



Jersey

COMPANIES (AMENDMENT No. 9) (JERSEY) LAW 2008

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

<i>Adopted by the States</i>	<i>16th January 2008</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>11th June 2008</i>
<i>Registered by the Royal Court</i>	<i>20th June 2008</i>

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(1) of the principal Law –

- (a) in the definition “capital accounts”, in paragraph (b), the words “and any capital redemption reserves” are deleted; and
- (b) after the definition “surname” there is inserted the following definition –
 - “ ‘treasury share’ means a share held as a treasury share under Article 58A(1);”.

3 Article 2 amended

In Article 2 of the principal Law –

- (a) for paragraph (4) there is substituted the following paragraph –
 - “(4) A holding company is a body corporate that is a holding body.”;
 - and

(b) paragraph (5) is deleted.

4 New Article 2B

In the principal Law, after Article 2A, there is inserted the following Article –

“2B Power of States to amend Part 1

The States may amend this Part by Regulations.”.

5 Article 13 amended

In Article 13 of the principal Law, after paragraph (3), there are inserted the following paragraphs –

“(3A) Despite paragraph (2), the name of a public company that is a limited company may end with the words ‘public limited company’ or the abbreviation ‘PLC’ or ‘plc’.

(3B) A company which is registered with a name ending with the words ‘public limited company’ or the abbreviation ‘PLC’ or ‘plc’ may, in setting out or using its name for any purpose under this Law, do so –

- (a) in full or in the abbreviated form; and
- (b) in any combination of capital or lower case characters, as it prefers.”.

6 Article 17 amended

In Article 17 of the principal Law, paragraph (4) is deleted.

7 Article T55 repealed

Article T55 of the principal Law is repealed.

8 Article 55 amended

In Article 55 of the principal Law –

(a) for paragraphs (4) to (7) there are substituted the following paragraphs –

“(4) The redeemable limited shares of a par value company that is not an open-ended investment company shall be capable of being redeemed from any source, but only if they are fully paid up.

(5) The redeemable limited shares of a no par value company that is not an open-ended investment company shall be capable of being redeemed from any source, but only if they are fully paid up.”;

- (b) paragraphs (13) to (15) are deleted;
- (c) for paragraph (16) there is substituted the following paragraph –

“(16) A company may, by special resolution, apply a capital redemption reserve in issuing shares to be allotted as fully paid bonus shares.”.

9 Article 58 amended

In Article 58 of the principal Law, paragraphs (4) and (5) are deleted.

10 Article 58A amended

In Article 58A of the principal Law, in paragraph (5), the words “55(14) and (15) and Article” are deleted.

11 Article 61 amended

In Article 61 of the principal Law, in paragraph (3), after the words “paragraphs (4) and (5)” there are inserted the words “or in the case of a reduction in capital comprised of a distribution made in accordance with Article 115”.

12 Article 73 amended

In Article 73 of the principal Law, paragraph (5) is deleted.

13 New Article 85A inserted

In the principal Law, immediately after Article 85, there is inserted the following Article –

“85A Power of States to amend Part 14

The States may amend this Part by Regulations.”.

14 Article 87 amended

In Article 87 of the principal Law –

- (a) in paragraph (4) the word “private” is deleted;
- (b) in paragraph (6) –
 - (i) in sub-paragraph (a) for the words “the agreement;” there are substituted the words “the agreement; or”,
 - (ii) in sub-paragraph (b) for the words “the agreement; or” there are substituted the words “the agreement.”, and
 - (iii) sub-paragraph (c) is deleted.

15 Article 90 amended

In Article 90 of the principal Law, in paragraphs (1) and (2), for the words “21 days’ notice” there are substituted the words “14 days’ notice”.

16 Article 91 amended

In Article 91 of the principal Law –

- (a) in paragraph (1) for the words “by a shorter notice than –” and all the words following there are substituted the words “by a shorter notice than 14 days’ notice in writing.”;
- (b) in paragraph (2) for the words “may be called –” and all the words following there are substituted the words “may be called by 14 days’ notice in writing.”.

17 Article 104 amended

In Article 104 of the principal Law –

- (a) for paragraph (2) there shall be substituted the following paragraphs –
 - “(2) The accounts must be prepared in accordance with any generally accepted accounting principles.
 - (2A) The accounts of a company must specify the generally accepted accounting principles that have been adopted in their preparation.
 - (2B) The accounts of a company that is required by Article 109(1) to appoint an auditor must show a true and fair view of, or be presented fairly in all material respects so as to show –
 - (a) the company’s profit or loss for the period covered by the accounts; and
 - (b) the state of its affairs at the end of the period,and must otherwise comply with any other requirements of this Law.”;
- (b) in paragraph (4)(b) for the words “subject in the case of a private company to paragraph (5)” there are substituted the words “subject to paragraph (5)”.

