



Jersey

COMPANIES (UNCERTIFICATED SECURITIES) (JERSEY) ORDER 1999

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COMPANIES (UNCERTIFICATED SECURITIES) (JERSEY) ORDER 1999

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THE ECONOMIC DEVELOPMENT COMMITTEE, in pursuance of Articles 50, 51A and 219 of the [Companies \(Jersey\) Law 1991](#) and after having consulted the Jersey Financial Services Commission, orders as follows –

Commencement [[see endnotes](#)]

PART 1

INTRODUCTORY

1 Interpretation

(1) In this Order, “computer system” means –

- (a) a computer - based system; and
- (b) its related facilities and procedures,

that is provided by an authorized operator and by means of which title to units of a security can be evidenced and transferred, in accordance with this Order, without a written instrument.

(2) In this Order –

“approved operator” means a person who is approved by the Commission under Article 4 as an operator of a computer system, and whose approval is not for the time being suspended;

“authorized operator” means a person who is an approved operator or a recognized operator;

“certificate” means a certificate or other written instrument or document of title to units of a security, or evidencing title to units of a security;

“certificated unit of a security” means a unit of a security that is not an uncertificated unit of a security;

“competent authority” means a person or body authorized to approve persons to operate computer systems under the laws of –

- (a) any other British Island;
- (b) a member state of the European Union; or
- (c) any other country or territory recognized for the purpose of this Order by the Commission;

“computer instruction” means an instruction that is sent or received by means of a computer system;

“Court” means the Royal Court;

“generate”, in relation to an operator’s instruction, means to initiate the procedures by which the instruction comes to be sent;

“guidance”, in relation to an authorized operator, means guidance with respect to the provision of a computer system that –

- (a) is issued by the authorized operator;
- (b) is issued in writing or in some other legible form; and
- (c) is intended to have continuing effect;

“instruction” includes an election, acceptance or other message of any kind;

“interest in a security” means a legal or equitable interest or right in relation to a security (for which purpose a legal or equitable interest includes –

- (a) an absolute or contingent right to acquire a security created, allotted or issued or to be created, allotted or issued; and
- (b) the interests or rights of a person for whom a security is held by a custodian or depositary);

“issue”, in relation to a new unit of a security, means to confer title to a new unit on a person;

“issuer” means a person who has issued a security that is a participating security;

“issuer’s instruction” means an authenticated computer instruction that is attributable to an issuer;

“Law” means the [Companies \(Jersey\) Law 1991](#);

“member”, in relation to a computer system, means –

- (a) a person who is permitted by an authorized operator to transfer, by means of that system, title to uncertificated units of a security held by the authorized operator; or
- (b) 2 or more persons who are jointly so permitted to do so;

“member’s instruction” means an authenticated computer instruction that is attributable to a member of a computer system;

“officer”, in relation to an issuer –

- (a) where the issuer is a company, includes a director, manager or secretary of the company;
- (b) where the issuer is a partnership, includes any of its partners or (in the event that no partner is situated in Jersey) any person in Jersey who is acting on behalf of any of its partners; and
- (c) where the issuer is neither a company nor a partnership, includes any member of its governing body or (in the event that no member of its governing body is situated in Jersey) any person in Jersey who is acting on behalf of any member of its governing body;

“operator’s instruction” means an authenticated computer instruction that is attributable to an authorized operator;

“operator’s system”, means those facilities and procedures that –

- (a) are part of a computer system; and
- (b) are maintained and operated by or for an authorized operator,

by which the authorized operator generates instructions and receives computer instructions from other users of the system and by which persons change the form in which units of a participating security are held;

“participant”, in relation to a computer system, means a person who as regards that system is an authorized operator, issuer, member, settlement bank or user;

“participating security” means a security the title to units of which is permitted by an authorized operator to be transferred by means of a computer system;

“recognized operator” means a person who is recognized by the Commission under Article 5 as an operator of a computer system, and whose recognition is not for the time being suspended;

“register of company members” means a register of members maintained by a company under Article 41 of the Law;

“register of securities” –

- (a) in relation to shares, means a register of company members; and
- (b) in relation to units of a security other than shares, means a register maintained by the issuer (under this Order or otherwise) of persons holding the units;

“rules”, in relation to an authorized operator, means rules that are made or conditions that are imposed by the authorized operator with respect to the provision of a computer system;

“serious offence” means one for which the maximum penalty (if it were committed by an individual) would include a term of imprisonment of not less than one year;

“settlement bank”, in relation to a computer system, means a person who has contracted to make payments in connection with transfers of title to uncertificated units of a security by means of that system;

“share” means a share (or stock) in the share capital of a company;

“sponsor”, in relation to a computer system, means a user who is permitted by an authorized operator to send authenticated computer instructions that are attributable to another person and to receive authenticated computer instructions on another person’s behalf;

“uncertificated” means not recorded by means of a certificate;

“uncertificated unit of a security” means a unit of a security to which title –

- (a) is recorded on the relevant register of securities as being held in uncertificated form; and
- (b) may be transferred under this Order by means of a computer system;

“unit of a security” means the smallest possible transferable unit of the security (for example, a single share);

“user”, in relation to a computer system, means a person who is permitted by an authorized operator to send and receive authenticated computer instructions.¹

(3) For the purposes of this Order –

- (a) a computer instruction is authenticated if it complies with the specifications of the authorized operator to which paragraph 5(b) of the Schedule refers;
- (b) a computer instruction is attributable to a person if it is expressed to have been sent by that person, or if it is expressed to have been sent on behalf of that person, in accordance in either case with the specifications of the authorized operator to which paragraph 5(c) of the Schedule refers;
- (c) a computer instruction may be attributed to more than one person; and
- (d) an addressee is the person to whom an authenticated computer instruction indicates that it is addressed in accordance with the specifications of the authorized operator drawn up in order to satisfy paragraphs 5(d), (e) and (f) of the Schedule.

2 Purposes of Order

- (1) The general purpose of this Order is to allow title to units of a security to be evidenced and transferred by means of a computer system, without a written instrument, where the requirements of this Order are complied with.
- (2) The particular purposes of Part 2 are to provide for the approval or recognition, and the control, of persons who operate computer systems.
- (3) The particular purposes of Part 3 are –
 - (a) to allow companies and other persons, by using computer systems, to permit the holding in uncertificated form of units of securities issued by them;

- (b) to allow the transfer, by means of computer systems, of title to units of those securities; and
 - (c) to establish, in relation to uncertificated units of securities, the duties and obligations of issuers with respect to the keeping of registers, the registration of transfers and other matters.
- (4) The particular purposes of Part 4 are –
 - (a) to specify circumstances in which persons who are expressed to have sent authenticated computer instructions, and persons on whose behalf those instructions are expressed to have been sent, are not allowed to deny to the persons to whom those instructions are addressed that information relating to them is correct;
 - (b) to specify circumstances in which persons to whom authenticated computer instructions are addressed may accept that information relating to them is correct; and
 - (c) to specify circumstances in which persons suffering loss are to be compensated by authorized operators of computer systems.

