

CONSULTATION PAPER NO. 1 2009

COMPANIES (AMENDMENT NO. 4) (JERSEY) REGULATIONS 200-

Amendments to the Companies (Jersey) Law 1991 to provide for an oversight regime for auditors of share traded companies and for the preparation of accounts for share traded companies in accordance with prescribed accounting standards

CONSULTATION PAPER

The Jersey Financial Services Commission (the “**Commission**”) invites comments on this Consultation Paper.

Robert Kirkby at Jersey Finance Limited is co-ordinating an industry response that will incorporate any matters raised by local businesses. Comments should reach Jersey Finance by 31 March 2009.

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Responses may also be sent directly to Andrew Le Brun at the Commission by 31 March 2009. If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, it is of course appropriate to contact the Commission.

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It is the policy of the Commission to make the content of all responses available for public inspection unless specifically requested otherwise.

Glossary of terms

auditor	means a natural person or a firm practising as an auditor and in whose name audit reports are issued. (Compare with the definition of ‘responsible individual’.) A ‘firm’ may be a partnership (including a limited liability partnership) or a body corporate.
Audit Rules	means rules governing the conduct of the audit of share traded companies by an eligible auditor.
eligible auditor	means an auditor whose name is entered in the Register of Eligible Auditors (as referred to in the Regulations) and thus authorised under the Companies Law to audit a share traded company.
exempt company	means a company that has only debt securities admitted to trading on a regulated market, the denomination of which is at least €50,000 (or equivalent).
EU	means the European Union.
IOSCO	means the International Organisation of Securities Commissions.
Jersey Finance	means Jersey Finance Limited.
JSCCA	means the Jersey Society of Chartered and Certified Accountants.
Principle 16	means Principle 16 of IOSCO’s “Objectives and Principles of Securities Regulation”.
recognized professional body	means any of the following – the Institute of Chartered Accountants in England and Wales; the Institute of Chartered Accountants of Scotland; the Institute of Chartered Certified Accountants; or the Institute of Chartered Accountants in Ireland.
regulated market	has the same meaning as ‘regulated market’ in Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments. (The website of the Committee of European Securities Regulators ¹ contains a list of the EU markets that meet the criteria of a ‘regulated market’ in Directive 2004/39/EC.)
responsible individual	means a natural person who is responsible for audit work in a firm of auditors and who has been authorised by the firm to sign audit reports for the firm.

¹ See

http://mifiddatabase.cesr.eu/Index.aspx?sectionlinks_id=23&language=0&pageName=REGULATED_MARKETS_Display

share traded company	means a Jersey-incorporated company (except an exempt company) that has its securities admitted to trading on a regulated market.
the CD agencies	means, together, the following agencies in the Crown Dependencies - the Jersey Financial Services Commission; the Guernsey Law Officers' Department; and the Isle of Man Financial Supervision Commission.
the Commission	means the Jersey Financial Services Commission.
the Commission Law	means the Financial Services Commission (Jersey) Law 1998.
the Companies Act	means the Companies Act 2006 of the United Kingdom.
the Companies Law	means the Companies (Jersey) Law 1991.
the ICAEW	means the Institute of Chartered Accountants in England and Wales.
the Minister	means the Minister for Economic Development.
the POB	means the Professional Oversight Board of the UK's Financial Reporting Council.
the Register	means the Register of Eligible Auditors.
the Registrar	means the Registrar of Companies in Jersey.
the Regulations	means the draft Companies (Amendment No. 4) (Jersey) Regulations 200-.
the Statutory Audit Directive	means the European Union Directive 2006/43/EC.
the UK	means the United Kingdom.
third countries	are jurisdictions outside of the EU, such as Jersey.

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1 EXECUTIVE SUMMARY

1.1 Overview

- 1.1.1 The purpose of this paper is to consult on draft legislation that would amend the Companies (Jersey) Law 1991 (the “**Companies Law**”) to: (i) respond to the impact on Jersey-based auditors of European Union Directive 2006/43/EC (the “**Statutory Audit Directive**”)²; and (ii) improve the Island’s level of compliance with IOSCO Principle 16 relating to accounting and auditing standards.
- 1.1.2 The draft legislation is entitled the ‘Companies (Amendment No. 4) (Jersey) Regulations 200-’ and will be referred to in this paper as “**the Regulations**”.
- 1.1.3 Where a reference in this Consultation Paper is made to an “**auditor**” it should be taken as a reference to a natural person or firm practising as an auditor and in whose name audit reports are issued. In this paper, the pronoun ‘it’ has been used when referring to an auditor. This is for convenience only and does not infer that an auditor may not be a natural person.
- 1.1.4 A natural person who is responsible for audit work in a firm of auditors and who has been authorised by the firm to sign audit reports for the firm is referred to herein as a “**responsible individual**”.

1.2 What is proposed and why?

Responding to the impact of the Statutory Audit Directive

- 1.2.1 The Statutory Audit Directive aims to introduce harmonised provisions in all European Union (“EU”) Member States relating to auditor eligibility and independent oversight (quality assurance). The Statutory Audit Directive had to be transposed into Member States’ national law by the end of June 2008.
- 1.2.2 Once certain transitional provisions have expired (see paragraph 4.1.9), the Statutory Audit Directive will subject auditors of ‘third country’ (i.e. non-EU) companies with securities admitted to trading on a regulated market in the EU to the auditor registration and oversight provisions in the relevant Member State where the company’s securities are admitted to trading. However, an EU Member State may grant a derogation from this requirement (but will not be obliged to grant such a derogation) where the third country auditor is subject to an EU equivalent system of public oversight, quality assurance, investigations and penalties.
- 1.2.3 The Regulations would amend the Companies Law so that Jersey can establish an auditor oversight regime that should meet the equivalence requirements of the Statutory Audit Directive. The introduction of such a regime *may* avoid the need for a Jersey auditor:
- 1.2.3.1 To apply for registration in each Member State in which it acts as an auditor to a Jersey company whose securities are admitted to trading

² See http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_157/l_15720060609en00870107.pdf

on a regulated market (or allow it to benefit from “lighter touch” registration); and

- 1.2.3.2 To be subject to the systems of oversight, quality assurance, investigation and penalties in each Member State in which it is registered,

although it will be up to each Member State to determine the extent to which it recognises the equivalence of third country regimes.

- 1.2.4 Certainly, the application of full Statutory Audit Directive requirements by more than one Member State would prove to be quite onerous and expensive. For example, a Jersey audit firm auditing Jersey companies with securities admitted to trading on stock exchanges in London, Frankfurt, Dublin and Luxembourg, would be required to register with, and follow rules set by, the competent authorities in four Member States.

- 1.2.5 To introduce into the Companies Law an auditor oversight regime that would meet the equivalence requirements of the Statutory Audit Directive, the Regulations would, in summary, provide that the auditor of a Jersey company whose securities are admitted to trading on a regulated market in the EU (a “**share traded company**”) would;

- 1.2.5.1 Need to be entered in a Register of Eligible Auditors (the “**Register**”) (and once entered in the Register an auditor would be defined under the Companies Law as an “**eligible auditor**”);

- 1.2.5.2 Need to meet certain criteria before being entered in the Register;

- 1.2.5.3 Have to comply with rules (“**Audit Rules**”) issued by a recognized professional body governing the conduct of the audit of share traded companies; and

- 1.2.5.4 Be monitored for compliance with those Audit Rules by the recognized professional body that issued them and be liable to disciplinary action where breaches occur.

- 1.2.6 In addition, to meet the equivalence requirements of the Statutory Audit Directive, the Regulations would amend the Companies Law to provide that the auditor monitoring work of a recognized professional body would itself be subject to oversight by an independent body.

- 1.2.7 The intention is that the Regulations would allow Jersey to ‘piggyback’ on to the United Kingdom’s (“**UK**”) existing auditor oversight regime. To this end, the Institute of Chartered Accountants in England and Wales (“**ICAEW**”) would be requested to issue the Audit Rules referred to in paragraph 1.2.5.3, monitor the compliance of eligible auditors with them, and, if breaches occur, take disciplinary action when necessary. The Jersey Registrar of Companies (the “**Registrar**”) would also be granted powers under the Companies Law to take action against eligible auditors.

- 1.2.8 The UK’s Professional Oversight Body (“**POB**”) (part of the Financial Reporting Council) would be requested to fulfil the role of the independent body overseeing the monitoring work of the ICAEW.

- 1.2.9 The Commission does not anticipate that a recognized professional body other than the ICAEW would be requested to issue Audit Rules, at least in the first instance. There are two reasons for this. Firstly, it is believed that the majority of auditors that work in Jersey are members of the ICAEW. Secondly, it is thought that most, and possibly all, Jersey audit firms are already subject to practice assurance reviews by the ICAEW.
- 1.2.10 The development of an auditor oversight regime is being progressed in conjunction with the authorities in Guernsey and the Isle of Man so that regimes that are substantially the same would be introduced in each island at the same time.
- 1.2.11 These proposals would not impact on the audit arrangements of companies that are not share traded companies.

Enhancing the Island's level of compliance with IOSCO Principle 16 relating to accounting and auditing standards.

- 1.2.12 The International Organisation of Securities Commissions ("IOSCO") – the international standard setter for securities regulation – has issued an international standard ("Principle 16") that states that a jurisdiction should apply accounting and auditing standards that are of a high and internationally acceptable quality. Principle 16 applies to issuers that make "public offerings" of securities and issuers whose securities are "publicly traded".
- 1.2.13 To enhance Jersey's level of compliance with Principle 16 it is proposed that the Regulations would amend the Companies Law to:
- 1.2.13.1 Provide for statutorily prescribed accounting standards to be adopted by share traded companies (rather than "generally accepted accounting principles"); and
- 1.2.13.2 Provide a mechanism for enforcing compliance with accounting standards and auditing standards that would apply to share traded companies.
- 1.2.14 The Commission is taking the view that, initially at least, Jersey should aim to comply with Principle 16 only in respect of the same constituency of companies as that covered by third country provisions in the Statutory Audit Directive i.e. companies that have securities admitted to trading on an EU regulated market.
- 1.2.15 This limitation in scope would mean that the Regulations would not fully meet the scope of issuers covered by Principle 16, but it is proposed for practical reasons which are explained in Section 6.1.

1.3 Who would be affected?

- 1.3.1 The proposed changes to the Companies Law that would be made by the Regulations would affect every share traded company, and their directors and auditors (and the responsible individuals thereof).
- 1.3.2 It is expected that the proposed auditor oversight regime would most likely impact only on the 'Big 4' audit firms, a handful of smaller firms, and the responsible individuals in those firms. Affected audit firms would be expected to bear the costs of the oversight regime.

1.4 Timing

- 1.4.1 It is currently anticipated that the auditor oversight regime and statutorily prescribed accounting standards for share traded companies would be in place by the end of the third quarter of 2009.

2 CONSULTATION

2.1 Basis for consultation

2.1.1 The Commission has issued this Consultation Paper in accordance with Article 8(2) of the Financial Services Commission (Jersey) Law 1998 (the “**Commission Law**”), as amended, under which the Commission “*may, in connection with the carrying out of its functions -consult and seek the advice of such persons or bodies whether inside or outside Jersey as it considers appropriate*”.

2.2 Responding to the consultation

2.2.1 The Commission invites comments in writing from interested parties on the proposals included in this Consultation Paper. Where comments are made by an industry body or association, that body or association should also provide a summary of the type of individuals and/or institutions that it represents.

2.2.2 To assist in analysing responses to the Consultation Paper, respondents are asked to:

2.2.2.1 Prioritise comments and to indicate their relative importance; and

2.2.2.2 Respond as specifically as possible and, where they refer to costs, to quantify those costs.

2.3 Next steps

2.3.1 Following analysis of the responses to this Consultation Paper, the results will be presented to the Board of Commissioners together with a final draft of the Regulations. Subject to the approval of the Board of Commissioners the draft Regulations will be recommended to the Minister for Economic Development (the “**Minister**”). If approved by the Minister, the Regulations will then be laid before the States of Jersey for consideration and adoption.

3 THE COMMISSION

3.1 Overview

3.1.1 The Commission is a statutory body corporate established under the Commission Law. It is responsible for the supervision and development of financial services provided in or from within Jersey.

3.2 Commission's functions

3.2.1 The Commission Law prescribes that the Commission shall be responsible for:

- 3.2.1.1 The supervision and development of financial services provided in or from within Jersey;
- 3.2.1.2 Providing the States, any Minister or any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;
- 3.2.1.3 Preparing and submitting to the Minister recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure;
- 3.2.1.4 Such functions in relation to financial services or such incidental or ancillary matters –
 - as are required or authorised by or under any enactment; or
 - as the States may, by Regulations, transfer; and
- 3.2.1.5 Such other functions as are conferred on the Commission by any other Law or enactment.

3.3 Guiding principles

3.3.1 The Commission's guiding principles require it to have particular regard to:

- 3.3.1.1 The reduction of risk to the public of financial loss due to dishonesty, incompetence, malpractice, or the financial unsoundness of financial service providers;
- 3.3.1.2 The protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
- 3.3.1.3 The best economic interests of the Island; and
- 3.3.1.4 The countering of financial crime in both Jersey and elsewhere.

4 BACKGROUND

4.1 The Statutory Audit Directive

- 4.1.1 The EU adopted the Statutory Audit Directive in May 2006. It considerably broadens the scope of existing directives that deal with the approval and registration of auditors. In particular, it aims to introduce harmonised provisions relating to auditor eligibility and independent oversight.
- 4.1.2 The Statutory Audit Directive contains provisions relating to:
- 4.1.2.1 The approval, continuing education and mutual recognition of auditors;
 - 4.1.2.2 The registration of auditors;
 - 4.1.2.3 Professional ethics, independence, objectivity, confidentiality and secrecy;
 - 4.1.2.4 Auditing standards and audit reporting;
 - 4.1.2.5 Quality assurance;
 - 4.1.2.6 Investigations and penalties;
 - 4.1.2.7 Public oversight and regulatory arrangements between Member States;
 - 4.1.2.8 Appointment and dismissal of auditors;
 - 4.1.2.9 Special provisions for the statutory audit of ‘public-interest’³ entities; and
 - 4.1.2.10 Third country auditors.
- 4.1.3 Articles 45 and 46 of the Statutory Audit Directive deal with the registration and oversight of third country auditors by EU Member States. ‘Third countries’ are jurisdictions outside of the EU, such as Jersey.
- 4.1.4 Article 45(1) of the Statutory Audit Directive says that competent authorities in each Member State shall register every third country auditor that provides an audit report concerning the annual or consolidated accounts of “a company incorporated outwith the European Union whose transferable securities are admitted to trading on a regulated market of that Member State...”. Article 45(3) adds that Member States shall subject registered third country auditors to their systems of oversight, quality assurance, investigation and penalties.

³ Defined in Article 2 of the Statutory Audit Directive. In essence, EU entities whose securities are traded on a regulated market in the EU, banks, insurance companies and other entities that are of significant public relevance because of the nature of their business, their size or the number of their employees.

- 4.1.5 Article 46(1) will provide for Member States to “disapply or modify” the requirements in Article 45(1) and (3) if a third country auditor is subject to systems of public oversight, quality assurance, investigations and penalties in the third country, under whose law it is conducting the audit, that are equivalent to those of the Statutory Audit Directive. In order to ensure the uniform application of Article 46(1), the Statutory Audit Directive specifies that equivalence shall be assessed by the European Commission in cooperation with Member States. Member States may also assess equivalence or rely on assessments carried out by other Member States as long as the European Commission has not itself taken any decision on a particular jurisdiction.
- 4.1.6 The Statutory Audit Directive had to be adopted into Member States’ national law by 29 June 2008.
- 4.1.7 A technical standard on equivalence assessments⁴ has been published. This sets out the indicators that will be examined in order to assess the equivalence of third country systems of public oversight, quality assurance and investigations and penalties.
- 4.1.8 The European Commission’s approach to assessing the equivalence of third country systems was outlined at a conference held in Brussels on 10 December 2008⁵.
- 4.1.9 The European Commission has allowed transitional provisions to apply in respect of 34 third countries that the European Commission considers are likely to have oversight systems similar to those required under the Statutory Audit Directive or have shown a commitment to introducing an oversight system that would meet the equivalence requirements of the Statutory Audit Directive. This list of third countries includes Jersey, Guernsey and the Isle of Man.
- 4.1.10 The European Commission ‘Decision’ that authorises the transitional provisions for certain third countries was published on 29 July 2008⁶. It requires Members States not to apply Article 45 to auditors of Jersey companies with securities traded on a regulated market in the EU for financial years starting on or before 1 July 2010. However, to benefit from the transitional provisions, a Jersey auditor would need to register with the competent authority of the relevant Member State and provide:
- 4.1.10.1 The name and address of the auditor concerned and information about its legal structure;
- 4.1.10.2 Where the auditor belongs to a network, a description of the network;
- 4.1.10.3 The auditing standards and independence requirements which have been applied to the audits concerned;
- 4.1.10.4 A description of the internal quality control system of the auditor;

⁴ See http://ec.europa.eu/internal_market/auditing/docs/committees/summary-record03-06-08_en.pdf.

