



Jersey

# **BANKRUPTCY (DÉSASTRE) (JERSEY) LAW 1990**

## **Official Consolidated Version**

This is an official version of consolidated legislation compiled and issued under the authority of the Legislation (Jersey) Law 2021.

04.160

Showing the law from 2 March 2021 to Current





Jersey

## BANKRUPTCY (DÉSASTRE) (JERSEY) LAW 1990

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Jersey

## BANKRUPTCY (DÉSASTRE) (JERSEY) LAW 1990

A LAW to amend and extend the law relating to the declaring of the property of a person to be *en désastre*; to make provision for the disqualification and personal liability of persons involved in the management of companies and other bodies corporate and legal persons; to abolish certain customary law concepts; and for connected purposes<sup>1</sup>

Commencement [[see endnotes](#)]

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### PART 1

#### INTERPRETATION AND GENERAL

##### 1 Interpretation

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

“claim” includes a claim for repossession of goods and a claim for rent;

“Commission” means the Jersey Financial Services Commission established by the [Financial Services Commission \(Jersey\) Law 1998](#);

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

“company” means –

- (a) a company registered under the Companies Law (including a company originally registered under the Loi (1861) sur les Sociétés à Responsabilité Limitée);
- (b) a foundation;
- (c) a corporation constituted under Article 4 of the [Loi \(1862\) sur les teneurs en fidéicommis et l’incorporation d’associations](#);
- (d) an association constituted by Act of the States; and
- (e) a body corporate incorporated outside Jersey,

and references to directors and other officers of a company and to voting power at a general meeting of a company shall be interpreted with the necessary modifications;

“court” means the Royal Court;

“creditor” includes a person claiming repossession of goods;

“debtor” –

- (a) in relation to an application for a declaration means a person who is insolvent;
- (b) in relation to a declaration means the person in respect of whose property that declaration is made;
- (c) in relation to a reference to anything done by a debtor before a declaration was made, means the person who became the debtor on the declaration being made although the person may not have been insolvent at the time the thing was done;

“declaration” means an Act of the court made under Article 6 declaring the property of a person to be *en désastre*;

“director” means any person occupying the position of –

- (a) director; or
- (b) in the case of a foundation, a member of the council of the foundation,

by whatever name called;

“foundation” means a foundation incorporated under the [Foundations \(Jersey\) Law 2009](#);

“hypothec”, “judicial hypothec” and “conventional hypothec” have the respective meanings assigned to *hypothèque*, *hypothèque judiciaire* and *hypothèque conventionnelle* under the [Loi \(1880\) sur la propriété foncière](#);

“incorporated limited partnership” has the meaning given to it in the [Incorporated Limited Partnerships \(Jersey\) Law 2011](#);

“insolvency” means the inability of a debtor to pay his or her debts as they fall due;

“limited liability partnership” means a limited liability partnership registered under the [Limited Liability Partnerships \(Jersey\) Law 2017](#);

“Minister” means the Minister for External Relations and Financial Services;

“prescribed by the Minister” means prescribed by the Minister by Order;

“prescribed by the court” means prescribed by the court by Rules made under Article 2;

“property” means land, money, goods, things in action, goodwill, and every valuable thing, whether movable or immovable, and whether situated in Jersey or elsewhere; and also means obligations, servitudes, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property;



“registrar” means in relation to –

- (a) a company registered under the Companies Law;
- (b) a foundation;
- (c) an incorporated limited partnership; or
- (d) a limited liability partnership,

the registrar appointed pursuant to Article 196 of the Companies Law;

“security interest” means –

- (a) a continuing security interest to which, as referred to in Article 1A of the [Security Interests \(Jersey\) Law 1983](#), that Law applies; or
- (b) a security interest within the meaning of the [Security Interests \(Jersey\) Law 2012](#).<sup>2</sup>

- (2) In this Law, the expression “during the course of a *désastre*” means the period between the date of the declaration and such date as an order of discharge under Article 41 takes effect.
- (3) Subject to Article 10, the provisions of this Law shall be in addition to and not in derogation of –
  - (a) the [Loi \(1832\) sur les décrets](#);
  - (b) the [Loi \(1839\) sur les remises de biens](#);
  - (c) those provisions of the [Loi \(1880\) sur la propriété foncière](#) which relate to bankruptcy;
  - (d) the [Loi \(1904\) \(Amendement No. 2\) sur la propriété foncière](#); and
  - (e) any other law relating to bankruptcy,

except in so far as the provisions contained therein are inconsistent with the provisions of this Law.

## 2 Power to make Rules

- (1) Rules may from time to time be made in the manner prescribed by the [Royal Court \(Jersey\) Law 1948](#) relating to the procedure of the court (including the procedure and practice to be followed by the Viscount under this Law) and to give effect to this Law.
- (2) Without prejudice to the generality of paragraph (1), Rules may be made under this Article as to –
  - (a) the manner in which proceedings may be commenced;
  - (b) the mode of proving debts and the exemption of certain debts from the requirement of proof;
  - (c) <sup>3</sup>
  - (d) the forms to be used in any proceedings;
  - (e) the attestation and verification of documents for use in proceedings;
  - (f) the notices to be given in connection with any proceedings and by and to whom the same shall be given;

- (g) the manner of advertising;
  - (h) the granting of costs, and the cases in which security for costs must be given;
  - (i) subject to Article 49A, such matters as are required for giving full effect to the provisions of this Law and for the due administration thereof.<sup>4</sup>
- (3) The Rules may authorize the Viscount to exercise a discretion including a discretion to extend or abridge the period within which a person is required or authorized to do any act in pursuance of the Rules.<sup>5</sup>
- (4) The Rules may authorize the Viscount to grant an extension referred to in paragraph (3) although the application for the extension was not made until after the period prescribed by the Rules or any extension of that period.<sup>6</sup>

## PART 2

### APPLICATION FOR DECLARATION

#### 3 Application for a declaration<sup>7</sup>

- (1) An application for a declaration may be made by –
- (a) a creditor of the debtor with a claim against the debtor of not less than such liquidated sum as shall be prescribed by the Minister;
  - (b) the debtor; or
  - (c) the Commission, in the case of a person who –
    - (i) holds or has held a permit under the [Insurance Business \(Jersey\) Law 1996](#) or the [Collective Investment Funds \(Jersey\) Law 1988](#),
    - (ii) holds or has held a certificate under the [Collective Investment Funds \(Jersey\) Law 1988](#) or the [Alternative Investment Funds \(Jersey\) Regulations 2012](#),
    - (iii) is or was registered under the [Banking Business \(Jersey\) Law 1991](#) or the [Financial Services \(Jersey\) Law 1998](#), or
    - (iv) is a foundation.<sup>8</sup>
- (2) An application may not be made by –
- (a) a creditor to the extent that the creditor has agreed not to make an application; or
  - (b) a creditor whose only claim is one for the repossession of goods.
- (3) Except as provided by paragraph (4), an application must be made in the form prescribed by the court and must be accompanied by an affidavit verifying the contents of the form.
- (4) Paragraph (3) does not apply to an application made by the Commission under paragraph (1)(c).

#### 4 Persons in respect of whose property a declaration may be applied for

- (1) An application under Article 3 may be made in respect of the property of any debtor –
  - (a) who –
    - (i) is, or
    - (ii) was, at any time within the period of 12 months immediately preceding the date of the application,  
ordinarily resident in Jersey;
  - (b) who –
    - (i) carries on, or
    - (ii) has carried on, at any time within the period of 3 years immediately preceding the date of the application,  
business in Jersey;
  - (c) who has in Jersey immovable property capable of realization at the time of the application;
  - (d) who, being a company, is registered under the Companies Law or has been dissolved pursuant to that Law;
  - (da) who is an incorporated limited partnership; or
  - (e) who is a limited liability partnership,  
whether or not the debtor is present in Jersey at the time of application for a declaration or at the time of the declaration.<sup>9</sup>
- (2) For the avoidance of doubt it is hereby declared that no application may be made in respect of the property of a deceased person.

#### 5 Duty of court to refuse to make declaration in certain cases

- (1) The court shall refuse to make a declaration –
  - (a) if the court has made an order pursuant to Article 2 of the [Loi \(1839\) sur les remises de biens](#) granting permission to the debtor to place the debtor's property in the hands of the court and at the date of the application the order remains in force;
  - (b) if the debtor has been permitted to make general cession (*reçu à faire cession générale*) of the debtor's property; or
  - (c) if the debtor's property has been adjudged renounced (*adjudée renoncée*).
- (2) In the case of an application by a creditor the court may require the creditor to indemnify the Viscount against the costs of the *désastre* to the extent that it thinks fit.

## PART 3

### DECLARATION

#### 6 Declaration

- (1) Subject to paragraph (2), the court, after considering an application and the affidavit required by Article 3(3) to accompany it, may make a declaration.<sup>10</sup>
- (2) Where an application is made under Article 3(1)(c) the court may make a declaration if it considers it just and equitable to do so.<sup>11</sup>
- (3) The court may at any time adjourn the hearing of an application for such time as it thinks fit and may require the applicant to furnish such further information as it requires.
- (4) Where, as the result of an application made by a creditor a declaration is made and the person in respect of whose property it is made is, notwithstanding the declaration, at the date of the declaration not insolvent, that person shall have a right of action against the applicant to recover damages for or in respect of any loss sustained by the person as a consequence of the declaration, unless the applicant, in making the application, acted reasonably and in good faith.
- (5) Any action brought pursuant to paragraph (4) shall be commenced within 12 months from the date of the declaration.

#### 7 Debtor's application to recall a declaration

- (1) The debtor may at any time during the course of the *désastre* apply to the court for an order recalling the declaration.
- (2) The debtor shall give to the Viscount not less than 48 hours' notice of the debtor's intention to make an application under paragraph (1).
- (3) The court shall refuse an application made under paragraph (1) where it is not satisfied that property of the debtor vested in the Viscount pursuant to Article 8 or 9 is at the time of such application sufficient to pay in full claims filed with the Viscount or claims which the Viscount has been advised will be filed within the prescribed time.
- (4) In considering an application under paragraph (1) the court shall have regard to the interests of –
  - (a) creditors who have filed a statement of claim;
  - (b) creditors whose claims the Viscount has been advised will be filed within the prescribed time; and
  - (c) the debtor,and in the case of a declaration made pursuant to Article 6(2), shall also have regard to the views of the Commission and of the Viscount.<sup>12</sup>
- (5) Where the court makes an order under this Article it may make such order as to costs as it thinks fit.

- (6) Where the court makes an order under this Article, the property of the debtor which is vested in the Viscount pursuant to Article 8 or 9 shall, with effect from the date of the order, vest in the debtor.
- (7) An order made under this Article shall not prejudice the validity of any act of the Viscount relating to the property of the debtor between the date of the declaration and the date of the order.

## **PART 4**

### EFFECT OF DECLARATION

#### **8 Property of debtor at date of declaration to vest in the Viscount**

- (1) All the property and powers of the debtor specified in paragraph (2) shall vest in the Viscount immediately upon the making of the declaration.
- (2) Subject to paragraph (3) and Article 8A, the property and powers of the debtor to vest in the Viscount under this Article and be divisible amongst the debtor's creditors shall comprise –
  - (a) all property belonging to or vested in the debtor at the date of the declaration;
  - (b) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of any property as might have been exercised by the debtor for the debtor's own benefit at the date of the declaration.<sup>13</sup>
- (3) Property held by the debtor in trust for any other person shall not vest in the Viscount.

