
# Treasury shares in a Jersey company

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Treasury shares are well established in Jersey as in other jurisdictions, and were introduced into Jersey law in 2008.

Treasury shares are for example useful for employee share schemes, and can avoid the need for an employee benefit trust. Share buybacks to create a "more efficient" balance sheet, that is one more reliant on debt, are now less popular, but treasury shares resulting from such buybacks have advantages, including ready availability of shares for sale by the company in place of a new issue.

## Statutory regime under the Companies (Jersey) Law 1991 as amended (the "Companies Law")

### Authorisation and how treasury shares come about

A company's memorandum and articles of association do not have to contain any express permission to hold treasury shares, but an ordinary resolution of the shareholders is required. Only shares in a limited company can be held as treasury shares; and treasury shares can only be shares that have been redeemed or bought back by the company; previously all such shares were automatically cancelled. New shares cannot be issued into treasury. Redeemable shares that have been redeemed retain their status as redeemable when held in treasury. For redemption/(re)purchase of its shares by a company, please see our briefing note on this subject.

### Use and transfer of treasury shares

Treasury shares can be cancelled (which, as noted above, was what used to be automatically the case with shares that were redeemed or repurchased); sold; transferred for or under an employees' share scheme; or held. It follows that security cannot be granted over treasury shares.

The register of members of a company is under the control of the directors, and whatever use they make of treasury shares must be one that they decide on "with a view to the best interests of the company" and otherwise acting in accordance with their duties. Any transfer of treasury shares will be subject to the general statutory rule that a company shall not, except where the shares are uncertificated/dematerialised and are handled within the regime set out in the Companies (Uncertificated Securities) (Jersey) Order 1999, register a transfer of shares unless an instrument of transfer in writing has been delivered to it: thus the company will execute an instrument of transfer for its own shares.

If treasury shares are sold, the company must consider the proper accounting treatment: if they were redeemed or purchased out of profits, then the proceeds will be profits. If the articles of association contain pre-emption rights these must be complied with as applicable, or waived, before any disposal of treasury shares. If treasury shares of a par value company are cancelled, the amount of the company's (issued) share capital is diminished by the nominal value of those shares.

### Restrictions on treasury shares

The company cannot exercise any voting rights attaching to treasury shares (or, to put it another way, treasury shares while they are treasury shares do not have voting rights). The company cannot pay or receive any dividend, or other distribution of its assets on the shares, including a distribution on a winding-up. Thus the company should disregard treasury shares in assessing the dividend per share it can and wishes to pay.

### Prevention of unintended consequences

Treasury shares are disregarded when calculating the shareholding interest needed to requisition a meeting of shareholders. More generally, if a provision of the Companies Law requires for a given purpose a certain proportion of votes attaching to shares, or a certain proportion of the holders of shares, the treasury shares shall be disregarded for calculating the total number of shares in the company or whether the relevant proportion has been attained.

### General provisions

Rights in respect of treasury shares cannot be exercised by or against the company, and correspondingly for obligations. Apart from the avoidance of nonsensical consequences, the rules on treasury shares are consistent with the basic rule that you need two parties for a contract, that one cannot contract with oneself. The Companies Law provides at Article 10, in terms, that the memorandum and articles of association constitute a contract between the company and its shareholders.

### Special cases

As exceptions to the overall position in paragraphs 3 - 5 above, the Companies Law provides (in terms) that where bonus shares are issued treasury shares are entitled to their proportionate share, which will maintain the ratio between treasury and non-treasury shares; and if redeemable shares are held in treasury the amount payable on redemption can be paid (by the company to itself).

### Composition of share capital

The Companies Law contains provisions to ensure that, where treasury shares are held, there is another share or shares in issue which are non-redeemable.

The Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020 and its subordinate legislation have replaced the requirement for companies to provide annual returns with the requirement to provide annual confirmation statements. While this new legislation makes no express reference to treasury shares, for consistency with annual returns the information contained in the company's annual confirmation statement should include the number of its treasury shares.

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## Where the Companies Law is silent

Where the Companies Law is silent on the point we can take it that treasury shares can be treated like - and as the case may be together with – other shares, e.g. consolidation and division, or conversion from par to non par or vice-versa.

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FIND US

Carey Olsen Jersey LLP
47 Esplanade
St Helier
Jersey JE1 0BD
Channel Islands

T +44 (0)1534 888900
E jerseyco@careyolsen.com

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