

ORDER IN COUNCIL

ratifying a Projet de Loi

ENTITLED

The Companies (Guernsey) Law, 1973

(Registered on the Records of the Island of Guernsey
on the 5th day of April, 1973.)



1973

II
1973

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 5th day of April, 1973, before Sir William Arnold, Kt., C.B.E., Bailiff; present:—Bertram Guy Blampied, Esquire, O.B.E., Claude Fortesque Nason, Stanley Walter Gavey, Esquires. Gilbert Carey de Jersey, Esquire, C.B., D'Arcy George Le Tissier, Esquire, Edward James Lainé, Esquire, C.B.E., D.F.C., Jean Le Pelley, Walter Francis Robin, Richard Alan Kinnersly, Esquires, Harry Wall Poat, Esquire, D.S.O., M.C., A.D.C., Richard Brook Sutcliffe and Richard Oliver Symons, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 16th day of February, 1973, ratifying a *Projet de Loi* entitled "The Companies (Guernsey) Law, 1973", the Court, after the reading of the said Order in Council and after having heard Her Majesty's Procureur thereon, ordered that the said Order in Council be registered on the records of this Island, of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 16th day of February 1973

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey, dated the 12th day of February 1973, in the words following, viz.:—

"YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey, setting forth:—

- '1. That, in pursuance of their Resolution of the 27th day of March 1972, the States of Deliberation at a meeting held on the 29th day of September 1972, approved a Bill or "Projet de Loi" entitled "The Companies (Guernsey) Law, 1973" and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto.
2. That the said Bill or "Projet de Loi" is in the words and figures set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or "Projet de Loi" of the States of Guernsey entitled "The Companies (Guernsey) Law, 1973" and to order that the same shall have force of law in the Island of Guernsey.'

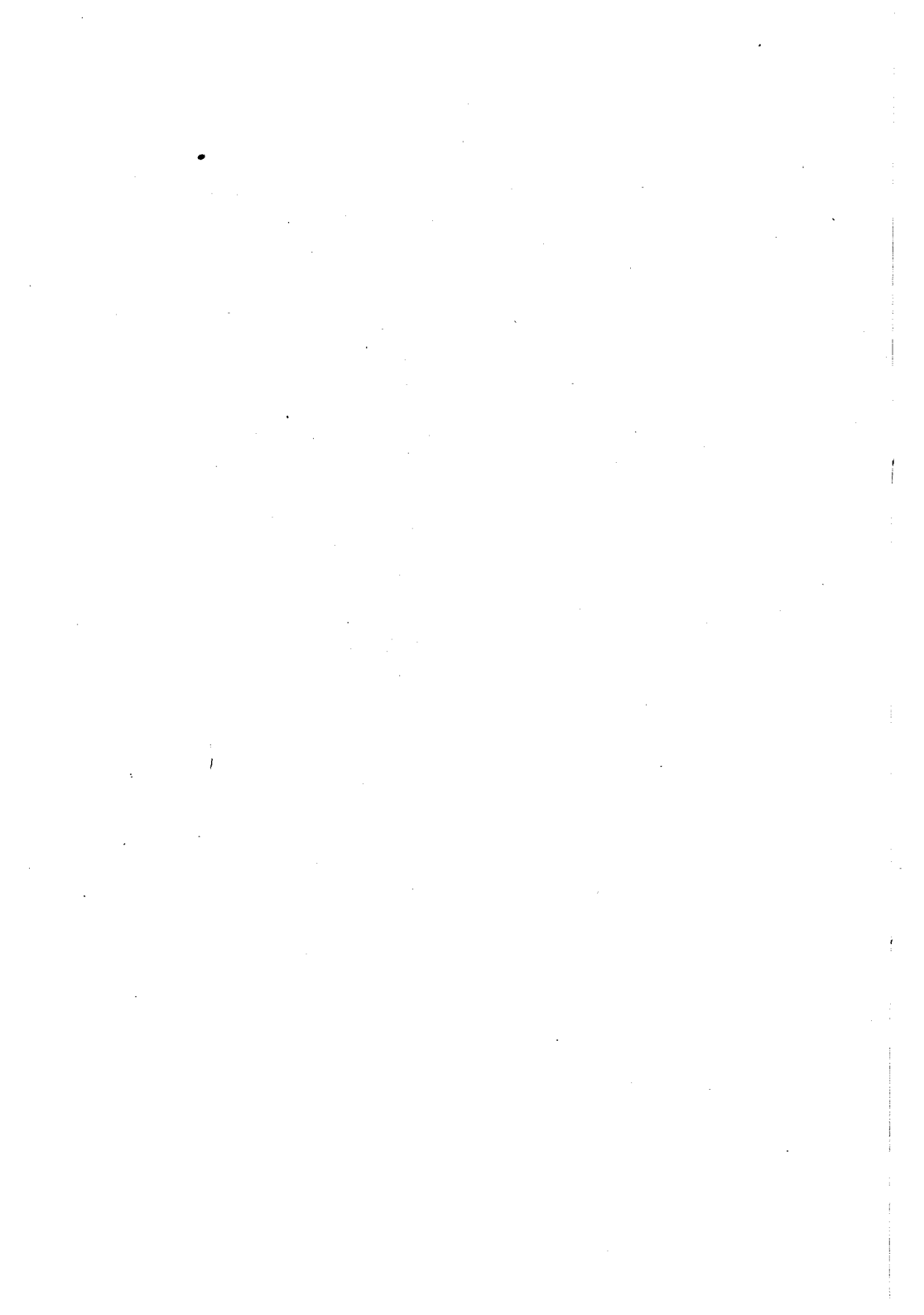
"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration, and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi."

