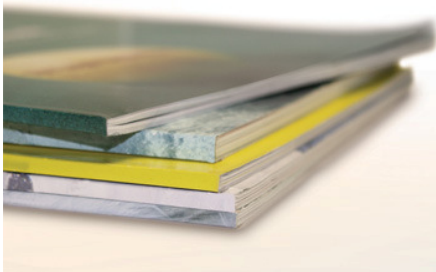


## Jersey Company Law Amendments

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BY DANNY COLE

Since our last company law round up in the autumn 2009 Newsletter, there have been two significant developments in relation to the Companies (Jersey) Law 1991, as amended (the “Law”). Firstly, Companies (Amendment No.4) (Jersey) Regulations 2009 (“Amendment No. 4”) came into force on 10 December 2009 and secondly the Economic Development Department have published a Green Paper for consultation on the proposed Companies (Amendment No.5) (Jersey) Regulations 200- (“Amendment No. 5”).

### Auditors

Amendment No.4 responds to the impact on Jersey based auditors of European Union Directive 2006/43/EC, 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** has been replaced. The changes made include:

- 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.

### Cross-Border Mergers

It is proposed that Amendment No.5 will contain amendments enabling cross-border mergers of Jersey companies with foreign body corporates.

At present, it is only possible to directly merge a Jersey company with another Jersey company. However, the **Companies (Amendment No.10) (Jersey) Law 2009**, introduced an enabling provision into the Law allowing the States of Jersey to make regulations to permit the cross-border merger of Jersey companies with companies and other bodies incorporated outside Jersey, and also with bodies that are incorporated in Jersey but which are not companies.

Although it is possible to merge a Jersey company with a foreign company indirectly by first bringing them into the same jurisdiction (either by continuing the Jersey company into the foreign jurisdiction, or

by continuing the foreign company into Jersey under Part 18C of the Law) and then merging them (either under Part 18B of the Law or the relevant foreign law). This procedure is more cumbersome than the direct merger process permitted in other jurisdictions and is also unsatisfactory in some circumstances for foreign fiscal purposes.

### **Proposed Merger Procedure**

It is intended to amend Part 18B of the Law so as to permit the cross-border merger of Jersey companies (subject to appropriate safeguards) with any other body corporate, wherever incorporated. This would include foreign companies, foreign incorporated bodies and also bodies that are incorporated in Jersey but are not companies, such as foundations (once corresponding amendments have been made to the foundations legislation).

In order to protect the interests of Jersey creditors, employees and the public, and to protect the Island's international reputation with regard to anti-money laundering, it is proposed that the Jersey Financial Services Commission (the "Commission") would supervise cross-border mergers on a similar basis to that which is applied to continuances under Articles 127K and 127T of the Law.

It is proposed that the consent of the Commission would be required for all mergers involving foreign bodies and Jersey bodies other than Jersey companies. Mergers between two (or more) Jersey companies would not require Commission consent.

Where Commission consent is required, the merging entities would have to apply providing sufficient information for the Commission to make a decision e.g. a copy of the merger agreement. In addition, the application would have to include evidence that the merger would be recognised in any relevant overseas jurisdiction and that, where the merged entity is to be an overseas body. Any such jurisdiction would recognise the merged entity as having the rights and liabilities of the merging entities.

The passing of a special resolution of the members of merging companies will be required to approve any

merger. It is therefore proposed that the relevant companies are required to provide shareholders with:

- a copy or summary of the merger agreement and relevant directors' certificates,
- a copy or summary of the merged body's constitutional documents,
- a statement of the material interests of the directors/managers of each merging entity, and
- such further information as a reasonable member would require to reach an informed decision.

Notice must also be given to creditors of the merging companies and creditors who will have the right to apply to the court to restrain the merger.

It is proposed that (whether or not the merger has a cross-border element) the directors of each merging entity would be required to resolve and sign a certificate confirming that the merger is in the best interests of that entity and it will remain solvent until the merger is completed. Each director voting in favour of such a resolution and each proposed director/manager of the merged body would also have to sign a further certificate confirming the solvency of the merged body. However, a merger where one or more of the merging bodies is insolvent may still be permitted, but only where the court has specifically consented to this.

At present, the Law provides that the merged entity must be a body corporate, but in order to provide greater flexibility, it is proposed that the parties should be able to choose whether the body resulting from the merger should be either a company, or another body corporate of the same type and incorporated in the same jurisdiction as one of the merging entities.

The consultation process on Amendment No.5 ended on 2 April 2010. Amendment No.5 was received positively by industry as it should strengthen the flexibility of the Jersey company and is one of the key tools used by the finance industry in the Island.

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