

STATES OF JERSEY

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DRAFT COMPANIES (AMENDMENT No. 2)(JERSEY) REGULATIONS 200

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

STATES GREFFE



Jersey

DRAFT COMPANIES (AMENDMENT No. 2)(JERSEY) REGULATIONS 200

REPORT

These Regulations set out a number of substantial and important changes to the Companies Law, all designed to ensure that Jersey companies remain flexible vehicles suitable to the widest possible range of corporate activity.

In turn, the more important changes include:

- The introduction of treasury shares, which will permit a company that purchases its own shares to hold them for a limited duration, rather than cancel them. This means that a company can purchase its own shares and then transfer them to a new investor much more easily, which will be of particular use to the funds sector.
- The removal of the prohibition against a company giving financial assistance for the purchase of its own shares. This has been a longstanding problem, as it effectively makes it difficult for a person to acquire a company using a loan and at the same time using the shares in the company as security for that loan. As with many changes to the Companies Law, the principle is that, provided the company remains solvent, the actions of a company are its internal affairs. The prohibition against financial assistance has been lifted in the U.K. and it will significantly assist the finance industry to follow suit in Jersey.
- A regulated financial services business will be permitted to act as a corporate director of a Jersey company, again helping the industry. In practice, many directors are provided by regulated businesses, and it makes sense that those businesses, rather than its employees, should act as directors.
- Cells of cell companies will be permitted to have different boards of directors.

There are a number of minor changes of a technical nature. The majority of these arose from the introduction of Amendment No.8 to the Companies Law and suggestions that have been received in relation to how these provisions could better operate in practice.

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

There are no financial or manpower implications arising from the amendments.

Explanatory Note

These Regulations amend the Companies (Jersey) Law 1991. References to Articles in these notes are references to Articles of that Law.

Regulation 1 is an interpretative provision that explains that references in the Regulations to the Law are references to the Companies (Jersey) Law 1991.

Regulation 2 puts a temporary provision into Part 11 of the Law until Parts 1 of the Law and Schedule 1 to the Law can be amended by an amending Law.

Regulation 3 amends Article 55, to remove the requirement that directors may only make statements (“solvency statements”) in relation to the redemption of shares after having made “full enquiry into the affairs and prospects of the company”.

The amendment also amends paragraph (12) of that Article so that requirements placed on directors relating to a authorization of the redemption of shares shall only relate to those directors who authorize the redemption, not the directors generally.

The amendment also amends Article 55(18). That Article currently states that when a par value company is about to redeem shares, it may issue shares up to the nominal amount of the shares to be redeemed as if those shares had never been issued.

The amendment removes from the ambit of the paragraph redeemed shares that are to be held as treasury shares, since such shares will not automatically be cancelled on redemption. (If such shares are, after redemption, cancelled under Article 58A(2)(a), Article 58A(6), which sets out similar provisions as those in Article 55(18) shall apply.)

These Regulations also insert a new Article 55(21). The new paragraph (21) makes clear that shares redeemed by a company are cancelled on redemption. This Article does not apply to shares redeemed by a company and held as treasury shares.

Regulation 4 makes an amendment to Article 57(7) that is consequential to the new Articles in relation to treasury shares inserted by Regulation 7.

Regulation 5 repeals Article 58. That Article sets out restrictions on the ability of a company to provide financial assistance to others to enable purchases of shares in itself. Article 58 had the effect of altering (and overriding) the “customary law” rules that previously related to such matters. The repeal of the provision raises the prospect of the “customary law” rules re-emerging to govern the matter, which is not intended.

Regulation 6 inserts a new Article 58 to prevent this occurring. The provision as amended also permits certain past and future transactions, to which the repealed Article 58 related or would have related, not to be regarded as distributions under Part 17 of the Law.

Regulation 7 introduces into the Law provisions relating to “treasury shares”. Currently, when a company “buys back” or “redeems” its shares, the shares are automatically cancelled and the issued capital of the company is thereby reduced. The creation of “treasury shares” shall enable a company to “buy back” or “redeem” shares in itself, without the shares having to be cancelled. Instead, they may be sold, transferred for the purposes of an employee share scheme, or held. (They may also be cancelled under this Article.)

The proposed Article 58A will enable a company to buy back treasury shares if it is authorized to do so by a resolution of the company, and if its memorandum or articles of association do not prevent it from doing so.

The proposed Article 58B (T58B) sets out principles relating to the minimum number of shares that shall be held if treasury shares are to be held.

Regulation 8 alters Article 73, which currently prevents a body corporate from being a director of a company. The Article is amended so that a body corporate may be a director of a company if the body corporate is registered as a director under the Financial Services (Jersey) Law 1998, and if the body corporate itself does not have a director that is a body corporate.

Regulation 9 amends Article 116, which relates to takeover offers, to enable treasury shares to be included in takeover offers.

Regulation 10 alters Article 117, which relates to the rights of offerors to buy out minority shareholders. Article 117(1) currently requires the offeror to have obtained 9/10ths “in value of the shares”. The amendment alters this to “9/10ths of the nominal value of the shares”. Similar amendments are made in the Regulation in relation to classes of shares.

Regulation 11 makes similar amendments to those in Regulation 10 to Article 119, which relates to the rights of minority shareholders to be bought out by an offeror.

Regulation 12 replaces certain Articles in the Law relating to the creation of cells of cell companies, so as to clarify some aspects of the current provisions.

The proposed *Article T127YDA* does more than this, however, in that it alters the existing policy in relation to cell companies. Currently, all duties imposed on a cell of a cell company under Part 9 (duties relating to registers and certification of shares) are, under this Article, imposed on its cell company. The amendment will limit this, so that this is only the case in relation to a cell of a protected cell company. The amendment also places a new requirement on all cells to have the same registered office and secretary as their cell company.

