This consultation paper is being issued to seek feedback on proposed amendments to the Companies (Guernsey) Law, 2008 (the "Companies Law").

Responses will be considered by the Committee *for* Economic Development (the "Committee") with a view to developing policy proposals.

Closing date: Friday 15th June 2018.

The Committee invites comments from all business, stakeholders, consumers, industry associations, practitioners and any other interested parties.

Thank you for taking the time to fill out this consultation.

1. Background

Finance Sector Development ("FSD") has kept the Companies Law under review since its introduction in 2008, to ensure that it has kept pace with the needs of modern business and to respond to developments in other jurisdictions and industry feedback.

New Parts were inserted into the Companies Law, by Ordinance, dealing with the Takeovers and Mergers Panel and the Regulation of Auditors for the purpose of Directive 2006/43/EC.

Numerous amendments have been made to the Companies Law, by Ordinance, most recently in 2013, 2014 and 2015[1] following a major post implementation review of the Companies Law. Further amendments have been made, by regulation, in a number of areas following consideration of discrete issues.

As part of its ongoing review of the Companies Law, FSD has identified some further potential areas for amendment through engagement with key stakeholders (the "Proposals").

[1] The Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2013; Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2014 and Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2015.

2. Issues for consultation

2.1 Requirement for an incorporated cell company and each cell to have the same directors (Section 136)

2.1.1 Section 136 of the Companies Law requires that each director of an incorporated cell company shall also be a director of each of its incorporated cells, and that no person may be a director of an incorporated cell unless he is a director of its incorporated cell company.

2.1.2 It has been proposed that this restriction does not always allow an incorporated cell company to appoint the most appropriate directors and that removing this restriction would allow experts in a particular field relating to the business of an individual cell to be appointed to the board, without needing to be appointed to the board of the incorporated cell company, or to any other individual cell.

2.1.3 The Committee understands that there are no such requirements in some competitor jurisdictions.

1. Should the requirement for an incorporated cell company and each of its incorporated cells to have the same board of directors be removed?

- [ ] Yes
- [ ] No
- [ ] Don't know

Additional Comments

2.2 Requirements for the directors of an incorporated cell company to keep accounting records, prepare and deliver the accounts of an incorporated cell to members and officers, and appoint, etc, an auditor (Sections 241, 246, 253 and 261)

2.2.1 If section 136 of the Companies Law were to be amended to remove the requirement for an incorporated cell company and each of its incorporated cells to have the same board of directors, it may be appropriate for sections 241, 246, 253 and 261 of the Companies Law to be amended so that the duty to keep accounting records lies with the incorporated cell and the directors of an incorporated cell are responsible for preparing the accounts of the cell, delivering accounts and reports to members, and appointing, etc, an auditor; rather than those duties and functions falling to the incorporated cell company and/or its directors, as is currently the case.

2. Do you consider that sections 241, 246, 253 and 261 of the Companies Law should be amended so that the duties and functions referred to in those sections fall on an incorporated cell and/or its directors (as appropriate) rather than falling to the incorporated cell company and/or its directors?

- ◯ Yes
- ◯ No
- ◯ Don't know

Additional Comments

2.3 Conversion of cell of protected cell company into non-cellular company (Section 52A)

2.3.1 In September 2015, section 52A was inserted into the Companies Law to provide for a cell of a protected cell company to be able to convert into, and incorporate as, a non-cellular company.

2.3.2 Section 52A(3) of the Companies Law provides that if cell shares have been issued in respect of a cell, the holders of those shares must give the requisite consent, as provided for in subsections (a) to (f). This mechanism allows for cell shareholders to be able to approve a conversion even where, for example, they do not constitute a single class or where cell shares had no voting rights. By virtue of section 52A(3) of the Companies Law, for the purposes of that subsection, the holders of the cell shares are considered to have given consent only if:-

a. the holders of not less than 75% in number of those shares give their written consent, or

b. consent is given at a meeting on a show of hands by not less than 75% of the holders of those shares who vote in person on the matter and the persons who vote on the matter as duly appointed proxies of the holders of those shares.

2.3.3 There is presently no provision for poll voting under section 52A(3) of the Companies Law and other provisions relating to poll voting on resolutions do not apply as the requisite consent mechanism is not a shareholder resolution.