⁵ See http://ec.europa.eu/internal_market/auditing/relations/10122008_conference_en.htm.

⁶ See http://ec.europa.eu/internal_market/auditing/relations/index_en.htm

and

- 4.1.10.5 An indication of whether and when the last quality assurance review of the auditor was carried out and information about the outcome of the review.
- 4.1.11 Some of this information will be made public by the relevant competent authority. Further information on registration may be found at: http://ec.europa.eu/internal_market/auditing/relations/index_en.htm.
- 4.1.12 Member States agreed that, where possible, they would start the registration of third country auditors on 1 October 2008, although the Commission is aware that few Member States have met this deadline.

4.2 Oversight of the audit profession in the UK

- 4.2.1 The professional accountancy bodies (such as the ICAEW) in the UK have the primary regulatory responsibility for the supervision of their members acting in their professional capacity. In relation to audit, as ‘recognised qualifying bodies’ under UK law, the accountancy bodies must have effective arrangements in place to ensure that their audit qualifications meet the UK statutory requirement; and, as ‘recognised supervisory bodies’ under UK law, they must have in place (amongst other things) effective arrangements for the registration, monitoring and disciplining of auditors.
- 4.2.2 The Financial Reporting Council – a body independent of the accountancy profession – has statutory responsibility (through one of its operating bodies, the POB) for the oversight of the regulation of auditors by the professional accountancy bodies. In particular, the POB is responsible for the recognition, supervision and de-recognition of those accountancy bodies responsible for monitoring the work of auditors or offering an audit qualification.
- 4.2.3 Monitoring of the audits of all entities with listed securities and other entities in whose financial condition there is considered to be a major public interest is carried out by the Audit Inspection Unit of the POB and for other entities by the inspection units of the relevant professional accountancy body.

4.3 IOSCO Principle 16

- 4.3.1 IOSCO is the international standard setter for securities regulation. In its publication entitled “Objectives and Principles of Securities Regulation”⁷ it sets out thirty principles of securities regulation.
- 4.3.2 Principle 16 sets out certain criteria that IOSCO considers that a jurisdiction should meet so that its “accounting and auditing standards are of a high and internationally acceptable quality”. These criteria require regulation to be in place providing for:
 - 4.3.2.1 The timeliness and relevance of information provided to investors and potential investors;

⁷ See <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD154.pdf>.

- 4.3.2.2 An appropriate mechanism for the setting of quality accounting and auditing standards and for ensuring that, where there is some dispute or uncertainty, standards can be the subject of authoritative and timely interpretation that is consistently applied;
 - 4.3.2.3 An independent verification of financial statements and compliance with accounting principles through professional external auditing;
 - 4.3.2.4 Any audit to be conducted pursuant to well defined and internationally acceptable standards;
 - 4.3.2.5 Rules to ensure the independence of the auditor;
 - 4.3.2.6 Use of a set of international standards (where acceptable to the regulator) to facilitate efficient cross-border capital raising as an aid to the provision of internationally comparable information and to assist in the more efficient raising of capital; and
 - 4.3.2.7 A mechanism for enforcing compliance with accounting and auditing standards.
- 4.3.3 Principle 16 is intended to apply to issuers that make “public offerings” of securities and issuers whose securities are “publicly traded”. Neither term is defined by IOSCO so interpretation is left to individual jurisdictions.

5 AN EU EQUIVALENT AUDITOR OVERSIGHT REGIME

5.1 Introduction

- 5.1.1 Whilst the Regulations would provide the legislative framework for a Statutory Audit Directive equivalent auditor oversight regime, many of the practical elements of the regime - as indicated in paragraphs 1.2.7 and 1.2.8 - would rely upon the use of the ICAEW and the POB.
- 5.1.2 Because the impact of the Statutory Audit Directive affects each Crown Dependency similarly, representatives from the Commission have been working closely with colleagues from the Guernsey Law Officers' Department and the Isle of Man Financial Supervision Commission (which together with the Commission are referred to herein as the "CD agencies") with a view to implementing a common form of auditor oversight regime.
- 5.1.3 At an early stage in considering how the Crown Dependencies should respond to the impact of the Statutory Audit Directive, the CD agencies agreed that, on practical and economic grounds, it would be preferable, if possible, to use the expertise and infrastructure of the ICAEW and the POB, rather than attempt to set up new agencies in the Crown Dependencies to do the work or to expand the remit (and staff) of existing CD agencies to do the work.
- 5.1.4 Consequently, representatives from the CD agencies have held discussions with the ICAEW and the POB and have come to a quintpartite 'in principle' agreement on the shape of the auditor oversight regime and, importantly, have agreed the role that the ICAEW and the POB would play in the oversight regime.

5.2 Overview of the regime

- 5.2.1 In summary, the auditor oversight regime would consist of four key elements:
- 5.2.1.1 Before being able to audit a share traded company an auditor would need to be entered in the Register of Eligible Auditors maintained in Jersey;
- 5.2.1.2 Before being entered in the Register an auditor would need to meet certain minimum criteria. These would include: the auditor having to be a member of one of the professional accountancy bodies in the United Kingdom or Ireland (or, if a firm, be owned/controlled by a certain number of such persons); the auditor contractually agreeing to be bound by Audit Rules issued by the ICAEW; and responsible individuals holding a current practising certificate and being competent to audit the accounts of a share traded company;
- 5.2.1.3 The ICAEW's Audit Rules referred to above would govern the conduct of audit work by Eligible Auditors in relation to share

traded companies and the ICAEW would monitor each Eligible Auditor's compliance with those rules. The ICAEW would effect this monitoring through an extension of its existing 'practice assurance' regime. If breaches of the Audit Rules occur, the ICAEW would have the power to take disciplinary action, when necessary (the auditor's contractual agreement to be bound by the Audit Rules would include being subject to the ICAEW's disciplinary process). The Registrar would also be granted power under the Companies Law to take action, when appropriate; and

5.2.1.4 The POB would be responsible for overseeing the auditor monitoring work of the ICAEW.

5.2.2 Further information on the oversight regime can be found in APPENDIX B.

5.2.2.1 **What is your view on the proposed auditor oversight regime? If you have any concerns, please explain what they are and give reasons for them.**

5.3 Future consultation

5.3.1 This Consultation Paper is solely concerned with the legislative aspects of the oversight regime. In due course, consultation will take place on the other aspects of the regime – for example, on the registration process, the content of the Audit Rules referred to above, and the recovery from eligible auditors of the costs of operating the proposed oversight regime.

5.4 Timing of implementation of the oversight regime

5.4.1 The CD agencies have agreed that, to ensure a level playing field for auditors across the Crown Dependencies, the aim should be to implement the oversight regime on a common date.

5.4.2 Although auditors in the Crown Dependencies can benefit from transitional provisions until (at least) the middle of 2010, the CD agencies are of the view that the oversight regime should be implemented before then. This is because the European Commission's Decision on the transitional arrangements indicates that it intends to conduct the equivalence assessments before the end of the transitional period.

5.4.3 Paragraphs (3) and (4) of the Decision state the following:

(3) *The [European] Commission has carried out a preliminary assessment of audit regulation in relevant third countries [this includes the Crown Dependencies] with the assistance of the European Group of Auditors' Oversight Bodies (EAOB). However, the assessments have not allowed final equivalence decisions to be taken but have provided an initial view of the state of audit regulation in the third countries concerned. Some third countries have a system of public oversight in place, although for the time being the information about the systems is not sufficient for final equivalence decisions to be taken. Others do not have such systems of public oversight yet but have in place an audit regulatory framework offering a perspective of moving towards such a system.*

(4) *In view of the need for further assessments for the purpose of taking final equivalence decisions regarding the audit regulation in third countries, it is appropriate to take a decision providing for a transitional period in respect of auditors [i.e. natural persons] and audit entities [i.e. audit firms] from the third countries concerned in order to permit such assessments to be carried out. During this period, equivalence decisions should therefore not be taken by Member States at national level.*

5.4.4 In terms of giving the Crown Dependencies the best chance of being assessed as equivalent, the view of the CD agencies is that the oversight regime should be implemented as soon as practicable so that the European Commission would be able to review an oversight regime that is working in practice. The European Commission is following developments in Jersey closely and, at its request, was given an update at the end of November 2008 on the progress that has been made towards the introduction of the proposed auditor oversight regime.

5.4.5 In addition, the forthcoming report of the International Monetary Fund on the Island's compliance with international regulatory standards is expected to include comment on the extent to which Jersey is preparing to meet the requirements of IOSCO Principle 16.

5.4.6 Because of these factors, the CD agencies are aiming for implementation of the oversight regime by the end of Q3 2009.

5.4.6.1 **Are you content with the proposed implementation timescale for the auditor oversight regime? If not, please give your reasons.**

6 ENHANCING COMPLIANCE WITH IOSCO PRINCIPLE 16

6.1 Introduction

- 6.1.1 As explained in paragraph 4.3.3, Principle 16 is intended to apply to issuers that make “public offerings” of securities and issuers whose securities are “publicly traded”. Neither term is defined by IOSCO so interpretation is left to individual jurisdictions.
- 6.1.2 The Commission is taking the view that, initially at least, Jersey should aim to comply with Principle 16 only in respect of the same constituency of companies as that covered by the third country provisions of the Statutory Audit Directive i.e. share traded companies.
- 6.1.3 It is acknowledged that this will not fully meet the scope of issuers covered by Principle 16, not least because it will not include issuers with securities admitted to trading on regulated markets outside the EU. It is also possible that Principle 16 could be interpreted as covering issuers that do not have their securities admitted to trading on any public market (e.g. stock exchange) but nevertheless have issued securities that are held widely by the public.
- 6.1.4 However, there are sound practical reasons for limiting the scope, at least initially. Research conducted last year indicates that the vast majority of Jersey companies that have securities admitted to trading on a public market have their securities admitted to trading on a regulated market in the EU (although a sizeable minority also have securities admitted to trading on the Channel Islands Stock Exchange).
- 6.1.5 In addition, agreement would need to be reached with the ICAEW on extending its monitoring of audits to (i) Jersey issuers that have securities admitted to trading on regulated markets outside of the EU – markets that the ICAEW may not be familiar with, and, potentially; and (ii) any Jersey issuer with wide public ownership, whether or not its securities are publicly traded. Although, the ICAEW has indicated that it would be willing to enter into discussions on doing so, the Commission is of the view that it would best to adopt an initial approach that covers the vast majority of Jersey companies that are covered by Principle 16, and only consider extending the scope once the monitoring regime has bedded down.
- 6.1.5.1 **Are you content with the Commission’s suggestion that, initially at least, the constituency of companies that should be covered by legislation in response to the requirements of IOSCO Principle 16 should be restricted to companies with securities traded on a regulated market in the EU? If you are not, please explain why and indicate what approach you think should be adopted instead.**

6.2 Proposed enhancements

- 6.2.1 A review of the Companies Law has identified that in many respects Jersey already complies with the requirements of Principle 16. However, compliance could be enhanced in three ways:
- 6.2.1.1 Firstly, by providing for statutorily prescribed accounting standards (rather than “generally accepted accounting principles”) to be adopted by share traded companies;
 - 6.2.1.2 Secondly, by providing a mechanism for enforcing compliance with accounting standards that are adopted by share traded companies, such as requiring restatements of financial statements; and
 - 6.2.1.3 Thirdly, by providing a mechanism to ensure compliance with auditing and auditor independence standards applied in respect of the audits of share traded companies.
- 6.2.2 The Regulations would amend the Companies Law to provide these three enhancements.
- 6.2.3 The first enhancement would be achieved by requiring a share traded company to prepare its accounts in accordance with accounting principles that are set by the Minister.
- 6.2.4 The second and third enhancements would be achieved by amending the Companies Law:
- 6.2.4.1 To provide for the proposed EU-equivalent auditor oversight regime in relation to share traded companies;
 - 6.2.4.2 So that investigations could be carried out by an inspector into the affairs of a share traded company in respect of the company’s compliance with the accounting principles applicable to the company;
 - 6.2.4.3 So that investigations could be carried out by an inspector into the affairs of a share traded company in respect of any aspect of the company’s accounts or their auditing that raises or appears to raise important issues affecting the public interest; and
 - 6.2.4.4 To provide the Commission and the Minister with the power, in appropriate circumstances, to require a share traded company to restate its accounts or have its accounts re-audited.
 - 6.2.4.5 **Are you content with the proposed approach to enhancing the Island’s compliance with IOSCO Principle 16? If you are not, please explain why.**

7 THE REGULATIONS - OVERVIEW

7.1 Introduction

- 7.1.1 The principal effect of the Regulations would be to replace Part 16 [Accounts and Audit] of the Companies Law in its entirety with a new Part 16 and make other consequential changes to the Companies Law.
- 7.1.2 The text of the new Part 16 is modelled closely on relevant provisions in Part 42 [Statutory Auditors] and the associated Schedule 10 [Recognised Supervisory Bodies] of the Companies Act. The Commission considers that this should facilitate the equivalence assessment when it is undertaken by the European Commission.

7.2 Chapters 8 to 10

- 7.2.1 Chapters 8 to 10 will describe the effect of what are considered to be the main provisions of the Regulations. Necessarily, each chapter will summarise and paraphrase the text of the law in places. Auditors and others who would be affected by the changes that the Regulations would make to the Companies Law are therefore encouraged to review the full text of the Regulations (see APPENDIX C) to assess the impact on their particular circumstances.
- 7.2.2 Chapter 8 covers Regulations 1-4.
- 7.2.3 Chapter 9 covers Regulation 5.
- 7.2.4 Chapter 10 covers Regulations 6-9.

8 REGULATIONS 1 - 4

8.1 Regulation 1

8.1.1 Regulation 1 is a straightforward interpretation article to ensure that references to “the principal Law” in the Regulations are read as referring to the Companies Law.

8.2 Regulation 2

8.2.1 Regulation 2 would delete certain definitions that currently appear in Article 1 of the Companies Law. This is because replacement definitions would be placed directly in Part 16 by means of Regulation 5.

8.3 Regulation 3

8.3.1 Article 17(2) of the Companies Law already provides for a private company to be treated as a public company where it has more than 30 members or circulates a prospectus relating to its securities.

8.3.2 Regulation 3 would add an additional circumstance when a private company would be treated as a public company under the Companies Law. This is when a private company has securities admitted to trading on a regulated market in the EU (see paragraph 9.2.9). This is being done to ensure that such a private company would be required to have an audit of its accounts carried out. This ensures that there is no disparity of treatment with public companies that have securities admitted to trading on a regulated market in the EU.

8.4 Regulation 4

8.4.1 Regulation 4 would amend Article 78(7) in the Companies Law by adding an auditor to the list of persons included in the definition of a person holding “private office”. The effect of this would be to ensure that where a person had been disqualified by the court under Article 78(2) from acting as a company director, such disqualification can be extended to the person acting as an auditor. Such a prohibition is currently achieved through existing Article 113C(2)(c) of the Companies Law but that article is being restructured in the new Part 16 to more closely follow the similar UK provision.

8.4.1.1 **What is your view on Regulations 1 to 4? If you have any concerns, please explain what they are and give your reasons.**

9 REGULATION 5

9.1 Introduction

9.1.1 Regulation 5 would substitute the existing Part 16 of the Companies Law (Articles 102 to 113E) with a new Part 16. The effect of the Articles in the new Part 16 will be summarised below. *To avoid confusion with existing Articles in the Companies Law, where reference is being made to an Article in the new Part 16 the Article number will be prefaced with an asterisk (*)*.

9.2 Article *102 [Definitions]

9.2.1 This Article would insert into Part 16 definitions that are needed in subsequent Articles. Most of the definitions are self-explanatory so they will not be described here. However, five that do merit further explanation are those of 'auditor', 'eligible auditor', 'share traded company', 'regulated market' and 'exempt company'.

9.2.2 The definition of 'auditor' allows for a distinction to be made in the new Part 16 between those auditors who may audit share traded companies and those who may not. (An auditor that would be allowed to audit a share traded company is referred to in the Regulations as an 'eligible auditor'.)

9.2.3 The opportunity has also been taken to incorporate into the definition of 'auditor' the qualification criteria for auditors that are currently set out in existing Articles 113, 113A and 113B. This would give greater flexibility in the future because the definition would be able to be changed by Ministerial Order (rather than by Regulations passed by the States, as at present).

