

**A GUIDE TO
GUERNSEY COMPANIES**

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INTRODUCTION

On the 1st July 2008 a new consolidated Companies (Guernsey) Law, 2008 (the “Law”) came into force.

The Law introduced a modern company incorporation and registration system (the “Guernsey Registry”) replacing the role that the Greffe, Advocates and the Court played in the process of incorporation and the maintenance of company records. In general the principles contained in the Law are based on English company law.

The primary purpose of the legislation was to update and consolidate the existing Companies Law and Ordinances with a view to rationalising and updating certain areas, removing excessive bureaucracy and duplication and ensuring that commercial needs of local and international business in Guernsey was met.

The Law recognises a number of different types of company. A company may therefore be a cell company (either a protected cell company or an incorporated cell company) an incorporated cell of an incorporated cell company, or a non-cellular company. In respect of the liability of its members a company is either limited by shares or guarantee, unlimited or of mixed liability.

This guide has been compiled to give a brief overview of the different types of Guernsey companies and the main aspects of the Law.

GUERNSEY LEGAL BACKGROUND

The Bailiwick of Guernsey consists of the island of Guernsey (some 25 square miles) and the smaller islands of Alderney, Sark, Herm, Jethou and Brecqhou. Although only some 30 miles from the French coast and about 70 miles from the English coast, Guernsey is attached to the British Crown but maintains its own unique administrative and legal system. The Judicial system covers the whole of the Bailiwick, the islands of Alderney and Sark having their own courts, which are subject to the jurisdiction of the Royal Court of the Island of Guernsey.

Guernsey’s constitutional position is that it has internal self-government, fiscal autonomy and duty-free entry of produce to the EU.

The UK retains the ultimate responsibility for the good government of the Channel Islands. The UK government (or more strictly the Crown) is responsible for Guernsey’s external relations with other countries and so represents Guernsey in external matters such as defence and international affairs, but only with the Island’s consent.

The sources of law in Guernsey are:

- customary law;

- statute; and
- judicial decisions

Customary law derives from the laws of the old Duchy of Normandy and the customary law of Guernsey, not post-Revolution French civil law. The old customary law of Normandy is still cited in the Guernsey courts, particularly in such areas as property law and the law of succession.

Modern law, such as company and Trust law, is based on Anglo-Saxon concepts and, if a precedent is required, it is to the English Courts that the Guernsey courts refer for guidance. The highest court of appeal is the Judicial Committee of the Privy Council, which sits in London.

FEATURES OF A GUERNSEY COMPANY

Types of Company

The following types of company are available:

- a company limited by shares;
- a protected cell company (“PCC”);
- an incorporated cell company (“ICC”);
- an incorporated cell of an ICC;
- a company limited by guarantee
- an unlimited liability company (where a member’s liability is unlimited while a member and for a period of one year afterwards); and
- a mixed liability company (any combination of liability limited by shares, liability limited by guarantee and/or unlimited liability).

Memorandum and Articles of Incorporation

There is no longer a requirement for a company limited by shares to have an authorised share capital and unless a company's memorandum of incorporation specifically limits the objects for which that company has been formed, the objects of that company are deemed to be unrestricted. Accordingly, the memorandum of incorporation of a typical Guernsey company has become much shorter.

Standard articles will apply to all company incorporations unless specifically disapplied. The Law also allows provisions to be entrenched in the articles either upon incorporation or upon passing a unanimous resolution of the members.

The Guernsey Companies Registry

The Registry of Companies in Guernsey (the “Registry”) is overseen by the Registrar of Companies (the “Registrar”) and came into effect in June 2008, removing the involvement of the Greffe in Guernsey in the incorporation process.

The Registrar has responsibility for the incorporation of companies, the maintenance of records and, generally, all statutory obligations of an administrative nature imposed by the Law.

The Registry holds all information on companies incorporated in Guernsey and ensures that basic information is made available to the general public. The Registry can be accessed electronically at www.guernseyregistry.com.

