

GUIDE

DISTRIBUTIONS AND SHARE PURCHASES AND REDEMPTIONS UNDER THE COMPANIES (JERSEY) LAW 1991

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This guide examines the key aspects of distributions, share purchases (sometimes referred to as share buy-backs) and redemptions under the Companies (Jersey) Law 1991 (the **Companies Law**).

DISTRIBUTIONS

A company's articles of association will contain provisions concerning the payment of distributions. In addition, the Companies Law regulates the payment of distributions.

WHAT IS A DISTRIBUTION?

A distribution is defined in the Companies Law as a distribution (whether in cash or otherwise) of a company's assets to its members in their capacity as members other than an issue of bonus shares, the redemption or purchase of shares, any reduction of capital made in accordance with the Companies Law or a distribution of assets on a winding up. A dividend is a form of distribution.

In addition, the Companies Law only regulates a distribution if the distribution reduces the net assets of the company or is in respect of shares which (in accordance with generally accepted accounting principles adopted by the company) are required to be recognised as a liability in the accounts of the company.

In this context, 'the net assets of the company' means the aggregate of the 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 the company is to be determined in accordance with the generally accepted accounting principles adopted by the company.

The focus on the reduction of net assets is designed to ensure that certain transactions are not classified as distributions. For example, if a subsidiary guarantees the indebtedness of its parent company, the giving of the guarantee would not normally need to be sanctioned as a distribution because, as it is unlikely that the guarantee will be called, the guarantee will not need to be made the subject of a provision in the subsidiary's accounts which would otherwise reduce its net assets. The accounts of the subsidiary may, however, need to disclose the guarantee as a contingent liability. By contrast, if a guarantee were given and it was more likely than not that the guarantee would be called, then accounting standards would normally require the guarantee to be the subject of a provision which would reduce the net assets of the subsidiary and would require approval as a distribution.

MAKING DISTRIBUTIONS

A company (other than an open-ended investment company) must not make a distribution unless the directors who authorise the distribution make a prior 12-month cashflow solvency statement in the statutory form set out below under the heading *Solvency statement*.

On or after 1 June 2026, distributions made without a prior solvency statement may be ratified by the directors making a subsequent solvency statement, without the need for a court order. This ratification mechanism is limited to correcting technical breaches or administrative oversights and does not permit the retrospective reclassification of payments, including loans, as distributions. The court-based process for ratifying a distribution is considered below.

An open-ended investment company may only make a distribution if the directors who authorise the distribution reasonably believe that, immediately after the distribution is made, the company will be able to discharge its liabilities as they fall due.

An **open-ended investment company** is a company, the sole business of which, is to invest in securities or any other property and which provides in its articles of association that its shares (or substantially all of its shares) are to be redeemed or purchased at the request of the holders of those shares at a price not exceeding the net asset value of those shares.

SHARE PURCHASES AND REDEMPTIONS

SHARE PURCHASES

A company may purchase any of its limited shares, including any redeemable shares, whether or not they are fully paid. Under the Companies Law, a limited share is a share in respect of which the holder's liability to contribute to the debts of the company is limited to the amount (if any) unpaid on the share. The purchase must be authorised by an ordinary resolution of the members unless the purchase is made by a wholly owned subsidiary or the shares are purchased for nil consideration.

The directors who authorise the purchase must make a prior solvency statement in the statutory form set out below, except where a company is purchasing its own shares for nil consideration. If the required solvency statement was not made at the time of the purchase, the directors may ratify the transaction without a court order by making a subsequent solvency statement confirming that:

- immediately after the purchase, the company was solvent;
- the company is solvent when the solvency statement is made; and
- where the purchase is made less than 12 months before the solvency statement, the company will remain solvent for a period of 12 months from the repurchase date.

An open ended investment company does not require any sanction from its members to purchase any of its limited shares but may only purchase its limited shares if the shares are fully paid, the shares are purchased at a price not exceeding their net asset value and the directors who authorise the purchase have reasonable grounds for believing that, immediately following the date on which the payment is proposed to be made, the company will be able to discharge its liabilities as they fall due.

A company may not purchase its limited shares if, as a result, there would no longer be a member holding shares other than treasury shares.

Where the purchase will take place on a securities exchange (an **on-market buy-back**), the resolution sanctioning the purchase must specify the maximum number of shares to be purchased, the maximum and minimum prices which may be paid (which may be specified sums or a basis or formula pursuant to which those sums may be calculated) and a date on which the purchase authority will expire, which must not be more than five years after the date on which the resolution is passed.