9.2.4 The effect of existing Article 113A(2)(c) is that, where an auditor is a partnership, the only person that can sign audit reports for the partnership is a *partner* that is a member of a recognized professional body or is otherwise authorized by the Commission under existing Article 113(2) to act as an auditor. Other employees of the partnership are not permitted to sign audit reports. This is different to the position of audit firms that are bodies corporate where the effect of existing Article 113B(1)(a) is that *any* officer of the audit firm can sign an audit report where he or she is a member of a recognized professional body or is otherwise authorized by the Commission under existing Article 113(2) to act as an auditor.

9.2.5 The Regulations, as currently drafted, maintain this differential position (see paragraph (c) of the definition of 'auditor' in Article *102 and paragraph (c) of the definition of 'qualified partnership' in Article *102). However, on the face of it, it is difficult to see why only suitably qualified partners in a partnership should be able to sign an audit report and not any suitably qualified employee of the partnership.

9.2.5.1 **Do you think it appropriate that only a suitable qualified partner in an audit partnership can sign an audit report or should any suitable qualified employee of the partnership be permitted to do so? Please give reasons for your view.**

- 9.2.6 A ‘**share traded company**’ would be defined as a company that has its securities admitted to trading on a ‘regulated market’ (see paragraph 9.2.9 for definition), but does not include an ‘exempt company’ (see paragraph 9.2.10).
- 9.2.7 This definition of ‘share traded company’ is very significant in the construction of the new Part 16 as will become evident from the description of later Articles. The principal purpose of putting such a definition in the Companies Law is to ensure that auditors of companies that are within the scope of the Statutory Audit Directive’s provision on ‘third country issuers’⁸ can be made subject to a Directive-equivalent oversight regime.
- 9.2.8 The principal effects on the auditor of a share traded company would be that it would:
- 9.2.8.1 Need to be entered in a Register of Eligible Auditors before being able to audit a share traded company;
 - 9.2.8.2 Need to meet certain criteria before being entered in the Register;
 - 9.2.8.3 Have to comply with Audit Rules issued by a recognized professional body governing the conduct of the audit of share traded companies; and
 - 9.2.8.4 Be monitored for compliance with those Audit Rules by the recognized professional body and be liable to disciplinary action where breaches occur.
- 9.2.9 ‘**Regulated market**’ would be defined in Article *102 as having the same meaning as in Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments. (The website of the Committee of European Securities Regulators⁹ contains a list of the EU markets that meet the criteria of a ‘regulated market’ in Directive 2004/39/EC.)
- 9.2.10 Note that, in line with the provisions of the Statutory Audit Directive, a company that has only debt securities admitted to trading on a regulated market, the denomination per unit of which is at least €50,000 (or equivalent) would be taken outside of the definition of share traded company. Each such company is defined in Article *102 as an ‘**exempt company**’.
- 9.2.11 This is because the audit of an exempt company is specifically excluded from the scope of the Statutory Audit Directive. The rationale for this is believed to be that the holders of such securities should be sophisticated enough to decide whether or not they will invest in a company whose auditor is not subject to an oversight regime.
- 9.2.11.1 **Do you consider that the definition of ‘share traded company’ is appropriate to address the equivalence requirements of the Statutory Audit Directive and the need to enhance Jersey’s**

⁸ In other words, companies incorporated outside of the EU whose securities are admitted to trading on a regulated market in the EU.

⁹ See

http://mifidatabase.cesr.eu/Index.aspx?sectionlinks_id=23&language=0&pageName=REGULATED_MARKETS_Display

compliance with IOSCO Principle 16? If you consider that the definition is not appropriate, please explain why.

9.3 Article *103 [Accounting records]

9.3.1 Article *103 would provide for companies to keep adequate accounting records. It substantively replicates existing Article 102 in the Companies Law.

9.4 Article *104 [Retention of records]

9.4.1 Article *104 would provide for companies to retain records in certain places and for certain time periods. It substantively replicates existing Article 103 in the Companies Law.

9.5 Article *105 [Accounts]

9.5.1 In large part, Article *105 substantively replicates existing Article 104 in the Companies Law. However, there are two new provisions.

9.5.2 Firstly, Article *105(2)(a) would provide for the Minister to prescribe by Order which generally accepted accounting principles a share traded company must follow when preparing its accounts. This provision is included to address the requirements of IOSCO Principle 16 (see paragraph 6.2.1.1). The intention is that before any such Order was drafted, the Commission would discuss with the JSCCA which generally accepted accounting principles would be most appropriate. Once the Order was drafted, its content would be publicly consulted upon.

9.5.3 Secondly, Article *105(11) would introduce a new concession for holding companies (whether intermediate or ultimate holding companies). Such companies would not need to prepare separate accounts if consolidated accounts for the company are prepared, unless required to do so by the members of the holding company by ordinary resolution. This concession would be without prejudice to any other statutory or regulatory requirement that requires a holding company to prepare separate accounts.

9.5.3.1 **What is your view on the proposal to enable the Minister to prescribe by Order which generally accepted accounting principles a share traded company must follow when preparing its accounts? If you have any concerns, please explain what they are and give reasons for them.**

9.5.3.2 **Do you think that it is appropriate for holding companies to be granted a concession from preparing separate accounts when consolidated accounts are prepared? If you do not think such a concession is appropriate, please explain why.**

9.6 Article *106 [Publication of interim accounts]

9.6.1 Article *106 would add a new provision to the Companies Law. Where a share traded company publishes interim accounts, whether audited or not, Article *106 would require the accounts to be prepared in accordance with the

prescribed generally accepted accounting principles that would apply to the company's annual accounts (see paragraph 9.5.2). This provision is included to address the requirements of IOSCO Principle 16 (see paragraph 6.2.1.1).

9.6.2 In addition, where a company other than a share traded company publishes interim accounts, Article *106 would require them to be prepared in accordance with the same generally accepted accounting principles as would be used to prepare the company's annual accounts (see existing Article 104(2) and its proposed replacement Article *105(2)(b)).

9.6.2.1 **What is your view on the proposal to extend requirements for the application of generally accepted accounting principles to interim accounts? If you have any concerns, please explain what they are and give reasons for them.**

9.7 Article *107 [Copies of accounts]

9.7.1 Article *107 substantively replicates existing Article 105 in the Companies Law.

9.7.2 The offence of failing to provide a copy of the accounts, currently set out in existing Article 105(2), is replicated in new Article *109.

9.8 Article *108 [Delivery of accounts to registrar]

9.8.1 Article *108 substantively replicates existing Article 106 in the Companies Law.

9.9 Article *109 [Failure to comply with Article *103, *104, *105, *106, *107 or *108]

9.9.1 Article *109 would provide for a list of offences that may be committed. This Article substantively replicates existing Articles 105(2) and 107 in the Companies Law.

9.10 Article *110 [Registrar to maintain Register of Eligible Auditors]

9.10.1 Article *110 would oblige the Minister to make an Order requiring the Registrar to maintain a Register of Eligible Auditors.

9.10.2 Under the provisions of Article *110, the Registrar would maintain a register of those auditors that qualify under Article *111 or Article *112 to be eligible auditors and who have applied and been approved by the Registrar to have their names entered in the Register. In summary:

9.10.2.1 Article *111 (see Section 9.11) would provide for an auditor to qualify as an eligible auditor where it is contractually bound by Audit Rules governing the conduct of the audit of share traded companies; and

9.10.2.2 Article *112 (see Section 9.12) would provide for an auditor to qualify as an eligible auditor if it is a statutory auditor as defined in

the Statutory Audit Directive and its audit of share traded companies is subject to oversight in the EU Member State, or the auditor is subject to an equivalent oversight regime in a third country.

9.10.3 Only once an auditor's name was on the Register would it meet the definition of an 'eligible auditor' in Article *102 and thus lawfully be able to audit share traded companies.

9.10.4 The Regulations provide for the Registrar rather than the Commission to maintain the Register. Arguably, the Commission could be given the duty but it was felt that the duty would fit naturally with the Registrar's other registration duties under the Companies Law. However, it could be argued that the Commission should maintain the Register, particularly given that under the requirements of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 the Commission is currently the registration body for accountants that are subject to Schedule 2 of the Proceeds of Crime (Jersey) Law 1999.

9.10.4.1 **Do you think that the Registrar of Companies or the Commission should maintain the Register of Eligible Auditors? Please give reasons for your answer.**

9.10.5 Article *110(2) and *110(3) would require the Order to stipulate certain minimum information concerning each eligible auditor that must be held on the Register. Where the eligible auditor is a firm certain information on the firm's responsible individuals would also need to be included on the Register.

9.10.6 Article *110(4) would provide for the Minister, in connection with the Register, to impose, by an Order, such obligations as he thinks necessary to enforce compliance with the registration provisions. The obligations could be imposed on a recognized professional body, any professional oversight body (see paragraph 9.28.2) or any eligible auditor. For example, a recognized professional body could be required to notify the Registrar if it takes disciplinary action against an eligible auditor, or an eligible auditor could be required to notify the Registrar if one of its responsible individuals is subject to internal disciplinary action by the firm in relation to his or her audit work or if the auditor no longer meets the criteria to be entered in the Register.

9.10.7 Article *110(5) would enable the Minister by means of the Order to make the Register (or parts of it) open to public inspection and for certified copies of it to be provided (and charged for).

9.10.8 Paragraphs (1) to (5) of Article *110 are modelled on section 1239 of the Companies Act.

9.10.9 Article *110(6) would make it a criminal offence for an eligible auditor to fail to meet an obligation set under the Order or, where the obligation is to provide information, provides information that is false or misleading.

9.10.10 The intention is that the draft Order would be consulted upon by the Commission before being made. However, it is envisaged that the Order would require the Register to contain the same information as in the equivalent UK register and provide for the same level of public access.

- 9.10.11 Article *110(7) would provide for an auditor that meets the criteria set out in Articles *110(1) (i.e. to be entered in the Register), to apply to the Registrar to have their name entered in the Register. The Article would enable the Registrar to levy an application fee.
- 9.10.12 The intention is that the Registrar would, using his proposed discretion under Article *110(7) to specify the content of an application, make it a pre-condition to registration in the Register of Eligible Auditors that an auditor agrees to be contractually bound by the Audit Rules (see paragraph 9.11.2).
- 9.10.13 Article *110(8) to *110(15) would provide for the circumstances in which the Registrar may: refuse to enter an auditor's name in the Register of Eligible Auditors; make an eligible auditor's registration subject to certain conditions; or suspend or revoke a registration.
- 9.10.14 Note that Article *110(8) would provide for the Registrar to refuse to enter an auditor's name in the Register if he was satisfied that the auditor was not competent to act as an eligible auditor. The intention would be that the Registrar, after consultation, would issue guidelines setting out criteria that an auditor would need to meet to demonstrate competence. These criteria are likely to include, amongst other things, appropriate training programmes for employees that audit share traded companies and responsible individuals having adequate experience to audit share traded companies.
- 9.10.15 Article *110(8) would not require an auditor to pass a 'fit and proper' test prior to being entered in the Register. However, Article *110(11)(a) would provide that an eligible auditor's registration could be suspended or revoked if circumstances resulted in the Registrar coming to the opinion that the eligible auditor was not fit and proper to act as an eligible auditor.
- 9.10.16 Article *110(16) to *110(19) would provide for the Registrar to give an auditor notice when: he refuses to enter an auditor's name in the Register; makes a registration subject to conditions; or suspends or revokes a registration. Those paragraphs also provide an appeal to the Royal Court for an auditor aggrieved by a decision of the Registrar.
- 9.10.17 Article *110(20) would make it an offence for an eligible auditor not to inform the Registrar, within one month, of any change in the information supplied by the auditor when it applied to have its name entered in the Register (or such information as subsequently updated).
- 9.10.18 Article *110(21) would make it a criminal offence for a person to recklessly supply false or misleading information under the provisions of Article *110.
- 9.10.19 Article *110(22) & *110(23) would enable the Registrar to levy an annual fee on eligible auditors. This would enable the Registrar to recover ongoing costs in connection with operating the Register. The setting of the fee would be subject to the consultation process and arbitration mechanism set out in Article 15 of the Commission Law.
- 9.10.19.1 **What is your view on the proposed provisions in Article *110 relating to a Register of Eligible Auditors? If you have any concerns, please explain what they are and give reasons for them.**

9.11 Article *111 [Rules of recognized professional bodies]

9.11.1 Article *111(1) would provide for an auditor to be an eligible auditor and therefore able to make an application to the Registrar to be entered in the Register if the auditor is bound by:

9.11.1.1 Audit Rules governing the conduct of the audit of the accounts of share traded companies issued by a recognized professional body¹⁰ and approved by the Commission; or

9.11.1.2 if no such Audit Rules have been issued by a recognized professional body, or if issued, have not been approved by the Commission, under Audit Rules issued by the Commission.

9.11.2 Under the oversight regime agreed with the ICAEW (see paragraph 5.1.4), the ICAEW would issue Audit Rules that would govern the conduct of the audit of share traded companies. The effect of Article *111(1) would be that an auditor would need to agree to be contractually bound by those ICAEW Audit Rules to qualify as an eligible auditor. In practical terms, this would give the Audit Rules the same contractual status as the rules that UK statutory auditors have to follow. (However, see paragraph 9.15.2 in relation to a proposed criminal offence for breaches of the Audit Rules.)

9.11.3 It is anticipated that the Audit Rules would be based on the UK equivalent but pared down to only include provisions that are necessary to meet the equivalence requirements of the Statutory Audit Directive. Before approval of the Audit Rules by the Commission, their content would be discussed with the JSCCA and publicly consulted upon.

9.11.4 The Audit Rules would provide for the ICAEW to take disciplinary action against an eligible auditor that breached the rules. In addition, the Registrar would have the power to take action against an eligible auditor by conditioning, suspending or revoking an eligible auditor's registration (as described in paragraph 9.10.13). It is anticipated that the provision of such powers to the Registrar will assist the EU's assessment of Jersey's disciplinary arrangements - as it will be clear that action can be taken in Jersey when there is failure to follow requirements that are set.

9.11.5 The Commission does not anticipate that a recognized professional body other than the ICAEW would be requested to issue rules, at least in the first instance. There are two reasons for this. Firstly, it is believed that the majority of auditors that work in Jersey are members of the ICAEW. In addition, it is thought that most, and possibly all, Jersey audit firms are already subject to practice assurance reviews by the ICAEW.

9.11.5.1 **Do you agree that the majority of auditors that work in Jersey are members of the ICAEW and that most, and possibly all, Jersey**

¹⁰ 'Recognized professional body' is defined in Article *102 as any of the following - the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland, the Institute of Chartered Certified Accountants, or the Institute of Chartered Accountants in Ireland.

audit firms are already subject to practice assurance reviews by the ICAEW? If you think this is not the case, please provide your understanding of the position.

- 9.11.6 The provision referred in paragraph 9.11.1.2 is included as a back-up measure to ensure that Jersey can maintain a Statutory Audit Directive-equivalent oversight regime should the ICAEW (or other recognized professional bodies) be unable or unwilling to issue appropriate Audit Rules. This is thought unlikely but Article *111(1)(b) would permit the Commission to issue Audit Rules itself. Article *111(6) would require Audit Rules made by the Commission to be based on the UK equivalent as amended to make them appropriate to the audit of share traded companies.
- 9.11.7 Article *111(2) would require the Minister to prescribe by Order what any Audit Rules must cover. Article *111(3) would set out what the Minister may, in particular, require the rules to cover. The intention is that the Order would, in effect, require the Audit Rules to be based on the UK equivalent as amended to make them appropriate to the audit of share traded companies. (There would therefore be no conflict with the proposed requirements of Article *111(6).)
- 9.11.8 Article *111(4) would require the Commission, before approving the Audit Rules of a recognized professional body, to be satisfied that the body would meet certain criteria, such as having adequate arrangements for the effective monitoring and enforcement of its rules. The requirements in Article *111(3) and (4) are modelled on those in Part 2 of Schedule 10 to the Companies Act [Requirements for recognition of a supervisory body].
- 9.11.9 Article *111(5) would provide for an Order (rather than primary law) to set out circumstances in which the Commission may withdraw its approval of the Audit Rules of a recognized professional body.
- 9.11.10 The intention is that the proposed content of an Order to be made under *Article 111(2) would be discussed with the JSCCA and also publicly consulted upon.
- 9.11.11 Note that the qualification criteria for auditors of companies that are not share traded companies would remain as they are at present - by virtue of the proposed definition of 'auditor' in Article *102(1).
- 9.11.11.1 **What is your view on the proposed provisions in Article *111 relating to Audit Rules? If you have any concerns, please explain what they are and give reasons for them.**

9.12 Article *112 [Qualification under Statutory Audit Directive or equivalent]

9.12.1 Article *112 is designed to enable an auditor that is: (i) a natural person that is not a member of a recognized professional body; or (ii) a firm that is not owned/controlled by sufficient members of recognized professional bodies (as required by the Companies Law) to be entered in the Register as an eligible auditor in two circumstances.