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, as it is hereby ordered, that the same shall have the force of Law within the Island of Guernsey.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant-Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

W. G. Agnew



Projet de Loi referred to in the foregoing
Order in Council.

PROJET DE LOI

ENTITLED

The Companies (Guernsey) Law, 1973

ARRANGEMENT OF SECTIONS

Section

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ISSUE OF SHARES AT PREMIUM AND DISCOUNT AND REDEEMABLE PREFERENCE SHARES

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2. Power to issue shares at a discount.
3. Power to issue redeemable preference shares.
4. Additional information in annual list.

PART II

MISCELLANEOUS PROVISIONS AS TO SHARE CAPITAL

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6. Reserve liability of company.
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REDUCTION OF SHARE CAPITAL

8. Special resolution for reduction of share capital.
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Section

10. Order confirming reduction and powers of Court on making such order.
11. Act of Court deemed to form part of memorandum.
12. Liability of members in respect of reduced shares.
13. Penalty for concealing name of creditor, etc.

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14. Rights of holders of special classes of shares.
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PROJET DE LOI

ENTITLED

The Companies (Guernsey) Law, 1973

THE STATES, in pursuance of their Resolution of the twenty-ninth day of March, nineteen hundred and seventy-two, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of Law in the Island of Guernsey.

PART I

Issue of Shares at Premium and Discount and Redeemable Preference Shares

1. (1) Where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account, to be called "the share premium account", and the provisions of this Law relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the share premium account were paid up share capital of the company.

Application
of premiums
received on
issue of
shares.

(2) The share premium account may, notwithstanding anything in the foregoing subsection, be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares, in writing off—

- (a) the preliminary expenses of the company;
- or

- (b) the expenses of, or the commission paid or discount allowed on, any issue of shares of the company;

or in providing for the premium payable on redemption of any redeemable preference shares of the company.

(3) Where a company has before the commencement of this Law issued any shares at a premium, this section shall apply as if the shares had been issued after the commencement of this Law:

Provided that any part of the premiums which has been so applied that it does not at the commencement of this Law form an identifiable part of the company's reserves shall be disregarded in determining the sum to be included in the share premium account, if any.

Power to
issue shares
at a
discount.

2. (1) Notwithstanding the provisions of Article XXII of the principal Law, it shall be lawful for a company to issue at a discount shares in the company of a class already issued:

Provided that—

- (a) the issue of the shares at a discount shall be authorised by resolution passed in general meeting of the company, and shall be sanctioned by the Court;
- (b) such resolution shall specify the maximum rate of discount at which the shares are to be issued;
- (c) not less than one year shall at the date of the issue have elapsed since the date on which the company was entitled to commence business;
- (d) the shares to be issued at a discount must be issued within one month after the date on which the issue is sanctioned by the

Court or within such extended time as the Court may allow.

(2) Where a company has passed a resolution authorising the issue of shares at a discount, it may apply to the Court for an order sanctioning the issue, and on any such application the Court, if, having regard to all the circumstances of the case, it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit.

(3) Every prospectus relating to the issue of the shares shall contain particulars of the discount allowed on the issue of the shares or of so much of that discount as has not been written off at the date of the issue of the prospectus.

If default is made in complying with this subsection, the company and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable on conviction to a fine not exceeding five pounds for every day during which such default continues.

3. (1) A company, if so authorised by its articles, may—

Power to
issue re-
deemable
preference
shares.

- (a) subject to the provisions of this section, issue preference shares which are, or at the option of the company are liable, to be redeemed;
- (b) subject to the provisions of section fourteen of this Law, convert the whole, or any particular class, of its preference shares into redeemable preference shares:

Provided that—

- (i) no such shares shall be redeemed except out of profits of the company

which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption;

- (ii) no such shares shall be redeemed unless they are fully paid;
- (iii) the premium, if any, payable on redemption, shall have been provided for out of the profits of the company or out of the company's share premium account before the shares are redeemed;
- (iv) where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called "the capital redemption reserve fund", a sum equal to the nominal amount of the shares redeemed, and the provisions of this Law relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company.