The amendment also clarifies that a director of a cell does not have, just because he or she is such a director, any duties or liabilities, or entitlements to information, in relation to the cell company or any other cell of the cell company.

Regulation 13 amends Article T127YE so as to place a duty on cells to provide such information to their cell companies as will enable the cell companies to comply with their obligations under the Law in relation to the preparation of annual reports that include information in relation to the cells.

Regulation 14 repeals Article 127YF, which places the obligation to keep accounting records on the cell company in relation to a cell, rather than on the cell itself. Subsequent to the amendment, the cell will be obliged to keep the records.

Regulation 15 replaces Article 127YG. The current Article places the obligation to prepare regular accounts on the cell company in relation to a cell, rather than on the cell itself. Subsequent to the amendment, the cell will be obliged to keep the records. The amendment will also limit the information that the cell company will be entitled to obtain from the cell to so much information as is necessary to enable the cell company to prepare its annual return (which must include information in relation to each cell).

Regulation 16 replaces current provisions relating to transfers of cells and how companies may become cells of cell companies, so as to clarify the effect of such alterations in status.

Regulation 17 puts a temporary provision into Part 18D of the Law until Schedule 1 to the Law can be amended by an amending Law.

Regulation 18 amends a trivial error in the current Law.

Regulation 19 amends Article 127YM so that a memorandum or articles of a company may be altered so as to enable the company to become a cell company, if the alteration is sanctioned by the court as an arrangement under Article 125— without (as is currently the case) a special resolution of the company being required. The Regulation also establishes in proposed paragraphs (8) and (9) certain requirements in relation to certification of cells that have been created after alteration of memorandums or articles.

Regulation 20 corrects a trivial error in the current Law.

Regulation 21 amends Article 127YT(5), which relates to the provision of a “solveny statement” by a director of a protected cell company that intends to meet a liability, attributable to a particular cell, from the company’s non-cellular assets. The amendment requires the director to make the statement as to the predicted solveny in respect of the “non-cellular liabilities” of the company, not just the “liabilities” generally of the company.

Regulation 22 gives to the court a power to determine, on the application of a protected cell company, to what extent an asset of the company is a cellular asset or a non-cellular asset of any of the cells of the cell company.

Regulation 23 specifies the name by which these amending Regulations may be cited and that they shall come into force 7 days after they are made.



Jersey

DRAFT COMPANIES (AMENDMENT No. 2)(JERSEY) REGULATIONS 200

Arrangement

Regulation

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Temporary Article T55</u>
<u>3</u>	<u>Article 55 amended</u>
<u>4</u>	<u>Article 57 amended</u>
<u>5</u>	<u>Article 58 repealed</u>
<u>6</u>	<u>New Article 58 inserted</u>
<u>7</u>	<u>New Articles 58A and T58B inserted</u>
<u>8</u>	<u>Article 73 amended</u>
<u>9</u>	<u>Article 116 amended</u>
<u>10</u>	<u>Article 117 amended</u>
<u>11</u>	<u>Article 119 amended</u>
<u>12</u>	<u>Articles 127YA to 127YD substituted</u>
<u>13</u>	<u>Article 127YE Substituted</u>
<u>14</u>	<u>Article 127YF repealed</u>
<u>15</u>	<u>Article 127YG substituted</u>
<u>16</u>	<u>Article 127YI substituted</u>
<u>17</u>	<u>Temporary Article T127YN</u>
<u>18</u>	<u>Article 127YL amended</u>
<u>19</u>	<u>Article 127YM amended</u>
<u>20</u>	<u>Article 127YR amended</u>
<u>21</u>	<u>Article 127YT amended</u>
<u>22</u>	<u>Article 127YW amended</u>
<u>23</u>	<u>Citation and commencement</u>



Jersey

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Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Articles 59, 73, 124A, 127YN and 220 of the Companies (Jersey) Law 1991^[1], have made the following Regulations –

1 Interpretation

In these Regulations, “the Law” means the Companies (Jersey) Law 1991^[2].

2 Temporary Article T55

Immediately before Article 55 of the Law, there is inserted the following Article–

“T55 ‘Treasury share’ defined and penalty applied

- (1) In this Law ‘treasury share’ means a share held as a treasury share under Article 58A(1).
- (2) The penalty for an offence under Article T58B(4) (Company failing to dispose of treasury shares) is a fine of level 3 on the standard scale and a daily default fine of level 2 on the standard scale.
- (3) Article 215(3), with the necessary amendments, applies to the interpretation of “daily default fine” in paragraph (2).
- (4) This Article has effect in addition to Article 215.
- (5) In Article 58A(3)(c) the reference to Article 58B shall be construed as a reference to T58B”.

3 Article 55 amended

In Article 55 of the Law–

(a) for paragraph (9) there is substituted the following paragraph–

- “(9) The statement shall state that the directors of the company authorizing the redemption have formed the opinion –
- (a) that, immediately following the date on which the payment 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 payment is proposed to be made or until the company is dissolved under Article 150, whichever first occurs”;
- (b) in paragraph (12)(c) for the word “directors” there are substituted the words “directors of the company authorizing the redemption”;
- (c) in paragraph (18), after the words “redeem limited shares” there are inserted the words “(other than shares it intends to hold as treasury shares under Article 58A(2)(d))”;
- (d) after paragraph (20) there is added the following paragraph–
 - “(21) Any shares redeemed under this Article (other than shares that are, immediately after being purchased or redeemed, held as treasury shares) are treated as cancelled on redemption.”.

4 Article 57 amended

In Article 57(7) of the Law, at the end, there is added the words “or treasury shares”.

5 Article 58 repealed

Article 58 of the Law is repealed.

