

STATES OF JERSEY

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DRAFT COMPANIES (AMENDMENT No. 9)(JERSEY) LAW 200

**Lodged au Greffe on 19th November 2007
by the Minister for Economic Development**

STATES GREFFE



Jersey

DRAFT COMPANIES (AMENDMENT No. 9)(JERSEY) LAW 200

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Economic Development has made the following statement –

In the view of the Minister for Economic Development the provisions of the Draft Companies (Amendment No. 9) (Jersey) Law 200 are compatible with the Convention Rights.

(Signed) **Senator P.F.C. Ozouf**

REPORT

This short amendment to the Companies Law makes a number of changes to the Law, both minor and important.

The most significant change is the amendment to Articles 114 and 115, which will permit a Jersey company to make a distribution provided the directors make a statement in relation to the company's solvency. This will greatly simplify the ability of a company to make payments to its shareholders while maintaining protection for creditors and is in accordance with a general trend in corporate law worldwide.

The amendment also simplifies the ability of certain types of company to reduce their capital accounts, again with the focus being on creditor protection.

Finally, there are a number of minor changes aimed at increasing the law's flexibility. Examples include allowing a public company to include the abbreviation "plc" in its name and reducing certain notice periods to 14 days.

Taken together, the amendments will further encourage the use of Jersey companies, and be beneficial to the Island.

Financial/manpower implications

There are no financial or manpower implications arising from this amendment.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 16th November 2007 the Minister for Economic Development made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Economic Development the provisions of the Draft Companies (Amendment No. 9) (Jersey) Law 200 are compatible with the Convention Rights.

Explanatory Note

Article 1 defines the “principal Law” to mean the Companies (Jersey) Law 1991.

Article 2 alters the definition of “capital accounts” so that “capital redemption reserves” are no longer within the meaning of the definition in so far as it relates to a no par value company, such a company not in fact being required to have such reserves.

The Article also defines “treasury share”. This term is presently defined by temporary Article T55, which this Law repeals.

Article 3 clarifies the wording of the definition of “holding company”.

The Article also deletes a limited power the Minister has to amend the Law and replaces it (see next Article) with a greater power for the States to amend Part 1 of the Law by Regulations.

Article 4 provides the States with a power to amend Part 1 by Regulations.

Article 5 amends Article 13 of the Law to enable a public limited company to end its name in “public limited company”, “PLC” or “plc”, and in any combination of upper and lower case characters, that it prefers.

Article 6 amends Article 17 of the Law by deleting paragraph (4), which purported to create an offence in relation to a provision against which no offence can be committed.

Article 7 repeals temporary Article T55.

Article 8 amends Article 55 of the Law, which relates to the power to issue redeemable shares.

The amendment deletes paragraphs (4) to (7) of Article 55, which set out certain restrictions on the sources of capital from which redemptions, in respect of par value, and no par value, companies, that are not open-ended investment companies, may be made.

The amendment also deletes paragraphs (13), (14) and (15) of Article 55.

Paragraph (13) is removed as it relates to paragraph (5), which is being deleted.

Paragraph (14) currently states that when limited shares are redeemed wholly or partly out of a par value company’s profits, an equivalent sum must be placed in a capital redemption reserve.

Paragraph (15) currently states that when limited shares are redeemed wholly or partly out of the proceeds of a fresh issue of shares, and the proceeds are less than the nominal value of the shares that are redeemed, the company must transfer the amount of the difference to the capital redemption reserve out of distributable profits.

The substitution of paragraph (16) of that Article ensures that capital redemption reserves may be applied in the issue of shares to be allotted as fully paid up bonus shares.

Article 9 repeals Articles 58(4) and (5) of the Law, which will be rendered otiose by amendments to Article 11 of the Law by Article 23 of this Law.

Article 10 makes an amendment to Article 58A, consequential to the repeal of Articles 55(14) and (15) by Article 6.

Article 11 amends Article 61 of the Law, by including in the list of capital reductions that shall not require court confirmation reductions of capital that take place in accordance with Article 115.

Article 12 deletes a limited power the States have to amend one Article of Part 14 and replaces it with (see Article 13) with a general power for the States to amend Part 14 by regulations.

Article 13 gives the States the power to amend Part 14 by Regulations.

Article 14 amends Article 87 of the Law. That Article currently allows members of *private* companies to dispense, by agreement, with the requirement for an annual general meeting to be held. The amendment, by omitting the word “private”, alters the provision so that it will apply to all companies, public or private.

Article 15 amends Article 90 of the Law, by reducing from 21 days to 14 days the period for which notice shall be given of a meeting at which a special resolution is proposed to be made.

Article 16 amends Article 91 of the Law, by reducing from 21 days to 14 days the period for which notice shall be given of any meeting that is to be held.

Article 17 makes an amendment to Article 104 of the Law consequential on the amendments to Article 87 of the Law.

Article 18 inserts into Article 106 of the Law a provision to enable a public company that becomes a private company to satisfy the requirement to give accounts in relation to its existence as a public company, by giving accounts that either relate to just the period before it became a private company, or that include periods before and after it became a private company.

Article 19 replaces Article 108 of the Law with a provision that will allow the States a wider power to amend Part 16 (accounts and audit) of the Law by Regulations.

Article 20 makes amendment to Article 109 of the Law consequential on the amendments to Article 87 of the Law.

Article 21 amends Article 113A of the Law, which relates to qualifications for appointment as auditors. The Article currently requires that, in order for a partnership to be eligible for appointment as an auditor, all partners must hold a relevant qualification, or that at least 75% of the partners, and the voting rights, must be, or be held by, respectively, persons with relevant qualifications. The amendment shall reduce the percentage to 50%.