(2) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

(3) The redemption of preference shares under this section by a company shall not be taken as reducing the amount of the company's authorised share capital.

(4) Where in pursuance of this section a company has redeemed or is about to redeem any

preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any enactment relating to stamp duty or other duty payable on documents registered at the Greffe be deemed to be increased by the issue of shares in pursuance of this subsection:

Provided that, where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to stamp duty or other duty payable on documents registered at the Greffe, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.

(5) Where in pursuance of this section a company has redeemed any preference shares it shall within one month after so doing give notice thereof in writing to Her Majesty's Greffier who shall register such notice in the register.

(6) If default is made in complying with the provisions of subsection (5) of this section, the company and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable on conviction to a fine not exceeding five pounds for every day during which such default continues.

(7) The capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Additional
information
in annual
list.

4. (1) Where a company allows discount on, or pays commission on the issue of any shares of the company, the company shall include in the annual list delivered to Her Majesty's Greffier in accordance with the provisions of Article LXV of the principal Law the following particulars in addition to those set out in that Article—

- (a) the total amount of the sums (if any) paid by way of commission in respect of any shares;
- (b) the discount allowed on the issue of any shares issued at a discount or so much of that discount as has not been written off during the preceding calendar year.

(2) The provisions of Article LXVI of the principal Law shall apply in the case of a contravention of this section as they apply to a contravention of the provisions of Article LXV of the principal Law.

(3) In this section the expression "calendar year" means the period commencing on the first day of January in any year and ending on the expiration of the thirty-first day of December next following.

PART II

Miscellaneous Provisions as to Share Capital

Power of
company to
arrange for
different
amounts
being paid
on shares.

5. A company, if so authorised by its articles, may do any one or more of the following things—

- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (b) accept from any member the whole or a part of the amount remaining unpaid on

any shares held by him, although no part of that amount has been called up;

- (c) pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

6. A company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Reserve liability of company.

7. (1) A company, if so authorised by its articles, may alter the conditions of its memorandum as follows, that is to say, it may—

Power of company to alter its share capital.

- (a) increase its share capital by new shares of such amount as it thinks expedient;
- (b) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (c) convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination;
- (d) subdivide its shares, or any of them into shares of smaller amount than is fixed by the memorandum, so however that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

- (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(2) The powers conferred by this section shall be exercised by resolution passed in general meeting of the company, so however that no such resolution shall be valid unless a copy thereof under the seal of the company is lodged with Her Majesty's Greffier who shall register the same in the register provided for under Article III of the principal Law.

(3) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Law.

PART III

Reduction of Share Capital

Special
resolution
for
reduction
of share
capital.

8. (1) Subject to confirmation by the Court, a company may, by special resolution reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may—

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
- (b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or
- (c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company:

and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

(2) A special resolution under this section is in this Law referred to as "a resolution for reducing share capital".

9. (1) Where a company has passed a resolution for reducing share capital, it shall apply to the Court for an order confirming the reduction and shall cause a notice setting out the terms of the application and the date when the application is to be made to the Court to be published in La Gazette Officielle on three weekly occasions prior to that date.

Application
to Court for
confirming
order,
objections
by creditors,
and list of
creditors.

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, the following provisions shall have effect, subject nevertheless to the next following subsection:—

- (a) every creditor of the company who at the date of the hearing of the application is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;
- (b) at the hearing of the application the company shall furnish to the Court a list, signed and certified to be a true and complete list by a director or by the secretary of the company, and containing the names and addresses of all the creditors of the company and the amounts which are due to them respectively;

(c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the Court may direct, the following amount:—

- (i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;
- (ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the Court may, if, having regard to any special circumstances of the case, it thinks proper so to do, direct that subsection (2) of this section shall not apply as regards any class or any classes of creditors.

(4) Where the list furnished to the Court in accordance with the provisions of paragraph (b) of subsection (2) of this section contains any material error or omission, the person who signed the list shall, unless he proves that such error or omission occurred without his knowledge or that he exercised

all due diligence to prevent it, be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding one year or to both such fine and such imprisonment.

19. (1) The Court, if satisfied, with respect to every creditor of the company who under the last foregoing section is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

Order confirming reduction and powers of Court on making such order.

(2) Where the Court makes any such order, it may—

- (a) if for any special reason it thinks proper so to do, make an order directing that the company shall, during such period, commencing on or at any time after the date of the order, as is specified in the order, add to its name as the last words thereof the words "and reduced"; and
- (b) make an order requiring the company to publish as the Court directs the reasons for reduction or such other information in regard thereto as the Court may think expedient with a view to giving proper information to the public, and, if the Court thinks fit, the causes which led to the reduction.