#### **8A Rights under approved pension arrangements excluded<sup>14</sup>**

- (1) The States may, by Regulations, make provision for or in connection with enabling rights of a person under an approved pension arrangement to be excluded, in the event of a declaration being made in respect of that person, from the person's property for the purposes of this Law.
- (2) Regulations under this Article may, in particular, make provision –
  - (a) for rights under an approved pension arrangement to be excluded from a person's property –
    - (i) by an order made by the court on the person's application, or
    - (ii) in accordance with a qualifying agreement made between the person and the Viscount;
  - (b) for the court's decision whether or not to make such an order in relation to a person to be made by reference to –
    - (i) future likely needs of the person and the person's family, and
    - (ii) whether any benefits (by way of pension or otherwise) are likely to be received by virtue of rights of the person under other pension arrangements and (if so) the extent to which

they appear to be likely to be adequate for meeting any such need;

- (c) for the prescribed persons, in the case of any prescribed pension arrangement, to provide a person or the Viscount on request with information reasonably required by that person or the Viscount for or in connection with the making of such applications and agreements as are mentioned in sub-paragraph (a);
  - (d) for rights under an approved pension arrangement to be excluded from a person's property to an approved extent.
- (3) Regulations made under this Article –
- (a) may make different provisions in relation to different cases;
  - (b) may exempt specified cases from any provision of the Regulations;
  - (c) may contain provisions that are incidental or supplementary.

- (4) In this Article –

“approved pension arrangement” means a pension arrangement of a prescribed type;

“prescribed” means prescribed by Regulations made under this Article;

“qualifying agreement” means an agreement entered into in such circumstances and satisfying such requirements as may be prescribed.

## **9 After-acquired property**

- (1) Subject to this Article, the Viscount may by notice in writing claim any property which has been acquired by, or has devolved upon, the debtor since the date of the declaration for division amongst the debtor's creditors.
- (2) A notice under this Article shall not be served in respect of any property which is acquired by, or devolves upon, the debtor after the debtor's discharge.
- (3) Subject to paragraph (4), upon the service on the debtor of a notice under this Article the property to which the notice relates shall vest in the Viscount and the Viscount's title to that property has relation back to the time at which the property was acquired by, or devolved upon, the debtor.
- (4) Where, whether before or after service of a notice under this Article –
  - (a) a person acquires property in good faith, for value and without notice of the declaration; or
  - (b) a banker enters into a transaction in good faith and without such notice,

the Viscount is not in respect of that property or transaction entitled by virtue of this Article to any remedy against that person or banker, or any person whose title to any property derives from that person or banker.

- (5) Except with the leave of the court a notice shall not be served after the end of the period of 40 days beginning with the day on which it first came to the knowledge of the Viscount that the property had been acquired by, or had devolved upon the debtor.

**10 Prohibition on pursuing alternative remedies, etc. after declaration<sup>15</sup>**

- (1) With effect from the date of the declaration a creditor to whom the debtor is indebted in respect of a debt provable in the “désastre” shall not –
  - (a) have any other remedy against the property or person of the debtor in respect of the debt;
  - (b) commence any action or legal proceedings to recover the debt; or
  - (c) except with the consent of the Viscount or by order of the court, continue any action or legal proceedings to recover the debt.
- (2) Consent under paragraph (1)(c) may be given on such terms as the Viscount or the court thinks fit.
- (3) If the debtor is a company –
  - (a) a transfer of shares in the debtor not being a transfer made to or with the sanction of the Viscount; or
  - (b) an alteration in the status of the company’s members, made after the declaration is void.
- (4) If the debtor is an incorporated limited partnership –
  - (a) a transfer of any interest in the debtor not being a transfer made to or with the sanction of the Viscount; or
  - (b) an alteration in the status of the partnership’s partners, as partners, made after the declaration is void.<sup>16</sup>
- (5) Paragraphs (1) and (2) shall not prevent a secured party under a security agreement from exercising, without the consent of the Viscount, and without an order of the court, a power under Part 7 of the [Security Interests \(Jersey\) Law 2012](#) in relation to the relevant collateral.<sup>17</sup>
- (6) Paragraph (3) shall not avoid a transfer of shares made pursuant to a power under Part 7 of the [Security Interests \(Jersey\) Law 2012](#) even if not made to, or with the sanction of, the Viscount.<sup>18</sup>

**11 Special provisions regarding immovable property**

- (1) Any immovable property vesting in the Viscount pursuant to Article 8(1) or 9(3) shall so vest subject to all hypothecs and debts secured thereby to which such property was subject prior to the vesting.
- (2) Subject to paragraph (3), and without prejudice to the rights of preference of an hypothecary creditor, where any property which vests in the Viscount pursuant to Article 8(1) or 9(3) is subject to a judicial or conventional hypothec, the hypothec shall be extinguished on the sale of the property by the Viscount under Article 27.
- (3) Paragraph (2) shall not apply to a judicial or conventional hypothec obtained against or created or consented to by any predecessor in title of the debtor, the debtor not having been charged by the debtor’s contract of acquisition with the payment of the debt or other claim which the hypothec secures, and Article 2(3) of the [Loi \(1880\) sur la propriété foncière](#) shall continue to apply in such a case.

- (4) If, immediately prior to a declaration, the debtor is beneficially entitled to immovable property as a joint owner (“conjointement par ensemble”) the title to the property shall, as from the date of the declaration, be taken to have been converted into an ownership in common in equal shares (“en indivis en parts égales”) and any hypothecs to which the immovable property is subject shall, with the debts secured by it, be apportioned equally between those shares.<sup>19</sup>
- (5) If, after a conversion and any apportionment under paragraph (4) has taken place, the court, on an application made under Article 7(1), makes an order recalling the declaration, the court may also make such order as the court thinks fit for restoring the position to what it would have been if the declaration had not been made or as nearly thereto as the court thinks practicable.<sup>20</sup>

## 12 Special provisions regarding matrimonial home

- (1) Where any property vesting in the Viscount pursuant to Article 8(1) or 9(3) represents the matrimonial home or an interest in part thereof the spouse of the debtor, not being a person in respect of whom a declaration has been made and not recalled, may, within 3 months of the date of the declaration, apply to the court for such order as is referred to in paragraph (5) as the court thinks fit.<sup>21</sup>
- (1A) Where any property vesting in the Viscount pursuant to Article 8(1) or 9(3) represents the civil partnership home or an interest in part thereof the civil partner of the debtor, not being a person in respect of whom a declaration has been made and not recalled, may, within 3 months of the date of the declaration, apply to the court for such order as is referred to in paragraph (5) as the court thinks fit.<sup>22</sup>
- (2) Application may be made under paragraph (1) notwithstanding any agreement made to the contrary.
- (3) The power to sell property conferred on the Viscount by Article 27 shall not be exercised in respect of property referred to in paragraph (1) until a period of more than 3 months has elapsed from the date of the declaration.
- (4) Paragraph (1) shall apply whether or not the spouse or civil partner of the debtor is beneficially entitled as a joint tenant with the debtor to the matrimonial home or civil partnership home.<sup>23</sup>
- (5) After considering an application under paragraph (1) or (1A) the court may order –
  - (a) that the property or the interest in part thereof as to which the Viscount is beneficially entitled, subject to –
    - (i) any hypothec and debts secured thereby, or
    - (ii) security interest and debts secured thereby,or part thereof attaching to the property or interest therein, be vested in the applicant;
  - (b) the sale of the property and the distribution of the proceeds of sale, or such part of the proceeds as represents the value of the interest in the part of the property as to which the Viscount is beneficially



entitled, to such persons and in such proportions as the court thinks fit;

- (c) a usufruct in the property or in such part thereof as to which the Viscount is beneficially entitled to be vested in the applicant for such period as the court thinks fit.<sup>24</sup>
- (6) Where the court makes an order under paragraph (5)(a) it may make a further order that payment be made by the applicant to the Viscount of such sum as the court thinks fit for the benefit of the debtor's creditors.
- (7) Orders made under paragraphs (5) and (6) shall be on such terms and conditions as the court thinks fit.
- (8) It shall be the duty of the court in deciding in what manner to exercise its powers under paragraph (5) to give first consideration to the desirability of reserving the matrimonial home or civil partnership home for the occupation of the spouse or civil partner and any dependants of the debtor having regard to all the circumstances of the *désastre* including the interests of creditors.<sup>25</sup>
- (9) The court shall in particular have regard to the following matters –
- (a) the income, earning capacity, property and other financial resources which the spouse or civil partner has or is likely to have in the foreseeable future;
- (b) the age of the debtor's dependants; and
- (c) the income, earning capacity (if any), property and other financial resources of the debtor's dependants.<sup>26</sup>
- (10) Before deciding whether to make an order under paragraph (5), the court shall give the Viscount an opportunity to make representations with respect to the order.
- (11) Any representations made by the Viscount shall be included among the circumstances to which the court is required to have regard under this Article.
- (12) For the purposes of this Article –
- “civil partner” includes a person with whom the debtor is alleged to be in a civil partnership by habit and repute;
- “civil partnership home” means the residence that is used habitually or from time to time by the debtor and the debtor's civil partner or either of them as the only or principal family residence;
- “dependants” means all persons who in the opinion of the court are dependant on the debtor wholly or partially for the provision of the ordinary necessities of life;
- “matrimonial home” means the residence that is used habitually or from time to time by the debtor and the spouse or either of them as the only or principal family residence;
- “spouse” includes a person to whom the debtor is alleged to be married by habit and repute.<sup>27</sup>

### 13 Special provisions regarding movable property

Where immediately prior to a declaration the debtor owns or has an interest in movable property jointly with one or more persons, the debtor's share or interest in that property shall vest in the Viscount upon the making of a declaration as a tenancy in common in equal shares with the other co-owners.

### 14 Security interests

- (1) Where immediately prior to a declaration the debtor is beneficially entitled with other persons to any movable property in undivided shares and that property is the subject of a security interest, the security interest shall as from the date of the declaration be apportioned between the persons beneficially entitled to the property and the interest of the debtor vesting in the Viscount shall bear its proportion of the security interest.
- (2) Article 6 of the [Security Interests \(Jersey\) Law 1983](#), or Articles 56 and 59 of the [Security Interests \(Jersey\) Law 2012](#), shall apply to a security interest to which any movable property of a debtor is subject, being, respectively, a continuing security interest within paragraph (a) of the definition of "security interest" in Article 1(1) or a security interest within paragraph (b) of that definition.<sup>28</sup>

### 15 Power to disclaim certain onerous property

- (1) For the purpose of this Article "onerous property" means –
  - (a) movable property;
  - (b) a contract lease;
  - (c) other immovable property if it is situated outside Jersey, that is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act, and includes an unprofitable contract.<sup>29</sup>
- (2) The Viscount may, within 6 months of the declaration, and by giving the notice prescribed by the court, disclaim any onerous property of the debtor vested in the Viscount, and may do so notwithstanding that the Viscount has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in respect of it.<sup>30</sup>
- (3) A disclaimer under this Article shall –
  - (a) operate so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the debtor in or in respect of the property disclaimed; and
  - (b) discharge the Viscount from all liability in respect of that property as from the date of the declaration,but shall not, except so far as is necessary for the purpose of releasing the debtor, the debtor's property and the Viscount from any liability, affect the rights or liabilities of any other person.
- (4) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this Article shall be deemed to be a creditor of the debtor

to the extent of the loss or damage and accordingly may prove for the loss or damage.

