



Jersey Company Law Series - Demergers

October 2022

The Companies (Demerger) (Jersey) Regulations 2018 (the “Regulations”) provides a flexible demerger regime for relevant Jersey companies, whilst simultaneously protecting shareholder, creditor and employee interests.

In simple terms, a demerger enables an existing Jersey company (the “Demerging Company”) to divide its assets and liabilities between two (or more) new companies (the “Demerged Companies”). A Demerging Company may also survive, if desired, as a separate entity, being known as the “Survivor Company”.

Which Entities are Eligible to Demerge?

At present, the Regulations provide that only relevant Jersey companies may demerge, which, broadly speaking, includes all Jersey incorporated companies which are not:

- cell companies or cells;
- companies with unlimited shares; or
- companies with guarantor members.

In addition, the Regulations do not allow certain Jersey companies to demerge where they are, amongst other relevant restrictions, registered under the Banking Business (Jersey) Law 1991 or the Insurance Business (Jersey) Law 1996, or where they fall into specific applications of the Income Tax (Jersey) Law 1961 (in other words, where the relevant Jersey company is liable to pay tax in Jersey, either at company or shareholder level). Legal advice should be sought as to the eligibility of a particular Jersey company to demerge.

The Demerged Entities

A successful demerger process will result in two or more Demerged Companies, which may comprise of a “split up demerger” (where the Demerged Companies are new entities and the Demerging Company ceases to exist) or a “spin off demerger”, where the Demerged Companies comprise of the Survivor Company and one or more new entities. Both these options are available under the Regulations.

The Demerger Process

The process for approving and effecting a demerger principally requires (amongst other things) the obtaining of board and shareholder consent of the Demerging Company, directors giving statements as to the solvency of the Demerging Company as well as confirmations of solvency as to the proposed Demerged Companies, and notices being given to relevant creditors (those with claims of over £5,000 as against the Demerging Company) and employees.



In summary, the process involves the following steps, prior to the submission of a demerger application being made to the registrar of companies in Jersey (the “Registrar”):

- a demerger instrument must be prepared that outlines the information required by the Regulations – this would include, amongst other things, whether the Demerging Company will be a Survivor Company or a new company, the various split of assets and liabilities between the Demerged Companies and the names and address of the directors of the Demerging Company, and if the Demerged Company is to be a new company the proposed memorandum and articles of association and the names and address of the proposed directors;
- the directors of the Demerging Company voting for the demerger must then pass a resolution that, in the opinion of the directors voting for the resolution, the demerger is in the best interests of the Demerging Company. If those directors are satisfied that they can make a solvency statement with respect to the Demerging Company then such resolution shall include the relevant statement, and if not then it should state that the directors voting for it are satisfied that there is a reasonable prospect of obtaining the permission of the court. After passing the resolution each director approving the demerger shall sign a confirmation certificate;
- the demerger instrument (and demerger in general) must be submitted to the shareholders of the Demerging Company for approval by special resolution – the notice for the relevant meeting must be also be accompanied by, amongst other things, copies of the proposed memorandum and articles of association of any proposed Demerged Companies and copies of signed solvency statements. Shareholders may object to a demerger within 21 days of approval of the demerger by the shareholders, and shareholders who do not vote in favour of the demerger have an additional 21 days after notifying their objection to apply to the court on grounds of unfair prejudice of their interests;
- provided shareholder approval is obtained, the Demerging Company must also give written notice of the proposed demerger within 21 days of the shareholder approval:
 - (i) to relevant creditors (those who have claims of over £5,000 against the Demerging Company), as well as publish a notice of the demerger in a Jersey newspaper (or another approved method of publication of such information); and
 - (ii) to any employees of the Demerging Company.
- if a Demerging Company is solvent, then a creditor has the right to object to a demerger and is able to give notice of such objection within 21 days of the date of the publication of the written notice from the Demerging Company. In addition, provided a creditor objects, it then has 21 additional days from the date of such objection to apply to the court for an order in respect of the demerger that the court may deem fit in the circumstances. Additionally, employees are entitled to object in writing to any proposed transfer of their contract of employment proposed to result from the demerger; and
- following the passing of the special resolution, provided that:
 - (i) any creditor notice period has expired (or if all creditors have consented to the merger);
 - (ii) any shareholder notice period has expired (or if all shareholders have consented to the merger); and
 - (iii) the directors of the Demerging Company have complied with all relevant provisions of the Regulations,

the Demerging Company may then submit its application to demerge to the Registrar, which, upon being registered by the same, will take effect.

