

# **PROPOSED AMENDMENTS TO THE COMPANIES (GUERNSEY) LAW 2008**

## **CONSULTATION DOCUMENT**

Commerce and Employment Department  
1 April 2010

## **1. Background**

- 1.1 The Companies (Guernsey) Law 2008 ('the Law') has now been in place for almost two years, having come into force on 1 July 2008.
- 1.2 The Law has been well received as a successful piece of legislation for Guernsey, providing a competitive and leading framework for the operation of Guernsey companies.

## **2. Review and improvement**

- 2.1 Given the significant nature of the changes introduced by the Law, the Commerce and Employment Department has reviewed the Law with a view to making appropriate amendments to address practical issues, to take account of developments in company law elsewhere and to ensure that Guernsey remains a highly regarded and competitive jurisdiction.
- 2.2 The Department has taken note of feedback from a number of individuals and organisations including local Advocates, local industry and the Guernsey Registry, as well as taking into account broader policy considerations. The amendments set out in the attached appendix are proposed as a result.

## **3. Consultation**

- 3.1 A two month consultation period for interested stakeholders to consider the proposals will commence on 1 April 2010. The appendix summarises the proposed amendments in the following format:

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
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## **4. Request for feedback**

- 4.1 Commerce and Employment invite comments from interested parties in relation to the proposed amendments - referenced to match the individual sections identified in the appendix.
- 4.2 We also invite comments on any matters relating to the Law which are not covered in the appendix. If you wish to suggest changes to the Law which are not covered in the appendix then it would be of considerable assistance to the Department if your reply could include the following:
- A summary of the issue that you feel needs to be addressed in practice,
  - A suggestion as to how the Law might be altered to address that issue, and
  - If your suggestion refers to a provision of company law in another jurisdiction, please include a reference to the jurisdiction and the relevant legislative provision.

4.3 Please provide responses, preferably by email, by 31 May 2010 to:

[finance@commerce.gov.gg](mailto:finance@commerce.gov.gg)

Or by hard copy to:

Companies (Guernsey) Law 2008 Review, Director of Finance Sector Development, Commerce and Employment Department, Raymond Falla House, Po Box 459, Longue Rue, St Martins, Guernsey, GY1 6AF.

## **5. Next Steps**

5.1 Once the responses to this consultation have been collated and analysed, the Department intends to issue a public summary of the responses received, identifying those amendments which are to be taken forward.

5.2 An Ordinance will be required to effect the amendments.

# **Appendix 1**

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
6(1)	Company limited by shares	<b>Amend</b> to replace 'shall' with 'may'.	It should not be compulsory to have a share capital.
9(5)	Mixed liability company	<b>Amend</b> the second sentence to replace 'memorandum and articles' with 'memorandum <i>or</i> articles'.	Minor amendment for clarification.
15(3)	Memorandum of incorporation	<b>Repeal</b> the requirement for signature by the founder member in s.15(3).	This has caused practical difficulties for PCCs converting into ICCs as sections 48(5)(a), 17(2)(a) and 15(3) read together require the signature of all existing members. Also, the obligation to include signatures has caused some difficulty in implementing a fully electronic registry. The removal of the signatures requirement will place the onus on corporate services providers to they have all necessary authority from their clients when forming the company.

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
15(4)	Memorandum of incorporation	<b>Repeal</b> this sub-section.	This section is unnecessarily prescriptive and can be repealed without negative consequence.
16(3)	Articles of incorporation	<b>Amend</b> , for the avoidance of doubt, to clarify the current position that the standard articles <i>currently in force</i> shall apply to a company save to the extent that they have been varied or disapplied.	To clarify that in the event of amendments to the standard articles prescribed by the Department, the amended standard articles automatically apply to a company that has not varied or disapplied them, regardless of when the company was incorporated.
17(2)(f)	Application for incorporation	<b>Amend</b> to clarify that in the case of a company with a share capital, the initial share capital may be unlimited.	Clarification.
27	Reservation of names	<b>Amend</b> to permit reservation of names for change of name purposes, rather than only for new companies.	Self-explanatory.