2.3.4 On a show of hands, each member present has one vote without regard to the number of shares held by him personally or as a proxy holder for a third party. Accordingly, no matter how many proxies a member may hold he will have only one vote on a show of hands. In such a scenario, shareholders holding a small minority stake could potentially block any proposed consent, despite another party holding proxies representing more than 75% of relevant shareholders voting in favour of the consent.

2.3.5 The Committee would welcome views on whether it is desirable to amend the Companies Law to permit a poll of cell shareholders to be held, or demanded, on a proposal to convert a cell into a non-cellular company.

2.3.6 It may also be appropriate to replicate the effect of other provisions of the Companies Law relating to polls on resolutions including, for example:

a. that requisite consent would be considered to have been given where consent is given by the holders of cell shares representing not less than 75% of the total voting rights of cell shareholders who, being entitled to vote, vote in person or by proxy (replicating section 178(5) of the Companies Law);

b. that where requisite consent is given on a poll taken at a meeting, each cell shareholder has one vote in respect of each share (replicating section 191(3) of the Companies Law). It may be considered appropriate to provide that this is the case notwithstanding any provision in the company's memorandum or articles of incorporation which provide that a cell share does not entitle the holder to voting rights, or restricts the same particularly in the context of a cell conversion;

c. that restrictions on signifying requisite consent on polls are void (partially replicating section 193 of the Companies Law);

d. that votes in respect of multiple shares may be split (replicating section 196); and

e. that cell shareholders have the right to demand a poll (replicating section 216 of the Companies Law).

3. Should provision be made for requisite consent to be given at a meeting on a poll?

- [ ] Yes
- [ ] No
- [ ] Don't know

Additional Comments

4. Do you consider that it would be necessary to replicate some, or all, of the provisions of the Companies Law set out in paragraph 2.3.6 above, in respect of a poll on requisite consent?

- [ ] Yes
- [ ] No
- [ ] Don't know

Other (please specify)

5. Do you have any other comments on the proposals set out at 2.3 above?

2.3.7 Pursuant to section 52A(3)(d)(i), of the Companies Law, a new company must, on conversion, adopt a memorandum and articles of incorporation which comply with the requirements of the Companies Law as to memoranda and articles.

2.3.8 Section 15(3) of the Companies Law requires a memorandum of incorporation to be signed by, and state the name, address and shareholding of, the founder member. Sections 15(4) and (5) of the Companies Law require that certain details in respect of each founder member's shareholding or guarantee, as the case may be, must be stated.

2.3.9 The wording of Section 15(3) of the Companies Law has been the subject of some debate amongst practitioners, in particular whether the signature of one founder member, or all founder members, is required. In 2010, the Commerce and Employment Department consulted on whether to repeal the requirement for signature by the founder member in Section 15(3) of the Companies Law, but decided not to following industry feedback that signature of the memorandum is a fundamental tenet of the company formation process and was considered vital for certainty.

2.3.10 The issue that has arisen in the context of section 52A of the Companies Law is that it will often be impractical to obtain all the shareholders' signatures, not least where one or more cell shareholders do not consent to the conversion.

2.3.11 It is understood that an interpretation of section 15(3) of the Companies Law which requires all founder members to sign the memorandum of incorporation has also caused similar issues when Protected Cell Companies have converted into Incorporated Cell Companies.

2.3.12 The Committee would be interested to receive feedback on whether the Companies Law should be amended so that there is definitively no requirement for all members to sign the memorandum of incorporation of a new non-cellular company as part of the conversion process specified in section 52A of the Companies Law.

2.3.13 The Committee is also interested in views on the merits of amending Section 15(3) of the Companies Law with general effect (i.e. not only in the context identified above), to clarify that it is sufficient for one founder member to sign the memorandum of incorporation in all company incorporations.

6. Should the Companies Law be amended to make it clear that there is no requirement that all members sign the memorandum of incorporation of a new non-cellular company as part of a conversion pursuant to section 52A of the Companies Law?

- [ ] Yes
- [ ] No
- [ ] Don't know

Other (please specify)

7. Alternatively, should section 15(3) of the Companies Law be amended with general effect, to make it clear that it is sufficient for one founder member to sign the memorandum in all company incorporations?