PART 2

AUTHORIZED OPERATORS OF COMPUTER SYSTEMS

3 Application for approval or recognition

- (1) A person may apply to the Commission –
 - (a) for approval under Article 4 as an operator of a computer system; or
 - (b) for recognition under Article 5 as an operator of a computer system.
- (2) The application shall be made in such a manner as the Commission directs.
- (3) The application shall be accompanied –
 - (a) by such information as the Commission reasonably requires; and
 - (b) by a copy of the rules and guidance that the applicant intends to issue.
- (4) At any time after receiving an application and before determining it, the Commission may require the applicant to provide such further information as the Commission reasonably requires.
- (5) The Commission may require information that is to be provided to it under this Article to be in such a form or to be verified in such a manner as the Commission specifies.

4 Approval of operator

- (1) The Commission may in writing approve an applicant under Article 3 as an operator, where it appears to the Commission that the requirements in the Schedule are satisfied.
- (2) The approval may be granted on such conditions, if any, as the Commission specifies.
- (3) In granting the approval, the Commission shall state when it will take effect, and may state when it will cease to have effect.
- (4) Where the Commission refuses the application, it shall inform the applicant in writing, giving its reasons.

5 Recognition of overseas operator

- (1) The Commission may in writing recognize an applicant under Article 3 as an operator in Jersey, where it appears to the Commission that the applicant is for the time being approved by a competent authority to operate a computer system outside Jersey.
- (2) Recognition may be granted on such conditions, if any, as the Commission specifies.
- (3) In granting recognition, the Commission shall state when it will take effect, and may state when it will cease to have effect.
- (4) Where the Commission refuses the application, it shall inform the applicant in writing, giving its reasons.

6 Rules and guidance

An authorized operator who –

- (a) issues any rules or guidance; or
- (b) amends, adds to or revokes any rules or guidance issued by the authorized operator,

shall deliver a copy of the issued rules or guidance or the change (as the case may be) to the Commission within 7 days.

7 Further information from operator

- (1) The Commission may by notice in writing given to an authorized operator require the authorized operator to provide to it further information about his or her operations.
- (2) Information may be required under this Article –
 - (a) with respect to a particular matter or occasion;
 - (b) at specified times; or
 - (c) with respect to specified periods.

- (3) The Commission may require an authorized operator to verify, in such a manner as it specifies, information that he or she is required to provide under this Article.

8 Directions to operator

- (1) Where it appears to the Commission at any time –
 - (a) that a requirement of the Schedule is not satisfied by an approved operator; or
 - (b) that any authorized operator has failed to comply with an obligation to which he or she is subject by virtue of this Order,the Commission may by notice in writing give the operator concerned such directions as it thinks fit for securing that the requirement is satisfied or the obligation is complied with.
- (2) However, before doing so –
 - (a) the Commission shall, if the circumstances so permit, consult the operator and allow him or her an opportunity to make representations; and
 - (b) the Commission shall, as far as it is reasonably practicable to estimate them, have regard to the cost to him or her of complying with the directions and also to the costs to other persons resulting from his or her compliance.

9 Compliance orders

- (1) Where it appears to the Commission at any time –
 - (a) that a requirement of the Schedule is not satisfied by an approved operator; or
 - (b) that any authorized operator has failed to comply with an obligation under this Order,the Commission may apply to the Court for relief.
- (2) Where the Court is satisfied that the requirement is not satisfied, or that the operator concerned has failed to comply with the obligation, it may order him or her to take such steps as it directs for securing that the requirement is satisfied or the obligation is complied with.

10 Suspension or revocation of approval by Commission

- (1) The Commission may, by notice in writing given to an approved operator, suspend or revoke his or her approval in any of the following circumstances –
 - (a) at his or her written request;
 - (b) where he or she has failed, within 12 months after the date from which the approval took effect, to commence to operate a computer system;

- (c) where, having commenced to operate a computer system, he or she has ceased its operation for any period exceeding 6 months; or
 - (d) where the operator is being wound up, or is bankrupt, under the law of Jersey or under the law of any other jurisdiction to which he or she is subject.
- (2) Before acting under paragraph (1), the Commission shall inform the approved operator in writing of its intention, giving its reasons.
- (3) In suspending or revoking its approval of an operator under this Article, the Commission shall specify a date on which the suspension or revocation shall take effect.

11 Suspension or revocation of approval by Court

- (1) The Commission may apply to the Court in a summary manner, for an order suspending or revoking the approval of an approved operator, in any of the following circumstances –
 - (a) where it appears to the Commission that the approved operator is not satisfying a requirement in the Schedule;
 - (b) where it is expedient to do so in the interest of the proper and orderly regulation of the participants (or any of them) in a computer system of the operator, or in order to protect investors;
 - (c) where the operator has been convicted of a serious offence against the Law or involving fraud, dishonesty or a breach of trust;
 - (d) where the approved operator has obtained the approval by knowingly or recklessly making a false or misleading statement, or by knowingly or recklessly using false or misleading information;
 - (e) where the approved operator has been called on by the Commission to comply to a material degree with a requirement of this Order, and has thereafter failed to do so;
 - (f) where the approved operator has failed to comply with a condition on which the approval was granted;
 - (g) where the approved operator is unable to meet his or her obligations to creditors, or in the opinion of the Commission he or she is likely to become unable to meet those obligations; or
 - (h) where the approved operator has suspended payments that are lawfully due, or in the opinion of the Commission is likely to do so.
- (2) Where an application is made to the Court under this Article, it may make such an order or orders as the circumstances require.
- (3) An application to the Court under this Article may be heard otherwise than in public.

12 Suspension or withdrawal of recognition by Commission

- (1) The Commission shall, by notice in writing given to a recognized operator, suspend his or her recognition where the competent authority by whom he or she was approved as an operator has suspended that approval.
- (2) The Commission shall, by notice in writing given to a recognized operator, withdraw his or her recognition where the competent authority by whom he or she was approved as an operator has revoked that approval.
- (3) The Commission may, by notice in writing given to a recognized operator, suspend or withdraw his or her recognition in any of the following circumstances –
 - (a) at his or her written request;
 - (b) where he or she has failed, within 12 months after the date from which his or her recognition took effect, to commence to operate a computer system;
 - (c) where, having commenced to operate a computer system, he or she has ceased its operation for any period exceeding 6 months;
 - (d) where the operator is being wound up, or is bankrupt, under the law of Jersey or under the law of any other jurisdiction to which the operator is subject; or
 - (e) on any other reasonable grounds.
- (4) Before acting under paragraph (1), (2) or (3), the Commission shall inform the recognized operator in writing of its intention, giving its reasons.
- (5) In suspending or withdrawing its recognition of an operator under this Article, the Commission shall specify a date on which the suspension or withdrawal shall take effect.

13 Duties of operator whose authorization is suspended or terminated

- (1) Paragraph (2) applies where an operator's approval is suspended or revoked under Article 10 or 11, or where his or her recognition is suspended or withdrawn under Article 12, even though he or she is not authorized to continue to operate a computer system.
- (2) Where an operator to whom paragraph (1) refers is not a company that is being wound up –
 - (a) the participants in each of his or her computer systems shall remain subject to the duties and obligations imposed by this Order until all of his or her liabilities, duties and obligations have been discharged to the satisfaction of the Commission; and
 - (b) as soon as possible after the revocation he or she shall inform the Commission, and the other participants in each of his or her computer systems and such other persons (if any) as the Commission stipulates, of the measures that are being taken to

discharge his or her liabilities, duties and obligations without undue delay.