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
29	Objection to a company name	<p><b>Amend</b> to widen the category of potential applicants to reflect s.69 of the UK Companies Act 2006 i.e. to permit objections from anyone who considers that (i) the name is the same as a name associated with the applicant in which he has goodwill or (ii) that it is sufficiently similar to such a name that its use in Guernsey would be likely to mislead by suggesting a connection between the company and the applicant.</p> <p><b>Amend</b> to allow a company which has reserved a name under s.27 but is not yet incorporated to object to a company name.</p>	Consistency with UK provisions and fairness.
30	Registered office	<b>Amend</b> to introduce a criminal offence for breach of s.30(1).	Reference to proceedings for an offence under subsection (5) is made in subsection (7) but no offence is created under this section.

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
32	Registered office ineffective	<b>Amend</b> to introduce a provision requiring service of formal notices and documents by publication in La Gazette Officielle, where service is to be effected on a company in respect of which a notice of registered office ineffective has been served.	A company must have a registered office at all times, and an ineffective registered office must therefore continue as the registered office until such time as the office is validly changed. However, it does not seem to be desirable for service on an ineffective registered office to constitute effective service in the case of formal notices and documents. Do you consider that such a change is necessary and desirable? What practical difficulties might such a provision cause and how could these be resolved?
35(2)	Details to appear in company's correspondence	<b>Amend</b> to replace 'particulars' with 'name'.	Consistency with other sub-sections.
38(3)	Restriction on Alteration of Memorandum	<b>Amend</b> to replace 'may' with 'shall'.	It should be compulsory to delete this on migration.



Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
40	Objects	<b>Amend</b> to include a provision that the annulment of an alteration to the company's objects does not affect the right, title or interest of a third party arising from a transaction entered into by the company in the period between the alteration being passed and its subsequent annulment, subject to any order of the court to the contrary.	In the interests of certainty for all parties.
47	Conversion of non-cellular company into incorporated cell company	<b>Amend</b> to read 'an' incorporated cell company.	Typographical correction.
61(1)	Amalgamation	<b>Delete</b> sub-section 1 to permit the amalgamation of all types of body corporate with each other, subject only to the requirement in sub-section 2 that at least one of the amalgamating bodies corporate must be a company.	Self-explanatory – more permissive.
64(1)	Amalgamation	<b>Amend</b> to read 'board of directors' instead of 'directors', so that the provisions of s.133 apply.	Clarification and consistency.
64(8)	Amalgamation - special resolution definition	<b>Amend</b> to transfer the certification function to the Registrar and to give the Registrar the power to prescribe rules governing which resolutions of overseas companies are to be automatically accepted as equivalent to a special resolution and criteria for equivalence in other cases.	Self-explanatory.

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
69(3) and 70(5)		<b>Amend</b> to permit the 28 day public notice period under s.69(3) to run from the date on which the registry is notified of a company's intention to amalgamate.	This reflects current practice, as well as the procedure under the old Law, whereby the public notice period may run concurrently with required member, creditor and EGM notice periods and the certificate of amalgamation may be issued 28 days after the company first give notice of its intention to amalgamate.
76(a) & 76(b)	Migration	<b>Delete</b> 'to be registered as a Guernsey company' and insert 'to transfer its incorporation to Guernsey'.	Clarification for accuracy.
76(c)	Migration	<b>Amend</b> to transfer responsibility for certification from Commission to Registrar.	Self-explanatory.
84	Migration	Is the definition of 'migration details' working in practice, or are the provisions too prescriptive?	Please provide comments based on practical experience.
94(2)(b)	Migration	<b>Amend</b> to provide a power for regulations to prescribe fees payable to HM Procureur and the Director of Income Tax for their confirmation pursuant to this section.	Self-explanatory.

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
97(3)	Migration	<b>Amend</b> to permit the 28 day public notice period under s.69(3) to run from the date on which the registry is notified of a company's intention to migrate.	This reflects current practice, as well as the procedure under the old Law, whereby the public notice period may run concurrently with required member, creditor and EGM notice periods and the steps required to be taken under s.98 must therefore be taken not less than 28 days after the company first gave notice of its intention to migrate.
98(a)	Migration	<b>Amend</b> to clarify that deletion shall be by operation of law and that the company must alter its memorandum accordingly is altered accordingly under the provision of section 38(3).	Clarification.
102	Migration	<b>Amend</b> to clarify that the translation must be in such form as the Registrar may prescribe.	Clarification.
115(3)	Powers of directors to bind company	<b>Amend</b> to provide that subsections (1) and (2) do not affect any liability incurred <i>by any director</i> by reason of the directors having exceeded their powers.	Clarification.
130	Right to inspect register of members – exceptions	<b>Delete</b> 'members in respect of any' in the 3 <sup>rd</sup> line and 'held by them' in the last line.	So that mutual fund promoters are not required to reveal confidential client lists.