Article 22 makes similar amendments to the requirements in Article 113B of the Law that a body corporate must satisfy in order to be eligible to be appointed as an auditor.

Article 23 alters provisions relating to distributions contained in Articles 114 and 115 of the Law.

Amendments to Article 114 remove definitions that are no longer required, because of the replacement of Article 115 by this amendment.

It also alters the scope of what is a distribution for the purposes of the Part, by including any reduction of capital by paying off an amount standing to the credit of a capital account.

The amendment replaces the current Article 115. The new Article 115 removes the limitations, on distributions that are currently in the Law.

The new Article permits any distribution by a company that is not an open-ended investment company, providing the directors authorizing it give a statement that, in effect, they believe the company to which the distribution relates shall still be solvent within 12 months after the distribution.

The new Article also permits any distribution by a company that is an open-ended investment company, providing the directors reasonably believe that immediately after the distribution is made the company will be able to discharge its liabilities as they fall due.

The amendment shall have the effect that the paying off of an amount standing to the credit of any capital account shall become a distribution for the purposes of the Article.

The amendment also provides that a distribution made under this Article by a company shall be charged to any account of the company, other than the capital redemption reserve or the nominal capital account of the company.

Article 24 inserts a new Article 115B, to enable the States to amend Part 17 by Regulations.

Article 25 amends Article 125 of the Law so that compromises or arrangements may only be agreed to by $\frac{3}{4}$ of the value of creditors or a class of them, or $\frac{3}{4}$ of the *voting rights* of the members or a class of them. The current provision requires the agreement of $\frac{3}{4}$ of value of creditors or a class of them, or of the *value* of the members or a class of them.

Article 26 corrects an error in the Law, whereby a reference is made to “Committee” rather than “Commission”.

Article 27 amends the existing requirement in relation to statements to be made by directors, so that it fits the new standard requirement for statements as to solvency introduced by this amending Law.

Article 28 repeals temporary Article T127YN, the provisions of which are incorporated into Schedule 1 of the Law by Article 31.

Article 29 alters the provisions of Article 186, which relate to the distribution of company property on winding up. The amendment inserts a new paragraph enabling a liquidator (or if a liquidator has not yet been appointed, a director) to distribute property of the company to the company’s members, before settling all debts and expenses, if he or she is satisfied that the assets of the company shall enable all the creditor’s claims and all the company expenses to be satisfied after the distribution is made.

Article 30 amends Article 220 to provide that when the States is permitted to make Regulations to amend any

provisions of the Law (for example, those in Part 18D of the Law) it can make Regulations that may make consequential amendments to other provisions of the Law (for example, those in Part 1 - Interpretation or in Schedule 1 - penalties for offences under the Law).

Article 31 amends Schedule 1 to the Law, which sets out the penalties to which offences against the Law are to be subject.

Article 32 sets out the name by which the amending Law may be cited and that it shall come into force 7 days after it is registered.



Jersey

DRAFT COMPANIES (AMENDMENT No. 9)(JERSEY) LAW 200

Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Article 1 amended</u>
<u>3</u>	<u>Article 2 amended</u>
<u>4</u>	<u>New Article 2B</u>
<u>5</u>	<u>Article 13 amended</u>
<u>6</u>	<u>Article 17 amended</u>
<u>7</u>	<u>Article T55 repealed</u>
<u>8</u>	<u>Article 55 amended</u>
<u>9</u>	<u>Article 58 amended</u>
<u>10</u>	<u>Article 58A amended</u>
<u>11</u>	<u>Article 61 amended</u>
<u>12</u>	<u>Article 73 amended</u>
<u>13</u>	<u>New Article 85A inserted</u>
<u>14</u>	<u>Article 87 amended</u>
<u>15</u>	<u>Article 90 amended</u>
<u>16</u>	<u>Article 91 amended</u>
<u>17</u>	<u>Article 104 amended</u>
<u>18</u>	<u>Article 106 amended</u>
<u>19</u>	<u>Article 108 substituted</u>
<u>20</u>	<u>Article 109 amended</u>
<u>21</u>	<u>Article 113A amended</u>
<u>22</u>	<u>Article 113B amended</u>
<u>23</u>	<u>Articles 114 and 115 substituted</u>
<u>24</u>	<u>New Article 115B inserted</u>
<u>25</u>	<u>Article 125 amended</u>
<u>26</u>	<u>Article 127N(5) amended</u>
<u>27</u>	<u>Article 127W amended</u>
<u>28</u>	<u>Repeal of Article T127YN and consequential renumbering of Articles</u>
<u>29</u>	<u>Article 186 amended</u>
<u>30</u>	<u>Article 220 amended</u>
<u>31</u>	<u>Schedule 1 amended</u>
<u>32</u>	<u>Citation and commencement</u>



Jersey

DRAFT COMPANIES (AMENDMENT No. 9)(JERSEY) LAW 200

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

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

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 1991^[1].

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–

“85 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(4)(b) of the principal Law 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 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%”.

22 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%”.

23 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.”.

24 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.”.

25 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.”.

26 Article 127N(5) amended

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

27 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.”.

28 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.

29 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.”.

30 Article 220 amended

A 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.”.

31 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”.

32 Citation and commencement

- (1) This Law may be cited as the Companies (Amendment No. 9) (Jersey) Law 200.
- (2) It comes into force 7 days after it is registered.

