

STATES OF JERSEY



DRAFT COMPANIES (DEMERGER) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 1st March 2018
by the Chief Minister

STATES GREFFE



Jersey

DRAFT COMPANIES (DEMERGER) (JERSEY) REGULATIONS 201-

REPORT

Background

The [Companies \(Amendment No. 11\) \(Jersey\) Law 2014](#) introduced an enabling provision into the [Companies \(Jersey\) Law 1991](#) to allow the States to make Regulations to permit the demerger of Jersey companies. The drafting of such Regulations, entitled the Draft Companies (Demerger) (Jersey) Regulations 201- (the “**Draft Demerger Regulations**”) was approved by [MD-C-2015-0054](#).

As directed by Ministerial Decision [MD-C-2017-0148](#), a public consultation was carried out in late 2017 / early 2018. Following that consultation, and the amendments that followed from it, the Draft Demerger Regulations have been proposed.

The Draft Demerger Regulations

The introduction of a demerger regime is intended to enable the undertaking, property, rights and liabilities of a Jersey company to be divided amongst 2 or more companies, with assets and liabilities transferred by operation of law. Whilst it is possible to achieve a division in other ways (such as a scheme of arrangement, liquidation or a sale of assets), the demerger regulations will provide another alternative for a company to consider depending on the particular circumstances in place.

It is considered that the introduction of demerger rules will strengthen the corporate law offering already available in Jersey and, it is anticipated, provide additional flexibility and cost-efficiency to those using Jersey companies. Industry representatives have reported a commercial need for a process which enables a division in this manner and which might be simpler than alternatives currently available, whilst of course still providing protections for other interested parties (particularly creditors, shareholders and employees).

The current proposal envisages that the demerger regime will be applicable only to Jersey companies demerging into other Jersey companies. For the time being the regime will not be available to Jersey companies which, broadly, are liable to pay taxes in Jersey nor Jersey companies which are ultimately owned by individuals resident in Jersey. The specific list of companies not eligible to demerge on these grounds is found in Regulation 2(3). It is intended to extend the regime to these companies once the consequential amendments to the tax legislation have been developed. Specific procedures are already in place to govern transfers involving banking and insurance business and thus this business is also excluded from these Regulations.

Following a demerger, the original entity may cease to exist with the business being continued by 2 or more new entities; or, the original entity may continue to exist alongside one or more new entities. Subject to some limitations, the destination of the assets and liabilities of the demerging company can be determined by the demerging company and must be specified in a demerger instrument.

Significantly, all demerging companies must seek approval from their shareholders and give notice to their creditors (of over £5,000). Shareholders and creditors can serve objections on the demerging company and can also apply to the Royal Court for relief on the basis that their interests are unfairly prejudiced by the demerger. Employees of the demerging company must be given notice of and provided information on the demerger. All duties, rights and liabilities under contracts of employment are transferred to one of the demerged companies.

However, the principal means of protection for creditors, shareholders and employees is the requirement for a solvency statement to be given by the directors of both the demerging company and the demerged companies. Making a false statement or signing a certificate without reasonable grounds is an offence punishable with imprisonment or a fine. If the directors of the demerging company cannot sign a solvency statement, permission of the Court is required for the demerger.

Collective Responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers and the Assistant Ministers to the Chief Minister, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

Financial and manpower implications

There are no additional financial or manpower implications for the States arising from the adoption of these draft Regulations.

Explanatory Note

These Regulations provide a demerger regime for certain companies registered in Jersey.

Regulation 1 provides definitions for certain terms used in the Regulations. The term “relevant Jersey company” is defined to mean a company that is not a cell company or a cell and does not have unlimited shares or guarantor members. *Regulation 1* defines a “demerging company” as a relevant Jersey company that demerges into 2 or more companies and a “demerged company” as a relevant Jersey company resulting from a demerger.

Regulation 2 permits a relevant Jersey company to demerge into 2 or more relevant Jersey companies, one of which is a survivor company or all of which are new companies. A “survivor company” is defined in *Regulation 1* to mean a demerging company which, on completion of a demerger, continues as a demerged company. A “new company” is defined in *Regulation 1* to mean a company incorporated as a result of a demerger.

A company that is registered under the Banking Business (Jersey) Law 1991 or that is a permit holder under the Insurance Business (Jersey) Law 1996 would not be eligible to demerge or to be a demerged company (*Regulation 2(2)*).

A company specified in *Regulation 2(3)* would not be eligible to demerge or to be a demerged company, including a company that is a financial services company within the meaning given in Article 3(1) of the Income Tax (Jersey) Law 1961 that is subject to tax under Article 123D of that Law and a utility company within the meaning given in Article 123C(3) of the Income Tax (Jersey) Law 1961.

A company that is under investigation in relation to an offence or has been charged with an offence and against which there is a criminal prosecution pending would not be eligible to demerge or to become a demerged company until the conclusion of the criminal prosecution (*Regulation 2(4)*).

Regulation 3 makes it mandatory for a relevant Jersey company proposing to demerge to execute a demerger instrument stating the terms and means of effecting the demerger, in particular, whether or not the demerging company is to be a survivor company; the names and addresses of persons who are the directors of the demerging company; details of any arrangements necessary to complete the demerger; details of payments to be made to a member or director of the demerging company and details of any securities of the demerging company that are to be converted into securities of a demerged company (*Regulation 3(1) to (3)*).

If a demerged company is to be a new company, the demerger instrument must also set out the proposed memorandum and articles of the demerged company and the name and address of any person who will become a director of the demerged company and must have attached to it a draft of any other document that would be required by Part 2 of the Companies (Jersey) Law 1991 (the “Law”) to be delivered to the registrar (as defined in Article 1(1) of the Law) if the demerged company was being incorporated under the Law otherwise than by demerger (*Regulation 3(4)*).

If the demerging company is to be a survivor company, the demerger instrument must also state whether any amendments to the memorandum or articles of the demerging company are proposed to take effect on the demerger and the details of those amendments (*Regulation 3(5)*).