6 New Article 58 inserted

In the Law, after Article 57, there is inserted the following Article–

“58 Rule of law relating to financial assistance abolished

- (1) This Article applies to any thing which would have been unlawful by reason of any rule of law, if that rule had not ceased to have effect by virtue of, or had not been modified by, the former Article 58.
- (2) The repeal of the former Article 58 by Regulation 5 of the Companies (Amendment No. 2) (Jersey) Regulations 2000 shall not cause anything to which this Article applies to be rendered unlawful by reason of any rule of law which had ceased to have effect by virtue of, or had been modified by, the former Article 58.
- (3) A transaction that was –
 - (a) authorized by a company before the repeal of the former Article 58 by Regulation 5 of the Companies (Amendment No. 2) (Jersey) Regulations 2000;
 - (b) a transaction of the kind to which paragraph (1) of the former Article 58 applied;
 - (c) lawful under paragraph (2) or (3) of the former Article 58; and
 - (d) taken under the Law, as in force immediately before the repeal, to not be a distribution for the purposes of Part 17,

shall not be a distribution for the purposes of Part 17.

- (4) Financial assistance that is –
- (a) of the kind to which paragraph (1) of the former Article 58 related immediately before its repeal by Regulation 5 of the Companies (Amendment No. 2) (Jersey Regulations 200-;
 - (b) given by a company after the repeal; and
 - (c) sanctioned by a prior special resolution of the company,
- shall not be a distribution for the purposes of Part 17 if the directors who are to authorize the assistance make a statement in accordance with paragraph (5).
- (5) The statement shall state that the directors of the company who are to authorize the financial assistance have formed the opinion –
- (a) that, immediately following the date on which the financial assistance is proposed to be given, 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 financial assistance is proposed to be given or until the company is dissolved under Article 150, whichever first occurs.
- (6) In this Article, ‘the former Article 58 means Article 58 of this Law, as that Article was in force immediately before it was repealed by Regulation 5 of the Companies (Amendment No. 2) (Jersey) Regulations 200.’.

7 New Articles 58A and T58B inserted

In the Law, after Article 58, there are inserted the following Articles–

“58A Treasury shares

- (1) A company may hold as treasury shares any of the limited shares that it has redeemed or purchased under this Part, to the extent that –
 - (a) it is not prohibited, by its memorandum or articles of association, from holding shares as treasury shares; and
 - (b) it is authorized by a resolution of the company to hold the shares as treasury shares.
- (2) A company that holds shares as treasury shares may –
 - (a) cancel the shares;
 - (b) sell the shares;
 - (c) transfer the shares for the purposes of or under an employees’ share scheme; or
 - (d) hold the shares without cancelling, selling or transferring them.

- (3) While shares are held by a company as treasury shares –
 - (a) the company shall not, for the purposes of Articles 71, 89 and 92(2) be treated as being a member or as holding shares in the company;
 - (b) the company shall not exercise any voting rights attaching to the shares;
 - (c) if a provision of this Law (other than Article 58B) requires–
 - (i) a proportion of votes attaching to shares held in the company to be obtained, or
 - (ii) a proportion of the holders of shares of the company, (which may include persons representing by proxy other holders of shares of the company) to consent or not to consent,in order for a resolution to be passed or an action or decision to be taken or not to be taken by any person, the shares held as treasury shares shall not for the purposes of that provision be taken into account in determining –
 - (A) the total number of shares held in the company, or
 - (B) whether such a proportion has been attained;
 - (d) the company shall not make or receive any dividend, or any other distribution (whether in cash or otherwise) of the company’s assets (including any distribution of assets to members on a winding up), in respect of those shares;
 - (e) the rights in respect of the shares shall not be exercised by or against the company;
 - (f) the obligations in respect of the shares shall not be enforceable by or against the company; and
 - (g) any purported exercise or enforcement of a right, obligation or requirement referred to in sub-paragraph (b) to (f) is void.
- (4) Nothing in paragraph (3) shall prevent–
 - (a) an allotment of shares as fully paid bonus shares in respect of treasury shares; or
 - (b) the payment of any amount payable on the redemption of redeemable shares that are held as treasury shares.
- (5) Article 55(14) and (15) and Article 55(17) (including that Article as applied by Article 57(6))–
 - (a) shall not apply in relation to any shares that are, immediately after being purchased or redeemed, held as treasury shares;
 - (b) shall, on and from the day on which any shares held as treasury shares are cancelled under paragraph (2)(a), apply to such shares as if references in Article 55(14), (15) and (17) to a redemption of shares were references to the cancellation of the shares under this Article.
- (6) If under paragraph (2)(a) a par value company is about to cancel limited shares, it may issue shares up to the nominal amount of the shares to be cancelled as if those shares had never been issued.
- (7) Any shares allotted as fully paid bonus shares in respect of shares held as treasury shares by a company shall be treated for the purposes of this Law as if they were purchased by the company at the time they were allotted.
- (8) If shares are held by a company as treasury shares –
 - (a) the register kept under Article 41 shall include an entry relating to the number of shares held as treasury shares; and
 - (b) the annual return provided under Article 71 shall include an entry relating to the number of shares held as treasury shares on 1st January in the year of the return.

- (9) For the purposes of this Article, an employees' share scheme is a scheme for encouraging or facilitating the holding of shares or debentures in a company by or for the benefit of –
 - (a) the *bona fide* employees or former employees of the company, the company's subsidiary or holding company or a subsidiary of the company's holding company; or
 - (b) the wives, husbands, widows, widowers or minor children or minor step-children of such employees or former employees.