### **15A Disclaimer of contract leases<sup>31</sup>**

- (1) The disclaimer of a contract lease does not take effect unless a copy of its disclaimer has been served (so far as the Viscount is aware of their addresses) on every person claiming under the debtor as a hypothecary creditor or under the lessee and either –
  - (a) no application under Article 16 is made with respect to the contract lease before the end of the period of 14 days beginning with the day on which the last notice under this paragraph was served; or
  - (b) where such an application has been made, the court directs that the disclaimer is to have effect.
- (2) Where the court gives a direction under paragraph (1)(b) it may also, instead of or in addition to any order it makes under Article 16, make such orders with respect to fixtures, tenant's improvements and other matters arising out of the lease as it thinks fit.

### **16 Powers of court in respect of disclaimed property**

- (1) This Article applies where the Viscount has disclaimed any property under Article 15.
- (2) An application may be made to the court under this Article by –
  - (a) any person who claims an interest in the disclaimed property (which term shall be taken to include, in the case of the disclaimer of a contract lease, a person claiming under the debtor as a hypothecary creditor or an under lessee); or
  - (b) any person who is under any liability in respect of the disclaimed property (which term shall be taken to include a guarantor), not being a liability discharged by the disclaimer.<sup>32</sup>
- (3) Subject to paragraph (4), the court may, on an application under this Article, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to –
  - (a) a person entitled to it or a trustee for such a person; or
  - (b) a person subject to such a liability as is mentioned in paragraph (2)(b) or a trustee for such a person.
- (4) The court shall not make an order by virtue of paragraph (3)(b) except where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.
- (5) The effect of any order under this Article shall be taken into account in assessing for the purposes of Article 15(4) the extent of any loss or damage sustained by any person in consequence of the disclaimer.

**17 Transactions at an undervalue<sup>33</sup>**

- (1) If a debtor has at a relevant time entered into a transaction with a person at an undervalue the court may, on the application of the Viscount, make such an order as the court thinks fit for restoring the position to what it would have been if the debtor had not entered into the transaction.
- (2) The court shall not make an order under paragraph (1) if it is satisfied –
  - (a) that the debtor entered into the transaction in good faith for the purpose of carrying on a business or, in the case of a company, its business; and
  - (b) that, at the time the debtor entered into the transaction, there were reasonable grounds for believing that the transaction would be of benefit to the debtor.
- (3) Without prejudice to the generality of paragraph (1) but subject to paragraph (5), an order made under paragraph (1) may do all or any of the following things, namely –
  - (a) require property transferred as part of the transaction to be vested in the Viscount;
  - (b) require property to be so vested if it represents in a person's hands the application either of the proceeds of sale of property so transferred or of money so transferred;
  - (c) release or discharge (in whole or in part) security given by the debtor;
  - (d) require a person to pay in respect of a benefit received by him or her from the debtor such sum to the Viscount as the court directs;
  - (e) provide for a surety or guarantor whose obligation to a person was released or discharged (in whole or in part) under the transaction to be under such new or revived obligation to that person as the court thinks appropriate;
  - (f) provide –
    - (i) for security to be provided for the discharge of an obligation imposed by or arising under the order,
    - (ii) for the obligation to be secured on any property, and
    - (iii) for the security to have the same priority as the security released or discharged (in whole or in part) under the transaction;
  - (g) provide for the extent to which a person –
    - (i) whose property is vested in the Viscount by the order, or
    - (ii) on whom an obligation is imposed by the order,is to be able to prove in the “désastre” of the debtor for debts or other liabilities that arose from, or were released or discharged (in whole or in part) under or by, the transaction.
- (4) Except to the extent provided by paragraph (5), an order made under paragraph (1) may affect the property of or impose an obligation on any

person, whether or not he or she is the person with whom the debtor entered into the transaction.

- (5) An order made under paragraph (1) –
  - (a) shall not prejudice an interest in property that was acquired from a person other than the debtor and was acquired in good faith and for value, or prejudice any interest deriving from such an interest; and
  - (b) shall not require a person who in good faith and for value received a benefit from the transaction to pay a sum to the Viscount, except where the person was a party to the transaction.
- (6) In considering for the purposes of this Article whether a person has acted in good faith, the court may take into consideration –
  - (a) whether the person was aware –
    - (i) that the debtor had entered into a transaction at an undervalue, and
    - (ii) that the debtor was insolvent or would as a likely result of entering into the transaction become insolvent; and
  - (b) whether the person was an associate of or was connected with either the debtor or the person with whom the debtor had entered into the transaction.
- (7) For the purposes of this Article, a debtor enters into a transaction with a person at an undervalue if –
  - (a) he or she makes a gift to that person;
  - (b) he or she enters into a transaction with that person –
    - (i) by way of a marriage settlement, or
    - (ii) on terms for which there is no “cause”, or
    - (iii) for a “cause” the value of which, in money or money’s worth, is significantly less than the value, in money or money’s worth, of the “cause” provided by the debtor.
- (8) Subject to paragraphs (9) and (10), the time at which a debtor entered into a transaction at an undervalue is a relevant time for the purpose of paragraph (1) if the transaction was entered into during the period of 5 years immediately preceding the making of the declaration.
- (9) The time to which paragraph (8) refers is not a relevant time unless –
  - (a) the debtor was insolvent when he or she entered into the transaction; or
  - (b) the debtor became insolvent as a result of the transaction.
- (10) If the transaction at an undervalue was entered into with a person connected with the debtor or with an associate of the debtor, paragraph (9) does not apply and the time to which paragraph (8) refers is a relevant time unless it is proved that –
  - (a) the debtor was not insolvent when he or she entered into the transaction; and

- (b) the debtor did not become insolvent as a result of the transaction.
- (11) For the purposes of this Article “cause” has the meaning assigned to it by the customary law of Jersey.

### 17A Giving of preferences<sup>34</sup>

- (1) If a debtor has at a relevant time given a preference to a person the court may, on the application of the Viscount, make such an order as the court thinks fit for restoring the position to what it would have been if the preference had not been given.
- (2) Without prejudice to the generality of paragraph (1) but subject to paragraph (4), an order made under paragraph (1) may do all or any of the following things, namely –
  - (a) require property transferred in connection with the giving of the preference to be vested in the Viscount;
  - (b) require property to be vested in the Viscount if it represents in any person’s hands the application either of the proceeds of sale of property so transferred or of money so transferred;
  - (c) release or discharge (in whole or in part) security given by the debtor;
  - (d) require a person to pay in respect of a benefit received by him or her from the debtor such sum to the Viscount as the court directs;
  - (e) provide for a surety or guarantor whose obligation to a person was released or discharged (in whole or in part) by the giving of the preference to be under such new or revived obligation to that person as the court thinks appropriate;
  - (f) provide –
    - (i) for security to be provided for the discharge of any obligation imposed by or arising under the order,
    - (ii) for such an obligation to be secured on any property, and
    - (iii) for the security to have the same priority as the security released or discharged (in whole or in part) by the giving of the preference; and
  - (g) provide for the extent to which a person –
    - (i) whose property is vested by the order in the Viscount, or
    - (ii) on whom obligations are imposed by the order,is to be able to prove in the “désastre” of the debtor for debts or other liabilities that arose from, or were released or discharged (in whole or in part) under or by the giving of the preference.
- (3) Except as provided by paragraph (4), an order made under paragraph (1) may affect the property of, or impose an obligation on, any person whether or not he or she is the person to whom the preference was given.
- (4) An order made under paragraph (1) shall not –

- (a) prejudice an interest in property that was acquired from a person other than the debtor and was acquired in good faith and for value, or prejudice any interest deriving from such an interest; or
  - (b) require a person who in good faith and for value received a benefit from the preference to pay a sum to the Viscount, except where the payment is in respect of a preference given to that person at a time when he or she was a creditor of the debtor.
- (5) In considering for the purpose of this Article whether a person has acted in good faith the court may take into consideration –
  - (a) whether the person had notice –
    - (i) of the circumstances that amounted to the giving of the preference by the debtor, and
    - (ii) of the fact that the debtor was insolvent or would as a likely result of giving the preference become insolvent; and
  - (b) whether the person was an associate of or was connected with either the debtor or the person to whom the debtor gave the preference.
- (6) For the purposes of this Article, a debtor gives a preference to a person if –
  - (a) the person is a creditor of the debtor or a surety or guarantor for a debt or other liability of the debtor; and
  - (b) the debtor –
    - (i) does anything, or
    - (ii) suffers anything to be done,that has the effect of putting the person into a position which, in the event of a declaration being made in respect of that debtor's property, will be better than the position he or she would have been in if that thing had not been done.
- (7) The court shall not make an order under this Article in respect of a preference given to a person unless the debtor, when giving the preference, was influenced in deciding to give the preference by a desire to put the person into a position which, in the event of a declaration being made in respect of the debtor's property, would be better than the position in which the person would be if the preference had not been given.
- (8) A debtor who gave a preference to a person who was, at the time the preference was given, an associate of or connected with the debtor (otherwise than by reason only of being the person's employee) shall be presumed, unless the contrary is shown, to have been influenced in deciding to give the preference by the desire mentioned in paragraph (7).
- (9) Subject to paragraphs (10) and (11), the time at which a debtor gives a preference is a relevant time for the purpose of paragraph (1) if the preference was given during the period of 12 months immediately preceding the making of the declaration.
- (10) The time to which paragraph (9) refers is not a relevant time unless –
  - (a) the debtor was insolvent at the time the preference was given; or
  - (b) the debtor became insolvent as a result of giving the preference.

- (11) If the preference was given to a person connected with the debtor or to an associate of the debtor, paragraph (10) does not apply and the time to which paragraph (9) refers is a relevant time unless it is proved that –
- (a) the debtor was not insolvent at the time the preference was given; and
  - (b) the debtor did not become insolvent as a result of the preference being given.

### **17B Certain definitions in respect of Articles 17 and 17A<sup>35</sup>**

- (1) For the purposes of Articles 17 and 17A, a person is connected with a company if the person is –
- (a) a director of the company;
  - (b) an associate of a director of the company; or
  - (c) an associate of the company.
- (1A) For the purposes of Articles 17 and 17A, a person is connected with an incorporated limited partnership if the person is –
- (a) a general partner of the partnership;
  - (b) an associate of a general partner of the partnership; or
  - (c) an associate of the partnership.<sup>36</sup>
- (2) For the purposes of Articles 17 and 17A and of this Article –
- (a) a person is an associate of an individual if that person is the individual's husband or wife or civil partner, or is a relative, or the husband or wife or civil partner of a relative, of the individual or of the individual's husband or wife or civil partner;
  - (b) a person is an associate of any person with whom he or she is in partnership (whether or not such a partnership is a limited partnership), and of the husband or wife or civil partner or a relative of any individual with whom he or she is in partnership;
  - (c) a person is an associate of any person whom he or she employs or by whom he or she is employed;
  - (d) a person in his or her capacity as a trustee of a trust is an associate of another person if –
    - (i) the beneficiaries of the trust include that other person or an associate of that other person, or
    - (ii) the terms of the trust confer a power that may be exercised for the benefit of that other person or an associate of that other person;
  - (e) a company is an associate of another company –
    - (i) if the same person has control of both companies, or a person has control of one company and either persons who are his or her associates, or he or she and persons who are his or her associates, have control of the other company, or