Regulation 3(6) and (7) make provision for the revocation of a demerger instrument by the demerging company, at any time before the date of the merger.

A demerger instrument must identify the undertaking, property and liabilities of the demerging company and must state, in respect of each demerged company, which part of the undertaking, property and liabilities of the demerging company is to become the undertaking, property and liabilities of each demerged company, except that a liability attached to any property of a demerging company must not be separated from that property (*Regulation 3(8)*).

Regulation 4 requires that the directors of a demerging company pass a resolution that, in the opinion of the directors voting for the resolution, the demerger is in the best interests of the demerging company. The resolution must be passed prior to notice being given of a meeting of the demerging company to approve a demerger instrument. Each director who voted in favour of a demerger is required to sign a certificate containing a solvency statement (as defined in *Regulation 1*) or a statement that the director is satisfied on reasonable grounds that there is a reasonable prospect of obtaining the permission of the court to demerge under *Regulation 9* and setting out the grounds for that statement.

If a solvency statement is made, each person who will become a director of a demerged company as set out in the demerger instrument is required to sign a certificate stating that in his or her opinion, the demerged company of which he will become a director can continue to carry on business and discharge their liabilities as they fall due for the 12 months after the signing of the certificate. Additionally, if none of the persons who will become directors of the demerged company is a director of the demerging company, the certificate must also be signed by a director of the demerging company who voted in favour of the demerger. The certificate must also state the grounds for that opinion. The resolution must be passed, and the certificates signed, prior to notice being given of a meeting of the demerging company to approve a demerger instrument.

Regulation 5 provides for the approval of the demerger instrument by a special resolution of the demerging company and, where there is more than one class of members, by a special resolution of a separate meeting of each class of members. Notice of each meeting must be given and, from the date that the notice of a meeting is given, a demerging company is required to make the demerger instrument and copies of the proposed memorandum and articles of each demerged company available for inspection by a member free of charge either electronically at any time or at its registered office during normal office hours. A demerger is approved under *Regulation 5* when all of the required special resolutions have been passed and a demerger shall not be completed unless it is approved.

Regulation 6 permits a member of a demerging company to serve notice of the member's objection to a demerger on the demerging company and to apply to the court for an order on the ground that the demerger would unfairly prejudice the interests of the member. A notice must be served within 21 days after the date the demerger is approved and an application may be made within 21 days after the date the notice of an objection is served on the demerging company. An objection or application for an order under *Regulation 6* may not be made by a member who voted in favour of the demerger. If the court is satisfied that an application is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of. The demerging company must, within 14 days after an order is made or such longer period as the court may allow, deliver to the registrar for the registration of the Act of court recording the making of an order.

Regulation 7 provides for notice of the demerger to be given to each of the creditors of a demerging company who, after its directors have made reasonable enquiries, is known to the directors to have a claim against the company exceeding £5,000. The demerging company is also required to make the demerger instrument and a copy of the proposed memorandum and articles of each demerged company available for inspection free of charge by its creditors either electronically at any time or at its registered office during normal office hours. The demerging company is given the power to redact commercially sensitive information from the demerger instrument or copy of the proposed memorandum and articles prior to making it available to creditors.

Regulation 8 provides for the demerging company to make a declaration to the Comptroller. Under *Regulation 8(2)*, the declaration must state that the demerging company is eligible to demerge in accordance with *Regulation 2(1)* as none of the conditions as set out in *Regulation 2(3)* apply to the demerging company. If a demerging company makes a declaration, the Comptroller must issue a certificate tax certificate (showing a lodgement number) to the demerging company. If the Comptroller discovers that the demerging company is not eligible to demerge, the Comptroller shall advise the registrar of the discovery.

Regulation 9 applies to a demerger if any certificate signed by a director of the demerging company under *Regulation 4(5)* does not contain a solvency statement. The demerger is not completed unless an order of the court has been obtained permitting the demerger on the ground that the demerger must not be unfairly prejudicial to the interests of any creditor or member of the demerging company. The demerging company is required to apply, as soon as is practicable after the demerger is approved, to the court for an order permitting the demerger. The application which application must not be heard until at least 28 days after it is made unless creditors and members consent to a shorter period. The demerging company is required to send a copy of the application to any creditor who, after the directors have made reasonable enquiries, is known to the directors to have a claim against the demerging company exceeding £5,000, any other creditor of the demerging company who requests a copy, any member of the demerging company who objects to the demerger under *Regulation 6*, and to the registrar, who all have a right to be heard on the hearing of the application.

Regulation 10 gives the creditor of a demerging company the opportunity to object to a demerger if all solvency statements are made and sets out the procedure for such an objection.

Regulation 11 provides for the demerging company to apply to the registrar to complete the demerger and provides for the registrar to register the demerger, if the registrar is satisfied that certain conditions of the Regulations have been complied with.

Regulation 12 makes provision for the registration of notices as to a demerger by the Registrar.

Under *Regulation 12(2)*, the completion date of a demerger is the date that the last entry on the register is made in relation to the demerger.

The registrar is required to enter in the register, in respect of a demerging company that is not a survivor company, a notice that states that the company has ceased to be incorporated as a separate company because it has demerged into the demerged companies specified in the notice and specifies the names of each demerged company (*Regulation 12(3)*).

If the demerged company is a survivor company, the registrar is required to enter in the register, in respect of that company, a notice that states that the company has demerged, and continues as a survivor company together with the new company or companies specified in the notice and specifies any change in the company's memorandum and articles that takes effect on the demerger (*Regulation 12(4)*).

By *Regulation 12(5)*, if a demerged company is a new company and the registrar would have registered the company under the Law if it had been incorporated otherwise than as a result of a demerger, the registrar is required to register the new company by registering the memorandum and articles of the new company and issuing a certificate of its incorporation and by entering in the register, in respect of that new company, a notice that states that the new company is the result of a completed demerger of the demerging company specified in the notice. The fee payable under Article 201 of the Law in respect of the registration of a company is payable in respect of the registration of the new company.

Regulation 13 provides for the effect of a demerger generally.