9.12.2 The first circumstance covers an auditor in an EU Member State. Such an auditor could be entered in the Register if it is a statutory auditor as defined in the Statutory Audit Directive and when auditing a share traded company is subject in the relevant EU Member State to a system of oversight, quality assurance, investigation and penalties that meets the requirements of the Statutory Audit Directive¹¹.

9.12.3 The second circumstance covers an auditor outside an EU Member State. Such an auditor could be entered in the Register if, when auditing a share traded company, it is subject in a jurisdiction outside Jersey to a system of oversight, quality assurance, investigation and penalties that has been assessed by the European Commission, pursuant to Article 46 of the Statutory Audit Directive, as “equivalent” to that required of Member States under the Statutory Audit Directive¹².

9.12.3.1 **What is your view on the proposed provisions concerning the qualification of auditors as eligible auditors where they are statutory auditors or equivalent? If you have any concerns, please explain what they are and give reasons for them.**

9.13 Article *113 [Appointment and removal of auditors]

9.13.1 Article *113 substantively replicates existing Article 109 in the Companies Law.

9.13.2 However, to meet the equivalence requirements of the Statutory Audit Directive it would provide that where the company is a share traded company the auditor that is appointed must be an eligible auditor.

¹¹ At the moment, it is believed that no auditor would meet this requirement, because no EU Member State currently covers the audit of share traded companies by its national system of auditor oversight. However it is conceivable that this position could change in the future.

¹² At the moment, it is thought that no auditor would meet this requirement, because no jurisdiction has yet been confirmed as “equivalent” and, even if one were to be, it would need to subject the audit of share traded companies to its national system of auditor oversight. This is a hypothetical possibility, but it is thought unlikely to happen unless sufficient share traded companies are audited by auditors in the relevant jurisdiction to make it economically viable for the jurisdiction to apply its auditor oversight regime to the audit of such companies.

9.14 Article *113A [Auditor's report]

- 9.14.1 Article *113A substantively replicates existing Article 110 in the Companies Law but with some new requirements concerning the signing of audit reports.
- 9.14.2 Article *113A would provide that the audit report would need to state the name of the responsible individual in charge of the audit of the company and be signed by that person in his/her own name on behalf of the firm.
- 9.14.3 This is proposed so that the signing of audit reports for companies would be in line with the convention that is now being followed in the EU by virtue of Article 28 of the Statutory Audit Directive (and as implemented in the UK through section 503 of the Companies Act).
- 9.14.3.1 **What is your view on the proposed requirement for an audit report to be signed by the responsible individual on behalf of the firm? If you have any concerns, please explain what they are and give reasons for them.**

9.15 Article *113B [Auditor's duties and powers]

- 9.15.1 Article *113B substantively replicates existing Article 111 in the Companies Law but with two additional provisions covering eligible auditors.
- 9.15.2 Article *113B(11) would require an eligible auditor and responsible individuals to comply with the Audit Rules. Failure to do so would be a criminal offence (Article *113B(15)).
- 9.15.3 This is different to the position in the UK where a breach of similar rules is not a criminal offence (except where the rules replicate a statutory provision).
- 9.15.4 The provision for a criminal offence has been included at the suggestion of the POB. Because the intention is that Jersey's audit oversight regime would rely to a significant extent on UK authorities (i.e. the ICAEW and the POB) the POB has suggested that Jersey's application to the European Commission for an assessment of "equivalence" would be helped if there was a provision in law that gives the highest authority in Jersey (i.e. the Royal Court) an explicit power to sanction an auditor or a responsible individual.
- 9.15.5 It could be argued, however, that the powers that would be granted to the Registrar under Article *110 to condition, suspend or revoke an eligible auditor's registration should demonstrate that a Jersey body has sufficient authority and disciplinary powers.
- 9.15.5.1 **What is your view on the proposal to make it a criminal offence for an eligible auditor or responsible individual to breach the Audit Rules? If you have any concerns, please explain what they are and give reasons for them.**
- 9.15.6 To ensure that effective monitoring of the audit of a share traded company can be carried out, Article *113B(12) would require an eligible auditor to maintain its working papers in the English language and make those working papers

available to the Commission or to a recognized professional body, upon demand. Failure to do so would be a criminal offence (Article *113B(16)).

9.15.6.1 **What is your view on the proposed requirement for an eligible auditor to have to maintain its working papers in the English language and make those working papers available to the Commission or to a recognized professional body, upon demand? If you have any concerns, please explain what they are and give reasons for them.**

9.16 Article *113C [False statements to auditors]

9.16.1 Article *113C substantively replicates existing Article 112 in the Companies Law.

9.17 Article *113D [Ineligibility and authorized persons]

9.17.1 Article *113D would provide for a number of matters in relation to the eligibility of auditors and would also give the Commission the discretion (as it presently has under existing Articles 113 and 113B¹³) to authorize persons to act as the auditor of a company that is not a share traded company.

9.17.2 Article *113D(1) would provide that only an eligible auditor (as defined in Article *102(1)) may audit a share traded company, or hold itself out as being an eligible auditor.

9.17.3 Article *113D(2) would provide that only an auditor (as defined in Article *102(1)) may audit a company that is not a share traded company, or hold itself out as being an auditor.

9.17.4 Article *113D(3) would provide that where, during the term of office, an auditor becomes ineligible for appointment as the auditor of the company (whether a share traded company or not) it must resign from office and give written notice to the relevant company that it has become ineligible for appointment.

9.17.5 Article *113D(4) would provide for offences in relation to a breach of the requirements set out above. A reasonable defence provision is included in Article *113D(5).

9.17.6 Article *113D(6) would provide for the Commission to be able to authorise a person to audit a company that is not a share traded company. This is designed to replicate the discretion the Commission presently has by virtue of existing Articles 113 and 113B. Provisions have been put in Article *113D (paragraphs (7) to (10)) that would enable the Commission to condition, suspend or revoke the authorization. An appropriate appeal mechanism against a decision of the

¹³ The Commission has issued a policy statement concerning the use of its discretion under existing Articles 113 and 113B. See <http://www.jerseyfsc.org/pdf/policy%20statement%20discretionary%20authorisation%20of%20auditors.pdf>

Commission has also been included (paragraphs (11) to (14)). The discretion under Article *113D(6) would most likely be used – as has been the case in the past under existing Articles 113 and 113B – to approve appropriately qualified non-Jersey/non-UK/non-Irish auditors.

9.17.7 Although Article *113D(6) would maintain the *status quo* by providing for the Commission to authorize a person to audit a company that is not a share traded company, it could be argued that a more consistent approach would be for the Registrar to be given this discretion given his proposed role in registering auditors as eligible auditors. We would welcome respondents' views on this.

9.17.8 Save for paragraph (6) of Article *113D, there is no direct equivalent to Article *113D in the existing Part 16 of the Companies Law. Article *113D is modelled on section 1213 of the Companies Act.

9.17.8.1 **What is your view on the proposed provisions in Article *113D concerning the eligibility of auditors? If you have any concerns, please explain what they are and give reasons for them.**

9.17.8.2 **Do you think that the Commission should continue be given the discretion to authorize auditors under the provisions of Article *113D or should the discretion be given to the Registrar? Please give reasons for your answer.**

9.18 Article *113E [Independence requirement]

9.18.1 Article *113E would provide for the Minister to prescribe by Order the circumstances where an auditor of a company must not act because of a lack of independence.

9.18.2 At present, existing Article 113C sets out the circumstances where an auditor would not be independent and is prohibited from acting as an auditor. It is felt that setting independence requirements in an Order, rather than in primary legislation, would provide greater flexibility. It is envisaged that the Order would follow UK precedent in the area of auditor independence. The content of the Order would be publicly consulted upon before being made.

9.18.2.1 **Do you consider that it would be appropriate to set independence requirements in an Order rather than in primary legislation? If you have any concerns, please explain what they are and give reasons for them.**

9.19 Article *113F [Effect of lack of independence]

9.19.1 This Article would require an auditor to resign from office where the independence requirements of an Order made under Article *113E were no longer met. The Article is of similar effect to existing Article 113C(5) of the Companies Law.

9.19.2 Article *113F is modelled on section 1215 of the Companies Act.

9.20 Article *113G [Effect of appointment of a partnership]

9.20.1 This Article would address certain technical matters concerning the appointment of a partnership as an auditor. It is modelled on section 1216 of the Companies Act.

9.21 Article *113H [Power to amend Part 16]

9.21.1 Article *113H would provide for Part 16 to be amended by the States by Regulations. This replicates existing Article 108.

9.22 Article *113I [Power to make Regulations in respect of eligible auditors]

9.22.1 This Article would provide for the States to make Regulations that would require eligible auditors to make specified information public (in addition to that on the Register), including information regarding:

9.22.1.1 the eligible auditor's ownership and governance;

9.22.1.2 the eligible auditor's internal controls with respect to the quality and independence of the auditor's audit work;

9.22.1.3 the eligible auditor's turnover; and

9.22.1.4 the share traded companies for whom the auditor has acted.

9.22.2 Article *113I is modelled on section 1240 of the Companies Act which itself is designed to meet the "transparency report" requirements of Article 40 of the Statutory Audit Directive.

9.22.3 Article *113I would be included for future flexibility but the Commission does not see any immediate need for Regulations to be made under the Article. If Regulations were to be proposed in the future it is anticipated that the information required in respect of the eligible auditor's internal controls and turnover would relate only to share traded companies (i.e. the type of companies covered by the Statutory Audit Directive).

9.22.3.1 **What is your view on the Regulation making power set out in Article *113I to enable an eligible auditor to be required to publish a transparency report? If you have any concerns, please explain what they are and give reasons for them.**

9.23 Article *113J [Exemption from liability for damages]

9.23.1 This Article would provide recognized professional bodies and the professional oversight body (as defined in Article *102), and their employees,

with the customary form of exculpation for bodies that undertake statutory functions.

- 9.23.2 The exculpation from liability for damages would not apply where: (a) the relevant act or omission was in bad faith; or (b) the exculpation would prevent an award of damages in respect of an act that was unlawful under the Human Rights (Jersey) Law 2000.
- 9.23.3 The statutory exculpation in Article 9 of the Commission Law would apply in respect of the Commission's proposed functions under the new Part 16 of the Companies Law.
- 9.23.4 The Registrar would be able to rely upon the statutory exculpation in existing Article 217A of the Companies Law.

9.24 Articles *113K, *113L, *113M and *113N - Introduction

- 9.24.1 Article *113K, *113L, *113M and *113N need to be understood in the context of the structure of the proposed auditor oversight regime. As described in Chapter 5, to meet the equivalence requirements of the Statutory Audit Directive, the intention is that the ICAEW would monitor each eligible auditor's compliance with Audit Rules governing the conduct of audit work for share traded companies and the POB would be responsible for overseeing the auditor monitoring work of the ICAEW.
- 9.24.2 As indicated in Chapter 5, in principle agreement has been reached with the ICAEW and the POB over their respective roles in the eligible auditor oversight regime. However, there is a need to ensure that should, for any reason, either the ICAEW or the POB (or both) be unable to undertake their anticipated roles in the oversight regime (which is thought unlikely), there is a fall-back position so that Jersey would not fail to meet the equivalence requirements of the Statutory Audit Directive.
- 9.24.3 For this reason, Articles *113K, *113L, *113M and *113N are drafted in such a way that, in the unlikely event that the ICAEW and/or the POB are unable to undertake their anticipated roles in the oversight regime or, if at some future time, they withdraw from the oversight regime, the Commission could take their place. These articles will also deal with the possibility that the POB may prefer to work on a contractual basis with the Commission (rather than to be designated by an Order under Article *113N).

9.25 Article *113K [Matters to be notified to the Commission]

- 9.25.1 Article *113K would provide for the Commission to require a recognized professional body to notify the Commission or the Registrar immediately of certain events, or to provide the Commission or the Registrar with information on a periodic basis.
- 9.25.2 This Article could, for example, be used to require the ICAEW to notify the Registrar when it has concerns over the quality of audit work undertaken by a particular eligible auditor (and which might impact on the auditor's suitability to continue to be entered in the Register).
- 9.25.3 Article *113K is modelled on section 1223 of the Companies Act.

9.26 Article *113L [The Commission's power to call for information]

- 9.26.1 Article *113L would allow the Commission to call for information relevant to its role under Part 16 from an eligible auditor.
- 9.26.2 Article *113L is modelled on section 1224 of the Companies Act.

9.27 Article *113M [Commission to ensure compliance]

- 9.27.1 Article *113M would set a statutory duty on the Commission to act as the body to oversee the work of recognized professional bodies (i.e. the ICAEW, at least to start) in monitoring eligible auditors' compliance with Audit Rules. In practice, however, the Commission anticipates that the POB would act as the independent oversight body under the provisions of Article *113N.
- 9.27.2 Article *113M would provide for the Commission to levy fees on eligible auditors to cover its functions under Articles *113K, *113L and *113M. Where any of the Commission's functions under those Articles are carried out by a professional oversight body through the delegation of power (see paragraph 9.28), Article *113M(4) would enable the Commission to levy a fee on eligible auditors to reimburse any cost levied on the Commission by the professional oversight body.

9.28 Article *113N [Delegation of the Commission's functions]

- 9.28.1 As indicated earlier in this paper, the Commission does not anticipate undertaking the independent oversight role itself. The intention is, so far as is possible, to 'piggyback' on to the UK's auditor oversight regime. The POB, which acts as the independent oversight body in the UK, has agreed, in principle, to act on the Commission's behalf.

- 9.28.2 Article *113N would enable the Commission's oversight functions (including its powers and duties) to be delegated to the POB by Ministerial Order. The Article would also provide the POB with the ability to levy fees for the carrying out of the duties delegated to it. (Although the POB has agreed in principle to act as the independent oversight body the method of recovering its costs, and their level, have not yet been discussed. But the expectation is that the audit profession in Jersey would, proportionately, bear a similar level of costs as the UK audit profession does for the work of the POB¹⁴.) Funding of the oversight regime would be subject to separate future consultation with the local audit profession.
- 9.28.3 Article *113N is modelled on sections 1252 and 1253 of the Companies Act.
- 9.28.4 It would have been possible for the Regulations to have been drafted in such a way that the POB (with its agreement) would be directly appointed as the independent oversight body. The primary reason for not doing so is that appointing the Commission directly under the Companies Law (but with the statutory ability to delegate) would provide a fall-back position if, for any reason, the POB is unwilling, or unable, to take on the role of the independent oversight body. Or, if at some future date, the POB withdrew from the role.
- 9.28.5 Whilst Article *113N would enable the Commission's oversight functions to be delegated to the POB by Ministerial Order, it is possible that the POB may prefer to undertake oversight functions under a contract with the Commission. This has yet to be discussed in detail with the POB. If the contract method was used, the Commission would retain statutory responsibility for the oversight function. Conversely, if the Commission's functions were delegated to the POB using the provisions proposed in Article *113N, the POB would have statutory responsibility for the oversight function.
- 9.28.5.1 **What is your view on the provisions in Articles *113K, *113L, *113M and *113N? If you have any concerns, please explain what they are and give reasons for them.**

9.29 Article *113O [Enforcement of rules]

- 9.29.1 Article *113O needs to be understood in the context of an auditor that wishes to audit a share traded company having to contractually submit to Audit Rules (see paragraph 9.11.2). It is envisaged that, as with similar rules that apply to UK auditors, the Audit Rules that would be issued by the ICAEW would provide for an eligible auditor to contractually submit itself to the disciplinary arrangements of the ICAEW in respect of breaches of the Audit Rules.
- 9.29.2 Article *113O(1) would enable a recognized professional body (e.g. the ICAEW), in order to secure the enforcement of its Audit Rules, to apply to the Royal Court for an order enabling the body to enforce disciplinary action against an eligible auditor or for an order making the eligible auditor subject to

¹⁴ Recognised professional bodies, on behalf of the accountancy profession, contribute an agreed proportion of the cost of the Financial Reporting Council's core operating activities in relation to accounting, auditing and corporate governance each year. The POB is one of the 'operating bodies' of the Financial Reporting Council.

supervision, restraint or conditions. The Commission would be given a similar right under Article *113O(5) where it had issued Audit Rules itself.

9.29.3 This provision is proposed so that a recognized professional body or the Commission (as the case may be) would have a statutory mechanism to enforce, in Jersey, disciplinary action against an eligible auditor, should an eligible auditor resist, or attempt to ignore, disciplinary action taken under the contractual provisions of the Audit Rules.

9.29.4 This provision should support Jersey's equivalence assessment. Where a recognized professional body has decided to take disciplinary action against an eligible auditor, Article *113O(1) would clearly demonstrate to the European Commission that, notwithstanding that the disciplinary action is being taken by a body that is outside Jersey, there is a clear statutory basis for enforcing such action in Jersey against an eligible auditor.

