



Jersey

COMPANIES (AMENDMENT No. 11) (JERSEY) LAW 2014

Arrangement

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A **LAW** to amend further the Companies (Jersey) Law 1991.

Adopted by the States

21st May 2014

Sanctioned by Order of Her Majesty in Council

16th July 2014

Registered by the Royal Court

25th July 2014

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law “principal Law” means the Companies (Jersey) Law 1991¹.

2 Article 1 amended

In Article 1 of the principal Law –

- (a) in paragraph (1), after the definition “net asset value” there shall be inserted the following definition –

“ ‘nominal capital account’, in relation to a company, means a share capital account of the company to which are credited amounts up to the nominal value of the shares issued by the company;”; and

- (b) after paragraph (2) there shall be added the following paragraph –

“(3) The Minister may by Order amend the definition of ‘prospectus’ in paragraph (1).”.

3 Article 17 amended

For Article 17(2)(c) of the principal Law there shall be substituted the following sub-paragraph –

“(c) it is a market traded company within the meaning of Part 16.”.

4 Article 17A amended

In Article 17A(1) of the principal Law –

- (a) in sub-paragraph (a), after the word “company” there shall be inserted the words “, a subsidiary of the company, the holding company of the company or a subsidiary of the holding company”; and
- (b) in sub-paragraph (b) –
 - (i) after the word “company” there shall be inserted the words “or any other body corporate within sub-paragraph (a)”,
 - (ii) in clause (i), after the word “member” there shall be inserted the words “of the company or of any other such body corporate”, and
 - (iii) in clause (ii), after the words “continued to be” there shall be inserted the word “such”.

5 Article 17B amended

In Article 17B of the principal Law –

- (a) in the heading, for the word “Notice” there shall be substituted the words “Effective date”;
- (b) for the words “changes its status in accordance with Article 16 or Article 17(1)” there shall be substituted the words “alters its memorandum as mentioned in Article 16 or 17(1)”; and
- (c) after the words “altered status” there shall be added the words “; and the altered status has effect from the date on which the certificate of incorporation which is appropriate to the altered status is issued”.

6 Article 17D inserted

After Article 17C of the principal Law there shall be inserted the following Article –

“17D Power to abolish 30-member limit

The States may by Regulations amend any provision of Articles 3(3) and 16 to 17C that limits the number of persons who may apply to form a private company or the number of members that a private company may have or treats a company as a public company if the number of its members exceeds a particular number.”

7 Articles 35 and 36 repealed and new Article 35 inserted

- (1) Articles 35 and 36 of the principal Law shall be repealed.
- (2) After Article 34 of the principal Law there shall be inserted the following Article –

“35 Rule of law relating to issue of shares at discount etc. abolished

- (1) This Article applies to the issue of shares at a discount and the application of shares or capital money in payment of a commission, discount or allowance.
- (2) The repeal of the former Articles 35 and 36 by Article 7(1) of the Companies (Amendment No. 11) (Jersey) Law 2014² shall not cause anything to which this Article applies to be rendered unlawful by reason of any rule of law which had ceased to have effect by virtue of, or had been modified by, the former Articles 35 and 36.
- (3) In this Article, ‘the former Articles 35 and 36’ means Articles 35 and 36 of this Law, as those Articles were in force immediately before they were repealed by Article 7(1) of the Companies (Amendment No. 11) (Jersey) Law 2014.’.

8 Article 39 amended

After Article 39(1) of the principal Law there shall be inserted the following paragraph –

“(1A) An amount may be transferred by the company to a share premium account from any other account of the company other than the capital redemption reserve or the nominal capital account.”.

9 Article 39A amended

In Article 39A of the principal Law –

- (a) in paragraph (3) –
 - (i) at the end of sub-paragraph (a) there shall be added the word “and”,
 - (ii) for the word “; and” at the end of sub-paragraph (b) there shall be substituted a full-stop, and
 - (iii) sub-paragraph (c) shall be deleted; and
- (b) after paragraph (3) there shall be inserted the following paragraph –

“(3A) An amount may be transferred by the company to a stated capital account from any other account of the company.”.

10 Article 49 amended

For Article 49(1) of the principal Law there shall be substituted the following paragraph –

- “(1) A public company which transacts business in any country, territory or place outside Jersey may cause to be kept there a register of –
- (a) members who are resident in that country, territory or place; and

- (b) all or any of its other members.”.

11 Article 55 amended

In Article 55 of the principal Law, after paragraph (12) there shall be inserted the following paragraph –

- “(12A) A payment for the redemption of shares in accordance with this Article may be made in cash or otherwise than in cash (or partly in cash and partly otherwise than in cash).”.