- (ii) if each company is controlled by a group of 2 or more persons and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he or she is an associate;
  - (f) a company is an associate of another person if that person has control of the company or if that person and persons who are his or her associates together have control of the company;
  - (fa) a limited partner of an incorporated limited partnership is an associate of a general partner of the partnership;
  - (fb) an incorporated limited partnership is an associate of another body corporate if the same person has control of both of those bodies corporate, or a person has control of one of those bodies corporate and either persons who are his or her associates, or he or she and persons who are his or her associates, have control of the other body corporate;
  - (fc) an incorporated limited partnership is an associate of another body corporate if each of those bodies corporate is controlled by a group of 2 or more persons, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person of whom he or she is an associate;
  - (fd) an incorporated limited partnership is an associate of another person if that person has control of the partnership or if that person and persons who are his or her associates together have control of the partnership; and
  - (g) a provision that a person is an associate of another person shall be taken to mean that they are associates of each other.<sup>37</sup>
- (3) For the purposes of this Article a person is a relative of an individual if he or she is that individual's brother, sister, uncle, aunt, nephew, niece, lineal ancestor or lineal descendant, for which purpose –
- (a) any relationship of the half blood shall be treated as a relationship of the whole blood and the stepchild or adopted child of a person as his or her child; and
  - (b) an illegitimate child shall be treated as the legitimate child of his or her mother and reputed father.
- (4) References in this Article to a husband or wife include a former husband or wife and a reputed husband or wife.
- (4A) References in this Article to a civil partner include a former civil partner and a reputed civil partner.<sup>38</sup>
- (5) For the purposes of this Article, a director or other officer of a company shall be treated as employed by the company.
- (5A) For the purposes of this Article, a general partner of an incorporated limited partnership shall be treated as employed by the partnership.<sup>39</sup>
- (6) For the purposes of this Article, a person shall be taken as having control of a company if –

- (a) the directors of the company or of another company that has control of it (or any of them) are accustomed to act in accordance with his or her directions or instructions; or
  - (b) he or she is entitled –
    - (i) to exercise, or
    - (ii) to control the exercise of,  
more than one third of the voting power at any general meeting of the company or of another company which has control of it,
- and where 2 or more persons together satisfy either of the above conditions, they shall be taken as having control of the company.
- (6A) For the purposes of this Article, a person shall be taken as having control of an incorporated limited partnership if –
- (a) the terms of the partnership agreement so provide;
  - (b) the general partners of the partnership or of another body corporate which has control of it (or any of them) are accustomed to act in accordance with his or her directions or instructions; or
  - (c) he or she has control (within the meaning of this Article) of another body corporate which has control of the partnership,
- and where 2 or more persons together satisfy either of the above conditions, they shall be taken as having control of the partnership.<sup>40</sup>

### **17C Extortionate credit transactions<sup>41</sup>**

- (1) This Article applies where a debtor is, or has been, a party to a transaction for, or involving, the provision of credit to the debtor.
- (2) The court may, on the application of the Viscount, make an order with respect to the transaction if the transaction is or was extortionate and was entered into in the period of 3 years ending with the declaration.
- (3) For the purposes of this Article, a transaction is extortionate if, having regard to the risk accepted by the person providing the credit –
  - (a) the terms of it are or were such as to require grossly exorbitant payments to be made (whether unconditionally or in certain contingencies) in respect of the provision of the credit; or
  - (b) it otherwise grossly contravened ordinary principles of fair dealing.
- (4) It shall be presumed, unless the contrary is proved, that a transaction with respect to which an application is made under this Article is or, as the case may be, was extortionate.
- (5) An order under this Article with respect to a transaction may contain one or more of the following as the court thinks fit –
  - (a) provision setting aside the whole or part of an obligation created by the transaction;

- (b) provision otherwise varying the terms of the transaction or varying the terms on which a security for the purposes of the transaction is held;
- (c) provision requiring a person who is or was a party to the transaction to pay to the Viscount sums paid to that person, by virtue of the transaction, by the debtor;
- (d) provision requiring a person to surrender to the Viscount property held by him or her as security for the purposes of the transaction;
- (e) provision directing accounts to be taken between any persons.

### **17D Recovery of excessive approved pension arrangement contributions<sup>42</sup>**

- (1) Where a debtor has excluded rights under an approved pension arrangement, the Viscount may apply to the court for an order under this Article.
- (2) If the court is satisfied –
  - (a) that the rights under the arrangement are to any extent, and whether directly or indirectly, the fruits of relevant contributions; and
  - (b) that the making of any of the relevant contributions (“the excessive contributions”) has unfairly prejudiced the debtor’s creditors,the court may make such order as it thinks fit for restoring the position to what it would have been had the excessive contributions not been made.
- (3) In paragraph (2) “relevant contributions” means contributions to the approved pension arrangement or any other pension arrangement –
  - (a) that the debtor has at any time made on his or her own behalf; or
  - (b) that have at any time been made on his or her behalf.
- (4) The court shall, in determining whether it is satisfied under paragraph (2)(b), consider in particular –
  - (a) whether any of the contributions were made for the purpose of putting assets beyond the reach of the debtor’s creditors or any of them; and
  - (b) whether the total amount of any contributions –
    - (i) made by or on behalf of the debtor to pension arrangements, and
    - (ii) represented (whether directly or indirectly) by excluded rights under the approved pension arrangement,is an amount which is excessive in view of the debtor’s circumstances when those contributions were made.
- (5) For the purposes of this Article, rights of a debtor under an approved pension arrangement are excluded rights if they are rights which are excluded from forming part of his or her property by virtue of Regulations made under Article 8A.

- (6) Without prejudice to the generality of paragraph (2), an order under that paragraph may include provision –
- (a) requiring the person responsible for the approved pension arrangement to pay an amount to the Viscount;
  - (b) adjusting the liabilities of the arrangement in respect of the debtor;
  - (c) adjusting any liabilities of the arrangement in respect of any other person that derive, directly or indirectly, from rights of the debtor under the arrangement;
  - (d) for the recovery by the person responsible for the arrangement (whether by deduction from any amount which that person is ordered to pay or otherwise) of costs incurred by that person in complying in the debtor's case with any requirement under paragraph (12) or in giving effect to the order.
- (7) In paragraph (6), references to adjusting the liabilities of the arrangement in respect of a person include (in particular) reducing the amount of any benefit or future benefit to which that person is entitled under the arrangement.
- (8) The maximum amount which the person responsible for an arrangement may be required to pay by an order under paragraph (2) is the lesser of –
- (a) the amount of the excessive contributions; and
  - (b) the value of the debtor's rights under the approved pension arrangement.
- (9) An order under paragraph (2) that requires the person responsible for an arrangement to pay an amount ("the restoration amount") to the Viscount must provide for the liabilities of the arrangement to be correspondingly reduced.
- (10) For the purposes of paragraph (9), liabilities are correspondingly reduced if the difference between –
- (a) the amount of the liabilities immediately before the reduction; and
  - (b) the amount of the liabilities immediately after the reduction,
- is equal to the restoration amount.
- (11) An order under paragraph (2) in respect of an arrangement –
- (a) shall be binding on the person responsible for the arrangement; and
  - (b) overrides provisions of the arrangement to the extent that they conflict with the provisions of the order.
- (12) The person responsible for –
- (a) an approved pension arrangement under which a debtor has rights; or
  - (b) a pension arrangement under which a debtor has at any time had rights,
- shall, on the Viscount making a written request, provide the Viscount with such information about the arrangement and rights as the Viscount may

reasonably require for, or in connection with, the making of applications under paragraph (2).

- (13) Where any sum is required by an order under paragraph (2) to be paid to the Viscount that sum shall form part of the debtor's property.
- (14) References in this Article to the person responsible for an approved pension arrangement are to –
  - (a) the trustees, managers or provider of the arrangement; or
  - (b) the person having functions in relation to the arrangement corresponding to those of a trustee, manager or provider.
- (15) In this Article “approved pension arrangement” means a pension arrangement prescribed by Regulations made under Article 8A.

## PART 5

### CONTROL OVER PERSON AND PROPERTY OF DEBTOR

#### 18 General duties of debtor

- (1) In addition to every other duty imposed on the debtor by this Law or any other enactment or by law, the debtor shall, to the utmost of the debtor's power, aid the Viscount in the realization of the debtor's property and the distribution of the proceeds amongst the debtor's creditors, and, more particularly, shall –
  - (a) give a complete and accurate list of the debtor's property and of the debtor's creditors and debtors and such other information as to the debtor's property as the Viscount requires, and attend before the Viscount whenever called upon to do so;
  - (b) disclose to the Viscount as soon as practicable any property which may be acquired by the Viscount during the course of the *désastre*;
  - (c) execute an assignment in favour of the Viscount of any property which has been acquired by, or has devolved upon, the debtor since the date of the declaration;
  - (d) supply such information regarding his or her expenditure and sources of income after the declaration as the Viscount may require;<sup>43</sup>
  - (e) deliver on demand all or any of the debtor's property that is divisible amongst the debtor's creditors and is under the debtor's possession or control to the Viscount or anyone authorized by the Viscount to take possession of it or any part thereof;
  - (f) deliver on demand to the Viscount or anyone authorized by the Viscount any property that is acquired by the debtor during the course of the *désastre*;
  - (g) notify the Viscount immediately in writing of any change of the debtor's address, employment or name.

- (2) Where the debtor is a company or an incorporated limited partnership, any person who –
- (a) is or was at the time of the declaration a director of the company; or
  - (b) is or was at the time of the declaration a general partner of the partnership,
- shall notify the Viscount immediately in writing of any change of his or her address, employment or name.<sup>44</sup>
- (2A) If a person without reasonable excuse fails to comply with a requirement of paragraph (1) or (2) he or she commits an offence and is liable to imprisonment for a term of 6 months and a fine.<sup>45</sup>
- (3) Where an offence under this Article which has been committed by a company is proved to have been attributable to any director, manager, secretary or other officer of the company, or any person who was purporting to act in any such capacity, or any liquidator of the company, he or she, as well as the company, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

## 19 Failure to keep proper accounts of business

- (1) Where the debtor has been engaged in any business for any of the period of 2 years ending with the date of the declaration, the debtor commits an offence if he or she has not –
- (a) kept proper accounting records throughout that period; or
  - (b) preserved all the accounting records which the debtor has kept.
- (2) The debtor shall not be guilty of an offence under paragraph (1)(a) if –
- (a) the debtor's unsecured liabilities at the date of the declaration did not exceed the amount prescribed by the Minister; or
  - (b) the debtor proves that in the circumstances in which the debtor carried on business the omission was honest and excusable.<sup>46</sup>
- (3) The debtor shall not be guilty of an offence under paragraph (1)(b) if the debtor complies with paragraph (2)(b).
- (4) For the purposes of this Article, a person shall be deemed not to have kept proper accounting records if the person has not kept such records as are necessary to show or explain the person's transactions and financial position in the person's business, including –
- (a) records containing entries from day to day, in sufficient detail, of all cash received and paid;
  - (b) where the business involved dealings in goods, statements of annual stock-takings; and
  - (c) except in the case of goods sold by way of retail trade to the actual customer, records of all goods sold and purchased showing the buyers and sellers in sufficient detail to enable the goods and the buyers and sellers to be identified.

