

# STATES OF JERSEY



## **DRAFT COMPANIES (AMENDMENT No. 5) (JERSEY) REGULATIONS 201-**

---

**Lodged au Greffe on 29th December 2010  
by the Minister for Economic Development**

---

**STATES GREFFE**





Jersey

## **DRAFT COMPANIES (AMENDMENT No. 5) (JERSEY) REGULATIONS 201-**

### **REPORT**

---

At present, it is only possible to directly merge a Jersey company with another Jersey company. However, the Companies (Amendment No. 10) (Jersey) Law 2009 introduced an enabling provision into the Companies (Jersey) Law 1991 (“**the Companies Law**”) allowing the States to make Regulations to permit the cross-border merger of Jersey companies with companies and other bodies incorporated outside Jersey and also with bodies that are incorporated in Jersey but which are not companies.

In an increasingly globalised world, more and more business is conducted across national borders and there is a growing demand for Jersey companies to be able to merge directly with a wider range of bodies, in particular with foreign companies – something which is already permitted by other jurisdictions.

Although it is possible to merge a Jersey company with a foreign company indirectly by first bringing them into the same jurisdiction (either by continuing the Jersey company into the foreign jurisdiction or by continuing the foreign company into Jersey under Part 18C of the Companies Law) and then merging them (either under Part 18B of the Companies Law or the relevant foreign law), this procedure is more cumbersome than the direct merger process permitted in other jurisdictions and is also more costly.

In order to ensure that Jersey’s company law remains market leading, it is intended to amend Part 18B of the Companies Law so as to permit the cross-border merger of Jersey companies (subject to appropriate safeguards) with any other body corporate, wherever incorporated. This will include foreign companies, foreign incorporated bodies and also bodies that are incorporated in Jersey but are not companies, such as foundations (once corresponding amendments have been made to the foundations legislation).

It is considered that the proposed amendments are necessary in order to strengthen the competitiveness of the Jersey company, one of the key tools used by the finance industry in the Island, which will help to maintain Jersey’s position as one of the most progressive jurisdictions in the world.

#### **Financial and manpower implications**

There are no financial or manpower consideration for the States of Jersey.

## **Draft Companies (Amendment No. 5) (Jersey) Regulations 201-**

*(“the draft Regulations”)*

The draft Regulations provide for certain companies incorporated in Jersey to merge with other such companies, other bodies incorporated in Jersey, or bodies incorporated outside Jersey (subject to certain restrictions). The resulting merged body will be either a survivor body (one of the existing merging bodies, which absorbs the others) or a new body created by the merger.

All merging bodies that are companies must obtain approval from their members and give notice to their creditors, and both members and creditors may object by applying to the court if their interests would be unfairly prejudiced.

A merger involving only Jersey companies can be carried out through the registrar of companies. Any other merger requires the consent of the Jersey Financial Services Commission (“**the Commission**”), which must consider the interests of members, creditors and the public, and the reputation of Jersey.

In considering an application to merge, the Commission must consider all the relevant circumstances, including the interests of creditors and must also have particular regard to Jersey’s best economic interests and its commercial and financial reputation and integrity, to countering financial crime in Jersey and overseas, and to risks to the public from any financial services involved.

The Commission can reject an application, or impose conditions, on any grounds including unfair prejudice to creditors, undesirability of the merger and procedural failures. An applicant can appeal to the Royal Court against a rejection or a condition on the ground that the decision was unreasonable.

The draft Regulations will enable a merger to take place where, although the merged body will be solvent, one or more of the merging companies will not meet the test for a solvency statement before the merger. This new feature will ensure that asset rich companies that are temporarily experiencing cash flow difficulties are not unduly excluded from being able to merge if such a merger would be in the interests of all concerned. As a safeguard, such mergers will only take place if the company without the solvency statement applies to the court, and the court decides to permit the merger on the basis that it will not be prejudicial to any creditor of any of the merging bodies. The company must send a copy of the application to any creditors of any of the merging bodies who are owed over £5,000 (or on request).

Further controls are in place so that an overseas body cannot obtain permission from the Commission for a merger with a Jersey company unless the Commission is satisfied by evidence that such a merger is permitted under the overseas laws governing that body. Further, the Minister is also given the power to designate classes of overseas bodies that are excluded from merging with Jersey companies.

## Explanatory Note

---

These Regulations amend the provisions on mergers in Part 18B of the Companies (Jersey) Law 1991. They also take the opportunity to correct two points related to recent amendments to Part 16.

The Regulations provide for certain companies incorporated in Jersey to merge, in any combination, with other such companies, other bodies incorporated in Jersey, or bodies incorporated outside Jersey (subject to certain restrictions). The result of a merger is either that one of the merging bodies (a “survivor body”) absorbs the others or that they are all merged into a “new body” which is created by the merger and shares certain characteristics with at least one of the merging bodies. All merging bodies that are companies must obtain approval from their members and give notice to their creditors, and both members and creditors may object to the court if their interests would be unfairly prejudiced. A merger involving only Jersey companies can be carried out through the registrar of companies. Any other merger requires the consent of the Jersey Financial Services Commission, which must consider the interests of members, creditors and the public, and the reputation of Jersey.

*Regulation 1* defines the “principal Law” as the Companies (Jersey) Law 1991.

*Regulation 2* removes a redundant definition of “merged company” from Article 1 of the principal Law (relevant terms are all to be defined at the start of Part 18B instead).

*Regulation 3* amends Article 9 of the principal Law, on company registration, to remove a redundant reference to mergers (the express division between “survivor body” and “new body” cases means the incorporation of new companies from mergers can be dealt with like any other incorporation of a company).

*Regulation 4* is an unrelated amendment to correct an error in Part 16 of the principal Law, replacing the obsolete term “eligible auditor” with the current “recognized auditor”.

*Regulation 5* replaces Articles 127A to 127G of the principal Law with 21 new Articles, divided into 6 Chapters, as follows.

New Chapter 1 contains general preliminary provisions.

New Article 127A of the principal Law defines terms used in the merger provisions, including “survivor body” and “new body” (see above). A “relevant Jersey company” is one that can engage in and result from mergers (some other Jersey companies can engage in certain subsidiary mergers – see new Article 127FA). It is defined as a company (registered in Jersey – see Article 1(1) of the principal Law) that is not a cell company or a cell within a cell company (see Articles 127YD(1)(b) and 127YD(3) of the principal Law) or a company with unlimited shares or guarantor members. Paragraph (2) allows more than one person to sign the same certificate under this Part, and more than one certificate to be contained in the same document. Paragraph (3) clarifies that, in the merger provisions, a body may be regarded as incorporated (whether in Jersey or elsewhere) even if it does not meet the restrictions on the definition of “body corporate” in Article 1(2)(b) to (d) of the principal Law. Paragraph (4) clarifies that a takeover can be structured as a merger.

