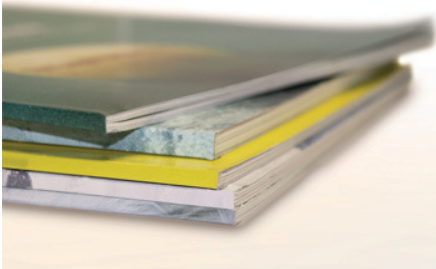


## Roundup of Jersey Companies Law Amendments

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BY MARK ESTELLA

### Roundup of Jersey Company Law Amendments

From a legislative perspective 2009 has been a very busy year and saw the commencement of various amendments to the **Companies (Jersey) Law 1991**, as amended (the “Law”), as well as the announcement of various other changes to the Law that are forthcoming in the near future. The changes are part of the Jersey legislature’s 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. 11) (Jersey) Law 200-** (“Amendment No. 11”), **Companies (Amendment No. 4) (Jersey) Regulations 200-** (“Amendment No. 4”) and **Companies (Amendment No. 5) (Jersey) Regulations 200-** (“Amendment No. 5”)

Additionally the **Companies (Amendment) No. 10 (Jersey) Law 2009** (“Amendment No. 10”) was approved by the Jersey legislature and came into force on 6 November 2009.

**Companies (Amendment) No. 3 (Jersey) Regulations 2009** (“Amendment No.3”) came into force on 3 March 2009. Amendment No. 10 and Amendment No. 3 are together referred to as the “Amendments”.

### Amendment No. 10

Amendment No. 10 clarifies aspects of the Law and provides statutory guidance in relation to a number of areas of uncertainty which had come to light since the coming into force last year of the **Companies (Amendment No. 9) (Jersey) Law 2008** and the **Companies (Amendment No. 2) (Jersey) Regulations 2008**.

Amendment No. 10, deals principally with the following main areas of company law:

### Distributions

Amendment No. 10 provides 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.

### **Company Conversions**

There is now 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, 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.

### **Amendment No. 11**

Jersey Finance is coordinating the preparation of a paper for submission to the Economic Development Department with consultation following in late 2009. Amendment No. 11 is intended to clarify certain aspects concerning the giving of solvency statements by directors of Jersey companies.

### **Amendment No. 4**

Amendment No.4 responds to the impact on Jersey based auditors of European Union Directive 2006/43/EC (the "Directive") which aims to introduce harmonised provisions in all EU Member States relating to auditor eligibility and independent oversight (Quality Assurance). It also improves the Island's level of compliance with an international standard issued by the International Organisation of Securities Commissions relating to accounting and auditing matters (commonly known as IOSCO Principle 16).

The changes brought in by Amendment No.4 are substantial and the whole of Part 16 of the **Companies (Jersey) Law 1991** will be replaced. The changes contemplated are as follows:

- the need to register on a register of recognised auditors;
- auditors must satisfy certain criteria before being registered as a recognised auditor;
- required to comply with rules set by a recognised professional body (such as the Institute of Chartered Accountants in England and Wales);
- subject auditors to monitoring for compliance with the audit rules set by the recognised professional body; and
- auditors will be subject to disciplinary action for a breach of the audit rules.

## Conclusions

The clarification of these important aspects of the Law should make Jersey a more attractive place to do business.

## Amendment No. 5

An industry response on cross border mergers was submitted to the Economic Development Department on 19 May 2009. Amendment No.5 will contain amendments enabling cross border mergers of Jersey companies.

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