** Regulation 3 to remove the requirement for a member to receive something as part of the demerger.	This is consistent with amendments proposed in Part A above in relation to Article 127D of the Law in respect of mergers.
89.	Regulation 5	Approval of demerger instrument	**Amend** Regulation 5 to remove the requirement for separate class consent subject to the articles of association. It is noted that the individual class members will retain their general	The aim of this amendment is to reduce the administrative burden in obtaining class consents and to prevent disproportionate rights and protections arising for non-voting shares and minority holdings.

			objection rights under Regulation 6.	This is consistent with amendments proposed in Part A above in relation to Article 127F of the Law in respect of mergers.
90.	Regulation 7	Notice to creditors	**Amend** Regulation 7 as follows: (i) to clarify that the notice to creditors under Regulation 7(1) shall be sent to actual creditors i.e. creditors that have a liquidated claim; (ii) to increase the current de minimis threshold provided in Regulations 7(1), 9(3)(b)(i), 10(2) and 11(2) from £5,000 to £10,000; and (iii) to amend Regulation 7 so that no creditors' notice or public notice (newspaper notice or Registry notice) be required where all known creditors agree to dispense with such notices (regardless of the value of their claim) or where are no known creditors.	This is consistent with amendments proposed in Part A above in relation to Article 127FC of the Law in respect of mergers.
91.	Regulation 11	Pre-registration steps	**Amend** to reflect the position adopted in Article 127FJ if finalised for mergers.	Self-explanatory

92.	Regulation 13(2)(a)	Effect of completion of demerger generally	**Amend** to reflect the position adopted in Article 127FN(2)(b) if finalised for mergers.	Self-explanatory
	Companies (GAAP)(Jersey) Order 2010			
93.	Article 2.	Prescribed GAAP under Article 105(2)(a) of the Law	**Amend** Article 2 of the GAAP Order to include 'the UK adopted international accounting standards (UK IAS);' as an additional set of principles and standards.	This regulation prescribes the list of GAAPs a MTC is able to prepare its accounts under. UK IAS is the new version of International Financial Reporting Standards (IFRS) used by UK incorporated companies subsequent to Brexit. For Jersey MTCs listed on the UK regulated exchanges (e.g. the LSE) it would be desirable to allow the use of UK IAS. Please note this has been included in the consultation for information purposes only, and is being implemented separately.

Appendix B – Proposed Administration Procedure for Insolvency

Introduction

The technical committee of the Jersey branch of the Association of Insolvency and Restructuring Experts (ARIES) has put forward proposals in relation to the introduction of an additional insolvency procedure for Jersey, namely an administration type procedure.

A modern and effective corporate insolvency regime is key for the financial services industry and indeed the island generally and it is considered that the proposals set out here will enhance the current regime, building on existing concepts such as the suspensory nature of the traditional *remise de biens.*

Whilst the recent introduction of the court ordered Creditors' Winding Up procedure has been welcomed, there is no specific process which assists a business to recover when it is essentially viable but facing cashflow issues which makes it technically insolvent.

Proposals have been discussed over time with recognition that such a process can mean a better outcome and higher returns for creditors than would otherwise be achieved in a liquidation (albeit that it might still lead to the disposal of all or part of the business, or its winding up), alongside societal benefits such as the potential to encourage entrepreneurs and support the economy including in respect of employees. Any proposals must, of course, also respect the position of Jersey as an international finance centre and the suggestion that secured creditors will be able to continue to enforce their security ensures that the island's reputation as a creditor friendly jurisdiction is unaffected. In the absence of a specific procedure, there has been a tendency to seek to use the just and equitable winding up route (Article 155 of the Companies (Jersey) Law 1991) as a quasi-administration process, attracting comment that the just and equitable jurisdiction has been extended beyond its natural and proper meaning to achieve these ends. Whether that is correct or not as a matter of law, an administration type procedure would provide an alternative.

It is also suggested that there has, in some cases, been recourse to applications for the issue of a letter of request to the English High Court under s426 of the UK Insolvency Act by the Royal Court of Jersey requesting that the High Court place a Jersey company in administration. It is considered likely that the introduction of an administration process will reduce the number of applications for Letters of Request on this basis – and will thereby reduce costs also.