9.29.5 Where it appears to the Commission or a professional oversight body that a recognized professional body has failed to secure the enforcement of its rules, or has otherwise failed to meet its obligations under the new Part 16, Article *113O(3) and (4) would allow the Commission or a professional oversight body to apply to the court for an order. The court would be able to order the recognized professional body to take such steps as the court directs to (a) secure the enforcement of the body's rules; or (b) to secure compliance of the body with any of its obligations under the new Part 16. These provisions are modelled on section 1225 of the Companies Act.

9.29.5.1 **What is your view on the proposed arrangements in Article *113O for the enforcement of Audit Rules? If you have any concerns, please explain what they are and give reasons for them.**

9.30 Article *113P [Confidentiality]

9.30.1 Article *113P would require recognized professional bodies, the Commission (and any delegate appointed under Article *113N) and the Registrar to keep confidential any non-public information received in connection with the exercise of their functions under the new Part 16.

9.30.2 However, each of those bodies might release confidential information, without the consent of the auditor or the audited company to whom the information relates, to other similar bodies to enable those other bodies to carry out their functions, including those in respect of auditor oversight.

9.30.3 Note that Article *113P(5)(f) is widely drawn and would enable confidential information to be passed to a body that exercises any function (not just a function connected with auditor oversight) that is the same, or similar, to a function of the Commission. Such a wide discretion is considered necessary to ensure that there are adequate gateways for the sharing of relevant information. For example, without such a gateway, the Commission would be unable to share concerns about the audit of a share traded company with the market authority on which the share traded company's securities are traded.

- 9.30.4 The release of confidential information would also be permitted:
- 9.30.4.1 Where it is to be used to assist an inspector appointed under Part 19 of the Companies Law (see paragraph 9.31);
 - 9.30.4.2 To a company where the information relates to an audit of the company's accounts;
 - 9.30.4.3 To the public, where the information relates to the activities of the Commission or a professional oversight body, and does not identify any audited company or auditor;
 - 9.30.4.4 Where the information may or is to be used for the purposes of criminal proceedings; and
 - 9.30.4.5 Where it is a summary or collection of information that does not identify any person to whom the information relates.
- 9.30.5 Article *113P is modelled on sections 1224A and 1224B of the Companies Act.
- 9.30.5.1 **What is your view on the information confidentiality provisions in Article *113P? If you have any concerns, please explain what they are and give reasons for them.**

9.31 Article *113Q [Application of Part 19 to share traded companies]

- 9.31.1 Article *113Q would enable an inspector to be appointed under Part 19 of the Companies Law to investigate:
- 9.31.1.1 a share traded company's compliance with the accounting principles that are applicable to the company (see paragraphs 9.5.1 to 9.6.2); and
 - 9.31.1.2 any aspect of a share traded company's accounts or their auditing that raise or appear to raise important issues affecting the public interest.
- 9.31.2 In appropriate cases, Article *113Q would provide the Commission or the Minister with the power to direct a share traded company to: (i) have its accounts re-audited; or (ii) restate its accounts for a specified period and, if further directed do so, have those re-stated accounts audited.
- 9.31.3 This Article would address the requirement under IOSCO Principle 16 for a mechanism for enforcing the compliance of: (i) a share traded company with the accounting standards prescribed under Article *106 and; (ii) its auditor with the relevant auditing standards specified in Audit Rules applicable under Article *111.
- 9.31.3.1 **What is your view on the proposed investigatory and enforcement regime to be included in the amended Part 19? If you have any concerns, please explain what they are and give reasons for them.**

10 REGULATIONS 6 - 9

10.1 Regulation 6

10.1.1 Regulation 6 would amend existing Article 135(3) of the Companies Law to change the definition of “relevant supervisory authority” to match a recent change made to the same definition in the four regulatory laws¹⁵ administered by the Commission.

10.2 Regulation 7

10.2.1 Regulation 7 would amend Schedule 1 [List of Offences] of the Companies Law to reflect changes that would be made to the existing Part 16.

10.2.2 It would also correct an oversight in the drafting of Companies (Amendment No. 9) (Jersey) Law 2008 in which Article 17(4) was deleted but the corresponding cross-reference in Schedule 1 was not.

10.3 Regulations 8 & 9

10.3.1 Regulations 8 and 9 are the Citation and Commencement Articles, respectively. The Regulations would be brought into effect by the use of an Appointed Day Act.

¹⁵ Banking Business (Jersey) Law 1991, Collective Investment Funds (Jersey) Law 1988, Financial Services (Jersey) Law 1998; and the Insurance Business (Jersey) Law 1996.

11 COST BENEFIT ANALYSIS

11.1 There are a number of costs associated with the proposals in this Consultation Paper:

- 11.1.1 The costs of implementing the auditor oversight regime for auditors of share traded companies would need to be recouped from such auditors. (This would be subject to separate consultation.)
- 11.1.2 Auditors of share traded companies would incur costs in establishing and maintaining procedures (to the extent that they do not already have the same) to ensure that they can comply with the relevant Audit Rules.
- 11.1.3 However, it is conceivable that, without an EU-equivalent auditor oversight regime in place in Jersey, local auditors would incur greater costs than those referred to in paragraphs 11.1.2 and 11.1.4 in having to register under, and put in place procedures to comply with, the auditor oversight regime in each EU Member State in which a company it audits has securities admitted to trading.
- 11.1.4 The Registrar of Companies would also incur costs in establishing and maintaining the Register of Eligible Auditors. However, the intention would be for those costs to be recouped through a combination of initial registration and annual fees levied on eligible auditors.

11.2 There are a number of benefits associated with the proposals:

- 11.2.1 The Island's regulatory framework should comply with IOSCO Principle 16.
- 11.2.2 The Island should have in place an EU-equivalent auditor oversight regime. This may avoid the costs and inconvenience that would be incurred by a Jersey auditor in having to: (i) apply for registration in each EU Member State in which it acts as an auditor to a Jersey company whose securities are admitted to trading on a regulated market; and (ii) be subject to systems of oversight, quality assurance, investigation and penalties in each Member State in which it is registered.
- 11.2.3 The introduction of the auditor oversight regime should enhance confidence in the work undertaken by auditors in relation to share traded companies.
- 11.2.4 The proposals would provide a basis for extending auditor oversight to companies that are not share traded companies, should there be good reason to do so in the future.
- 11.2.5 The proposals should also provide for the continued use of Jersey companies in international capital market transactions.

12 SUMMARY OF QUESTIONS

REFERENCE	QUESTION
5.2.2.1	What is your view on the proposed auditor oversight regime? If you have any concerns, please explain what they are and give reasons for them.
5.4.6.1	Are you content with the proposed implementation timescale for the auditor oversight regime? If not, please give your reasons.
6.1.5.1	Are you content with the Commission's suggestion that, initially at least, the constituency of companies that should be covered by legislation in response to the requirements of IOSCO Principle 16 should be restricted to companies with securities traded on a regulated market in the EU? If you are not, please explain why and indicate what approach you think should be adopted instead.
6.2.4.5	Are you content with the proposed approach to enhancing the Island's compliance with IOSCO Principle 16? If you are not, please explain why.
8.4.1.1	What is your view on Regulations 1 to 4? If you have any concerns, please explain what they are and give your reasons.
9.2.5.1	Do you think it appropriate that only a suitable qualified partner in an audit partnership can sign an audit report or should any suitable qualified employee of the partnership be permitted to do so? Please give reasons for your view.
9.2.11.1	Do you consider that the definition of 'share traded company' is appropriate to address the equivalence requirements of the Statutory Audit Directive and the need to enhance Jersey's compliance with IOSCO Principle 16? If you consider that the definition is not appropriate, please explain why.
9.5.3.1	What is your view on the proposal to enable the Minister to prescribe by Order which generally accepted accounting principles a share traded company must follow when preparing its accounts? If you have any concerns, please explain what they are and give reasons for them.
9.5.3.2	Do you think that it is appropriate for holding companies to be granted a concession from preparing separate accounts when consolidated accounts are prepared? If you do not think such a concession is appropriate, please explain why.
9.6.2.1	What is your view on the proposal to extend requirements for the application of generally accepted accounting principles to interim accounts? If you have any concerns, please explain what they are and give reasons for them.
9.10.4.1	Do you think that the Registrar of Companies or the Commission should

maintain the Register of Eligible Auditors? Please give reasons for your answer.

- 9.10.19.1** What is your view on the proposed provisions in Article *110 relating to a Register of Eligible Auditors? If you have any concerns, please explain what they are and give reasons for them.
- 9.11.5.1** Do you agree that the majority of auditors that work in Jersey are members of the ICAEW and that most, and possibly all, Jersey audit firms are already subject to practice assurance reviews by the ICAEW? If you think this is not the case, please provide your understanding of the position.
- 9.11.11.1** What is your view on the proposed provisions in Article *111 relating to Audit Rules? If you have any concerns, please explain what they are and give reasons for them.
- 9.12.3.1** What is your view on the proposed provisions concerning the qualification of auditors as eligible auditors where they are statutory auditors or equivalent? If you have any concerns, please explain what they are and give reasons for them.
- 9.14.3.1** What is your view on the proposed requirement for an audit report to be signed by the responsible individual on behalf of the firm? If you have any concerns, please explain what they are and give reasons for them.
- 9.15.5.1** What is your view on the proposal to make it a criminal offence for an eligible auditor or responsible individual to breach the Audit Rules? If you have any concerns, please explain what they are and give reasons for them.
- 9.15.6.1** What is your view on the proposed requirement for an eligible auditor to have to maintain its working papers in the English language and make those working papers available to the Commission or to a recognized professional body, upon demand? If you have any concerns, please explain what they are and give reasons for them.
- 9.17.8.1** What is your view on the proposed provisions in Article *113D concerning the eligibility of auditors? If you have any concerns, please explain what they are and give reasons for them.
- 9.17.8.2** Do you think that the Commission should continue be given the discretion to authorize auditors under the provisions of Article *113D or should the discretion be given to the Registrar? Please give reasons for your answer.
- 9.18.2.1** Do you consider that it would be appropriate to set independence requirements in an Order rather than in primary legislation? If you have any concerns, please explain what they are and give reasons for them.
- 9.22.3.1** What is your view on the Regulation making power set out in Article *113I to enable an eligible auditor to be required to publish a

transparency report? If you have any concerns, please explain what they are and give reasons for them.

9.28.5.1 What is your view on the provisions in Articles *113K, *113L, *113M and *113N? If you have any concerns, please explain what they are and give reasons for them.

9.29.5.1 What is your view on the proposed arrangements in Article *113O for the enforcement of Audit Rules? If you have any concerns, please explain what they are and give reasons for them.

9.30.5.1 What is your view on the information confidentiality provisions in Article *113P? If you have any concerns, please explain what they are and give reasons for them.

9.31.3.1 What is your view on the proposed investigatory and enforcement regime to be included in the amended Part 19? If you have any concerns, please explain what they are and give reasons for them.

APPENDIX A

List of representative bodies who have been sent this consultation paper.

- Jersey Finance Limited
- Jersey Society of Chartered and Certified Accountants

APPENDIX B

Auditor oversight regime – agreed framework for each Crown Dependency

AUDITOR OVERSIGHT - AGREED FRAMEWORK FOR EACH CROWN DEPENDENCY (CD)

The framework would consist of 4 key elements:

1. Before auditing a share traded company an auditor would need to be entered on a Register of Eligible Auditors maintained by each CD.
2. To be entered on the Register an auditor would need to meet certain criteria.
3. The ICAEW would be appointed by each CD to monitor Eligible Auditors' compliance with Audit Rules governing the conduct of audit work for share traded companies. (The ICAEW would do this via its "practice assurance" regime for CD audit firms.)
4. The Professional Oversight Board would be appointed by each CD to be responsible for overseeing the monitoring work of the ICAEW.

Further detail:

Element No.	Summary	Comment	Notes
1	Before auditing a share traded company an auditor would need to be entered on a Register of Eligible Auditors maintained by each CD.	<ol style="list-style-type: none"> 1. 'Share traded company' would mean a company that has securities admitted to trading on an 'organised public market'. 2. 'organised public market' could be defined widely to cover any public market - wherever located - on which securities are regularly traded. 3. The definition of share traded company would exclude companies where the securities admitted to trading are debt securities with a denomination per unit of at least €50,000. 	<p>The term 'share traded company' is presently used by Jersey in its draft Companies Legislation. Guernsey and the Isle of Man may ultimately choose to use a different term.</p> <p>If requested to, the ICAEW will be content to monitor audits of CD companies with securities traded on public markets outside of the definition of "EU regulated markets" (as defined in the Statutory Audit Directive) but will need to be assured of access to full audit working papers at such place as they require and for the working papers to be in the English language.</p>

Element No.	Summary	Comment	Notes
2	To be entered on the Register an auditor would need to meet certain criteria.	<p>The criteria would be:</p> <ol style="list-style-type: none"> 1. the auditor is: <ol style="list-style-type: none"> (a) where an individual – a member of the ICAEW, ICAS, ICAI or ACCA; or (b) where a firm – owned/controlled by an appropriate percentage of individuals who are members of the ICAEW, ICAS, ICAI or ACCA; 2. the auditor must confirm that every person responsible for signing an audit report (“Responsible Individual”) for the auditor holds a current practising certificate (from the ICAEW/ICAS/ICAI/ACCA), is competent, and is authorised (by the auditor) to sign audit reports on behalf of the auditor; 3. the auditor must confirm that, on an ongoing basis, each Responsible Individual will remain competent; and 	<p>The ownership/control rules would be defined in CD secondary legislation and be as presently exist in the CDs. The audit firm would be required to submit the names of owners/controllers/ directors/ partners, as appropriate, to the Registrar.</p> <p>The auditor would be required to submit the names of Responsible Individuals to the Registrar.</p> <p>The CDs will provide their Registrar with the statutory power to set out the criteria to be met by a responsible individual to be considered “competent”. The grandfathering of existing responsible individuals will be provided for.</p> <p>The Audit Rules (see Element 3) would require an audit firm to ensure RIs and other employees are competent on an ongoing</p>

Element No.	Summary	Comment	Notes
		<p data-bbox="913 411 1585 703">4. the auditor and Responsible Individuals, would – under CD legislation – have a statutory obligation to comply with ICAEW Audit Rules that will govern the conduct of audit work for share traded companies and make auditors and Responsible Individuals subject to the ICAEW’s disciplinary process for breaches of those Audit Regulations (see Element 3 below).</p> <p data-bbox="869 1074 1585 1177">An auditor would be expected to self-certify that he/she/it met the above criteria on an application form for entry on the Register of Eligible Auditors. .</p>	<p data-bbox="1686 268 1753 292">basis.</p> <p data-bbox="1686 400 2096 858">The Audit Rules would be issued by the ICAEW and accepted by the JFSC/GFSC/IofM FSC. They would be a cut-down UK version. See Annex for a summary of what they would contain. (If firms of certified accountants wish to audit share traded companies (thought unlikely), the CDs may need to enter into negotiations with the ACCA for it to issue appropriate Audit Rules, if the ICAEW does not wish to oversee ACCA firms under ICAEW Audit Regulations.)</p> <p data-bbox="1686 1002 2096 1265">The auditor and RIs would need to authorise, by means of the application form, the Registrar to make such enquiries [of the ICAEW and other authorities] as he/she considers appropriate (i.e. to corroborate any relevant information).</p>

Element No.	Summary	Comment	Notes
		<p>Once entered in the Register, an auditor would be legally obliged to communicate to the Registrar any changes to the information previously provided - e.g. when a new Responsible Individual is appointed or an existing Responsible Individual has his/her practising certificate suspended.</p> <p>The Registrar would be given the power to:</p> <ol style="list-style-type: none"> 1. refuse to register 2. register unconditionally 3. register with conditions 4. impose conditions on an existing registration 5. suspend a registration 6. withdraw a registration. <p>Relevant appeal provisions to the relevant CD Court - against decisions of the Registrar - would be needed to ensure human rights compliant.</p>	<p>These powers would be used as appropriate, e.g. conditions imposed or registration suspended in response to concerns arising from ICAEW monitoring of audit quality (see Element 3).</p>
3	<p>The ICAEW would be appointed by each CD to monitor Eligible Auditors' compliance with Audit Rules governing the conduct of audit work for share traded companies. (The ICAEW would do this via its "practice assurance" regime for CD audit firms.)</p>	<p>The ICAEW would:</p> <ol style="list-style-type: none"> 1. implement a monitoring regime based on what it does in the UK; 2. charge CD audit firms a fee to cover the cost of the monitoring work; 3. be required to pass to the Registrar in each CD a copy of those inspection reports on Eligible 	<p>The ICAEW would inspect CD audit firms at least once every three years.</p>

Element No.	Summary	Comment	Notes
		<p>Auditors that are requested by the Registrar; and</p> <p>4. be able to take disciplinary action where breaches of the Audit Rules for share traded companies occurs (see Element 2), and where such disciplinary action is taken, advise the relevant Registrar.</p>	<p>→ The Registrar will set parameters for when the ICAEW should send a report in e.g. when major problems are identified at an audit firm. The ICAEW will need to ensure it has a gateway available under which to supply the reports.</p>
4	<p>The Professional Oversight Board would be appointed by each CD to be responsible for overseeing the monitoring work of the ICAEW.</p>	<p>The POB would be responsible for ensuring that:</p> <ol style="list-style-type: none"> 1. the ICAEW carries out quality assurance and adequately monitors Eligible Auditors' compliance with the Audit Rules governing the conduct of audit work for share traded companies; and 2. the ICAEW takes enforcement action when appropriate. 	<p>→ This should enable CDs to have in place "principles of public oversight" equivalent to Article 32 of the Statutory Audit Directive.</p> <p>A mechanism for covering the POB's costs would be needed. Perhaps the most straightforward method would be for the POB to charge each CD a fee. That fee could be recouped from Eligible Auditors via an annual charge for registration.</p> <p>To assist in getting EU equivalence, the POB suggest that</p>

Element No.	Summary	Comment	Notes
			CD legislation should be flexible enough to allow for the Audit Inspection Unit to be requested to undertake inspections of very big audits (e.g. FTSE traded CD companies).

