



Jersey

## **DRAFT COMPANIES (GENERAL PROVISIONS) (AMENDMENT No. 6) (JERSEY) ORDER 202-**

*Made*

*[date to be inserted]*

*Coming into force*

*[date to be inserted]*

**THE MINISTER FOR EXTERNAL RELATIONS AND FINANCIAL SERVICES** makes this Order under Articles 188 and 219 of the Companies (Jersey) Law 1991, having consulted the Jersey Financial Services Commission –

### **1 Companies (General Provisions)(Jersey) Order 2002 amended**

This Order amends the Companies (General Provisions) (Jersey) Order 2002.

### **2 Article 7 (qualifications of liquidator) amended**

In Article 7 –

(a) for paragraph (2) there is substituted –

“(2) Subject to paragraphs (3) and (3A), a person is only eligible for appointment as a liquidator of a company to which this Article applies if the person is registered as an approved liquidator and entered on the Register of Approved Liquidators under paragraph (2C).

(2A) A person is not qualified to be registered as an approved liquidator and entered on the Register of Approved Liquidators under paragraph (2C) unless the person –

(a) is resident in Jersey;

(b) is an individual who has the level of experience determined by the Viscount in writing and –

(i) is licensed in the United Kingdom to act as insolvency practitioner by one of the recognised professional bodies as defined under section 391(8) of the Insolvency Act 1986 c. 45, or

(ii) is a member of –

(A) the Association of Chartered Certified Accountants,

(B) the Chartered Accountants of Ireland,

- (C) the Institute of Chartered Accountants in England and Wales, or
  - (D) the Institute of Chartered Accountants in Scotland; and
- (c) has in place a general bond of £250,000 plus a specific bond of between £5000 and £5,000,000 for each appointment.
- (2B) An individual who is qualified under paragraph (2A) may apply to the Viscount, in the form approved by the Viscount, to be registered or re-registered as an approved liquidator and entered in the Register of Approved Liquidators.
- (2C) The Viscount must keep and maintain a Register of Approved Liquidators and may upon –
- (a) application under paragraph (2B) by an individual who is qualified to be registered as an approved liquidator under paragraph (2A); and
  - (b) payment to the Viscount by the individual of the registration fee of **1**,
- register the individual as an approved liquidator and enter the name of the individual in the Register of Approved Liquidators.
- (2D) The registration of an individual as an approved liquidator under this Article expires after one year and an individual may apply to the Viscount under paragraph (2B) to re-register.
- (2E) A person registered as an approved liquidator under this Article must notify the Viscount of any change of circumstances which disqualifies the person from meeting the requirements under paragraph (2A) and the Viscount must cancel the person’s registration as an approved liquidator and remove the name of the person from the Register of Approved Liquidators.
- (2F) The Viscount must publish the register kept and maintained under paragraph (2C) online and make the register available for inspection to the public.”
- (b) after paragraph (3), there is inserted –
- “(3A) An individual who is not resident in Jersey but is otherwise qualified in accordance with paragraph (2A)(b) and (c) may, together with an individual who is registered as an approved liquidator and entered in the Register of Approved Liquidators under paragraph (2C), be appointed as a liquidator of a company to which this Article applies.”.

### **3 Article 8 (supervision of liquidators) and Article 9 (prescribed minimum liquidated sum) inserted**

After Article 7 there is inserted –

#### **“8 Supervision of liquidators**

- (1) Where –

- (a) the Viscount receives representations (including, but not limited to, complaints) about the exercise of powers, or a failure to exercise powers, by a liquidator; or
- (b) it otherwise appears to the Viscount that there are circumstances justifying investigation including circumstances which –
  - (i) give rise to concerns on the part of the Viscount about the conduct of the liquidator (including, but not limited to, the level of fees charged or proposed to be charged by a liquidator),
  - (ii) suggest that a liquidator has failed to comply with an order made or directions given by the Court, or
  - (iii) otherwise constitute good reason, in the view of the Viscount, to seek further information about a liquidator's discharge of his or her functions,the Viscount may by notice in writing given to the liquidator –
  - (c) require the liquidator to provide such information (including accounts) or documents as may be specified, or as are of such description as may be specified, and such reports as the Viscount may require, from the liquidator as to the exercise of his or her functions, and in either case, to do so in such a manner and before the end of such reasonable period and at such place as may be specified; and
  - (d) require that an act or decision, or a proposed act or decision, by a liquidator be suspended or postponed until such time as the Viscount may reasonably require.
- (2) Where any information or document is provided to the Viscount under paragraph (1)(c), the Viscount may further require such information to be verified, or such document to be authenticated, in such reasonable manner as the Viscount may see fit.
- (3) Nothing in this Order requires the Viscount to investigate, consider or determine any complaint if, in the Viscount's opinion –
  - (a) the subject matter of the complaint is trivial; or
  - (b) the complaint is frivolous or vexatious or is not made in good faith.
- (4) A person required under paragraph (1)(c) to submit a report may make an application to the Viscount to request more time for doing so.
- (5) An application under paragraph (4) must –
  - (a) state the grounds for requesting more time; and
  - (b) contain, or be accompanied by, such information as the Viscount may reasonably require to determine the application.
- (6) The Viscount may, in response to an application under paragraph (5), grant such extension of time as the Viscount may consider reasonable.

- (7) The Viscount may, at all reasonable times, examine and take copies of any record kept in relation to the liquidator's functions by persons or bodies carrying on the business of providing financial services within the meaning given to that expression by Article 1(1) of the Financial Services Commission (Jersey) Law 1998.
- (8) For the purposes of an investigation into a complaint received by the Viscount, the Viscount may consult such persons, being persons having expertise in the matter in respect of which the complaint is made, as the Viscount may see fit.
- (9) Where, following an investigation under this Article the Viscount considers it necessary or appropriate to do so, the Viscount may make an application to the Court requesting the exercise, in relation to a liquidator of any of the Court's powers under the Law.
- (10) In considering whether it is necessary or appropriate to make an application under paragraph (9), the Viscount must have regard to –
  - (a) the terms of the appointment of the liquidator; and
  - (b) orders or directions given by the Court.
- (11) A liquidator may require the Viscount to reconsider any decision made by the Viscount under this Article in relation to that liquidator.
- (12) The right conferred by paragraph (11) is exercisable by the liquidator giving notice in writing to the Viscount within the period of 21 days beginning with the date on which notice of the decision was given to the liquidator.
- (13) Notice given in accordance with paragraph (12) must –
  - (a) state the grounds for the request for reconsideration; and
  - (b) contain, or be accompanied by, any relevant information or documents.
- (14) At any time after receiving the notice and before reconsidering the decision to which it relates, the Viscount may require the liquidator to provide such further information, or to produce such documents, as the Viscount reasonably considers necessary to enable reconsideration of the decision.
- (15) Following reconsideration, the Viscount must give to the liquidator –
  - (a) notice in writing of the decision on reconsideration; and
  - (b) if the previous decision is upheld, a statement in writing of the reasons for upholding it.
- (16) The Viscount, or any member of the Viscount's Department is not liable in damages for anything done or omitted in the discharge of or purported discharge of any function under this Order.
- (17) Paragraph (16) does not apply –
  - (a) if it is shown that the act was done, or the omission made, in bad faith; or
  - (b) so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000.

**9 Prescribed minimum liquidated sum**

The prescribed minimum liquidated sum under Article 157A of the Law is £3,000.”.

**4 Citation and commencement**

This Order may be cited as the Companies (General Provisions) (Amendment No. 6) Order 202- and comes into force on [ ].