Regulation 13(1) provides that on the completion date of a demerger, if the demerging company is a survivor company, it continues as a demerged company together with one or more demerged companies that are new companies, or, if the demerging company is not a survivor company it ceases to be incorporated as a separate company and continues as 2 or more demerged companies that are new companies.

Regulation 13(2) describes the effect of the completion of the demerger on the property and rights of the demerging company and on the civil liabilities, contracts, debts and other obligations and legal proceedings to which the demerging company was subject immediately before the demerger was completed. The effect is that the property, rights, and civil liabilities, contracts, debts and other obligations would pass to the demerged company in the parts stated in the demerger instrument or jointly and severally if not stated. *Regulation 13(2)* also provides for the effect of the completion of the demerger on the actions and other legal proceedings which, immediately before the demerger was completed, were pending by or against the demerging company.

Under *Regulation 13(3)*, a licence held by a demerging company shall not be transferred to a demerged company on completion of the demerger unless with the permission of the relevant licensing or regulatory authority.

Regulation 13(4) provides that entries made on the register are conclusive evidence that on the completion date of the demerger specified in the entry, the demerging company has demerged and continued as the demerged companies and that the requirements of these Regulations and the Law have been complied with in respect of the demerger of the demerging company and all matters precedent to and incidental to the demerger.

By *Regulation 13(5)*, the operation of *Regulation 12* must not be regarded as a breach of contract or confidence or otherwise as a civil wrong; a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of rights or liabilities; or 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.

The term "licence" is defined in *Regulation 13(6)* to include an authorization, a certificate, a consent, a permit, a registration or other permission.

Regulation 14 provides for the effect of a demerger on to employment.

Regulation 14(1) requires that the demerging company send written notice to each of its employees.

Regulation 14(2) specifies the information that must be included in the notice.

Regulation 14(3) requires a demerging company to make the demerger instrument available to employees free of charge and gives the demerging company the power to redact commercially sensitive information from the demerger instrument prior to making it available to employees.

Under *Regulation 14(4)*, where a right or liability under a contract of employment is transferred to a demerged company under a demerger, the contract is not terminated by the demerger, unless express provision is made to that effect. In such a case the contract of employment has effect from the completion date of the demerger as if between the employee and the demerged company and any act done before the completion date of the demerger by or in relation to the demerging company in respect of the contract of employment or employee is to be treated from that date as having been done by or in relation to the demerged company. Further, a period of employment with the demerging company is to be treated as a period of employment with the demerged company, and the demerger is not to be treated as interrupting the continuity of that period.

Under *Regulation 14(5)*, where an employee objects to a transfer of his or her rights and liabilities under a contract of employment, the employee must give notice of his or her objection to the demerging company in writing prior to the completion date of the demerger and where such notice is given and has not been withdrawn prior to that date of the demerger, the rights and liabilities of the employee under the contract of employment are not transferred by the demerger. The employee is not to be treated, for any purpose, as having been either employed by the demerged company or dismissed by the demerging company and the employee's contract of employment terminates on whichever is the later of the completion date of the demerger and the demerging company may make a payment to the employee in lieu of notice in respect of all or part of the relevant unexpired notice period. Any liability of the demerging company to pay the employee upon termination of the employee's contract of employment is a liability of the demerged companies in the parts stated in the demerger instrument or jointly and severally if not stated in the demerger instrument.

A collective agreement which is made by the demerging company with a representative body recognized by the demerging company and in force in relation to an employee immediately before the completion date of the demerger will continue to have effect in respect of that employee as if made by or on behalf of the demerged company to which the rights and liabilities under the collective agreement are transferred (*Regulation 14(6)*).

Under *Regulation 14(7)*, changes to an employee's terms and conditions of employment may, after the expiry of one year after the completion date of the demerger, be negotiated between a demerged company and an employee of that demerged company (whose contract of employment was transferred from the demerging company to the demerged company) without the risk of the changes being declared void on the basis of terms that were in effect between the demerging company and the employee before the demerger.

Regulation 14(8) provides that a demerging company or demerged company shall not within 2 years after a demerger terminate the recognition of a representative body whose recognition by the demerging company was effective immediately prior to the completion date of the demerger.

Under *Regulation 14(9)*, a demerging company may transfer to a demerged company the information regarding an employee of the demerging company for the purpose of employment of the employee by the demerged company. The information that may be transferred includes the name and address of the employee, the age of the employee, educational or vocational qualification of the employee and information regarding a collective agreement which applies to the employee.

Regulation 15 provides for the effect of a demerger on a retirement scheme so that if immediately before the completion date of a demerger, the demerging company had a contractual obligation to pay a certain level of contribution to a retirement scheme on behalf of the employee, that contractual obligation shall, on the completion date of the demerger be transferred to the demerged company, if any, which is the employee's employer on completion date of the demerger.

Regulation 16 creates an offence if on, or in connection with, an application under these Regulations, a person knowingly or recklessly provides to the registrar or the Comptroller any information which is false, misleading or deceptive in a material particular or any document containing any such information.

Regulation 17 provides for the title of these Regulations and provides for them to come into force 7 on such day or days as the States may by Act appoint.



Jersey

DRAFT COMPANIES (DEMERGER) (JERSEY) REGULATIONS 201-

Arrangement

Regulation

1	Interpretation	13
2	Companies eligible and not eligible to demerge and be demerged	14
3	Demerger instrument	15
4	Resolutions and certificates	16
5	Approval of demerger instrument	17
6	Objection by member	18
7	Notice to creditors	19
8	Declaration to Comptroller	20
9	Company to apply to court if solvency statement not made	21
10	Objection by creditor if solvency statement made	21
11	Pre-registration steps	22
12	Registration of notices as to demerger	24
13	Effect of completion of demerger generally	25
14	Effect of demerger on employment	26
15	Effect of a demerger on retirement schemes	28
16	Offences relating to demerger	28
17	Citation and commencement	28



Jersey

DRAFT COMPANIES (DEMERGER) (JERSEY) REGULATIONS 201-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Regulation 127GB of the Companies (Jersey) Law 1991¹, have made the following Regulations –