New Article 127B sets limits to the types of bodies that may engage in mergers (currently Jersey companies may only merge between themselves). At least one of the bodies must be a relevant Jersey company. The others may be other relevant Jersey companies, bodies incorporated in Jersey other than companies, bodies incorporated outside Jersey, or any combination of those bodies (and in any number). However, Jersey bodies other than companies (such as foundations) will not be able to merge with companies under these provisions until the legislation governing those other bodies is amended to permit it (and to specify the remaining elements of the procedure for those bodies). Equally an overseas body cannot obtain permission from the Commission for a merger with a Jersey company unless the Commission is satisfied by evidence that such a merger is permitted under the overseas laws governing that body (see also new Article 127FF(7) and (8)). The Minister is also given the power to designate classes of overseas bodies that are excluded from merging with Jersey companies.

New Article 127C sets out the rule that the resulting merged body will be either a survivor body (one of the existing merging bodies, which absorbs the others) or a new body created by the merger. A new body must be a relevant Jersey company, or another Jersey body of the same type as one of the merging Jersey bodies that is not a company, or an overseas body incorporated in the same jurisdiction as one of the merging overseas bodies. In the case of an overseas merged body, the law of the overseas jurisdiction will set any rules as to the permissible forms which the resulting body may take, and the Commission will be able to refuse consent if not satisfied with the proposal.

New Chapter 2 contains provisions on the involvement of members in a merger.

New Article 127D expands on the current provisions for merger agreements, entered into by merging bodies, to detail the proposed course of the merger. It adds a requirement to include details of any proposed payments to members or directors and it allows agreements to provide for their own termination.

New Article 127E requires directors of each merging company to pass a resolution stating their belief that the merger is in the best interests of the company and that they are satisfied on reasonable grounds that it will remain solvent until the merger, or that otherwise they will be able to obtain the court's permission for the merger on the basis that no creditor will be prejudiced (in which case they must notify the other merging bodies). Those who voted in favour must sign a certificate to the same effect (see new Article 127G for offences relating to certificates). The proposed directors or managers of the merged body must also sign a similar certificate as to the expected solvency of the merged body, from the merger until 12 months after signing. If none of the existing directors of the merging Jersey companies is to be a director or manager of the merged body, then all those who sign the certificate as to solvency up to the merger must also sign the certificate as to solvency after the merger.

New Article 127F (adapted from the current Article 127B of the principal Law) covers approval of the agreement by members. It expands on the information that must accompany a notice to members, to include the new directors' certificates, any information already received about certificates from other merging companies that do not have a solvency statement, and any other information that a member would reasonably require to decide on the merger. It also alters the time limit for objections from 30 days to 28 (as part of simplifying provisions on time throughout the Part), and removes provisions on voting (so that the normal rules for special resolutions apply).

New Article 127FA (adapted from the current Article 127C of the principal Law) gives simplified provisions for approval of mergers (without a formal merger agreement) between wholly-owned subsidiaries of the same holding company or between a holding company and one or more of its wholly-owned subsidiaries. The provisions are adapted to align them with the rest of the new scheme. The scope is extended to Jersey companies with unlimited shares or guarantor members (as well as “relevant” Jersey companies), but cells and cell companies are excluded. It also covers mergers between Jersey subsidiary companies even if their holding body is overseas.

New Article 127FB is adapted from the current Article 127E of the principal Law, providing for objecting members to apply to court for relief against unfair prejudice to their interests (it is moved to this point to sit with the other provisions on members).

New Chapter 3 contains provisions for protection of creditors in a merger.

New Article 127FC is adapted from the current Article 127D(1)–(2) of the principal Law, providing for notice to creditors. The changes reflect other changes, allow creditors to request a free copy of the merger agreement and allow the court, instead of restraining the merger, to modify it (any party may then terminate the agreement). It also reflects the new provision for mergers without a solvency statement (Article 127FD). The notice must inform creditors of their right to object to the merger, or to be notified if another creditor objects. In a case where one of the merging companies may not be solvent (see new Article 127FD below) the notice must instead give creditors details of the application to court that must be made by that company. Notice must still be sent to creditors known to be owed over £5,000 (and the Minister can still vary that figure by Order), and the company must also publish the notice, but may now do so in a manner approved by the registrar, as an alternative to publication in a newspaper.

New Article 127FD is a new provision, enabling a merger to take place where, although the merged body will be solvent, one or more of the merging companies will not meet the test for a solvency statement before the merger (in a merger involving an insolvent merging body other than a company, the merged body would still have to be solvent and the Commission, before deciding whether to give consent, would consider the interests of creditors of all of the merging bodies – see Article 127FI(2)(b) and (3)(a) below). The merger can only take place if the company without the solvency statement applies to the court, and the court decides to permit the merger on the basis that it will not be prejudicial to any creditor of any of the merging bodies. The company must send a copy of the application to any creditors of any of the merging bodies who are known (on reasonable enquiry) to be owed over £5,000, and to any other creditors on request (the notice published under Article 127FC will have given contact details).

New Article 127FE separates out the procedure for objections by creditors to mergers where every merging company is solvent (adapted from the current Article 127D(3)–(5) of the principal Law). A creditor of a merging company may object and apply to the court, which may restrain the merger (or modify the merger agreement, allowing a subsequent opportunity to the merging bodies to terminate it in response) if it would unfairly prejudice any creditor of that company (see Chapter 4 below for creditors of merging bodies other than companies).

New Chapter 4 deals with the new requirement for consent from the Jersey Financial Services Commission for any merger involving a body other than a Jersey company.

New Article 127FF requires consent unless all of the merging bodies are Jersey companies (in which case they would proceed under the new Article 127FJ to apply direct to the registrar). It requires the application to include copies of the merger agreement, the directors' certificates and other relevant information authenticated as required by the Commission, including information about the effectiveness of the merger under the law of any overseas jurisdiction involved. The application may be made before time has expired for objections, but the applicants must keep the Commission informed as to the progress of any objections, and the Commission can suspend or refuse the application otherwise.

New Article 127FG allows the Commission to set fees for applications for its consent, to charge applicants for its expenses in excess of the fee, and to require security for those expenses. The Commission can suspend or refuse the application if the fee is not paid or the security is not given.

New Article 127FH allows the Commission to require applicants to supply further information, which can include information as to solvency and creditors of the merging bodies that are not companies. The Commission can require the information to be authenticated, and can suspend or refuse the application if the information is not supplied.