T58B Limits on number and nominal value of shares to be held as treasury shares

- (1) A company may hold as treasury shares so many shares in the company that it has redeemed or purchased under this Part as it thinks fit –
 - (a) if another person holds at least one non-redeemable share in the company; or
 - (b) where the articles of the company specify that –
 - (i) more than one non-redeemable share in the company, or
 - (ii) a specified proportion of non-redeemable shares in the company,is required to be held by one or more persons other than the company if the company is to hold shares as treasury shares, if that number or proportion of shares in the company are held by one or more other persons.
- (2) If –
 - (a) a company holds shares as treasury shares;
 - (b) the articles of the company do not specify that –
 - (i) more than one non-redeemable share in the company, or
 - (ii) a specified proportion of non-redeemable shares in the company,is required to be held by one or more persons other than the company if the company is to hold shares as treasury shares; and
 - (c) on any day there ceases to be any person who holds at least one non-redeemable share in the company,the company shall, within 12 months after the day, dispose of to another person or persons at least one non-redeemable share in the company.
- (3) If –
 - (a) a company holds shares as treasury shares;
 - (b) the articles of the company specify that –
 - (i) more than one non-redeemable share in the company, or
 - (ii) a specified proportion of non-redeemable shares in the company,is required to be held by one or more persons other than the company if the company is to hold shares as treasury shares; and
 - (c) on any day there ceases to be any person who holds at least that number, or proportion, of non-redeemable shares in the company,the company shall, within 12 months after the day, dispose of to another person or persons that number, or proportion, of non-redeemable shares in the company.
- (4) If a company fails to comply with paragraph (2) or (3) it is guilty of an offence”.

In Article 73 of the Law, for paragraph (4) there is substituted the following paragraph–

- “(4) A body corporate shall not be a director of a company unless –
 - (a) the body corporate is a company that is permitted under the terms of its registration under the Financial Services (Jersey) Law 1998 to act as, or fulfil the requirements of, a director; and
 - (b) the body corporate has no director that is a body corporate.”.

9 Article 116 amended

(1) In Article 116 of the Law, for paragraph (2) there are substituted the following paragraphs–

- “(2) In paragraph (1) ‘shares’ means shares (other than relevant treasury shares) that have been allotted on the date of the offer.
 - (2A) A takeover offer may include among the shares to which it relates –
 - (a) all or any shares that are allotted after the date of the offer but before a specified date;
 - (b) all or any relevant treasury shares that cease to be held as treasury shares before a specified date; and
 - (c) all or any other relevant treasury shares.
 - (2B) In this Article –
 - ‘relevant treasury shares’ means shares which –
 - (a) are held by the company as treasury shares on the date of the offer; or
 - (b) become shares held by the company as treasury shares after that date but before a specified date;
 - ‘specified date’ means a date specified in or determined in accordance with the terms of the offer.”.

(2) In Article 116 of the Law, in paragraph (5), for the words “which offeror” there are substituted the words “which the offeror”.

10 Article 117 amended

In Article 117 of the Law–

- (a) in paragraph (1)(a), for the words “in value of the shares” there are substituted the words “in nominal value of the shares”;
- (b) in paragraph (2)(a), for the words “in value of the shares” there are substituted the words “in nominal value of the shares of any class”;
- (c) in paragraph (2)(b), for the words “in number of the shares” there are substituted the words “in number of the shares of any class”.

11 Article 119 amended

In Article 119 of the Law–

- (a) in paragraph (1)(b), for the words “in value” there are substituted the words “in nominal value”;
- (b) for paragraph (2)(b) there is substituted the following subparagraph –
 - “(b) those shares (with or without any other shares in the company which he or she has acquired or contracted to acquire) amount, in the case of a par value

company, to not less than 9/10ths in nominal value of all the shares of that class in the company or, in the case of a no par value company, to not less than 9/10ths in number of all the shares of that class in the company,”.

12 Articles 127YA to 127YD substituted

For Articles 127YA to 127YD (inclusive) of the Law there are substituted the following Articles –

“127YA Application by cell company for creation of cells

- (1) A cell company may, by special resolution, resolve to apply to the registrar to create one or more cells of the cell company.
- (2) The special resolution –
 - (a) shall assign to the cell that it proposes shall be created a name that complies with this Law;
 - (b) shall adopt a memorandum of association in relation to the proposed cell; and
 - (c) shall adopt articles in relation to the proposed cell.
- (3) If a cell company makes a special resolution under paragraph (1), it shall apply to the registrar to create the cell to which the resolution relates, by delivering to the registrar –
 - (a) in accordance with Article 100, a copy of the resolution; and
 - (b) the memorandum of association and the articles adopted by the resolution.

127YB Memorandum and articles of cells

- (1) The memorandum or articles of a cell may, in addition to providing for matters that a cell company shall or may, under Part 2, as applied to the cell by Article 127YC, provide in the memorandum or articles in relation to a cell, provide that the cell shall be wound up and dissolved on –
 - (a) the bankruptcy, death, expulsion, insanity, resignation or retirement of any cellular member of the cell;
 - (b) the expiration of a fixed period of time; or
 - (c) the happening of some other event that is not the expiration of a fixed period of time.
- (2) A cell company may also provide in the memorandum –
 - (a) that there may be issued par value shares or no par value shares in respect of the cell mentioned in the memorandum; or
 - (b) that the cell mentioned in the memorandum may have a guarantor member or guarantor members.
- (3) There shall be taken to be included in the articles of a cell –
 - (a) a provision that the cell may not own shares in its cell company; and
 - (b) unless the contrary intention appears in the articles, a provision that the cell may own shares in any other cell of its cell company.
- (4) The articles of a cell may be amended –
 - (a) in the manner set out in those articles; or
 - (b) if there is no such manner set out in the articles, by special resolution of both the cell and of the company of which it is a cell.
- (5) Article 11(1) shall not apply in relation to a cell of a cell company and a reference in

Article 11(2), (3) or (4) to an alteration in the articles of a company shall be taken to include an alteration made in accordance with paragraph (4) of this Article.