Total companies on the Register at 31 December 2008 were 18,627.

Company Incorporation

Standard company incorporation is within 24 hours. However it is possible for a rapid incorporation that only takes 2 hours and a special incorporation (with certain restrictions) within 15 minutes.

All company incorporations are now carried out by a Corporate Service Provider (“CSP”), who must hold a full fiduciary license under the Regulation of Fiduciaries etc. (Guernsey) Law. Jupiter Administration Limited and Jupiter Trustees Limited are the holders of a full fiduciary license and registered with the Registry as a CSP.

Applications are done online to the Registry once the CSP has identified and carried out Customer Due Diligence on the principles to be involved with the new company (i.e. beneficial owners, directors and officers).

It is no longer a requirement to obtain any approval from the Guernsey Financial Services Commission (“GFSC), the Greffe, the Court or the Law Officers prior to incorporation, except in the case of the incorporation of a PCC or ICC, or for a company which is to be regulated or carrying out licensed activity in Guernsey, in which case prior approval must be sought from the GFSC.

The application to the Registry by a CSP is in a prescribed form and must be accompanied by:

- memorandum of incorporation;
- statement of the proposed first directors;
- address of the proposed registered office;
- name and address of resident agent;
- name and address of founder member;
- statement of initial share capital / guarantee;
- GFSC consent (in case of PCC or ICC companies, or regulated / licensed companies);
- Declaration of Compliance (Incorporation).

All applications, registration of documents and changes to a company’s particulars are also done electronically by the CSP.

Resident Agent

All companies must have a Resident Agent who is either a CSP or a director resident in Guernsey. The Resident Agent must keep a record of the beneficial ownership of the company and usually also retains a copy of the Register of Directors & Officer and the Register of Members.

Details of the beneficial owners or the members are not required to be submitted to the Guernsey Registry.

Registered Office

All companies must have a registered office address in Guernsey at which a copy of the Register of Directors, the Register of Secretaries (if applicable) and the Register of Members must be held.

Reservation and Change of a Company Name

A CSP can apply to the Registry to reserve a name if:

- (i) it intends to apply for the incorporation of the company within 3 months; and
- (ii) it is acting on behalf of those persons who wish that company to be incorporated.

The reservation lapses after 3 months.

A company can change its name by passing a Special Resolution of the members which is submitted by the Resident Agent to the Registry along with a Declaration of Compliance (Change of Name).

Corporate Capacity

A company can have unlimited objects. Pre-incorporation contracts are possible and must be ratified by resolution of the directors.

Single Member

A company must have at least one member.

Share Capital

A company is no longer required to have an authorised share capital, although it is possible to define an authorised share capital if required.

Ordinary shares, redeemable shares and preference shares can be issued. Fractional shares are permitted if authorised under the company's memorandum and articles of association. Shares

may have a nominal value or no par value and can be denominated in any currency and different classes of shares may be denominated in different currencies.

Consideration on the issue of shares is paid into a single share capital account and a separate share premium account is not required.

The Law contains restrictions on the powers of directors to issue shares. The directors have the power to issue shares where there is only one share class. For a company with more than one class of shares, the members must give the directors authority to issue shares by ordinary resolution or in the memorandum or articles of the Company. This authority must specify the maximum number of shares that may be issued and must specify the date on which such authority will expire, which can only be for a maximum period of 5 years, although it can be renewed or revoked.

It should be noted under the Companies (Transitional Provisions) Regulations, 2008 as amended by the Companies (Transitional Provisions) (Amendment) Regulations, 2009, these provisions do not come into force until 1 July 2011 for companies incorporated prior to 1 July 2008.

Directors

A company must have at least one director. There is no maximum number of directors. Unless the company is regulated, there is no legal requirement to appoint a Guernsey resident to the board.

Directors are subject to new eligibility criteria and are required to be registered with the Registry. The definition of director includes alternate directors. Accordingly, they must also be registered with the Registry.

