

# **The Companies (Guernsey) Law, 2008**

## **Company Law Amendments – Response Document**

**May 2012**

## PART I      REVISED PROPOSALS – AMENDMENTS BEING TAKEN FORWARD

Key

White background = Proposal in 2010 Consultation
Shaded background = Additional proposal following consultation

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
9(5)	Mixed liability company	<b>Amend</b> the second sentence to replace ‘memorandum and articles’ with ‘memorandum <i>or</i> articles’.	Minor amendment for clarification.	<b><i>A clear majority supported this proposal which will therefore be taken forward.</i></b>
17(9)	Application for Incorporation	<b>Amend</b> to widen the category of persons entitled to incorporate companies to include the Law Officers of the Crown, when forming a company the sole beneficial owner of which will be the States of Guernsey; Guernsey Advocates; and anyone licensed by the GFSC under the Protection of Investors (Bailiwick of Guernsey) Law, 1987; the Banking Supervision (Bailiwick of Guernsey) Law, 1994; the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000; and the Insurance Business (Bailiwick of Guernsey) Law, 2002.	This will widen the scope of those who may apply to incorporate a company whilst ensuring that AML/CFT standards are upheld.	

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
21	Compulsory components in a company's name	<p><b>Amend</b> to make specific provisions for a company to have an official alternative name in non-Roman script. A company will be required to have its primary name in Roman script but will be permitted to have an official alternative registered name in another script. The company will be officially permitted to use either name. References in the Law to the company's name will be defined to include either official name.</p> <p>Existing provisions of the Law will ensure that the company is readily identifiable in important documents whichever name it uses including: section 21 (the compulsory components required in a company's name); section 35(2) (the requirement that the company's particulars (including registration number and registered office address) shall appear in all order forms and formal business letters); and section 35(3) (the requirement under that where the company has a website the company's particulars shall appear in a reasonably prominent location on the company website).</p>	This will make the use of Guernsey companies more attractive to jurisdictions that use a non-Roman script.	

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
24(4)(b)	Prohibited names	<b>Amend</b> to clarify that a company whose name pre-dates the registration of a trade mark does not have to change its name as a result of the subsequent registration of the trade mark.	Self-explanatory	
27	Reservation of names	<b>Amend</b> to permit reservation of names for change of name purposes, rather than only for new companies.	Self-explanatory	<i><b>There was overwhelming support for this proposal and this will therefore be taken forward.</b></i>
29	Objection to a company name	<p><b>Amend</b> to widen the category of potential applicants to reflect s.69 of the English Companies Act 2006 i.e. to permit objections from anyone who considers that (i) the name is the same as a name associated with the applicant in which he has goodwill or (ii) that it is sufficiently similar to such a name that its use in Guernsey would be likely to mislead by suggesting a connection between the company and the applicant.</p> <p><b>Amend</b> to allow a company which has reserved a name under s.27 but is not yet incorporated to object to a company name.</p>	Consistency with UK provisions and fairness.	<p><i><b>There was overwhelming support for these proposals and these will therefore be taken forward.</b></i></p> <p><i><b>It is noted that such an objection will need to be raised by the person who has reserved the name under s.27 not by ‘the company’, as it is a pre-incorporation objection.</b></i></p>

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
38(1)	Restriction on alteration of memorandum	<b>Amend</b> to expressly provide that the restrictions on alterations to the memorandum contained in this section are subject to express provision elsewhere requiring or permitting alteration.	There are a number of other provisions in the Law that permit or require amendments and this should be recognised in section 38(1).	
40	Objects	<b>Amend</b> to include a provision that the annulment of an alteration to the company's objects does not affect the right, title or interest of a third party arising from a transaction entered into by the company in the period between the alteration being passed and its subsequent annulment, subject to any order of the court to the contrary.	In the interests of certainty for all parties.	<b><i>There was overwhelming support for this proposal and this will therefore be taken forward.</i></b>
47	Conversion of non-cellular company into incorporated cell company	<b>Amend</b> to read 'an' incorporated cell company.	Typographical correction.	<b><i>There was overwhelming support for this proposal and this will therefore be taken forward.</i></b>

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
15(5)	<b>Conversion of company into limited liability company</b>	<b>Amend</b> to repeal the requirement for the maximum number of guarantee members to be stated in memorandum. Consequential amendments will be required elsewhere in the Law, such as s.55(2)(d).	This will increase the flexibility of the Law with no adverse consequences.	
55(8)	<b>Conversion of company into limited liability company</b>	<b>Amend</b> to correct the reference to 'unanimous resolution' at the end of this section to 'special resolution' as this is what it in fact refers back to.	Self-explanatory	
61(1)	Amalgamation	<b>Delete</b> sub-section 1 to permit the amalgamation of all types of body corporate with each other, subject only to the requirement in sub-section 2 that at least one of the amalgamating bodies corporate must be a company.	Self-explanatory – more permissive.	<p><i><b>There was overwhelming support in principle for this proposal and this will therefore be taken forward.</b></i></p> <p><i><b>A number of detailed comments were received regarding the nature of the necessary legislative provision and these will be taken into account during the drafting process.</b></i></p>
64(1)	Amalgamation	<b>Amend</b> to read 'board of directors' instead of 'directors', so that the provisions of s.133 apply.	Clarification and consistency.	<p><i><b>There was overwhelming support for this proposal feedback and this will therefore be taken forward.</b></i></p> <p><i><b>It was noted that the same point arises at other places in the Law and this amendment will be made throughout, as applicable.</b></i></p>

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
64(8)	Amalgamation - special resolution definition	<b>Amend</b> to transfer the certification function to the Registrar and to give the Registrar the power to prescribe rules governing which resolutions of overseas companies are to be automatically accepted as equivalent to a special resolution and criteria for equivalence in other cases.	Self-explanatory.	<b><i>There was overwhelming support for this proposal feedback and this will therefore be taken forward.</i></b>  <b><i>It was suggested by one respondent that the same amendment should be made to section 76(c) and this will be taken forward.</i></b>
65	<b>Short form amalgamations for subsidiary companies</b>	<b>Amend</b> to refer to 'body corporate' rather than 'company' to permit cross border short form amalgamations.	Section 60(2) defines body corporate as meaning a company or an overseas company. This amendment will ensure that a Guernsey company can amalgamate with an overseas company on a short form basis and that the provisions of section 65 are not restricted to Guernsey companies only.	
69(3) and 70(5)	Application to Registrar for amalgamation / Effect of amalgamation	<b>Amend</b> to permit the 28 day public notice period under s.69(3) to run from the date on which the registry is notified of a company's intention to amalgamate.	This reflects current practice, as well as the procedure under the old Law, whereby the public notice period may run concurrently with required member, creditor and EGM notice periods and the certificate of amalgamation may be issued 28 days after the company first give notice of its intention to amalgamate.	<b><i>There was overwhelming support for this proposal and this will therefore be taken forward.</i></b>  <b><i>A number of detailed comments were received which will be taken into account during the drafting process.</i></b>

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
76(a) & 76(b)	Migration	<b>Delete</b> 'to be registered as a Guernsey company' and insert 'to transfer its incorporation to Guernsey'.	Clarification for accuracy.	<p><b><i>There was overwhelming support in principle for this proposal and this will therefore be taken forward.</i></b></p> <p><b><i>A number of suggestions were made as to the precise wording of such an amendment and these will be taken into account during the drafting process.</i></b></p> <p><b><i>It is also noted that the same amendment should also be made to a number of other sections of the Law and this will be taken forward.</i></b></p>
76(c)	Migration	<b>Amend</b> to transfer responsibility for certification from Commission to Registrar.	Self-explanatory.	<b><i>There was overwhelming support for this proposal and this will therefore be taken forward.</i></b>
89(b)	<b>Companies cannot transfer registration if in liquidation, etc</b>	<b>Repeal</b> sub-section (b) which refers to the Loi ayant rapport aux Débiteurs et à la Renonciation of 1929.	This sub-section should be repealed as it refers to sub-section (a) which has itself been repealed by the Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2008.	



Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
94(2)(b)	Migration	<b>Amend</b> to provide a power for regulations to prescribe fees payable to HM Procureur and the Director of Income Tax for their confirmation pursuant to this section.	Self-explanatory.	<b><i>A majority of respondents supported this proposal and this will therefore be taken forward.</i></b>
97(3)	Migration	<b>Amend</b> to permit the 28 day public notice period under s.97(3) to run from the date on which the registry is notified of a company's intention to migrate.	This reflects current practice, as well as procedure under the old Law, whereby the public notice period may run concurrently with required member, creditor and EGM notice periods and the steps required to be taken under s.98 must therefore be taken not less than 28 days after the company first gave notice of its intention to migrate.	<b><i>Please note there was a typographical error in Appendix 1 to the consultation document. The proposed amendment is to section 97(3), not s.67(3) as was indicated in the body of the text of Appendix 1.</i></b>  <b><i>There was overwhelming support for this proposal and this will therefore be taken forward.</i></b>
98(a)	Migration	<b>Amend</b> to clarify that deletion shall be by operation of law and that the company must alter its memorandum accordingly under the provision of section 38(3).	Clarification.	<b><i>There was overwhelming support for this proposal and this will therefore be taken forward.</i></b>
102	Migration	<b>Amend</b> to clarify that the translation must be in such form as the Registrar may prescribe.	Clarification.	<b><i>A majority of respondents supported this proposal and this will therefore be taken forward.</i></b>

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
108(3), 108(6)	<b>Arrangements and Reconstructions</b>	The terms 'deed' and 'debenture' will be reviewed by with a view to replacing these with alternative descriptions that cover all equivalent concepts in Guernsey Law to which they are intended to refer.	Self-explanatory	
110(1)	<b>Arrangements and Reconstructions</b>	<b>Amend</b> to correct typographical error - 'class or creditors' should be 'class of creditors'.	Typographical amendment	
110(4)	<b>Arrangements and Reconstructions</b>	<b>Amend</b> 'a compromise or agreement sanctioned by the Court' to read 'a compromise or <b>arrangement</b> sanctioned by the Court.'	Typographical amendment	
111(7)	<b>Arrangements and Reconstructions</b>	<b>Amend</b> to provide that ' <b>transferor company</b> ' includes an overseas company to provide for uniformity of treatment whether the overseas company is the transferee or the transferor.	Self-explanatory	
115(3)	Powers of directors to bind company	<b>Amend</b> to provide that subsections (1) and (2) do not affect any liability incurred <i>by any director</i> by reason of the directors having exceeded their powers.	Clarification.	<b><i>There was overwhelming support for this proposal and this will therefore be taken forward.</i></b>

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
135	<b>Company must have at least one director</b>	<b>Amend</b> to provide that a company which does not have at least one director is liable to be struck off under section 355 of the Law.	Self-explanatory	
137(2)(c)	Eligibility/disqualification of directors	<b>Amend</b> to provide that this section only applies to a person disqualified, by reason of misconduct or unfitness, from acting as a director under the law of a district, territory or place <i>prescribed by the Registrar</i> .	To ensure that only jurisdictions with appropriate disqualification provisions are recognised. Disqualification in a jurisdiction not prescribed by the Registrar will continue to be a factor that the Court may consider in an application for a disqualification order under Part XXV of the Law.	<b><i>A majority of respondents supported this proposal and this will therefore be taken forward.</i></b>
150(1)	<b>Application to Court for disclosure of usual residential address</b>	<b>Amend</b> to provide that the applicant may make an application to the Court if a company does not comply with a request under section 149 within 5 days instead of the current 2 weeks.	This is for consistency with other periods allowed under the Law for disclosure of information e.g. under section 128, 144 and 174 of the Law.	
151(1)	<b>Disclosure of usual residential address by Registrar</b>	<b>Amend</b> to add Parish Constables to the list of persons to whom a director's residential address may be disclosed by the Registrar upon request.	Self-explanatory. This is necessary to assist with the collection of parish taxes.	

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
154(1)	<b>Minutes of directors' meetings</b>	<b>Amend</b> the reference to 'all proceedings' to read ' <b>the</b> proceedings'.	To make it clear that whilst the proceedings must be minuted it is not necessary for every inconsequential event to be recorded.	
157	<b>Exempting directors from liabilities</b>	<b>Amend</b> to ensure that an overseas subsidiary is included within the definition of subsidiary for the purpose of this section.	This is necessary as 'company' in the Law means a Guernsey registered company - see section 2(3), section 1 and section 496 of the Law. An 'associated company' includes a 'subsidiary' as a result of section 529(1) of the Law. However, the definition of 'subsidiary' under section 531(6) of the Law does not however include an overseas company.	
162	Disclosure of interest	<b>Repeal</b> sub-sections (1)(a) and (b).  Add the words 'the nature and extent of the interest' at the end of sub-section 1.	To simplify the disclosure requirements.	<b><i>A majority of respondents supported this proposal and this will therefore be taken forward.</i></b>  <b><i>A number of suggestions were made as to the exact wording of the amendment which will be taken into account during the drafting process.</i></b>

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
167(2)	Meaning of interested	Amend 'party' to read 'part'.	Typographical correction.	<b><i>There was overwhelming support for this proposal and this will therefore be taken forward.</i></b>
170	<b>Eligibility to be a secretary</b>	<b>Amend</b> to insert a provision akin to section 141(1) in respect of the validity of acts of a secretary whose appointment is afterwards discovered to be void pursuant to section 170(3).	This will create uniformity in respect of directors and secretaries and will enhance commercial certainty.	
170(2)(c)	Eligibility to be secretary	<b>Amend</b> to provide that this section only applies to a person disqualified, by reason of misconduct or unfitness, from acting as a director under the law of a district, territory or place <i>prescribed by the Registrar</i> .  <b>Amend</b> 'director' to read 'director, secretary or other officer of any company'.	To ensure that only jurisdictions with appropriate disqualification provisions are recognised.  To ensure that anyone disqualified from holding any relevant office is ineligible to be a secretary.	<b><i>A majority of respondents supported these proposals and these will therefore be taken forward.</i></b>
171	Duties of secretaries	<b>Repeal</b> section.	No duties should be compulsory when the appointment of a secretary is optional. This should be a matter for the memo and arts.	<b><i>There was overwhelming support for this proposal which will be taken forward.</i></b>

