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## Changes to the Jersey Companies Law

### Introduction

The Companies (Amendment No. 2) (Jersey) Regulations 2008 (the “Regulations”) came into force on 22 January 2008. The Companies (Amendment No. 9) Jersey Law (the “Amendment”) was passed by the States of Jersey in January and is currently awaiting Privy Council approval and is anticipated to come into force in the middle of 2008. Summarised below are the key provisions of the Regulations and Amendment.

### The Regulations

#### Corporate Directors

The ability for corporate entities to act as directors of Jersey companies has been introduced. The corporate director must have consent to do so under the Financial Services (Jersey) Law 1998 so in practice this means that Jersey Trust Company can fulfil such a role under our existing permits issued by the Jersey Financial Services Commission.

#### Financial Assistance

The restrictions against a company providing financial assistance for the purchase of its own shares (or that of its holding company) and criminal sanctions arising from giving unauthorised assistance have been removed. The principle adopted is based on the proviso that as long as a company remains solvent then it can manage its

own affairs. Financial assistance can be given without the need for a special resolution, previously known as a ‘shareholder whitewash’, as long as the assistance doesn’t constitute a distribution and the directors sign a solvency statement.

#### Treasury Shares

A Jersey company can now hold its own shares ‘in treasury’ following a repurchase or redemption and consequently can hold, sell, cancel or transfer such shares, for example, to an employee benefit scheme. Treasury shares are not entitled to dividends or to carry voting rights. It has been suggested that these shares will appeal to investment funds where managers may want shares available on short notice for sale to investors.

#### Solvency Statements

Only those directors who approve a resolution relating to the repurchase or redemption of shares will be required to sign the statement of solvency. This will mean that those directors who are not present at this meeting will not be required to sign such a statement. Furthermore, the previous requirement for the board of directors to make full enquiry into the affairs and prospects of the company has been removed which alleviates the burden on directors in such instances.

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## Cell Companies

There have been a number of amendments concerning cell companies and the headlines are as follows:-

- the directors of a protected cell or incorporated cell need no longer be the same as the protected cell company or incorporated cell company itself;
  - a company which is not a cell can now become a cell of a cell company; and
  - the parent cell is no longer responsible for the accounting records and register of members of its cells.
- immediately following the date of the distribution, the company will be able to discharge its liabilities as they fall due; and
  - the company will remain solvent and carry on business for 12 months following the date of distribution, unless dissolved under a solvent dissolution.

## 'Squeeze out' provisions

There is now clarity in the provisions of Jersey company law where a minority shareholder owning 10% or less is approached to sell their shares by an offeror holding 90%. The offeror is to hold 90% of the shares to which the offer relates with regards to the **nominal value** of the shares and not the **quoted value** of the shares.

## The Amendment

### Capital Maintenance Requirements

A Jersey company will be permitted to make a distribution to shareholders from any source other than the capital redemption reserve or nominal capital account. Such distributions can be made from capital without the consent of the Court provided a statement is made by the directors to the extent that:-

## Public Companies

Public limited companies now have the option of having 'PLC', 'plc' or 'public limited company' at the end of their company name. In addition, all public companies can now dispense with holding annual general meetings subject to approval from all shareholders.

## Notice for General Meetings

The notice period for annual general meetings or general meetings where special resolutions are proposed will be reduced from 21 to 14 days.

## Accounts

The requirement for a statement in the financial accounts noting that they show a true and fair view of the profit and loss of a company for the period and of the state of the company's affairs has been removed. This has been replaced with a requirement that the financial accounts must state which accounting principles have been adopted during their preparation.

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## Conclusion

Jersey Trust Company believes that the Regulations and Amendment further demonstrates Jersey's ability to offer flexible and efficient solutions to meet the needs of both existing and potential clients in structuring their affairs. Coupled with Jersey's professional workforce and regulatory reputation we believe that these changes can only increase the volume of business being carried out in Jersey and ultimately heighten the Island's reputation as a premier international finance centre.

## Jersey Trust Company

Jersey Trust Company is one of Jersey's leading independent trustee, management and fund administration service providers. Our head office is located in Jersey's financial district of St. Helier and through our continued international expansion we have opened offices in jurisdictions such as London, Glasgow, the British Virgin Islands and Geneva. We have experience in administering and managing complex company structures for our clients and we have approximately £7.3 billion in assets currently under our management and administration.

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Regulated by the Jersey Financial Services Commission

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