There is no codification of directors' responsibilities in the Law and the Royal Court of Guernsey would consider any English and commonwealth case law on director's duties.

The Registry keeps a record of all directors and alternate directors. Any change in directors or their particulars must be notified by the Resident Agent to the Registry within 14 days of such occurrence and can be filed electronically. Directors may now use a service address rather than a home address.

Company Secretary

A company may have a company secretary (but is not required to have one) and a director may also be the company secretary. If there is no company secretary, the secretarial duties fall onto the director(s).

The Law specifically sets out the duties of a company secretary, which include taking reasonable steps to ensure that all registers and indexes are maintained in accordance with the provisions of the law, all notices and documents required to be filed are filed, all resolutions,

records, minutes are properly kept, the Memorandum and Articles are kept fully up to date and the board of directors is aware of any obligations imposed on it by the Memorandum and Articles or the rules of any Stock Exchange that the company is listed on.

Meetings

The members can waive the requirement to hold Annual General Meetings by means of a Waiver Resolution (a majority of 90% of the voting rights of members eligible to vote on the resolution) which must be filed by the Resident Agent with the Registry within 30 days and can be filed electronically. The waiver may be rescinded at any time by members holding more than 10% of the voting rights in the capital of the company.

Financial Statements

It is now the duty of the directors to prepare accounts for each of a company's financial years. A financial year is defined as a period of no more than 18 months beginning on the date of incorporation and thereafter a period of not more than 18 months beginning on the day after its previous financial year end. The directors of an asset holding company can prepare consolidated accounts for all or any of its subsidiaries and if they do so then they are not required to prepare individual accounts for the underlying Guernsey companies.

The accounts must include a P&L and balance sheet, be prepared, give and state that they give a true and fair view, in accordance with generally accepted accounting principles and comply with relevant legislation and include statements confirming each of these requirements, and be approved by the board of directors (either board meeting or circular written resolution) and signed on behalf of the board by at least one director. The directors must also prepare a directors report for each financial year.

The accounts, directors' report and auditor's report (where the company is audited) must be sent to each member of the company within 12 months after the end of the financial year to which they relate.

Audit

The members can waive the requirement to have a company audited by means of a Waiver Resolution (a majority of 90% of the voting rights of eligible members) which must be filed by the Resident Agent with the Registry within 30 days and can be filed electronically.

To be eligible for exemption, a company must not be a "large company". A company is a "large company" if any two of the following three conditions are met in a financial year and in the preceding financial year:

- annual net turnover of greater than £6.5m;
- net balance sheet of greater than £3.26m;
- average number of employees of more than 50.

However the following classes of company are not a “large company” regardless of whether the conditions above are met:

- dormant companies;
- asset holding companies i.e. its principal purpose is to hold specified assets, it does not trade and all activities are related to the assets held;
- companies with 10 members or less.

At present there is a requirement that the waiver resolution must be passed prior to the commencement of the financial year for which the company wishes to be audit exempt.

Annual Validation

A company must file an annual validation on the 1st January each year (the deadline is the 31st January). This is done electronically by the Resident Agent and must include the following information:

- address of the registered office;
- names and address of directors;
- name and address of the Resident Agent;
- categories of principal business;
- whether a company is exempt from audit;
- that the register of members was current as at 31 December;
- information contained in the validation was current as at 31 December;
- if the company is an ICC, details of each cell;
- a Declaration of Compliance (Annual Validation);
- where a company has a share capital, the number of shares issued, the aggregate value of those shares, the amount paid or unpaid, the number of shares redeemed together with the redemption price and the number of treasury shares.

There is no requirement to disclose details of a company’s shareholders.

The Annual Validation Fee is currently £250 for most Guernsey companies (as at 1st January 2009) although this fee is higher for ICC of PCC companies and for regulated companies.

Failure to file an annual validation by the 31st January incurs a £5 per day fine for each day thereafter.

