

STATES OF JERSEY

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DRAFT COMPANIES (AMENDMENT No. 3)(JERSEY) REGULATIONS 200

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

STATES GREFFE



Jersey

DRAFT COMPANIES (AMENDMENT No. 3)(JERSEY) REGULATIONS 200

REPORT

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

The most significant amendment is a change to the definition of an open-ended investment company (“OEIC”), which will allow other funds whose shares may be subject to frequent redemption (e.g. COBO-only, unregulated and feeder funds) to benefit from the exemptions afforded to OEICs in this regard.

There are no significant financial or manpower implications arising from these Regulations.

Explanatory Note

These Regulations would amend the Companies (Jersey) Law 1991.

Regulation 1 is an interpretation clause.

Regulation 2 widens the meaning of the expression “open-ended investment company”. A company would now come within this category if its sole business is to invest in securities or other property, and its articles provide that substantially all of its shares are to be redeemed or purchased at the request of the holders at prices not exceeding their net asset value.

Regulation 3 amends Article 114(2) of the Law. That paragraph at present provides that, for the purposes of Part 17 of the Law (which Part controls distributions by companies), the expression “distribution” does not include reductions of capital by extinguishing or reducing a shareholder’s liability on shares that are not paid up.

The effect of the amendment is to provide instead that the expression does not include a distribution by a reduction of capital that is made in accordance with Part 12 of the Law.

Regulation 4 amends Article 181 of the Law. That Article relates (inter alia) to the liability of a person to contribute in a creditors’ winding up the amount of money paid to him or her in respect of the redemption or purchase by a company of its shares. The liability at present arises if the payment has not been made wholly out of profits available for distribution, or out of a fresh issue of shares for the purpose of the redemption or purchase. The effect of the amendment is to replace references to payments from these sources by references to payments made unlawfully.

Regulation 5 provides for the citation of the Regulations, and that they will come into force 7 days after they are made.



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Arrangement

Regulation

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Article 1 of the Companies (Jersey) Law 1991 amended</u>
<u>3</u>	<u>Article 114 amended</u>
<u>4</u>	<u>Article 181 amended</u>
<u>5</u>	<u>Citation and commencement</u>



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Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Articles 2B, 115B, 181 and 220 of the Companies (Jersey) Law 1991^[1], have made the following Regulations –

1 Interpretation

In these Regulations, “the Law” means the Companies (Jersey) Law 1991^[2].

2 Article 1 of the Companies (Jersey) Law 1991 amended

In Article 1 of the Law, for the definition “open-ended investment company” there shall be substituted the following definition –

“ ‘open-ended investment company’ means a company –

- (a) the sole business of which is to invest in securities or other property of any description; and
- (b) the articles of which provide that its shares, or substantially all its shares, are to be redeemed or purchased at the request of the holders at a price or prices not exceeding the net asset value of those shares;”.

3 Article 114 amended

For Article 114(2)(c) of the Law there shall be substituted the following sub-paragraph –

“(c) any reduction of capital made in accordance with Part 12; or”.

4 Article 181 amended

(1) For Article 181(1)(b) of the Law there shall be substituted the following sub-paragraph –

“(b) the payment was not made lawfully; and”.

(2) For Article 181(2) of the Law there shall be substituted the following paragraph–

“(2) In this Article, the amount of a payment that has not been made lawfully for the purpose of the redemption or purchase is referred to as the ‘relevant payment’”.

5 Citation and commencement

(1) These Regulations may be cited as the Companies (Amendment No. 3) (Jersey) Regulations 200.

(2) These Regulations shall come into force 7 days after they are made.

[1]

chapter 13.125

[2]

chapter 13.125