1 Interpretation

- (1) In these Regulations, unless the context otherwise requires –
- “completion date”, in relation to a demerger, shall be construed in accordance with Article 12(2);
- “Comptroller” has the meaning given by the Income Tax (Jersey) Law 1961²;
- “demerged company” means a relevant Jersey company resulting from a demerger under these Regulations;
- “demerger instrument” shall be construed in accordance with Regulation 3;
- “demerging company” means a relevant Jersey company that demerges into 2 or more relevant Jersey companies under these Regulations;
- “employee” has the meaning given by Article 1A(1) of the Employment (Jersey) Law 2003³;
- “employer” has the meaning given by Article 1A(1) of the Employment (Jersey) Law 2003;
- “Law” means the Companies (Jersey) Law 1991⁴;
- “new company” means a relevant Jersey company incorporated as a result of a demerger;
- “relevant Jersey company” means a company that is not a cell company or a cell and does not have unlimited shares or guarantor members;
- “solvency statement” shall be construed in accordance with Regulation 4(2);
- “survivor company” means a demerging company which, on completion of a demerger, continues as a demerged company.

- (2) Nothing in these Regulations is to be read as preventing –
- (a) more than one person from signing the same certificate under these Regulations; or
 - (b) more than one certificate signed under these Regulations from being included in the same document,
- and references to a certificate are to be construed accordingly.

2 Companies eligible and not eligible to demerge and be demerged

- (1) Subject to paragraphs (2), (3) and (4) and to the requirements of these Regulations, a relevant Jersey company may demerge into 2 or more relevant Jersey companies –
- (a) one of which is a survivor company; or
 - (b) all of which are new companies.
- (2) A company that is registered under the Banking Business (Jersey) Law 1991⁵ or a permit holder within the meaning of the Insurance Business (Jersey) Law 1996⁶ shall not be eligible to demerge or to become a demerged company.
- (3) The following companies shall not be eligible to demerge or to become a demerged company –
- (a) a financial services company within the meaning given in Article 3(1) of the Income Tax (Jersey) Law 1961⁷ that is subject to tax under Article 123D of that Law;
 - (b) a utility company within the meaning given in Article 123C(3) of the Income Tax (Jersey) Law 1961;
 - (c) a company with profits or gains chargeable to tax from the importation and supply of hydrocarbon oil under Article 123CAA of the Income Tax (Jersey) Law 1961;
 - (d) a company with profits or gains chargeable to tax under Schedule A under Article 51(1)(a), (b) or (c) of the Income Tax (Jersey) Law 1961;
 - (e) a company to which Article 123C of the Income Tax (Jersey) Law 1961 applies by virtue of paragraph (1) of that Article where an individual resident in Jersey owns (whether directly or indirectly) more than 2% of the ordinary share capital of the company;
 - (f) a company required to deduct tax from the earnings payable by the employer to an employee under Article 41B(1) of the Income Tax (Jersey) Law 1961;
 - (g) a company required to deduct tax from a payment made to a sub-contractor or to a person nominated by the sub-contractor for the purpose under Article 41E(1) of the Income Tax (Jersey) Law 1961;
 - (h) a “large corporate retailer” within the meaning given by Article 123I of the Income Tax (Jersey) Law 1961; and

- (i) a company registered under Part 3 of the Goods and Services Tax (Jersey) Law 2007⁸.
- (4) Subject to an order of the court, a company that –
 - (a) is under investigation in relation to an offence; or
 - (b) has been charged with an offence and against which there is a criminal prosecution pending,

shall not be eligible to demerge or to become a demerged company until the conclusion of the investigation without a criminal prosecution; or the criminal prosecution, as the case may be.

3 Demerger instrument

- (1) A relevant Jersey company proposing to demerge shall execute a demerger instrument in accordance with this Regulation.
- (2) A demerger instrument shall state the terms and means of effecting the demerger and, in particular, the following information –
 - (a) details of the proposed demerging company, including –
 - (i) whether or not it is to be a survivor company, and
 - (ii) the names and addresses of the persons who are the directors of the demerging company;
 - (b) details of any arrangements necessary to complete the demerger;
 - (c) details of any payment, other than of a kind described in paragraph (3)(b), proposed to be made to a member or director of the demerging company; and
 - (d) in relation to any securities of a demerging company, the information specified in paragraph (3).
- (3) The information referred to in paragraph (2)(d) is –
 - (a) if the securities are to be converted into securities of a demerged company, the manner in which that conversion is to be done; or
 - (b) otherwise, the kind of the payment that the holders of any securities in the demerging company are to receive instead of the securities of a demerged company and the manner in which and the time at which they are to receive it.
- (4) If a demerged company is to be a new company, the demerger instrument shall, in addition to the information required under paragraph (2) –
 - (a) set out –
 - (i) the proposed memorandum and articles of the demerged company, and
 - (ii) the name and address of any person who will become a director of the demerged company; and
 - (b) have attached to it a draft of any other document or information that would be required by Part 2 of the Law to be delivered to the registrar if the demerged company was being incorporated under the Law otherwise than by demerger.

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- (5) If a demerging company is to be a survivor company, the demerger instrument shall, in addition to the information required under paragraph (2) state –
 - (a) whether any amendments to the memorandum and articles of the demerging company are proposed to take effect on the demerger and, if so, details of those amendments; and
 - (b) whether it is proposed that, on the demerger, any person will become, or cease to be a director of the survivor company and, if so, the name and address of each such person.
 - (6) A demerger instrument may provide that, at any time before the completion date of the demerger, the demerger instrument may be revoked by the demerging company.
 - (7) If a demerger instrument is revoked under a provision included in it under paragraph (6), nothing in these Regulations requires or authorizes any further steps to be taken to complete the demerger.
 - (8) A demerger instrument must identify the undertaking, property, rights and liabilities of the demerging company and must state, in respect of each demerged company, which part of the undertaking, property, rights and liabilities of the demerging company is to become the undertaking, property, rights and liabilities of each demerged company, except that a liability attached to any property of a demerging company must not be separated from that property.

