

DIVIDENDS & DISTRIBUTIONS BY JERSEY COMPANIES

Introduction This briefing note provides an overview of the process contained in Part 17 of the Companies (Jersey) Law 1991 (the **Law**) by which a Jersey company (a **company**) can make a distribution to its shareholders. It is also important to note that in addition to the requirements of the Law, a company's distribution process will also be governed by its articles of association (the **articles**). More detailed guidance or advice is available on request.

What does the Law class as a distribution?

The Law defines a distribution as: "every description of distribution of the company's assets to its members as members whether in cash or otherwise". A 'distribution' therefore includes, but is wider than, a simple dividend payment. However, the Law states that a distribution does not include:

- A bonus share issue;
- The redemption or purchase of any of the company's shares;
- Any reduction of capital; or
- A distribution of assets to members of the company on its winding up.

Are there any restrictions on making a distribution?

The Law allows a company to make a distribution at any time. However, where the distribution would have the effect of:

- Reducing the company's net assets; or
- Is in respect of shares which are required to be recognised as a liability in the company's accounts,

the company must comply with a specific procedure under the Law.

'Net assets of a company' is defined under the Law as the aggregate of a company's assets less the aggregate of its liabilities and any question as to whether a distribution reduces the amount of the net assets of a company is to be determined in accordance with the generally accepted accounting principles adopted by the company.

What is the process involved in making a distribution?

The directors of a company who authorise the distribution must make a prescribed statement in the form found in the Law, essentially confirming that, those directors have formed an opinion that:

- Immediately following the date the proposed distribution is made, the company will be able to discharge its liabilities as they fall due; and
- The company will be able to continue to carry on its business and discharge its liabilities as they fall due for 12 months immediately following the date of the distribution or until it is dissolved, whichever occurs first.

If a director makes the prescribed statement without having reasonable grounds for doing so then that director is guilty of an offence.

The statement set out in the Law should be evidenced in the board minutes of the company and/or in a separate authorisation document.

As noted above, the full process required to be followed, will also depend upon any requirements in a company's articles.

What happens if the process is not followed?

If a distribution is made without complying with the requirements under the Law, then the shareholder who received that distribution is liable to pay it or part of it (or a sum equivalent to the distribution received, if the distribution is of an asset) back to the company if at the time of receiving the distribution the shareholder knew or had reasonable grounds for believing that the distribution was made in contravention of the requirements under the Law.

If the process is not followed, is it possible for the Court to ratify the distribution?

If the process is not followed, the Law permits a company to make an application to the Jersey court for an order that the distribution be treated for all purposes as complying with the Law.

In addition to this court process, there may be other remedies available to a company from a practical perspective and further advice can be provided in that regard.

This briefing is only intended to give a summary of the subject matter. It does not constitute legal advice. If you would like legal advice or further information, please contact us using the details below.

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