Annex

Summary of the Audit Rules for auditors of share traded companies in the Crown Dependencies

Explanatory note: The Audit Rules would be a cut-down and appropriately Crown Dependency-fied UK version.

In essence, they would consist of Chapter 3 “Conduct of regulated audit work”, those parts of Chapter 6 “The Committees” that provide the ICAEW with sanctions, and Chapter 9 “Disciplinary arrangements”.

Content

1. Conduct of audit work

Auditors must:

- be independent
- carry out their work with integrity
- be fit and proper
- keep to technical standards
- be competent and continue to be competent
- be able to meet claims against them that may arise from audit work [Professional indemnity insurance]

2. Disciplinary arrangements

- The audit rules would apply relevant sanctions (e.g. directions) [i.e. ICAEW action short of disciplinary action].
- The audit rules would apply the disciplinary arrangements of the ICAEW.

APPENDIX C

Draft Companies (Amendment No. 4) (Jersey) Regulations 200-



Jersey

COMPANIES (AMENDMENT No. 4) (JERSEY) REGULATIONS 200-

REPORT

Explanatory Note

This Law will replace Part 16 of the Companies (Jersey) Law 1991, which deals with the accounts and the auditing of the accounts of companies.

The main change brought about by the new Part 16 is to require the accounts of companies with shares traded on stock markets to have their accounts audited by auditors who are bound when auditing such accounts by the relevant rules of certain recognized professional bodies.



Jersey

COMPANIES (AMENDMENT No. 4) (JERSEY) REGULATIONS 200-

Arrangement

Regulation

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2	Article 1 amended	5
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Jersey

COMPANIES (AMENDMENT No. 4) (JERSEY) REGULATIONS 200-

Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 108 and 220 of the Companies (Jersey) Law 1991, have made the following Regulations –

1 Interpretation

In these Regulations, “the Law” means the Companies (Jersey) Law 1991.

2 Article 1 amended

In Article 1(1) of the Law, the definitions “partnership” and “recognized professional body” are deleted.

3 Article 17 amended

For Article 17(2) of the Law there is substituted the following paragraph –

“(2) A private company shall be subject to this Law as though it were a public company if –

- (a) otherwise than in accordance with a direction under Article 16(2), it enters the name of a person in its register of members so as to increase the number of its members beyond 30, and their number for the time being remains above 30;
- (b) it circulates a prospectus relating to its securities; or
- (c) its securities are admitted to trade on a regulated market (as that term is defined by Article 102(1)).”.

4 Article 78 amended

For Article 78(7) of the Law there is substituted the following paragraph –

“(7) In this Article –

‘private office’ means any of the offices of –

- (a) curator;
- (b) electeur;
- (c) auditor of a company for the purposes of Part 16;
- (d) liquidator of a company;
- (e) trustee;
- (f) tuteur;
- (g) executor or administrator of a deceased person’s estate;
- (h) donee of a power of attorney;

‘public office’ means any of the offices of –

- (a) Centenier;
- (b) Vingtenier;
- (c) Constable’s Officer;
- (d) Procureur du Bien Public;
- (e) member of an Assessment Committee constituted under the Parish Rate (Administration) (Jersey) Law 2003.”.

5 Part 16 substituted

For Part 16 of the Law there is substituted the following Part –

“PART 16

Interpretation - Part 16

102 Interpretation - Part 16

(1) In this Part, unless the context otherwise requires –

‘accounts’ means accounts prepared in accordance with Article 105;

‘auditor’ means –

- (a) in the case of an individual, an individual who is a member of a recognized professional body and is authorized by that body to practice as an auditor;
- (b) in the case of a partnership, a partnership in which all its partners are auditors or a partnership that is a qualified partnership;
- (c) in the case of a body corporate, a body corporate that is controlled by auditors and where each of the persons who is responsible to it for examining or reporting on the accounts of a company pursuant to Article 113, or for supervising the examination of or report on such accounts, is an individual



who is a member of a recognized professional body or is authorized under Article 113D(6);

- (d) in respect of a function that may only be carried out by an eligible auditor, an eligible auditor whose name is on the register of Eligible Auditors by virtue of Article 110(1)(b);
- (e) in respect of a company that is not a share traded company, a person authorized by the Commission under Article 113D(6) to carry out an audit of the company;

‘controlled by auditors’, in respect of a body corporate, means a body corporate where –

- (a) auditors;
- (b) partnerships accepted by a recognized professional body as being qualified for appointment as auditors of companies incorporated in the United Kingdom;
- (c) bodies corporate accepted by a recognized professional body as being qualified for appointment as auditors of companies incorporated in the United Kingdom,

or any combination of persons mentioned in subparagraphs (a), (b) and (c) –

- (d) constitute at least half the number of members of the body corporate;
- (e) hold at least half the voting rights of each class of members of the body corporate;
- (f) who are individuals, make up at least half the number of directors of the body corporate; or
- (g) hold at least half of the voting rights in the board of directors, committee or other management body of the body corporate;

‘eligible auditor’ means a firm or an individual whose name appears in the Register of Eligible Auditors;

‘exempt company’ means a company that is an issuer exclusively of debt securities admitted to trading on a regulated market, the denomination per unit of which is at least €50 000 or, in case of debt securities denominated in another currency, equivalent, at the date of issue, to at least €50 000;

‘firm’ means an entity, whether or not a legal person, that is not an individual and includes a body corporate, a corporation sole and a partnership or other unincorporated association;

‘partnership’ includes –

- (a) a firm or entity of a similar character to a partnership formed under the law of a country or territory outside Jersey; and
- (b) a limited liability partnership that is registered under the Limited Liability Partnerships (Jersey) Law 1997 or a firm or entity of a similar character formed under the law of a jurisdiction outside Jersey;

‘professional oversight body’ means a body designated by an Order made under Article 113N;

‘qualified partnership’ means a partnership in which –

- (a) at least half of its partners are any of, or any combination of, the following –
 - (i) individuals who are members of recognized professional bodies, or are authorized under Article 113D(6),
 - (ii) partnerships which are themselves auditors,
 - (iii) bodies corporate which are themselves auditors;
- (b) at least half of the voting rights in the partnership and, if it has a management body, in that body are held by persons specified in sub-paragraph (a); and
- (c) each of the partners who examines or reports on the accounts of a company pursuant to Article 113, or who supervises the examination of or report on such accounts, is an individual who is a member of a recognized professional body or is authorized under Article 113D(6);

‘recognized professional body’ means any of the following bodies –

- (a) the Institute of Chartered Accountants in England and Wales;
- (b) the Institute of Chartered Accountants of Scotland;
- (c) the Association of Chartered Certified Accountants;
- (d) the Institute of Chartered Accountants in Ireland;

‘Register of Eligible Auditors’ means the Register kept by the registrar under an Order made under Article 110(1);

‘regulated market’ has the same meaning as in Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments (see Article 4.1(14) of the Directive);

‘rules’, in respect of a recognized professional body, means the rules of the body as to –

- (a) the eligibility of persons for appointment as auditors; and
- (b) the conduct of audit work,

that are binding on persons acting as auditors under this Part and, where Article 111(6) applies, includes rules published by the Commission in accordance with that Article;

‘share traded company’ means a public or a private company that has its securities admitted to trading on a regulated market but does not include an exempt company.

- (2) The Minister may, by Order, amend a definition in this Article.

*Accounts***103 Accounting records**

- (1) A company must keep accounting records that are sufficient to show and explain its transactions.
- (2) They must be such as to –
 - (a) disclose with reasonable accuracy, at any time, the financial position of the company at that time; and
 - (b) enable the directors to ensure that any accounts prepared by the company under this Part comply with the requirements of this Law.

104 Retention of records

- (1) A company's accounting records must –
 - (a) be kept at such place as the directors think fit; and
 - (b) be open at all times to inspection by the company's officers and its secretary.
- (2) If accounting records of a public company are kept at a place outside Jersey, returns with respect to the business dealt with in the accounting records so kept must –
 - (a) be sent to, and kept in, Jersey; and
 - (b) be open at all times to inspection by the company's officers and its secretary.
- (3) The returns must be such as to –
 - (a) disclose with reasonable accuracy the financial position of the business in question at intervals of not more than 6 months; and
 - (b) enable the directors to ensure that any accounts prepared by the company under this Part comply with the requirements of this Law.
- (4) Except as provided by Article 194 (winding up of company), the accounting records that a company is required by Article 103 to keep must be preserved by it for at least 10 years from the date on which they are made.

105 Accounts

- (1) Except as provided by paragraph (11), the directors of a company must prepare accounts for a period of not more than 18 months –
 - (a) beginning on the date the company was incorporated; or

- (b) if the company has previously prepared a profit and loss account, beginning at the end of the period covered by the most recent accounts.
- (2) The accounts must be prepared –
 - (a) in the case of a share traded company, in accordance with generally accepted accounting principles prescribed for the purposes of this provision; or
 - (b) in any other case, in accordance with any generally accepted accounting principles.
- (3) The accounts of a company must specify the generally accepted accounting principles that have been adopted in their preparation.
- (4) The accounts of a company that is required by Article 113(1) to appoint an auditor must show a true and fair view of, or be presented fairly in all material respects so as to show –
 - (a) the company's profit or loss for the period covered by the accounts; and
 - (b) the state of its affairs at the end of the period,and must otherwise comply with any other requirements of this Law.
- (5) A company's accounts must be –
 - (a) approved by the directors; and
 - (b) signed on their behalf by one of them.
- (6) The accounts for a financial period of a company must –
 - (a) be prepared, and, if required under this Part, be examined and reported upon by an auditor; and
 - (b) subject to paragraph (8), be laid before a general meeting of the company together with a copy of any auditor's report on them.
- (7) The actions mentioned in paragraph (6) must be taken –
 - (a) in the case of a public company, within 7 months; or
 - (b) in the case of a private company, within 10 months,after the end of the financial period of the company covered by the accounts.
- (8) Paragraph (9) applies if at the end of a financial period of a company, an agreement under Article 87(4) dispensing with the holding of an annual general meeting has effect.
- (9) The company is not obliged to lay the accounts for the financial period or a copy of any auditor's report on them before a general meeting of the company unless a member of the company, not later than 11 months after the end of the financial period covered by the accounts, by written notice given to the company, requires the company to do so.
- (10) In such a case the general meeting of the company must be held within 28 days after –

- (a) the receipt of the notice by the company; or
 - (b) the approval of the accounts by the directors,
- whichever last occurs.

- (11) For the purposes of this Article, the directors of a holding company need not prepare separate accounts under paragraph (1) if consolidated accounts for the company are prepared, unless required to do so by the members of the company by ordinary resolution.

106 Publication of interim accounts

A company must not publish interim accounts, whether or not audited, unless the accounts have been prepared –

- (a) in the case of a share traded company, in accordance with generally accepted accounting principles prescribed for the purposes of Article 105(2)(a); or
- (b) in any other case, in accordance with any generally accepted accounting principles.

107 Copies of accounts

- (1) This Article applies where a member of a company who has not previously been furnished with a copy of its latest accounts makes a written request to the company to be furnished with a copy of those accounts together with a copy of any auditor's report on them.
- (2) The company must, without charge and within 7 days of the request being made to it, furnish to the person the accounts requested together with any auditor's report on them.

108 Delivery of accounts to registrar

- (1) Where the directors of a public company are required to produce accounts for the company under Article 105(1), the directors must, for each financial period of the company, deliver to the registrar –
 - (a) a copy of the company's accounts for the period signed on behalf of the directors by one of them;
 - (b) a copy of the auditor's report on the accounts; and
 - (c) if any of the documents is not in English, a copy of it in English, certified to be a correct translation.
- (2) The documents must be delivered to the registrar within 7 months after the end of the financial period to which they relate.
- (3) If a public company becomes a private company during a financial period –

- (a) paragraph (1) applies in relation to the company in respect of that period; but
 - (b) the requirement in the paragraph to deliver accounts is to be taken to have been satisfied if the accounts relate to either all of the financial period (including a period when the company was no longer a public company) or to only the part of the financial period during which the company was a public company.
- (4) Paragraph (5) applies if, not later than one month before the end of the period mentioned in –
- (a) Article 105(1), 105(7) or 105(9); or
 - (b) paragraph (2) of this Article,
- a written application is made to the Commission for an extension of the period.
- (5) The Commission may, by written notice to the company, extend the period if it is satisfied that a special reason for doing so exists.
- (6) If the Commission does so, it must send a copy of the notice to the registrar.
- (7) A company must pay the published fee and any late filing fee on filing documents under this Article.

109 Failure to comply with Article 103, 104, 105, 106, 107 or 108

If a company fails to comply with Article 103, 104, 105, 106, 107 or 108 –

- (a) the company; and
 - (b) in the case of a public company, each officer of the company in default,
- is guilty of an offence.

Eligible auditors

110 Registrar to maintain Register of Eligible Auditors

- (1) The Minister must make an Order requiring the registrar to keep a register, to be known as the Register of Eligible Auditors, of persons –
- (a) who under Article 111 are auditors qualified to be eligible auditors; or
 - (b) who under Article 112 are persons qualified to be eligible auditors,
- and who have applied and have been approved by the registrar to have their names entered in the Register under this Article.

(2) The Order must require that the entry in the Register in respect of each eligible auditor must contain –

- (a) the name and address of the eligible auditor;
- (b) in the case of an individual, the name of the recognized professional body (if any) the eligible auditor is a member of; and
- (c) in the case of a firm, the specified information relating to the individuals responsible for audit work under this Part on behalf of the firm and the information mentioned in paragraph (3) in respect of the firm,

and may require each entry to contain other specified information.

(3) The information referred to in paragraph (2)(c) is –

- (a) in respect of a body corporate, except where subparagraph (b) applies, the name and address of each person who is a director of the body or holds any shares in it;
- (b) in respect of a limited liability partnership, the name and address of each member of the partnership;
- (c) in respect of a corporation sole, the name and address of the individual for the time being holding the office by the name of which he or she is the corporation sole; and
- (d) in respect of a partnership, the name and address of each partner.

(4) The Order may impose such obligations as the Minister thinks fit on –

- (a) recognized professional bodies;
- (b) any professional oversight body;
- (c) persons qualified or approved to be eligible auditors.

(5) The Order may also include –

- (a) provisions requiring that specified entries in the Register be open to inspection at times and places specified or determined in accordance with the Order;
- (b) provisions enabling a person to require a certified copy of specified entries in the Register;
- (c) provisions authorizing the charging of published fees for inspecting the Register and for the provision of certified copies of entries in it,

but may also prescribe circumstances in which entries in the Register shall not be made open for inspection or made available as certified copies.

