

STATES OF JERSEY

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DRAFT COMPANIES (AMENDMENT No. 10) (JERSEY) LAW 200

**Lodged au Greffe on 23rd December 2008
by the Minister for Economic Development**

STATES GREFFE



Jersey

DRAFT COMPANIES (AMENDMENT No. 10)(JERSEY) LAW 200

European Convention on Human Rights

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

In the view of the Minister for Economic Development the provisions of the Draft Companies (Amendment No. 10) (Jersey) Law 200 are compatible with the Convention Rights.

(Signed) **Senator A.J.H. Maclean**

REPORT

The purpose behind the Amendment is to clarify aspects of the Law following the introduction of Companies (Amendment No. 9) (Jersey) Law 2008 and Companies (Amendment No. 2) (Jersey) Regulations 2008.

The Amendment will introduce an additional right of appeal to the Royal Court for a company and/or any of its members against certain directions of the Jersey Financial Services Commission.

There is clarification with regard to distributions and reduction of share capital, and the Amendment introduces a new offence where companies do not comply with their obligations regarding the keeping of a registered office in Jersey.

In addition, in order to make it easier for Jersey companies to be listed on certain foreign stock exchanges, companies will be able to specify in their Articles a higher than a two-thirds majority for the passing of special resolutions.

Greater flexibility will be introduced by allowing the States to amend further Parts of the Law by Regulations in the future.

There are no significant financial or manpower implications arising from this Amendment.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 22nd December 2008 the Minister for Economic Development made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Economic Development the provisions of the Draft Companies (Amendment No. 10) (Jersey) Law 2008 are compatible with the Convention Rights.

Explanatory Note

This draft Law would amend the Companies (Jersey) Law 1991 (“the principal Law”).

Article 1 is an interpretative provision.

Article 2 amends Article 16 of the principal Law, which enables a public company to request the Jersey Financial Services Commission to direct that it may become a private company even though it has more than 30 members.

The amendment creates a right of appeal to the Royal Court by a member of a company against such a direction, and gives to the company and any member of it a right of appeal to the court against a condition imposed by the direction.

Article 2 also enables the Commission to direct subsequently that the company shall become subject to the principal Law as if it were a public company.

The amendment gives the company and any member a right of appeal against a direction.

Article 3 amends Article 17 of the principal Law.

That Article provides – in paragraph (2) – that if a private company increases its membership beyond 30 persons or circulates a prospectus relating to its own securities, the principal Law is to apply to it as if it were a public company.

However, Article 17 also enables the Commission, if it is satisfied on the application of a private company that its affairs may properly be regarded as the domestic concern of its members, to direct that paragraph (2) shall apply to the company with modifications.

The amendment creates a right of appeal by a member of a company against a direction by the Commission modifying the application of Article 17(2) to the company, and gives to the company and any member of it a right of appeal against any term of the direction.

Article 4 provides that the share premium account of a par value company may be applied for the purpose of making of a distribution under Part 17 of the principal Law.

Article 5 provides that the stated capital account of a no par value company may be applied for any purpose for which a par value company may apply its share premium account.

Article 6 enables the States to amend Part 8 of the principal Law by Regulations. That Part relates to share capital

Article 7 provides that for the purposes of Part 12 of the principal Law (which Part relates generally to reductions of capital), the redemption, purchase or cancellation of its own shares by a company is not to be regarded as a reduction of capital.

Article 8 amends Article 61 of the principal Law, which deals with the way in which a company may reduce its capital accounts.

The amendment, which is related to that made by Article 12 (*below*) of this amending Law, is to make it clear that a distribution in accordance with Article 115 of the principal Law is not a reduction in capital to which Part 12 of the principal Law applies.

Article 9 empowers the States to amend Part 12 of the principal Law by Regulations. That Part relates generally to reductions in capital.

Article 10 replaces Article 67 of the Law, which relates to the registered office of a company.

The amendment introduces the following new provisions –

- (a) Article 67 will state explicitly that a company does not satisfy the existing requirement in the principal Law to maintain a registered office in Jersey at all times, unless the occupier of the premises in which the office is situated authorizes their use for that purpose.
- (b) The registrar may refuse to incorporate a company if he or she is not satisfied that the occupier of the premises in which the proposed registered office is to be situated authorizes their use for that purpose.
- (c) The registrar may refuse to register a notice that a company has changed its registered office, if the

registrar is not satisfied that the occupier of the premises in which the new office is to be situated authorizes their use for that purpose.