14 Appeals

- (1) The following persons shall have a right of appeal to the Court under this Law –
 - (a) an applicant for approval or recognition as an authorized operator, against the refusal of his or her application by the Commission, or against any condition imposed by the Commission in granting such approval or recognition;
 - (b) an approved operator, against a decision by the Commission to suspend or revoke his or her approval under Article 10; and
 - (c) a recognized operator, against a decision to suspend or withdraw his or her recognition under Article 12.
- (2) An appeal shall be brought within 21 days after the appellant is given notice in writing of the decision to which the appeal relates, or within such further time as the Court may allow.
- (3) Pending the determination of the appeal, the Court may make such orders providing for interim or interlocutory relief as it thinks fit.
- (4) On hearing the appeal, the Court may confirm, reverse or vary the decision of the Commission, and may make such order as to the costs of the appeal as it thinks fit.

15 Publication of decisions

- (1) The Commission shall publish notice of each of the following decisions in the Jersey Gazette within 21 days –
 - (a) a decision by the Commission to approve or recognize a person as an operator;
 - (b) a decision by the Commission to suspend or revoke its approval of an operator, or to suspend or withdraw its recognition of an operator;
 - (c) a decision of the Court on an appeal under Article 14; and
 - (d) a decision on any further appeal.
- (2) In doing so, the Commission shall specify –
 - (a) the date from which the decision has effect; and
 - (b) in the case of a decision to approve or recognize a person as an operator for a specified period, the period for which the approval or recognition will have effect.

PART 3

PARTICIPATION BY ISSUERS

16 Participation in respect of shares

- (1) Where –
- (a) the authorized operator of a computer system permits a class of shares to which this Article applies to be a participating security in the computer system; and
 - (b) shares of that class are recorded on a register of company members as being held in uncertificated form,
- title to shares that are so recorded may be transferred by means of that computer system.
- (2) This Article applies to a class of shares in a company if its articles of association are consistent in all respects with –
- (a) the holding of shares in that class in uncertificated form;
 - (b) the transfer of title to shares in that class by means of a computer system; and
 - (c) this Order.
- (3) A company may permit the holding in uncertificated form of shares in a class to which this Article applies, and the transfer of title to any such shares, by means of a computer system.

17 Participation in respect of securities other than shares

Where –

- (a) the authorized operator of a computer system permits a security (other than a share) to be a participating security in the computer system; and
 - (b) units of that security are recorded in a register of securities as being held in uncertificated form,
- title to those units may be transferred by means of that computer system.

18 Entries on registers

- (1) An issuer that is a company shall enter on its register of company members, in respect of each class of shares that is a participating security –
- (a) the number of shares that each company member holds in uncertificated form; and
 - (b) the number of shares that each company member holds in certificated form.
- (2) An issuer who (apart from this Article) is required by or under an enactment or instrument to maintain in Jersey a register of persons

holding securities (other than shares) issued by it shall enter on that register in respect of each class of security that is a participating security –

- (a) the names and addresses of the persons holding units of that security;
 - (b) the number of units of that security that each person holds in uncertificated form; and
 - (c) the number of units of that security that each person holds in certificated form.
- (3) An issuer who (apart from this Article) is not required by or under any enactment or instrument to maintain in Jersey, in respect of a participating security issued by it, a register of persons holding units of that security shall maintain in Jersey such a register, in which shall be recorded –
- (a) the names and addresses of the persons holding units of that security in uncertificated form; and
 - (b) the number of units of that security that each person holds in that form.
- (4) Where an issuer fails to comply with paragraph (1), (2) or (3) of this Article, the issuer and its officers shall be liable to the same criminal and civil sanctions as apply to a company and its officers in the event of a default in complying with Article 41 of the Law, but this paragraph is subject to Article 44 of this Order.
- (5) Liability that is incurred by an issuer and arises –
- (a) from the making or deletion of an entry in a register of securities pursuant to paragraph (1), (2) or (3); or
 - (b) from a failure to make or delete any such entry,
- shall not be enforceable more than 20 years after the date on which the entry was made or deleted or, in the case of a failure, on which the failure first occurred.
- (6) Paragraph (5) is without prejudice to any lesser period of limitation and to any rule as to the prescription of rights.

19 Effect of entries on registers

- (1) An entry that –
- (a) is made on a register to which Article 18(1) or (2) refers; and
 - (b) records a person as holding units of a security in uncertificated form,
- shall be evidence of such title to the units as would be evidenced if the entry on the register related to units of that security held in certificated form.
- (2) An entry that is made on a register to which Article 18(3) refers shall be *prima facie* evidence that the person to whom the entry relates has such

title to the units of the security that he or she is recorded as holding in uncertificated form as he or she would have if he or she held the units in certificated form.

- (3) This Article is subject to Article 25.

20 Changes to registers of securities

- (1) An issuer shall not rectify a register of securities in relation to uncertificated units of a security held by a member of a computer system except –
- (a) with the consent of the authorized operator; or
 - (b) by an order of the Court.
- (2) An issuer who rectifies or otherwise changes an entry on a register of securities in relation to uncertificated units of a security shall immediately –
- (a) notify the authorized operator; and
 - (b) inform the members of the computer system who are concerned, of the change to the entry.
- (3) Paragraph (2) does not apply if the change is made in response to an operator's instruction.

21 Restrictions on registration of transfers of securities

- (1) An issuer shall not register a transfer of title to uncertificated units of a security on a register of securities, unless he or she is required to do so –
- (a) by an operator's instruction;
 - (b) by an order of the Court;
 - (c) by Article 41(2); or
 - (d) by or under an enactment.
- (2) Paragraph (1) does not prevent an issuer from entering, on a register of securities, a person to whom title to uncertificated units of a security has been transmitted by operation of law.

22 Obligatory registration of transfers of securities

- (1) An issuer shall register a transfer of title to uncertificated units of a security on a register of securities in accordance with an operator's instruction, unless –
- (a) the transfer is prohibited by an order of the Court that has been served on the operator;
 - (b) the transfer is prohibited by or under an enactment;
 - (c) the issuer has actual notice that the transfer is avoided by or under an enactment;

- (d) the issuer has actual notice that the transfer is to a deceased person;
 - (e) the circumstances described in paragraph (2) apply; or
 - (f) the issuer may under Article 23 refuse to register the transfer.
- (2) The circumstances to which paragraph (1)(e) refers are –
- (a) that the transfer is one of 2 or more transfers in respect of which the operator has notified the issuer in accordance with Article 26(1); and
 - (b) that by virtue of Article 26(5), Article 26(3) does not apply to those transfers.
- (3) Article 42(5) of the Law shall apply in relation to a refusal by an issuer to register a transfer of securities in any of the circumstances specified in paragraph (1) as it applies in relation to a refusal by a company to register a transfer of shares.
- (4) In Article 42(5) of the Law, as it applies by virtue of paragraph (3), the reference to the date on which the transfer was lodged with the company is a reference to the date on which the operator's instruction was received by the issuer.
- (5) Where an issuer fails to comply with Article 42(5) of the Law, as applied by paragraph (3), the issuer and his or her officers shall be liable to the same criminal and civil sanctions as apply to a company and its officers in the event of a default in complying with Article 42(5) of the Law.
- (6) Paragraph (5) is subject to Article 44 of this Order.