- [ ] Yes
- [ ] No
- [ ] Don't know

Additional Comments

2.4 Notice required of appointment and termination of the authority of proxies (Sections 224 and 226 of the Companies Law)

2.4.1 These sections of the Companies Law contain provisions relating to the minimum notice that can be required in a company's memorandum and articles of incorporation for the appointment, and termination, of the authority of proxies. Section 224(2)(c) and section 226(6)(c) make void any provision of a company's articles of incorporation requiring the relevant notice to be received by the company earlier than the time at which the poll was demanded.

2.4.2 When the Companies Law was drafted, these sections replicated sections 327 and 330 of the UK Companies Act 2006 ("UK Act"). Sub-sections 327(2)(c) and 330(6)(c) of the UK Act were never brought into force in the UK and were repealed by paragraph 30 of Schedule 6 to the UK Deregulation Act 2015 as the UK Government considered these to be drafting errors. The policy intention was to provide that where a poll is taken within 48 hours of it being called at a meeting, the deadline would be 48 hours before the meeting, as for proxy voting at the meeting. In Guernsey, sections 224(2)(c) and 226(6)(c) require the company to accept proxies received up to the time at which the poll was demanded, regardless of the provisions of the articles, which has the potential to cause difficulties with corporate administration.

2.4.3 The Committee would welcome views on whether sections 224(2)(c) and 226(6)(c) of the Companies Law should be repealed.

8. Should sections 224(2)(c) and 226(6)(c) of the Companies Law be repealed?

- [ ] Yes
- [ ] No
- [ ] Don't know

Additional Comments

2.5 Qualification for appointment as an auditor (Section 260 of the Companies Law)

2.5.1 Section 260 of the Companies Law governs qualification for appointment as an auditor of a Guernsey company and sets out a requirement that partnerships and bodies corporate must be 'controlled' by 'qualified individuals' (as defined in section 260(1) of the Companies Law) in order to be appointed auditor of a Guernsey company.

2.5.2 Control is defined, in section 260(8) of the Companies Law as an "entitlement to exercise a majority of the votes cast (a) in the case of a partnership, at any meeting of the partners or other management body, or (b) in the case of a body corporate, at any meeting of the members or directors or other management body".

2.5.3 Following a review of section 260 of the Companies Law, the Committee believes that it may be appropriate to amend it so that a partnership and body corporate would be qualified to act as an auditor of any Guernsey company where control rests with any of the following:

a. qualified individuals; or

b. individuals who hold a qualification to audit accounts under the law of a European Economic Area member state other than the United Kingdom or the Republic of Ireland; or

c. partnerships or bodies corporate controlled by qualified individuals,

d. partnerships or bodies corporate accepted by an appropriate body as being qualified for appointment as auditors of companies incorporated in the United Kingdom; or

e. any combination of the above;

as long as each person responsible for the conduct of an audit of a company is a qualified individual.

2.5.4 The Committee is also of the opinion that an individual, partnership or body corporate (as opposed to just an individual as at present under section 260(1)(b)) should be qualified for appointment as an auditor of a Guernsey company, other than a market traded company within the meaning of Part XVIA of the Companies Law, if authorised by the Committee.

9. Should the meaning of ‘control’ in section 260 of the Companies Law, be widened to include the parties described in 2.5.3?

- [ ] Yes
- [ ] No
- [ ] Don't know

Additional Comments

10. Should the Committee be able to authorise partnerships and bodies corporate to act as auditors of Guernsey companies (other than market traded companies), as well as individuals?

- [ ] Yes
- [ ] No
- [ ] Don't know

Additional Comments

2.6 Purchase of own shares (off market acquisition) (Section 314 of the Companies Law)

2.6.1 Section 314 of the Companies Law deals with authority for the off market purchase, by a company, of its own shares. A company may acquire its own shares, other than under a market acquisition under Section 315 of the Companies Law, in pursuance of a contract authorised in advance by a special resolution of the company. Subject to a requirement that the authority must state a date on which it is to expire, the authority may also be varied, revoked or renewed by special resolution of the company.

2.6.2 On market acquisitions, by a company of its own shares, are governed by section 315 of the Companies Law and only require authorisation by ordinary resolution or by the company's memorandum or articles of incorporation.