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
178(6)	Special Resolutions	<b>Amend</b> to introduce a power for the Department to make provision by Regulation for very small companies to disapply section 178(6) where all members are in agreement.	Very small companies should not be in a position where a resolution passed at a meeting cannot be a special resolution as a result of a technical or drafting error in the notice despite the agreement and will of all members.	
180	Unanimous Resolutions	<b>Amend</b> to clarify that a unanimous resolution is one agreed to by every member of the company <i>or duly appointed proxies</i> .	To clarify the effect of s.222 i.e. that a member of a company is entitled to appoint a proxy to exercise all or any of his rights to attend and to speak and vote at a meeting.	<p><b><i>A majority of respondents supported this proposal in principle and this will therefore be taken forward, with the intention of harmonising section 180 with the provisions of section 176, 178 and 179.</i></b></p> <p><b><i>In addition, a number of respondents suggested that s.180 should be amended to specify that a unanimous resolution means a resolution agreed to by every member of the company 'entitled to vote'. The Department accepts this proposal and this will be taken forward.</i></b></p>

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
181	Circulation of Written Resolutions	<b>Introduce</b> new provision to provide, for the avoidance of doubt, that the register of members may be closed for a limited period of time prior to the issue of a written resolution.	To clarify that the register of members may be closed to ensure that it does not change during the circulation of a written resolution. Do you consider that a similar provision is required to permit the closure of the register for a limited period in respect of meetings at which resolutions are to be moved?	<b><i>A majority of respondents supported this proposal and this will therefore be taken forward.</i></b>
187	“authenticated document” is not defined	<b>Amend</b> to delete ‘authenticated’.	Under s.182(3) the shareholder must be told how he is to signify agreement. The word ‘authenticated’ is not defined under the Law and is unnecessary - the shareholder should just be required to do whatever he has been asked to do to signify agreement.	<b><i>A majority of respondents supported this proposal and this will therefore be taken forward.</i></b>
191(3) (a)  191(3)	General Rules on Voting	<b>Amend</b> to specify that ‘in the case of a company <i>limited by shares</i> , every member <i>present in person or by proxy</i> has one vote in respect of each share, and...’. <b>Amend</b> to specify that every proxy present who has been duly appointed may exercise the voting rights of a member	Clarification  Clarification – not strictly necessary given s.222, but for consistency with s.191(2) which deals with proxies voting on a show of hands.	<b><i>A majority of respondents supported these proposals and these will therefore be taken forward.</i></b>  <b><i>A number of suggestions were made about the drafting of the amendment which will be taken into account during the drafting process.</i></b>

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
199(1)	Requirement to hold annual general meeting	<b>Amend</b> to read 'annual general meeting' in the first sentence.	Clarification	
210	Contents of notice of meetings	<b>Amend</b> to introduce a power for the Department to prescribe by Regulation categories of company that may waive notice requirements.	The intention is that small companies should in future be able to waive notice requirements. Often all members are present at a meeting and this has caused problems where they haven't given proper notice of a meeting.	
210	Contents of notice of meetings	<b>Amend</b> to include a cross reference to the requirements of section 223.	Section 223 includes additional requirements for the content of notice of meetings and as such a cross-reference in section 210 will ensure that these are not overlooked.	
213(2) (a)	EGM Quorum	<b>Amend</b> to replace 'issued share capital' with 'voting rights'.	Clarification	<p><b><i>A majority of respondents supported this proposal in principle and this will therefore be taken forward.</i></b></p> <p><b><i>A number of respondents suggested that sub paragraphs (a) and (b) could be collapsed into one provision and further consideration will be given to this during the drafting process.</i></b></p>



Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
221	<b>Resolutions at meeting</b>	<b>Amend</b> to state that 'resolution' includes all types of resolution identified in section 175(1).	Clarification	
228(1)(b)	<b>Records of resolution and meetings, etc</b>	Amend the reference to 'all proceedings' to read ' <b>the</b> proceedings'.	To make it clear that whilst the proceedings must be minuted it is not necessary for every inconsequential event to be recorded.	
232	Quorum requirements for class meetings	It has been suggested that the Law is unnecessarily prescriptive in setting out quorum requirements for class meetings where class rights will be varied and that this may cause a problem for funds which have more than one class. It has been suggested that the section should be amended or repealed.	Do you consider that section 232 has caused any problems and should the section be amended or repealed? If you suggest that this section be amended, please explain how you consider those amendments should be framed.	<b><i>A majority of respondents suggested that this section should remain but should be subject to the memorandum and articles of the company.</i></b>  <b><i>The Department accepts that this is appropriate and therefore proposes to amend this section to permit the memorandum and articles of a company to vary or disapply the requirements.</i></b>
232 (3)(a)	Class meetings	<b>Amend</b> - in section 232(3)(a) and 233(3)(a), replace 'two persons' with 'one or more persons'.	Self-explanatory.	<b><i>A majority of respondents supported this proposal in principle and this will therefore be taken forward.</i></b>

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
234	Duty to submit annual validation	<b>Amend</b> to clarify that the duty to submit an AV for a particular year arises on 1 January of each year, for every company incorporated before 1 December of the previous year (notwithstanding that the AV need not be completed, filed, delivered, etc, until 31 January). Amend to clarify that where a company is to be voluntarily struck off, wound up, migrated, amalgamated, etc, between 1 January and 31 January of any year in which the company was on the register on 1 December of the previous year, such action is conditional upon the submission of the annual validation and payment of the relevant fee.	Clarification as to the date on which a company becomes liable to submit an AV.	<b><i>A majority of respondents supported this proposal in principle and this will be taken forward.</i></b>
235 (1) (f)	Content of annual validation	<b>Amend</b> s.235(1)(f) to delete the words ‘in its current financial year’.	Clarification. Section 234(1)(a) provides that the annual validation must contain information which is valid on 31 December of the previous year. The words ‘current financial year’ are not therefore necessary.	<b><i>A majority of respondents supported this proposal in principle and this will be taken forward.</i></b>

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
235 (2)	Content of annual validation where a company has a share capital	<b>Repeal</b> section 235(2).	<p>It has been suggested that in the case of funds this section requires too much commercial information to be revealed.</p> <p>It is also difficult for funds to capture all this information for a given date.</p> <p>Finally this information is not required for a specific purpose and its absence will not therefore pose a problem.</p>	<p><b><i>A majority of respondents supported this proposal in principle and this will be taken forward.</i></b></p> <p><b><i>It was noted by a number of respondents that section 235(3) should also be repealed for the same reasons and the Department has decided that this will also be taken forward.</i></b></p>

