

## Companies (Jersey) Law 1991 – significant amendments

Service area / [Corporate](#)

Location / [Jersey](#)

Date / [August 2014](#)

### Introduction

On 1 August 2014 the Companies (Amendment No.11) Jersey Law 2014 ("Amendment 11") came into force, representing the most significant amendment to Jersey's company law in recent years. The changes include many innovations which are expected to be of considerable interest to those who already use, or in the future will use, Jersey companies in their structures.

### Highlights

- **Shareholder Resolutions:** Introducing new rules which enable different thresholds to be specified for different resolutions. For instance, a company could provide that certain special resolutions need to be passed by a higher than usual majority (or unanimously). We expect this flexibility to be of interest in many cases, including joint venture arrangements and where robust minority shareholder protections are required. This new regime applies to written resolutions as well as to resolutions proposed at shareholder meetings.
- **Reductions of Capital:** Introducing a new procedure which enables companies to reduce their capital without having to go to Court. The new procedure requires a special resolution of the shareholders together with a supporting solvency statement by the directors. All types of company can take advantage of this new procedure, including private and public companies. The existing procedure, which involves court confirmation of the reduction of capital, continues in force for anyone who prefers this route.
- **Statutory Mergers:** A number of improvements are made to the existing statutory merger rules, including shortening the timetable required to effect a statutory merger. Statutory mergers have proved popular and we expect these changes will encourage their further use, including as one of the options for takeovers of listed companies.
- **Statutory Demergers:** Introducing a new demerger regime which enables an existing company to be "split" into two or more surviving companies. Potential uses include effecting transfers of a portfolio of UK or other real estate without having to transfer that portfolio out of a remaining portfolio; splitting off certain assets in preparation for a sale; or creating more robust separation of existing businesses and risks through the creation of a revised group structure. The details of the demerger procedure will be set out in separate Regulations.
- **Statutory Migrations:** A number of improvements are made to the existing rules, including shortening the timetable required to effect a statutory migration. A migration involves the transfer of the seat of incorporation of the company from one jurisdiction to another and offers a variety of structuring options to clients. For instance, we have advised on transactions where the overseas law did not provide for the compulsory acquisition of minority shareholders following a takeover offer, where the company chose to migrate to Jersey to take advantage of our compulsory acquisition regime.

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- **Dividends:** Amendments to the dividend regime which ensure that a dividend or other distribution (including a “deemed distribution” or “disguised distribution”) which does not have the effect of reducing the net assets of the company does not require to comply with the statutory rules in respect of distributions. This change is expected to further facilitate the structuring of international finance transactions through Jersey vehicles by putting beyond any doubt that e.g. upstream guarantees are not treated as any form of distribution. Whether or not the transaction reduces the net assets is determined based on the accounting principles (e.g. IFRS) adopted by the company.
- **Ratification of Unlawful Dividends:** Introducing a new statutory procedure which enables a company to ratify a previously unlawfully made dividend or other distribution. One advantage of this procedure over existing methods is that it results in the distribution being treated as lawfully made at the time it was originally made. The procedure requires an application to Court with a supporting solvency statement by the directors, but does not require a shareholder vote or any creditor notification (unless the Court orders that creditors be notified).
- **Ratification of Breach of Directors’ Duties:** Introducing a new statutory regime which enables shareholders to ratify any breach of directors’ duties by ordinary resolution (or special resolution if the articles of association require). This new regime is based on the English law regime but with a simplified procedure. This new regime sits alongside, and does not affect, the existing statutory regime, which permits ratification by unanimous shareholder approval (and which, given such unanimity, involves very simple procedural requirements).
- **Prospectuses:** Changes to the prospectus regime, introducing new exemptions from the regime (and from the associated requirement for Jersey Financial Services Commission approval). As a result, many share offerings which currently require a prospectus will no longer require a prospectus under Jersey law. The detailed exemptions will be set out in a separate Ministerial Orders
- **Takeovers:** Changes to the minority shareholder compulsory acquisition procedure (known as the “squeeze out”) on takeovers, in particular in respect of the requirement to make the offer in jurisdictions where there are issues under the relevant law with doing so. This aligns the Jersey law with English law, although was for clarification only as this was already considered to be the position under common law.
- **Annual General Meetings:** for private companies (including existing private companies), there will be a new “opt in” regime for AGMs which replaces the existing “opt out” regime. Under the new “opt in” regime, the default position will be that a private company does not need to hold an AGM unless its articles of association specify otherwise. Existing companies will also no longer be required to hold an AGM unless they pass a special resolution requiring AGMs to be held.
- **Short Notice of General Meetings:** The threshold for consent to short notice of a general meeting is reduced to 90%, except for meetings to consider special resolutions where the threshold remains 95%.
- **Overseas branch registers:** Amending the overseas branch register rules to permit companies to include the details of any shareholder, not just those resident in that overseas jurisdiction. This will facilitate listings of Jersey companies on overseas exchanges which require such branch registers.
- **Purchase of Own Shares:** Express recognition that the payment for shares can take the form of cash or non-cash consideration, which provides more flexibility than some other jurisdictions are able to offer. There is also a new regime for the purchase of depositary certificates, which can now be purchased directly by the company rather than through the purchase of the underlying shares.
- **Corporate Representatives:** Enabling multiple corporate representatives to be appointed to attend general meetings, which aligns Jersey law with English law.
- **Proxies:** Providing that, in calculating when proxies must be delivered no later than “48 hours” before a meeting, non-business days can be ignored. This aligns Jersey law with English law.
- **Commissions and Discounts:** Abolishing the restrictions on paying commissions in respect of newly issued shares and on disclosing the amount of commissions paid. Abolishing the restriction on issuing shares at a discount to their nominal value.
- **Winding Up:** Changes to the requirements for winding up companies, in particular the quorum for a creditors meeting will be one instead of three, intended to ensure that a single large creditor cannot be prevented by other creditors from holding a creditors’ meeting.

### Further information

The Carey Olsen team was extensively involved in the development of Amendment 11, including the original formulation of the proposals, the debate on policy aspects with relevant governmental and regulatory bodies, and the subsequent drafting of Amendment 11.

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