(6) A person –

- (a) who fails to comply with an obligation imposed under paragraph (4)(c); or

- (b) if the obligation is to provide information, knowingly or recklessly provides information that is false or misleading in a material way,
- is guilty of an offence.
- (7) A person mentioned in paragraph (1)(a) or (b) may apply to have the person's name entered on the Register –
- (a) by applying to the registrar in the manner published by the registrar; and
- (b) by paying the published fee.
- (8) The registrar may refuse to enter the name of a person on the register if the registrar is satisfied that the person is not competent to act as an eligible auditor.
- (9) The registrar may, when entering the name of a person on the register or at any subsequent time, make the registration of the person subject to the person complying with such conditions and limitations as the registrar considers appropriate, details of which the registrar must enter in the Register.
- (10) The registrar may amend the conditions and limitations –
- (a) at any time on his or her own volition; or
- (b) on the application of the eligible auditor.
- (11) The registrar may suspend or revoke the registration of a person as an eligible auditor if –
- (a) in the opinion of the registrar, the eligible auditor is no longer competent or a fit and proper person to act as an eligible auditor;
- (b) the eligible auditor has breached any of the rules mentioned in Article 111(1) that apply to the auditor;
- (c) the eligible auditor has breached any condition or limitation imposed under paragraph (9);
- (d) the eligible auditor is found guilty of an offence under paragraph (20) or (21);
- (e) the eligible auditor has failed to pay a fee mentioned in paragraph (22);
- (f) in the case of a person who by virtue of Article 112 is qualified to be an eligible auditor, the person has breached any of the rules that apply to the person in the relevant country when auditing a share traded company as an eligible auditor; or
- (g) the eligible auditor is found guilty of an offence under Article 113L(4).
- (12) The registrar may, under paragraph (11), suspend the registration of a person as an eligible auditor –
- (a) for a specified period; or
- (b) until, on the application of the eligible auditor, the auditor satisfies the registrar that the suspension may be revoked.

- (13) The registrar must suspend or revoke the registration of a person as an eligible auditor on the application of the person.
- (14) The suspension of the registration of a person under paragraph (13) shall be –
- (a) for a specified period; or
 - (b) if no period is specified, until the eligible auditor applies to the registrar for the registration to be restored.
- (15) The registrar must remove the name of an eligible auditor from the register if the Registrar is satisfied that the eligible auditor is no longer a person mentioned in paragraph (1)(a) or (b).
- (16) If the registrar –
- (a) refuses to enter the name of a person in the Register on an application made under paragraph (7);
 - (b) makes the registration of a person subject to conditions and limitations under paragraph (9);
 - (c) amends conditions and limitations under paragraph (10)(a);
 - (d) refuses to amend any condition or limitation on an application made under paragraph (10)(b);
 - (e) suspends or revokes the registration of a person as an eligible auditor under paragraph (11);
 - (f) refuses to revoke the suspension of the registration of a person as an eligible auditor on an application under paragraph (12)(b); or
 - (g) removes the name of an eligible auditor from the Register under paragraph (15),
- the registrar must serve a notice on the applicant or eligible auditor, as the case may be.
- (17) The notice must –
- (a) specify the action taken by the registrar;
 - (b) set out the reasons why the registrar took the action; and
 - (c) advise the applicant or eligible auditor of the applicant's or auditor's right, under paragraph (18), to appeal to the court against the action taken by the registrar.
- (18) A person upon whom a notice has been served under paragraph (17) may, within 28 days of the service of the notice or within such longer period as the court may approve, appeal to the court against the action taken by the registrar, as specified in the notice, on the ground that it was unreasonable for the registrar to take the action in all the circumstances of the case.
- (19) The court may, on an appeal under paragraph (18), make such order as it considers appropriate.
- (20) An eligible auditor is guilty of an offence if the auditor fails to inform the registrar of any change in any information supplied by the auditor to the registrar –

- (a) when applying to become an eligible auditor; or
- (b) subsequently under this paragraph,

as soon as practicable but in any event within 1 month of the change.

(21) A person is guilty of an offence if the person knowingly or recklessly supplies information for the purpose of paragraph (7)(a), (10)(b) or (12)(b) that is false or misleading in a material particular.

(22) An eligible auditor must pay any published annual fee imposed on eligible auditors.

(23) In this Article –

‘published annual fee’ means the annual fee published by the registrar in a manner that is likely to bring it to the attention of those affected;

‘specified’ means specified by Order made under this Article.

111 Qualification under rules of recognized professional bodies

(1) An auditor is qualified to be an eligible auditor if the auditor is bound by –

- (a) rules governing the conduct of the audit of share traded companies issued by a recognized professional body and approved by the Commission; or
- (b) if no such rules have been issued by a recognized professional body, or, if issued, have not been approved by the Commission, rules governing the conduct of the audit of share traded companies issued by the Commission.

(2) The Minister must make an Order prescribing what any rules approved or published by the Commission under paragraph (1) must provide for before the Commission may approve or publish them.

(3) The Order may, in particular, require that the rules –

- (a) are adequate to ensure that a person eligible under them to be an auditor is a fit and proper person;
- (b) are adequate to prevent a person –
 - (i) who is not an auditor, or
 - (ii) where an auditor is a firm - who is not a member or employee of the firm,

from being able to exert influence over the way in which an audit of a share traded company is conducted in circumstances in which that influence would be likely to affect the independence or integrity of the audit;

(c) are adequate to ensure that –

- (i) audit work carried out under this Part is carried out properly and with integrity, and

- (ii) an auditor is not appointed in circumstances in which the auditor has an interest that is likely to conflict with the proper conduct of the audit;
 - (d) cover –
 - (i) the technical standards to be applied in audit work carried out under this Part, and
 - (ii) the manner in which those standards are to be applied in practice;
 - (e) are designed to ensure that an auditor continues to maintain an appropriate level of competence;
 - (f) contain provisions to ensure that an auditor who carries out audit work under this Part in respect of a share traded company takes any steps required to enable the performance of the work to be monitored;
 - (g) where they relate to –
 - (i) the grant and withdrawal of eligibility for appointment as auditor, and
 - (ii) the discipline the body exercises,are fair and reasonable and include adequate provision for appeals;
 - (h) contain provisions designed to ensure an auditor must take reasonable steps to be able to meet claims arising out of audit work carried out under this Part;
 - (i) contain provisions designed to ensure that the Commission or a professional oversight body can conduct investigations in relation to an auditor and has the right to take appropriate action.
- (4) The Commission must not approve the rules of a recognized professional body unless it has satisfied itself that the body –
 - (a) has adequate arrangements and resources for the effective monitoring and enforcement of compliance with its rules;
 - (b) has effective arrangements for the investigation of complaints against auditors, and against itself in respect of matters arising out of its functions under the rules;
 - (c) promotes and maintain high standards of integrity in the conduct of audit work;
 - (d) will cooperate, by the sharing of information or otherwise, with the Minister, the registrar and any other authority, body or person having responsibility for the qualification, supervision or regulation of auditors, whether in Jersey or elsewhere; and
 - (e) will carry out a quality assurance review of each eligible auditor at least once in any period of 3 years.
- (5) An Order made under paragraph (2) may, in particular, provide for the Commission to withdraw its approval of the rules of a

recognized professional body if at any time it is satisfied that the body –

- (a) has ceased to have or is not using any of the arrangements or resources mentioned in paragraph (4)(a);
- (b) has ceased to have or is not using any of the arrangements mentioned in paragraph (4)(b);
- (c) has not promoted or has not maintained the standards mentioned in paragraph (4)(c);
- (d) has failed to cooperate in the manner mentioned in paragraph (4)(d); or
- (e) has failed to comply with any obligation placed on it by an Order made under Article 110(4).

- (6) The rules published by the Commission under paragraph (1)(b) shall be the rules of the recognized professional body that are applicable to the eligibility of a member of the body to be appointed to be a statutory auditor under section 1212(1) of the Companies Act 2006 of the United Kingdom, amended as necessary to make them –

- (a) applicable to Jersey and the auditing of the accounts of share traded companies in accordance with this Part; and
- (b) comply with any additional relevant requirement of an Order made under paragraph (2).

112 Qualification under Statutory Audit Directive or equivalent

- (1) A person is qualified to be an eligible auditor if the person is –
- (a) a ‘statutory auditor’ as defined in the Statutory Audit Directive; and
 - (b) when auditing a share traded company, is subject in the relevant Member State to a system of oversight, quality assurance, investigations and penalties that meets the requirements of the Statutory Audit Directive.
- (2) A person is also qualified to be an eligible auditor if the person, when auditing a share traded company, is subject, in a jurisdiction outside Jersey, to a system of oversight, quality assurance, investigations and penalties that has been assessed by the European Commission, pursuant to Article 46 of the Statutory Audit Directive, as ‘equivalent’ to those required of Member States under the Statutory Audit Directive.
- (3) In this Article ‘the Statutory Audit Directive’ means Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts.

113 Appointment and removal of auditors

- (1) A company must appoint an auditor to examine and report in accordance with this Law upon its accounts if –
 - (a) it is a public company;
 - (b) its articles so require; or
 - (c) a resolution of the company in general meeting so requires.
- (2) If the company is a share traded company –
 - (a) the auditor appointed under paragraph (1) must be an eligible auditor; and
 - (b) an audit of the company's accounts by any other person is of no effect for the purposes of this Part.
- (3) Except as provided by paragraphs (5) and (6), a company that is required by this Article to appoint an auditor must at each annual general meeting appoint an auditor to hold office from the conclusion of that meeting to the conclusion of the next annual general meeting.
- (4) The directors or (failing the directors) the company in general meeting may, at any time before the first annual general meeting, appoint an auditor to hold office to the conclusion of that meeting.
- (5) If a company that is required by this Article to appoint an auditor dispenses with the holding of an annual general meeting under Article 87(4) any auditor then in office shall continue to act and be taken to have been re-appointed for each succeeding financial period until –
 - (a) the conclusion of the next annual general meeting; or
 - (b) the company in general meeting resolves that the appointment of the auditor be brought to an end.
- (6) If –
 - (a) a company that has dispensed with the holding of an annual general meeting becomes bound to appoint an auditor; and
 - (b) there is no auditor in office,the directors must appoint an auditor to continue to act until the conclusion of the next annual general meeting.
- (7) The directors or the company in general meeting may fill any casual vacancy in the office of auditor and fix the auditor's remuneration.
- (8) A company may by resolution at any time remove an auditor despite anything in any agreement between it and the auditor.
- (9) Nothing in this Article is to be taken as depriving a person removed under it of compensation or damages payable to the person in respect of the termination of the person's appointment as auditor.

- (10) If a company fails to comply with paragraph (1), the company and every officer of it who is in default is guilty of an offence.

113A Auditor's report

- (1) The auditor of a company that is required to appoint an auditor under Article 113 must make a report to the company's members on the accounts of the company examined by the auditor.
- (2) The report must state whether, in the opinion of the auditor, the accounts –
 - (a) have been properly prepared in accordance with this Law; and
 - (b) give a true and fair view or, alternatively, are presented fairly in all material respects.
- (3) The report must –
 - (a) state the name of the auditor; and
 - (b) be signed and dated.
- (4) If –
 - (a) the auditor is an individual, the report must be signed by the auditor; or
 - (b) the auditor is a firm, the report must be signed in his or her name by the individual in the firm who is responsible to it for examining and reporting on the accounts, for and on behalf of the auditor.

113B Auditor's duties and powers

- (1) This Article applies to companies that are required to appoint an auditor under Article 113.
- (2) The auditor of a company must, in preparing an audit report, carry out such investigations as will enable the auditor to form an opinion as to –
 - (a) whether proper accounting records have been kept by the company;
 - (b) whether proper returns adequate for the audit have been received from branches not visited by the auditor; and
 - (c) whether the company's accounts are in agreement with its accounting records and returns.
- (3) If the auditor is of the opinion –
 - (a) that proper accounting records have not been kept by the company;
 - (b) that proper returns adequate for the audit have not been received from branches not visited by the auditor; or
 - (c) that the company's accounts are not in agreement with its accounting records and returns,

the auditor must, in each such case, state that fact in the report produced by the auditor.

- (4) The auditor of the company –
 - (a) has a right of access to the company's records at all times; and
 - (b) is entitled to require from the company's officers and the secretary such information and explanations as the auditor thinks necessary for the performance of the auditor's duties.
- (5) The auditor of a company is entitled –
 - (a) to receive notice of, and to attend, any meeting of members of the company; and
 - (b) at any such meeting, to be heard on any part of the business of the meeting that concerns the auditor.
- (6) The auditor of a company must mention in an audit report any failure to obtain from the company any information or explanation that, to the best of the auditor's knowledge and belief, was necessary for the audit.
- (7) An auditor of a company may resign from office by depositing at the company's registered office –
 - (a) a written notice of resignation; and
 - (b) a statement under paragraph (9).
- (8) The notice operates to bring the auditor's term of office to an end –
 - (a) on the date on which the notice is deposited; but
 - (b) if a later date is specified in the notice, on that later date.
- (9) When, for any reason, an auditor of a company ceases to hold office the auditor must deposit at the company's registered office –
 - (a) a statement to the effect that there are no circumstances connected with the auditor's ceasing to hold office that the auditor considers should be brought to the notice of the members or creditors of the company; or
 - (b) if there are such circumstances, a statement setting out those circumstances.
- (10) A company that receives a statement mentioned in paragraph (9)(b) must, within 14 days of receiving the statement, send a copy of it –
 - (a) to each member of the company; and
 - (b) to each person entitled to receive notice of a general meeting of the company.
- (11) An eligible auditor of a share traded company and any person authorized to sign an audit report on such a company on behalf of an eligible auditor must, when auditing the accounts of a share traded company, comply with any rules mentioned in Article 111(1) that are applicable to the eligible auditor.
- (12) An eligible auditor of a share traded company must –

- (a) maintain the working papers relating to the audit of the company in English; and
 - (b) make those working papers available to the Commission, or to a recognized professional body, upon demand.
- (13) An auditor who fails to comply with paragraph (9) is guilty of an offence.
- (14) A company that fails to comply with paragraph (10) and each officer of it in default is guilty of an offence.
- (15) An eligible auditor and any person authorized to sign an audit report on behalf of an eligible auditor who fails to comply with paragraph (11) is guilty of an offence.
- (16) An eligible auditor who fails to comply with paragraph (12) is guilty of an offence.

113C False statements to auditors

- (1) This Article applies to companies that are required to appoint an auditor under Article 113.
- (2) An officer of a company or its secretary is guilty of an offence if –
- (a) knowingly or recklessly, the officer or secretary makes to the auditor of the company, either in writing or orally, a statement that conveys or purports to convey any information or explanation that the auditor requires, or is entitled to require, as auditor of the company; and
 - (b) the statement is misleading, false or deceptive in a material particular.

113D Ineligibility and authorized persons

- (1) A person who is not an eligible auditor must not –
- (a) audit a share traded company for the purpose of this Part; or
 - (b) attempt to persuade others that the person is an eligible auditor.
- (2) A person who is not an auditor must not –
- (a) audit any other company for the purposes of this Part; or
 - (b) attempt to persuade others that the person is an auditor.
- (3) If, during the term of office of the auditor of a company, the auditor becomes ineligible for appointment as the auditor of the company, the auditor must immediately –
- (a) resign from office with immediate effect; and
 - (b) give written notice to the company that the auditor has resigned by reason of becoming ineligible for appointment.
- (4) A person is guilty of an offence if the person –
- (a) acts as an auditor of a company in contravention of paragraph (1)(a) or paragraph (2)(a);



- (b) attempt to persuade others that the person is an eligible auditor or an auditor in contraventions of paragraph (1)(b) or paragraph (2)(b);
 - (c) fails to give a notice mentioned in paragraph (3)(b).
- (5) In proceedings against a person for an offence under this Article it is a defence for the person to show that the person did not know and had no reason to believe that person was, or had become, ineligible for appointment as the auditor of the company.
- (6) For the purposes of this Article, 'auditor', in respect of a company that is not a share traded company, shall be taken to include any person authorized by the Commission to carry out an audit of the company for the purposes of this Part.
- (7) The Commission may, when authorizing a person under paragraph (6) or at any subsequent time, make the authorization subject to the person complying with such conditions and limitations as the Commission considers appropriate.
- (8) The Commission may amend the conditions and limitations –
 - (a) at any time on its own volition; or
 - (b) on the application of the person authorized by the Commission.
- (9) The Commission may suspend or revoke the authorization of a person under paragraph (6) if –
 - (a) in the opinion of the Commission, the person is no longer competent to carry out an audit of a company for the purposes of this Part; or
 - (b) the person has breached any condition or limitation imposed under paragraph (7).
- (10) The Commission may, under paragraph (9), suspend the authorization of a person –
 - (a) for a specified period; or
 - (b) until, on the application of the person, the person satisfies the Commission that the suspension may be revoked.
- (11) If the Commission –
 - (a) refuses to authorize a person under paragraph (6);
 - (b) makes the authorization of a person subject to conditions and limitations under paragraph (7);
 - (c) amends conditions and limitations under paragraph (8)(a);
 - (d) refuses to amend any condition or limitation on an application made under paragraph (8)(b);
 - (e) suspends or revokes the authorization of a person under Article (9); or
 - (f) refuses to revoke the suspension of the authorization of a person on an application under paragraph (10)(b),

the Commission must serve a notice on the person.