12 Article 57 amended

In Article 57 of the principal Law –

- (a) in paragraph (1), after the word “shares)” there shall be added the words “including by the purchase of depositary certificates in respect of such shares”;
- (b) in paragraph (2), the words “of its own shares” shall be deleted;
- (c) in paragraph (3) –
 - (i) after the words “the shares” there shall be inserted the words “or depositary certificates in respect of shares”, and
 - (ii) for the words “they shall” there shall be substituted the words “the shares shall”;
- (d) in paragraph (4) –
 - (i) for the words “the shares” shall be substituted the word “shares”, and
 - (ii) for the words “18 months” there shall be substituted the words “5 years”;
- (e) after paragraph (4) there shall be inserted the following paragraph –
 - “(4ZA) If depositary certificates in respect of shares are to be purchased, the resolution authorizing the purchase shall specify –
 - (a) the maximum number of depositary certificates to be purchased;
 - (b) the maximum and minimum prices which may be paid; and
 - (c) a date, not being later than 5 years after the passing of the resolution, on which the authority to purchase is to expire.”;
- (f) in paragraph (4A), for the words “paragraph (4)(b)” there shall be substituted the words “paragraphs (4)(b) and (4ZA)(b)”;
- (g) in paragraph (5), for the words “and (4)” there shall be substituted the words “, (4) and (4ZA)”;
- (h) after paragraph (5) there shall be inserted the following paragraph –
 - “(5A) If depositary certificates in respect of shares are purchased under this Article the shares shall (unless they are, immediately after the purchase of the depositary certificates, held as treasury shares) be treated as cancelled on purchase.”;

- (i) in paragraph (6), after the words “own shares” there shall be inserted the words “(including by the purchase of depositary certificates)”;
- (j) in paragraph (7), for the words “under this Article purchase its shares” there shall be substituted the words “make a purchase under this Article”;
- and
- (k) after paragraph (7) there shall be added the following paragraph –
 - “(8) In this Article and Article 58A ‘depositary certificate’ means an instrument (whatever it is called and whether it is held in paper or electronic form) which confers on a person a right or rights (other than an option or a security interest) in respect of a share or shares held by another person.”.

13 Article 58A amended

In Article 58A(1) of the principal Law, after the word “Part” there shall be inserted the words “(including by the purchase of depositary certificates)”.

14 Article 61 amended

In Article 61 of the principal Law –

- (a) for paragraph (1) there shall be substituted the following paragraphs –
 - “(1) A company may reduce its capital accounts in any way.
 - (1A) A reduction of capital shall be sanctioned by a special resolution of the company.”;
- (b) for paragraph (3) there shall be substituted the following paragraph –
 - “(3) Subject to paragraphs (4) and (5), every reduction of capital shall either –
 - (a) be supported by a solvency statement (see Articles 61A and 61B); or
 - (b) be subject to confirmation by the court (see Articles 62 to 64).”;
- (c) in paragraph (4) –
 - (i) for the word “A” there shall be substituted the words “Paragraph (3) does not apply to a”, and
 - (ii) the words “shall not be subject to confirmation by the court” shall be deleted;
- (d) in paragraph (5) –
 - (i) for the word “A” there shall be substituted the words “Paragraph (3) does not apply to a”, and
 - (ii) the words “shall not be subject to confirmation by the court” shall be deleted; and
- (e) after paragraph (5) there shall be inserted the following paragraph –

- “(6) A reduction of capital supported by a solvency statement shall be treated for all purposes in the same way as one that has been confirmed by an order of the court.”.

15 Articles 61A and 61B inserted

After Article 61 of the principal Law there shall be inserted the following Articles –

“61A Solvency statement

- (1) A reduction of capital is supported by a solvency statement if the directors of the company authorizing the reduction make a solvency statement not more than 15 days before the special resolution sanctioning the reduction is passed.
- (2) A ‘solvency statement’ is a statement that the directors making it have formed the opinion –
 - (a) that, as at the date of the statement, the company is able to discharge its liabilities as they fall due; and
 - (b) that, having regard to –
 - (i) the prospects of the company and the intentions of the directors with respect to the management of the company’s business, and
 - (ii) the amount and character of the financial resources that will in their view be available to the company, the company will be able to –
 - (A) continue to carry on business, and
 - (B) discharge its liabilities as they fall due,until the expiry of the period of 12 months immediately following the date of the statement or until the company is dissolved under Article 150, whichever first occurs.
- (3) A director who makes a solvency statement without having reasonable grounds for the opinion expressed in it is guilty of an offence.

61B Registration of solvency statement and minute of reduction

- (1) Where a reduction of capital is supported by a solvency statement, the company shall, within 15 days after the special resolution is passed, deliver to the registrar –
 - (a) a copy of the solvency statement; and
 - (b) a minute showing in respect of the company the information specified in paragraph (2).
- (2) The information to which paragraph (1) refers is –
 - (a) the amounts of the capital accounts;

- (b) the number of shares into which the share capital is to be divided and, in the case of a par value company, the amount of each share;
 - (c) in the case of a par value company the amount (if any), at the date of the registration of the solvency statement and minute under paragraph (3), which will remain paid up on each share which has been issued; and
 - (d) in the case of a no par value company, the amount (if any) remaining unpaid on issued shares.
- (3) The registrar shall register the solvency statement and minute, and thereupon the resolution for reducing the capital shall take effect.
- (4) The registrar shall certify the registration of the solvency statement and minute and the certificate –
- (a) shall be signed by the registrar and sealed with the registrar's seal; and
 - (b) is conclusive evidence that all the requirements of this Law with respect to the reduction of share capital have been complied with, and the company's share capital is as stated in the minute.
- (5) The minute when registered is deemed to be substituted for the corresponding part of the company's memorandum.”.