4 Resolutions and certificates

- (1) Before notice is given of a meeting of a demerging company to approve a demerger instrument under Regulation 5, the directors of the demerging company shall pass a resolution that, in the opinion of the directors voting for the resolution, the demerger is in the best interests of the demerging company.
- (2) For the purposes of this Regulation, a solvency statement is a statement that, having made full inquiry into the affairs of the demerging company, the person making the statement reasonably believes that the demerging company is, and will remain until the demerger is completed, able to discharge its liabilities as they fall due.
- (3) If the directors voting for the resolution are satisfied on reasonable grounds that they can properly make a solvency statement in respect of the demerging company, the resolution shall in addition state that they are so satisfied.
- (4) If paragraph (3) does not apply, the resolution shall instead state that the directors voting for it are satisfied on reasonable grounds that there is a reasonable prospect of obtaining the permission of the court under Regulation 9 for the demerger.
- (5) After a resolution is passed under paragraph (1), but before notice is given as mentioned in that paragraph, each director who voted in favour of it shall sign a certificate –
 - (a) containing –

- (i) if paragraph (3) applies, a solvency statement, or
 - (ii) if paragraph (3) does not apply, a statement that the director is satisfied on reasonable grounds that there is a reasonable prospect of obtaining the permission of the court under Regulation 9; and
 - (b) setting out the grounds for making the solvency statement under sub-paragraph (a)(i) or statement under sub-paragraph (a)(ii).
- (6) If paragraph (3) applies, before notice is given as mentioned in paragraph (1), each person who will become a director of a demerged company as set out in the demerger instrument under Regulation 3(4)(a)(ii) shall sign a certificate stating –
- (a) that, in that person’s opinion, the demerged company of which the person will be a director is in a position to carry on business and discharge its liabilities as they fall due for the 12 months immediately following the demerger; and
 - (b) the grounds for that opinion, having particular regard to –
 - (i) the prospects of the demerged company,
 - (ii) the proposals in the demerger instrument with respect to the management of the businesses of the demerged company, and
 - (iii) the amount and character of the financial resources that will, in the view of the person signing, be available to the demerged company.
- (7) If none of the persons referred to in paragraph (6) are directors of the demerging company, the certificate under paragraph (6) must also be signed by a director referred to in paragraph (5).

5 Approval of demerger instrument

- (1) The directors of a demerging company shall submit the demerger instrument for approval by a special resolution of that demerging company and, where there is more than one class of members, for approval by a special resolution of a separate meeting of each class.
- (2) Notice of each meeting referred to in paragraph (1), shall be given and –
 - (a) shall be accompanied by –
 - (i) a copy or summary of the demerger instrument,
 - (ii) a copy of the proposed memorandum and articles of association for each demerged company, or a summary of the principal provisions of the memorandum and articles,
 - (iii) if a summary is supplied under clause (i) or (ii), information as to how a copy of the document summarized may, from the date that the notice is given, be inspected free of charge by members either electronically (at all times) or at the demerging company’s registered office during normal office hours in accordance with paragraph (3),

- (iv) a copy of the certificates signed under Regulation 4(5) and (6) in respect of that demerging company,
 - (v) a statement of the material interests in the demerger of the directors of the demerging company and of the persons who will become directors of the demerged companies, and
 - (vi) such further information as a member would reasonably require to reach an informed decision on the demerger; and
 - (b) shall contain sufficient information to alert members to their right to apply to the court under Regulation 6.
- (3) A demerging company shall, from the date that notice of a meeting is given under paragraph (2), make the demerger instrument and copies of the proposed memorandum and articles of each demerged company available for inspection free of charge by its members either electronically at any time or at its registered office during normal office hours.
- (4) A demerger is approved under this Regulation when all of the special resolutions required under paragraph (1) have been passed in respect of the demerging company.
- (5) A demerger shall not be completed unless it is approved under this Regulation.

6 Objection by member

- (1) A member of a demerging company may –
- (a) within 21 days after the date on which the demerger is approved under Regulation 5(4), serve notice on the demerging company of the member's objection to the demerger; and
 - (b) within 21 days after the date on which the member of the demerging company served notice of his or her objection under sub-paragraph (a), apply to the court for an order on the ground that the demerger would unfairly prejudice the interests of the member.
- (2) An objection or application under paragraph (1) may not be made by a member who voted in favour of the demerger under Regulation 5.
- (3) If the court is satisfied that an application under paragraph (1)(b) is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.
- (4) Without prejudice to the generality of paragraph (3), the court's order may –
- (a) regulate the conduct of the demerging company's affairs in the future;
 - (b) require the demerging company to refrain from doing or continuing an act complained of by the member or to do an act which the member has complained it has omitted to do;
 - (c) authorize civil proceedings to be brought in the name and on behalf of the demerging company by such person or persons and on such terms as the court may direct; and

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- (d) provide for the purchase of the rights of any members of the demerging company by other members or by the demerging company itself and, in the case of a purchase by the demerging company itself, the reduction of the demerging company's capital accounts accordingly.
 - (5) If an order under this Regulation requires the demerging company not to make any, or any specified, alterations in its memorandum or articles, the demerging company shall not then without leave of the court make such alterations in breach of that requirement.
 - (6) An alteration in the demerging company's memorandum or articles made by virtue of an order under this Regulation is of the same effect as if duly made by resolution of the demerging company, and the provisions of the Law apply to the memorandum or articles as so altered accordingly.
 - (7) The demerging company shall, within 14 days after an order is made under this Regulation or such longer period as the court may allow, deliver to the registrar for the registration of the Act of court recording the making of the order under this Regulation –
 - (a) if the order is altering, or giving leave to alter, a demerging company's memorandum or articles; or
 - (b) if the court otherwise sees fit.
 - (8) If the demerging company fails to comply with paragraph (7), the demerging company shall be guilty of an offence and liable to a fine of level 3 on the standard scale and a daily default fine of level 2 on the standard scale in accordance with Article 215 of the Law.