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
128	Response to Request for inspection or copy	<b>Amend</b> to allow two weeks for responding under sub-section 1 for the sake of consistency with the provisions of s.150 in respect of directors.	Consistency with s.150.
132(3)	Shadow Directors	<b>Repeal</b> cross reference to ss.162 to 166 which have never been brought into force.	Self-explanatory.
137	Eligibility/disqualification of directors	<b>Amend</b> to provide that no person shall be appointed or hold office as a director within a period of 5 years of conviction of a criminal offence on indictment before the Royal Court of Guernsey leading to a sentence of imprisonment of 6 months or longer, or is convicted of an offence against the law of a foreign country that is punishable by imprisonment for a period of twelve months or longer, except where on application to the Royal Court the applicant can prove that the conviction does not render him unfit to hold office.	Self-explanatory.

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
137(2)(c)	Eligibility/disqualification of directors	<b>Amend</b> to provide that this section only applies to a person disqualified, by reason of misconduct or unfitness, from acting as a director under the law of a district, territory or place <i>prescribed by the Registrar</i> .	To ensure that only jurisdictions with appropriate disqualification provisions are recognised. Disqualification in a jurisdiction not prescribed by the Registrar will continue to be a factor that the Court may consider in an application for a disqualification order under Part XXV of the Law.
145	Alternate Directors	<b>Amend</b> to provide an exception to sub-section 1 for appointments lasting less than 7 days and to introduce a new section requiring retrospective notification of all such appointments as part of the annual validation.	Under the law, 'director' includes alternate director. This limited exception is appropriate and proportionate.
155	Minutes as Evidence	<b>Amend</b> to permit signature by any director present at the meeting who is authorised for that purpose.	Self-explanatory.
157	Liability for acts of alternate directors	<b>Insert</b> a new provision that where an alternate director is appointed for less than seven days under the proposed amendment to s.145, a director is liable for all the acts of his alternate as though they were his acts.	To ensure that the registered director retains responsibility for the acts of temporary unregistered alternate directors.

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
162	Disclosure of interest	<p><b>Repeal</b> sub-sections (1)(a) and (b).</p> <p>Add the words ‘the nature and extent of the interest’ at the end of sub-section 1.</p>	To simplify the disclosure requirements.
167(2)	Meaning of interested	<b>Amend</b> ‘party’ to read ‘part’.	Typographical correction.
170(2)(c)	Eligibility to be secretary	<p><b>Amend</b> to provide that this section only applies to a person disqualified, by reason of misconduct or unfitness, from acting as a director under the law of a district, territory or place <i>prescribed by the Registrar</i>.</p> <p><b>Amend</b> ‘director’ to read ‘director, <i>secretary or other officer of any company</i>’.</p>	<p>To ensure that only jurisdictions with appropriate disqualification provisions are recognised.</p> <p>To ensure that anyone disqualified from holding any relevant office is ineligible to be a secretary.</p>
171	Duties of secretaries	<b>Repeal</b> section.	No duties should be compulsory when the appointment of a secretary is optional. This should be a matter for the memo and arts.

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
180	Unanimous Resolutions	<b>Amend</b> to clarify that a unanimous resolution is one agreed to by every member of the company <i>or duly appointed proxies</i> .	To clarify the effect of s.222 i.e. that a member of a company is entitled to appoint a proxy to exercise all or any of his rights to attend and to speak and vote at a meeting.
181	Circulation of Written Resolutions	<b>Introduce</b> new provision to provide, for the avoidance of doubt, that the register of members may be closed for a limited period of time prior to the issue of a written resolution.	To clarify that the register of members may be closed to ensure that it does not change during the circulation of a written resolution. Do you consider that a similar provision is required to permit the closure of the register for a limited period in respect of meetings at which resolutions are to be moved?