- (d) If the registrar ceases to be satisfied that the occupier of premises in which a company's registered office is situated authorizes their use for the purpose, the registrar may require the company to change its registered office within 14 days.
- (e) If a company fails to comply with the requirements of Article 67, the company and each of its officers who in default will be guilty of an offence.
- (f) There will be rights of appeal to the Royal Court against decisions of the registrar to refuse under Article 67 to incorporate a company, and either to require a company to change its registered office or refuse to register a change of its registered office.
- (g) The Minister may make Orders prescribing information that is to be produced to the registrar to show that an occupier of premises authorizes their use as a company's registered office.

It should be noted that although a failure by a company to comply with Article 67 will render it (and each of its officers who are in default) criminally liable, the registrar and other persons will continue to be entitled, as they are at present, to treat its registered office of record as a valid address for the purposes of serving documents on the company.

Article 11 amends Article 90 of the principal Law to enable a company, in its articles of association, to provide that the majority that is required for special resolutions of the company shall be greater than two-thirds of the members or class of members concerned.

Article 12 amends Article 115 of the principal Law.

Paragraph (1) of the amendment is a formal drafting adjustment.

The effect of paragraph (2) of the amendment is to provide that a distribution that is made in accordance with Article 115 is not to be treated as a reduction of capital for the purposes of Part 12 of the principal Law.

Article 13 amends Part 18B of the principal Law. That Part relates to mergers between Jersey companies.

The effect of the amendment is to enable the States to amend Part 18B by Regulations. In particular, it may do so by extending the Part (with or without modifications) to mergers between Jersey companies with bodies corporate (whether incorporated within or outside Jersey) that are not companies.

Article 14 is consequential upon Article 15, and on the addition of paragraph (3) to Article 220 of the principal Law by Article 31 of the Companies (Amendment No. 9) (Jersey) Law 2008.

Article 15 amends Part 21 of the principal Law. That Part relates to the winding up of companies.

The effect of the amendment is to enable the States to amend Part 21 by Regulations.

Article 16 amends Schedule 1 of the principal Law to provide, for a contravention of Article 67, a maximum penalty of level 3 in the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993.

The maximum penalties for each level on the scale are, currently –

Level 1 – £50

Level 2 – £500

Level 3 – £2,000

Level 4 – £5,000

Article 17 gives the name by which this amending Law may be cited.

It also provides that the amending Law shall come into force 7 days after it is registered in the Royal Court.



Jersey

DRAFT COMPANIES (AMENDMENT No. 10)(JERSEY) LAW 200

Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Article 16 amended</u>
<u>3</u>	<u>Article 17 amended</u>
<u>4</u>	<u>Article 39 amended</u>
<u>5</u>	<u>Article 39A amended</u>
<u>6</u>	<u>New Article 40C inserted</u>
<u>7</u>	<u>New Article 58C inserted</u>
<u>8</u>	<u>Article 61 amended</u>
<u>9</u>	<u>New Article 66A inserted</u>
<u>10</u>	<u>Article 67 replaced</u>
<u>11</u>	<u>Article 90 amended</u>
<u>12</u>	<u>Article 115 amended</u>
<u>13</u>	<u>New Article 127GA inserted</u>
<u>14</u>	<u>Article 181 amended</u>
<u>15</u>	<u>New Article 194A inserted</u>
<u>16</u>	<u>Schedule 1 amended</u>
<u>17</u>	<u>Citation and commencement</u>



Jersey

DRAFT COMPANIES (AMENDMENT No. 10)(JERSEY) LAW 200

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

Adopted by the States [date to be inserted]

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

Registered by the Royal Court [date to be inserted]

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

1 Interpretation

In this Law, “principal Law” means the Companies (Jersey) Law 1991^[1].