The introduction of an administration process is not intended to undermine the attempts of a distressed company and its creditors to resolve matters by way of a consensual arrangement and to reschedule or renegotiate debt positions. Rather it is intended to augment those benefits, particularly in the face of more challenging market conditions prevailing at this time.

Similar schemes have been implemented in other jurisdictions and have been seen to work well with other remedies to offer a comprehensive regime striking an appropriate balance between creditor and debtor, including in the context of an international finance centre.

Current situation

There are currently five principal means by which a company can be brought to an end in Jersey:

- a désastre (Bankruptcy (Désastre) (Jersey) Law 1990);
- a summary winding up for a solvent company (Articles 145 – 154A CJL91);
- a creditor's winding up instigated by the shareholders (Articles 156 – 186 CJL91);
- a creditor's winding up instigated by a creditor and ordered by the Court (Articles 157A et seq CJL91); and
- a court winding up on the grounds that it is just and equitable to do so, or it is expedient in the public interest to do so. (Article 155 CJL91) ("just and equitable winding up").

It is also possible for a company to come to an end on the happening of a specific event or at the expiration of a certain time period (If that is the type of company concerned), or to be struck off by the Registrar for failures to file requisite information with the Registry.

How to respond

Questions numbered B1 to B21 can be found below. When responding, please provide the number(s) of the question(s) to which your response relates. Details of how to respond can be found on page 4 of this document.

Proposals and questions

The below is a general description of what is being proposed. There will be matters of detail which will be considered in due course if these broad proposals are supported such that instructions to draft the relevant provisions to amend the Law are given.

How is the application made?
It is proposed that the process should be commenced by way of application to the Royal Court of Jersey. Whilst this might be seen as increasing costs, the oversight of the Court is seen as an essential part of the protections for a creditor to reduce the risk of any abuse of the process, and indeed may be said to deter spurious applications.

Who can make the application?
It is suggested that the application should be available to be made by the company, its directors, its shareholders, one or more creditors, the JFSC, and any previously appointed liquidator (including a provisional liquidator).

B1

Should any other party be able to make an application? Should the creditors include a contingent or a prospective creditor?

Is this available only in respect of a Jersey company?
The current proposal is that the process will be available in relation to a Jersey company only, as is the Article 157A court ordered creditors' winding up.

B2

Do you agree that this should only be available in respect of a Jersey company?

What test must be satisfied?
It is proposed that the Court must be satisfied:

- that the company is insolvent on a combination of the cashflow and balance sheet tests
- AND that the administration is reasonably likely to achieve the purpose of either the survival of the company as a going concern *or* a more advantageous realisation of the company's assets than would be effected on a winding up.

B3

Do you consider that this is the right test? Criticism has been levied in relation to other jurisdictions to the effect that the option might come too late when solvency is already in question? Is there an alternative such as for example, where there is a real concern that insolvency is likely?

B4

Should the test combine both the cash flow and balance sheet tests for insolvency? Should it also include any other solvency test as may be required by regulatory laws, if it is a registered person?

B5

Should the current statutory demand procedure be available to assist with showing insolvency when making an administration application?

B6

What evidence should be required? A full report – which might make it costly to make the application and deter applications? Or a statement from the proposed administrator that in his opinion the purpose of the administration (as per the statute) is reasonably likely to be achieved? Or something else?

B7

Should an applicant have to satisfy the court that there is likely to be a benefit from the grant of an administration order? Otherwise the company should surely be wound up (or rendered en desastre)?

If the test is satisfied, must the Royal Court make the Order?
It is proposed that the Royal Court will retain a discretion as to whether or not to make the administration order, to dismiss it, to adjourn the hearing, to seek further information, to convene other parties, to make an interim order or such other order as it thinks fit.

B8

Do you agree?

Who can be an administrator?
The Court will appoint an administrator from the list of Approved Liquidators maintained by the Viscount. This is to ensure that the proposed administrator is a regulated professional with the necessary expertise. The Administrator acts as an officer of the court. The fees and expenses of the Administrator, properly incurred, will be payable from the company's assets in priority to all other claims and shall be fixed by the Court.

B9

Do you agree?