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
236 (1)	Declaration of compliance (annual validation)	<b>Amend</b> to permit declaration of compliance to be signed by a CSP, subject to confirmation by the CSP that a named director or secretary has confirmed the truth of the contents.	Self-explanatory and permissive only.	<b><i>A majority of respondents supported this proposal in principle and this will therefore be taken forward. Some respondents felt that the need for a signed declaration of compliance to be delivered to the Registrar should be repealed and replaced with a simple requirement for electronic submission of the AV by the CSP with no signature. However, the Department considers it to be essential for an individual authorised by an officer of the company to sign a declaration of compliance to confirm the accuracy of the information contained in the AV, with the sanction of prosecution under section 236(3) for false, deceptive or misleading declarations. The absence of such a requirement for an individual to make such a declaration may over time lead to less diligence on the part of those filing annual validations, to the detriment of the integrity of the data held by the Registrar.</i></b>

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
248	<b>Duty to prepare directors' report</b>	<b>Amend</b> to introduce a waiver provision, mirroring the existing audit exemption provision under section 256.	This strikes an appropriate balance between shareholder protection and cost and is likely to be attractive to very small companies where all the shareholders agree that an annual directors' report is unnecessary.	
251(2)	<b>Delivery of accounts and reports to members and officers</b>	<b>Amend</b> to read 'to a member or officer of the company within 7 days after the date on which the member <b>or officer</b> makes such a request...'	Typographical correction.	
252	Laying of accounts and reports before the AGM	<b>Amend</b> to insert 'annual' before 'general meeting' in both header and text.  <b>Amend</b> to clarify that this duty is subject to the requirements of section 254, in respect of PCCs.	Clarification  Clarification	<b><i>A majority of respondents supported this proposal in principle and this will therefore be taken forward.</i></b>
254	<b>Application of rights to accounts and reports to protected cell companies</b>	<b>Amend</b> to clarify that for PCCs the company need not consolidate the accounts of its core and its cells.	Self-explanatory	
256	<b>Exemption from audit</b>	<b>Amend</b> to permit PCC cells to be individually audit exempt.	Self-explanatory	

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
256(2)	Exemption from audit	<b>Amend</b> to permit an indefinite waiver and to make necessary amendments to existing provisions.	Self-explanatory	<p><b><i>There was near unanimous support for this proposal which will therefore be taken forward.</i></b></p> <p><b><i>Indefinite waiver will be optional and the alternative of annual waivers will remain. It should be noted that the Registry will need to determine the appropriate fee structure before this change can be implemented.</i></b></p> <p><b><i>It is also proposed that the law should be amended to permit the passing of an audit waiver in the financial year to which it relates.</i></b></p> <p><b><i>A number of respondents argued that companies should be permitted to pass an indefinite audit waiver with retrospective effect to cover previous years. The Department does not accept that this is appropriate and this proposal will not be taken forward.</i></b></p>

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
257	Appointment of auditor	It has been suggested that these provisions are too complicated and that sub-sections 2 – 5 should be simplified?	Do you agree? Please give reasons and suggest how these provisions might be simplified.	<b><i>A majority of respondents supported the simplification of these provisions and this proposal will therefore be taken forward. In particular the Department notes that the requirement for appointment within 28 days is causing some difficulties and proposes repealing sub-section (2) and making such consequential amendments to other provisions as are necessary as a result.</i></b>
258(2)(a)	<b>Term of office of auditor</b>	<b>Repeal</b>	This is considered to lead to unnecessary bureaucracy in re-appointing an auditor in these circumstances.	
283	No conversion into stock	<b>Repeal.</b>	It is felt that this imposes an unnecessary restriction.	<b><i>A majority of respondents supported this proposal in principle and this will therefore be taken forward.</i></b>
284	<b>Different amounts may be paid on shares</b>	<b>Amend</b> so that a company is permitted to do anything mentioned in sub-sections (a), (b) or (c) if so authorised by the terms of issue of the shares in question.	Self-explanatory	

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
287	Power of company to alter share capital	<p><b>Delete</b> the words ‘alter its memorandum so as to’ in s.287(1).</p> <p><b>Repeal</b> sub-section (1)(c).</p> <p><b>Repeal</b> section 287(3).</p> <p>Transitional provisions will be required in respect of companies formed before the introduction of the new Law, which have an authorised share capital until 1 July 2011, under the existing transitional provisions.</p>	These sections are no longer necessary, as companies will no longer have an authorised share capital in their memorandum.	<b><i>A majority of respondents supported this proposal in principle and this will therefore be taken forward.</i></b>
289(1)	Transfer of shares	<b>Amend</b> to provide that ‘The shares of any shareholder in a company are transferable <i>only to the extent and</i> in the manner provided by the company’s memorandum or articles, <i>which may provide that the shares are not transferable.</i> ’	Clarification.	<b><i>Opinion was evenly divided on this proposal. On balance, the Department has decided to proceed with the proposed amendment. A number of suggestions regarding the precise wording of the sub section will be taken into account in the drafting process.</i></b>



Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
291-293	Exercise by directors of power to issue shares	<b>Repeal</b> these sections and replace with a general provision that directors may issue shares, to the extent permitted by the Company's memorandum and articles.	Self-explanatory.	<i><b>There was unanimous support for this proposal and this will therefore be taken forward.</b></i>
295(2) 296(6)	Certificate	<b>Amend</b> to exempt OEICs from the certification provisions as they are proving unworkable.	Self-explanatory.	<i><b>There was unanimous support for this proposal, with a significant number of respondents arguing that the amendment should go further and repeal the sub sections in their entirety. On balance the Department agrees that the sub-sections should be repealed in their entirety and this will be taken forward.</b></i>

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
295 296	Consideration to be decided by board of directors	<b>Amend</b> to delete the words 'and to all existing members' in s.295(1)(b).	<p>Directors have an obligation to act in the best interests of the company, not individual shareholders.</p> <p>Also, do you consider that these sections generally have caused any difficulties in their application? If so, please identify the difficulties and any suggested amendments.</p>	<b><i>A clear majority of respondents supported this proposal in principle and this will therefore be taken forward. A number of additional amendments were proposed by individual respondents, but there was no clear consensus and the Department does not propose any further amendments.</i></b>
309	Recovery of distributions	<p>It has been suggested that a time limit should be introduced for recovery of distributions from members under s.309(1).</p> <p>It has also been suggested that section 309 should be amended to include a 'whitewash' provision for directors' liability under this section, i.e. no recovery where the company would have passed the solvency test at the time the distribution was made and would pass it at the time recovery is sought.</p>	<p>Do you agree that a time limit should be introduced and, if so, what period of time should be allowed for the recovery of distributions? Please give reasons for your answer.</p> <p>Do you agree that such a provision should be included?</p>	<p><b><i>A majority of respondents supported the proposal that there should be a time limit and this will therefore be taken forward. A number of suggestions were made as to the appropriate period of time and after careful consideration the Department proposes introducing a time limit of 24 months.</i></b></p> <p><b><i>There was unanimous support in principle for the proposal to introduce a whitewash provision and this will therefore be taken forward. Detailed comments received will be taken into account during the drafting process.</i></b></p>