- (12) The notice must –
 - (a) specify the action taken by the Commission;
 - (b) set out the reasons why the Commission took the action; and
 - (c) advise the person of the person's right, under paragraph (13), to appeal to the court against the action taken by the Commission.
- (13) A person upon whom a notice has been served under paragraph (12) may, within 28 days of the service of the notice or within such longer period as the court may approve, appeal to the court against the action taken by the Commission, as specified in the notice, on the ground that it was unreasonable for the Commission to take the action in all the circumstances of the case.
- (14) The court may, on an appeal under paragraph (13), make such order as it considers appropriate.

113E Independence requirement

- (1) The Minister may, by Order, prescribe circumstances where an auditor must not act as the auditor of a company for the purposes of this Part.
- (2) The prescribed circumstances must relate to an actual or possible lack of independence on the part of the auditor.

113F Effect of lack of independence

- (1) If, during an auditor's term of office as auditor of a company, the auditor becomes prohibited from acting by virtue of an Order made under Article 113E(1), the auditor must immediately –
 - (a) resign from office with immediate effect; and
 - (b) give notice in writing to the company that the auditor has resigned by reason of lack of independence.
- (2) An auditor is guilty of an offence if the auditor –
 - (a) acts as an auditor in contravention of Article 113E(1); or
 - (b) fails to give the notice mentioned in paragraph (1)(b).
- (3) In proceedings against an auditor for an offence mentioned in paragraph (2) it is a defence for the auditor to show that the auditor did not know and had no reason to believe that the auditor was or had become, prohibited from acting as an auditor of the company by Article 113E(1).

113G Effect of appointment of a partnership

- (1) This Article applies where a partnership constituted under the law of Jersey or of a jurisdiction in which a partnership is not a legal

person, is by virtue of this Part appointed as the auditor of a company.

- (2) Unless a contrary intention appears, the appointment is an appointment of the partnership as such and not of the partners.
- (3) If the partnership ceases, the appointment is to be treated as extending to –
 - (a) any appropriate partnership that succeeds to the practice of the partnership; or
 - (b) any other appropriate person who succeeds to the practice having previously carried it on in partnership.
- (4) For the purposes of paragraph (3) –
 - (a) a partnership is to be regarded as succeeding to the practice of another partnership only if the members of the successor partnership are substantially the same as those of the former partnership; and
 - (b) a partnership or other person is to be regarded as succeeding to the practice of a partnership only if the partnership or person succeeds to the whole or substantially the whole of the business of the former partnership.
- (5) If the partnership ceases and the appointment is not treated under paragraph (3) as extending to any partnership or other person, the appointment may, with the consent of the company in respect of which the partnership is auditor, be treated as extending to an appropriate partnership, or other appropriate person, who succeeds to –
 - (a) the business of the former partnership; or
 - (b) such part of it as is agreed by the company in respect of which the partnership is auditor, is to be treated as comprising the appointment.
- (6) For the purposes of this Article, a partnership or other person is ‘appropriate’ if the partnership or person –
 - (a) is an auditor or, as the case may require, an eligible auditor; and
 - (b) is not prohibited by Article 113E(1) from acting as auditor of the company.

Regulations and exemptions

113H Power to amend Part 16

The States may amend this Part by Regulations.

113I Power to make Regulations in respect of eligible auditors

- (1) The States may by Regulations require an eligible auditor to keep and make available to the public specified information, including information regarding –
 - (a) the auditor's ownership and governance;
 - (b) the auditor's internal controls with respect to the quality and independence of the auditor's audit work;
 - (c) the auditor's turnover; and
 - (d) the audited persons of whom the auditor has acted as an eligible auditor.
- (2) Regulations under this Article may –
 - (a) impose such obligations as the States thinks fit on eligible auditors;
 - (b) require the information to be made available to the public in a specified manner.
- (3) Such Regulations may further provide for the imposition of fines in respect of offences under the Regulations.
- (4) In this Article 'specified' means specified by Regulations under this Article.

113J Exemption from liability for damages

- (1) A person within paragraph (2) is not liable in damages for anything done or omitted in the discharge or purported discharge of functions to which this paragraph applies.
- (2) The persons within this paragraph are –
 - (a) a recognized professional body;
 - (b) an officer or employee of a recognized professional body;
 - (c) a member of the governing body of a recognized professional body;
 - (d) a professional oversight body;
 - (e) an officer or employee of a professional oversight body; and
 - (f) a member of the governing body of a professional oversight body.
- (3) Paragraph (1) applies to the functions of a recognized professional body so far as relating to, or to matters arising out of, any of the following –
 - (a) the rules, practices, powers and arrangements of the body;
 - (b) the obligations to promote and maintain high standards of integrity in the conduct of audit work;
 - (c) the obligations imposed on the body by or by virtue of this Part.
- (4) Paragraph (1) does not apply –
 - (a) if the act or omission is shown to have been in bad faith; or

- (b) so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000 (acts of public authorities incompatible with Convention rights).

Information

113K Matters to be notified to the Commission

- (1) The Commission may require a recognized professional body –
 - (a) to notify the Commission or the registrar immediately of the occurrence of such events as the Commission may specify in writing and to give it or the registrar such information in respect of those events as is so specified;
 - (b) to give the Commission or the registrar, at such times or in respect of such periods as the Commission may specify in writing, such information as is so specified.
- (2) The notices and information required to be given must be such as the Commission or the registrar may reasonably require for the exercise of the Commission's or registrar's functions under this Part.
- (3) The Commission may require information given under this Article to be given in a specified form or verified in a specified manner.
- (4) Any notice or information required to be given under this Article must be given in writing unless the Commission specifies or approves some other manner.

113L The Commission may require eligible auditors to give information

- (1) The Commission may, by notice in writing, require an eligible auditor to give the Commission such information as it may reasonably require for the exercise of its functions under this Part.
- (2) The Commission may require information given under this Article to be given in a specified form or verified in a specified manner.
- (3) Any information required to be given under this Article must be given in writing unless the Commission specifies or approves some other manner.
- (4) An eligible auditor who fails, within a reasonable time, to comply with a requirement made by the Commission under this Article is guilty of an offence.

*Enforcement***113M Commission to ensure compliance**

- (1) The Commission must ensure that an audit of a share traded company carried out under this Part by an auditor who is an eligible auditor is carried out in accordance with the rules mentioned in Article 111(1) that are applicable to the auditor when auditing a share traded company under this Part.
- (2) Accordingly –
 - (a) where the rules mentioned in paragraph (1) are the relevant rules of a recognized professional body, the Commission must ensure that the recognized professional body enforces those rules and otherwise carries out its obligations under this Part; and
 - (b) where the rules mentioned in paragraph (1) are rules published under Article 111(1)(b) by the Commission, the Commission must enforce those rules.
- (3) The Commission may, for the purposes of this Article, in the case of any audit of a company, check directly that the audit has been carried out in accordance with the appropriate rules mentioned in Article 111(1).
- (4) The Commission may publish fees that it may charge eligible auditors –
 - (a) for carrying out the Commission's functions under Articles 113K and 113L and this Article; or
 - (b) where any of the Commission's functions under Articles 113K and 113L and this Article are carried out by a professional oversight body, to reimburse the Commission for any costs incurred by it by virtue of that arrangement.

113N Delegation of the Commission's functions

- (1) The Minister may, on the recommendation of the Commission, make an Order under this Article that enables the functions of the Commission under Articles 113K, 113L and 113M, to the extent specified in the Order, to be exercised by a body designated by the Order.
- (2) That body may be either –
 - (a) a body corporate established by the Order; or
 - (b) a body (whether a body corporate or an unincorporated association) that is already in existence either in Jersey or elsewhere.
- (3) The Order has the effect of transferring to the body designated by it all the functions of the Commission under Articles 113K, 113L and



113M subject to such exceptions and reservations as may be specified in the Order.

- (4) The Order may confer on the body designated by it such other functions supplementary or incidental to those transferred as appear to the Minister to be appropriate.
- (5) During the time the functions of the Commission are transferred by an Order made under this Article to a body designated in the Order –
 - (a) in the case of the transferred powers of the Commission, the Commission cannot exercise them concurrently with the body; and
 - (b) in the case of the transferred duties of the Commission, the obligation to perform them rests with the body and not with the Commission.
- (6) The Minister must not make an Order under this Article transferring functions of the Commission to an existing body unless it appears to the Minister that –
 - (a) the body is able and willing to exercise the functions that would be transferred by the Order; and
 - (b) the body has arrangements in place relating to the exercise of those functions that are such as to be likely to ensure that the conditions in paragraph (7) are met.
- (7) The conditions are –
 - (a) that the functions in question will be exercised effectively; and
 - (b) where the Order is to contain any requirements or other provisions specified under paragraph (8), that those functions will be exercised in accordance with any such requirements or provisions.
- (8) The Order may contain such requirements or other provisions relating to the exercise of the functions by the designated body as appear to the Minister to be appropriate.
- (9) Those provisions may include provisions providing for the designated body to publish and charge fees for carrying out the functions delegated to it under the Order.
- (10) In this Article “functions” includes powers and duties.

113O Enforcement of rules

- (1) A recognized professional body may, to secure the enforcement of its rules mentioned in Article 111(1), apply to the court –
 - (a) for an order enabling the body to enforce disciplinary action it has decided to take against an eligible auditor who is bound by the rules; or

- (b) for an order making such an auditor subject to such supervision, restraint or conditions when carrying out an audit of a share traded company under this Part as may be specified in the order.
- (2) The court may make the order applied for and any ancillary order that it considers necessary, appropriate or desirable.
 - (3) Where it appears to the Commission or a professional oversight body, that a recognized professional body –
 - (a) has failed to secure the enforcement of its rules mentioned in Article 111(1); or
 - (b) has otherwise failed to comply with any of its obligations under this Part,the Commission or the professional oversight body may apply to the court to secure the enforcement of the rules or compliance with any of its obligation.
 - (4) On such an application, the court may order the recognized professional body to take such steps as the court directs to secure –
 - (a) the enforcement of the body's rules; or
 - (b) compliance with any of its obligations under this Part.
 - (5) The Commission may, to secure the enforcement of rules published by it under Article 111(1)(b), apply to the court –
 - (a) for an order enabling the Commission to enforce disciplinary action it has decided to take against an eligible auditor who is subject to the rules; or
 - (b) for an order making such an auditor subject to such supervision, restraint or conditions when carrying out an audit of a share traded company under this Part as may be specified in the order.
 - (6) The court may make the order applied for and any ancillary order that it considers necessary, appropriate or desirable.

113P Confidentiality

- (1) This Article applies to information (in whatever form) that relates to –
 - (a) the private affairs of an individual; or
 - (b) any particular business,and that is provided to a body to which this Article applies in connection with the exercise of its functions under this Part.
- (2) This Article applies to –
 - (a) a recognized professional body;
 - (b) the Commission;
 - (c) a professional oversight body; and
 - (d) the registrar.

-
- (3) Except as provided by paragraphs (4), (6) and (7), the information must not be disclosed –
- (a) during the lifetime of the individual; or
 - (b) so long as the business continues to be carried on, without the consent of the individual or the person for the time being carrying on the business.
- (4) The information may be disclosed to a person or body mentioned in paragraph (5) to enable the person or body to carry out the functions of the person or body.
- (5) The persons and bodies are –
- (a) a recognized professional body;
 - (b) the Commission;
 - (c) a professional oversight body;
 - (d) the registrar;
 - (e) any other authority, body or person having responsibility for the qualification, supervision or regulation of auditors, whether situated in Jersey or elsewhere;
 - (f) an organization in a jurisdiction outside Jersey that carries out in that jurisdiction functions the same as, or similar to, those carried out in Jersey by the Commission or an officer of such an organization.
- (6) This Article does not prohibit the disclosure of information –
- (a) that is to be used to assist an inspector appointed under Part 19;
 - (b) to a company, that relates to an audit of the company's accounts;
 - (c) to the public, that relates to the activities of the Commission or a professional oversight body pursuant to Article 113M and that does not identify any audited company or auditor;
 - (d) that may or is to be used for the purposes of criminal proceedings;
 - (e) that is a summary or collection of information that does not identify any person to whom the information relates.
- (7) This Article does not prohibit the disclosure of information that is or has been available to the public from any other source.
- (8) Nothing in this Article authorizes the making of a disclosure in contravention of the Data Protection (Jersey) Law 2005.
- (9) A person who discloses information in contravention of this Article is guilty of an offence, unless the person –
- (a) did not know, and had no reason to suspect, that the information had been provided as mentioned in paragraph (1); or

- (b) took all reasonable steps and exercised all due diligence to avoid the commission of the offence.

113Q Application of Part 19 to share traded companies

- (1) In Part 19, references to the affairs of a company shall be taken, where the company is a share traded company, to include reference to –
 - (a) the company’s compliance with the accounting principles applicable to the company under this Part; and
 - (b) any aspect of its accounts or their auditing that raises or appears to raise important issues affecting the public interest.
- (2) If a report mentioned in Article 135(1) is in respect of any aspect of the affairs of a share traded company mentioned in paragraph (1)(a) or (b), the Minister or Commission may, in addition to the persons mentioned in Article 135(2), forward a copy of the report to –
 - (a) any relevant recognized professional body;
 - (b) a professional oversight body; and
 - (c) the registrar.
- (3) For the purposes of, or as a consequence of, an investigation of a share traded company being carried out or that has been carried out under Part 19, the Commission or the Minister may direct a company –
 - (a) to have its accounts re-audited; or
 - (b) to restate its accounts in respect of a specified period by a specified date and, if further directed to do so, to have them audited.
- (4) If a company fails to comply with a direction given under paragraph (3) it and each of its officers that are in default is guilty of an offence.
- (5) Where this Article applies –
 - (a) Article 128(2) shall be taken to include the Minister and the Commission; but
 - (b) Article 128(3) shall not apply to an application made by the Minister or by the Commission.”.

6 Article 135 amended

For Article 135(3) of the Law there is substituted the following paragraph –

- “(3) In this Article, ‘relevant supervisory authority’ means an authority discharging in a country or territory outside Jersey any function that is the same as, or similar to, a function of the Commission.”.

7 Schedule 1 amended

In the table in Schedule 1 to the Law –

- (a) the item relating to Article 17(4) is deleted; and
- (b) for the items that appear in respect of the Articles that form Part 16 of the Law, the following items are substituted –

“109	Company failing to comply with Article 103 (keeping accounting records), 104 (retaining accounting records), 105 (preparing and laying accounts), Article 106 (publishing interim accounts), Article 107 (supplying copies of accounts to members) or 108 (delivering copy of accounts to registrar)	A fine	For contravention of Article 107, Level 2
109	Liquidator or other officer of public company failing to comply with Article 103, 104, 105, 106, 107 or 108	2 years or a fine; or both	
110(6)	Failure to comply with an obligation imposed by an Order made under the Article or providing false or misleading information.	Level 4	Level 2
110(20)	Failure by eligible auditor to inform registrar of change in provided information.	Level 4	Level 2
110(21)	Auditor supplying false or misleading information.	A fine	
113(10)	Company failing to appoint auditor when required to do so	A fine	
113(10)	Officer failing to appoint auditor when company required to do so	2 years or a fine; or both	
113B(13)	Auditor ceasing to hold office failing to deposit statement as required by Article 113B(9)	A fine	
113B(14)	Company failing to send notice of auditor’s resignation to members and to other persons entitled to receive notice of general meetings	A fine	
113B(15)	Eligible auditor or person acting	A fine	

	for eligible auditor failing to comply with applicable rules when auditing accounts of share traded company		
113B(16)	Eligible auditor failing to keep working papers of audit of share traded company in the English language or failing to produce them on demand	A fine	
113C(2)	Company officer or secretary making misleading, false or deceptive statement to auditors	5 years or a fine; or both	
113D(4)	Person acting or attempting to act as auditor of a share traded company knowing the person is not an eligible auditor;	5 years or a fine; or both	
113D(4)	Person acting or attempting to act as company auditor knowing the person is not an auditor	2 years or a fine; or both	
113D(4)	Person failing to give company notice of ineligibility	2 years or a fine; or both	
113F(2)	Auditor acting when prohibited or failing to give notice	2 years or a fine; or both	
113L(4)	Eligible auditor failing to comply with a requirement of the Commission to provide information.	A fine	
113P(9)	Unauthorized disclosure of information	A fine	
113Q(4)	Company failing to comply with a direction to restate its accounts	A fine	
113Q(4)	Officer of company that fails to comply with a direction to restate its accounts	2 years or a fine; or both"	

8 Citation

These Regulations may be cited as the Companies (Amendment No. 4) (Jersey) Regulations 200-.

9 Commencement

- (1) Except as provided by paragraph (2), these Regulations shall come into force on such day or days as the States may by Act appoint.



- (2) Regulation 8 and this Regulation shall come into force 7 days after these Regulations are made.