7 Notice to creditors

- (1) During the period beginning with the date on which the first notice is given under Regulation 5(2) in relation to a demerger and ending 21 days after the demerger is approved under Regulation 5(4), the demerging company shall send written notice to each of its creditors who, after its directors have made reasonable enquiries, is known to the directors to have a claim against the demerging company exceeding £5,000.
- (2) The notice sent under paragraph (1) shall state –
 - (a) that the demerging company intends to demerge, in accordance with these Regulations, into 2 or more relevant Jersey companies specified in the notice; and
 - (b) that the demerger instrument is available to creditors from the demerging company, on request, free of charge.
- (3) If Regulation 9 applies to the demerger, the notice sent under paragraph (1) shall (in addition to the matters in paragraph (2)) –
 - (a) state that a demerging company has applied or will apply for the permission of the court under that Regulation;
 - (b) state that any creditor of the demerging company may require the demerging company making the application to send a copy of the application to the creditor; and

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- (c) set out information as to –
 - (i) the means by which a creditor may contact the demerging company making the application, or a person representing the demerging company in that application, and
 - (ii) Regulation 9(4), including the date of the hearing of the application if known at the time of the notice.
 - (4) If Regulation 9 does not apply to the demerger, the notice sent under paragraph (1) shall state (in addition to the matters in paragraph (2)) that any creditor of the demerging company may –
 - (a) object to the demerger under Regulation 10(2)(a) and apply to the court for an order restraining the demerger or modifying the demerger instrument under Regulation 10(2)(b); or
 - (b) require the demerging company to notify the creditor if any other creditor of the demerging company applies to the court under Regulation 10(2)(b).
 - (5) Where an application is made for a court order under paragraph (4)(a), the creditor shall serve a copy of the application on the demerging company;
 - (6) The demerging company shall, within the time limit set out in paragraph (7), publish the contents of the notice sent under paragraph (1) –
 - (a) once in a newspaper circulating in Jersey; or
 - (b) in any other manner –
 - (i) approved by the registrar, and
 - (ii) published by the Commission.
 - (7) The time limit referred to in paragraph (6) is whichever is the earlier of –
 - (a) 21 days after the demerger is approved under Regulation 5(4); or
 - (b) as soon as practicable after the demerging company sends the last of any notices under paragraph (1).
 - (8) Subject to paragraph (9), a demerging company shall, from the date that notice of a meeting is given under paragraph (1), make the demerger instrument and a copy of the proposed memorandum and articles of each demerged company available for inspection free of charge by its creditors either electronically at any time or at its registered office during normal office hours.
 - (9) A demerging company may redact commercially sensitive information from the demerger instrument or copy of the proposed memorandum and articles of each demerged company prior to making it available for inspection under paragraph (8).

8 Declaration to Comptroller

- (1) During the period beginning with the date on which the first notice is given under Regulation 5(2) in relation to a demerger and ending 21 days after the demerger is approved under Regulation 5(4), the demerging

company shall subject to paragraphs (2), make a declaration to the Comptroller.

- (2) The declaration made under paragraph (1) shall state that the demerging company is eligible to demerge in accordance with Regulation 2(1) as none of the conditions as set out in Regulation 2(3) apply to the demerging company.
- (3) If a demerging company makes a declaration under paragraph (1), the Comptroller shall issue a tax certificate (showing a lodgement number) to the demerging company.
- (4) If the Comptroller discovers that the demerging company is not eligible to demerge, the Comptroller shall advise the registrar of that discovery.

9 Company to apply to court if solvency statement not made

- (1) This Regulation applies to a demerger if any certificate signed by a director of the demerging company under Regulation 4(5) does not contain a solvency statement.
- (2) A demerger to which this Regulation applies shall not be completed unless an order of the court has been obtained permitting the demerger on the ground that the demerger would not be unfairly prejudicial to the interests of any creditor or member of the demerging company.
- (3) A demerging company in respect of which a certificate referred to in paragraph (1) has been signed shall, as soon as is practicable after the demerger is approved under Regulation 5(4) –
 - (a) apply to the court for an order permitting the demerger under paragraph (2); and
 - (b) send a copy of the application referred to in sub-paragraph (a) –
 - (i) to any creditor who, after the directors have made reasonable enquiries, is known to the directors to have a claim against the demerging company exceeding £5,000,
 - (ii) to any other creditor of the demerging company who requests a copy from the demerging company,
 - (iii) to any member of the demerging company who requests a copy of the application, and
 - (iv) to the registrar.
- (4) The court shall not hear an application made under paragraph (3) until at least 28 days after it is made to the court unless the creditors and members mentioned in paragraph (3)(b) consent to a shorter period.
- (5) On the hearing by the court of an application under this Regulation, a person mentioned in paragraph (3)(b) shall have a right to be heard.

10 Objection by creditor if solvency statement made

- (1) This Regulation applies to a demerger to which Regulation 9 does not apply.

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- (2) A creditor of a demerging company who has a claim against the demerging company exceeding £5,000 and who objects to the demerger may –
- (a) within 21 days after the date of the publication of the contents of the notice under Regulation 7(6), serve notice of the creditor's objection to the demerging company; and
 - (b) within 21 days after the date on which the notice of the creditor's objection was given under sub-paragraph (a), if the creditor's claim against the demerging company has not been discharged, apply to the court for an order restraining the demerger or modifying the demerger instrument and serve a copy of the application on the demerging company.
- (3) If a creditor makes an application under paragraph (2)(b), the demerging company shall, as soon as is practicable after being served with a copy of the application under paragraph (2)(b), give a copy of it to each other creditor –
- (a) to whom a notice was given under Regulation 7(1);
 - (b) who has required notification under Regulation 7(4)(b);
 - (c) who has given notice of objection under paragraph (2)(a); or
 - (d) to whom the court orders that a copy should be sent.
- (4) If on an application under paragraph (2)(b) the court is satisfied that the demerger would unfairly prejudice the interests of the applicant, or of any other creditor of the demerging company, the court may make such order as it thinks fit in relation to the demerger, including an order –
- (a) restraining the demerger; or
 - (b) modifying the demerger instrument in such manner as may be specified in the order.
- (5) The court shall not make an order under paragraph (4)(b) to modify a demerger instrument that does not contain a provision in accordance with Regulation 3(6) allowing the demerging company to revoke the demerger instrument following the modification unless –
- (a) the order also inserts such a provision in the demerger instrument; and
 - (b) the court is satisfied that the demerging company will have an adequate opportunity to reconsider whether to proceed with the demerger following the modification.

