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CHANGES TO THE COMPANY LAW FRAMEWORK IN 2012–2013

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This briefing note summarises the changes to the Companies (Jersey) Law 1991 and the company law framework in a number of areas, introduced as a result of three pieces of amending legislation in the course of 2012 to early 2013.

Introduction¹

1 The Companies (Jersey) Law 1991 is now of some vintage, albeit working reasonably well in providing a useful and efficient framework for the conduct of business in Jersey. Since enacted, the Law has been periodically amended to update and refine its provisions and continue to keep it relevant to the needs of the modern age. Legislative amendments have appeared at a steady pace over the period since the introduction of the Law, although in recent years it seems as if this pace has accelerated. In 2009, three sets of changes were made in a number of key areas, affecting the threshold requirement separating the choice between private and public companies, the requirements for registered offices and bringing certain clarifications to the framework for transactions with capital and the uses to which the share premium and stated capital accounts may be put. Also of import, although a modest change, was the alteration to the special resolution threshold authorising companies to impose greater majorities to protect their internal constitutional frameworks and decision-making procedures. The major changes in this series of amendments were to the accounting and audit frameworks, which necessitated the drafting of a mostly new Part 16 of the Law so as to enable compliance with international auditing regimes that have an impact on the Jersey corporate sector.² In 2011, three further sets of changes were also

¹ References below to articles and Parts are to the Companies Law (Jersey) 1991 unless otherwise specified.

² Companies (Amendment No 3) Regulations 2009 (in force 3 March 2009), Companies (Amendment No 10) (Jersey) Law 2009 (in force 6 November 2009), and Companies (Amendment No 4) Regulations 2009 (in force 5 April

made to deal with the effect of the introduction of the new separate and incorporated limited partnership forms as well as to introduce major changes to the merger framework, which necessitated the drafting of a mostly new Part 18 of the Law, the purpose of which was to enable mergers, particularly at the cross-border level, for which the Law did not hitherto provide.³

2 This briefing note takes a look at some of the changes introduced as a result of amending legislation in the period 2012 to March 2013. These have included amendments made consequent to the introduction of the possibility of civil partnerships on the Island as well as a new regime for security interests in 2012 and the need to tidy up the rules on the differentiation between individual and corporate directors made in 2013.⁴

1. Definitions in and structure of the Law

(a) Significant others

3 The Law is updated to reflect the new framework for civil partnerships to provide that art 58A(9)(b), which permits the transfer of shares for the purposes of or under an employee share scheme, art 123(7), defining the meaning of associates for the purpose of takeover provisions in Part 18, art 176B, also defining associates for the purposes of the provisions on transactions at an undervalue and preferences (arts 176 and 176A) as well as art 210, on the privilege against self-incrimination or incrimination of another, will now include note being taken of civil partners, who are assimilated to the position of spouses. Furthermore, in the case of art 58A(9)(b), account may also be taken of surviving civil partners in order to determine the

2010), covered by this author in “Changes to the Company Law Framework in 2009–2010”, (2010) 14 JGLR at 319.

³ Companies (Amendment No 5) Regulations 2011 (in force 23 February 2011), Separate Limited Partnerships (Jersey) Law 2011 (in force 20 April 2011) and the Companies (Amendment No 6) Regulations 2011 (in force 20 July 2011), all of which are dealt with, by this author, *ibid.*, at 320.

⁴ Civil Partnerships (Jersey) Law 2012 (in force 2 April 2012), Security Interests (Jersey) Law 2012 (not yet in force), and Companies (Amendment No 7) Regulations 2013 (“Regulations No 7”) (in force 27 March 2013). A Companies (Designated Body) (Jersey) Order 2012 (in force 18 December 2012) was also made to designate the Financial Reporting Council Limited (a United Kingdom body) for the purposes of assisting the Jersey Financial Services Commission (“JFSC”) in enforcing compliance with professional standards under arts 113K, 113L and 113M in relation to the audit rules that were introduced in 2010.