New Article 127FI deals with decisions and appeals on applications. It allows the Commission to attach conditions to its consent. It requires the Commission to consider all the relevant circumstances, including the interests of creditors. The Commission must also always, under Article 7 of the Financial Services Commission (Jersey) Law 1998, have particular regard to Jersey's best economic interests and its commercial and financial reputation and integrity, to countering financial crime in Jersey and overseas, and to risks to the public from any financial services involved. The Commission can reject an application, or impose conditions, on any grounds (giving written reasons and information as to appeal rights) including unfair prejudice to creditors, undesirability of the merger (for reputational or other reasons mentioned above), procedural failures, and other grounds on which company registration could be refused (if the merged body is to be a new company). An applicant can appeal to the Royal Court against a rejection or a condition on the ground that the decision was unreasonable having regard to all the circumstances of the case, and the court can confirm, reverse or vary the Commission's decision.

New Chapter 5 provides for 3 ways in which the different types of merger are completed and registered (replacing the current Articles 127F and 127G of the principal Law): in Article 127FJ where only Jersey companies are involved in the merger (without needing Commission consent); in Article 127FK where the merged body is not to be a company (so the merger is completed under the other legislation governing that body); and in Article 127FL where the merged body is a company but at least one of the merging bodies is not. Article 127FM then provides for the registration of notices and completion of the merger.

New Article 127FJ is an adapted version of the current Article 127F of the principal Law. It requires the documents submitted to the registrar to include the new documents required by earlier Articles (and adjusts the time-scale accordingly) together with a further directors' certificate of compliance, indicating no unfair prejudice to creditors.

New Article 127FK requires the merging bodies, after receipt of the Commission's consent, to take steps to complete the merger under the legislation relevant to the



merged body, and to give the Commission evidence of having done so. If the Commission is satisfied it instructs the registrar to register the merger, and passes on copies of the relevant documents from the consent application.

New Article 127FL applies where the merged body is to be a Jersey company, but the Commission's consent was needed. So it merely requires the Commission, after giving consent, to instruct the registrar to register the merger (and the Commission passes on copies of the relevant documents from the consent application).

New Article 127FM contains procedures for registration, requiring appropriate notices to be entered on the register for each merging company and any survivor company (and information to be sent to any relevant overseas jurisdictions). If the merged company is new then it is registered under the normal procedure for incorporation, with appropriate entries noting the merger. The entries must give the completion date. If the merged body is not a Jersey company, the completion date is the date which the Commission is satisfied was the date on which the merger was completed under whatever law governs the merged body. Otherwise it is the date the last entry is made on the register.

New Chapter 6 provides for the effects of a merger and for offences relating to mergers (and will include the existing Article 127GA which gives the power used to amend this Part, but is not itself amended).

New Article 127FN sets out the effects of a merger, namely that on completion the merging bodies form one merged body as provided for in the merger agreement. The merging company or companies cease to exist as such (except the one, if any, that is a survivor company). Where the merged body is incorporated in Jersey, any property, liabilities and legal actions are transferred from all the merging bodies to the merged body. Where the merged body is overseas, the Commission will have had to be satisfied under new Article 127FF(8) that the relevant jurisdiction's laws will provide for an equivalent result. The entries can be relied on as conclusive proof that the merger was carried out properly, and the completion of a merger does not in itself amount to a breach of contract or other civil wrong.

New Article 127G creates a new offence of providing false information to the Commission or the registrar, and another of signing a certificate under this Part without reasonable grounds.

*Regulation 6* is an unrelated amendment to correct a cross-referencing error following recent amendments to Part 16 of the principal Law. It updates a cross-reference in Article 127YG(1) to the current re-numbered Article 105 on accounts (the equivalent of which was previously numbered as Article 104).

*Regulation 7* amends a reference in Article 143 of the principal Law, so that the procedure for members' objections to mergers is still available.

*Regulation 8* amends Schedule 1 to the principal Law to provide, for each of the 2 new offences in relation to mergers, a penalty of 2 years imprisonment, an unlimited fine, or both.

*Regulation 9* makes transitional provision for the existing merger scheme to continue to apply to a merger which has started but not finished before these Regulations come into force.

*Regulation 10* provides for the short title of the Regulations, and brings them into force 7 days after they are made.



Jersey

## **DRAFT COMPANIES (AMENDMENT No. 5) (JERSEY) REGULATIONS 201-**

### **Arrangement**

---

#### **Regulation**

1	Interpretation .....	13
2	Article 1 amended .....	13
3	Article 9 amended .....	13
4	Article 110 amended .....	13
5	Articles 127A to 127G substituted .....	13
6	Article 127YG amended.....	35
7	Article 143 amended .....	35
8	Schedule 1 amended.....	35
9	Transitional provision .....	35
10	Citation and commencement.....	35





Jersey

## **DRAFT COMPANIES (AMENDMENT No. 5) (JERSEY) REGULATIONS 201-**

*Made* [date to be inserted]

*Coming into force* [date to be inserted]

**THE STATES**, in pursuance of Articles 2B, 113H, 127GA, 127YN and 220 of the Companies (Jersey) Law 1991<sup>1</sup>, have made the following Regulations –

### **1 Interpretation**

In these Regulations, “principal Law” means the Companies (Jersey) Law 1991<sup>2</sup>.

### **2 Article 1 amended**

In Article 1(1) of the principal Law, the definition “merged company” shall be deleted.

### **3 Article 9 amended**

For Article 9(1) of the principal Law there shall be substituted the following paragraph –

“(1) On the registration of a company’s memorandum the registrar shall issue a certificate that the company is incorporated.”.

### **4 Article 110 amended**

In Article 110(5) of the principal Law for the words “an eligible auditor” there shall be substituted the words “a recognized auditor”.

### **5 Articles 127A to 127G substituted**

For Articles 127A to 127G of the principal Law there shall be substituted the following chapter headings and Articles –

*“Chapter 1 – General***127A Interpretation**

- (1) In this Part, unless the context otherwise requires –
  - ‘merged body’ means the body resulting from a merger under Article 127C (and ‘merged company’ is to be read accordingly);
  - ‘merger agreement’ means an agreement under Article 127D;
  - ‘merging body’ means a body that is seeking to merge with another body under this Part (and ‘merging company’ is to be read accordingly);
  - ‘new body’ means a merged body that is new within the meaning of Article 127C(2) (and ‘new company’ is to be read accordingly);
  - ‘overseas body’ means a body incorporated in a jurisdiction outside Jersey;
  - ‘relevant Jersey company’ means a company that is not a cell company or a cell and does not have unlimited shares or guarantor members;
  - ‘survivor body’ means a merging body that becomes a merged body as provided for in Article 127C(1)(a) (and ‘survivor company’ is to be read accordingly).
- (2) Nothing in this Part is to be read as preventing –
  - (a) more than one person from signing the same certificate under this Part; or
  - (b) more than one certificate signed under this Part from being included in the same document,and references to a certificate are to be construed accordingly.
- (3) For the avoidance of doubt, it is declared that references in this Part to a body as being incorporated (whether in or outside Jersey) are to be construed without reference to sub-paragraphs (b) to (d) of Article 1(2).
- (4) Nothing in Part 18 or Part 18A is to be construed as preventing the acquisition or takeover of one merging body by another by way of merger under this Part.