16 Article 62 amended

In Article 62(2)(b) and (6) of the principal Law, after the word “payment” there shall be inserted the words “(whether in cash or otherwise)”.

17 Article 73 amended

In Article 73 of the principal Law, after paragraph (4B) there shall be added the following paragraph –

- “(4C) A limited liability partnership shall not be a director of a company.”.

18 Article 74 amended

After Article 74(2) of the principal Law there shall be added the following paragraphs –

- “(3) Furthermore, no act or omission of a director shall be treated as a breach of paragraph (1) if –
 - (a) a resolution, or (if the articles so require) special resolution, authorizing or ratifying the act or omission is passed otherwise than by all of the members of the company and in accordance with paragraphs (4) and (5); and
 - (b) after the act or omission the company will be able to discharge its liabilities as they fall due.

- (4) Where the resolution authorizing or ratifying the act or omission is proposed as a written resolution, neither the director (if a member of the company) nor any member connected with the director shall be treated for the purposes of Article 95(1B) and (1C) as a member entitled to vote on the resolution.
- (5) Where the resolution authorizing or ratifying the act or omission is proposed at a meeting, it is passed only if the necessary majority is obtained disregarding votes in favour of the resolution by the director (if a member of the company) and any member connected with him; but this does not prevent the director or any such member from attending, being counted towards the quorum or taking part in the proceedings at any meeting at which the decision is considered.
- (6) The Minister may by Order disapply paragraphs (3) to (5) in relation to any class of company.”.

19 Article 74ZA inserted

After Article 74 of the principal Law there shall be inserted the following Article –

“74ZA Persons connected with director for purposes of Article 74

- (1) The following persons (and only those persons) are connected with the director for the purposes of Article 74(4) and (5) –
 - (a) members of the director’s family (see paragraph (2));
 - (b) a foundation incorporated under the Foundations (Jersey) Law 2009³ under which the director or a person who, by virtue of sub-paragraph (a), is connected with the director is a beneficiary;
 - (c) any other body corporate with which the director is connected (as defined in paragraph (3));
 - (d) a person acting in his capacity as trustee of a trust –
 - (i) the beneficiaries of which include the director or a person who by virtue of sub-paragraph (a), (b) or (c) is connected with him, or
 - (ii) the terms of which confer a power on the trustees that may be exercised for the benefit of the director or any such person,
other than a trust for the purposes of an employees’ share scheme or a pension scheme;
 - (e) a person acting in the capacity of a partner –
 - (i) of the director, or
 - (ii) of a person who, by virtue of sub-paragraph (a), (b), (c) or (d), is connected with the director; and
 - (f) a firm that is a legal person under the law by which it is governed (including a limited liability partnership, a separate

limited partnership and an incorporated limited partnership) and in which –

- (i) the director is a partner,
- (ii) a partner is a person who, by virtue of subparagraph (a), (b), (c) or (d) is connected with the director, or
- (iii) a partner is a firm in which the director is a partner or in which there is a partner who, by virtue of subparagraph (a), (b), (c) or (d), is connected with the director.

(2) The members of the director's family are –

- (a) the director's spouse or civil partner;
- (b) any other person (whether of a different sex or the same sex) with whom the director lives as partner in an enduring family relationship, other than a grandparent or grandchild, sister, brother, aunt or uncle, or nephew or niece;
- (c) the director's children or step-children;
- (d) any children or step-children of a person within paragraph (b) (and who are not children or step-children of the director) who live with the director and have not attained the age of 18; and
- (e) the director's parents.

(3) A director is connected with a body corporate (other than a foundation incorporated under the Foundations (Jersey) Law 2009⁴ or an incorporated limited partnership) if, but only if, the director and the persons connected with the director together –

- (a) have an interest in shares comprised in the equity share capital of that body corporate of a nominal value equal to at least 20% of that share capital; or
- (b) are entitled to exercise or control the exercise of more than 20% of the voting power at any general meeting of that body.

(4) For the purposes of paragraph (3)(a) –

- (a) the reference to an interest in shares includes any interest of any kind whatsoever in shares;
- (b) any restraints or restrictions to which the exercise of any right attached to the interest is or may be subject shall be disregarded;
- (c) it is immaterial that the shares in which there is an interest are not identifiable;
- (d) persons having a joint interest in shares are deemed each to have that interest;
- (e) a person is taken to have an interest in shares if the person enters into a contract to acquire them;
- (f) a person is taken to have an interest in shares if –