Dividends and Distributions

The concept of capital maintenance has been abolished and replaced with a solvency test. A company can pay dividends out of any source of funds, whether income or capital, subject to the directors being satisfied that the company meets the solvency test at the time of the distribution.

A company satisfies the solvency test if:

- the company is able to pay its debts as they become due (the liquidity or cash flow test);
- the value of the company's assets is greater than the value of its liabilities (the balance sheet solvency test).

In addition, where the company is regulated in Guernsey it must meet any additional solvency requirements imposed under its regulatory regime.

In determining whether the value of a company's assets is greater than the value of its liabilities, the directors must have regard to:

- the most recent accounts of the company; and
- all other circumstances that the directors know or ought to know affect, or may affect, the value of the company's assets and liabilities;
- may rely on the valuation of assets or estimates of liabilities that are reasonable in the circumstances.

The directors may authorise a distribution (including a dividend) if:

- the board of directors is satisfied on reasonable grounds that the company will, immediately after the distribution, satisfy the solvency test; and
- it satisfies any other requirements in its memorandum and articles.

The directors must approve a certificate (usually included in the directors' minutes or resolutions) stating that in their opinion the company will, immediately after the distribution, satisfy the solvency test and the grounds for that opinion.

A dividend or distribution made at a time when the company did not satisfy the solvency test may be recovered by the company, save in certain limited circumstances. If a dividend or distribution payment is made in breach of the requirements of the Law or at a time when there was no reasonable grounds for believing that the company would satisfy the solvency test then any director who voted to approve the certificate is personally liable to the company to repay so much of that distribution as cannot be recovered from the members.

Striking Off

The directors can request the Registrar to strike a company off the registry provided within the preceding 3 months the company has not changed its name, traded or carried on business, or made a disposal of property or property rights.

In order to make the application the company must not have any assets or liabilities and a Declaration of Compliance (Voluntary Striking Off) is made by the directors which must be filed by the Resident Agent with the Registry and can be filed electronically.

The Registrar will then issue a notice and 2 months from the date of that notice the company will be struck off.

However if a company does not make the application before the 31st October then the company will be liable to pay the Annual Validation Fee on the 1st January, despite having made the strike off application.

Company Identification

It is a requirement for the company's name to be displayed at the registered office address either outside or inside and where the general public has access during ordinary business hours. The company's name must also be displayed at any other office or place at which the company's business is ordinarily carried on.

The company's name should also appear in all correspondence, statements of account, invoices, letters of credit, etc. unless this detail is ascertainable from the context or course of dealing. The company's particulars including name, registered number and registered office address need to appear on all order forms, invoices and formal business letters (including e-mails). If the company is limited by guarantee, this must also now be stated on such documentation.

Taxation

The Guernsey Tax regime is regulated by the Income Tax (Guernsey) Law 1975 (as amended). Guernsey does not have capital taxes, inheritance taxes or purchase tax / value-added taxes, but does have income tax at the rate of 20%.

With effect from the 1 January 2008 Guernsey has introduced a Zero-10 corporate tax policy. As a result the standard rate of income tax for companies is 0%. However, certain income, such as Guernsey rental income or that derived from certain regulated activities, is subject to tax at the rate of 20%.

The receipt of investment income and certain other events will trigger a deemed distribution of income which may be taxable if the company is owned by a Guernsey resident beneficial owner.

For a Guernsey company where there are no Guernsey resident beneficial owners, the company does not carry out a trade in Guernsey and is not in receipt of any Guernsey source income (with the exception of Guernsey bank interest), the company will be taxed at 0%.

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GENERAL DISCLAIMER

This guide is intended as a brief summary of Guernsey as a company jurisdiction looking at the types of company available, their uses and features. It is very important that specific professional advice is obtained before incorporating a company. Jupiter Trustees Limited cannot accept any responsibility for any loss arising from any inaction or action taken due to any content of this publication and will not be liable for any omissions or errors contained within this guide.

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