- (5) A debtor who commits an offence under paragraph (1) is liable to a fine or to imprisonment for a term not exceeding 6 months, or to both.
- (6) Where an offence under paragraph (1) has been committed by a company, any director, or any person who was purporting to act in such capacity who knowingly and wilfully authorized or permitted the offence shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

## **20 Attendance of persons respecting debtor or the debtor's property**

- (1) The Viscount may, at any time, summon before the Viscount –
  - (a) the debtor;
  - (b) the wife or husband or civil partner of the debtor; or
  - (c) any other person known or suspected to have in the person's possession any of the property, or any book, paper, document or record relating to the affairs or property, of the debtor, or supposed to be indebted to the debtor, or whom the Viscount thinks capable of giving any information respecting the debtor, the debtor's trade, dealings, or property, or concerning the debtor's income from any source, or the debtor's expenditure, and may require the person so summoned to produce and surrender to the Viscount any book, paper, document or record in the person's custody or power relating to the dealings or property of the debtor.<sup>47</sup>
- (2) Where the debtor is a company or an incorporated limited partnership, the Viscount may at any time summon any officer of the company or partnership or person known or suspected to have in his or her possession any of its property or supposed to be indebted to it, or any person whom the Viscount deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company or partnership.<sup>48</sup>
- (3) The Viscount may apply to the court for an order to question before the Viscount the debtor or any other person referred to in paragraph (1) or (2) on oath.
- (4) If the debtor or any other person summoned before the Viscount under paragraph (1) or (2) –
  - (a) fails without reasonable excuse to come before the Viscount at the time appointed; or
  - (b) not being questioned on oath –
    - (i) makes any statement knowing it to be false in a material particular, or
    - (ii) wilfully misleads or attempts to mislead the Viscount,the debtor or other person commits an offence and is liable to a fine or to imprisonment for a term not exceeding 6 months, or to both.
- (5) For the purposes of paragraph (2), "officer" –

- (a) in the case of a company, includes a director, manager or secretary; and
  - (b) in the case of an incorporated limited partnership, means a general partner.<sup>49</sup>
- (6) A person shall not under this Article be required to disclose any information or produce any document which the person would be entitled to refuse to disclose or produce on grounds of legal professional privilege in the Royal Court.

## **21 Unenforceability of liens on records<sup>50</sup>**

- (1) Subject to paragraph (2), a lien or other right to retain possession of a record of the debtor shall be unenforceable to the extent that its enforcement would deny possession of the record to the Viscount.
- (2) Paragraph (1) does not apply to a lien on a document that gives a title to property and is held as such.

## **22 Privilege of witnesses**

Any debtor or other person who is being questioned by the Viscount under Article 20 shall be excused from answering any question on the ground that the answer may incriminate or tend to incriminate him or her or his or her spouse or civil partner.<sup>51</sup>

## **23 Viscount may make allowance to debtor**

The Viscount may from time to time make such an allowance of money as the Viscount thinks just out of the property of the debtor for the support of the debtor and his or her dependants.

## **24 Debtors prohibited from acting in certain capacities<sup>52</sup>**

- (1) In this Article –
  - “person to whom this Article applies” means –
    - (a) a debtor during the course of the “désastre”;
    - (b) a person who is or has the status of an undischarged bankrupt (by whatever name called) under the laws of any other jurisdiction;
  - “private office” means the office of delegate, director of a company, “electeur”, liquidator of a company, general partner of an incorporated limited partnership, trustee, “tuteur”, executor or administrator of a deceased person’s estate or the donee of a power of attorney;
  - “public office” means the office of Centenier, Vingtenier, Constable’s Officer, “Procureur du Bien Public”, member of the Assessment Committee constituted under the Parish Rate (Administration) (Jersey) Law 2003.<sup>53</sup>



- (2) A person to whom this Article applies shall not hold a public or private office.
- (3) A person who at the time of becoming a person to whom this Article applies is the holder of a public or private office shall resign from the office forthwith.
- (4) Subject to paragraph (5), a person to whom this Article applies is not qualified to sit on a jury.
- (5) If a person who is sitting on a jury becomes a person to whom this Article applies the person is qualified to continue to sit on that jury until his or her services on the jury are no longer required.
- (6) A person who –
  - (a) contravenes paragraph (2); or
  - (b) fails to comply with paragraph (3); or
  - (c) sits on a jury when he or she is not qualified to do so by virtue of paragraph (4),commits an offence and is liable to imprisonment for a term of 6 months and a fine.
- (7) Where the debtor is a company, the Court may, on the application of the Viscount, make any order in respect of a person who is or was a director of the company that it would be permitted to make under Article 78 of the Companies Law in respect of such a person.

## 25 Requirement that debtor disclose declaration

- (1) No debtor shall obtain credit, in excess of such sum as shall be prescribed by the Minister, during the course of the *désastre* unless the debtor informs the intending creditor of the declaration.<sup>54</sup>
- (2) A debtor who contravenes paragraph (1) commits an offence and is liable to a fine or to imprisonment for a term not exceeding 6 months, or to both.

## PART 6

### ADMINISTRATION OF DEBTOR'S ESTATE

## 26 General powers of Viscount

Subject to the provisions of this Law, the Viscount may –

- (a) hold property of every description;
- (b) bring, institute, or defend any action or other legal proceedings relating to the property of the debtor whether situated in Jersey or elsewhere;
- (c) refer any dispute to arbitration, or at the Viscount's discretion compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist,

- between the debtor and any person who may have incurred any liability to the debtor on such terms as may be agreed upon;
- (d) make such compromise or other arrangements as are thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the declaration;
  - (e) make such compromise or other arrangements as are thought expedient with respect to any debt or other claim secured upon the property of the debtor by a judicial or conventional hypothec obtained against or created or consented to by any predecessor in title of the debtor;
  - (f) accept for the sale of any property of the debtor a sum of money payable at a future time, subject to such conditions as to security and otherwise as the Viscount thinks fit;
  - (g) make such compromise or other arrangements as are thought expedient with respect to any claim arising out of or incidental to the property of the debtor made or capable of being made on the Viscount by any person or by the Viscount on any person;
  - (h) carry on the business of the debtor as far as is necessary or expedient for the beneficial disposal of the same and for that purpose may employ and pay the debtor or any other person;
  - (i) expend money of the debtor for the repair, maintenance, upkeep, or renovation of the property of the debtor, whether or not the work is necessary for the purpose of the salvage of the property;
  - (j) borrow any money and charge any property of the debtor;
  - (k) employ any person to transact any business or do any act required to be transacted or done in the course of administration of a *désastre*, including the receipt and payment of money;
  - (l) prove and draw a dividend in respect of any debt due to the debtor;
  - (m) divide in its existing form amongst the creditors according to its estimated value any property which from its peculiar nature or other special circumstances cannot readily or advantageously be sold;
  - (n) give receipts and execute discharges and releases for any money received by the Viscount, which receipts, discharges, or releases shall effectively discharge the person paying the money from all responsibility in respect of the application thereof, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect the provisions of this Law;
  - (o) exercise any voting rights on shares owned by the debtor;
  - (p) exercise any authority or power or do any act in relation to the debtor's property which the debtor could have exercised or done if it were not for the declaration;
  - (q) from time to time appoint an agent by power of attorney or otherwise to act for the Viscount, either in or out of Jersey, in respect of any particular property and delegate to any such agent all or any of the powers hereby conferred upon the Viscount in respect of the property and from time to time revoke any such appointment and fix the remuneration for any such agent, which shall be paid out of the debtor's property:

Provided that the powers conferred upon the Viscount by this Article shall be in furtherance of and not in limitation of all other powers vested in the Viscount.

## **27 Power of Viscount to sell**

- (1) Subject to the provisions of this Law, and to Article 12(3), the Viscount may sell the whole or any part of the property of the debtor by public auction or public tender on such terms and conditions as the Viscount thinks fit, with power to buy in at any auction or to rescind or vary any contract for sale on such terms as the Viscount thinks fit, and with power also to sell the whole thereof to any person or to sell the same in parcels and in any order.
- (2) In addition to the powers given by paragraph (1), but subject to the provisions of this Law, the Viscount may sell by private contract –
  - (a) any perishable property;
  - (b) any property offered for sale by public auction or public tender and not sold;
  - (c) any property which, by reason of its nature, situation, value, or other special circumstances, the Viscount considers it unnecessary or inadvisable to sell by public auction or public tender.
- (3) Except in the case of perishable property none of the property of the debtor shall be sold until after the specified date.
- (4) For the purposes of paragraph (3), “specified date” means the date specified in Rules made under Article 2 by which statements of claim of creditors shall be filed.
- (5) Where a document is made or executed in exercise of the power to sell conferred by this Article, the title of any person acquiring title thereunder shall not be impeachable except on the ground of fraud, or be affected on the ground that no case has arisen to authorize the sale, or the power was otherwise improperly or irregularly exercised.

## **28 Reports by Viscount to creditors**

The Viscount may from time to time report to creditors on the progress of a *désastre*.

# **PART 7**

## **PROOFS OF DEBT**

## **29 Provable debts**

- (1) Except as provided in paragraph (4), all debts and liabilities, present or future, or contingent, to which the debtor is subject at the time of the declaration, or to which the debtor becomes subject before payment of the final dividend by reason of any obligation incurred before the time of the declaration, shall be debts provable in the *désastre*.<sup>55</sup>

- (2) Where a debt bears interest, interest to the date of the declaration is provable as part of the debt, except in the case of a debt secured by a hypothec, security interest, or pledge, when interest is provable to the date of payment of the claim and payable out of the proceeds of sale of the secured property to the extent that it is required and able to meet it and is secured thereby.
- (3) In the case of a debt which, by reason of its being subject to any contingency or contingencies or for any other reason does not bear a certain value, and a debt provable by virtue of Article 15(4) the creditor shall make an estimate of its value.
- (4) Where a declaration has been made in respect of the property of a person before the commencement of this Law, no debt or liability which would not have been provable in the *désastre* if this Law had not been passed shall be provable in the *désastre*.

### **30 Creditors to prove**

- (1) Unless exempted by Rules made under Article 2, every creditor shall prove the creditor's debt at the time and in the manner prescribed by the court.<sup>56</sup>
- (2) A creditor shall bear the cost of proving the debt unless the court decides otherwise.
- (3) Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors at a time fixed by the Viscount in accordance with Rules made under Article 2.
- (4) A creditor may from time to time amend or withdraw the creditor's proof and every such amendment shall be subject to the same formalities as the original proof.

### **31 Proofs of debts to be examined and admitted or rejected<sup>57</sup>**

- (1) The Viscount may admit or reject proof of a debt in whole or in part.
- (2) Before admitting or rejecting proof of a debt the Viscount shall examine the proof and any statement opposing the admission of the debt.
- (3) Before admitting or rejecting proof of a debt the Viscount may require further evidence in support of, or in opposition to, its admission.
- (4) The Viscount may reject in whole or part any claim for interest on a debt if the Viscount considers the rate of interest to be extortionate.
- (5) If the Viscount rejects proof of a debt in whole or in part the Viscount shall serve notice of rejection in the manner prescribed by the court on the person who provided the proof.
- (6) If the Viscount rejects a statement opposing admission of a debt in whole or in part the Viscount shall serve notice of rejection in the manner prescribed by the court on the person who provided that statement.
- (7) If a person upon whom notice has been served in accordance with paragraph (5) or paragraph (6) is dissatisfied with the decision of the Viscount and wants the decision reviewed by the court he or she must,

within the time prescribed by the court, request the Viscount to apply to the court for a date to be fixed for the court to review the decision.

- (8) The Viscount shall comply with a request made in accordance with paragraph (7).