Where shares are purchased other than on a securities exchange (an **off-market buy-back**), the directors may, following receipt of any required shareholder approval, adopt one of three permitted approaches:

- the shares may be purchased under a contract approved in advance by ordinary resolution, provided the shares being acquired do not vote on that resolution or, if required, the shareholder resolution approving the purchase;
- the shares may be purchased under a contract approved in advance by the directors, with any required shareholder resolution specifying the maximum number of shares to be purchased, the approved price range or confirmation that pricing will follow the company's articles, and an expiry date for the authority not exceeding five years from the date of the resolution; or
- where shares are acquired for nil consideration, the purchase may proceed under a contract approved in advance by the directors alone.

A company may also acquire its own listed shares through a third party, such as a broker or bank, under a contract which must specify the limit on the total value of shares that may be purchased. As a company may not control or know the timing of individual purchases, the requirement for a solvency statement for each purchase is replaced with a single solvency statement made at the time the contract is entered into. If the buy-back program exceeds 12 months, the solvency statement must be refreshed annually

In addition to the purchase of shares, a company may purchase depositary certificates in respect of its shares. Under the Companies Law, a depositary certificate is an instrument which confers on a person a right or rights (other than an option or a security interest) in respect of a share or shares held by another person. A purchase of depositary certificates must also be sanctioned by an ordinary resolution which must specify the equivalent information in respect of the depositary certificates as a resolution approving an on-market buy-back.

SHARE REDEMPTIONS

A company may issue (or convert non-redeemable limited shares into) limited shares that are liable to be redeemed in accordance with their terms or at the option of either the company or the holder if the company is authorised to do so by its articles of association.

To ensure that a company always has at least one member, company may have only redeemable shares in issue provided that at least one share (other than a treasury share) remains in issue after a redemption or purchase.

A company (other than an open-ended investment company) may only redeem its redeemable limited shares, whether or not they are fully paid, if the directors who authorise the redemption make a prior solvency statement in the statutory form set out below. If the required solvency statement was not made at the time of the redemption, the directors may ratify the transaction without a court order by making a solvency statement confirming that:

- immediately after the redemption or purchase, the company was solvent;
- the company is solvent when the solvency statement is made; and
- if the redemption is made less than 12 months before the solvency statement, the company will remain solvent for a period of 12 months from the redemption date.

An open-ended investment company may only redeem its redeemable limited shares if the shares are fully paid, the shares are redeemed at a price not exceeding their net asset value and the directors who authorise the redemption have reasonable grounds for believing that, immediately following the date on which the payment is proposed to be made, the company will be able to discharge its liabilities as they fall due.

EFFECT ON SHARE CAPITAL

In the case of a par value company, a purchase or redemption of limited shares will reduce the company's issued share capital by the number of shares that have been purchased or redeemed (unless the company resolves to hold them as treasury shares) but it does not reduce the share capital the company is authorised to issue.

TREASURY SHARES

A company may hold as treasury shares any shares that it has purchased or redeemed if the company is not prohibited by its memorandum or articles of association from doing so. Shareholder approval is not required to hold shares in treasury. However, a company may not redeem or purchase shares if, as a result, there would no longer be a member holding shares other than treasury shares.

A company that holds treasury shares may cancel them, transfer them for or without consideration for any purpose or hold them.

While the company holds shares as treasury shares, the rights attaching to the shares are generally suspended. Consequently, the company may not exercise any voting rights attached to the shares, receive any dividends or other distributions in respect of the shares (other than fully paid bonus shares) and the rights and obligations in respect of the shares cannot be exercised by, or enforced by or against, the company.

SOLVENCY STATEMENT

In the solvency statement required by the Companies Law, the directors who authorise the distribution, purchase or redemption must confirm that they have formed the opinion that:

- immediately following the date on which the distribution or payment is proposed to be made, the company will be able to discharge its liabilities as they fall due; and
- having regard to:
 - the prospects of the company and to the intentions of the directors with respect to the management of the company's business; and
 - 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 business; and
- discharge its liabilities as they fall due,

until the expiry of the period of 12 months immediately following the date on which the distribution or payment is proposed to be made or until the company is dissolved pursuant to a solvent winding up, whichever first occurs.

The solvency statement may be included in the minutes of the board meeting at which the distribution, purchase or redemption is approved. It is not necessary that the solvency statement be signed by the relevant directors or filed with the Jersey Financial Services Commission.

To address issues arising where a director resigns between authorising a distribution, redemption or purchase and the formal execution of the solvency statement, only directors who both authorised the transaction and remain in office at the time the solvency statement is made are required to sign the solvency statement. If all the directors who authorised the relevant transaction have left office before the statement is made, then either:

- the statement may be made by all directors in office; or
- the directors may re-authorise the transaction.

SOURCE OF PAYMENT

DISTRIBUTIONS

A distribution may be debited to any account of the company other than the nominal capital account (in the case of a par value company) or a capital redemption reserve.