Solvency Statement

Each director who approves the demerger at the relevant board meetings of the Demerging Company is required to make a statement (a



“Solvency Statement”) that they have formed the opinion that, having made full inquiry into the affairs of the Demerging Company, such directors reasonably believe that the Demerging Company is, and will remain until the demerger is completed, able to discharge its liabilities as they fall due.

In addition, each proposed director of each Demerging Company must give a certificate of confirmation that each Demerged Company for which they propose to act will be able to carry on its business and discharge its liabilities as they fall due for the 12-month period following the signing of the certificate of confirmation.

Completion and Effect of the Demerger

On completion of a demerger, as a matter of Jersey law and amongst other things:

- if the Demerging Company does not become a Survivor Company, then it ceases to exist, and the relevant Demerged Companies will continue in its place;
- if the Demerging Company becomes a Survivor Company, then it continues in existence with the other relevant Demerged Companies created pursuant to the demerger;
- the various assets and liabilities of the Demerging Company will be split pursuant to the demerger instrument (or, if not expressly outlined in that agreement, jointly in common in equal parts) as between the Demerged Companies);
- employment contracts held between the Demerging Company and its employees (if any) will transfer automatically to the relevant Demerged Company on the same terms and conditions, unless either an employee objects to such a transfer pursuant to their employment contract and has given notice in writing of the same prior to the demerger becoming effective; and
- subject to any order of the court:
 - i. the Demerged Companies become jointly and severally subject to all financial penalties with which the Demerging Company was subject to immediately before the demerger was completed; and
 - ii. all actions and other legal proceedings which were pending by or against the Demerging Company (immediately before the demerger was completed) may be continued by or against all or any of the Demerged Companies.



Contacts

For further information please speak with your usual contact at Walkers or contact:



Jonathan Heaney
Partner, Jersey
T: +44 (0) 1534 700 786
E: jonathan.heaney@walkersglobal.com



Dilmun Leach
Group Partner, Jersey
T: +44 (0) 1534 700 783
E: dilmun.leach@walkersglobal.com



Christopher Reed
Group Partner, Jersey
T: +44 (0) 1534 700 825
E: christopher.reed@walkersglobal.com



Leanne Wallser
Group Partner, Jersey
T: +44 (0) 1534 700 755
E: leanne.wallser@walkersglobal.com



Tatiana Collins
Senior Counsel, Jersey
T: +44 (0) 1534 700 757
E: tatiana.collins@walkersglobal.com



Kirsten Faichnie
Senior Counsel, Jersey
T: +44 (0) 1534 700 733
E: kirsten.faichnie@walkersglobal.com



Tom Fothergill
Senior Counsel, Jersey
T: +44 (0) 1534 700 724
E: tom.fothergill@walkersglobal.com



Sarah Townsend
Senior Counsel, Jersey
T: +44 (0) 1534 700 736
E: sarah.townsend@walkersglobal.com



Ruth Donnellan
Senior Associate, Jersey
T: +44 (0) 1534 700 719
E: ruth.donnellan@walkersglobal.com



Ellen Jarvis
Senior Associate, Jersey
T: +44 (0) 1534 700 827
E: ellen.jarvis@walkersglobal.com



Luke Steele
Senior Associate, Jersey
T: +44 (0) 1534 700 720
E: luke.steele@walkersglobal.com

Disclaimer

The information contained in this advisory is necessarily brief and general in nature and does not constitute legal or taxation advice. Appropriate legal or other professional advice should be sought for any specific matter.