

Redemption and purchase of shares of a Jersey company

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Introduction

Jersey law now permits the monies payable on the redemption of redeemable shares or on the purchase by a Jersey company of its own shares to be funded from any source, including capital. This gives Jersey companies a considerable degree of flexibility in structuring returns to investors.

This briefing summarises the requirements for a redemption of shares in a Jersey company and the purchase by a Jersey company of its own shares.

Redemption

The redemption of shares by a Jersey company is permitted by article 55 of the Companies (Jersey) Law 1991 (the 'Law'). Generally, a company may issue redeemable shares or convert existing non-redeemable shares into redeemable shares if authorised to do so by its articles.

However, redeemable limited shares may not be issued at a time when there are no issued shares of the company which are not redeemable and no existing issued non-redeemable limited shares may be converted into redeemable shares if as a result there would be no issued shares of the company which are not redeemable.

Purchase of own shares

Article 57 of the Law allows a Jersey company to purchase its own shares, whether they are redeemable or not, provided that the purchase is sanctioned by a special resolution. (This sanction is not needed if the Jersey Company is a wholly-owned subsidiary of another Jersey company.)

If the shares are to be purchased other than on a stock exchange:

- they may only be purchased pursuant to a contract approved in advance by an ordinary resolution of the company; and
- they shall not carry the right to vote on the resolution sanctioning the purchase or approving the contract.

If the shares are to be purchased on a stock exchange, the resolution authorising the purchase must specify:

- the maximum number of shares to be purchased;
- the maximum and minimum prices which may be paid; and
- the date (not being later than 5 years after the passing of the resolution) on which the authority to purchase is to expire.

A company may not purchase its shares under Article 57 if as a result of the purchase there would no longer be a member of the company holding shares other than redeemable shares or treasury shares.

Source of funds

The monies payable on the redemption of redeemable shares or on the purchase of its own shares by a Jersey company (whether a par or no par value company) may be funded from any source, including capital, provided that such shares are fully paid.

Solvency test

In the case of both redemption and purchase of the company's own shares, the directors of the company responsible for authorising the redemption or purchase payment will be required to make a statement that they have formed the opinion:

- 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; and
- that, having regard to:
 1. the prospects of the company and to the intentions of the directors with respect to the management of the company's business, and
 2. 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 payment is proposed to be made (or, if sooner, a summary winding up of the company).

A director who makes a statement without having reasonable grounds for the opinion expressed in the statement is guilty of an offence.

Liability in respect of purchase or redemption of shares

Where a company is being wound up in a creditors' winding up in which the realisable value of the company's assets are not sufficient for the payment of its liabilities and the expenses of the winding up, and the company has within 12 months before the commencement of the winding up made an unlawful payment in respect of the redemption or purchase of its own shares, a person from whom the shares were redeemed or purchased or a director may be ordered by the court to contribute to the assets of the company.

A person's contribution is limited to such amount of the redemption or purchase payment which was made unlawfully.

However, a person would not be liable to contribute under these provisions unless the court is satisfied that, when payment for the shares was received:

- he or she knew; or
- he or she ought to have concluded from the facts known to him or her,

that, immediately after the relevant payment was made, the company would be unable to discharge its liabilities as they fell due and that the realisable value of the company's assets would be less than the aggregate of its liabilities.

A director who makes a solvency statement in connection with the redemption or purchase may also be ordered to contribute to the assets of the company in these circumstances unless the court is satisfied that the director had grounds for the opinion expressed.

Open-ended investment companies

Different rules apply to the redemption or purchase of shares of an open-ended investment

company and specific advice should be sought in relation to such companies.

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Meet the Author



Raulin Amy

Partner

Jersey

E: raulin.amy@ogier.com

T: +44 1534 514239

Key Contacts



Simon Dinning

Partner

Jersey

London

E: simon.dinning@ogier.com

T: +44 1534 514251



Nathan Powell

Partner 田田田

Hong Kong

E: nathan.powell@ogier.com

T: +852 3656 6054

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