What must the administrator do and what powers will they have?
The Administrator will be tasked with reviewing how the business is operating and setting out a plan for restoring the business to solvency. All property of the company is taken into his/her custody or control. The administrator will be able to do what is necessary or expedient for the management of the affairs, business and property of the company. He/she will be able to apply to the court for directions if necessary. He/she will be able to remove the directors from post, and call meetings of creditors. He/she acts as the agent of the company but is excused from liability save for where there has been wilful neglect, gross negligence or fraud. He/she can require a statement of affairs to be prepared by the directors (or other relevant participants) setting out the details in relation to the company (such as assets, liabilities, creditors, etc) and it is expected that the directors will co-operate with the Administrator.

The Administrator will have the usual obligations as to notifications.

B10

Do you consider that an Administrator should only be chosen from the list of Approved Liquidators maintained by the Viscount?

B11

Do you think that the Administrator requires any other particular powers? Do you think that the standard powers should be listed in a Schedule to the Law? This is the approach taken in Guernsey for example (see Schedule 1 in relation to Section 379 of the Guernsey companies legislation Companies (Guernsey) Law, 2008 (guernseylegalresources.gg))

B12

Do you think the Administrator should be able to borrow money and to grant security?

B13

Do you think that the Administrator should be able to make a distribution to one or more creditors? Are there limits on that?

B14

Do you think that there should be a requirement to hold a meeting of creditors? Please explain why? Should any such requirement be suspended when it is clear that there are no assets available for distribution to the creditors? Should there be requirements on creditor approval of any plan?

B15

Do you think the powers of the directors should be suspended automatically on the appointment of an Administrator save as may be sanctioned by the Administrator or the Court? Or are the directors best placed to understand the needs of the business so that they should be able to continue to act under the supervision of the Administrator?

B16

Should the Administrator be able to challenge transactions at an undervalue? And exorbitant credit transactions?

Is there a moratorium?

Once an administration is declared by the court, it is proposed that no legal action will be permitted against the company and the company will not be placed into liquidation without leave, save that the rights of secured creditors are to be fully preserved including as to enforcement. This reflects the position as currently exists in Jersey in a creditor's winding up and ensures that Jersey continues to be a creditor friendly jurisdiction in relation to the corporate finance transactions of an international finance centre.

The moratorium provides a breathing space for the company so that the Administrator can review the operation of the business and develop a plan to assist it. It also preserves equality between the unsecured creditors. (For the avoidance of doubt the moratorium applies to unsecured creditors only; secured creditor rights remain unaffected.)

It is suggested, in addition, that between the presentation of the application in court and any eventual order or dismissal (should they not be at the same time), the company may not be wound up, and proceedings may not be commenced nor continued without the leave of Court (save in relation to secured creditors as above).

B17

Do you agree? Do you have any comments on the moratorium?

B18

Is there any issue with the proposed position for secured creditors?

The end of the administration

It is proposed that the administration comes to an end when the Administrator applies to the Court for its discharge or variation. The Administrator must apply to court for such if he considers that the purposes have either been achieved or are not possible to achieve; or it is otherwise desirable to do so.

It is also proposed that a creditor or shareholder or the JFSC may apply for an order as to the management of the company or the doing of a particular act, or for discharge, or such other action, on the ground of unfair prejudice or that it would be otherwise desirable.

B19

Do you agree with these proposals?

Other

It is likely that there will need to be consideration of the position for incorporated and protected cell companies.

B20

Are there any other bodies that need to be considered?

General

B21

Are there any particular modifications that you wish to propose to the outline regime set out above or points that should be considered further?

Other jurisdictions

A similar rescue procedure is available in the UK and Guernsey. The US has Chapter 11 proceedings and in France, *sauvegarde* proceedings, offer similar opportunities. In the Cayman Islands and the BVI, provisional liquidation is often used to this end and Cayman has recently introduced the role of the 'Restructuring Officer'.

The administration procedure introduced into Guernsey in 2006 has been received positively and serves as a useful example of how the procedure can be beneficial.

Conclusion

As with the Creditor's Winding Up reforms, by following established concepts and processes, the procedure will be familiar to practitioners, investors and intermediaries. The proposals are grounded on tried and tested and widely understood procedures across jurisdictions, reflecting the reality of complex cross jurisdictional commerce today and enhancing certainty in relation to exit and contingency planning.