(3) Where a company is ordered to add to its name the words "and reduced", those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company.

Act of Court
deemed to
form part of
memoran-
dum.

11. The Act of Court containing an order confirming a resolution for reducing share capital shall be deemed to be substituted for the corresponding part of the memorandum and shall have effect as if it had been originally contained therein, so however that nothing in this section contained shall affect anything done in accordance with the provisions of the memorandum before the making of such Act of Court.

Liability of
members in
respect of
reduced
shares.

12. (1) In the case of a reduction of share capital, a member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference if any, between the amount of the share as fixed by the Act of Court confirming the resolution for reducing share capital and the amount paid, or the reduced amount, if any, which is to be deemed to have been paid, on the share, as the case may be:

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, has been, without neglect or default on his part, omitted from the list of creditors furnished to the Court by the company under the provisions of paragraph (b) of subsection (2) of section nine of this Law, and, after the reduction, the company is unable within the meaning of the provisions of the principal Law with respect to winding up by the Court, to pay the amount of his debt or claim, then—

- (a) every person who was a member of the company at the date of the said Act of Court shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the said date; and

- (b) if the company is wound up, the Court, on the application of any such creditor and proof of the omission of the creditor from the list as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.
- (2) Nothing in this section shall affect the rights of the contributories among themselves.

13. If any officer of the company—

- (a) wilfully conceals the name of any creditor entitled to object to the reduction; or
- (b) wilfully misrepresents the nature or amount of the debt or claim of any creditor; or
- (c) aids, abets or is privy to any such concealment or misrepresentation as aforesaid,

Penalty for
concealing
name of
creditor,
etc.

he shall be liable on conviction to a fine not exceeding two hundred and fifty pounds or to imprisonment for a term not exceeding one year or to both such fine and such imprisonment.

PART IV

Variation of Shareholders' Rights

14. (1) If, in the case of a company the share capital of which is divided into different classes of shares, provision is made by the memorandum or articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or

Rights of
holders of
special
classes
of shares.

the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision the rights attached to any such class of shares are at any time varied, the holders of not less in the aggregate than fifteen per centum of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the Court to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Court.

(2) An application under this section must be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

(3) On any such application the Court, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested in the application, may, if it is satisfied, having regard to all the circumstances of the case, that the variation would unfairly prejudice the shareholders of the class represented by the applicant, disallow the variation and shall, if not so satisfied, confirm the variation.

(4) The decision of the Court on any such application shall be final.

(5) The expression "variation" in this section includes abrogation and the expression "varied" shall be construed accordingly.

15. Notwithstanding the provisions of Article XLVII of the principal Law, a company may, if its articles so provide, issue shares which shall—

Issue of non-voting shares.

- (a) entitle the holder to no voting right; or
- (b) entitle the holder to a restricted voting right,

in any general meeting of the company.

PART V

Miscellaneous

16. The principal Law is hereby amended as follows:—

Amendments to principal Law.

- (a) in the heading immediately preceding Article LVIII thereof the words "ET AUGMENTATION OU DIMINUTION DU CAPITAL" are repealed;
- (b) Article LIX, LX and LXI thereof are repealed.

17. (1) In this Law, unless the context otherwise requires—

Interpretation.

"articles" has the same meaning as "Statuts pour la conduite de la Société" in the principle Law;

"company" means a company registered under the principal Law;

"contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory;

"the Court" means the Royal Court sitting as an Ordinary Court;

"memorandum" has the same meaning as "Acte de Société" in the principal Law;

"officer", in relation to a body corporate, includes a director, manager or secretary;

"the principal Law" means the Law entitled "Loi relative aux Sociétés Anonymes ou à Responsabilité Limitée" registered on the twenty-first day of March, nineteen hundred and eight(a);

"register" has the same meaning as "Registre des Sociétés établies avec responsabilité limitée" in the principal Law, and "registered" shall be construed accordingly;

"resolution" has the same meaning as "décision" in the principal Law;

"share" means share in the share capital of a company;

"share capital" has the same meaning as "fonds social" and "capital" in the principal Law.

"special resolution" has the same meaning as "décision spéciale" in the principal Law.

(2) Except in so far as the context otherwise requires, any reference in this Law to any other enactment shall be construed as a reference to that enactment as repealed and re-enacted, amended, extended or applied by or under any other enactment including this Law.

18. This Law may be cited as the Companies Citation. (Guernsey) Law, 1973, and this Law and the Companies (Guernsey) Laws, 1908 to 1965(b), may be cited together as the Companies (Guernsey) Laws, 1908 to 1973.

R. H. VIDELO,
Her Majesty's Greffier

(b) Ordres en Conseil Vol. IV, p. 178, Vol. X, p. 298,
Vol. XVII, p. 444, Vol. XX, p. 17.