- (i) the person has a right to call for the delivery of the shares to, or to the order of, the person, or
 - (ii) the person has a right to acquire an interest in shares or is under an obligation to take an interest in shares, whether the right or obligation is conditional or absolute (but not if it is a right or obligation to subscribe for shares);
 - (g) a person is taken to have an interest in shares if, not being the registered holder, the person is entitled –
 - (i) to exercise any right conferred by the holding of the shares, or
 - (ii) to control the exercise of any such right;
 - (h) a person is taken to have an interest in shares if a body corporate is interested in them and –
 - (i) the body corporate or its directors are accustomed to act in accordance with the person's directions or instructions, or
 - (ii) the person is entitled to exercise or control the exercise of more than one-half of the voting power at general meetings of the body corporate;
 - (i) a person is taken to have an interest in shares if the person is a beneficiary under a foundation incorporated under the Foundations (Jersey) Law 2009⁵ which is interested in them; and
 - (j) where an interest in shares is comprised in property held on trust, every beneficiary of the trust is taken to have an interest in the shares unless –
 - (i) it is an interest in reversion or remainder and a person is entitled to receive income from the trust property comprising shares for that person's or another's life, or
 - (ii) the person holds the shares as a bare trustee or as a custodian trustee.
- (5) A person ceases to have an interest in shares by virtue of paragraph (4)(e) or (f) –
 - (a) on the shares being delivered on the person's order to another person –
 - (i) in fulfilment of a contract for their acquisition by the other person, or
 - (ii) in satisfaction of a right of the other person to call for their delivery;
 - (b) on a failure to deliver the shares in accordance with the terms of such a contract or the terms on which such a right falls to be satisfied; or
 - (c) on the lapse of the person's right to call for delivery of the shares or to acquire an interest in the shares or of the person's obligation to take an interest in the shares.

- (6) For the purposes of paragraph (4)(g) a person is taken to be entitled to exercise or control the exercise of a right conferred by the holding of shares if the person –
 - (a) has a right (whether subject to conditions or not) the exercise of which would make the person so entitled; or
 - (b) is under an obligation (whether or not so subject) the fulfilment of which would make the person so entitled.
- (7) A person is not by virtue of paragraph (4)(g) taken to be interested in shares by reason only that the person –
 - (a) has been appointed a proxy to exercise any of the rights attached to the shares; or
 - (b) has been appointed by a body corporate to act as its representative at any meeting of the company or of any class of its members.
- (8) For the purposes of paragraph (4)(h), where –
 - (a) a person is entitled to exercise, or control the exercise, of more than one-half of the voting power at general meetings of a body corporate; and
 - (b) the body corporate is entitled to exercise, or control the exercise, of any of the voting power at general meetings of another body corporate,the voting power mentioned in sub-paragraph (b) is taken to be exercisable by the person.
- (9) The reference in paragraph (3)(b) to voting power the exercise of which is controlled by the director or a person connected with the director includes voting power the exercise of which is controlled by a body corporate controlled by the director or person.
- (10) Shares in a company held as treasury shares, and any voting rights attached to such shares, are disregarded for the purposes of paragraph (3).
- (11) The Minister may by Order amend this Article.”.

20 Article 87 amended

In Article 87 of the principal Law –

- (a) in paragraph (2), for the words “Every company” there shall be substituted the words “Every public company and every relevant private company”;
- (b) after paragraph (2) there shall be inserted the following paragraphs –
 - “(2A) In this Article ‘relevant private company’ means a private company –
 - (a) which is required to hold annual general meetings by provision made in its articles after the coming into force of the Companies (Amendment No. 11) (Jersey) Law 2014⁶; or

- (b) in whose case a requirement for the holding of annual general meetings was imposed by provision made in its articles before the coming into force of that Law and confirmed by a special resolution passed after the coming into force of that Law and remaining in effect.
- (2B) Any requirement for the holding of annual general meetings imposed by provision made in the articles of a private company before the coming into force of the Companies (Amendment No. 11) (Jersey) Law 2014 is of no effect unless confirmed by special resolution passed after the coming into force of that Law and remaining in effect.”;
- (c) in paragraph (3), before the word “private” there shall be inserted the word “relevant”; and
 - (d) in paragraph (4), after the word “a” there shall be inserted the words “public company or relevant private”.

21 Article 90 amended

In Article 90 of the principal Law –

- (a) in paragraph (1A), for the words “do specify a greater majority than two-thirds, that greater majority” there shall be substituted the words “specify a greater majority than two-thirds (or unanimity), that greater majority (or unanimity)”; and
- (b) after paragraph (1A) there shall be inserted the following paragraph –

“(1B) Where the articles make different provision in relation to different descriptions of special resolutions, the reference in paragraph (1A) to the majority specified by the articles (or unanimity) is to the majority specified by the articles in relation to special resolutions of the description of the special resolution concerned (or unanimity, if that is what is so specified).”.

22 Article 91 amended

In Article 91(3)(b) of the principal Law –

- (a) for the words “95 per cent” there shall be substituted the words “90 per cent”; and
- (b) after the words “that right” there shall be added the words “, or, if the articles require a greater majority of such persons (or unanimity), by that greater majority (or unanimity)”.

