

Reduction of capital by Jersey companies

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The Companies (Amendment No. 11) (Jersey) Law 2014 (the **Amendment Law**) came into force on 1 August 2014 and amended the Companies (Jersey) Law 1991 (the **Companies Law**). One of many improvements made by the Amendment Law was to provide Jersey companies with the ability to carry out a reduction of capital without needing to obtain court approval.

This briefing provides a summary of the new out of court procedure for reductions of capital by limited companies in Jersey.

The New Procedure

Prior to the Amendment Law, reductions of capital by Jersey limited companies required confirmation by the Royal Court of Jersey.

Such a reduction of capital no longer requires court confirmation where any such reduction is supported by a solvency statement filed with the Companies Registry. There are certain other documents which are required including:

1. a shareholder approval by way of a special resolution; and
2. a minute (a legal document as opposed to a board minute) confirming certain information in relation to the capital accounts of the company and the share capital of the company.

This procedure is open to all types of public and private limited companies in Jersey and it is worth noting that, to the extent that a Jersey company would prefer to follow the court confirmed process for a reduction of capital, this is still possible as an alternative.

Solvency Statement

The directors who authorise the solvency statement are required to make a solvency statement

not more than 15 days before the special resolution sanctioning the resolution to reduce capital confirming that:

1. as at the date of the statement, the company is able to discharge its liabilities as they fall due; and
2. having regard to (i) the prospects of the company and to the intentions of the directors with respect to the management of the company's business; and (ii) the amount and character of the financial resources that will in their view be available to the company, the company will be able to continue to carry on its business and discharge its liabilities as they fall due until the expiry of the period of 12 months immediately following the date of the statement or until the company is dissolved under article 150 of the Companies Law (that is, on the basis of a solvent winding up).

Minute

The minute must include the following information:

1. the amounts of the capital accounts of the company following the reduction;
2. the share capital of the company following the reduction; and
3. the amount remaining unpaid on issued shares following the reduction.

Companies Registry Application

A certified copy of the special resolution, the original solvency statement(s) and a copy of the minute are required to be submitted to the Companies Registry within 15 days of the passing of the special resolution.

The Companies Registry once having completed their review of the documents then issue a certificate which is conclusive evidence that the requirements of the Companies Law have been complied with.

Comment

Whilst the old mechanism for court approval of a share capital reduction remains in place, the new procedure allows for Jersey companies to more easily reduce their capital accounts and supplements the ability for Jersey companies to distribute from certain capital accounts. The procedure also puts Jersey companies on an equal footing with certain English companies.

Ogier advised on the first non-court capital reduction under the Amendment Law.

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