**127B Bodies eligible to merge**

- (1) A relevant Jersey company may merge, subject to the requirements of this Part, with one or more bodies falling within any one or more of paragraphs (2) to (4).
- (2) A body falls within this paragraph if it is another relevant Jersey company.
- (3) A body falls within this paragraph if –

- (a) it is not a company; and
  - (b) it is incorporated –
    - (i) in Jersey, and
    - (ii) under an enactment under which it is permitted to merge with a company.
- (4) A body falls within this paragraph if it is an overseas body that –
- (a) is not an excluded body under paragraph (5); and
  - (b) to the reasonable satisfaction of the Commission, is not prohibited, under the law of the jurisdiction in which it is incorporated, from merging with a company.
- (5) The Minister may designate, as classes of excluded bodies for the purpose of paragraph (4), one or more classes of overseas bodies, not being classes of bodies designated by the Minister under Regulation 2 of the Foundations (Mergers) (Jersey) Regulations 2009<sup>3</sup>.
- (6) A designation under paragraph (5) shall be by notice published in a manner that will bring the notice to the attention of those who, in the opinion of the Minister, are likely to be affected by it.

#### **127C Bodies eligible to be merged bodies**

- (1) The result of a merger under this Part is that the merging bodies continue as a single merged body, and that body is either –
- (a) one of the merging bodies; or
  - (b) a new body that –
    - (i) is a relevant Jersey company,
    - (ii) is incorporated in Jersey under the same enactment (other than this Law) as one of the merging bodies, or
    - (iii) is an overseas body that is incorporated under the law of the same jurisdiction as one of the merging bodies and is not an excluded body under Article 127B(5).
- (2) For the purpose of this Part, a merged body is new if it is created by the merger from which it results.

#### *Chapter 2 – Members*

#### **127D Merger agreement**

- (1) Each company proposing to merge shall, in order to do so, enter into an agreement in writing with each body with which it proposes to merge.
- (2) The merger agreement shall state the terms and means of effecting the merger and, in particular, the following information –
- (a) details of the proposed merged body, including –

- (i) whether it is to be a survivor body or a new body,
    - (ii) whether it is to be a company, an overseas body or some other body, and
    - (iii) the names and addresses of the persons who are proposed –
      - (A) to be its directors, or
      - (B) to manage it, if it is to be a body that does not have directors;
  - (b) details of any arrangements necessary to complete the merger and to provide for the management of the merged body;
  - (c) details of any payment, other than of a kind described in paragraph (3), proposed to be made to a member or director of a merging company or to a person having a similar relationship to a merging body that is not a company; and
  - (d) in relation to any securities of a merging 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 the merged body, the manner in which that conversion is to be done; or
  - (b) otherwise, what the holders are to receive instead and the manner in which and the time at which they are to receive it.
- (4) If the merged body is to be a new company, the merger agreement shall also set out –
- (a) the proposed memorandum and articles of the merged company; and
  - (b) a draft of any other document or information that would be required by Part 2 to be delivered to the registrar if the merged company were being incorporated under this Law otherwise than by merger.
- (5) If the merged body is to be a survivor company, the merger agreement shall also state –
- (a) whether any amendments to the memorandum and articles of the company are proposed to take effect on the merger, with details of those amendments; and
  - (b) whether it is proposed that, on the merger, any person will become, or cease to be a director of the company, with the name and address of each such person.
- (6) If shares of a merging company are held by or on behalf of another merging company and the merged body is to be a company –
- (a) the merger agreement shall provide for the cancellation of those shares, without any repayment of capital, when the merger is completed; and



- (b) no provision may be made in the merger agreement for the conversion of those shares into securities of the merged company.
- (7) A merger agreement may provide that, at any time before the completion of the merger, the agreement may be terminated by –
- (a) any one or more of the merging companies, notwithstanding that it has been approved by the members of all or any of those companies; or
  - (b) any of the merging bodies that are not companies.
- (8) If an agreement is terminated under a provision included in it under paragraph (7), nothing in this Part requires or authorizes any further steps to be taken to complete the merger.

### **127E Resolutions and certificates**

- (1) Before notice is given of a meeting of a merging company to approve a merger agreement under Article 127F, or to approve a merger under Article 127FA, the directors of that company shall pass a resolution that, in the opinion of the directors voting for the resolution, the merger is in the best interests of the company.
- (2) For the purposes of this Article a solvency statement is a statement that, having made full inquiry into the affairs of the company, the person making the statement reasonably believes that the company is, and will remain until the merger 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 company, the resolution shall in addition state that they are so satisfied.
- (4) If paragraph (3) does not apply –
- (a) 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 Article 127FD; and
  - (b) the company shall, as soon as is practicable after the passing of the resolution, inform the other merging bodies that paragraph (3) does not apply.
- (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 Article 127FD; and

- (b) setting out the grounds for that statement.
- (6) Before notice is given as mentioned in paragraph (1), each person falling within paragraph (7) shall sign a certificate stating –
  - (a) that, in his or her opinion, the merged body will be able to continue to carry on business and discharge its liabilities as they fall due –
    - (i) on and immediately after the completion of the merger, and
    - (ii) if later, until 12 months after the signing of the certificate; and
  - (b) the grounds for that opinion, having particular regard to –
    - (i) the prospects of the merged body,
    - (ii) the proposals in the merger agreement with respect to the management of the merged body's business, or any proposals in the special resolutions passed under Article 127FA with respect to that matter, and
    - (iii) the amount and character of the financial resources that will, in the view of the person signing, be available to the merged body.
- (7) The persons falling within this paragraph are –
  - (a) the persons proposed in the merger agreement, or in a special resolution passed under Article 127FA –
    - (i) to be directors of the merged body, or
    - (ii) to manage the merged body, if it is to be a body that does not have directors; and
  - (b) if none of the directors of the merging companies is a person referred to in sub-paragraph (a), each person who must sign a certificate under paragraph (5).

#### **127F Approval of merger agreement**

- (1) The directors of each merging company shall submit the merger agreement for approval by a special resolution of that 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 –
  - (a) shall be accompanied by –
    - (i) a copy or summary of the merger agreement,
    - (ii) copies of the proposed constitutional documents for the merged body, or a summary of the principal provisions of those documents,
    - (iii) if a summary is supplied under clause (i) or (ii), information as to how a copy of the document summarized may be inspected by members,

- (iv) a copy of the certificates signed under Article 127E(5) and (6) in respect of that company, and a copy of any information that may have been provided, by the date of the notice, to that company by any other merging company under Article 127E(4)(b),
  - (v) a statement of the material interests in the merger of the directors of each merging body, and of the persons managing any merging body that does not have directors, and
  - (vi) such further information as a member would reasonably require to reach an informed decision on the merger; and
- (b) shall contain sufficient information to alert members to their right to apply to the court under Article 127FB.
- (3) A merger is approved under this Article when all of the special resolutions referred to in paragraph (1) have been passed in respect of all of the merging bodies that are companies.
- (4) A merger may not be completed unless it is approved under this Article, or under Article 127FA.