11 Pre-registration steps

- (1) The demerging company shall apply, in the published form and manner (if any), to the registrar to complete the demerger.
- (2) Except where all the members of the demerging company and all of its creditors, who, after its directors have made reasonable enquiries, are known to the directors to have a claim against the demerging company exceeding £5,000, otherwise agree in writing, the application under paragraph (1) shall not be made until after whichever is the latest of the following dates –

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- (a) if any application was made to the court under Regulation 6, the last date on which such an application is disposed of otherwise than by an order restraining the demerger;
 - (b) if Regulation 9 applies to the demerger, the date of the order permitting the demerger;
 - (c) if Regulation 9 does not apply to the demerger –
 - (i) 21 days after the last date on which a notice was published under Regulation 7(6), if by then no creditor has given notice of objection under Regulation 10(2)(a),
 - (ii) 21 days after the date on which the last notice of objection by a creditor was given under Regulation 10(2)(a), if by then no creditor has applied to the court under Regulation 10(2)(b), or
 - (iii) if any application was made to the court under Regulation 10(2)(b), the last date on which such an application is disposed of otherwise than by an order restraining the demerger.
- (3) An application under paragraph (1) shall be accompanied by –
- (a) a copy of the demerger instrument;
 - (b) a copy of –
 - (i) if a demerged company is to be a new company, its memorandum and articles and any other document required for the incorporation of a new company under the Law, or
 - (ii) if a demerged company is to be a survivor company, any amendment to its memorandum or articles provided for under Regulation 3(5)(a);
 - (c) a copy, in respect of the demerging company, of –
 - (i) the resolution passed under Regulation 4(1), together with, if that information is not contained in the resolution, a list identifying the directors who voted in favour of that resolution, and
 - (ii) the certificates signed under Regulation 4(5) and (6);
 - (d) a further certificate, signed by each director who signed a certificate under Regulation 4(5), stating –
 - (i) that the director, and the demerging company of which he or she is a director, have complied with the requirements of these Regulations in respect of the demerger,
 - (ii) if Regulation 9 does not apply to the demerger, that in the director's opinion there has been no material change to the position stated in the solvency statement; and
 - (e) the special resolution passed under Regulation 5(1);
 - (f) a copy of any order of the court under Regulation 6, 9 or 10;
 - (g) proof that a declaration has been made by the demerging company under Regulation 8 in the form of a tax certificate (showing a lodgement number) issued by the Comptroller to the demerging company under Regulation 8(3); and

- (h) any other document or information required by the registrar, including documents or information which may be required by the registrar to establish that the requirements of paragraph (2) have been met.
- (4) The registrar shall register notices as to the demerger in accordance with Regulation 12 if he or she is satisfied –
 - (a) that the application complies with paragraphs (1) and (2) and is accompanied by the documents and information required under paragraph (3) and that the documents provided under paragraph (3) comply with that paragraph and with the provisions mentioned in it; and
 - (b) if the demerger instrument provides for a demerged company to be a new company, that he or she would have registered the memorandum and articles of the company under Article 8 of the Law if it had been incorporated otherwise than by demerger.

12 Registration of notices as to demerger

- (1) This Regulation applies where the registrar is to register notices as to a demerger under Regulation 11.
- (2) The completion date of a demerger is the date the last entry on the register is made under this Regulation in relation to the demerger.
- (3) The registrar shall enter in the register, in respect of a demerging company that is not a survivor company, a notice that states that the company has ceased to be incorporated as a separate company because it has demerged into the demerged companies specified in the notice.
- (4) If a demerged company is a survivor company, the registrar shall enter in the register, in respect of that company, a notice that states that the company has demerged, and has been continued as a survivor company together with the new company or companies specified in the notice.
- (5) If a demerged company is a new company, the registrar shall, if he or she would have registered the new company under the Law if it had been incorporated otherwise than as the result of a demerger, register the new company by –
 - (a) registering the memorandum and articles of the new company under Article 8 of the Law, and issuing a certificate of its incorporation under Article 9 of the Law, as if the registrar had received an application for the creation of the new company under Part 2 of the Law with the memorandum and articles provided for in the demerger instrument; and
 - (b) entering in the register, in respect of that new company, a notice that states that the new company is the result of a completed demerger of the demerging company specified in the notice,and the fee payable under Article 201 of the Law in respect of the registration of a company shall be payable in respect of the registration of the new company.
- (6) Each entry on the register under this Regulation –

- (a) shall in addition include a note specifying the completion date of the demerger to which it relates; and
- (b) may in addition include a note of any further information that the registrar considers useful in relation to the demerger.

13 Effect of completion of demerger generally

- (1) On the completion date of a demerger –
 - (a) if the demerging company is a survivor company it continues as a demerged company together with one or more demerged companies that are new companies; or
 - (b) if the demerging company is not a survivor company it ceases to be incorporated as a separate company and continues as 2 or more demerged companies that are new companies.
- (2) Subject to paragraph (3), when a demerger is completed –
 - (a) all property and rights to which the demerging company was entitled immediately before the demerger was completed become the property and rights of the demerged companies in the parts stated in the demerger instrument under Regulation 3(8) or jointly in common in equal parts if not stated in the demerger instrument;
 - (b) subject to an order of the court, the demerged companies become jointly and severally subject to all financial penalties which the demerging company was subject to immediately before the demerger was completed;
 - (c) the demerged companies become subject to all civil liabilities and all contracts, debts and other obligations which the demerging company was subject to immediately before the demerger was completed in the parts stated in the demerger instrument under Regulation 3(8) or jointly and severally if not stated in the demerger instrument; and
 - (d) subject to an order of the court, all actions and other legal proceedings which, immediately before the demerger was completed, were pending by or against the demerging company may be continued by or against all or any of the demerged companies.
- (3) A licence held by a demerging company shall not be transferred to a demerged company on completion of the demerger unless with the permission of the authority that granted the licence.
- (4) Entries made on the register under Regulation 12 are conclusive evidence of the following matters to which they refer –
 - (a) that on the completion date of the demerger specified in the entry, the demerging company demerged and was continued as the demerged companies; and
 - (b) that the requirements of these Regulations and the Law have been complied with in respect of –
 - (i) the demerger of the demerging company under these Regulations, and

- (ii) all matters precedent to and incidental to the demerger.
- (5) The operation of this Regulation 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.
- (6) In this Regulation “licence” includes an authorization, a certificate, a consent, a permit, a registration or any other permission.

