

DRAFT COMPANIES (REDEMPTION, AND FINANCIAL ASSISTANCE) (JERSEY) REGULATIONS 200-

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REPORT

Background

Companies (Amendment No. 6) (Jersey) Law 2002 (“**Amendment No. 6**”), was approved by the States of Jersey on 17th July 2001, sanctioned by Order of Her Majesty in Council on 12th February 2002 and registered in the Royal Court on 8th March 2002. Subject to the approval by the States of an Appointed Day Act, it is to come into force on 1st July 2002.

Article 59 of the Companies (Jersey) Law 1991 (the “**1991 Law**”) provides that the States may, by Regulations, extend or modify the provisions of Articles 55, 57 and 58. Pursuant to this power, it is proposed to modify particular paragraphs of Articles 55 and 58.

Notwithstanding the extensive consultation over several years before Amendment No. 6 was presented to the States last July since January of this year concern has been expressed over the implications of certain changes to Articles 55 and 58. In order to be able to derive the correct solution to these issues, it will be necessary to fully consider them and to undertake further consultation. The draft Regulations are proposed as an interim solution, which will avert the anticipated difficulties whilst avoiding any further delay to the introduction of Amendment No. 6.

Payments of Premium on Redemption of Shares - Article 55

The change made by Amendment No. 6 to subparagraph (3)(b)(i) of Article 55 restricted the use of share premium account in relation to the payments of premium when redeeming shares. No such restriction existed prior to Amendment No. 6, even if the company chose to establish more than one such account. There is no evidence that the change was made to address any particular mischief and it is most probably a consequence of the introduction of the new types of companies that Amendment No. 6 introduces.

The change being made by the Regulations is to restore the wording of sub-paragraph (3)(b)(i) to that which existed prior to Amendment No. 6, so that, when redeeming shares, payments of premium may be made from any share premium account. Any redemption of shares must still be subject to the requirement for the conditions of both a cash flow test and a balance sheet test to be met.

Financial Assistance - Article 58

The need for corrective action in respect of Article 58 of the 1991 Law stems from an attempt in Amendment No. 6 to remove the uncertainty associated with the term “value of the assets”, where that value is required to be greater than the company’s liabilities, usually aggregated with its capital accounts, (the “balance sheet test”). To achieve this, the term was altered to read “realisable value of the assets”.

Because the balance sheet test must often be valid with effect from a point *immediately* after the event being governed, the unintentional effect of the change made by Amendment No. 6 is to require that the realisable value might have to be determined on a forced sale basis. In practice, this could frustrate compliance with the test, whereas the use of a continuing value for the assets might allow the test criterion to be met.

The balance sheet test is a feature of several provisions of the 1991 Law. One of these is in Article 58(3), where the test is one of the criteria to be met by a company for it not to act illegally by giving financial assistance for the purchase of its shares. On advice, this is the only case where the change made by Amendment No. 6 is likely to cause difficulties to both existing and new financial arrangements of such proportions and on such a scale as to potentially damage the Island’s reputation.

The change being made by the Regulations is to restore the wording of paragraph (3) of Article 58 to that which existed prior to Amendment No. 6. There is no change to the other criteria to be met under that paragraph, which are-

- that the company is able to discharge its liabilities as they fall due; and
- that the giving of financial assistance is sanctioned by a prior special resolution of the company.

These draft Regulations have no implications for the financial or manpower resources of the States.

Explanatory Note

These Regulations would modify Part XI of the Companies (Jersey) Law 1991 in the following ways -

- (a) they would permit a par value company to redeem its limited shares, in the case of a payment of a premium on a redemption, out of any share premium account; and
- (b) they would permit a company to give financial assistance for the purchase of its own shares if the directors are reasonably satisfied that the value (as opposed to the “realisable” value) of its assets will remain not less than the aggregate of its liabilities and the amounts standing to the credit of its capital accounts.

The Regulations would come into force on the same day as the Companies (Amendment No. 6) (Jersey) Law 2002 (i.e. 1st July 2002).

Companies (Jersey) Law 1991

COMPANIES (REDEMPTION, AND FINANCIAL ASSISTANCE) (JERSEY) REGULATIONS 200-

(Promulgated on the _____ day of _____ 200-)

STATES OF JERSEY

The _____ day of _____ 200-

THE STATES, in pursuance of Article 59 of the Companies (Jersey) Law 1991,^[1] as amended,^[2] have made the following Regulations -

Interpretation

1. In these Regulations, “the Law” means the Companies (Jersey) Law 1991,^[3] as amended.^[4]

Power to issue redeemable shares

2. In Article 55(3)(b)(i) of the Law,^[5] for the words “the share premium account for shares of the class concerned” there shall be substituted the words “any share premium account”.

Financial assistance by company for purchase of its shares

3. In Article 58(3)(b) of the Law,^[6] for the words “realisable value” there shall be substituted the word “value”.

Citation and commencement

4. These Regulations may be cited as the Companies (Redemption, and Financial Assistance) (Jersey) Regulations 200- and shall come into force on 1st July 2002.

^[1] Recueil des Lois, Volume 1990-1991, page 937.

^[2] Recueil des Lois, Volume 2002, page 235.

^[3] Recueil des Lois, Volume 1990-1991, page 875.

^[4] Recueil des Lois, Volume 1992-1993, page 63, Volume 1994-1995, page 351, Volume 1996-1997, pages 552 and 683, Volume 1998, pages 499 and 594, Volume 1999, pages 107 and 525, Volume 2000, page 746, Volume 2002, page 177 and Nos. 8326 and 8941.

^[5] Recueil des Lois, Volume 1990-1991, page 932 and Volume 2002, page 229.

^[6] Recueil des Lois, Volume 1990-1991, page 936 and Volume 2002, page 235.