#### **127FA Simplified approval of mergers involving subsidiaries**

- (1) A holding company merger or an inter-subsiary merger may be approved by a special resolution of each merging company under this Article, without approval of a merger agreement.
- (2) For the purpose of this Article, a holding company merger is a merger in which –
- (a) the merging bodies are –
    - (i) a company that is a holding company, and
    - (ii) one or more other companies that are its wholly-owned subsidiaries; and
  - (b) the merged body is the holding company, continuing as a survivor company.
- (3) For a holding company merger –
- (a) each special resolution of a merging subsidiary shall provide that its shares are to be cancelled without any repayment of capital; and
  - (b) the special resolution of the holding company shall –
    - (i) provide that the capital accounts of each merging subsidiary are to be added to the capital accounts of the holding company,
    - (ii) provide that no securities are to be issued and no assets distributed by it in connection with the merger (whether before, on or after the merger),
    - (iii) specify any changes to its memorandum and articles that are to take effect on the merger, and

- (iv) state the names and addresses of the persons who are proposed to be the directors after the merger.
- (4) For the purpose of this Article, an inter-subsiary merger is a merger in which –
  - (a) the merging bodies are all companies that are wholly-owned subsidiaries of the same holding body (whether that holding body is incorporated in Jersey or elsewhere); and
  - (b) the merged body is one of the merging companies, continuing as a survivor company.
- (5) For an inter-subsiary merger –
  - (a) each special resolution of a merging company, other than the survivor company, shall provide that –
    - (i) its shares are to be cancelled without any repayment of capital, and
    - (ii) its capital accounts are to be added to the capital accounts of the survivor company; and
  - (b) the special resolution of the survivor company shall –
    - (i) provide that the capital accounts of each other merging company are to be added to the capital accounts of the survivor company,
    - (ii) specify any changes to the memorandum and articles of the survivor company that are to take effect on the merger, and
    - (iii) state the names and addresses of the persons who are proposed to be the directors of the survivor company after the merger.
- (6) A merger is approved under this Article when all of the merging companies have passed the special resolutions required by this Article.
- (7) In relation to a merger approved under this Article the provisions of this Part (other than this Article) apply to the extent that they apply to a merger between companies of which one is a survivor, but Articles 127B, 127D and 127F do not apply.
- (8) In this Article, ‘company’ means any company (whether or not having unlimited shares or guarantor members) that is not a cell or a cell company.

#### **127FB Objection by member**

- (1) A member of a merging company may apply to the court for an order under Article 143 on the ground that the merger would unfairly prejudice the interests of the member.
- (2) An application may not be made –
  - (a) more than 28 days after the merger is approved under Article 127F(3) or 127FA(6), or

- (b) by a member who voted in favour of the merger under either of those Articles.

### *Chapter 3 – Creditors*

#### **127FC Notice to creditors**

- (1) No later than 28 days after a merger is approved under Article 127F(3) or 127FA(6), each merging 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 company exceeding £5,000.
- (2) The notice shall state –
  - (a) that the company intends to merge, in accordance with this Part, with one or more bodies specified in the notice; and
  - (b) that the merger agreement, or the company's special resolution passed under Article 127FA, is available to creditors from the company, free of charge, on request.
- (3) If Article 127FD applies to the merger, the notice shall in addition –
  - (a) state that a merging company has applied or will apply for the permission of the court under that Article;
  - (b) state that any creditor of any of the merging bodies may request the company making the application to send a copy of the application to the creditor; and
  - (c) set out information as to –
    - (i) a means by which a creditor may contact the company making the application, or a person representing it in that application, and
    - (ii) the effect of Article 127FD(4), including the date of the application if known at the time of the notice.
- (4) If Article 127FD does not apply to the merger, the notice shall state (in addition to the matters in paragraph (2)) that any creditor of the company may –
  - (a) object to the merger under Article 127FE(2)(a); or
  - (b) require the company to notify the creditor if any other creditor of the company applies to the court under Article 127FE(2)(b).
- (5) The company shall, within the time limit set out in paragraph (6), publish the contents of the notice –
  - (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.

- (6) The time limit is whichever is the sooner of –
  - (a) no later than 28 days after the merger is approved under Article 127F(3) or 127FA(6); or
  - (b) as soon as practicable after the company sends the last of any notices under paragraph (1).
- (7) The Minister may by Order alter the amount specified in paragraph (1).

#### **127FD Company to apply to court if solvency statement not made**

- (1) This Article applies to a merger if any certificate signed by a director of any of the merging companies under Article 127E(5) does not contain a solvency statement for the purpose of that Article.
- (2) The merger may not be completed unless an Act of the court has been obtained permitting the merger on the ground that the merger would not be unfairly prejudicial to the interests of any creditor of any of the merging bodies.
- (3) A merging company to which a certificate mentioned in paragraph (1) relates, or all such companies jointly if there are more than one, shall as soon as is practicable after the merger is approved under Article 127F(3) or 127FA(6) –
  - (a) apply to the court for an Act permitting the merger under paragraph (2); and
  - (b) send a copy of that application –
    - (i) to any creditor who, after the directors have made reasonable enquiries, is known to the directors to have a claim against any of the merging bodies exceeding the amount specified in Article 127FC(1),
    - (ii) to any other creditor of any of the merging bodies who requests a copy from that company, and
    - (iii) to the registrar.
- (4) The court shall not hear the application for at least 28 days after it is made to the court.

#### **127FE Objection by creditor if all solvency statements made**

- (1) This Article applies to a merger to which Article 127FD does not apply.
- (2) A creditor of a merging company who objects to the merger –
  - (a) may, within 28 days of the date of the publication of the notice under Article 127FC(5), give notice of the creditor's objection to the company; and
  - (b) may, within 28 days of the date of the notice of objection, if the creditor's claim against the company has not been

- discharged, apply to the court for an order restraining the merger or modifying the merger agreement.
- (3) If a creditor makes an application under paragraph (2)(b), the company shall, within a reasonable time after receiving a copy of the application, send a copy of it to each other creditor –
- (a) to whom a notice was sent under Article 127FC(1);
  - (b) who has required notification under Article 127FC(3)(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 merger would unfairly prejudice the interests of the applicant, or of any other creditor of the company, the court may make such order as it thinks fit in relation to the merger, including, but not limited to, an order –
- (a) restraining the merger; or
  - (b) modifying the merger agreement in such manner as may be specified in the order.
- (5) Paragraph (6) applies if a court is considering making an order under paragraph (4)(b) to modify a merger agreement that does not contain a provision in accordance with Article 127D(7) allowing each of the merging bodies to terminate the merger following the modification.
- (6) The court shall not make the order unless –
- (a) the order also inserts such a provision in the agreement; and
  - (b) the court is satisfied that each merging body will have an adequate opportunity to reconsider whether to proceed with the merger following the modification.
- (7) If a merger is approved under Article 127FA, references in this Article to the merger agreement are to be read as references to the special resolutions passed under Article 127FA.