18 Article 106 amended

In Article 106 of the principal Law, after paragraph (1), there is inserted the following paragraph –

- “(1A) If a public company becomes a private company during a financial period –
 - (a) paragraph (1) applies in relation to the company in respect of that period; and
 - (b) the requirement in paragraph (1)(a) to deliver accounts may be satisfied if the accounts relate to either all of the financial period (including a period when the company was no longer

a public company) or only the part of the financial period during which the company was a public company.”.

19 Article 108 substituted

For Article 108 of the principal Law there is substituted the following Article –

“108 Power to amend Part 16

The States may amend this Part by Regulations.”.

20 Article 109 amended

In Article 109 of the principal Law in paragraphs (4) and (5) the word “private” is deleted.

21 Article 110 amended

In Article 110 of the principal Law for paragraph (3) there shall be substituted the following paragraph –

“(3) The report must state whether, in the opinion of the auditor, the accounts –

- (a) have been properly prepared in accordance with this Law; and
- (b) give a true and fair view or, alternatively, are presented fairly in all material respects.”.

22 Article 113A amended

In Article 113A of the principal Law, in paragraph (2) –

- (a) in sub-paragraph (a), for the words “at least 75% of the partners are” there are substituted the words “at least 50% of the partners are any of, or any combination of, the following”;
- (b) in sub-paragraph (b), for the words “at least 75%” there are substituted the words “at least 50%”.

23 Article 113B amended

In Article 113B of the principal Law, in paragraph (4), for the words “at least 75%” (wherever occurring) there are substituted the words “at least 50%”.

24 Articles 114 and 115 substituted

For Articles 114 and 115 of the principal Law there are substituted the following Articles –

“114 Meaning of ‘distribution’ in this Part

- (1) In this Part, ‘distribution’, in respect of a company, means every description of distribution of the company’s assets to its members as members, whether in cash or otherwise.
- (2) However, ‘distribution’ does not include a distribution by way of –
 - (a) an issue of shares as fully or partly paid bonus shares;
 - (b) the redemption or purchase of any of the company’s shares;
 - (c) any reduction of capital by extinguishing or reducing the liability of any of the members on any of the company’s shares in respect of capital not paid up; or
 - (d) a distribution of assets to members of the company on its winding up.

115 Restrictions on distributions

- (1) A company may make a distribution at any time.
- (2) A company shall not make a distribution except in accordance with this Article.
- (3) A company (other than an open-ended investment company) may make a distribution only if the directors who are to authorize the distribution make a statement in accordance with paragraph (4).
- (4) The statement shall state that the directors of the company who are to authorize the distribution have formed the opinion –
 - (a) that, immediately following the date on which the distribution is proposed to be made, the company will be able to discharge its liabilities as they fall due; and
 - (b) that, having regard to –
 - (i) the prospects of the company and to 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 on which the distribution is proposed to be made or until the company is dissolved under Article 150, whichever first occurs.
- (5) A director who makes a statement under paragraph (4) without having reasonable grounds for the opinion expressed in the statement is guilty of an offence.
- (6) Despite any other provision of this Law, an open-ended investment company may make a distribution only if the directors who are to authorize the distribution reasonably believe that immediately after

the distribution has been made the company will be able to discharge its liabilities as they fall due.

- (7) A distribution made in accordance with this Article is debited to –
- (a) a share premium account, or a stated capital account, of the company; or
 - (b) any other account of the company, other than the capital redemption reserve or the nominal capital account.
- (8) In paragraph (7), ‘nominal capital account’, in relation to a company, means a share capital account of the company to which are credited funds equivalent to the nominal value of the shares issued by the company.’.

25 New Article 115B inserted

In the principal Law, after Article 115A, there is inserted the following Article –

“115B Power of States to amend Part 17

The States may amend this Part by Regulations.’.

26 Article 125 amended

In Article 125 of the principal Law, for paragraph (2) there is substituted the following paragraph –

- “(2) If a majority in number representing –
- (a) 3/4ths in value of the creditors or class of creditors; or
 - (b) 3/4ths of the voting rights of the members or class of members,
- as the case may be, present and voting either in person or by proxy at the meeting, agree to a compromise or arrangement, the compromise or arrangement, if sanctioned by the court, is binding on –
- (i) all creditors or the class of creditors; or
 - (ii) all the members or class of members,
- as the case may be and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.’.

27 Article 127N(5) amended

In Article 127N(5) of the principal Law, for the word “Committee” there is substituted the word “Commission”.

