

Further Jersey Company Law Amendments

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The last few years have seen the world of offshore finance become increasingly competitive. This trend, together with the generally gloomy outlook for global economic prospects, has made it more important than ever that those charged with responsibility for Jersey's financial sector strive to make sure that it maintains its attractiveness for international investors. It is with this in mind that, as part of its ongoing strategy to maintain and build upon Jersey's position as a leading offshore financial centre, the Jersey legislature is in the process of introducing a series of company law amendments - **Companies (Amendment) No. 10 (Jersey) Law 200-** ("Amendment No. 10") and **Companies (Amendment) No. 3 (Jersey) Regulations 2009** ("Amendment No.3") (together "the Amendments").

AMENDMENT NO.10

The intention behind Amendment No. 10 is to clarify aspects of the **Companies (Jersey) Law 1991** (the "Law") and to provide statutory

guidance with regard to a number of areas of uncertainty which had come to light since the last round of company law amendments, which took place in 2008. Amendment No. 10, which has recently been by the States of Jersey subject to Privy Council approval, deals principally with the following five main areas of company law - distributions, reduction in capital, registered offices, special resolutions and company conversions, and these revisions are set out in more detail below.

DISTRIBUTIONS

The Amendments provide a useful clarification of the rules regarding distributions. These changes will permit, amongst other things, a par value company to apply its share premium account in the making of a distribution and a no par value company to apply its stated capital account for any purpose for which a share premium account is applied by a par value company.

In addition, Article 61 of the Law will be amended to clarify the fact that a distribution in accordance with Article 115 of the Law (which governs restrictions on distribution) will not be deemed to be a reduction of capital for the purposes of Part 12 of the Law, which deals with reductions of capital. A corresponding amendment to Article 115 also sets out that a distribution that is made in accordance with Article 115 will not be treated as a reduction of capital for the purposes of Part 12 of the Law. Overall, the intention is to make the distributions regime more focused and to follow a solvency based approach.

REDUCTION IN CAPITAL

Further clarification has also been provided with regard to reductions of share capital. Following the introduction of a new Article 58C, it is now clear that in future, for the purposes of a reduction of capital under Part 12 of the Law (Reductions of Capital), the redemption, purchase or cancellation of its own shares by a company will not be regarded as a reduction of capital.

REGISTERED OFFICES

The Amendments include a tightening of the rules for registered offices in Jersey. A result of which is that a new offence has been introduced to deal with companies who do not comply with their obligations concerning the maintenance of a registered office in Jersey.

SPECIAL RESOLUTIONS

There are also proposed changes to the rules governing special resolutions. These changes will allow companies to require a higher than two-thirds majority to be specified in their Articles of Association as the majority required to meet the threshold for a special resolution. The purpose behind these changes is to assist Jersey companies which are looking to list on certain foreign exchanges, such as the Hong Kong Stock Exchange, where this may be required.

COMPANY CONVERSIONS

The changes will lead to the introduction of an additional right of appeal to the Royal Court for a company and/or any of its members against certain directions of the Jersey Financial Services Commission (the "JFSC") regarding company conversions from public to private status, where there are more than 30 members of that company but the nature of its affairs are domestic.

AMENDMENT NO.3

As well as the more substantive changes being brought in by Amendment No. 10, Amendment No. 3, which came into force on 3 March 2009, clarifies various technical changes that were made to the Law in 2008.

One of its key amendments is the change to the definition of an open-ended investment company ("OEIC") which allows funds whose shares may be subject to frequent redemptions (e.g. COBO-only, unregulated and feeder funds) to benefit from exemptions offered to OEIC's in this regard.

CONCLUSIONS

The clarification of these important aspects of the Law should make Jersey an easier and more attractive place to do business. The extension of rights of appeal and the improved supervision of the use of registered offices, in particular, should also mean that investors in the island are better protected. Finally, it is hoped that the increased number of funds who will benefit from the exemptions awarded to OEIC's should increase the amount of investment coming into Jersey.

Should you have any questions or requests for further information, please contact:

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