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
187	"authenticated document" is not defined	<b>Amend</b> to delete 'authenticated'.	Under s.182(3) the shareholder must be told how he is to signify agreement. The word 'authenticated' is not defined under the Law and is unnecessary - the shareholder should just be required to do whatever he has been asked to do to signify agreement.
191(1)(a)	General Rules on Voting	<b>Amend</b> to specify that 'in the case of a company <i>limited by shares</i> , every member has one vote in respect of each share, and...'	Clarification. A share capital is not compulsory.
191(3) (a)  191(3)	General Rules on Voting	<p><b>Amend</b> to specify that 'in the case of a company <i>limited by shares</i>, every member <i>present in person or by proxy</i> has one vote in respect of each share, and...'</p> <p><b>Amend</b> to specify that every proxy present who has been duly appointed may exercise the voting rights of a member.</p>	<p>Clarification</p> <p>Clarification – not strictly necessary given s.222, but for consistency with s.191(2) which deals with proxies voting on a show of hands.</p>



Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
213(2) (a)	EGM Quorum	<b>Amend</b> to replace 'issued share capital' with 'voting rights'.	Clarification
222(2)	Right to appoint proxies	<b>Amend</b> to delete 'having a share capital' and replace with 'limited by shares'.	Clarification
224	Proxy Appointment	<p>These sections introduced restrictions in respect of the notice periods for appointment of a proxy and termination of a proxy.</p> <p>It has been suggested that this (in particular that lodging of a proxy cannot be requested greater than 48 hours before the relevant meeting) may cause difficulties where there are companies (in particular funds or listed companies) with large numbers of shareholders, as 48 hours may not give the relevant administrator sufficient time to process all of the proxies. It has been suggested that section 224 should be repealed.</p>	Do you consider that this requirement has caused any problems and should the section be repealed?
232	Quorum requirements for class meetings	It has been suggested that the Law is unnecessarily prescriptive in setting out quorum requirements for class meetings where class rights will be varied and that this may cause a problem for funds which have more than one class. It has been suggested that the section should be amended or repealed.	Do you consider that section 232 has caused any problems and should the section be amended or repealed? If you suggest that this section be amended, please explain how you consider those amendments should be framed.

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
232 (3)(a)	Class meetings	<b>Amend</b> - in section 232(3)(a) and 233(3)(a), replace 'two persons' with 'one or more persons'.	Self-explanatory.
234	Duty to submit annual validation	<b>Amend</b> to clarify that the duty to submit an AV for a particular year arises on 1 January of each year, for every company incorporated before 1 December of the previous year (notwithstanding that the AV need not be completed, filed, delivered, etc, until 31 January). Amend to clarify that where a company is to be voluntarily struck off, wound up, migrated, amalgamated, etc, between 1 January and 31 January of any year in which the company was on the register on 1 December of the previous year, such action is conditional upon the submission of the annual validation and payment of the relevant fee.	Clarification as to the date on which a company becomes liable to submit an AV.
235(1)(f)	Content of annual validation	<b>Amend</b> s.235(1)(f) to delete the words 'in its current financial year'.	Clarification. Section 234(1)(a) provides that the annual validation must contain information which is valid on 31 December of the previous year. The words 'current financial year' are not therefore necessary.

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
235 (2)	Content of annual validation where a company has a share capital	<b>Repeal</b> section 235(2).	<p>It has been suggested that in the case of funds this section requires too much commercial information to be revealed.</p> <p>It is also difficult for funds to capture all this information for a given date.</p> <p>Finally this information is not required for a specific purpose and its absence will not therefore pose a problem.</p>
236(1)	Declaration of compliance (annual validation)	<b>Amend</b> to permit declaration of compliance to be signed by a CSP, subject to confirmation by the CSP that a named director or secretary has confirmed the truth of the contents.	Self-explanatory and permissive only.

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
252	Laying of accounts and reports before the AGM	<p><b>Amend</b> to insert 'annual' before 'general meeting' in both header and text.</p> <p><b>Amend</b> to clarify that this duty is subject to the requirements of section 254, in respect of PCCs.</p>	<p>Clarification.</p> <p>Clarification.</p>
256(2)	Exemption from audit	<b>Amend</b> to permit an indefinite waiver and to make necessary amendments to existing provisions.	Self-explanatory.
257	Appointment of auditor	It has been suggested that these provisions are too complicated and that sub-sections 2 – 5 should be simplified?	Do you agree? Please give reasons and suggest how these provisions might be simplified.
283	No conversion into stock	<b>Repeal.</b>	It is felt that this imposes an unnecessary restriction.

