

Collas Crill explains... Non court approved reductions of capital under Jersey law

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This guide is one in a series of 'Collas Crill explains...' in which we examine areas of Jersey law that frequently arise in practice.

Jersey is a popular place to establish an asset holding company because the **Law** is modern, flexible and modelled on English companies legislation.

The **Law** has a simple procedure for a **company** to reduce its **capital accounts** without the need to get court approval. This guide looks at the key things you need to know about this procedure.

Words in bold text are defined at the end of this guide.

Brief history

Maintenance of capital rule

Being modelled on English companies legislation, the **Law** previously included provisions which adopted the maintenance of capital rule. This rule required a **company** to maintain its paid up share capital for the benefit of its creditors. Consequently, a **company** could only return its paid up share capital to its shareholders in accordance with statutory provisions which:

- limited the sources from which distributions or share buybacks could be paid; and
- required court approval for reductions of capital.

Relaxation of the rule

A **company's** paid up share capital is used to carry on its business and is not an amount sitting in an account available for creditors if needed. So some or all of a company's paid up share capital may be lost in the course of the **company's** business.

Many people considered the maintenance of capital rule to be ineffective and overly restrictive, so law makers in Jersey and elsewhere have relaxed it. In Jersey, as long as the directors who authorise the action believe on reasonable grounds that a **company** will satisfy a statutory solvency test, the **Law** now allows the **company** to:

- pay distributions from its share premium account (if it is a par value **company**) or its stated **capital account** (if it is a no par value **company**);
- buy or redeem its shares from any source; and
- reduce its **capital accounts** without court approval.

Reducing capital accounts

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The **Law** allows a **company** to reduce its **capital accounts** in anyway. So it may, for example:

- extinguish or reduce any amount unpaid on its shares;
- reduce a **capital account** to reflect a loss; or
- return excess capital to shareholders.

Procedure

The procedure for a non-court approved reduction of capital is as follows.

- The shareholders must pass a **special resolution** to approve the reduction of capital.
- The directors must:
 - approve the reduction of capital; and
 - make a solvency statement in the statutory form (See *Solvency statement* below) within 15 days of the **special resolution** being passed.
- The **company** must file with the registrar of companies within 15 days of the **special resolution** being passed:
 - a copy of the solvency statement; and
 - a minute showing:
 - the amount of each **capital account**;
 - the number of shares into which the share capital is to be divided and (in the case of a par value **company**) the nominal amount of each share;
 - (in the case of a par value **company**) the amount (if any) remaining paid up on each issued share; and
 - (in the case of a no par value **company**) the amount (if any) remaining unpaid on each issued share.
- The registrar of companies will:
 - register the solvency statement and minute at which point the reduction of capital then takes effect; and
 - issue a certificate of registration that is conclusive evidence that the:
 - requirements of the **Law** relating to the reduction of capital have been complied with; and
 - **company's** share capital is as stated in the minute.

Once the minute is registered, it is treated as amending the **company's** memorandum of association.

Under the **Law**, a non-court approved reduction of capital is treated in the same way as a court approved reduction of capital.

Solvency statement

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The solvency statement, to be made by the directors who authorise the non-court approved reduction of capital (mentioned in *Procedure* above), is to show that they have formed the opinion that:

- as at the date of the statement, the **company** is able to discharge its liabilities as they fall due; and
- having regard to the:
 - prospects of the **company**;
 - intentions of the directors with respect to the management of the **company's** business; and
 - amount and character of the financial resources that will in the view of the directors 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 first to occur of the expiry of the period of 12 months immediately following the date of the statement or the **company** is wound up on a solvent basis.

Offence

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

Terms used

capital account means any:

- nominal capital account, share premium account or capital redemption reserve of a par value **company**; or
- stated capital account of a no par value **company**.

company means a company limited by shares.

Law means the Companies (Jersey) Law 1991.

special resolution means a resolution that is required to be passed as a special resolution by a majority of two thirds (or any higher majority specified in the **company's** articles of association) of shareholders who (being entitled to do so) vote at a meeting of the **company** of which not less than 14 days' notice has been given.

About Collas Crill

We are a leading offshore law firm. We are easy to do business with and give practical advice to overcome tough challenges. Through our network of offices, we practise British Virgin Islands, Cayman Islands, Guernsey and Jersey law.

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This guide gives a general overview of this topic. It is not legal advice and you may not rely on it. If you would like legal advice on this topic, please get in touch with one of the authors or your usual Collas Crill contacts.

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