2 Article 16 amended

After Article 16(6) of the principal Law there shall be added the following paragraphs–

- “(7) Within 28 days after a company receives a notice of a direction made by the Commission under paragraph (2) in relation to the company–
 - (a) a member of the company may appeal to the court on the ground that the direction was unreasonable having regard to all the circumstances of the case; and
 - (b) the company, or a member of the company, may appeal to the court on the ground that a condition imposed by the direction was unreasonable having regard to all the circumstances of the case.
- (8) Within 28 days after a company receives a notice of a direction made by the Commission under paragraph (4) in relation to the company, the company, or a member of the company, may appeal to the court on the ground that the direction was unreasonable having regard to all the circumstances of the case.
- (9) On hearing an appeal under this Article –
 - (a) if the appeal is against a direction imposed by the Commission, the court may confirm or reverse the direction made by the Commission; or
 - (b) if the appeal is against a condition specified in a direction made by the Commission, the court may confirm, vary or revoke the condition and, in any case, add a new condition to the conditions specified in the direction.
- (10) On hearing an appeal under this Article the court may make such order as to the costs of the appeal as it thinks fit.”

3 Article 17 amended

After Article 17(8) of the principal Law there shall be added the following paragraphs–

- “(9) Within 28 days after a company receives a notice of a direction, or an amendment of the terms of a direction, made by the Commission under paragraph (7) in relation to the company –
 - (a) a member of the company may appeal to the court on the ground that the direction was unreasonable having regard to all the circumstances of the case; and
 - (b) the company, or a member of the company, may appeal to the court on the ground that a term imposed by the direction, or an amendment to a term of the direction, was unreasonable having regard to all the circumstances of the case.
- (10) On hearing an appeal under this Article –
 - (a) if the appeal is against a direction imposed by the Commission, the court may confirm or reverse the direction made by the Commission; or
 - (b) if the appeal is against a term imposed by a direction made by the Commission, the court may confirm, vary or revoke the term and, in any case, add a new term to the terms imposed by the direction.
- (11) On hearing an appeal under this Article the Court may make such order as to the costs of the appeal as it thinks fit.”.

4 Article 39 amended

In Article 39(3) of the principal Law –

- (a) in sub-paragraph (c) the word “and”, in the second place where it occurs, shall be deleted;
- (b) in sub-paragraph (d), for the full stop there shall be substituted the word “; and”;
- (c) after sub-paragraph (d) there shall be added the following new sub-paragraph –
 - “(e) in the making of a distribution in accordance with Part 17”.

5 Article 39A amended

In Article 39A of the principal Law, after paragraph (3), there shall be added the following paragraph–

- “(4) A stated capital account may be applied by the company for any purpose for which a share premium account may be applied by a par value company.”.

6 New Article 40C inserted

In Part 8 of the principal Law, after Article 40B, there shall be inserted the following Article–

“40C Power of States to amend Part 8

The States may amend this Part by Regulations.”.

7 New Article 58C inserted

In Part 11 of the principal Law, after Article 58B, there shall be inserted the following Article–

“58C Redemption, purchase or cancellation under Part 11 not a reduction of capital

The redemption, purchase or cancellation by a company under this Part of its shares is not for the purposes of Part 12 a reduction of capital.”.

8 Article 61 amended

In Article 61(3) of the principal Law, the words “or in the case of a reduction in capital comprised of a distribution made in accordance with Article 115” shall be deleted.

9 New Article 66A inserted

In Part 12 of the principal Law, after Article 66, there shall be inserted the following Article–

“66A Power of States to amend Part 12

The States may amend this Part by Regulations.”.

10 Article 67 replaced

For Article 67 of the principal Law, there shall be substituted the following Articles–

“67 Registered office

- (1) A company shall at all times have a registered office in Jersey to which all communications and notices may be addressed.
- (2) A company does not comply with the requirement in paragraph (1) unless the occupier of the premises that are the registered office authorizes for the time being their use for that purpose.
- (3) The registrar may, by notice in writing served on the applicants for the incorporation of a company, refuse to incorporate it if he or she is not satisfied that the occupier of the premises that are to be the registered office of the company authorizes their use for that purpose.
- (4) On incorporation, the company’s registered office shall be that specified in the statement sent to the registrar under Article 7.
- (5) The company may change its registered office from time to time by giving notice to the registrar.
- (6) If the registrar, by notice in writing served on the company, informs it that the registrar is no longer satisfied that the occupier of the premises that are the company’s registered office authorizes their use for that purpose, the company shall within 14 days change its registered office by giving notice to the registrar.
- (7) Subject to paragraph (8), a change of registered office under paragraph (5) or (6) shall take effect upon the notice being registered by the registrar, but until the end of the period of 14 days beginning with the date on which it is registered a person may validly serve any document on the company at its previous registered office.
- (8) The registrar may, by notice in writing served on a company, refuse to register a notice given by the company under paragraph (5) or (6) if he or she is not satisfied that the occupier of the premises that are to be the registered office of the company authorizes

their use for that purpose.