127YC Creation of cells

- (1) Subject to this Article, Part 2 shall apply in relation to a proposed cell (and, if it is created, a cell of a cell company) as if a reference in that Part to a company were a reference to a cell or proposed cell, as the case may be.
- (2) A memorandum which forms part of the application in accordance with Article 127YA(3) and which specifies that –
 - (a) the cell or proposed cell to which it refers is to be, or to be taken to be, a public company, shall be taken to be a memorandum delivered to the registrar under Article 3(1) constituting an application for the formation of a public company although it has not been signed in accordance with that paragraph; or
 - (b) the cell or proposed cell to which it refers is to be, or to be taken to be, a private company, shall be taken to be a memorandum delivered to the registrar under Article 3(2) constituting an application for the formation of a private company although it has not been signed in accordance with that paragraph.
- (3) Article 3(3) shall apply in relation to a cell or proposed cell of a cell company as if all the words after ‘more than 30 persons’ were deleted.
- (4) A reference in Article 3(10) to Article 127YA(4) shall be taken to be a reference to Article 127YB(2).
- (5) Article 4(3) shall not apply in relation to a cell or a proposed cell.
- (6) Nothing in this Law shall be taken to require there to be a subscriber in relation to a cell or a proposed cell.
- (7) The articles forming part of the application in accordance with Article 127YA(3) shall be taken to be articles specifying regulations for the cell delivered to the registrar under Article 5(1).
- (8) Articles 5(3) and (4), 6 and 7(4), shall not apply in relation to a cell or a proposed cell.
- (9) The requirement in Article 7(1) that the statement referred to in that paragraph shall be signed by the subscribers shall be taken to be satisfied in relation to a cell in relation to which there are no subscribers, if the statement is signed by the persons who are taken to have applied under Article 3 for the formation of the cell.
- (10) If the registrar registers under Article 8 a memorandum and articles in relation to a cell of a protected cell company, he or she shall, instead of issuing a certificate of incorporation in relation to the cell, issue under Article 9 a certificate of recognition in relation to the cell as if a reference in that Article to incorporation or a certificate of incorporation were a reference to the creation of a cell, or a certificate of recognition, respectively.
- (11) Article 9(3) shall not apply in relation to a cell of a protected cell company.
- (12) Article 9(3) shall apply in relation to a cell of an incorporated cell company as if for the words ‘the subscribers of the memorandum, together with such other persons who may from time to time become members of the company, shall be’ there were substituted the words ‘there shall be’.

127YD Status of cells

- (1) A cell of an incorporated cell company –

- (a) is created on the day specified in the certificate of incorporation in relation to the cell to be the date of incorporation of the cell; and
 - (b) is, in accordance with this Law, a company from that day.
- (2) A cell of a protected cell company is created on the day specified in the certificate of recognition in relation to the cell to be the date on which the cell was created.
 - (3) A cell of a protected cell company shall not be a company but it shall, except as otherwise provided by this Part, be treated as a company registered under this Law for the purpose of the application to it of this Law.
 - (4) In accordance with paragraph (3), except as otherwise provided by this Part, this Law shall apply to a cell of a protected cell company as if a reference in this Law –
 - (a) to a company were a reference to the cell;
 - (b) to the directors of a company were a reference to the directors of the cell;
 - (c) to the memorandum or articles of a company were a reference to the memorandum or articles of the cell;
 - (d) to incorporation were a reference to the creation of the cell;
 - (e) to a certificate of incorporation were a reference to a certificate of recognition;
 - (f) to members of a company were a reference to the members of the cell;
 - (g) to shares in a company were a reference to shares in the cell;
 - (h) to assets and liabilities of a company were a reference to the assets and liabilities of the cell; and
 - (i) to the share capital of a company were a reference to the share capital of the cell.
 - (5) Despite Article 2–
 - (a) a cell of a protected cell company is not, by virtue only of being such a cell of the company, a subsidiary or wholly owned subsidiary of the company; and
 - (b) a cell of an incorporated cell company is a company that is not a subsidiary or wholly owned subsidiary of the cell company.

T127YDA Requirements in relation to secretaries, directors, registered offices and registers

- (1) A cell of a cell company shall have the same registered office and secretary as the cell company.
- (2) The duties imposed on a company by Article 83 in relation to directors shall, in the case of a cell of a protected cell company, be performed by its cell company.
- (3) A cell of an incorporated cell company shall notify the incorporated cell company within 14 days of a director of the cell being appointed or of a director of the cell ceasing to be a director.
- (4) If a cell company fails to comply with paragraph (2), or a cell fails to comply with paragraph (3), it, and every officer of it who is in default, is guilty of an offence.
- (5) A director of a cell shall not be taken, by virtue only of being such a director, to have any duties or liabilities in respect of –
 - (a) the cell company in relation to the cell; or
 - (b) any other cell of the cell company.
- (6) A director of a cell shall not be entitled, by virtue only of being such a director, to obtain from the cell company in relation to the cell, or any other cell of the cell company, any information in respect of the cell company or any other cell of the cell company.”.

13 Article 127YE Substituted

For Article 127YE, of the Law there is substituted the following Article–

“T127YE Annual return in respect of cells

- (1) Article 71(1) (which requires a company to deliver an annual return to the registrar) shall not apply to a cell of a cell company.
- (2) However, the cell company must –
 - (a) include in its annual return the information required by Article 71 in respect of each cell of the company; and
 - (b) in respect of each of its cells – deliver to the registrar a copy of so much its annual return as relates to the cell.
- (3) If a cell company fails to comply with paragraph (2) it is guilty of an offence.
- (4) A cell of a cell company shall provide all relevant information to the cell company in sufficient time to enable the cell company to comply with the requirements of paragraph (2) in relation to the cell company.
- (5) If a cell fails to comply with paragraph (4), the cell, and, where the cell is a public company, every officer of the cell who is in default, is guilty of an offence.”.

