

DRAFT COMPANIES (AMENDMENT No. 4) (JERSEY) LAW 199

**Lodged au Greffe on 17th March 1998
by the Finance and Economics Committee**



STATES OF JERSEY

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Report

The proposed Companies (Amendment No. 4) (Jersey) Law 199 has been drafted to provide the Finance and Economics Committee with the power to establish procedures by way of Orders to enable Jersey securities to be traded and held in electronic form. A minor amendment to the definition of “the court” has also been included.

In 1996 a new electronic system for trading in shares and other corporate securities commenced operation in the United Kingdom called CREST. The system enables shares to be traded and held in electronic form where previously paper records were required. Specific legislation has been introduced in the United Kingdom in relation to this electronic trading.

A number of Jersey companies have expressed an interest in participating in CREST and in order to do so equivalent legislation to that which exists in the United Kingdom will have to be introduced.

The Companies (Jersey) Law 1991 provides in Article 42 that a company shall not register a transfer of shares unless an instrument of transfer in writing has been delivered to it and in Article 50 provides that every company shall issue share certificates. Although each of these Articles has an Order making power, the power is not as wide as that contained within the United Kingdom legislation.

This amendment to the Companies (Jersey) Law 1991 will enable the Finance and Economics Committee by Order to enact the necessary subordinate legislation. The Law follows closely a similar provision in the 1989 United Kingdom Companies Act and it is intended that the subordinate legislation will follow the Uncertificated Securities Regulations 1995 of the United Kingdom. The introduction of this Law together with the subordinate legislation should enable Jersey incorporated companies to participate in CREST by the end of the year.

Explanatory Note

The effect of this draft Law would be to empower the Finance and Economics Committee, by Order, to establish procedures providing for title to securities to be evidenced and transferred without a written instrument.

It also amends the definition of the Royal Court, in the Companies (Jersey) Law 1991, by removing the present requirement that jurisdiction must be exercised by the Inferior Number.

COMPANIES (AMENDMENT No. 4) (JERSEY) LAW 199

A LAW to amend further the Companies (Jersey) Law 1991, sanctioned by Order of Her Majesty in Council of the

(Registered on the day of 199)

STATES OF JERSEY

The day of 199

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

ARTICLE 1

(1) For the definition “the court” in paragraph (1) of Article 1 of the Companies (Jersey) Law 1991,¹ as amended (hereinafter referred to as “the principal Law”), there shall be substituted the following definition -

“ ‘the court’ means the Royal Court;”.

(2) For the definition “securities” in paragraph (1) of Article 1 of the principal Law there shall be substituted the following definition -

“ ‘securities’ -

- (a) in Article 51A, has the meaning assigned to it by paragraph (4) of that Article; and

¹ Volume 1990-1991, page 887.

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- (b) except as provided in sub-paragraph (a) of this definition, has the meaning assigned to it by sub-paragraph (b) of paragraph (4) of Article 29;”.

ARTICLE 2

Article 42 of the principal Law² is amended -

- (a) by substituting for paragraph (1) the following paragraph -

“(1) Notwithstanding anything in its articles, a company shall not register a transfer of shares in the company unless -

- (a) an instrument of transfer in writing has been delivered to it;
 - (b) the transfer is exempted from the provisions of this paragraph pursuant to paragraph (6); or
 - (c) the transfer is made in accordance with an Order made under Article 51A.”;
- (b) by substituting for paragraph (6) the following paragraph -

“(6) The Committee may by Order provide for exemptions from the provisions of paragraph (1), either as regards specified companies or classes of companies or as regards specified shares or classes of shares.”.

ARTICLE 3

Paragraph (1) of Article 50 of the principal Law is amended by inserting after the words “this Article” the words “and Article 51A”.

² Volume 1990-1991, page 920.

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ARTICLE 4

After Article 51 of the principal Law, but before Part X of the principal Law, there shall be inserted the following Article -

“ARTICLE 51A.

Uncertificated securities

(1) Notwithstanding any other provision in this Law, the Committee may by Order provide in accordance with this Article for title to securities or to any specified class or description of securities to be evidenced and transferred without a written instrument.

(2) An Order under this Article may provide for any of the following matters -

- (a) procedures for recording and transferring title to securities, and with respect to the keeping of the register of members in relation to such securities;
- (b) the regulation of those procedures and the persons responsible for or involved in their operation;
- (c) provision with respect to the rights and obligations of persons in relation to securities dealt with under such procedures;
- (d) the giving of effect to -
 - (i) the transmission of title to securities by operation of law;
 - (ii) any restriction on the transfer of title to securities arising by virtue of the provisions of

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- any enactment, instrument, court order or agreement; and
- (iii) any power conferred on a person, by any provision to which clause (ii) refers, to deal with securities on behalf of the person entitled;
- (e) in relation to the persons responsible for or involved in the operation of the procedures to which sub-paragraph (a) refers, provision as to -
- (i) the consequences of their insolvency, bankruptcy or incapacity; and
 - (ii) the transfer by or from them to other persons of their functions in relation to those procedures; and
- (f) for any of the purposes in sub-paragraphs (a) to (e) -
- (i) the modification or exclusion of any provisions of any enactment or rule of law;
 - (ii) the application (with such modifications, if any, as the Committee may think appropriate) of any provisions of this Law creating criminal offences;
 - (iii) the application (with such modifications, if any, as the Committee may think appropriate) of any other provisions of any enactment (not being provisions creating criminal offences);
 - (iv) the requiring of the payment of fees of such amounts as are specified in the Order or are determined in accordance with the Order, or the enabling of persons specified in the Order to require payment of such fees; and

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- (v) the empowering of the Committee to delegate to any person willing to discharge them any of its functions under the Order.

(3) An Order made under this Article shall contain such safeguards as appear to the Committee to be appropriate for the protection of investors.

(4) In this Article -

(a) 'securities' means -

- (i) shares, stock, debentures, debenture stock, loan stock and bonds;
- (ii) warrants entitling the holders to subscribe for any securities specified in clause (i);
- (iii) units in a collective investment fund within the meaning of the Collective Investment Funds (Jersey) Law 1988; and
- (iv) other securities of any description;

(b) references to title to securities include any legal, equitable or other interest in securities; and

(c) references to a transfer of title include a transfer by way of security.”.

ARTICLE 5

This Law may be cited as the Companies (Amendment No. 4) (Jersey) Law 199 and shall come into force on the day following its registration.