23 Discretion to refuse registration

An issuer may refuse to register a transfer of title to uncertificated units of a security in accordance with an operator's instruction if the instruction requires –

- (a) a transfer of units to an entity that is not a natural or legal person;
- (b) a transfer of units to a minor;
- (c) a transfer of units to be held jointly in the names of a greater number of persons than is permitted under the terms of the issue of the security; or
- (d) a transfer of units where, in relation to the operator's instruction, the issuer has actual notice from the operator of a matter specified in any of sub-paragraphs (a), (b) and (c) of Article 34(1).

24 Duty of issuer to notify operator

An issuer who is required by an operator's instruction to register a transfer of title to uncertificated units of a security shall notify the authorized operator by an issuer's instruction, in response, whether or not he or she has done so.

25 Consequences of irregular registration

A purported registration of a transfer of title to an uncertificated unit of a security otherwise than in accordance with the requirements of Articles 21 and 22 shall be of no effect.

26 Registration of linked transfers

- (1) Where an authorized operator sends 2 or more instructions requiring an issuer to register 2 or more transfers of title to uncertificated units of a security, and it appears to the operator that the conditions in paragraph (2) are satisfied, the operator may notify the issuer that the transfers are linked transfers.
- (2) The conditions to which paragraph (1) refers are –
 - (a) either –
 - (i) that there are fewer units of the security registered in the name of a person identified in any one of the operator's instructions as a transferor than the number of units to be transferred from him or her, or
 - (ii) that any one of the transfers taken alone is one in relation to which it has not been established in accordance with paragraph 15(1)(c) of the Schedule that a settlement bank has agreed to make a payment;
 - (b) that registration of all of the transfers would result in each of the persons identified in the operator's instructions as a transferor having title to a number of units of a security equal to or greater than nil; and
 - (c) that the combined effect of all the transfers taken together would result in paragraph 15(1)(c) of the Schedule being satisfied.
- (3) Where an authorized operator notifies an issuer that transfers are linked transfers, the issuer may –
 - (a) register the combined effect of all the transfers taken together; or
 - (b) register all the transfers simultaneously.
- (4) Paragraph (3) applies even though that there may be fewer uncertificated units of the security registered in the name of a person identified in any one of the operator's instructions as a transferor than the number of uncertificated units to be transferred from him or her.
- (5) However, paragraph (3) does not apply in any case in which –
 - (a) registration of the combined effect of the linked transfers or simultaneous registration of all the transfers (as the case may be) would not result in each of the persons identified in the operator's instructions as a transferor having title to a number of uncertificated units of the security equal to or greater than nil;
 - (b) one or more of the transfers constituting the linked transfers may not be registered, by virtue of the circumstances specified in any of sub-paragraphs (a), (b), (c) and (d) of Article 22(1); or

- (c) one or more of the transfers constituting the linked transfers are to be refused registration by virtue of Article 23.

27 Position of transferee before entry on register

- (1) At the time when an operator's instruction is generated that will require an issuer to register on a register of securities a transfer of title to any uncertificated units of a security constituted under the law of Jersey –
 - (a) the transferee shall acquire an equitable interest in the requisite number of uncertificated units of the security of the kind specified in the operator's instruction in which the transferor has an equitable interest by virtue of this Article, or in relation to which the transferor is recorded on the relevant register of securities as having title; and
 - (b) the equitable interest shall subsist until the time specified in paragraph (3).
- (2) For the purposes of paragraph (1)(a), it shall not be denied, solely by reason of the fact that the transferor acquired his or her equitable interest by virtue of that sub-paragraph at the same time as the transferee's equitable interest arose in that interest, that the transferee has obtained the equitable interest to which that sub-paragraph refers.
- (3) An interest acquired under paragraph (1) shall subsist until the time when the transferee is entered on the register of securities in respect of the transfer of units to him or her, except in the case in which under Article 26(3)(a) an issuer registers the combined effect of linked transfers.
- (4) In the case in which under Article 26(3)(a) an issuer does register the combined effect of linked transfers, an interest acquired under paragraph (1) shall subsist until the time when the combined effect of all the linked transfers is registered.
- (5) Paragraphs (3) and (4) are subject to any enactment or rule of law that provides otherwise.
- (6) This Article has effect even though the units to which the operator's instruction relates or in which an interest arises by virtue of paragraph (1), or any of those units, may be unascertained.
- (7) However, this Article does not in any other respect confer a proprietary interest (whether of the kind to which paragraph (1) refers or any other kind) in units of a security where the conferring of such an interest at the time specified in this Order would otherwise be void by or under an enactment or rule of law.
- (8) In this Article –
 - “A” means the number of uncertificated units in relation to which the transferor is recorded on the register of securities as having title;
 - “B” means the number in which the transferor has an interest by virtue of paragraph (1);

“C” means that number of units in which such interests subsist in favour of a third party by virtue of an earlier operator’s instruction requiring an issuer to register, on a register of securities, a transfer of title to those units;

“requisite number” means –

- (a) the number of units that are specified in the operator’s instruction; or
- (b) $A + B - C$,

whichever is lower at the time when the operator’s instruction is sent;

“transferee” means the person identified in the operator’s instruction as the transferee;

“transferor” means the person identified in the operator’s instruction as the transferor.

28 Conversion of securities into certificated form

- (1) An issuer shall not change a unit of a participating security from uncertificated form to certificated form, except in one of the sets of circumstances specified in paragraph (2).
- (2) The sets of circumstances to which paragraph (1) refers are –
 - (a) where it is permitted by the rules made and practices instituted by an authorized operator in order to comply with paragraph 13 or paragraph 19(2) or (3) of the Schedule;
 - (b) following receipt of an operator’s instruction requiring the conversion into certificated form of uncertificated units of a participating security registered in the name of a member of the computer system;
 - (c) subject to Articles 21 and 22, following receipt of an operator’s instruction requiring the registration of a transfer of title to uncertificated units of a security to a person who is not a member of the computer system; or
 - (d) on the registration, in accordance with Article 41(2), of an offeror who is not a member of the computer system as holder of the units of the security to which that Article refers.
- (3) In the circumstances specified in any of sub-paragraphs (b), (c) and (d) of paragraph (2) –
 - (a) an issuer shall record on the register of securities that the units of the security are held in certificated form;
 - (b) if a certificate can be issued for the security, the issuer shall issue a certificate in respect of the units of the security to the relevant person; and
 - (c) the issuer shall in any event notify the authorized operator that the units are no longer held in uncertificated form.

- (4) Article 50(1) of the Law (to the extent that that paragraph requires a company to complete share certificates and have them ready for delivery after a transfer of shares) shall apply in the circumstances specified in any of sub-paragraphs (b), (c) and (d) of paragraph (2), in relation to the issue of a certificate by an issuer pursuant to paragraph (3)(b), as it applies in relation to the completion and readiness for delivery by a company of share certificates.
- (5) In Article 50(1) of the Law, as it applies by virtue of paragraph (4), the reference to the date on which the transfer was lodged with the company is a reference to –
 - (a) the date on which the issuer received the operator's relevant instruction; or
 - (b) where relevant, the date on which the issuer registered the offeror as holding the units of the security to which Article 41(2) of this Order refers.
- (6) Where an issuer fails to comply with paragraph (3) in accordance with the requirements in paragraphs (4) and (5), the issuer and his or her officers shall be liable to the same criminal and civil sanctions as apply to a company and its officers in the event of a default in complying with Article 50(1) of the Law.
- (7) Paragraph (6) is subject to Article 44 of this Order.