14 Article 127YF repealed

Article 127YF of the Law is repealed.

15 Article 127YG substituted

For Article 127YG of the Law there is substituted the following Article–

“127YG Accounts of cell companies

- (1) Nothing in Article 104 shall be taken to require a cell company to prepare the accounts in relation to a cell of the company that are required to be prepared in relation to the cell.
- (2) Subject to any provision to the contrary in the articles of a cell of a cell company or of the company, a member of the cell company who is not a member of the cell shall only be entitled to be provided by the cell with so much of the accounts of the cell as is necessary in order for the cell company to comply with the requirements of Article 127YE(2) in relation to the cell company.
- (3) Nothing in this Article shall require the preparation, in relation to a cell of a cell company, of accounts in relation to the affairs of the cell that occurred before this Article came into operation.”.

16 Article 127YI substituted

For Article 127YI of the Law there are substituted the following Articles–

“T127YI Transfer of cell

- (1) A cell of a cell company may become a cell of another cell company by being transferred from the former to the latter.
- (2) The companies shall enter into a written agreement (the 'transfer agreement') that sets out the terms of the transfer.
- (3) A transfer of a cell is provisionally approved if –
 - (a) the directors of the cell company from which the cell is to be transferred have approved the transfer agreement;
 - (b) the agreement is approved by a special resolution of the cell company to which the cell is being transferred; and
 - (c) any of the following occur –
 - (i) the transfer agreement is sanctioned by the court as an arrangement in accordance with Article 125,
 - (ii) the transfer agreement is consented to by all the members of the cell being transferred and all the creditors (if any) of that cell,
 - (iii) where the agreement of all the creditors of the cell cannot be obtained, the transfer is authorized by a special resolution of the cell and sanctioned by the court on it being satisfied that no creditor of the cell will be materially prejudiced by the transfer.
- (4) A director of a cell who has approved a transfer agreement under which the cell shall be transferred to another cell company shall, as soon as practicable after the transfer has been provisionally approved in accordance with paragraph (3)–
 - (a) sign a declaration stating that the director believes on reasonable grounds that –
 - (i) the cell is able to discharge its liabilities as they fall due, and
 - (ii) the transfer has been provisionally approved in accordance with paragraph (3); and
 - (b) ensure that a copy of the declaration is delivered to the cell company to which the cell is to be transferred.
- (5) A director who makes a declaration under paragraph (4) without having reasonable grounds to do so is guilty of an offence.
- (6) The cell company to which the cell is to be transferred shall, within 21 days of receiving the declaration required to be delivered to the cell company under paragraph (4)(b) deliver to the registrar –
 - (a) a copy of the special resolution of the cell company provisionally approving the transfer agreement;
 - (b) a copy of the transfer agreement;
 - (c) a copy of the memorandum and the articles that it is intended the cell being transferred shall have when it is transferred; and
 - (d) a copy of the declaration delivered to the cell company under paragraph (4)(b).
- (7) If a cell company fails to deliver to the registrar the documents mentioned in paragraph (6) within the period specified in that paragraph, the company, and every officer of it who is in default, is guilty of an offence.
- (8) If a cell company delivers to the registrar, within the period specified in paragraph (6) the special resolution of that company provisionally approving the transfer agreement, the company shall be taken to have complied with the requirements of Article 100(1) in relation to that resolution.
- (9) The registrar may, after receiving the documents referred to in paragraph (6) in relation to the transfer of a cell –

- (a) if the requirements of this Article have been complied with, approve the transfer of the cell; or
 - (b) if the requirements of this Article have not been complied with, refuse to approve the transfer of the cell.
- (10) The registrar may not approve the transfer of a cell under paragraph (9) if the transfer would be inconsistent with the memorandum or articles of the cell, the cell company transferring the cell or the cell company to which it is to be transferred.
- (11) If the registrar approves the transfer of the cell –
 - (a) the cell is transferred to the cell company specified in the transfer agreement in relation to the cell to be the cell company to which it is to be transferred;
 - (b) the cell ceases to be a cell of the cell company that transferred it;
 - (c) the cell becomes a cell of the company to which it has been transferred;
 - (d) the registrar shall register the transfer of the cell, and the memorandum and articles, delivered to the registrar under paragraph (6);
 - (e) the registrar shall, in the case of –
 - (i) the transfer of a cell to an incorporated cell company, issue a certificate of incorporation of the cell under Article 9 as if he or she had received an application for the creation of the cell under Article 127YA, or
 - (ii) the transfer of a cell to a protected cell company, issue a certificate of recognition of the cell under Article 9 as if he or she had received an application for the creation of the cell under Article 127YA and Article 127YC(10) applied in relation to the cell; and
 - (f) the registrar shall record that the cell has ceased to be a cell of the company that transferred the cell.
- (12) If a cell that was a cell of an incorporated cell company is transferred under paragraph (11)(a)–
 - (a) all property and rights to which the cell was entitled immediately before the transfer shall –
 - (i) if the transfer is to an incorporated cell company, remain the property and rights of the cell, or
 - (ii) if the transfer is to a protected cell company, become the property and rights of that company in respect of the cell;
 - (b) the liabilities, and all contracts, debts and other obligations to which the cell was subject immediately before the transfer shall –
 - (i) if the transfer is to an incorporated cell company, remain the liabilities, contracts, debts and other obligations of the cell, or
 - (ii) if the transfer is to a protected cell company, become the liabilities, contracts, debts and other obligations of that company in respect of the cell; and
 - (c) all actions and other legal proceedings which, immediately before the transfer were pending by or against the cell may –
 - (i) if the transfer is to an incorporated cell company, be continued by or against the cell, or
 - (ii) if the transfer is to a protected cell company, be continued by or against that company in respect of the cell.
- (13) If a cell that was a cell of a protected cell company is transferred under paragraph (11)
 - (a) –
 - (a) all property and rights of that company in respect of the cell immediately before