23 Article 93 amended

In Article 93 of the principal Law –

- (a) in paragraph (1) –
 - (i) after the word “person” there shall be inserted the words “or persons”, and

- (ii) after the word “representative” there shall be inserted the words “or representatives”;
- (b) in paragraph (2), for the words “A person so authorized” there shall be substituted the words “Where the body corporate authorizes only one person, the person”; and
- (c) after paragraph (2) there shall be added the following paragraphs –
 - “(3) Where the body corporate authorizes more than one person, any one of them is entitled to exercise the same powers on behalf of the body corporate which they represent as that body corporate could exercise if it were an individual member or creditor of the company.
 - (4) Where the body corporate authorizes more than one person and more than one of them purport to exercise a power under paragraph (3) –
 - (a) if they purport to exercise the power in the same way, the power is treated as exercised in that way; and
 - (b) if they do not purport to exercise the power in the same way, the power is treated as not exercised.”.

24 Article 95 amended

In Article 95 of the principal Law –

- (a) for paragraph (1B) there shall be substituted the following paragraphs –
 - “(1B) Anything which may be done at a meeting of a company or at a meeting of any class of its members may be done by a resolution in writing passed by all the members of the company who, at the date when the resolution is deemed to be passed, would be entitled to vote on the resolution if it were proposed at a meeting.
 - (1C) In the case of a resolution which is –
 - (a) proposed as a written resolution by the directors of a company; or
 - (b) required to be circulated by a company by Article 95ZB,if the company’s articles provide that anything which may be done at a meeting of the company or at a meeting of any class of its members may be done by a resolution in writing passed by a specified majority of the members who, at the date when the resolution is deemed to be passed, would be entitled to vote on the resolution if it were proposed at a meeting, paragraph (1B) has effect as if the reference to all the members were to that majority of the members.
 - (1D) The majority specified by the articles of a company in relation to a special resolution may not be less than two-thirds.”;
- (b) for paragraph (3) there shall be substituted the following paragraphs –

- “(3) A resolution under this Article may be sent or submitted to members in hard copy or electronic form or in such other manner as the company’s articles may provide.
- (3A) A resolution under this Article shall be deemed to be passed when all the members have, or (where paragraph (1C) applies) the specified majority of the members has, signified agreement to the resolution.
- (3B) A member signifies agreement to a resolution under this Article when the company receives from the member (or from someone acting on the member’s behalf) a document (sent or submitted in hard copy or electronic form or in such other manner as the company’s articles may provide) which –
 - (a) identifies the resolution to which it relates; and
 - (b) indicates agreement to the resolution.
- (3C) A member’s agreement to a written resolution, once signified, may not be revoked.”; and
- (c) in paragraph (6), after the word “Article” there shall be inserted the words “or Articles 95ZA to 95ZC”.

25 Articles 95ZA to 95ZC inserted

After Article 95 of the principal Law there shall be inserted the following Articles –

“95ZA Circulation of written resolutions proposed by directors

- (1) This Article applies to any resolution proposed as a written resolution by the directors of a company, other than one passed by all the members of the company who, at the date when the resolution is deemed to be passed, would be entitled to vote on the resolution if it were proposed at a meeting.
- (2) The company must send or submit a copy of the resolution to every eligible member.
- (3) The company must do so –
 - (a) by sending copies at the same time (so far as reasonably practicable) to all eligible members; or
 - (b) if it is possible to do so without undue delay, by submitting the same copy to each eligible member in turn (or different copies to each of a number of eligible members in turn),
or by sending copies to some members in accordance with sub-paragraph (a) and submitting a copy or copies to other members in accordance with sub-paragraph (b).
- (4) The copy of the resolution must be accompanied by a statement informing the member –
 - (a) how to signify agreement to the resolution; and

- (b) as to the date by which the resolution must be passed if it is not to lapse.
- (5) If the company fails to comply with paragraph (2), (3) or (4), the company and every officer of it in default commits an offence.
- (6) A resolution to which this Article applies lapses if it is not passed before the end of –
 - (a) the period specified for this purpose in the articles; or
 - (b) if none is specified, the period of 28 days beginning with the circulation date.
- (7) The agreement of a member to such a resolution is ineffective if signified after the end of that period.
- (8) For the purposes of this Article an ‘eligible member’ is a member who, at the circulation date, would be entitled to vote on the resolution if it were proposed at a meeting.
- (9) In this Article the ‘circulation date’ means the date on which copies of the resolution are sent or submitted to members in accordance with this Article (or, if copies are sent or submitted to members on different days, the first of those days).
- (10) The validity of a resolution, if passed, is not affected by a failure to comply with this Article.

95ZB Members’ power to require circulation of written resolution

- (1) The members of a company may require the company to circulate a resolution that may properly be proposed and is to be proposed as a written resolution.
- (2) For the purposes of paragraph (1) a resolution may properly be proposed as a written resolution unless –
 - (a) it would, if passed, be ineffective (whether by reason of inconsistency with any provision of, or made under, any Law or the company’s constitution or otherwise);
 - (b) it is defamatory of any person; or
 - (c) it is frivolous or vexatious.
- (3) Where the members require a company to circulate a resolution they may require the company to circulate it with a statement of not more than 1,000 words on the subject matter of the resolution.
- (4) A company is required to circulate a resolution and any accompanying statement once it has received requests that it do so from members representing not less than the requisite percentage of the total voting rights of all members entitled to vote on the resolution.
- (5) The ‘requisite percentage’ is 10% or such lower percentage as is specified for this purpose in the company’s articles.
- (6) A request –

- (a) may be made in hard copy form or electronic form or in such other manner as the company's articles may provide;
- (b) must identify the resolution and any accompanying statement; and
- (c) must be authenticated by the person or persons making it.