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
310(a)	Power to issue redeemable shares	<b>Amend</b> cross-reference to section 325 in the current Law, to section 291.	Correction of error.	<i><b>There was unanimous support for this proposal and this will therefore be taken forward.</b></i>
311(3)	Redemption only of fully paid shares	<b>Amend</b> to provide that a company may redeem a partly paid up share to the extent that it has been paid up.	Self-explanatory.	<i><b>A majority of respondents supported this proposal in principle and this will therefore be taken forward.</b></i>
314	Authority for acquisition	<b>Amend</b> section 314 to mirror section 315(1) so as to permit non-market acquisition of own shares where authorised by memorandum or articles.  Repeal section 314(3) and 314(4).	Self-explanatory.	<i><b>A small majority of respondents supported this proposal in principle. A number of respondents felt that they could not comment on the merits until they had sight of the drafting of the legislation.</b></i>  <i><b>The Department has decided that this proposal will therefore be taken forward.</b></i>
323(2)	Effect of intervening insolvency on redemption or acquisition of shares	<b>Amend</b> s.323(2) to read ‘ <i>If the date on which the shares were to be redeemed or acquired is a date after the commencement of the winding up...</i> ’	Clarification.	<i><b>A majority of respondents supported this proposal in principle and this will therefore be taken forward.</b></i>

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
336 – 340	Takeovers	<b>Amend</b> to address concerns that the effect of section 337(1) is that the transferee has to wait for the expiration of 4 months before it can begin to effect squeeze out.	The provisions will be amended to provide that the transferee can effect squeeze out once 90% of shareholders have approved the offer, without waiting for the expiry of the four months period.	
337	Right of transferee to acquire shares	<b>Amend</b> to read ‘not less than 90%’, instead of ‘90%’.	Minor amendment.	<b><i>A majority of respondents supported this proposal in principle and this will therefore be taken forward.</i></b>
337	Making the offer to overseas shareholders	<b>Amend to provide a provision similar to that contained in section 978 of the Companies Act 2006 to expressly permit the making of an offer by publication in the Gazette Officielle to shareholders in jurisdictions with securities laws that restrict the direct communications of such offers.</b>	Some jurisdictions have securities laws that restrict the making of an offer to persons resident in those countries. In England and Wales, the Companies Act 2006 introduced a procedure under section 978 to address the difficulty that this created regarding the making of offers under the Companies Act to such persons. The Department considers that an equivalent provision in the Guernsey Law would be advantageous as it would provide greater certainty as to how an offer can be made in such circumstances without contravening the local law of shareholders’ countries of residence.	

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
337(2)	Nature of consideration on compulsory acquisition of shares	<b>Amend</b> to clarify that a notice to acquire must present the dissenting shareholder with the same choices of consideration as were presented in the offer.	This is necessary to clarify the position where an offer includes a choice of forms of consideration, e.g. shares or cash. In such circumstances, the recipient of a notice to acquire should be given the same choice as was presented in the offer. The section as currently drafted leaves some ambiguity as to what constitute the 'terms on which the shares of the approving shareholders are to be transferred'. Where all approving shareholders have chosen the same form of consideration, this could be interpreted as requiring the transferee to pay consideration in the form chose by the approving shareholders as this is a term of the transfer of all the shares of the approving shareholders. However, it is considered that in such circumstances the choice of consideration should remain open to the dissenting shareholder.	

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
355(1)	<b>Striking defaulting company off the Register of Companies</b>	<b>Amend</b> to include a company that does not have at least one director in the list of circumstances where this section applies (see proposed amendment to section 135 above.	A company is required to have at least one director but it possible in the case of resignations that a company is left in breach of this requirement. In such cases it should be liable to be struck off the Register.	
359(a) and (b)	<b>Circumstances in which applications for voluntary striking off not to be made: proceedings connected with solvency not concluded.</b>	<b>Repeal</b> sub-sections (a) and (b) accordingly to ensure consistency with the amendments made to section 89.	The Law to which the sections refer does not apply to companies and this section should therefore be repealed.	

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
371(10)	Restoration to the Register of Companies	<b>Amend</b> to include a discretion for the Registrar to restore a company to the register where the company was struck off for an error which was subsequently remedied and in respect of which all fees and any applicable late fees have been paid.	To avoid the need for the expense of court proceedings where it is equitable to restore.	<b><i>A majority of respondents supported this proposal in principle and this will therefore be taken forward. For the avoidance of doubt, the Department proposes widening the Registrar's discretion to permit administrative restoration where a company was not struck off 'in error or in circumstances in which it should not have been struck off' but was correctly struck as a result of a default which was subsequently remedied, subject to the Registrar being satisfied that the conditions in subsections 371(10)(b) and (c) are satisfied. The Department also proposes that the Registrar should be required to consult with the GFSC in the case of a company that was a supervised company before it was struck off.</i></b>

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
417(4)	<b>Examination of liquidator's accounts by Commissioner</b>	<b>Amend</b> section 417(4) to repeal the requirement to place 2 notices in La Gazette Officielle stating the date of the distribution fixed under section 417(2)(b).	This requirement has been causing practical difficulties and is considered to lead to unnecessary delay in distributing the company's assets following a creditor's meeting.	
419	Final distribution	<b>Amend</b> to provide that a final distribution under subsection 2 shall not constitute a distribution within meaning of section 301 and for the purposes of section 303 of the Law.	Clarification.	<b><i>There was unanimous support for this proposal and this will therefore be taken forward.</i></b>
434(3) and 435(3)	<b>Civil liability of directors for wrongful trading</b>	Amend 'every step' to read 'every reasonable step'.	The Department considers that every step arguably places an excessively high burden on Directors and that 'every reasonable step' is more appropriate.	
437(1)(a)	<b>Companies which can be protected cell companies</b>	Amend to include 'authorised collective investment scheme' to read 'authorised or registered collective investment scheme'.	This is to ensure that registered schemes are covered by the provisions of this section.	
447(2)(b)	<b>Recourse agreements</b>	Amend to specify that the resolution referred to in the final sentence is an ordinary resolution.	Self-explanatory.	



Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
461 (5)	Functions of receiver and effect of receivership orders	<b>Amend</b> to move the bracket in front of 'within' back before the word 'including'.	Typographical clarification.	<b><i>There was unanimous support for this proposal and this will therefore be taken forward.</i></b>
498	Electronic documents	<b>Amend</b> to insert a new provision authorising the destruction of original hard copy records, after a period of 3 years, where an electronic copy is retained and to provide that the registrar is under no obligation to retain the originals of documents delivered in electronic form, provided the information in them has been recorded in the register.	UK law has similar provisions (see section 1083 of the Companies Act 2006) and this facilitates the move to electronic record holding by the Registry.	<b><i>A majority of respondents supported this proposal in principle and this will therefore be taken forward.</i></b>
499(1)(c)	<b>Functions of Registrar</b>	<b>Amend</b> 'assisting them and promoting' to read 'assisting them <b>and/or</b> promoting' in the final paragraph.	Self-explanatory.	
515(3)	<b>Criminal liability of officers, etc</b>	<b>Amend</b> 'his Law' to read 'this Law'.	Typographical correction.	
519	Striking off for persistent or gross contraventions	<b>Amend</b> to clarify that a single gross contravention of the current or former Law will justify striking off, as well as persistent contraventions.	For the sake of clarity i.e. that one gross contravention is sufficient for an opinion under section 519.	<b><i>A majority of respondents supported this proposal in principle and this will therefore be taken forward.</i></b>