the transfer shall –

- (i) if the transfer is to an incorporated cell company, become the property and rights of the cell, or
 - (ii) if the transfer is to a protected cell company, become the property and rights of that company in respect of that cell;
- (b) all liabilities, contracts, debts and other obligations of that company in respect of the cell, to which the protected cell company was subject immediately before the transfer shall –
- (i) if the transfer is to an incorporated cell company, become the liabilities, contracts, debts and other obligations of the cell, or
 - (ii) if the transfer is to a protected cell company, become the liabilities, contracts, debts and other obligations of that company in respect of the cell; and
- (c) all actions and other legal proceedings that, immediately before the transfer, were pending by or against the protected cell company in respect of the cell may –
- (i) if the transfer is to an incorporated cell company, be continued by or against the cell, or
 - (ii) if the transfer is to a protected cell company, be continued by or against that company in respect of the cell.
- (14) The operation of paragraphs (11), (12) and (13) shall not be regarded –
- (a) as a breach of contract or confidence or otherwise as a civil wrong;
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities; or
 - (c) as giving rise to any remedy by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument, or of any obligation or relationship.

T127YIA Company may become cell of cell company

- (1) A company ('the transferring company') that is not a cell company may become a cell of a cell company by being transferred to the cell company.
- (2) The companies shall enter into a written agreement (the 'transfer agreement') that sets out the terms of the transfer.
- (3) A transfer of a transferring company is provisionally approved if –
 - (a) the directors of the transferring company have approved the transfer agreement;
 - (b) the transfer agreement is approved by a special resolution of the cell company to which the transferring company is to be transferred; and
 - (c) any of the following occur –
 - (i) the transfer agreement is sanctioned by the court as an arrangement in accordance with Article 125,
 - (ii) the transfer agreement is consented to by all the members of the transferring company and all the creditors (if any) of that company,
 - (iii) where the agreement of all the creditors of the transferring company cannot be obtained, the transfer is authorized by a special resolution of the transferring company and sanctioned by the court on it being satisfied that no creditor of the transferring company will be materially prejudiced by the transfer.

- (4) Each director of a transferring company who has approved a transfer agreement under which the company shall be transferred to a cell company shall, as soon as practicable after the transfer has been provisionally approved in accordance with paragraph (3)–
 - (a) sign a declaration stating that the director believes on reasonable grounds that –
 - (i) the transferring company is able to discharge its liabilities as they fall due,
 - (ii) there are no creditors of the transferring company whose interests will be unfairly prejudiced by the company becoming a cell of the cell company, and
 - (iii) the transfer has been provisionally approved in accordance with paragraph (3); and
 - (b) ensure that a copy of the declaration is, as soon as practicable, delivered to the cell company to which the transferring company is to be transferred.
- (5) A director who makes a declaration under paragraph (4) without having reasonable grounds to do so is guilty of an offence.
- (6) The cell company to which the transferring company is to be transferred shall, within 21 days of receiving the declaration required to be delivered to the cell company under paragraph (4)(b), deliver to the registrar–
 - (a) a copy of the special resolution of the cell company provisionally approving the transfer agreement;
 - (b) a copy of the transfer agreement;
 - (c) a copy of the memorandum and the articles that it is intended the transferring company shall have when it is transferred; and
 - (d) a declaration made in accordance with paragraph (4), signed by each director of the transferring company.
- (7) If a cell company fails to deliver the documents mentioned in paragraph (6) within the period specified in that paragraph, the company, and every officer of it who is in default, is guilty of an offence.
- (8) If a cell company delivers to the registrar, within the period specified in paragraph (6) the special resolution of that company provisionally approving the transfer agreement, the company shall be taken to have complied with the requirements of Article 100(1) in relation to that resolution.
- (9) The registrar may, after receiving the documents referred to in paragraph (6) in relation to the transfer of a transferring company –
 - (a) if the requirements of this Article have been complied with, approve the transfer of the transferring company; or
 - (b) if the requirements of this Article have not been complied with, refuse to approve the transfer of the transferring company.
- (10) The registrar may not approve the transfer of a transferring company under paragraph (9) if the transfer would be inconsistent with the memorandum, or articles, of the transferring company or of the cell company to which the transferring company is to be transferred.
- (11) If the registrar approves the transfer of the transferring company –
 - (a) the transferring company is transferred to the cell company specified in the transfer agreement in relation to the transferring company to be the cell company to which it is to be transferred;
 - (b) the transferring company ceases to be a company that is not a cell;
 - (c) the transferring company becomes a cell of the cell company;

- (d) the registrar shall register the transfer of the transferring company, and the memorandum and articles, delivered to the registrar under paragraph (6);
 - (e) the registrar shall, in the case of –
 - (i) the transfer of a transferring company to an incorporated cell company, issue a certificate of incorporation of the cell under Article 9 as if he or she had received an application for the creation of the cell under Article 127YA, or
 - (ii) the transfer of a transferring company to a protected cell company, issue a certificate of recognition of the cell under Article 9 as if he or she had received an application for the creation of the cell under Article 127YA and Article 127YC(10) applied in relation to the cell; and
 - (f) the registrar shall record that the transferring company has ceased to be a company that is not a cell.
- (12) If a transferring company is transferred under paragraph (11)(a)–
- (a) all property and rights to which the company was entitled immediately before the transfer shall –
 - (i) if the company became a cell of an incorporated cell company, become the property and rights of the cell, or
 - (ii) if the company became a cell of a protected cell company, become the property and rights of the protected cell company in respect of the cell;
 - (b) the liabilities, and all contracts, debts and other obligations to which the transferring company was subject immediately before the transfer shall –
 - (i) if the company became a cell of an incorporated cell company, become the liabilities, contracts, debts and other obligations of the cell, or
 - (ii) if the company became a cell of a protected cell company, become the liabilities, contracts, debts and other obligations of the protected cell company in respect of the cell;
 - (c) all actions and other legal proceedings which, immediately before the transfer were pending by or against the cell as a company may –
 - (i) if the company became a cell of an incorporated cell, be continued by or against the cell, or
 - (ii) if the company became a cell of a protected cell company, be continued by or against the protected cell company in respect of the cell.
- (13) The operation of paragraphs (11) and (12) shall not be regarded –
- (a) as a breach of contract or confidence or otherwise as a civil wrong;
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities; or
 - (c) as giving rise to any remedy by a party to a contract or other instrument, as an event of default under any contract or other instrument or as causing or permitting the termination of any contract or other instrument, or of any obligation or relationship.”.