## PART 8

### DISTRIBUTION OF ASSETS

#### 32 Order of payment of debts<sup>58</sup>

- (1) Except as otherwise provided by this Article, the Viscount shall apply money the Viscount receives by the realization of the property of a debtor in the following order –
- (a) in payment of the Viscount's fees and emoluments and all costs, charges, allowances and expenses properly incurred by or payable by the Viscount in the "désastre" (and any expenses of a liquidator as defined by Article 15(7) of the [Dormant Bank Accounts \(Jersey\) Law 2017](#);
  - (aa) where under the [Banking Business \(Depositors Compensation\) \(Jersey\) Regulations 2009](#) –
    - (i) the debtor is a bank in default, and
    - (ii) a right of an eligible depositor in respect of an eligible deposit held by the debtor is vested in the Jersey Bank Depositors Compensation Board,in payment to that Board of the total amount due to the Board by virtue of all such vested rights in relation to that debtor, but not exceeding the total amount payable by the Board in respect of that debtor as compensation to depositors under those Regulations;
  - (b) in payment to any employee of the debtor of any amount due to the employee at the date of the declaration in respect of arrears of –
    - (i) wages or salary for services rendered to the debtor during the 6 months immediately preceding the declaration, and
    - (ii) holiday pay and bonuses,but not exceeding in either case such amount as may be prescribed by the Committee;
  - (c) in payment of –
    - (i) all sums payable to the Health Insurance Fund under Article 25 of the [Health Insurance \(Jersey\) Law 1967](#) and to the Social Security Fund under Article 41 of the [Social Security \(Jersey\) Law 1974](#),
    - (ia) all amounts due as described in Article 45(3) of the [Income Tax \(Jersey\) Law 1961](#) and all amounts due as described in Article 47(8) of the [Goods and Services Tax \(Jersey\) Law 2007](#),

- (ii) an amount due by the debtor to his or her landlord for the payment of rent due to the extent, if any, that his or her claim qualifies for preference by virtue of customary law,
  - (iii) parochial rates due to any parish in Jersey for a period not exceeding 2 years;
- (d) in payment of all other debts proved in the “désastre”.<sup>59</sup>
- (2) The debts referred to in paragraphs (1)(b) and(c) shall rank equally between themselves and shall be paid in full, unless the property of the debtor is insufficient to meet them, in which case they shall abate in equal proportions between themselves.
- (3) Debts provable in the “désastre”, other than those referred to in paragraph (2), shall be paid on an equal footing.
- (4) Except as provided by paragraph (5), hypothecary creditors shall be entitled to preference in the order of the date of creation of their respective judicial or conventional hypothecs upon the proceeds of sale of any ‘hereditament, corporeal or incorporeal’ upon which their respective judicial or conventional hypothecs are secured.
- (5) If the Viscount sells a corporeal hereditament that is subject to a judicial or conventional hypothec the proceeds of sale shall be applied first in payment of the costs, disbursements and other charges necessarily incurred by the Viscount in connection with the sale and the Viscount’s fees in connection with the sale.
- (6) If the proceeds of sale of a “hereditament, corporeal or incorporeal,” upon which a judicial or conventional hypothec is secured is insufficient to meet in full the claim of a hypothecary creditor the balance shall rank for payment on the same footing as other debts mentioned in paragraph (1)(d).
- (7) Where any property of the debtor is subject to a continuing security interest within paragraph (a) of the definition of “security interest” in Article 1(1) or a security interest within paragraph (b) of that definition, the proceeds of sale of the property shall be applied in the manner provided by, respectively, Article 8(6) of the [Security Interests \(Jersey\) Law 1983](#) or Part 7 of the [Security Interests \(Jersey\) Law 2012](#).<sup>60</sup>
- (8) If the debtor at any time before the realisation in accordance with this Law of his or her property has made application to the court to place his or her property in its hands (remettre son bien entre les mains de la Justice) the reference in paragraph (1)(a) to the Viscount’s costs, charges, allowances and expenses shall be taken to include a reference to the costs (frais) of the Autorisés des Justice payable by virtue of Article 10 of the Loi (1839) sur les remises des biens.
- (9) In this Article –
  - (a) “corporeal hereditament” has the meaning assigned to “corps de bien-fonds” in Article 1 of the [Loi \(1880\) sur la propriété foncière](#);
  - (b) “incorporeal hereditament” has the meaning assigned to “bien-fonds incorporeal” in Article 1 of the [Loi \(1996\) sur l’hypothèque des biens-fonds incorporels](#).

### 33 Distribution of assets

The Viscount shall distribute the assets among the persons entitled to receive them in accordance with their respective claims as provided by Article 32 as soon as practicable and may from time to time pay interim dividends for this purpose.

### 34 Set off

Where there have been mutual credits, mutual debts or other mutual dealings between the debtor and a creditor, an account shall be taken of what is due from the one party to the other as at the date of the declaration in respect of such mutual dealings, and the sum due from one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively.

### 35 Hire-purchase agreements

Where the debtor is in possession of goods by virtue of a hire-purchase agreement, the Viscount may settle the debtor's indebtedness under such agreement if the Viscount considers that it would be in the interests of the creditors to do so.

### 36 Duty of Viscount to report to creditors and pay final dividend<sup>61</sup>

- (1) When the Viscount has realised all the debtor's property, or as much of it as in the Viscount's opinion can be realised without needlessly protracting the "désastre", the Viscount must –
  - (a) supply all the creditors of the debtor with a report and accounts relating to the "désastre"; and
  - (b) pay whatever final dividend is due.
- (2) If the debtor is –
  - (a) a company registered under the Companies Law; or
  - (b) a foundation,the Viscount must notify the registrar in writing of the date of payment of the final dividend.<sup>62</sup>
- (2A) If the debtor is an incorporated limited partnership, the Viscount must notify the registrar in writing of the date of payment of the final dividend.<sup>63</sup>
- (3) If the debtor is a limited liability partnership, the Viscount must notify the registrar in writing of the date of payment of the final dividend.

### 37 Surplus of assets

- (1) This Article shall have effect where a surplus of assets remains after payment in full of the provable debts and payment of the Viscount's fees and emoluments and all costs, charges, allowances and expenses incurred by or payable by the Viscount in the *désastre*.

- (2) The Viscount may pay interest on all provable debts not bearing interest at such rate as to the Viscount seems reasonable having regard to the circumstances of the *désastre*.
- (3) Where interest is paid under this Article it shall be calculated from the date of the declaration.
- (4) The Viscount shall serve notice on the debtor and creditors of the rate fixed by the Viscount under paragraph (2).
- (5) Where any person to whom notice has been given is dissatisfied with the decision of the Viscount the person shall within 21 days of the date of such notice notify the Viscount that the person wishes application to be made to the court for a variation of the decision, and the Viscount shall apply to the court for a date to be fixed for the hearing of such applications.
- (6) If a surplus remains after payment in full of interest referred to in this Article the Viscount must –
  - (a) if the debtor is a company and the memorandum or articles of the company do not otherwise provide, distribute the surplus among the members of the company according to their rights and interests in the company;
  - (aa) if the debtor is an incorporated limited partnership and the partnership agreement does not otherwise provide, distribute the surplus among the partners according to their rights and interests in the partnership; and
  - (b) in any other case, pay the surplus to the debtor.<sup>64</sup>

### **38 Status of debtor following distribution of assets**

- (1) Until an order of discharge under Article 41 takes effect –
  - (a) the debtor shall not cease to be liable for any debts provable in the *désastre* that are still outstanding;
  - (b) no action for the recovery of a debt incurred during the course of the *désastre* shall be taken against the debtor.
- (2) Subject to paragraph (3), where the debtor is a company registered under the Companies Law, foundation or incorporated limited partnership, it shall be dissolved with effect from the date on which the registrar receives the notice under Article 36(2) or (2A) (as the case may be), which notice the registrar shall thereupon register.<sup>65</sup>
- (3) Paragraph (2) shall not apply where the Attorney General has notified the registrar that criminal proceedings have been instituted or are pending against the company, foundation or incorporated limited partnership.<sup>66</sup>



## PART 9

### DISCHARGE WHERE DEBTOR IS AN INDIVIDUAL

#### 39 Application of Part 9

This Part applies to debtors who are individuals.

#### 40 Application by Viscount for order of discharge

- (1) Subject to paragraph (2), at the expiration of 4 years from the date of the declaration the Viscount shall apply to the court for an order discharging the debtor.
- (2) The Viscount, the debtor or a creditor of the debtor may apply to the court for an order that the period referred to in paragraph (1) be reduced or extended.

#### 41 Order of discharge

- (1) At the hearing of any application for an order under Article 40(1), the court may –
  - (a) grant an immediate order;
  - (b) grant an order subject to such conditions as it thinks fit, or suspend an order for such time as it thinks fit;
  - (c) grant an order with or without such conditions as it thinks fit to take effect at a specified future date;
  - (d) refuse to make an order.
- (2) At the hearing of an application for an order under Article 40(2), the court shall make such order as it thinks fit.
- (3) If the court exercises its powers under paragraph (1)(d) the Viscount, the debtor or a creditor of the debtor may from time to time apply for an order under Article 40(1).

#### 42 Effect of order of discharge

- (1) An order of discharge shall release the debtor from all debts provable in the *désastre* except the following –
  - (a) any debt or liability incurred by means of fraud or fraudulent breach of trust to which the debtor was a party;
  - (b) any debt or liability whereof the debtor has obtained forbearance by any fraud to which the debtor was a party;
  - (c) any debt or liability under a maintenance order (as that term is defined by the Maintenance Orders (Facilities for Enforcement) Jersey) Law 2000) that is enforceable in Jersey or elsewhere by virtue of that Law or the [Maintenance Orders \(Enforcement\) \(Jersey\) Law 1999](#).<sup>67</sup>

- (2) The prohibitions imposed by Article 24 and the provisions of Article 25 shall, as from the date at which an order under Article 41 takes effect, cease to apply to the debtor.

## **PART 10<sup>68</sup>**

### **ADDITIONAL PROVISIONS WHERE DEBTOR IS A COMPANY OR INCORPORATED LIMITED PARTNERSHIP<sup>69</sup>**

#### **42A Interpretation – Part 10**

- (1) Words and expressions used in this Part and defined in the Companies Law have the same meaning in this Part as they have in the Companies Law.<sup>70</sup>
- (2) Words and expressions (in addition to those already defined in Article 1(1) of this Law) which are used in this Part and defined in the [Incorporated Limited Partnerships \(Jersey\) Law 2011](#) have the same meanings in this Part as they have in that Law.<sup>71</sup>

#### **43 Viscount to report possible misconduct**

- (1) The Viscount in the case of a “désastre” in respect of a company or incorporated limited partnership shall take the action specified in paragraph (2) if it appears to the Viscount in the course of the “désastre” –
  - (a) that the company or partnership has committed a criminal offence;
  - (b) that a person has committed a criminal offence in relation to the company or partnership; or
  - (c) in the case of a director, that for any reason (whether in relation to the company, or to a holding company of the company or to any subsidiary of such a holding company) his or her conduct has been such that an order should be sought against him or her under Article 78 of the Companies Law.<sup>72</sup>
- (2) The Viscount shall –
  - (a) forthwith report the matter to the Attorney-General; and
  - (b) furnish the Attorney-General with information and give him or her access to, and facilities for inspecting and taking copies of, documents (being information or documents in the possession or under the control of the Viscount and relating to the matter in question) as the Attorney-General requires.
- (3) Where a report is made to the Attorney General under paragraph (2), the Attorney-General may refer the matter to the Committee or the Commission for further enquiry.
- (4) Where a matter is referred to the Committee or the Commission under paragraph (3) it shall have effect as if it were a matter referred to the Committee or the Commission under Article 184(4) of the Companies Law.

- (5) Where criminal proceedings are instituted by the Attorney-General following a report or reference under this Article the Viscount shall give the Attorney-General any assistance in connection with the prosecution which the Viscount is reasonably able to give.