#### *Chapter 4 – Commission*

#### **127FF Consent of Commission required for mergers involving bodies other than companies**

- (1) If any of the merging bodies is not a company –
- (a) the merging bodies shall apply jointly, in the published form and manner (if any), to the Commission for consent to the merger; and
  - (b) the merger may not be completed unless the Commission gives consent and any conditions attached to the consent are complied with.

- 
- (2) The application for consent shall not be made until after the date of the last publication of a notice under Article 127FC(5).
  - (3) The application shall be accompanied by –
    - (a) a copy of the merger agreement and the special resolutions passed under Article 127F;
    - (b) a copy, in respect of each merging company, of –
      - (i) the resolution passed under Article 127E(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 Article 127E(5) and (6);
    - (c) a copy, in respect of each merging company, of the notice to creditors under Article 127FC, with the date of its publication under Article 127FC(5); and
    - (d) information, as at the time of the application under this Article, as to –
      - (i) any application made by a member to the court under Article 127FB, or
      - (ii) if no such application has been made to the court, the date on which the time for doing so has elapsed or will elapse.
  - (4) If Article 127FD applies to the merger –
    - (a) the application under this Article shall in addition be accompanied by information, as at the time of that application, as to the application made, or to be made, to the court under Article 127FD; and
    - (b) the applicants shall –
      - (i) keep the Commission informed of the progress of the application under that Article, and
      - (ii) provide, when available, a copy of the Act of the court permitting the merger.
  - (5) If Article 127FD does not apply to the merger, the application shall in addition be accompanied by –
    - (a) information, as at the time of the application under this Article, as to –
      - (i) any notice of objection given by a creditor under Article 127FE(2)(a), or
      - (ii) if no such notice has been given, the date on which the time for doing so has elapsed or will elapse; and
    - (b) evidence satisfactory to the Commission that the merger would not be unfairly prejudicial to the interests of any creditor of any of the merging bodies.
  - (6) If the merged body is to be a company –
    - (a) the application shall in addition be accompanied by –



- (i) the consents of its proposed directors to act as such, and
    - (ii) a copy of its proposed memorandum and articles, unless it is to be a survivor company without any amendment to its memorandum or articles; and
  - (b) the Commission shall inform the registrar of the name proposed for the merged company in the merger agreement, and the registrar shall then inform the Commission whether that name is in his or her opinion in any way misleading or otherwise undesirable.
- (7) If one or more of the merging bodies is an overseas body, the application shall in addition be accompanied by evidence satisfactory to the Commission, in respect of each overseas body, that –
  - (a) the laws of the jurisdiction in which the overseas body is incorporated do not prohibit either or both of –
    - (i) the proposed merger, or
    - (ii) if the merged body is to be a new body incorporated in that jurisdiction, the incorporation of that body as the result of that merger;
  - (b) if those laws or the constitution of the overseas body require that an authorization be given for the application or for the merger, the authorization has been given; and
  - (c) if the overseas body is not to be a survivor body, the overseas body will, in due course after completion of the merger, cease to be a body incorporated under the law of the jurisdiction in which it is presently incorporated.
- (8) If the merged body is to be an overseas body, the application shall in addition be accompanied by evidence satisfactory to the Commission that the laws of the jurisdiction in which the merged body is to be incorporated provide that upon the merger –
  - (a) the property and rights to which the merging bodies were entitled immediately before the merger will become the property and rights of the merged body;
  - (b) the merged body will become subject to any criminal and civil liabilities, and any contracts, debts and other obligations, to which the merging bodies were subject immediately before merger; and
  - (c) any actions and other legal proceedings that, immediately before the merger, were pending by or against any of the merging bodies may be continued by or against the merged body.
- (9) In paragraphs (10), (11) and (12) ‘objection’ means –
  - (a) the making by a member of an application to the court under Article 127FB in respect of any merging company; and
  - (b) the giving of notice of objection under Article 127FE(2)(a) by a creditor of any merging company.

- (10) Paragraphs (11), (12) and (13) apply unless, at the time of the application under this Article –
  - (a) there has been no objection to the merger; and
  - (b) the time for making any objection has elapsed.
- (11) The applicants shall –
  - (a) notify the Commission of any objection of which they become aware after the application;
  - (b) notify the Commission of the result once any objection, whenever made, has been disposed of; and
  - (c) provide to the Commission any further information or document reasonably required by the Commission in connection with any objection.
- (12) Until the applicants have complied with paragraph (11), the Commission –
  - (a) shall not make any decision on the application other than to refuse consent on grounds unconnected to an objection; and
  - (b) may, in respect of the application, take any other action short of making a decision, or take no further action.
- (13) If a document or information required by the Commission under paragraph (11)(c) is not provided within a reasonable time, the Commission may give the applicants a warning notice stating that the application will be refused unless the document or information is provided within a period specified in the notice being not less than 14 days.
- (14) Where any document, information or evidence is submitted under this Article –
  - (a) it shall be authenticated in the manner, if any, published by the Commission; or
  - (b) the Commission may require it to be authenticated in any manner appearing reasonable to the Commission, if the Commission has not published any manner of authentication in relation to that document, information or evidence.
- (15) If a document, information or evidence submitted under this Article is not in English or French, it shall be accompanied by a translation into English or French, certified, in a manner approved by the Commission, to be a correct translation.

#### **127FG Fees, expenses and security**

- (1) Article 201 applies to the Commission's function of considering applications for consent under Article 127FF, as if references in Article 201 to the registrar were references to the Commission.
- (2) On receiving an application under Article 127FF, the Commission may estimate the likely amount of its expenses in dealing with the application.

- (3) If that amount exceeds any fee charged under Article 201, as applied by paragraph (1), for the consideration of the application, the Commission may require the applicants to give it security for that excess, to its satisfaction.
- (4) If the Commission, in the course of considering the application, subsequently forms the view that its expenses will be of a higher amount it may require the applicants to give it security for the difference, to its satisfaction.
- (5) If the Commission requires security under paragraph (3) or (4), the Commission need take no further action in respect of the application until the security has been given.
- (6) If –
  - (a) a fee is charged under Article 201, as applied by paragraph (1), or the Commission requires security under paragraph (3) or (4); and
  - (b) that fee is not paid, or that security is not given, within a reasonable time from the making of the application or the requirement,the Commission may give the applicants a warning notice stating that the application will be refused unless the fee is paid, or the security given, within a period specified in the notice being not less than 14 days.
- (7) If the Commission has required security under paragraph (3) –
  - (a) on determining the application the Commission shall ascertain the actual amount of its expenses; and
  - (b) if the actual amount exceeds any fee paid under Article 201, as applied by paragraph (1), the Commission may, by notice in writing, require the applicants to pay the excess.
- (8) An excess notified under paragraph (7)(b) shall be a debt due and payable jointly and severally by the applicants to the Commission.
- (9) Without prejudice to any other mode of recovery, the Commission may recover that excess by realising any security given if the excess is not paid by the applicants on demand.