14 Effect of demerger on employment

- (1) During the period beginning with the date on which the first notice is given under Regulation 5(2) in relation to a demerger and ending 21 days after the demerger is approved under Regulation 5(4), the demerging company shall send written notice to each of its employees.
- (2) The notice sent under paragraph (1) shall state –
- (a) that the demerging company intends to demerge, in accordance with these Regulations, into 2 or more relevant Jersey companies specified in the notice; and
 - (b) that the demerger instrument is available to employees from the demerging company, on request, free of charge.
- (3) A demerging company shall in accordance with paragraph (2)(b) make the demerger instrument available to employees free of charge and may redact commercially sensitive information from the demerger instrument prior to making it available to employees.
- (4) Where any duty, right or liability transferred from a demerging company to a demerged company under a demerger is a duty, right or liability under a contract of employment –
- (a) the contract –
 - (i) shall not be terminated by the demerger, unless express provision is made to that effect, or unless paragraph (5) applies, and
 - (ii) shall have effect from the completion date of the demerger as if between the employee and the demerged company;
 - (b) any act done or omitted to be done before the completion date of the demerger by or in relation to the demerging company in respect of the contract of employment or employee is to be treated from that date as having been done or omitted to be done, as the case may be, by or in relation to the demerged company;
 - (c) a period of employment with the demerging company is to be treated as a period of employment with the demerged company, and the demerger is not to be treated as interrupting the continuity of that period.

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- (5) Where an employee objects to a transfer of his or her rights and liabilities under a contract of employment, the employee must give notice of his or her objection to the demerging company in writing prior to the completion date of the demerger and where such notice is given and has not been withdrawn prior to that date –
- (a) subject to sub-paragraph (d), the rights and liabilities of the employee under the contract of employment are not transferred by the demerger;
 - (b) subject to sub-paragraph (d), the employee is not to be treated, for any purpose, as having been either employed by the demerged company or dismissed by the demerging company;
 - (c) the employee's contract of employment shall terminate on the completion date of the demerger and the demerging company may make a payment to the employee in lieu of notice in respect of all or part of the relevant unexpired notice period; and
 - (d) any liability of the demerging company to pay the employee upon termination of the employee's contract of employment under sub-paragraph (c) shall be a liability of the demerged companies in the parts stated in the demerger instrument under Regulation 3(8) or jointly and severally if not stated in the demerger instrument.
- (6) Any collective agreement which is –
- (a) made by the demerging company with a representative body recognized by the demerging company; and
 - (b) in force in relation to an employee immediately before the completion date of the demerger,
- shall continue to have effect in respect of that employee as if made by or on behalf of the demerged company to which the rights and liabilities under the collective agreement are transferred.
- (7) Changes to an employee's terms and conditions of employment may, after the expiry of one year after the completion date of the demerger, be negotiated between a demerged company and an employee of that demerged company (whose contract of employment was transferred from the demerging company to the demerged company) without the risk of the changes being declared void on the basis of terms and conditions that were in effect between the demerging company and the employee before the demerger.
- (8) A demerged company shall not within one year after a demerger terminate the recognition of a representative body whose recognition by the demerging company was effective immediately prior to the completion date of the demerger.
- (9) A demerging company may transfer to a demerged company the following information regarding an employee of the demerging company for the purpose of employment of the employee by the demerged company –
- (a) the name and address of the employee;
 - (b) the age of the employee;

- (c) educational or vocational qualification of the employee;
- (d) information regarding a collective agreement which applies to the employee;
- (e) information regarding any current disciplinary proceedings or grievances in respect of the employee;
- (f) information regarding any legal action taken by the employee against the employer in the previous 2 years;
- (g) information regarding any, annual, special, maternity, paternity or other leave due to be taken or owed to the employee; and
- (h) any other information which may reasonably be necessary.

15 Effect of a demerger on retirement schemes

If immediately before the completion date of a demerger, the demerging company had a contractual obligation to pay a contribution to a retirement scheme on behalf of an employee, that contractual obligation shall, on the completion date of the demerger be transferred to the demerged company, if any, which is the employee's employer on the completion date of the demerger.

16 Offences relating to demerger

- (1) A person shall not, on or in connection with an application under these Regulations, knowingly or recklessly provide to the registrar or the Comptroller –
 - (a) any information which is false, misleading or deceptive in a material particular; or
 - (b) any document containing any information which is false, misleading or deceptive in a material particular.
- (2) A person shall not sign a certificate under Regulation 4 or 11(3)(d) without having reasonable grounds for the opinion expressed in the certificate or for the statement made in the certificate.
- (3) A person who contravenes paragraph (1) or (2) shall be guilty of an offence and liable to imprisonment for a term of 2 years and a fine.

17 Citation and commencement

These Regulations may be cited as the Companies (Demerger) (Jersey) Regulations 201- and shall come into force on 1st September 2018 after they are made.

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- 1 *chapter 13.125*
 - 2 *chapter 24.750*
 - 3 *chapter 05.255*
 - 4 *chapter 13.125*
 - 5 *chapter 13.075*
 - 6 *chapter 13.425*
 - 7 *chapter 24.750*
 - 8 *chapter 24.700*