#### **44 Responsibility of persons for wrongful trading**

- (1) Subject to paragraph (3), if in the course of a “désastre” in respect of a company it appears that paragraph (2) applies in relation to a person who is or has been a director of the company, the court on the application of the Viscount may, if it thinks it proper to do so, order that that person be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company arising after the time referred to in paragraph (2).
- (2) This paragraph applies in relation to a person if at a time before the date of the declaration that person as a director of the company –
  - (a) knew that there was no reasonable prospect that the company would avoid a declaration or a creditors’ winding up; or
  - (b) on the facts known to him or her was reckless as to whether the company would avoid a declaration or such a winding-up.
- (3) The court shall not make an order under paragraph (1) with respect to a person if it is satisfied that after either condition specified in paragraph (2) was first satisfied in relation to him or her the person took reasonable steps with a view to minimising the potential loss to the company’s creditors.
- (4) On the hearing of an application under this Article, the Viscount may himself or herself give evidence or call witnesses.

#### **45 Responsibility for fraudulent trading**

- (1) If, in the course of a désastre in respect of a company or an incorporated limited partnership, it appears that any business of the company or partnership has been carried on with intent to defraud its creditors or creditors of another person, or for a fraudulent purpose, the court may, on the application of the Viscount, order that persons who were knowingly parties to the carrying on of the business in that manner are to be liable to make such contributions to the assets of the company or partnership as the court thinks proper.<sup>73</sup>
- (2) On the hearing of the application the Viscount may himself or herself give evidence or call witnesses.
- (3) Where the court makes an order under this Article or Article 44, it may give such further directions as it thinks proper for giving effect to the order.
- (4) Where the court makes an order under this Article or Article 44 in relation to a person who is a creditor of the company or partnership, it may direct that the whole or part of a debt owed by the company or partnership to that person and any interest thereon shall rank in priority after all other debts owed by the company or partnership and after any interest on those debts.<sup>74</sup>

- (5) This Article and Article 44 have effect notwithstanding that the person concerned may be criminally liable in respect of matters on the ground of which the order under paragraph (1) is to be made.

#### **45A Liability in respect of purchase or redemption of shares**

- (1) This Article applies where a declaration has been made in respect of a company (other than an open-ended investment company) and –
- (a) it has within 12 months before the declaration made a payment under Article 55 or Article 57 of the Companies Law or under Regulations made under Article 59 of that Law in respect of the redemption or purchase of its own shares;
  - (b) the payment was not made wholly out of profits available for distribution or out of the proceeds of a fresh issue of shares made for the purpose of the redemption or purchase; and
  - (c) the aggregate realisable value of the company's assets and the amount paid by way of contribution to its assets (apart from this Article) is not sufficient for the payment of its liabilities and the expenses in connection with the "désastre".
- (2) In this Article, the amount of a payment that has not been made wholly out of profits available for distribution or out of the proceeds of a fresh issue of shares made for the purpose of the redemption or purchase is referred to as "the relevant payment".
- (3) Subject to paragraphs (5) and (6), the court on the application of the Viscount may order –
- (a) a person from whom the shares were redeemed or purchased; or
  - (b) a director,
- to contribute in accordance with this Article to the company's assets so as to enable the insufficiency to be met.
- (4) A person from whom any shares were redeemed or purchased may be ordered to contribute an amount not exceeding so much of the relevant payment as was made in respect of his or her shares.
- (5) A person from whom shares were redeemed or purchased shall not be ordered to contribute under this Article unless the court is satisfied that, when the person received payment for his or her shares –
- (a) the person knew; or
  - (b) the person ought to have concluded from the facts known to him or her,
- that immediately after the relevant payment was made the company would be unable to discharge its liabilities as they fell due, and that the realisable value of the company's assets would be less than the aggregate of its liabilities.
- (6) A director who has expressed an opinion under Article 55(9) of the Companies Law may be ordered, jointly and severally with any other person who is liable to contribute under this Article, to contribute an

amount not exceeding the relevant payment, unless the court is satisfied that the director had grounds for the opinion expressed.

- (7) Where a person has contributed an amount under this Article, the court may direct any other person who is jointly and severally liable to contribute under this Article to pay to him or her such amount as the court thinks just and reasonable.
- (8) Article 45B does not apply in relation to liability accruing by virtue of this Article.
- (9) The States may by Regulations extend or modify the provisions of this Article in such ways as may appear to be reasonably necessary in consequence of any Regulations made under Article 59 of the Companies Law.

#### **45AA Liability in respect of returned contributions<sup>75</sup>**

- (1) This Article applies where a declaration has been made in respect of an incorporated limited partnership and –
  - (a) the partnership has within 6 months before the declaration made to a limited partner a payment representing a return of any part of that partner's contribution to the partnership;
  - (b) the payment was not made wholly out of profits available for distribution; and
  - (c) the aggregate realisable value of the partnership's assets and the amount paid by way of contribution to its assets (apart from this Article) is not sufficient for the payment of its liabilities and the expenses in connection with the "désastre".
- (2) In this Article, the amount of a payment which has not been made wholly out of profits available for distribution is referred to as "the relevant payment".
- (3) Subject to paragraph (4), the court on the application of the Viscount may order the limited partner to whom the payment was made, or a general partner, to contribute in accordance with this Article to the assets of the company or partnership so as to enable the insufficiency to be met.
- (4) A limited partner to whom a payment was made may be ordered to contribute an amount not exceeding so much of the relevant payment as the limited partner received, together with such interest as may be payable by that partner to the incorporated limited partnership under Article 16(2) of the [Incorporated Limited Partnerships \(Jersey\) Law 2011](#) in respect of the relevant payment.

#### **45B Liability as contributories of present and past members**

- (1) Except as otherwise provided by this Article, where a declaration has been made in respect of a company, each present and past member of the company is liable to contribute to its assets to an amount sufficient for payment of its liabilities, the expenses of the "désastre", and for the adjustment of the rights of the contributories among themselves.

- (2) A past member of a particular class is not, as a member of that class, liable to contribute –
  - (a) unless it appears to the court that the present members of that class are unable to satisfy the contributions required to be made by them as such members;
  - (b) if he or she ceased to be a member of that class for 12 months or more before the declaration; or
  - (c) in respect of a liability of the company contracted after he or she ceased to be a member of that class.
- (3) A past or present guarantor member is not liable in that capacity to contribute unless it appears to the court that the past and present members in their capacity as the holders of limited shares are unable to satisfy the contributions required to be made by them as such members.
- (4) A past or present member in his or her capacity as the holder of an unlimited share is not liable to contribute unless it appears to the court that the past and present members in their capacities as the holders of limited shares or as guarantor members are unable to satisfy the contributions required to be made by them as such members.
- (5) A contribution shall not be required from a past or present member, as such a member, exceeding –
  - (a) any amount unpaid on any limited shares in respect of which he or she is liable; or
  - (b) the amount undertaken to be contributed by him or her to the assets of the company if it should be wound up.
- (6) A sum due to a member of the company, in his or her capacity as a member, by way of dividends, profits or otherwise is not in a case of competition between himself or herself and any other creditor who is not a member of the company, a liability of the company payable to that member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributors among themselves.

#### **45C Liability as contributories of present and past partners of incorporated limited partnerships<sup>76</sup>**

- (1) Except as otherwise provided by this Article, where a declaration has been made in respect of an incorporated limited partnership, each present and past partner of the partnership is liable to contribute to its assets to an amount sufficient for payment of its liabilities, the expenses of the “désastre”, and for the adjustment of the rights of the contributories among themselves.
- (2) A contribution shall not be required from a present or past limited partner of an incorporated limited partnership, as such a partner, exceeding the amount for which, by virtue of Articles 16 and 17 of the [Incorporated Limited Partnerships \(Jersey\) Law 2011](#), he or she is liable to the partnership.
- (3) A sum due to a partner of an incorporated limited partnership in his or her capacity as a partner, by way of profits or otherwise, is not in a case of

competition between himself or herself and any other creditor who is not a partner of the partnership a liability of the partnership payable to that partner, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributors among themselves.

## PART 11

### ABOLITION OF CERTAIN CUSTOMARY LAW CONCEPTS

#### 46 Norman Customary Dower

The dower, known as Norman Customary Dower, is abolished.

#### 47 *Désastre maritime*

Any customary rule of law providing for a *désastre maritime* and for the order of payment of debts in such a *désastre* is abolished.

## PART 12

### MISCELLANEOUS AND CITATION

#### 48 Limitation of liability<sup>77</sup>

- (1) No person or body to whom this Article applies shall be liable in damages for anything done or omitted in the discharge of or purported discharge of any functions under this Law or any enactment made or purportedly made, under this Law, unless it is shown that the act or omission was in bad faith.
- (2) The Article applies to –
  - (a) the States;
  - (b) the Chief Minister or any person who is, or is acting as, an officer, servant or agent in an administration of the States for which the Chief Minister is assigned responsibility or who is performing any duty or exercising any power on behalf of the Chief Minister;
  - (c) the Commission, any Commissioner or any person who is, or is acting as an officer, servant or agent of the Commission or performing any duty or exercising any power on behalf of the Commission; and
  - (d) the Viscount or any member of the Viscount's Department.<sup>78</sup>

#### 49 Assistance for other courts in insolvency matters

- (1) The court may, to the extent it thinks fit, assist the courts of a relevant country or territory in all matters relating to the insolvency of a person, and when doing so may have regard to the extent it considers appropriate to the

provisions for the time being of any model law on cross border insolvency prepared by the United Nations Commission on International Trade Law.<sup>79</sup>

- (2) For the purposes of paragraph (1), a request from a court of a relevant country or territory for assistance shall be sufficient authority for the court to exercise, in relation to the matters to which the request relates, any jurisdiction which it or the requesting court could exercise in relation to these matters if they otherwise fell within its jurisdiction.<sup>80</sup>
- (3) In exercising its discretion for the purposes of this Article the court shall have regard in particular to the rules of private international law.
- (4) In this Article “relevant country or territory” means a country or territory prescribed by the Minister.<sup>81</sup>

#### **49A Orders<sup>82</sup>**

The Minister may make Orders prescribing any matter that is to be prescribed by the Minister by any provision of this Law.

#### **50 Registration in the Public Registry<sup>83</sup>**

The Judicial Greffier shall register in the Public Registry all Acts, orders and notices affecting immovable property made under this Law.

#### **51 Citation**

This Law may be cited as the Bankruptcy (Désastre) (Jersey) Law 1990.