17 Temporary Article T127YN

Immediately after Article 127YN of the Law, there is inserted the following Article–

T127YN Punishment for certain offences under this Part

- (1) The Table at the end of this Article has effect with respect to the way in which an

offence under a provision of this Part that is specified in Column 1 of the Table is punishable on conviction.

- (2) In relation to an offence under a provision of this Part specified in Column 1 of the Table 1 (the general nature of the offence being described in Column 2)–
- (a) the corresponding entry in Column 3 shows the maximum punishment by way of fine or imprisonment under this Law that may be imposed on a person convicted of the offence;
 - (b) the corresponding entry (if any) in Column 4 shows that a person convicted of the offence is also liable to a daily default fine;
 - (c) a reference in Column 3 to a period of years or months is a reference to a term of imprisonment of that duration; and
 - (d) a reference in Column 3 or 4 to a level is a reference to a fine of that level on the standard scale.
- (3) In paragraph (2)(b), liability to a daily default fine means that if–
- (a) a person has been convicted of the offence;
 - (b) the person is convicted of having again committed that offence; and
 - (c) on that subsequent occasion the contravention has continued for more than one day,

then in addition to the person’s liability to a fine under paragraph (2)(a) on conviction in respect of that subsequent offence, he or she is liable to the fine specified in Column 4 of the Table for each day (other than the first day) on which the subsequent offence is proved to have continued.

- (4) This Article has effect in addition to Article 215.

TABLE			
Column 1	Column 2	Column 3	Column 4
T127YDA(4)	Company or cell failing to comply with requirements re directors	Level 3	Level 2
T127YE(3)	Cell company failing to provide annual return for cell of the company	Level 3	Level 2
T127YE(5)	Cell of cell company and officer failing to provide information to cell company	Level 3	Level 2
T127YI(5)	Director making declaration without reasonable grounds to do so	2 years or a fine; or both	
T127YI(7)	Cell company and officers failing to file document in respect of cell transfer	Level 3	Level 2
T127YIA(5)	Director making declaration without having reasonable grounds to do so	2 years or a fine; or both	
T127YIA(7)	Cell company and officer failing to file document in respect of cell transfer	Level 3	Level 2”.

18 Article 127YL amended

In Article 127YL(3) of the Law, for the words “(a) ends with” there are substituted the words “(b) ends with”.

19 Article 127YM amended

In Article 127YM of the Law–

(a) in paragraph (1), for sub-paragraph (a) there is substituted the following sub-paragraph –

“(a) the alteration is sanctioned by the court as an arrangement in accordance with Article 125”;

(b) there are added at the end the following paragraphs –

“(8) When a certificate of incorporation is, in accordance with paragraph (3), issued under Article 9 in relation to a protected cell company that has become an incorporated cell company –

(a) the registrar shall, at the same time, issue in relation to each cell of the cell company a certificate of incorporation under Article 9 as if he or she had received an application for the creation of the cell under Article 127YA after the company had become an incorporated cell company;

(b) the certificate of recognition issued to each cell of the cell company under Article 9 as modified by Article 127YC(10) shall cease to have effect; and

(c) Article 127YI (11), (13) and (14) shall apply in relation to each cell of the protected cell company as if the cell had been transferred to the protected cell company under Article 127YI.

(9) When a certificate of incorporation is, in accordance with paragraph (3), issued under Article 9 in relation to an incorporated cell company that has become a protected cell company –

(a) the registrar shall, at the same time, issue under Article 9 in relation to each cell of the cell company a certificate of recognition as if he or she had received an application for the creation of the cell under Article 127YA after the company had become a protected cell company;

(b) the certificate of incorporation issued to each cell of the cell company under Article 9 as modified by Article 127YC(10) shall cease to have effect; and

(c) Article 127YI (11), (12) and (14) shall apply in relation to each cell of the protected cell company as if the cell had been transferred to the protected cell company under Article 127YI”.

20 Article 127YR amended

In Article 127YR(2)(b) of the Law, for the words “was or will complied with” there are substituted the words “was or will be complied with”.

21 Article 127YT amended

In Article 127YT(5) of the Law, in sub-paragraphs (a) and (b), for the words “its liabilities” there are substituted the words “its non-cellular liabilities”.

22 Article 127YW amended

In Article 127YW of the Law–

(a) for the words “The court” there are substituted the words “(1) The court”; and

(b) there is added at the end the following paragraph –

“(2) The court, on the application of a protected cell company, may determine, in accordance with this Part, if, or to what extent, an asset of the company is a cellular asset or a non-cellular asset of any of the cells of the cell company.”.

23 Citation and commencement

- (1) These Regulations may be cited as the Companies (Amendment No. 2) (Jersey) Regulations 200.
- (2) They come into force 7 days after they are made.

[1]

chapter 13.125

[2]

chapter 13.125