2.6.3 When the Companies Law was drafted, whilst not identical with regard to the type of resolution required, these provisions essentially reflected the position in the UK. However, in the UK, the requirements in respect of off market purchase of own shares were amended in 2013[1] so that an ordinary resolution is now sufficient[2].

2.6.4 Enabling authorisation of off market purchases of own shares by ordinary resolution, instead of special resolution, would align the requirement with the position for on market purchase of own shares and also with the position in the UK.

2.6.5 However, it is noted that the position in Jersey is that a special resolution is needed for both on and off market purchase of a company's own shares.[3]

[1] Regulation 5 of The Companies Act 2006 (Amendment of Part 18) Regulations 2013.
[2] Sections 694 and 697 of The Companies Act 2006.
[3] Article 57 (2) of The Companies (Jersey) Law, 1991

11. Do you consider that section 314 of the Companies Law should be amended to enable authorisation (including variation, revocation and renewal of authority) for off market purchase of own shares by ordinary resolution?

- [ ] Yes
- [ ] No
- [ ] Don't know

Additional Comments

2.7 Financial assistance (Sections 329-335 of the Companies Law)

2.7.1 Financial assistance for the acquisition by a company of its own shares, is permitted under section 329 of the Companies Law. Section 331 of the Companies Law states that such an acquisition is a distribution and, as such, must comply with the provisions of sections 303 and 309 of the Companies Law. In order to comply with the provisions of section 303 of the Companies Law, the board of directors must, inter alia, be satisfied, on reasonable grounds, that the company satisfies the solvency test and must comply with any other requirement in the memorandum and articles of incorporation.

2.7.2 The Committee notes that such an acquisition is not expressed to be a distribution in the UK and Jersey, and as such, there is no requirement for companies to fulfil similar requirements to those contained in section 303 of the Companies Law.[1]

2.7.3 The Committee would welcome views on whether it is desirable to amend section 331 of the Companies Law so that financial assistance by a company, for the acquisition of its own shares, is not a distribution and therefore does not require compliance with the provisions of sections 303 (satisfaction of the solvency test) and 309 of the Companies Law.

[1] This statement relates to private companies in the UK. There are restrictions on financial assistance for public companies in the UK.

12. Should section 331 of the Companies Law be amended to expressly provide that financial assistance by a company for the acquisition of its own shares, is not a distribution and therefore does not require compliance with the provisions of sections 303 (satisfaction of the solvency test) and 309 of the Companies Law?

- [ ] Yes
- [ ] No
- [ ] Don't know

Additional Comments

2.8 Conversion of shares to stock (Section 283 of the Companies Law)

2.8.1 The Companies (Guernsey) Law, 1994 (the "1994 Companies Law"), permitted both conversion of shares into stock and reconversion of that stock into paid-up shares of any denomination.[1]

2.8.2 When the Companies Law was enacted, the conversion of shares into stock was prohibited by section 283. Transitional provision was made by paragraph 7(1) of Schedule 4 to the Companies Law, which permits a company that has converted paid-up shares into stock (before the repeal by the Companies Law of the power to do so) to reconvert that stock into paid-up shares of any value. These provisions reflected the position under the UK Act at that time.

2.8.3 However, in the last round of amendments to the Companies Law, industry feedback was that the ability to use stock conversion was useful, particularly in share reorganisations, and a majority of respondents to the consultation supported permitting conversion of shares into stock. Section 283 of the Companies Law was therefore amended, with effect from 3rd September 2015, so that conversion of shares to stock is now, again, permitted.

2.8.4 There is, however, presently no provision in the Companies Law for the reconversion of stock to shares, other than the transitional provision in Paragraph 7(1) of Schedule 4.

2.8.5 It is therefore proposed to amend the Companies Law, to permit the reconversion of stock to shares, subject to authorisation under the memorandum and articles of the relevant company and/or by ordinary resolution.

2.8.6 The Committee also believes that it may be appropriate, for consistency, to require authorisation under the memorandum and articles of the relevant company and/or ordinary resolution for a conversion of shares into stock pursuant to Section 283 of the Companies Law.

[1] Section 37 of The Companies (Guernsey) Law, 1994

13. Do you believe that the Companies Law should be amended to permit the reconversion of stock to shares, subject to authorisation under the memorandum and articles of the relevant company and/or by ordinary resolution? Please provide reasons for your answer.