29 Conversion of securities into uncertificated form

- (1) An issuer shall not change a unit of a participating security from certificated form to uncertificated form, except in one of the sets of circumstances specified in paragraphs (3) and (4).
- (2) Paragraphs (3) and (4) are subject to paragraphs (5) and (6).
- (3) The first set of circumstances to which paragraph (1) refers is where the unit of the participating security is held by a member of the computer system, and –
 - (a) the issuer has received a request in writing, in the form required by the rules made and practices instituted by the authorized operator in order to comply with paragraph 13 of the Schedule, to register the member as holding the unit in uncertificated form; and
 - (b) the issuer has also received the certificate relating to the certificated unit that is to be converted into uncertificated form.
- (4) The second set of circumstances to which paragraph (1) refers is where the unit of the participating security is to be registered on a register of securities in the name of a member of the computer system, following a transfer of the unit to the member from another person, and –
 - (a) the issuer has received by means of the authorized operator's system an instrument of transfer in favour of the member relating to the unit to be transferred;

- (b) the issuer has also received by means of the operator's system the certificate relating to the certificated unit that is to be transferred and converted into uncertificated form; and
 - (c) the issuer may accept, by virtue of the rules made and practices instituted by the operator in order to comply with paragraph 13 of the Schedule, that the member to whom the unit is to be transferred wishes to hold it in uncertificated form.
- (5) The requirements in paragraphs (3) and (4) that the issuer shall have received a certificate relating to the unit of the participating security shall not apply in a case where the member or transferor (as the case may be) does not have a certificate in respect of the unit to be converted into uncertificated form because no certificate has yet been issued to the member or transferor.
- (6) The requirement in paragraph (4) that the issuer shall have received an instrument of transfer relating to the unit of the participating security shall not apply in a case in which, for a transfer of a unit of that security, no instrument of transfer is required.
- (7) In the set of circumstances specified in paragraph (3), on receiving the document or the documents (as the case may be) that are required for that set of circumstances to apply, the issuer shall within 2 months –
 - (a) enter on the register of securities that the member holds the unit in uncertificated form; and
 - (b) send the authorized operator an instruction informing the authorized operator of the entry on the relevant register of securities.
- (8) In the set of circumstances specified in paragraph (4), on receiving the document or the documents (as the case may be) that are required for that set of circumstances to apply –
 - (a) the issuer shall record that the member holds the unit, and enter on the register of securities that the member holds the unit in uncertificated form; and
 - (b) the member shall then, within 2 months, send the authorized operator an instruction informing the authorized operator of the entry on the register of securities.
- (9) Where an issuer fails to comply with paragraph (7) or (8), the company shall be liable to the same sanctions as apply to a company in the event of a default by it in complying with Article 42(5) of the Law.

30 New issues in uncertificated form

- (1) An issuer may issue units of a participating security in uncertificated form to a person if, but only if, that person is a member of the computer system.
- (2) For the purposes of calculating the number of new units to which a member of the computer system is entitled, an issuer may treat a member's holdings of certificated and uncertificated units of a security as if they were separate holdings.

- (3) On the issue in uncertificated form of new units of a participating security, the issuer shall by an instruction notify the authorized operator –
- (a) of the persons to whom the uncertificated units of a security have been issued; and
 - (b) of the number of those units issued to each of those persons.

PART 4

COMPUTER INSTRUCTIONS

31 Authenticated computer instructions

The rights and obligations of persons to whom authenticated computer instructions are attributable, and of persons to whom authenticated computer instructions are addressed, when such instructions relate –

- (a) to an uncertificated unit of a security;
- (b) to a right, benefit or privilege attaching to or arising from such a unit; or
- (c) to the details of a holder of such a unit,

shall be determined in accordance with this Part.

32 Obligations arising from authenticated computer instructions

- (1) Where an authenticated computer instruction is expressed to have been sent on behalf of a person by a sponsor or the authorized operator, the person on whose behalf the instruction is expressed to have been sent shall not be allowed to deny to the addressee –
 - (a) that the instruction was sent with his or her authority; or
 - (b) that the information contained in it is correct.
- (2) Where an authenticated computer instruction is expressed to be sent on behalf of a person by a sponsor or the authorized operator, that sponsor or operator shall not be allowed to deny to the addressee –
 - (a) that he or she has authority to send the instruction; or
 - (b) that he or she has sent it.
- (3) Where an authenticated computer instruction is expressed to have been sent by a person, and it is not expressed to have been sent on behalf of another person, the first person shall not be allowed to deny to the addressee –
 - (a) that the information contained in the instruction is correct; or
 - (b) that he or she has sent it.

33 Right of addressees to rely on instructions

- (1) An addressee who receives an authenticated computer instruction (whether directly, or by means of the facilities of a sponsor acting on the addressee's behalf) may accept that at the time when it was sent –
 - (a) the information contained in the instruction was correct;
 - (b) the user or authorized operator identified in the instruction as having sent the instruction did send it; and
 - (c) if the instruction was expressed to have been sent on behalf of a person, it was sent with the authority of that person.
- (2) This Article is subject to Article 34.

34 Restrictions on right to rely on instructions

- (1) An addressee shall not be allowed to accept any of the matters specified in Article 33 where, at the time when he or she received the authenticated computer instruction, he or she was a person who was not either an issuer or a sponsor receiving (in either case) authenticated computer instructions on behalf of an issuer, and he or she had actual notice –
 - (a) that any information contained in it was incorrect;
 - (b) that the user or authorized operator expressed to have sent the instruction did not send it; or
 - (c) if the instruction was expressed to have been sent on behalf of a person, that the person had not given to the operator or sponsor identified in the instruction as having sent it his or her authority to send the instruction on his or her behalf.
- (2) An addressee shall not be allowed to accept any of the matters specified in Article 33 where, at the time when he or she received the authenticated computer instruction, he or she was either an issuer or a sponsor receiving authenticated computer instructions on behalf of an issuer, and –
 - (a) he or she had actual notice from the authorized operator of any of the matters specified in paragraph (1); or
 - (b) the instruction was an operator's instruction requiring the registration of title in the circumstances specified in any of subparagraphs (a), (b), (c), (d) and (e) of Article 22(1).
- (3) An addressee shall not be allowed to accept any of the matters specified in Article 33 where, at the time when he or she received the authenticated computer instruction –
 - (a) he or she was an authorized operator; and
 - (b) the instruction related to a transfer of units of a security that was in excess of any limit imposed by virtue of paragraph 12 of the Schedule.
- (4) However, where an addressee has received actual notice of a kind to which this Article refers in respect of an authenticated instruction, he or she may accept the matters specified in Article 33 if at the time when he

or she received the actual notice it was not practicable for him or her to halt his or her processing of the instruction.

35 Liability in respect of acceptance of instructions

- (1) A person who is permitted by Article 33 or 34(4) to accept any matter shall not be liable in damages or otherwise to any person by reason of his or her having relied on the matter that he or she was permitted to accept.
- (2) Paragraph (1) does not affect –
 - (a) any liability of the authorized operator to pay compensation under Article 37; or
 - (b) any liability of an issuer under Article 43 by reason of a contravention of Article 21(1).
- (3) Except as provided in paragraph (1), this Article does not affect any liability of a person for causing or permitting a computer instruction –
 - (a) to be sent without authority;
 - (b) to contain information that is incorrect; or
 - (c) to be expressed to have been sent by a person who did not send it.