- (9) If default is made in compliance with any requirement of or made under this Article, the company and every officer of it who is in default are each guilty of an offence.

67A Relief from breach of duty in unavoidable circumstances

Where a company unavoidably ceases to perform any duty to keep at its registered office or make available for public inspection there any document, in circumstances in which it was not practicable to give prior notice to the registrar of a change in its registered office, but –

- (a) resumes performance of that duty at other premises as soon as practicable; and
- (b) gives notice under Article 67(5) to the registrar of the change of its registered office within 14 days of doing so, and that the change is made for the purposes of this Article,

and the registrar registers the notice, the company shall not be treated as having failed to comply with that duty.

67B Review of registrar's decision

- (1) Within 28 days after the applicants for the incorporation of a company receive notice under Article 67(3) that the registrar refuses to incorporate the company, the applicants may appeal to the court on the ground that the registrar's decision was unreasonable having regard to all the circumstances of the case.
- (2) Within 28 days after a company receives notice under Article 67(6) that the registrar is no longer satisfied that the occupier of the premises that are the company's registered office authorizes their use for that purpose, the company may appeal to the court on the ground that the registrar's decision was unreasonable having regard to all the circumstances of the case.
- (3) Within 28 days after a company receives notice under Article 67(8) that the registrar refuses to register a notice of change of registered office given by the company under paragraph (5) or (6) of that Article, the company may appeal to the court on the ground that the registrar's decision was unreasonable having regard to all the circumstances of the case.
- (4) On hearing the appeal, the court –
 - (a) may confirm or reverse the decision of the registrar; and
 - (b) may make such order as to the costs of the appeal as it thinks fit.

67C Evidence of authorization

The Minister may prescribe information that is to be provided to the registrar to show that an occupier of premises authorizes the use of the premises as a company's registered office.”.

11 Article 90 amended

- (1) In Article 90(1) of the principal Law, for the words “a majority of not less than 2/3rds of members” there shall be substituted the words “the majority specified in paragraph (1A) of the members”.
- (2) After Article 90(1) of the principal Law there shall be inserted the following paragraph–
 - “(1A) The majority to which paragraph (1) refers is –
 - (a) two-thirds, if the articles of the company do not specify a greater majority; or
 - (b) if the articles do specify a greater majority than two-thirds, that greater majority.”.

12 Article 115 amended

- (1) In Article 115(7) of the principal Law, for the words “A distribution made in accordance with this Article is debited to” there shall be substituted the words “A distribution made in accordance with this Article shall be debited by the company to”.
- (2) After Article 115(8) of the principal Law there shall be added the following paragraph–
 - “(9) A distribution made in accordance with this Article is not for the purposes of Part 12 a reduction of capital.”.

13 New Article 127GA inserted

In Part 18B of the principal Law, after Article 127G, there shall be inserted the following Article–

“127GA Power of States to amend Part 18B

- (1) The States may amend this Part by Regulations.
- (2) Without prejudice to the generality of the foregoing such Regulations may extend the provisions of this Part, with or without such modifications as may be specified in the Regulations –
 - (a) to mergers of companies with bodies that are incorporated in Jersey but are not companies; and
 - (b) to mergers of companies with bodies incorporated outside Jersey.”.

14 Article 181 amended

Article 181(9) shall be repealed.

15 New Article 194A inserted

In Part 21 of the principal Law, after Article 194, there shall be inserted the following Article–

“194A Power of States to amend Part 21

The States may amend this Part by Regulations.”.

16 Schedule 1 amended

In Schedule 1 to the principal Law, after the entries relating to Article 66, there shall be inserted in the first second and third columns respectively the following entries –

“67(9)	Company failing to comply with requirements as to registered office	Level 3”
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17 Citation and commencement

- (1) This Law may be cited as the Companies (Amendment No. 10) (Jersey) Law 200.
- (2) This Law shall come into force 7 days after it is registered.