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
287	Power of company to alter share capital	<p><b>Delete</b> the words 'alter its memorandum so as to' in s.287(1).</p> <p><b>Repeal</b> sub-section (1)(c).</p> <p><b>Repeal</b> section 287(3).</p> <p>Transitional provisions will be required in respect of companies formed before the introduction of the new Law, which have an authorised share capital until 1 July 2011, under the existing transitional provisions.</p>	These sections are no longer necessary, as companies will no longer have an authorised share capital in their memorandum.
288	Share capital reduction	<b>Amend</b> to include an optional new court approved share capital reduction process.	A court approved share capital reduction process may be preferable in some instances, particularly for cross border transactions where a court process may be required for such reductions to be recognised in other jurisdictions.

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
289(1)	Transfer of shares	<b>Amend</b> to provide that 'The shares of any shareholder in a company are transferable <i>only to the extent and</i> in the manner provided by the company's memorandum or articles, <i>which may provide that the shares are not transferable.</i> '	Clarification.
291-293	Exercise by directors of power to issue shares	<b>Repeal</b> these sections and replace with a general provision that directors may issue shares, to the extent permitted by the Company's memorandum and articles.	Self-explanatory.
294(2) 294(3)	Consideration for issue of shares	<b>Repeal</b> these two sub-sections.	The concepts of share capital account and authorised share capital are no longer necessary.
295(2) 296(6)	Certificate	<b>Amend</b> to exempt OEICs from the certification provisions as they are proving unworkable.	Self-explanatory.

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
295 296	Consideration to be decided by board of directors	<b>Amend</b> to delete the words 'and to all existing members' in s.295(1)(b).	<p>Directors have an obligation to act in the best interests of the company, not individual shareholders.</p> <p>Also, do you consider that these sections generally have caused any difficulties in their application? If so, please identify the difficulties and any suggested amendments.</p>
301-302	Distribution	It has been suggested that the use of the word 'distribution' in this context may be emotive with reference to historical tax issues.	<p>Do you consider that this is causing any problems in practice and, if so, how would you suggest the difficulties are remedied?</p> <p>Also, please provide any general feedback on how the distribution process is working in practice and how the Law could be improved in this respect.</p>

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
303(3)	Procedure for making a distribution other than dividend	<b>Amend</b> to delete the word 'made' in the last sentence.	Clarification.
303, 304, 305, & 309	Relationship between dividends and distributions	It has been suggested that the difference in treatment between dividends and distributions in these sections is not appropriate.	Do you consider that the distinction is appropriate? If not, have you encountered any difficulties with these provisions in practice?



Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
309	Recovery of distributions	<p>It has been suggested that a time limit should be introduced for recovery of distributions from members under s.309(1).</p> <p>It has also been suggested that section 309 should be amended to include a 'whitewash' provision for directors' liability under this section, i.e. no recovery where the company would have passed the solvency test at the time the distribution was made and would pass it at the time recovery is sought.</p>	<p>Do you agree that a time limit should be introduced and, if so, what period of time should be allowed for the recovery of distributions? Please give reasons for your answer.</p> <p>Do you agree that such a provision should be included?</p>
310(a)	Power to issue redeemable shares	<b>Amend</b> cross-reference to section 325 in the current Law, to section 291.	Correction of error.
311(3)	Redemption only of fully paid shares	<b>Amend</b> to provide that a company may redeem a partly paid up share to the extent that it has been paid up.	Self-explanatory.

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
314	Authority for acquisition	<b>Amend</b> section 314 to mirror section 315(1) so as to permit non-market acquisition of own shares where authorised by memorandum or articles.  Repeal section 314(3) and 314(4).	Self-explanatory.
315	Authority for market acquisition	<b>Repeal</b> section 315(3)(b) and 315(3)(c).	Considered inflexible.
319	Shares redeemed or acquired to be cancelled	<b>Amend</b> to delete the words ‘...and the amount of the company’s share capital shall be diminished accordingly.’	To reflect the fact that there is no longer a concept of authorised share capital.
323(2)	Effect of intervening insolvency on redemption or acquisition of shares	<b>Amend</b> s.323(2) to read ‘ <i>If the date on which the shares were to be redeemed or acquired is a date after the commencement of the winding up...</i> ’	Clarification.
329	Financial assistance	<b>Amend</b> to provide that companies may provide financial assistance for the purchase of their shares.	This will harmonise Guernsey Law with UK Law in this area.
337	Right of transferee to acquire shares	<b>Amend</b> to read ‘not less than 90%’, instead of ‘90%’.	Minor amendment.