36 Hackers' instructions and induced operator's instructions

- (1) For the purposes of Article 37, a computer instruction is a "hacker's instruction" if –
 - (a) it was not sent from the computers of a user in the computer system or the computers comprising the authorized operator's system; or
 - (b) it was not sent from the computers of the user or the computers comprising the authorized operator's system (as the case may be) from which it is expressed to have been sent.
- (2) For the purposes of Article 37, an act is a causative act if, not being a computer instruction and not being an act that causes a computer instruction to be sent from the computer of a user, it unlawfully causes the authorized operator to send an instruction to an issuer.
- (3) For the purposes of Article 37, an operator's instruction is an "induced operator's instruction" if it is an instruction to an issuer that results from a causative act or a hacker's instruction.

37 Liability for hackers' instructions and induced operator's instructions

- (1) Where, as a result either of a hacker's instruction that does not result in an induced operator's instruction or of an induced operator's instruction, any one of the following events occurs, namely –
 - (a) the name of any person remains on, is entered on or is removed or omitted from a register of securities;

- (b) the number of units of a security in relation to which the name of any person is entered on a register of securities is increased or reduced, or remains unaltered; or
- (c) the description of any units of a security in relation to which the name of any person is entered on a register of securities is changed, or remains unaltered,

and that person suffers loss as a result, he or she may apply to the Court for an order that the authorized operator compensate him or her for his or her loss.

- (2) It is immaterial for the purposes of paragraph (1) whether the event is permanent or temporary.
- (3) The Court shall not make an order under paragraph (1) where the authorized operator identifies a person as being responsible (whether alone or with others) –
 - (a) for the hacker's instruction (in any case in which it does not result in an induced operator's instruction); or
 - (b) for the causative act or hacker's instruction (in any case in which it does result in an induced operator's instruction),

as the case may be, even if it is impossible (for whatever reason) for the applicant to obtain satisfactory compensation from that person.

- (4) The Court shall not award compensation under this Article where the authorized operator shows that an issuer would be liable under Article 43 to compensate the applicant for the loss in respect of which the application is made, by reason of the issuer's contravention of Article 21(1).
- (5) The Court may award to an applicant compensation for –
 - (a) each hacker's instruction (not being one resulting in an induced operator's instruction); and
 - (b) each induced operator's instruction,

that result in the occurrence of an event to which paragraph (1) refers.

- (6) However, the Court shall not award to an applicant more than £50,000 for each hacker's instruction or induced operator's instruction.
- (7) In respect of liability arising under this Article, the Court shall act as follows –
 - (a) in awarding compensation, it shall only order the authorized operator to pay such amount of compensation as appears to the Court to be just and equitable in all the circumstances, having regard to the loss sustained by the applicant as a result of the hacker's instruction or induced operator's instruction;
 - (b) in ascertaining the loss, it shall apply the same rules concerning the duty of a person to mitigate his or her loss as apply to damages recoverable at law; and
 - (c) if it finds that the loss was to any extent caused or contributed to by any act or omission of the applicant, it shall reduce the amount of

the award by such proportion as it thinks just and equitable, having regard to that finding.

- (8) An application to the Court for an order under this Article shall not affect any right of the authorized operator to recover any sum from a third party.
- (9) This Article does not affect any liability or right that a person may incur or have apart from this Article.
- (10) Where an application is made under paragraph (1), and the authorized operator receives from the applicant a request for information or documents relating to –
 - (a) a hacker's instruction; or
 - (b) an induced operator's instruction,in respect of which the application is made, the operator shall, in so far as he or she is able to do so and the request is reasonable, furnish the applicant with the information and documents within one month.
- (11) In so far as he or she is able to do so, the applicant shall furnish the authorized operator within one month with such information or documents as the operator reasonably requests in connection with an application under paragraph (1) with respect to –
 - (a) steps taken by the applicant to prevent the giving of any hacker's instruction (whether of the kind to which paragraph (1) refers or of any other kind); and
 - (b) steps taken by the applicant to mitigate loss suffered by the applicant.
- (12) However, the applicant need not furnish information or documents under paragraph (11) until the authorized operator has complied with any request made under paragraph (10).
- (13) Neither the authorized operator nor the applicant shall be required to disclose any information under paragraph (10) or (11) that would be privileged in the course of civil proceedings.

PART 5

MISCELLANEOUS

38 Relationship of this Order to other laws

- (1) Any reference in any other enactment or rule of law –
 - (a) to an instrument of transfer; or
 - (b) to a transfer with respect to securities,or to any expression having like meaning, shall be taken to include a reference to an operator's instruction to an issuer to register a transfer of title on the relevant register of securities in accordance with the operator's instruction.

- (2) No requirement in any other enactment or rule of law that applies in respect of the transfer of securities otherwise than by means of a computer system shall preclude an operator's instruction from requiring an issuer to register a transfer of title to uncertificated units of a security.
- (3) Notwithstanding any other enactment, instrument or rule of law, no issuer shall issue a certificate in relation to any uncertificated units of a participating security.
- (4) Paragraph (3) does not apply to the issue of a certificate in accordance with Article 28.
- (5) Notwithstanding Article 51 of the Law, or any other enactment or rule of law, a document that –
 - (a) is issued by or on behalf of an issuer; and
 - (b) purportedly evidences title to an uncertificated unit of a participating security,shall not be evidence of title to the unit of the security.
- (6) No requirement in or under any enactment to endorse a statement or information on a certificate evidencing title to a unit of a security shall prohibit –
 - (a) the conversion of units of the security into uncertificated form; or
 - (b) the issue of units of the security in uncertificated form.
- (7) Any requirement in or under any enactment to endorse a statement or information on a certificate evidencing title to a unit of a security shall be taken, in relation to uncertificated units of the security, to be a requirement to provide the holder of the units with the statement or information on request.

39 Trusts, trustees and personal representatives

- (1) Unless a trustee or personal representative is expressly prohibited from transferring units of a security by means of a computer system, a trustee or personal representative shall not be chargeable with a breach of trust or, as the case may be, with default in administering an estate by reason only (in either case) of any of the following facts –
 - (a) that, for the purpose of acquiring units of a security that he or she has the power to acquire in connection with the trust or estate, he or she has paid for the units under arrangements that provide for them to be transferred to him or her from a member of the computer system but not to be so transferred until after the payment of the price;
 - (b) that, for the purpose of disposing of units of a security of which he or she has power to dispose in connection with the trust or estate, he or she has transferred the units to a member of the computer system under arrangements that provide that the price is not to be paid to him or her until after the transfer is made; or
 - (c) that, for the purpose of holding units of a security belonging to the trust or estate in uncertificated form and for transferring title to

them by means of a computer system, he or she has become a member of the computer system.