## ENDNOTES

### Table of Legislation History

Legislation	Year and Number	Commencement	°Projet No (where applicable)
Bankruptcy (Désastre) (Jersey) Law 1990	<a href="#">L.8/1990</a>	2 April 1991 (R&O.8175)	
Companies (Jersey) Law 1991	<a href="#">L.30/1991</a>	30 March 1992 (R&O.8308)	
Bankruptcy (Désastre) (Amendment) (Jersey) Law 1995	<a href="#">L.26/1995</a>	18 August 1995	
Loi (1996) sur l'hypothèque des biens-fonds incorporels	<a href="#">L.34/1996</a>	6 December 1996	
Bankruptcy (Désastre) (Amendment No. 2) (Jersey) Law 1996	<a href="#">L.37/1996</a>	1 April 1997 (R&O.9066)	
Limited Liability Partnerships (Jersey) Law 1997	<a href="#">L.3/1997</a>	9 September 1998 (R&O.9233)	
Bankruptcy (Désastre) (Amendment No. 3) (Jersey) Law 1997	<a href="#">L.11/1997</a>	18 April 1997	
Bankruptcy (Désastre) (Amendment No. 4) (Jersey) Law 1997	<a href="#">L.19/1997</a>	13 June 1997	
Financial Services Commission (Jersey) (Jersey) Law 1998	<a href="#">L.11/1998</a>	1 July 1998 (R&O.9238)	
Investment Business (Jersey) Law 1998	<a href="#">L.32/1998</a>	1 March 1999 (R&O.9356)	<a href="#">P.59/1998</a>
Financial Services (Extension) (Jersey) Law 2000	<a href="#">L.25/2000</a>	27 November 2000 <a href="#">(R&amp;O.119/2000)</a>	<a href="#">P.55/2000</a>
Loi (2000) (Amendement No. 4) sur la propriété foncière	<a href="#">L.41/2000</a>	24 February 2001	<a href="#">P.11/2000</a>
Transfer of Functions (Economic Development Committee) (Jersey) Act 2003	<a href="#">R&amp;O.101/2003</a>	14 October 2003	<a href="#">P.122/2003</a>
Rates (Jersey) Law 2005	<a href="#">L.33/2005</a>	2 December 2005	<a href="#">P.170/2005</a>
States of Jersey (Amendments and Construction Provisions No. 4) (Jersey) Regulations 2005	<a href="#">R&amp;O.44/2005</a>	9 December 2005	<a href="#">P.58/2005</a>
Income Tax (Amendment No. 24) (Jersey) Law 2005	<a href="#">L.12/2005</a>	1 January 2006	<a href="#">P.230/2004</a>

<b>Legislation</b>	<b>Year and Number</b>	<b>Commencement</b>	<b>◦Projet No (where applicable)</b>
Bankruptcy (Désastre) (Amendment No. 5) (Jersey) Law 2006	<a href="#">L.13/2006</a>	1 August 2006 ( <a href="#">R&amp;O.79/2006</a> )	<a href="#">P.172/2005</a>
Foundations (Jersey) Law 2009	<a href="#">L.23/2009</a>	17 July 2009	<a href="#">P.143/2008</a>
Income Tax (Amendment No. 32) (Jersey) Law 2009	<a href="#">L.27/2009</a>	4 December 2009	<a href="#">P.82/2009</a>
Incorporated Limited Partnerships (Jersey) Law 2011	<a href="#">L.5/2011</a>	26 May 2011 ( <a href="#">R&amp;O.67/2011</a> )	<a href="#">P.45/2010</a>
Civil Partnership (Jersey) Law 2012	<a href="#">L.4/2012</a>	2 April 2012	<a href="#">P.85/2011</a>
Bankruptcy (Désastre) (Amendment No. 6) (Jersey) Law 2012	<a href="#">L.43/2012</a>	28 December 2012	<a href="#">P.79/2012</a>
States of Jersey (Transfer of Functions No. 6) (Economic Development and Treasury and Resources to Chief Minister) (Jersey) Regulations 2013	<a href="#">R&amp;O.107/2013</a>	19 July 2013	<a href="#">P.75/2013</a>
Security Interests (Jersey) Law 2012	<a href="#">L.24/2012</a>	2 January 2014 ( <a href="#">R&amp;O.104/2013</a> )	<a href="#">P.88/2011</a>
Financial Regulation (Miscellaneous Provisions No. 2) (Jersey) Law 2014	<a href="#">L.40/2014</a>	21 November 2014	<a href="#">P.47/2014</a>
Dormant Bank Accounts (Jersey) Law 2017	<a href="#">L.1/2017</a>	17 July 2017 ( <a href="#">R&amp;O.72/2017</a> )	<a href="#">P.25/2016</a>
Connétables (Amendment No. 2) (Jersey) Law 2018	<a href="#">L.9/2018</a>	30 March 2018	<a href="#">P.112/2017</a>
Limited Liability Partnerships (Jersey) Law 2017	<a href="#">L.2/2017</a>	1 August 2018	<a href="#">P.95/2016</a>
Mental Health and Capacity (Consequential Amendment and Transitional Provision) (Jersey) Regulations 2018	<a href="#">R&amp;O.49/2018</a>	1 October 2018 ( <a href="#">R&amp;O.51/2018</a> )	<a href="#">P.48/2018</a>
Financial Regulation (Miscellaneous Provisions No. 5) (Jersey) Law 2019	<a href="#">L.7/2019</a>	26 May 2019	<a href="#">P.138/2018</a>
States of Jersey (Transfer of Responsibilities and Functions) (Chief Minister to External Relations) Order 2019	<a href="#">R&amp;O.40/2019</a>	31 May 2019	

Legislation	Year and Number	Commencement	°Projet No (where applicable)
States of Jersey (Minister for Children and Education, Minister for Housing and Communities and Minister for External Relations and Financial Services) (Jersey) Order 2021	<a href="#">R&amp;O.29/2021</a>	2 March 2021	

°Projets available at [www.statesassembly.gov.je](http://www.statesassembly.gov.je)

### Table of Renumbered Provisions

Original	Current
PART I	PART 1
1(3), (4), (5)	spent, omitted from this revised edition
1(6)	1(3)
2(2)(j)	2(2)(i)
PART II	PART 2
PART III	PART 3
6(1A)	6(2)
(2)	(3)
(3)	(4)
(4)	(5)
PART IV	PART 4
17(8)	repealed by <a href="#">L.41/2000</a>
(9)	17(8)
PART V	PART 5
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PART VII	PART 7
PART VIII	PART 8
PART IX	PART 9
PART X	PART 10
PART XI	PART 11
PART XII	PART 12
47A	48
48	49
49	50
50	spent, omitted from this revised edition
SCHEDULE	spent, omitted from this revised edition

### Table of Endnote References

<sup>1</sup> Long Title

amended by *L.5/2011*

<sup>2</sup> Article 1(1)

amended by *L.30/1991, L.3/1997, L.11/1998, L.13/2006, L.23/2009, L.5/2011, R&O.107/2013, L.24/2012, L.40/2014, L.2/2017, R&O.40/2019, R&O.29/2021*

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- <sup>3</sup> Article 2(2)(c) omitted by L.13/2006
- <sup>4</sup> Article 2(2)(i) amended by L.13/2006
- <sup>5</sup> Article 2(3) added by L.13/2006
- <sup>6</sup> Article 2(4) added by L.13/2006
- <sup>7</sup> Article 3 substituted by L.13/2006
- <sup>8</sup> Article 3(1) amended by L.23/2009, L.40/2014, L.7/2019
- <sup>9</sup> Article 4(1) amended by L.30/1991, L.3/1997, L.13/2006, L.5/2011
- <sup>10</sup> Article 6(1) amended by L.26/1995
- <sup>11</sup> Article 6(2) inserted by L.26/1995
- <sup>12</sup> Article 7(4) amended by L.26/1995, L.11/1998
- <sup>13</sup> Article 8(2) amended by L.13/2006
- <sup>14</sup> Article 8A inserted by L.13/2006
- <sup>15</sup> Article 10 substituted by L.13/2006
- <sup>16</sup> Article 10(4) added by L.5/2011
- <sup>17</sup> Article 10(5) inserted by L.24/2012
- <sup>18</sup> Article 10(6) inserted by L.24/2012
- <sup>19</sup> Article 11(4) substituted by L.13/2006
- <sup>20</sup> Article 11(5) inserted by L.13/2006
- <sup>21</sup> Article 12(1) amended by L.13/2006
- <sup>22</sup> Article 12(1A) inserted by L.4/2012
- <sup>23</sup> Article 12(4) amended by L.4/2012
- <sup>24</sup> Article 12(5) amended by L.4/2012
- <sup>25</sup> Article 12(8) amended by L.4/2012
- <sup>26</sup> Article 12(9) amended by L.4/2012
- <sup>27</sup> Article 12(12) amended by L.4/2012
- <sup>28</sup> Article 14(2) substituted by L.24/2012
- <sup>29</sup> Article 15(1) substituted by L.13/2006
- <sup>30</sup> Article 15(2) substituted by L.13/2006
- <sup>31</sup> Article 15A inserted by L.13/2006
- <sup>32</sup> Article 16(2) substituted by L.13/2006
- <sup>33</sup> Article 17 substituted by L.13/2006
- <sup>34</sup> Article 17A inserted by L.13/2006
- <sup>35</sup> Article 17B inserted by L.13/2006
- <sup>36</sup> Article 17B(1A) added by L.5/2011
- <sup>37</sup> Article 17B(2) amended by L.5/2011, L.4/2012
- <sup>38</sup> Article 17B(4A) added by L.4/2012
- <sup>39</sup> Article 17B(5A) inserted by L.5/2011
- <sup>40</sup> Article 17B(6A) added by L.5/2011
- <sup>41</sup> Article 17C inserted by L.13/2006
- <sup>42</sup> Article 17D inserted by L.13/2006
- <sup>43</sup> Article 18(1)(d) substituted by L.13/2006
- <sup>44</sup> Article 18(2) substituted by L.5/2011
- <sup>45</sup> Article 18(2A) inserted by L.13/2006
- <sup>46</sup> Article 19(2) amended by L.13/2006
- <sup>47</sup> Article 20(1) amended by L.4/2012
- <sup>48</sup> Article 20(2) substituted by L.5/2011
- <sup>49</sup> Article 20(5) substituted by L.5/2011
- <sup>50</sup> Article 21 substituted by L.13/2006
- <sup>51</sup> Article 22 amended by L.4/2012
- <sup>52</sup> Article 24 substituted by L.13/2006
- <sup>53</sup> Article 24(1) amended by L.5/2011, L.9/2018, R&O.49/2018
- <sup>54</sup> Article 25(1) amended by L.13/2006

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- <sup>55</sup> Article 29(1) *amended by L.13/2006*
- <sup>56</sup> Article 30(1) *amended by L.13/2006*
- <sup>57</sup> Article 31 *substituted by L.13/2006*
- <sup>58</sup> Article 32 *substituted and amended by L.13/2006*
- <sup>59</sup> Article 32(1) *amended by L.27/2009, L.43/2012, L.1/2017*
- <sup>60</sup> Article 32(7) *substituted by L.24/2012*
- <sup>61</sup> Article 36 *substituted by L.13/2006*
- <sup>62</sup> Article 36(2) *substituted by L.23/2009*
- <sup>63</sup> Article 36(2A) *inserted by L.5/2011*
- <sup>64</sup> Article 37(6) *substituted by L.13/2006, amended by L.5/2011*
- <sup>65</sup> Article 38(2) *substituted by L.5/2011*
- <sup>66</sup> Article 38(3) *substituted by L.5/2011*
- <sup>67</sup> Article 42(1) *amended by L.13/2006*
- <sup>68</sup> Part 10 *substituted and amended by L.13/2006*
- <sup>69</sup> Part 10 *heading amended by L.5/2011*
- <sup>70</sup> Article 42A(1) *amended by L.5/2011*
- <sup>71</sup> Article 42A(2) *added by L.5/2011*  
*law revision powers used to alter numbering*
- <sup>72</sup> Article 43(1) *amended by L.5/2011*
- <sup>73</sup> Article 45(1) *substituted by L.5/2011*
- <sup>74</sup> Article 45(4) *substituted by L.5/2011*
- <sup>75</sup> Article 45AA *inserted by L.5/2011*
- <sup>76</sup> Article 45C *inserted by L.5/2011*
- <sup>77</sup> Article 48 *substituted by L.11/1998*
- <sup>78</sup> Article 48(2) *amended by R&O.107/2013*
- <sup>79</sup> Article 49(1) *substituted by L.13/2006*
- <sup>80</sup> Article 49(2) *amended by L.13/2006*
- <sup>81</sup> Article 49(4) *added and amended by L.13/2006*
- <sup>82</sup> Article 49A *inserted and amended by L.13/2006*
- <sup>83</sup> Article 50 *substituted by L.13/2006*