95ZC Circulation of written resolution and statement

- (1) A company that is required under Article 95ZB to circulate a resolution must send or submit to every eligible member –
 - (a) a copy of the resolution; and
 - (b) a copy of any accompanying statement.
- (2) The company must do so –
 - (a) by sending copies at the same time (so far as reasonably practicable) to all eligible members; or
 - (b) if it is possible to do so without undue delay, by submitting the same copy to each eligible member in turn (or different copies to each of a number of eligible members in turn),

or by sending copies to some members in accordance with sub-paragraph (a) and submitting a copy or copies to other members in accordance with sub-paragraph (b).
- (3) The company must send or submit the copies (or, if copies are sent or submitted to members on different days, the first of those copies) not more than 21 days after it becomes subject to the requirement under Article 95ZB to circulate the resolution.
- (4) A copy of the resolution must be accompanied by a statement informing the member –
 - (a) how to signify agreement to the resolution; and
 - (b) as to the date by which the resolution must be passed if it is not to lapse.
- (5) If the company fails to comply with paragraph (2), (3) or (4), the company and every officer of it in default commits an offence.
- (6) A resolution which is required to be circulated by the company by Article 95ZB lapses if it is not passed before the end of –
 - (a) the period specified for this purpose in the articles; or
 - (b) if none is specified, the period of 28 days beginning with the circulation date.
- (7) The agreement of a member to such a resolution is ineffective if signified after the end of that period.
- (8) The validity of a resolution, if passed, is not affected by a failure to comply with this Article.
- (9) The expenses of the company in complying with this Article must be paid by the members who requested the circulation of the resolution unless the company resolves otherwise.

- (10) Unless the company has previously so resolved, it is not bound to comply with this Article unless there is deposited with or tendered to it a sum reasonably sufficient to meet its expenses in doing so.
- (11) The company is not required to circulate a copy of a statement if, on an application by the company or any other person, the court is satisfied that the rights conferred by Article 95ZB and this Article are being abused.
- (12) The court may order the members who requested the circulation of the statement to pay the whole or part of the company's costs on an application under paragraph (11) even if they are not parties to the application."

26 Article 96 amended

In Article 96 of the principal Law –

- (a) in paragraph (4), for the words “more than” there shall be substituted the words “before the beginning of the period commencing”; and
- (b) after paragraph (4) there shall be inserted the following paragraphs –
 - “(4A) In calculating the period mentioned in paragraph (4) no account shall be taken of any part of a day that is not a working day.
 - (4B) For the purposes of paragraph (4A) ‘working day’ means a weekday (within the meaning of Part 1 of the Schedule to the Public Holidays and Bank Holidays (Jersey) Act 2010⁷) other than –
 - (a) a day specified in that Schedule as a day which is to be observed as a public holiday; or
 - (b) a day noted in that Schedule as a day which is by custom observed as a general holiday.”.

27 Article 105 amended

For Article 105(8) of the principal Law there shall be substituted the following paragraph –

- “(8) Paragraph (9) applies if, at the end of a financial period of a company –
 - (a) the company is a private company that is not a relevant private company within the meaning given by Article 87(2A); or
 - (b) an agreement under Article 87(4) dispensing with the holding of an annual general meeting has effect in the case of the company.”.

28 Article 113 amended

After Article 113(1) of the principal Law there shall be inserted the following paragraphs –

- “(1A) A company of a class specified in an Order made by the Minister may disapply the requirement imposed by paragraph (1) in relation to a financial period of the company by a resolution passed before the date by which the actions mentioned in Article 105(6) are required by Article 105(7) to be taken in relation to the accounts of the company for that financial period.
- (1B) A resolution under paragraph (1A) must be passed by all members of the company entitled to vote in general meeting.
- (1C) A resolution under paragraph (1A) is rescinded once the company has received requests for its rescission from –
 - (a) members holding not less than 10 per cent in nominal value of the issued share capital (or any class of such share capital) of the company, or (if the company is a no par value company) not less than 10 per cent of the number of the company’s issued shares (or any class of issued shares), excluding any shares held as treasury shares; or
 - (b) if the company does not have share capital, members whose liability as members is in the aggregate not less than 10 per cent of the total liability of all members of the company (or any class of members).
- (1D) The rescission by paragraph (1C) of a resolution under paragraph (1A) in relation to a financial period has effect only if the requests required by paragraph (1C) have been received before the end of the period of 3 months beginning with the date on which the resolution was passed.
- (1E) Where a resolution under paragraph (1A) in relation to a financial period is rescinded, the actions mentioned in Article 105(6) in relation to the accounts of the company for that financial period must be taken by –
 - (a) the date by which they are required to be taken by Article 105(7); or
 - (b) the date 3 months after that on which the resolution is rescinded,whichever is later.
- (1F) The Minister may by Order modify or disapply any one or more of paragraphs (1B) to (1E) in relation to any class of company.”