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
523	Service of documents	<b>Amend</b> to include provision for service by e-mail where the intended recipient has agreed to accept service by e-mail and provided an e-mail address for that purpose. Deem receipt 48 hours after sending where the sender is able to show that the e-mail was properly addressed.	Self-explanatory.	<b><i>A majority of respondents supported this proposal in principle. A number of respondents suggested that such a provision should be subject to any provision to the contrary in a company's articles and the Department accepts that this is appropriate. This proposal will therefore be taken forward.</i></b>
527(2)	Definition of 'solvency test'	<b>Amend</b> 'directors' to read 'board of directors' for the sake of consistency and accuracy.  Note – this would no longer be relevant if 527(1)(b) was repealed.		<b><i>A majority of respondents supported this proposal in principle and this will therefore be taken forward.</i></b>
530	<b>Meaning of 'supervised company'</b>	<b>Amend</b> to delete references to companies that 'formerly held a licence', 'former licensees' and former licensed institutions'.	It is considered that a company that is no longer supervised by the Guernsey Financial Services Commission should not require the consent of the Commission to migrate.	

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
530	<b>Meaning of ‘supervised company’</b>	<b>Amend</b> to ensure that registered investment schemes are covered by this definition.	Self-explanatory.	
531(c)	<b>Meaning of ‘holding company’, ‘subsidiary’ and ‘wholly owned subsidiary’</b>	The terms ‘deed’ and ‘debenture’ will be reviewed by with a view to replacing these with alternative descriptions that cover all equivalent concepts in Guernsey Law to which they are intended to refer.	Self-explanatory.	

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
532	Definition of closed-ended investment company	<p>The definition of closed-ended investment companies states that:</p> <p><i>‘Investors are not entitled under the terms of the scheme (i) to have their units redeemed or repurchased by, or out of the funds provided by, the body, or (ii) to sell their units on an investment exchange, at a price related to the value of the property to which they relate’.</i></p> <p>It has been suggested that this may cause problems as under certain schemes shares can be redeemed (though at the discretion of the directors rather than the shareholders). Further, the discount management mechanism in operation for many listed closed-ended funds is to effect share repurchases on the market.</p>	Do you consider that this has caused any difficulties in practice and, if so, what amendments would you suggest are necessary to overcome these? Please give reasons for your answer.	<b><i>A number of respondents noted that the key factor is consistency with the Protection of Investors (Guernsey) Law, 1987. The Department therefore proposes that a Closed Ended Investment Company is defined by reference to that Law.</i></b>

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
Schedule 1, Paragraph 20	<b>Powers of administrator</b>	The terms 'deed' and 'debenture' will be reviewed by with a view to replacing these with alternative descriptions that cover all equivalent concepts in Guernsey Law to which they are intended to refer.	Self-explanatory	
Part V	<b>Conversions</b>	<b>Amend</b> to introduce a provision permitting a protected cell of a protected cell company to become incorporated.	Self-explanatory	
Part XVIII	<b>Protection for minority shareholders in</b>	<p><b>Amend to provide that the ability to compulsorily acquire the shares of a minority shareholder only exists where an offer to relates to the acquisition of all the shares in a company, or all the shares of a particular class.</b></p> <p><b>Amend to provide that shares already held by the offeror do not count towards the 90% acceptance threshold.</b></p>	<b>Notwithstanding the protection given to minority shareholders by section 339 of the Law, the Department considers it appropriate to make these amendments to ensure that minority shareholders are adequately protected without the need to resort to Court proceedings.</b>	

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
Part XX	<b>Striking Off</b>	<b>Amend</b> to provide that an application for voluntary strike off may not be made unless a director of the company certifies that the company has no known debts or outstanding liabilities.	Self-explanatory. A company should not be permitted to be voluntarily struck off the Register if it has outstanding liabilities.	
Parts XX, XXII and XXIII	<b>Restoration of wound up companies</b>	<b>Amend</b> to make express provision for the restoration of companies that have been dissolved on completion of a winding up, in appropriate circumstances.	At present, the Companies Law does not make express provision for this, unlike the Laws of other jurisdictions, including England and Wales, which have influenced the development of Guernsey company law. There are circumstances where it would be appropriate for a wound up company to be restored to the Register, subject to appropriate terms and conditions, for example to permit the disposal of an asset of the former company that has come to light after completion of the winding up. An express provision would remove any potential uncertainty over the extent of the Court's power to order restoration in such circumstances.	

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
Part XXIV	Release and discharge of liquidator	<b>Amend</b> to introduce an express power for the Court, in appropriate circumstances and on application, to release a liquidator on completion of a winding up and to discharge him or her from liability in respect of his or her acts or omissions, save for acts of fraud, wilful misconduct or gross negligence, subject to such terms, conditions and limitations as the Court thinks fit.	At present the Companies Law does not make express provision for this. An express provision would remove any potential uncertainty over the extent of the Court's power to make such an order in appropriate circumstances. For example, in the absence of an Official Receiver in Guernsey, it is important that experienced insolvency practitioners are prepared to act as liquidators of Guernsey companies that are being compulsorily wound up. An express power for the court to release and discharge the liquidator on completion of the winding up will assist in ensuring that suitable practitioners are willing to do so.	

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment	Comment following consultation
Part XXIV	<b>Commission may be heard on winding up application</b>	<b>Amend</b> to provide that a copy of any application to the Court made by a liquidator during the course of the winding up of a supervised company must be served on the Guernsey Financial Services Commission not less than 7 days before the hearing of the application and that the Commission has the right to make representations to the Court at the hearing of the application.	This is to ensure that the Commission is aware of, and permitted to address the Court in respect of, any application to the Court made by the liquidator of such a company during the course of a winding up. It is foreseeable that such applications may have an impact on regulatory action being taken or contemplated by the Commission.	