- [ ] Yes
- [ ] No
- [ ] Don't know

Additional Comments

14. Do you believe that the Companies Law should be amended to require authorisation under the relevant company's memorandum and articles of incorporation and/or by ordinary resolution, for the conversion of shares into stock, pursuant to section 283 of the Companies Law?

- [ ] Yes
- [ ] No
- [ ] Don't know

Additional Comments

2.9 Right of transferee to acquire shares (Section 337 of the Companies Law)

2.9.1 Part XVIII of the Companies Law deals with takeovers and was amended in September 2015 following industry feedback. Section 337(1) of the Companies Law provides that:

"If, within a period of 4 months after the date of making an offer in respect of such a scheme or contract as is mentioned in section 336, the offer is approved or accepted by shareholders comprising not less than 90% in value of the shares affected, the transferee may, within a period of two months immediately after the last day on which the offer can be approved or accepted, give notice to any dissenting shareholder that it desires to acquire his shares (a "notice to acquire").

2.9.2 One of the effects of the amended wording is that the last date on which an offer made under section 337 of the Companies Law can be approved or accepted, must have passed before a notice to acquire can be given to a dissenting shareholder. Consequently, the offer may not be kept open for any shareholders who might wish to send in a late acceptance. The UK Act does not contain the same restriction.

2.9.3 Additionally, section 337(7) of the Companies Law provides that:

"For the purposes of calculating the threshold specified in subsection (1) of 90% in value of the shares affected, shares held as treasury shares and shares held by the transferee or any class or description of person specified in section 337A shall not be taken into account."

2.9.4 It has been suggested that the effect of the above provision is that shares purchased during the bid period do not count towards the 90% threshold. In other jurisdictions, including the UK, purchases during the bid period do count towards the relevant threshold. This permits the gradual acquisition of shares during a takeover offer period, otherwise than by means of the offer, without making it more difficult to satisfy the 90% threshold in section 337(1) of the Companies Law.

2.9.5 In the UK, section 979(8) - 979(10) of the UK Act provide that where shares are purchased by the offeror during the offer period (i.e. during the period beginning with the date of the takeover offer and ending when the offer can no longer be accepted) at a price which does not exceed the offer price, those shares count towards the 90%.

15. Do you agree that section 337(1) should be amended to remove the requirement that the offer must have closed before a notice to acquire can be given to a dissenting shareholder?

- [ ] Yes
- [ ] No
- [ ] Don't know

Additional Comments

16. Do you agree with the proposal to amend Part XVIII of the Companies Law to provide that purchases of shares by the offeror during the offer period, otherwise than by means of the offer, should count towards the 90% threshold detailed in section 337(1) of the Companies Law?

- [ ] Yes
- [ ] No
- [ ] Don't know

Additional Comments

17. Do you believe that such an amendment should be subject to a requirement that such purchases are at a price that does not exceed the offer price?

- [ ] Yes
- [ ] No
- [ ] Don't know

Additional Comments

18. Do you have any further comments, or alternative proposals, to those set out in paragraph 2.9?

2.10 Shares in lieu of dividends (Section 306(a) of the Companies Law)

2.10.1 Section 306(a) of the Companies Law requires that any offer of shares in lieu of dividends be made to all shareholders of the same class, on the same terms. It has been suggested to the Committee that this provision causes problems as some jurisdictions restrict the ability to make offers of shares in lieu of dividends.

2.10.2 The Committee proposes addressing this issue. One option would be to insert a qualification in section 306 of the Companies Law so that companies may make the offer by other means, such as is set out at section 337(4) of the Companies Law, which was inserted to address similar concerns in the context of takeovers.

19. Should a qualification be inserted into section 306(a) of the Companies Law to the effect that companies may, for the purposes of section 306, make offers of shares to holders in jurisdictions that prohibit or restrict such offers by alternative means (such as those in section 337(4) of the Companies Law); or should another solution to this issue be considered?

- [ ] Yes
- [ ] No
- [ ] Don't know

Additional Comments

2.11 Terms and manner of acquisition of own shares (Section 313(3) of the Companies Law)

2.11.1 Section 313(3) of the Companies Law requires that a company must obtain the consent of the shareholders whose shares are being acquired, in an acquisition by a company of its own shares.