- (2) A trustee of a trust deed or other instrument for securing an issue of securities shall not be chargeable with a breach of trust by reason only of the fact that he or she has assented to an amendment of the trust deed or other instrument for the purposes only of –
- (a) allowing the holding of the securities in uncertificated form;
 - (b) allowing the exercise of rights attaching to the securities by means of a computer system; or
 - (c) allowing the transfer of title to the securities by means of a computer system,
- if he or she has caused notice of the amendment to be given in accordance with the trust deed or other instrument, not less than 30 days before its becoming effective, to all persons registered as holding the securities on a date not more than 21 days before the dispatch of the notice.
- (3) An authorized operator shall not be bound by or compelled to recognize any express, implied or constructive trust or other interest in respect of uncertificated units of a security, even if he or she has actual or constructive notice of the trust or interest.
- (4) No notice of a trust, expressed, implied or constructive, shall –
- (a) be entered on a register of securities maintained under Article 18(3); or
 - (b) be receivable by the registrar of such a register.

40 Notices of meetings

- (1) For the purposes of determining which persons are entitled to attend or vote at a meeting, and how many votes they may cast, an issuer may specify in the notice of the meeting a time (being not before the beginning of the period commencing 48 hours before the time fixed for the meeting) by which a person must be entered on the relevant register of securities in order to have the right to attend or vote at the meeting.²
- (1A) In calculating the period mentioned in paragraph (1), no account shall be taken of any part of a day that is not a working day.³
- (1B) For the purposes of paragraph (1A), “working day” means a weekday (within the meaning of Part 1 of the Schedule to the [Public Holidays and Bank Holidays \(Jersey\) Act 2010](#)) other than –
- (a) a day specified in that Schedule as a day which is to be observed as a public holiday; or
 - (b) a day noted in that Schedule as a day which is by custom observed as a general holiday.⁴
- (2) Notwithstanding any provision to the contrary in any enactment, articles of association or other instrument, changes to entries on the relevant register of securities after the time specified under paragraph (1) shall be

disregarded in determining the rights of any person to attend or vote at the meeting.

- (3) For the purposes of serving notices of meetings, whether under the Law, any other enactment, a provision in articles of association or any other instrument, an issuer may determine that those persons who are entered on the relevant register of securities at the close of business on a day determined by the issuer shall be persons who are entitled to receive such notices.
- (4) The day determined by a participating issuer under paragraph (3) may not be more than 21 days before the day on which the notices of the meeting are sent.

41 Notices to minority shareholders

- (1) This Article shall apply, instead of Article 118(6) of the Law, in relation to any uncertificated units of a security to which a notice given under Article 117 of the Law relates.
- (2) On receipt of a copy of the notice sent under Article 118(5) of the Law, a company that is an issuer shall be under the same obligation to enter the offeror on its register of securities as the holder of the uncertificated units of the security to which the notice relates, in place of the member of the computer system who was immediately before that entry registered as the holder of those units, as it would be if it had received an operator's instruction requiring it to amend its register of securities in such manner; and Article 22(5) of this Order shall have effect accordingly.
- (3) A company that amends its register of securities in accordance with paragraph (2) shall forthwith notify the authorized operator of the amendment.
- (4) In Article 122(5) of the Law, the reference to Article 118(6) of the Law shall be taken for the purposes of this Order as including a reference to paragraph (2).
- (5) In this Article, "offeror" has the same meaning as Article 116(7) of the Law, as construed in accordance with Article 122(4) of the Law.

42 Irrevocable powers of attorney

- (1) This Article applies where the terms of an offer for all or any uncertificated units of a participating security provide that a person accepting the offer creates an irrevocable power of attorney in favour of the offeror, or a person nominated by the offeror, in the terms set out in the offer.
- (2) An acceptance that is communicated by an authenticated computer instruction in respect of uncertificated units of a security shall constitute a grant of an irrevocable power of attorney by the member of the computer system accepting the offer, in favour of the offeror or person nominated by the offeror, in the terms set out in the offer.
- (3) Where the contract constituted by the offer and acceptance is governed by the law of Jersey, Article 5 of the [Powers of Attorney \(Jersey\) Law 1995](#)

shall apply to a power of attorney constituted in accordance with this Article.

- (4) A declaration in writing by the offeror stating the terms of a power of attorney and that it has been granted under this Article, and stating the name and address of the grantor, shall be *prima facie* evidence of the grant.
- (5) A requirement in any enactment, rule of law, or instrument to produce a copy of the power of attorney, or such a copy certified in a particular manner, shall be satisfied by the production of the declaration or a copy of the declaration certified in that manner.

43 Breaches of statutory duty

- (1) A default in complying with or contravention of Article 20(1) or (2), Article 21(1), Article 24, Article 28(1) or (3), Article 29(1), Article 30(3) or Article 41(3) shall be actionable at the suit of –
 - (a) a person who suffers loss as a result of the default or contravention; or
 - (b) a person who is otherwise adversely affected by it,subject to the defences and other incidents applying to actions for breach of statutory duty.
- (2) This Article does not affect any liability that a person may incur or have apart from this Article.

44 Liability of officers

For the purposes of Article 18(4), Article 22(5) and Article 28(6), an officer of an issuer shall be in default in complying with a provision to which any of those paragraphs refers if but only if he or she knowingly authorizes or permits the default.

45 Citation

This Order may be cited as the Companies (Uncertificated Securities) (Jersey) Order 1999.

SCHEDULE

(Articles 1(3)(a), (b), (d); 4(1); 8(1)(a); 9(1)(a); 11(1)(a); 26(2)(a)(ii), (c); 28(2)(a); 29(3)(a), (4)(c); 34(3)(b))

REQUIREMENTS FOR APPROVAL OF OPERATORS

1 Arrangements and resources

An operator must have adequate arrangements and resources for the effective monitoring and enforcement of compliance with his or her rules or, as respects monitoring, arrangements providing for that function to be performed on his or her behalf (and without affecting the operator's responsibility) by another body or person who is able and willing to perform it.

2 Financial resources

An operator must have financial resources sufficient for the proper performance of his or her functions as an operator.

3 Promotion and maintenance of standards

An operator must be able and willing to promote and maintain high standards of integrity and fair dealing in the operation of the computer system and to cooperate, by the sharing of information or otherwise, with the Commission and any other authority, body or person having responsibility for the supervision or regulation of investment business or other financial services.

4 Operation of the computer system

Where an operator causes or permits a part of the computer system that is not the operator's system to be operated by another person (other than as his or her agent) –

- (a) the operator shall monitor compliance by the person and that part of the computer system with the requirements of this Schedule; and
- (b) the operator shall have arrangements to ensure that the person provides him or her with such information and such assistance as he or she may require in order to meet his or her obligations under this Order.

5 System security

A computer system must be constructed and operate –

- (a) in such a way as to minimize the possibility of unauthorized access to or the unauthorized modification of any program or data held in any computer forming part of the operator's system;
- (b) in such a way that each computer instruction is authenticated in accordance with the specifications of the operator, which shall provide that each computer instruction is identifiable as being from the computers of a particular user or of the operator, and is also designed to minimize fraud and forgery;
- (c) that each computer instruction expresses, in accordance with the specifications of the operator, by whom it has been sent and (where relevant) on whose behalf it has been sent;
- (d) that each computer instruction that is sent to a user or the operator indicates, in accordance with the specifications of the operator, that it is addressed to that user or the operator;
- (e) that each computer instruction that is sent to a person who is using the facilities of a sponsor to receive computer instructions indicates, in accordance with the specifications of the operator, that it is addressed to that person and the sponsor;
- (f) that each computer instruction that is sent to the operator in order for the operator to send an operator's instruction to a user indicates, in accordance with the specifications of the operator, that it is addressed to the operator, to the user and (if the user is acting as a sponsor) to the relevant person on whose behalf the sponsor receives computer instructions; and
- (g) that the possibility for a user to send a computer instruction on behalf of a person from whom he or she has no authority is minimized.