#### **127FH Commission may require further information**

- (1) Following receipt of an application under Article 127FF, the Commission may by notice require the applicants to supply to the Commission such other document or information as the Commission may reasonably require to determine whether to accept the application.
- (2) The documents and information may in particular include any that are reasonably required to assess the solvency, and interests of any creditors, of any merging body that is not a company.
- (3) Any such document or information shall be authenticated in any manner reasonably required by the Commission.

- (4) If the Commission gives a notice under paragraph (1) –
  - (a) it need take no further action in respect of the application until the document or information has been supplied; and
  - (b) if the document or information is not supplied within a reasonable time after the notice, it may give the applicants a warning notice stating that the application will be refused unless the document or information is supplied within a period specified in the notice being not less than 14 days.

#### **127FI Decisions and appeals**

- (1) After considering an application under Article 127FF the Commission shall –
  - (a) give its consent without conditions;
  - (b) give its consent subject to conditions; or
  - (c) refuse its consent.
- (2) In deciding an application the Commission shall –
  - (a) consider all the relevant circumstances; and
  - (b) have particular regard to the interests of creditors of the merging bodies, in addition to the matters to which it must have particular regard under Article 7 of the Financial Services Commission (Jersey) Law 1998<sup>4</sup>.
- (3) The Commission may refuse its consent, or impose conditions on its consent, on any grounds, including any one or more of the following grounds –
  - (a) that the merger would unfairly prejudice the interests of a creditor of a merging body;
  - (b) that the merger would be undesirable with regard to any other matter mentioned in paragraph (2);
  - (c) that the applicants have not complied with a warning notice under Article 127FF(13), 127FG(6) or 127FH(4)(b) within the period specified in that notice;
  - (d) that any other requirement of or under this Part has not been met in respect of the merger.
- (4) Where the merged body is to be an overseas body, the Commission shall, unless it is satisfied that it would be preferable in the circumstances not to do so, impose on any consent a condition that the consent is subject to the merging bodies complying with Article 127FK(2) and the merged body complying with Article 127FK(3).
- (5) Where the merged body is to be a new company, the Commission may, without prejudice to the generality of paragraph (3), refuse its consent, as if the application was for incorporation under Part 2, on any ground on which the incorporation or registration of that company could be prevented under this Law (whether by the registrar, the Commission or the court).

- (6) On determining an application, the Commission shall inform the applicants in writing of –
  - (a) its decision;
  - (b) if consent is given subject to any condition, the terms of that condition; and
  - (c) if consent is refused or is given subject to any condition –
    - (i) the reasons for that refusal or condition, and
    - (ii) the right to appeal under paragraph (7).
- (7) If the Commission refuses consent, or gives consent subject to any condition, an applicant may, within one month after being informed of the decision, appeal to the court on the ground that the decision was unreasonable having regard to all the circumstances of the case.
- (8) On hearing an appeal under paragraph (7) the court –
  - (a) may confirm, reverse or vary the decision of the Commission; and
  - (b) may make such order as to the costs of the appeal as it thinks fit.

*Chapter 5 – Registration*

**127FJ Pre-registration steps: where all merging bodies are companies**

- (1) This Article applies if all the merging bodies in a merger are companies.
- (2) The merging companies shall apply jointly, in the published form and manner (if any), to the registrar to complete the merger.
- (3) The application shall not be made until after whichever is the latest of the following dates –
  - (a) if any application was made to the court under Article 127FB, the last date on which such an application is disposed of otherwise than by an order restraining the merger;
  - (b) if Article 127FD applies to the merger, the date of the Act of court permitting the merger;
  - (c) if Article 127FD does not apply to the merger –
    - (i) 28 days after the last date on which a notice was published under Article 127FC(5), if by then no creditor has given notice of objection under Article 127FE(2)(a),
    - (ii) 28 days after the last date on which the last notice of objection by a creditor was given under Article 127FE(2)(a), if by then no creditor has applied to the court under Article 127FE(2)(b), or

- (iii) if any application was made to the court under Article 127FE(2)(b), the last date on which such an application is disposed of otherwise than by an order restraining the merger.
- (4) The application shall be accompanied by –
  - (a) a copy of the merger agreement, unless the merger was approved under Article 127FA;
  - (b) a copy of –
    - (i) if the merged company is to be a new company, its memorandum and articles, or
    - (ii) if the merged company is to be a survivor company, any amendment to its memorandum or articles provided for under Article 127D(5)(a) or 127FA(3)(b)(iii);
  - (c) a copy, in respect of each merging company, of –
    - (i) the resolution passed under Article 127E(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 Article 127E(5) and (6);
  - (d) a further certificate, signed by each director who signed a certificate under Article 127E(5), stating –
    - (i) that the director, and the merging company of which he or she is a director, have complied with the requirements of this Part in respect of the merger, and
    - (ii) if Article 127FD does not apply to the merger, that in the director's opinion the merger will not unfairly prejudice any interests of any creditor of that merging company;
  - (e) a copy of any Act of the court under –
    - (i) Article 143 on an application under Article 127FB,
    - (ii) Article 127FD, or
    - (iii) Article 127FE; and
  - (f) any other document or information required by the registrar to establish that the requirements of paragraph (3) have been met.
- (5) The registrar shall register notices as to the merger in accordance with Article 127FM if he or she is satisfied –
  - (a) that the application complies with paragraphs (2) and (3), and that the documents provided under paragraph (4) comply with that paragraph and with the provisions mentioned in it; and
  - (b) if the merger agreement provides for the merged company to be a new company, that he or she would have registered the memorandum and articles of the company under Article 8 if it had been incorporated otherwise than by merger.

**127FK Pre-registration steps: where merged body is not a company**

- (1) This Article applies if –
  - (a) the merged body provided for in the merger agreement is not to be a company;
  - (b) the Commission has given its consent to the merger under Article 127FI; and
  - (c) if any conditions were attached to that consent (other than a condition under Article 127FI(4)), those conditions have been met to the satisfaction of the Commission.
- (2) When this Article applies, the merging bodies shall take whatever steps are necessary to complete the merger in accordance with the merger agreement under the laws governing the merged body and those merging bodies that are not companies.
- (3) As soon as is reasonably practical after the merging bodies have completed the merger the merged body shall –
  - (a) inform the Commission that it has been completed, including the date of completion;
  - (b) provide any document or information that the Commission may reasonably require to establish the fact and date of the completion; and
  - (c) authenticate any such document or information in any manner that the Commission may reasonably require.
- (4) If satisfied that the merger has been completed, the Commission shall –
  - (a) provide the registrar with copies of –
    - (i) the merger agreement,
    - (ii) the certificates signed under Article 127E(5) and (6),
    - (iii) any Act of the court provided to the Commission under Article 127FF or 127FH, and
    - (iv) the documents provided to the Commission to prove completion; and
  - (b) instruct the registrar to register the merger.
- (5) As soon as is practical after receipt of the documents and instruction under paragraph (4), the registrar shall register notices as to the merger in accordance with Article 127FM.