2.11.2 The Committee has received feedback that such a provision could cause problems if a company wanted to acquire shares in a situation where shareholder consent was likely to be withheld, such as an employee leaving in 'bad leaver' situations.

2.11.3 The need for consent contained in section 313 of the Companies Law represents a departure from the 1994 Companies Law. The relevant sections of the 1994 Law were inserted by the Companies (Purchase of Own Shares) Ordinance, 1998 (the "1998 Ordinance"), which states at section 2(2):

2(2) A company may not purchase its own shares under this Ordinance without the consent of the member whose shares are to be purchased unless the company is authorised to do so by virtue of-
(a) the provisions of its memorandum or articles;
(b) the terms and conditions subject to which, or the rights, qualifications or restrictions with which, the shares were issued; or
(c) the subscription agreement for the issue of shares.

2.11.4 The 1998 Ordinance therefore made clear that whilst own-share purchases are ordinarily to be consensual transactions between company and seller, a company's constitution, or the terms on which the shares in question had been issued, could also enable there to be a compulsory purchase.

2.11.5 The Committee would be interested to receive views on whether the Companies Law should be amended to include qualifications on shareholder consent.

20. Do you agree that the requirement for shareholder consent when a company is acquiring its own shares, under section 313(3) of the Companies Law, should be qualified?

- [ ] Yes
- [ ] No
- [ ] Don't know

Additional Comments

21. If yes, should those qualifications be as they were under the 1998 Ordinance or do you have any alternative or additional suggestions?

2.12 Purchase of own shares (Sections 312 – 314 of the Companies Law)

2.12.1 Under section 314 of the Companies Law, a company may only acquire its own shares in pursuance of a contract authorised in advance by way of a special resolution.

2.12.2 The Committee has received a suggestion that an equivalent provision to that found in section 693A of the UK Act would be a useful addition to the Companies Law.

2.12.3 Section 693A of the UK Act provides that any (off market) purchase by a company of its own shares for the purposes of an employees' share scheme must be authorised by an ordinary resolution of the company. Such a resolution must specify, inter alia, the maximum and minimum prices that may be paid for the shares. However, if a purchase of its own shares is for the purposes of an employee share scheme then the company does not need to obtain advance member approval of the contract acquiring the shares, as would usually be required under section 693 and section 694 of the UK Act.

22. Should the Companies Law be amended to include a provision that where a company is acquiring its own shares for the purposes of an employees' share scheme, advance authorisation by special resolution of the purchase contract is not required?

- [ ] Yes
- [ ] No
- [ ] Don't know

Additional Comments

2.13 Court sanction for compromise or arrangement (Section 110 of the Companies Law)

2.13.1 Section 110(1) of the Companies Law states that agreement needs to be obtained from 'a majority in number representing 75% in value of the members or class of members (excluding any shares held as treasury shares), or creditors or [class of creditors] (as the case may be), present and voting either in person or by proxy at the meeting summoned under section 107' in order for an application to be made to the Court to sanction a compromise or arrangement.

2.13.2 The Committee believes that it may be appropriate for the wording of section 110(1) of the Companies Law to be amended to set out that 75% of voting rights is required for members and that 75% of value relates to creditors.

2.13.3 Alternatively, the Committee has also received a suggestion that section 110(1) effectively creates a two limb test. First, the requirement for a 'majority in number' and, second, the requirement for 75% in value. It has been suggested that the two limb requirement should be dispensed with in favour of simply needing agreement by 75% of the relevant creditors or members in attendance at the meeting. FSD notes that members or creditors have the additional protection of any agreement or arrangement requiring Court sanction but that England and Jersey have a two limb requirement[1].

[1] Section 899 (1) of The Companies Act, 2006 and Article 125 (2) of The Companies (Jersey) Law, 1991 respectively

23. Do you agree that section 110(1) of the Companies Law should be amended so that the reference to 75% in value applies to creditors, and that in respect of members it refers to voting rights?

- [ ] Yes
- [ ] No
- [ ] Don't know

Additional Comments

24. In the alternative to Question 23, do you believe that Section 110(1) of the Companies Law should be amended so that an application to the Court, under Section 110(1), may be made on agreement of not less than 75% of the members, or creditors, as the case may be, present at the relevant meeting?