6-13 System capabilities

6

A computer system must ensure that the operator's system can send and respond to authenticated computer instructions in sufficient volume and with sufficient speed.

7

Before an operator's instruction to an issuer to register a transfer of uncertificated units of a security is generated, a computer system must be able –

- (a) to establish that the transferor is likely to have title to or (by virtue of Article 27(1)) an interest in such number of units of the security as is in aggregate at least equal to the number to be transferred; or
- (b) to notify the issuer in accordance with Article 26(1) that the transfer is one of 2 or more transfers that may be registered in accordance with paragraph (3) of that Article.

8

A computer system must maintain adequate records of all computer instructions.

9

A computer system must be able –

- (a) to permit each of its members to obtain a copy of any records relating to the member as are maintained by the computer system in order to comply with paragraph 7(a) or 8 of this Schedule; and
- (b) to make correcting entries in such records that are maintained in order to comply with paragraph 7(a) of this Schedule as are inaccurate.

10

A computer system must be able to establish, where there is a transfer of uncertificated units of a security to a member for value, that a settlement bank has agreed to make payment in respect of the transfer, whether alone or taken together with another transfer for value.

11

A computer system must ensure that the operator's system is able to generate –

- (a) the operator's instructions requiring issuers to amend the appropriate registers of securities kept by them; and
- (b) the operator's instructions informing settlement banks of their payment obligations.

12

(1) A computer system must enable a member –

- (a) to grant authority to a sponsor to send authenticated computer instructions on his or her behalf; and
- (b) to limit such authority by reference to the net value of the units of securities to be transferred in any one day.

(2) A computer system must prevent the transfer of units in excess of that limit.

13

A computer system must enable members –

- (a) to change the form in which they hold or are to hold units of a participating security; and
- (b) where appropriate, to require issuers to issue certificates relating to units of a participating security held or to be held by them.

14-18 Operating procedures**14**

A computer system must comprise procedures that provide that it responds only to authenticated computer instructions that are attributable to a participant or an operator.

15

(1) A computer system must comprise procedures that provide that an operator's instruction requiring an issuer to register a transfer of

uncertificated units of a security, or informing a settlement bank of its payment obligations in respect of such a transfer, is generated only where –

- (a) it has received a member's instruction from the transferor, or it has been required to do so by a court or by or under an enactment;
 - (b) it has established –
 - (i) that the transferor is likely to have title to, or is likely to have by virtue of Article 27(1), an interest in such number of units as is in aggregate at least equal to the number to be transferred, or
 - (ii) that the transfer is one of 2 or more transfers that may be notified to the participating issuer in accordance with Article 26(1);
 - (c) in the case of a transfer to a member for value, it has established that a settlement bank has agreed to make payment in respect of the transfer, whether alone or taken together with another transfer for value; and
 - (d) the transfer is not in excess of any limit that, by virtue of paragraph 12(1)(b) of this Schedule, the transferor has set on an authority given by him or her to a sponsor.
- (2) A computer system must also comprise procedures that provide that an operator's instruction requiring an issuer to register a transfer of uncertificated units of a security, or informing a settlement bank of its payment obligations in respect of such a transfer, may be generated where necessary to correct an error and if in accordance with the rules and practices of the operator instituted in order to comply with this Schedule.

16

- (1) A computer system must comprise procedures that provide that an operator's instruction to an issuer relating to a right, privilege or benefit attaching to or arising from an uncertificated unit of a security, is generated only where –
- (a) it has received an authenticated computer instruction that is attributable to the member having the right, privilege or benefit requiring the operator to generate an operator's instruction to the issuer; or
 - (b) it has been required to do so by the Court or by or under an enactment.
- (2) A computer system must also comprise procedures that provide that an operator's instruction to an issuer, relating to a right, privilege or benefit attaching to or arising from an uncertificated unit of a security, may be generated where necessary to correct an error and if in accordance with the rules and practices of an operator instituted in order to comply with this Schedule.

17

A computer system must comprise procedures that ensure that, if the computer system maintains records in order to comply with paragraph 15(1)(b)(i) of this Schedule, the records are regularly reconciled with the registers of securities maintained by issuers.

18

A computer system must comprise procedures that –

- (a) enable users to notify the operator of an error in or relating to a computer instruction; and
- (b) ensure that, where the operator becomes aware of an error in or relating to a computer instruction, he or she takes appropriate corrective action.

19-21 Rules and practices**19**

- (1) An operator's rules and practices must bind members and issuers –
 - (a) so as to ensure the efficient processing of transfers of title to uncertificated units of a security in response to operator's instructions; and
 - (b) as to the action to be taken where transfer of title in response to an operator's instruction cannot be effected.
- (2) An operator's rules and practices must make provision for an issuer to cease to participate in respect of a participating security so as –
 - (a) to minimize so far as practicable any disruption to members in respect of their ability to transfer the relevant security; and
 - (b) to provide the issuer with any relevant information held by the operator relating to uncertificated units of the relevant security held by members.
- (3) An operator's rules and practices must make provision for the orderly termination of participation by members and users whose participation is disruptive to other members or users or to issuers.
- (4) If an operator's rules and practices make provision for the designation of a subsidiary undertaking as a relevant nominee, they must require that the relevant nominee maintain –
 - (a) adequate records of the names of the persons who have an interest in the securities it holds; and
 - (b) adequate records of the nature and extent of their interests.

20

- (1) An operator's rules and practices must require that each user is able to send and receive authenticated computer instructions.
- (2) An operator's rules and practices must require that –
 - (a) each member has arrangements for authenticated computer instructions attributable to him or her to be sent;

- (b) each member has arrangements for authenticated computer instructions to be received by or for him or her; and
 - (c) each member has arrangements with a settlement bank for payments to be made, where appropriate, for units of a security transferred by means of the computer system.
- (3) An operator's rules and practices must require that each issuer is able to respond with sufficient speed to operator's instructions.

21

An operator must have rules that require users and former users to provide him or her with such information in their possession as he or she may require in order to meet his or her obligations under this Order.

ENDNOTES

Table of Legislation History

Legislation	Year and Number	Commencement
Companies (Uncertificated Securities) (Jersey) Order 1999	R&O.9462	1 December 1999
Transfer of Functions (Economic Development Committee) (Jersey) Act 2003	R&O.101/2003	14 October 2003
Companies (Uncertificated Securities) (Amendment) (Jersey) Order 2009	R&O.24/2009	9 March 2009
Companies (Uncertificated Securities) (Amendment No. 2) (Jersey) Order 2014	R&O.127/2014	1 August 2014

Table of Renumbered Provisions

Original	Current
1(3), (4), (5)	spent, omitted from this revised edition
1(6)	1(3)

Table of Endnote References

¹ Article 1(2)	<i>amended by R&O.24/2009</i>
² Article 40(1)	<i>amended by R&O.127/2014</i>
³ Article 40(1A)	<i>inserted by R&O.127/2014</i>
⁴ Article 40(1B)	<i>inserted by R&O.127/2014</i>