29 Article 113B amended

In Article 113B of the principal Law –

- (a) in paragraph (4), for the words “the company’s officers and the secretary” there shall be substituted the words “any relevant person”; and
 - (b) after paragraph (4) there shall be inserted the following paragraphs –
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“(4A) Each of the following is a ‘relevant person’ for the purposes of this Article and Article 113C –

- (a) any person who is, or at any relevant time was, an officer or the secretary of the company;
- (b) any person who is, or at any relevant time was, an employee of the company and who appears to possess information which the auditor thinks necessary for the performance of the auditor’s duties; and
- (c) any person who holds or is accountable for, or who at any relevant time held or was accountable for, any of the company’s records and who appears to possess such information.

(4B) Any information or explanation provided by a person in response to a requirement under paragraph (4)(b) may not be used in evidence against the person in criminal proceedings except proceedings for an offence under Article 113C(2).

(4C) Nothing in paragraph (4)(b) compels a person to provide any information or explanation which the person would be entitled to refuse to provide in proceedings in court on the ground of legal professional privilege.”.

30 Article 113C amended

In Article 113C(2) of the principal Law –

- (a) for the words “An officer of a company or its secretary” there shall be substituted the words “A relevant person”; and
- (b) for the words “officer or secretary” there shall be substituted the words “relevant person”.

31 Article 115 amended

In Article 115 of the principal Law –

- (a) in paragraph (2), after the word “Article” there shall be added the words “if the distribution –
 - (a) reduces the net assets of the company; or
 - (b) is in respect of shares which (in accordance with the generally accepted accounting principles adopted in the preparation of the most recent accounts of the company prepared under Article 105 or, if none have been, proposed to be adopted in the preparation of the first accounts of the company so prepared) are required to be recognized as a liability in the accounts of the company”;
- (b) after paragraph (2) there shall be inserted the following paragraph –

“(2A) In paragraph (2) ‘the net assets of the company’ means the aggregate of the company’s assets less the aggregate of its

liabilities; and any question as to whether a distribution reduces the amount of the net assets of the company for the purposes of that paragraph is to be determined in accordance with the generally accepted accounting principles adopted in the preparation of the most recent accounts of the company prepared under Article 105 or, if none have been, proposed to be adopted in the preparation of the first accounts of the company so prepared.”; and

- (c) paragraph (8) shall be deleted.

32 Article 115ZA inserted

After Article 115 of the principal Law there shall be inserted the following Article –

“115ZA Order treating distribution as made in accordance with Article 115

- (1) Where a distribution has been made by a company in contravention of Article 115 and the company makes an application to the court, the court shall make an order that the distribution is to be treated for all purposes as if it had been made in accordance with that Article if the court –
- (a) considers that all of the conditions specified in paragraph (2) are met; and
 - (b) does not consider that it would be contrary to the interests of justice to do so.
- (2) The conditions referred to in paragraph (1)(a) are that –
- (a) immediately after the distribution was made the company was able to discharge its liabilities as they fell due;
 - (b) at the time when the application is determined by the court the company is able to discharge its liabilities as they fall due; and
 - (c) where the distribution was made less than 12 months before the date on which application is determined, the company will be able to carry on business, and discharge its liabilities as they fall due, until the end of the period of 12 months beginning with the date on which the distribution was made.
- (3) No notice of an application under paragraph (1) need be given to any creditor of the company, or any other person, unless the court otherwise directs.”.

33 Article 115A amended

In Article 115A of the principal Law, after the words “Article 115” there shall be inserted the words “(and is not treated as if it had been made in accordance with that Article by virtue of an order under Article 115ZA)”.

34 Article 116 amended

After Article 116(2B) of the principal Law there shall be inserted the following paragraphs –

“(2C) An offer is not prevented from being a takeover offer by reason of not being made to shareholders whose registered address is not in Jersey if –

- (a) the offer was not made to those shareholders in order not to contravene the law of a country or territory outside Jersey; and
- (b) either –
 - (i) the offer is published in the Jersey Gazette, or
 - (ii) a document containing the terms of the offer can be inspected, or a copy of it obtained, at a place in Jersey or on a website, and a notice is published in the Jersey Gazette specifying the address of that place or website.

(2D) Where an offer is made to acquire shares in a company and there are persons for whom, by reason of the law of a country or territory outside Jersey, it is impossible to accept the offer, or more difficult to do so, that does not prevent the offer from being a takeover offer.

(2E) It is not to be inferred –

- (a) that an offer which is not made to every holder of shares, or every holder of shares of any class or classes, in the company cannot be a takeover offer unless the requirements of paragraph (2C) are met; or
- (b) that an offer which is impossible, or more difficult, for certain persons to accept cannot be a takeover offer unless the reason for the impossibility or difficulty is the one mentioned in paragraph (2D).”.

35 Article 127FB amended

In Article 127FB(2)(a) of the principal Law, for the words “28 days” there shall be substituted the words “21 days”.

36 Article 127FC amended

In Article 127FC of the principal Law –

- (a) for paragraph (1) there shall be substituted the following paragraphs –

“(1) During the period beginning with the date on which the first notice is given under Article 127F(1) in relation to a merger and ending 21 days after the merger is approved under Article 127F(3), each merging company shall send written notice to each of its creditors who, after its directors have made reasonable enquiries, is known

to the directors to have a claim against the company exceeding £5,000.