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entitlements of those (formerly) related by marriage or civil partnership to company shareholders by virtue of participating in an employee share scheme.⁵

(b) Articulation between security interests and companies legislation

4 Of general note here are the statements in the new security interests framework of the articulation between it and companies legislation. Under these rules, a deeming provision recites that nothing in companies legislation is intended to affect the operations of the security interests framework, while the new rules on security interests are also explicitly stated as not affecting the operations of art 2A(7), deeming rights attached to shares used as security to remain ordinarily with the shareholder, art 127(3), which provides for the vesting of shares (and other property) free of a security interest under a scheme of arrangement, arts 176(3), 176A(2) and 179(5), which allow for the making of orders adjusting property and security rights pursuant to the discovery of a transaction at an undervalue, preference or extortionate credit transaction, respectively.⁶

2. Individual and corporate directors

5 Changes to the law are made to distinguish between the requirements for individual and corporate directors. Article 7(3) is amended to stipulate that the requirements for information to be supplied by public companies for the purposes of registration in relation to the directors, to wit their name, nationality, date of birth, occupation and business or residential address, are to apply only to directors that are natural persons.⁷ A new provision will require, for corporate directors, the name under which the entity is registered, their registration number, the address of their registered office and their country or territory of registration, if outside Jersey.⁸ For these purposes, registration for entities emanating from jurisdictions elsewhere will be taken to mean registration or any equivalent procedure that is in use in the jurisdiction concerned by which companies are brought into being and that would apply to the relevant

⁵ Para 6, Schedule 4, Civil Partnerships (Jersey) Law 2012.

⁶ Art 58, Security Interests (Jersey) Law 2012.

⁷ Rule 2, Regulations No 7. Consequent changes are also made in Rule 6 to art 71(1)(e) (directors' details to be included in annual return), art 83(1) (requirement to maintain a register) and art 127K(1)(e) (details of directors in statement for purposes of continuance) to point to the articles as altered/inserted.

⁸ *Ibid*, inserting new art 7(3A).

entity.⁹ Furthermore, an entity which seeks to have corporate director status will also have to satisfy the definition in art 73(4), which prevents a body corporate from acting as a company director unless it is permitted in terms of its registration under the Financial Services (Jersey) Law 1998 to serve as director or fulfil the requirements of the function and, furthermore, does not itself have another company as its (or one of its) director(s). Article 73(4) is also amended to ensure that it refers to all bodies corporate wherever they are registered, thus capturing within its remit foreign corporate directors.¹⁰

6 In relation to the requirements to keep particulars of directors and secretaries on a register, the current provision in art 84 dealing with particulars of directors, which replicate the information required for the purposes of art 7(3) with the addition of the dates on which the directorship was assumed and, it being the case, relinquished, is to be restricted to directors who are natural persons.¹¹ For corporate directors, a new provision is created requiring, for the purposes of maintaining a register, information including, in the case of a Jersey company, its name, registered number and the address of its registered office. For any other company, the details required will be its corporate name, the place where it is incorporated and, as necessary, its registered number as well as the address of its registered office in that jurisdiction. For all types of company, the date on which it became a corporate director and, if appropriate, the date on which it ceased this function, are also required. For this provision also, compliance with the definition of a corporate director in art 73(4) is a prerequisite.¹²

3. Corporate liquidation and avoidance of share dispositions

7 A transfer of shares made in the context of enforcement by a creditor under the new regime for security interests introduced in 2012 will not attract the avoidance rule in art 159(3) which renders void any transfer of shares made following the moment a creditors' winding up is deemed to commence.¹³ This is despite the fact the transfer is not made to the liquidator or indeed with the sanction of the liquidator. This is intended to cover the situation of a disposition to a third party that may occur despite the prohibition and which under the previous

⁹ *Ibid*, inserting new art 7(3B).

¹⁰ Rule 3, Regulations No 7.

¹¹ *Ibid*, Rule 4.

¹² *Ibid*, Rule 5, inserting new art 84A.

¹³ New art 159(5), introduced by Schedule 1, para 3, Security Interests (Jersey) Law 2012.

security interests framework¹⁴ did not appear to attract a similar protection in the event of a creditor exercising its right to sell collateral that consisted of shares in a company.

Summary

8 The changes made by virtue of the amending texts covered in this briefing note may appear minor, albeit useful to ensure the perennity of the law and its concordance with the changes being introduced by other texts as well as with changes deriving from practice, including here the need to clarify the position of corporate directors. It is unlikely that these will be the last changes for the foreseeable future as the JFSC issued a Green Paper dated 25 November 2011 which opened a consultation on over 30 different topics within the wide scope of the law and seeking views on the issues identified. The items contained in the Green Paper have not been, thus far, featured in legislative proposals, although a number of them may in due course appear in future draft legislation. The legislators and practitioners in corporate law will certainly be kept busy studying and assimilating the impact of the current and likely future changes.

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¹⁴ The Security Interests (Jersey) Law 1983, which will remain in force until the 2012 Law comes into force and, even then, will continue to govern security interests created under its terms unless they are brought within the later framework.