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
371(10)	Restoration to the Register of Companies	<b>Amend</b> to include a discretion for the Registrar to restore a company to the register where the company was struck off for an error which was subsequently remedied and in respect of which all fees and any applicable late fees have been paid.	To avoid the need for the expense of court proceedings where it is equitable to restore.
419	Final distribution	<b>Amend</b> to provide that a final distribution under sub-section 2 shall not constitute a distribution within meaning of section 301 and for the purposes of section 303 of the Law.	Clarification.
461(5)	Functions of receiver and effect of receivership orders	<b>Amend</b> to move the bracket in front of 'within' back before the word 'including'.	Typographical clarification.
483(c)	Beneficial Ownership	When the new Law was introduced, there was some concern that the definitions of open-ended investment company and closed-ended investment company were not consistent with the definitions in the Protection of Investors Law. Amendments to the POI Law should now have resolved this concern.	Please indicate if there remains any concern on this topic.
498	Electronic documents	<b>Amend</b> to insert a new provision authorising the destruction of original hard copy records, after a period of 3 years, where an electronic copy is retained and to provide that the registrar is under no obligation to retain the originals of documents delivered in electronic form, provided the information in them has been recorded in the register.	UK law has similar provisions (see section 1083 of the Companies Act 2006) and this facilitates the move to electronic record holding by the Registry.

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
513(1)(b)	Criminal penalties	<b>Amend</b> to insert 's.247' into the list of sections - failure to comply with requirements of s.243 or s.244.	Self-explanatory.
513(1)(c)		<b>Amend</b> to insert 's.30' into the list of sections - see comment regarding creating a criminal offence under s.30, above.	
519	Striking off for persistent or gross contraventions	<b>Amend</b> to clarify that a single gross contravention of the current or former Law will justify striking off, as well as persistent contraventions.	For the sake of clarity i.e. that one gross contravention is sufficient for an opinion under section 519.
523	Service of documents	<b>Amend</b> to include provision for service by e-mail where the intended recipient has agreed to accept service by e-mail and provided an e-mail address for that purpose. Deem receipt 48 hours after sending where the sender is able to show that the e-mail was properly addressed.	Self-explanatory.
527(1)	Definition of 'solvency test'	It has been noted that other jurisdictions with a solvency test only have the cash flow test (save for where the company is migrating into or out of the jurisdiction).	Do you consider that it would be appropriate for Guernsey to move to such a test by repealing the balance sheet test provision in s.527(1)(b) for all circumstances except migrations? Please give reasons for your answer.

Section reference (of the Law)	Subject	Proposed amendment / request for feedback	Comment
527(2)	Definition of 'solvency test'	<p><b>Amend</b> 'directors' to read 'board of directors' for the sake of consistency and accuracy.</p> <p>Note – this would no longer be relevant if 527(1)(b) was repealed.</p>	
527(2)(a)	Solvency test	<p><b>Amend</b> to replace 'must' with 'may'.</p> <p>Note – this would no longer be relevant if 527(1)(b) was repealed.</p>	Self-explanatory.
532	Definition of closed-ended investment company	<p>The definition of closed-ended investment companies states that:</p> <p><i>'Investors are not entitled under the terms of the scheme (i) to have their units redeemed or repurchased by, or out of the funds provided by, the body, or (ii) to sell their units on an investment exchange, at a price related to the value of the property to which they relate'.</i></p> <p>It has been suggested that this may cause problems as under certain schemes shares can be redeemed (though at the discretion of the directors rather than the shareholders). Further, the discount management mechanism in operation for many listed closed-ended funds is to effect share repurchases on the market.</p>	Do you consider that this has caused any difficulties in practice and, if so, what amendments would you suggest are necessary to overcome these? Please give reasons for your answer.

532	'Set off'	It has been suggested it should be clarified that the definition of set-off includes both bilateral and multilateral contractual arrangements, for example in section 376(1)(b), Section 419(1)(c) and Section 461(5).	Do you consider that there is any scope for confusion in the current Law and/or that there is a need for 'set-off' to be defined in the Law? Please give reasons for your answer.
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