SHARE PURCHASES AND REDEMPTIONS

A share purchase or redemption may be funded from any source, including the nominal capital account and the share premium account (in the case of a par value company) and the stated capital account (in the case of a no par value company).

METHODS OF PAYMENT

DISTRIBUTIONS

A distribution may be made in cash or otherwise.

SHARE PURCHASES AND REDEMPTIONS

A payment may be made in cash or otherwise (or partly in cash and partly otherwise than in cash).

POTENTIAL LIABILITIES FOR DIRECTORS

SOLVENCY STATEMENTS

A director who makes a solvency statement without having reasonable grounds for the opinion expressed in it is guilty of an offence and, upon conviction, is liable to a fine, imprisonment for up to two years or both.

BREACH OF DUTY

If a director authorises a distribution, purchase or redemption and the company subsequently becomes insolvent, the director may be found to have breached the director's duties to the company, under Jersey customary law and the Companies Law, to act honestly and in good faith with a view to the best interests of the company and to exercise the necessary degree of care, diligence and skill.

SHARE PURCHASES AND REDEMPTIONS

If:

- a company (other than an open-ended investment company) has its assets declared en désastre (ie it is declared bankrupt) or commences an insolvent winding up;
- the company has made a payment in respect of a purchase or redemption of shares either:
 - in the 12 month period before the declaration was made or the winding up commenced; or
 - if a creditor has applied for a creditors' winding up, during the period beginning 12 months before the date of the application and ending on the date of commencement of the winding up;
- the payment was not lawfully made; and
- the aggregate realisable value of the company's assets and the amount paid by way of contribution to the company's assets by the members in accordance with the Bankruptcy (Désastre) (Jersey) Law 1990 or the Companies Law (as applicable) is insufficient to pay in full the company's liabilities and the expenses of the désastre proceedings or winding up,

the court may, on the application of the Viscount (the executive officer of the court) or liquidator, order a director to contribute to the assets of the company to enable the insufficiency to be met.

A director who has made a solvency statement in connection with the purchase or redemption may be ordered, jointly and severally with any other person liable to contribute in connection with the unlawful payment, to contribute to the assets of the company an amount not exceeding the amount of the unlawful payment, unless the court is satisfied that the director had grounds for holding the solvency opinion.

COURT RATIFICATION OF AN UNLAWFUL DISTRIBUTION

Where a distribution has been made by a company in contravention of the Companies Law, the company may make an application to the court, and the court may make an order that the distribution is to be treated for all purposes as if it had been made in accordance with the Companies Law if the court considers that specified conditions are met and does not consider that it would be contrary to the interests of justice to do so.

The specified conditions are that:

- immediately after the distribution was made the company was able to discharge its liabilities as they fell due;
- at the time when the application is determined by the court, the company is able to discharge its liabilities as they fall due; and
- where the distribution was made less than 12 months before the date on which the application is determined, the company will be able to carry on business and discharge its liabilities as they fall due, until the end of the period of 12 months beginning with the date on which the distribution was made.

If an order is made, this would absolve a director from any liability in respect of the unlawful distribution. The order would also have the effect of absolving a member from any potential liability to repay the distribution.

OTHER RELIEF

If proceedings were instituted against a director alleging that the director breached the director's duties to the company, the director would be entitled to apply to the court to be relieved of liability. The court is empowered by the Companies Law to relieve the director, in whole or part, from liability for negligence, default or breach of duty or trust on such terms as the court thinks fit if it appears to the court that:

- the director acted honestly; and
- having regard to all the circumstances of the case, the director ought fairly to be excused from liability.

POTENTIAL LIABILITIES FOR MEMBERS

DISTRIBUTIONS

If:

- a distribution is made by a company to a member; and
- at the time of the distribution or any subsequent ratification by the directors, the member knows, or has reasonable grounds for believing that, the distribution (or part of it) is made in contravention of the Companies Law,

the member is liable to repay the distribution (or part of it) to the company (unless the court has ratified the distribution).

If the distribution was a non-cash distribution, the member is liable to pay to the company a sum equal to the value of the distribution (or part of it) at the time at which the unlawful distribution was made.

SHARE PURCHASES AND REDEMPTIONS

In the circumstances mentioned under the paragraph headed *Potential liabilities for directors – Share purchases and redemptions* above, a person from whom shares were purchased or redeemed is liable to contribute to the assets of the company an amount not exceeding the amount of the unlawful payment received by the person.

The court will not order the person to contribute to the assets of the company unless the court is satisfied that, when the person received the unlawful payment, the person knew, or ought to have concluded from facts known to the person, that immediately after the unlawful payment was made:

- the company would be unable to discharge its liabilities as they fall due; and
- the realisable value of the company's assets would be less than its aggregate liabilities.

CONTACTS

A full list of contacts specialising in corporate law can be found [here](#).