28 Article 127W amended

In Article 127W of the principal Law –

- (a) in paragraph (1), for sub-paragraph (b) there is substituted the following sub-paragraph –

“(b) that, having regard to –

- (i) the prospects of the company,
- (ii) the intentions of the directors with respect to the management of the company’s business, and
- (iii) the amount and character of the financial resources that will in the directors’ 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 on which the statement is signed.”;

- (b) in paragraph (2), for sub-paragraph (b) there is substituted the following sub-paragraph –

“(b) that, having regard to –

- (i) the prospects of the applicant,
- (ii) the intentions of the directors with respect to the management of the applicant’s business, and
- (iii) the amount and character of the financial resources that will in the directors’ view be available to the applicant if the application is granted,

the applicant, if incorporated under the laws of the other jurisdiction, will be able to discharge its liabilities as they fall due.”;

- (c) at the end there is added the following paragraph –

“(4) A director, or a person who is to be a director, who makes a statement under paragraph (1) or (2) without having reasonable grounds for the opinion expressed in the statement is guilty of an offence.”.

29 Repeal of Article T127YN and consequential renumbering of Articles

- (1) Article T127YN of the principal Law is repealed.
- (2) Articles T58B, T127YDA, T127YE, T127YI and T127YIA of the principal Law are renumbered respectively as Article 58B, 127YDA, 127YE, 127YI and 127YIA.

30 Article 186 amended

In Article 186 of the principal Law, at the end, there is added the following paragraph –

“(3) Despite paragraphs (1) and (2) and Article 166, if, in the course of a creditor’s winding up of a company, the liquidator (or, if a liquidator has not yet been appointed, a director) is satisfied that the company’s assets will be sufficient to ensure that –

- (a) the costs, charges and expenses properly incurred in the winding up may be paid; and
- (b) the claims of all creditors (including any interest owing on a debt) may be satisfied in full,

the liquidator, or, with the sanction of the court under Article 164(2), the director, may, before or after meeting some or all of those costs, charges and expenses and satisfying some or all of the claims of the creditors, distribute to the members of the company, proportional to their rights or interests, or otherwise as provided by the company’s memorandum or articles, so much of the company’s assets as shall not be required to meet those costs, charges, expenses and claims.”.

31 Article 220 amended

At the end of Article 220 of the principal Law there is added the following paragraph –

“(3) A power conferred on the States by this Law to make Regulations to amend any provision of this Law includes the power to make Regulations to make such transitional, consequential, incidental or supplementary amendments to any other provision of this Law as appears to the States to be necessary or expedient.”.

32 Schedule 1 amended

In Schedule 1 to the principal Law –

- (a) for the entry relating to Article 58(5) there is substituted the following entry –

“58B(4)	Company failing to dispose of treasury shares	Level 3	Level 2”;
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- (b) after the entries relating to Article 113E(2) there are inserted the following entries in Columns 1, 2 and 3 respectively –

“115(5)	Director making statement without having reasonable grounds for doing so	2 years or a fine, or both”;
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- (c) after the entries relating to Article 127(4) there are inserted the following entries in Columns 1, 2 and 3 respectively –

“127W(4)	Director, or future director, making statement without having reasonable grounds for doing so	2 years or a fine, or both”;
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- (d) in the entry relating to Article 127Y, for the words “Part XVIIIIC” there are substituted the words “Part 18C”;
- (e) for the entry relating to Article 127YD(3) there is substituted the following entry –

“127YDA(4)	Company or cell failing to comply with requirements re directors	Level 3	Level 2”;
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- (f) for the entries relating to Article 127YF(4) and 127YG(5) there is substituted the following entry –

“127YE(5)	Cell of cell company and officer failing to provide information to cell company	Level 3	Level 2”;
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- (g) for the entries relating to Article 127YI(6) and (7) there are substituted the following entries –

“127YI(5)	Director making declaration without reasonable grounds to do so	2 years or a fine; or both	
127YI(7)	Cell company and officers failing to file document in respect of cell transfer	Level 3	Level 2
127YIA(5)	Director making declaration without having reasonable grounds to do so	2 years or a fine; or both	
127YIA(7)	Cell company and officer failing to file document in respect of cell transfer	Level 3	Level 2”.

33 Citation and commencement

- (1) This Law may be cited as the Companies (Amendment No. 9) (Jersey) Law 2008.
- (2) Except as provided by paragraph (3), this Law shall come into force 7 days after it is registered.
- (3) Articles 17 to 22 of this Law shall come into force on such day or days as the States may by Act appoint.

A.H. HARRIS

Deputy Greffier of the States

¹ *chapter 13.125*