## PART II

## REVISED PROPOSALS – AMENDMENTS NOT BEING TAKEN FORWARD

6(1)	Company limited by shares	<b>Amend</b> to replace ‘shall’ with ‘may’.	It should not be compulsory to have a share capital.	<i><b>A clear majority of respondents disagreed with this proposal and the Department has decided not to take this forward.</b></i>
15(3)	Memorandum of incorporation	<b>Repeal</b> the requirement for signature by the founder member in s.15(3).	This has caused practical difficulties for PCCs converting into ICCs as sections 48(5)(a), 17(2)(a) and 15(3) read together require the signature of all existing members. Also, the obligation to include signatures has caused some difficulty in implementing a fully electronic registry. The removal of the signatures requirement will place the onus on corporate services providers to they have all necessary authority from their clients when forming the company.	<i><b>Opinion was divided on this proposal. A significant number of respondents argued forcefully that signature of the memorandum is a fundamental tenet of the company formation process and is vital for certainty so should be retained. After careful consideration of the comments received, the Department has decided not to take this proposal forward.</b></i>
15(4)	Memorandum of incorporation	<b>Repeal</b> this sub-section.	This section is unnecessarily prescriptive and can be repealed without negative consequence.	<i><b>Opinion was divided on this proposal. After careful consideration of the comments received, the Department has decided not to take this proposal forward.</b></i>

16(3)	Articles of incorporation	<b>Amend</b> , for the avoidance of doubt, to clarify the current position that the standard articles <i>currently in force</i> shall apply to a company save to the extent that they have been varied or disapplied.	To clarify that in the event of amendments to the standard articles prescribed by the Department, the amended standard articles automatically apply to a company that has not varied or disapplied them, regardless of when the company was incorporated.	<b><i>A majority of respondents disagreed with this proposal and the Department has decided not to take this forward.</i></b>
17(2)(f)	Application for incorporation	<b>Amend</b> to clarify that in the case of a company with a share capital, the initial share capital may be unlimited.	Clarification.	<b><i>A majority of respondents disagreed with this proposal and the Department has decided not to take this forward.</i></b>
30	Registered office	<b>Amend</b> to introduce a criminal offence for breach of s.30(1).	Reference to proceedings for an offence under subsection (5) is made in subsection (7) but no offence is created under this section.	<b><i>One respondent noted that each of the components of section 30(5) are subject to criminal sanctions in their own right so it is not necessary for a separate criminal offence to be created under section 30. The Department accepts this argument and this proposal will not therefore be taken forward.</i></b>

32	Registered office ineffective	<b>Amend</b> to introduce a provision requiring service of formal notices and documents by publication in La Gazette Officielle, where service is to be effected on a company in respect of which a notice of registered office ineffective has been served.	A company must have a registered office at all times, and an ineffective registered office must therefore continue as the registered office until such time as the office is validly changed. However, it does not seem to be desirable for service on an ineffective registered office to constitute effective service in the case of formal notices and documents. Do you consider that such a change is necessary and desirable? What practical difficulties might such a provision cause and how could these be resolved?	<b><i>A majority of respondents agreed that an alternative means of service should be provided, but there was no clear consensus on what this should be. A number of respondents were opposed to the proposal of publication in the La Gazette Officielle as it may not be appropriate for confidential information, it would lead to considerable expense, and it may not be practicable for long documents. One respondent proposed service on the Registrar for publication as the Registrar sees fit. The Department has not been able to identify a satisfactory alternative arrangement and so, on balance, has decided not to take forward any amendment to this section.</i></b>
35(2)	Details to appear in company's correspondence	<b>Amend</b> to replace 'particulars' with 'name'.	Consistency with other sub-sections.	<b><i>A clear majority of respondents disagreed with this proposal and the Department has decided not to take this forward.</i></b>

38(3)	Restriction on Alteration of Memorandum	<b>Amend</b> to replace 'may' with 'shall'.	It should be compulsory to delete this on migration.	<i><b>Opinion was evenly divided on this proposal with a number of respondents arguing that the amendment was unnecessary. On balance, after careful consideration of the comments received, the Department has decided that the proposed amendment is not strictly necessary and will not take this forward.</b></i>
84	Migration	Is the definition of 'migration details' working in practice, or are the provisions too prescriptive?	Please provide comments based on practical experience.	<i><b>Opinion was divided on this topic. The Department has carefully considered all comments received and in the absence of a clear consensus that amendment is necessary has decided not to propose any amendments to this section.</b></i>

128	Response to Request for inspection or copy	<b>Amend</b> to allow two weeks for responding under sub-section 1 for the sake of consistency with the provisions of s.150 in respect of directors.	Consistency with s.150.	<i>Opinion was divided on this proposal. One respondent identified that sections 144 and 174 also contain the period of 5 days. A number of respondents suggested that the period of two weeks in section 150 should be amended so that the period of 5 days is consistent for such disclosure matters throughout the Law. On balance the Department accepts this argument and will therefore not take forward the proposal to amend section 128 but will instead take forward a proposal to amend the period under section 150 to 5 days.</i>
130	Right to inspect register of members – exceptions	<b>Delete</b> ‘members in respect of any’ in the 3 <sup>rd</sup> line and ‘held by them’ in the last line.	So that mutual fund promoters are not required to reveal confidential client lists.	<i>Opinion was divided on this proposal. Concerns were expressed by a number of respondents regarding transparency and the impact on the ability of legitimate investors to identify and contact other investors. On balance, the Department has decided not to proceed with this proposal.</i>

137	Eligibility/disqualification of directors	<b>Amend</b> to provide that no person shall be appointed or hold office as a director within a period of 5 years of conviction of a criminal offence on indictment before the Royal Court of Guernsey leading to a sentence of imprisonment of 6 months or longer, or is convicted of an offence against the law of a foreign country that is punishable by imprisonment for a period of twelve months or longer, except where on application to the Royal Court the applicant can prove that the conviction does not render him unfit to hold office.	Self-explanatory.	<b><i>A majority of respondents were opposed to this proposal and expressed concerns regarding the potential for offences in jurisdictions that have very different moral and criminal standards to Guernsey to be irrelevant to fitness to hold office in Guernsey. The Department has decided on balance that these concerns have merit and that the existing provisions regarding disqualification are sufficient.</i></b>
145	Alternate Directors	<b>Amend</b> to provide an exception to sub-section 1 for appointments lasting less than 7 days and to introduce a new section requiring retrospective notification of all such appointments as part of the annual validation.	Under the law, 'director' includes alternate director. This limited exception is appropriate and proportionate.	<b><i>A majority of respondents disagreed with this proposal and the Department has decided not to take this forward.</i></b>
155	Minutes as Evidence	<b>Amend</b> to permit signature by any director present at the meeting who is authorised for that purpose.	Self-explanatory.	<b><i>Opinion was divided on the merits of this proposal. The Department has carefully considered the comments received and on balance has decided not to proceed with this proposal.</i></b>

157	Liability for acts of alternate directors	<b>Insert</b> a new provision that where an alternate director is appointed for less than seven days under the proposed amendment to s.145, a director is liable for all the acts of his alternate as though they were his acts.	To ensure that the registered director retains responsibility for the acts of temporary unregistered alternate directors.	<b><i>A clear majority of respondents disagreed with this proposal and the Department has decided not to take this forward.</i></b>
187	“authenticated document” is not defined	<b>Amend</b> to delete ‘authenticated’.	Under s.182(3) the shareholder must be told how he is to signify agreement. The word ‘authenticated’ is not defined under the Law and is unnecessary - the shareholder should just be required to do whatever he has been asked to do to signify agreement.	<b><i>A majority of respondents supported this proposal and this will therefore be taken forward.</i></b>
191(1)(a)	General Rules on Voting	<b>Amend</b> to specify that ‘in the case of a company <i>limited by shares</i> , every member has one vote in respect of each share, and...’	Clarification. A share capital is not compulsory.	<b><i>Opinion was divided on the merits of this proposal. In light of the decision not to take forward the proposed amendment to section 6(1) the Department is of the view that this amendment is unnecessary and this proposal will not be taken forward.</i></b>