(1A) No later than 21 days after a merger is approved under Article 127FA(6), each merging company shall send written notice to each of its creditors who, after its directors have made reasonable enquiries, is known to the directors to have a claim against the company exceeding £5,000.”; and

(b) in paragraph (6)(a), for the words “28 days” there shall be substituted the words “21 days”.

37 Article 127FD amended

In Article 127FD(4) of the principal Law, for the words “28 days” there shall be substituted the words “21 days”.

38 Article 127FE amended

In Article 127FE(2)(a) and (b) of the principal Law, for the words “28 days” there shall be substituted the words “21 days”.

39 Article 127FJ amended

In Article 127FJ(3) of the principal Law –

(a) for the words “The application” there shall be substituted the words “Except where all the members of the companies and all the known creditors of the companies otherwise agree in writing, the application”; and

(b) in sub-paragraph (c)(i) and (ii), for the words “28 days” there shall be substituted the words “21 days”.

40 Part 18BA inserted

After Article 127GA of the principal Law there shall be inserted the following Part –

“PART 18BA

DEMERGERS

127GB Demergers

(1) The States may by Regulations make provision for enabling the undertaking, property and liabilities of a company to be divided among 2 or more companies.

(2) Regulations made under paragraph (1) may create offences and prescribe penalties.

(3) Regulations made under paragraph (1) may –

- (a) provide for the Chief Minister to exercise a discretion in respect of matters prescribed by the Regulations;
- (b) permit the Commission to publish fees that may be imposed by the Regulations; and
- (c) permit the Commission and the registrar to publish material in respect of matters prescribed by the Regulations.”.

41 Article 127R amended

In Article 127R of the principal Law –

- (a) for paragraph (1) there shall be substituted the following paragraphs –
 - “(1) Before a company makes an application under Article 127T to the Commission for authorization to seek continuance in another jurisdiction, the company shall, unless all its known creditors otherwise agree in writing, give notice to them in accordance with paragraph (2).
 - (1A) The notice shall be given at least 21 days before the making of the application.”; and
- (b) in paragraphs (2)(d) and (3), for the words “30 days” there shall be substituted the words “21 days”.

42 Article 127S amended

In Article 127S(2) of the principal Law, for the words “30 days” there shall be substituted the words “21 days”.

43 Article 135 amended

In Article 135(3) of the principal Law, for the words “supervisory functions corresponding to those of the Commission in respect of bodies corporate.” there shall be substituted the words “any function that is the same as, or similar to, a function of the Commission.”.

44 Article 169A amended

In Article 169A of the principal Law –

- (a) in paragraph (4) –
 - (i) for the words “at least” there shall be substituted the words “in excess of”, and
 - (ii) after the words “the resolution” there shall be inserted the words “(either in person or by proxy)”; and
- (b) for paragraph (5) there shall be substituted the following paragraph –
 - “(5) A creditors’ meeting is not competent to act unless there is present (either in person or by proxy) at least one creditor entitled to vote.”.

45 Article 205 amended

In Article 205 of the principal Law –

- (a) after paragraph (1) there shall be inserted the following paragraph –
- “(1A) Where –
- (a) a company fails to comply with a notice under Article 67(6);
or
- (b) the registrar refuses under Article 67(8) to register a notice given by a company under Article 67(5) or (6),
- the registrar may publish in the Jersey Gazette a notice under paragraph (6) and (unless it is not reasonably practicable to do so) send the notice to the company.”; and
- (b) in paragraph (6), after “(1),” there shall be inserted “(1A),”.

46 Schedule 1 amended

In the table in Schedule 1 to the principal Law –

- (a) the entry relating to Article 36(2) shall be deleted;
- (b) after the entry relating to Article 58B(4) there shall be inserted the following entries in the first, second and third columns –

“61A(3)	Director making solvency statement without reasonable grounds for the opinion expressed	2 years or a fine; or both”;	
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- (c) after the entry relating to Article 88(5) there shall be inserted the following entries in the first, second and third columns –

“95ZA(5)	Company and officer in default failing to comply with Article 95ZA(2) to (4) (circulation of written resolutions proposed by directors etc)	Level 3”;	
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- (d) after that entry there shall be inserted the following entries in the first, second and third columns –

“95ZC(5)	Company and officer in default failing to comply with Article 95ZC(2) to (4) (circulation of written resolutions required under Article 95ZB etc)	Level 3”;	
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- (e) in the entry relating to Article 113C(2), in the second column, for the words “Company officer or secretary” there shall be substituted the words “Relevant person”.

47 Citation and commencement

- (1) This Law may be cited as the Companies (Amendment No. 11) (Jersey) Law 2014.
- (2) This Law comes into force 7 days after it is registered.

L.-M. HART

Deputy Greffier of the States

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- 1* chapter 13.125
2 L.13/2014
3 chapter 13.265
4 chapter 13.265
5 chapter 13.265
6 L.13/2014
7 chapter 15.560.20