- [ ] Yes
- [ ] No
- [ ] Don't know

Additional Comments

2.14 Application to change name (Section 25 of the Companies Law)

2.14.1 Under section 25 of the Companies Law, a company may apply to the Registrar of Companies (the "Registrar") to change its name and any application must be accompanied by a special resolution authorising the change of name.

2.14.2 The Committee notes that the UK Act allows, at section 77, a change of name via 'other means provided for by the company's articles' in addition to passing a special resolution. Such other means could include, for example, a board resolution. The Committee further notes that, in the UK, notice must still be given to the Registrar if such other means are used, just as when a company obtains authority to change its name via a special resolution.

2.14.3 The Committee would welcome views on whether the inclusion of provisions allowing a company to authorise a change of name by other means provided for by its articles would be desirable in the Companies Law.

25. Should a provision that a company may authorise a change of name by other means provided for by its articles, as well as by special resolution, be introduced to section 25 of the Companies Law?

- [ ] Yes
- [ ] No
- [ ] Don't know

Additional Comments

2.15 Retention of copies of records in electronic form (Section 498A of the Companies Law)

2.15.1 Section 498A of the Companies Law was introduced with effect from 3rd September 2015 to facilitate the move to an electronic register of companies. Section 498A(1) states that the Registrar may destroy or dispose of original documents received or issued for the purposes of the Companies Law provided that an electronic copy is kept and, if the document was not originally sent electronically, the original hard copy is kept for three years.

2.15.2 Following a review of document retention policy, the Registrar has requested that the Committee consider amending Section 498A of the Companies Law to remove the requirement for an original hard copy document to be kept for three years.

2.15.3 The effect of section 498A of the Companies Law and the provisions of the Electronic Transactions (Guernsey) Law, 2000 are such that, on reflection, the Registrar and the Committee believe that the 3 year retention period for original non-electronic documents is not necessary.

26. Do you agree that the requirement for the Registry to retain any non-electronic original documents for three years, in addition to keeping an electronic copy, should be repealed?

- [ ] Yes
- [ ] No
- [ ] Don't know

Additional Comments

2.16 The Companies (Audit Exemption) Regulations, 2008

2.16.1 Under section 255 of the Companies Law, a company's accounts for a financial year must be audited unless the company is exempt from audit under section 256. Section 256(1) states that the members of a company may pass a waiver resolution exempting the company from the requirement for audit but, under Section 256(6), the Committee may make regulations preventing certain types, classes or descriptions of company, from being exempt from audit.

2.16.2 Under section 1 of the Companies (Audit Exemption) Regulations, 2008 ("Audit Exemption Regulations") a company is a large company if any two of the following conditions apply:

The Company has:
a. an annual net turnover of £6.5 million or more;
b. a net balance sheet of £3.26 million or more; or
c. 50 or more employees.

Implicitly, any companies that do not meet two or more of the conditions, are small companies. Under regulation 3(1) to the Audit Exemption Regulations, large companies are prohibited from passing a waiver resolution under section 255 of the Companies Law. A small company may pass a waiver resolution to exempt itself from audit.

2.16.3 Sections 381-384B of the UK Act set out a similar regime, exempting small companies from the requirement to be audited. A company qualifies as small if it satisfies two out of three criteria set out at section 382 of the UK Act, in relation to turnover, aggregate total of assets on the company's balance sheet; and number of employees. The figures in the UK Act were updated by the Companies, Partnerships and Groups (Accounts and Reports) Regulations 2015 ("2015 Regulations"), as follows:

- Turnover was updated from £6.5 million under the UK Act to £10.2 million under the 2015 Regulations; and

- Balance sheet total was updated from £3.26 million under the UK Act to £5.1 million under the 2015 Regulations.

The maximum number of employees remained at 50.

2.16.4 The Committee is of the view that the balance sheet and turnover figures should be increased to maintain consistency with the UK.

27. Do you agree with the proposal to increase the figures in the Audit Exemption Regulations, to maintain consistency with the UK figures, set out in the 2015 Regulations?

- [ ] Yes
- [ ] No
- [ ] Don't know

Additional Comments

2.17 Any further feedback

The Committee invites additional feedback and/or comments on any matters relating to the Companies Law that are not covered in this consultation paper.

28. Do you have any further feedback and/or comments on matters relating to the Companies Law that are not covered in this consultation paper?