**127FL Pre-registration steps: other cases**

- (1) This Article applies if –
  - (a) one or more of the merging bodies in a merger is not a company;
  - (b) the merged body provided for in the merger agreement is to be a company;

- (c) the Commission has given its consent to the merger under Article 127FI; and
  - (d) if any conditions were attached to that consent, those conditions have been met to the satisfaction of the Commission.
- (2) The Commission shall –
- (a) provide the registrar with copies of –
    - (i) the merger agreement,
    - (ii) the certificates signed under Article 127E(5) and (6),
    - (iii) the memorandum and articles of the merged company, if they were provided to the Commission under Article 127FF(6)(a)(ii), and
    - (iv) any Act of the court provided to the Commission under Article 127FF or 127FH; and
  - (b) instruct the registrar to register the merger.
- (3) As soon as is practical after receipt of the documents and instruction under paragraph (2), the registrar shall register notices as to the merger in accordance with Article 127FM.

#### **127FM Registration of notices as to merger**

- (1) This Article applies where the registrar is to register notices as to a merger under Article 127FJ, 127FK or 127FL.
- (2) The completion date of a merger is –
- (a) if the merged body is not a company, the date notified under Article 127FK(3); or
  - (b) if the merged body is a company, the date the last entry on the register is made under this Article in relation to the merger.
- (3) The registrar shall enter in the register, in respect of each merging company that is not a survivor body, a notice that –
- (a) states that the company has ceased to be incorporated as a separate company because it has merged with a body or bodies specified in the notice, so that they have together continued as a merged body; and
  - (b) specifies the name of the merged body and –
    - (i) the enactment under which it is incorporated in Jersey, or
    - (ii) the jurisdiction outside Jersey in which it is incorporated.
- (4) If the merged body is a survivor company, the registrar shall enter in the register, in respect of that company, a notice that –
- (a) states that the company has merged with a body or bodies specified in the notice, so that they have together continued as the merged survivor company; and



- (b) refers to any change in the company's memorandum and articles that takes effect on the merger.
- (5) If the merged body is a new company, the registrar shall, if he or she would have registered the company under this Law if it had been incorporated otherwise than as the result of a merger –
  - (a) register the memorandum and articles of the new company under Article 8, and issue a certificate of its incorporation under Article 9, as if the registrar had received an application for the creation of the company under Part 2 with the memorandum and articles provided for in the merger agreement; and
  - (b) enter in the register, in respect of that new company, a notice that states that the company is the result of a completed merger between the former bodies specified in the notice, which have together continued as the new company.
- (6) Each entry under this Article –
  - (a) shall in addition include a note specifying the completion date of the merger 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 merger.
- (7) When the registrar enters a notice on the register referring to an overseas body, the registrar shall also immediately send a copy of the notice to the appropriate official or public body in the jurisdiction in which that body is or was incorporated.
- (8) The registrar shall send the copy referred to in paragraph (7) –
  - (a) electronically;
  - (b) by some other means of instantaneous transmission; or
  - (c) if no instantaneous transmission to the official or public body is practicable, by such other means as the registrar believes likely to be acceptable to that official or public body.

*Chapter 6 – Final*

**127FN Effect of completion of merger**

- (1) On the completion date of a merger –
  - (a) the merging bodies are merged and continue as one merged body as provided in the merger agreement or in the special resolutions passed under Article 127FA;
  - (b) any merging company that is not a survivor company ceases to be incorporated as a separate company; and
  - (c) any merging body falling within Article 127B(3) that is not a survivor body ceases to be incorporated as a separate body.

- (2) When a merger is completed in which the merged body is a company or a body falling within Article 127B(3) –
  - (a) all property and rights to which each merging body was entitled immediately before the merger was completed become the property and rights of the merged body;
  - (b) the merged body becomes subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which each of the merging bodies was subject immediately before the merger was completed; and
  - (c) all actions and other legal proceedings which, immediately before the merger was completed, were pending by or against any of the merging bodies may be continued by or against the merged body.
- (3) Entries made on the register under Article 127FM are conclusive evidence of the following matters to which they refer –
  - (a) that on the completion date specified in the entry the merging bodies merged and continued as the merged body; and
  - (b) that the requirements of this Law have been complied with in respect of –
    - (i) the merger of the merging bodies under this Law, and
    - (ii) all matters precedent to and incidental to the merger.
- (4) The operation of this Article 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.

#### **127G Offences relating to merger**

- (1) A person commits an offence if, on or in connection with an application under this Part, he or she knowingly or recklessly provides to the Commission or to the registrar –
  - (a) any information which is false, misleading or deceptive in a material particular; or
  - (b) any document containing any such information.
- (2) A person commits an offence if he or she signs a certificate under Article 127E or 127FJ(4)(d) without having reasonable grounds for the opinion expressed in the certificate or for the statement made in the certificate.”.

**6 Article 127YG amended**

In Article 127YG(1) of the principal Law for the words “Article 104” there shall be substituted the words “Article 105”.

**7 Article 143 amended**

In Article 143(1) of the principal Law, for the words “Article 127E” there are substituted the words “Article 127FB”.

**8 Schedule 1 amended**

In Schedule 1 to the principal Law, after the entries relating to Article 127(4) there are inserted the following entries in Columns 1, 2 and 3 respectively –

“127G(1)	Person providing false, misleading or deceptive information or document in connection with application under Part 18B	2 years or a fine; or both
127G(2)	Person signing certificate without reasonable grounds for doing so	2 years or a fine; or both”

**9 Transitional provision**

- (1) The principal Law applies to a merger falling within paragraph (2) as if these Regulations had not come into force.
- (2) A merger falls within this paragraph if, immediately before the commencement of these Regulations –
  - (a) the merger has been approved under Article 127B or 127C of the principal Law; and
  - (b) the registrar has not complied with Article 127G(3).

**10 Citation and commencement**

These Regulations may be cited as the Companies (Amendment No. 5) (Jersey) Regulations 201- and come into force 7 days after they are made.

- 
- <sup>1</sup> *chapter 13.125*
  - <sup>2</sup> *chapter 13.125*
  - <sup>3</sup> *chapter 13.265.50*
  - <sup>4</sup> *chapter 13.250*