222(2)	Right to appoint proxies	<b>Amend</b> to delete ‘having a share capital’ and replace with ‘limited by shares’.	Clarification	<b><i>A number of respondents had no objection to this proposal, whilst one felt that it was unnecessary. In light of the decision not to take forward the proposed amendment to section 6(1) the Department is of the view that this amendment is unnecessary and this proposal will not be taken forward.</i></b>
224	Proxy Appointment	These sections introduced restrictions in respect of the notice periods for appointment of a proxy and termination of a proxy. It has been suggested that this (in particular that lodging of a proxy cannot be requested greater than 48 hours before the relevant meeting) may cause difficulties where there are companies (in particular funds or listed companies) with large numbers of shareholders, as 48 hours may not give the relevant administrator sufficient time to process all of the proxies. It has been suggested that section 224 should be repealed.	Do you consider that this requirement has caused any problems and should the section be repealed?	<b><i>A number of detailed comments were received on this topic. A majority of respondents felt that section 224 should not be repealed. On balance, after careful consideration of the comments received the Department has decided not to propose any amendments to this section.</i></b>



288	Share capital reduction	<b>Amend</b> to include an optional new court approved share capital reduction process.	A court approved share capital reduction process may be preferable in some instances, particularly for cross border transactions where a court process may be required for such reductions to be recognised in other jurisdictions.	<i><b>Opinion was divided on this proposal. Those in favour felt it would provide increased certainty in circumstances where this was seen as desirable but those against felt that it was not necessary, would undermine the abolition of the capital maintenance rules and would lead to anything other than a court approval being seen as less certain. On balance the Department has decided not to proceed with this proposal.</b></i>
294(2) 294(3)	Consideration for issue of shares	<b>Repeal</b> these two sub-sections.	The concepts of share capital account and authorised share capital are no longer necessary.	<i><b>Opinion was divided on this proposal with a slim majority in favour. On balance the Department has decided not to take this proposal forward but instead to amend section 294 to provide that for the avoidance capital can be paid out by the Board of Directors as a distribution in accordance with the solvency test.</b></i>

301-302	Distribution	It has been suggested that the use of the word 'distribution' in this context may be emotive with reference to historical tax issues.	<p>Do you consider that this is causing any problems in practice and, if so, how would you suggest the difficulties are remedied?</p> <p>Also, please provide any general feedback on how the distribution process is working in practice and how the Law could be improved in this respect.</p>	<p><b><i>A number of detailed comments were received in respect of this proposal. The Department has considered this issue further in discussion with legal and accountancy professionals. As a result of these discussions it is not proposed that any amendments are made to these sections.</i></b></p>
303(3)	Procedure for making a distribution other than dividend	<b>Amend</b> to delete the word 'made' in the last sentence.	Clarification.	<p><b><i>Opinion was divided on this proposal. On balance the Department has decided that the amendment is not necessary and this will not be taken forward.</i></b></p>
303, 304, 305, & 309	Relationship between dividends and distributions	It has been suggested that the difference in treatment between dividends and distributions in these sections is not appropriate.	Do you consider that the distinction is appropriate? If not, have you encountered any difficulties with these provisions in practice?	<p><b><i>Opinion was divided on the merits of the current difference in treatment. A number of detailed comments were received in respect of this proposal. The Department has considered this issue further in discussion with legal and accountancy professionals. As a result of these discussions it is not proposed that any amendments are made to these sections are made.</i></b></p>

315	Authority for market acquisition	<b>Repeal</b> section 315(3)(b) and 315(3)(c).	Considered inflexible.	<b><i>A majority of respondents disagreed with this proposal and the Department has decided not to take this forward.</i></b>
319	Shares redeemed or acquired to be cancelled	<b>Amend</b> to delete the words '...and the amount of the company's share capital shall be diminished accordingly.'	To reflect the fact that there is no longer a concept of authorised share capital.	<b><i>A majority of respondents disagreed with this proposal and the Department has decided not to take this forward.</i></b>
329	Financial assistance	<b>Amend</b> to provide that companies may provide financial assistance for the purchase of their shares.	This will harmonise Guernsey Law with UK Law in this area.	<b><i>A majority of respondents disagreed with this proposal and the Department has decided not to take this forward.</i></b>
483(c)	Beneficial Ownership	When the new Law was introduced, there was some concern that the definitions of open-ended investment company and closed-ended investment company were not consistent with the definitions in the Protection of Investors Law. Amendments to the POI Law should now have resolved this concern.	Please indicate if there remains any concern on this topic.	<b><i>A number of respondents noted that the key factor is consistency with the Protection of Investors (Guernsey) Law, 1987. The Department therefore proposes that a Closed Ended Investment Company is defined by reference to that Law.</i></b>

513(1)(b)	Criminal penalties	<b>Amend</b> to insert 's.247' into the list of sections - failure to comply with requirements of s.243 or s.244.	Self-explanatory.	<b><i>A number of respondents noted that section 247 is in fact already listed under section 513(b) and the Department accepts that there is therefore no need for the first proposed amendment to be made.</i></b>
513(1)(c)		<b>Amend</b> to insert 's.30' into the list of sections - see comment regarding creating a criminal offence under s.30, above.		<b><i>One respondent argued that each of the components of section 30(5) are subject to criminal sanctions in their own right so it is not necessary for a separate criminal offence to be created under section 30. The Department accepts this argument. It therefore follows that there is also no need for section 30 to be listed under sections 513(1)(b) or 513(1)(c) and this proposal will not be taken forward.</i></b>

527(1)	Definition of 'solvency test'	It has been noted that other jurisdictions with a solvency test only have the cash flow test (save for where the company is migrating into or out of the jurisdiction).	Do you consider that it would be appropriate for Guernsey to move to such a test by repealing the balance sheet test provision in s.527(1)(b) for all circumstances except migrations? Please give reasons for your answer.	<b><i>Opinion was almost evenly divided on this proposal, with a small majority against. After careful consideration of the detailed comments received, the Department has decided not to take this proposal forward.</i></b>
527(2)(a)	Solvency test	<b>Amend</b> to replace 'must' with 'may'.  Note – this would no longer be relevant if 527(1)(b) was repealed.	Self-explanatory.	<b><i>Opinion was divided on the merits of this proposal. A number of respondents felt that replacing 'must' with 'may' would create a lack of certainty in many cases and would render the section void of purpose. On balance the Department has decided not to proceed with this proposal.</i></b>
532	Set off	It has been suggested it should be clarified that the definition of set-off includes both bilateral and multilateral contractual arrangements, for example in section 376(1)(b), Section 419(1)(c) and Section 461(5).	Do you consider that there is any scope for confusion in the current Law and/or that there is a need for 'set-off' to be defined in the Law? Please give reasons for your answer.	<b><i>Opinion was evenly divided on the need for a definition in the Law. On balance, after careful consideration of the comments received the Department has decided not to take this proposal forward.</i></b>