

JERSEY COMPANIES

Reasons for using a Jersey Company

For many individuals, corporate entities, lenders and onshore counsel, Jersey is the offshore jurisdiction of choice.

Jersey companies are used in a wide range of transactions, such as:

- owning yachts and aircraft
- investing in property, securities and other assets
- acting as a group holding company
- holding and exploiting patents and copyrights
- facilitating the collection of commissions and consultancy fees
- employing an internationally based work force

Jersey is a tax neutral jurisdiction and using a Jersey company for structuring international financing transactions can be beneficial in terms of company law provisions and tax treatment. Additional benefits include separate legal identity, limited liability for shareholders and ease of transfer of ownership. Share capital can be denominated in any currency and issued in various classes, including redeemable shares. The ability to incorporate "no par value" companies has added yet more flexibility. These features enable Jersey companies to be structured to meet a wide variety of business and private purposes.

Jersey Company Structures

Jersey company law is governed by the Companies (Jersey) Law, 1991 (the "Law").

The Law makes provision for different types of company. These include the following:

Par Value Companies

Private and public companies with shares that are expressed as having a par value (e.g. the company's share capital may be expressed as being 100 shares of £1 each).

No Par Value Companies

Private and public companies with shares that do not have a par value (e.g. the company's share capital may be expressed as just being 100 shares without giving any nominal value to any individual share).

A company cannot have both par value shares and no par value shares.

Guarantee Companies

Private and public companies with guarantee members. The liability of the guarantee members is limited to the amounts they undertake to contribute on a winding up of the company.

Unlimited Liability Companies

Private and public companies with unlimited members. On the winding up of the company, the liability of the unlimited members is unlimited.

Limited Life Companies

Private and public companies of limited life. These are companies which are to be wound up and dissolved upon (a) the bankruptcy, death, expulsion, insanity, resignation or retirement of any member of the company or (b) the happening of some other event which is not the expiration of a fixed period of time.

Fixed Life Companies

A limited life company may also make provision for its winding up and dissolution on the expiration of a fixed period of time.

Cell Companies

There are two types of cell company. One type is the "incorporated cell company" and the other type is the "protected cell company". These vehicles are particularly useful in the context of investment funds and structured finance transactions. The cells of an incorporated cell company are companies in their own right. In contrast, the cells of a protected cell company do not have their own separate legal personality. A protected cell company will contract in respect of a particular cell and there are detailed provisions in the Law which provide that creditors may only have recourse to the assets which are attributable to the relevant protected cell.

Migration of Companies

Foreign companies can migrate to Jersey (and vice versa)

Incorporation of a Jersey Company

Name

The proposed company name must be chosen and submitted to the registrar of companies at the Jersey Financial Services Commission for approval. The name of a limited company must end with the word "Limited" or the abbreviation "Ltd" or the words "avec responsabilité limitée" or the abbreviation "a.r.l.". However, the name of a public company which is a limited company may end with "public limited company" or the abbreviations "PLC" or "plc".

Memorandum of Association

The memorandum of association, which sets out the fundamental provisions of the constitution of the company, must be prepared. The ultra vires rule in its application to Jersey companies was abolished with effect from 30 March, 1992 and, accordingly, the capacity of a Jersey company is not limited by anything in its memorandum or articles of association or by any act of its members.

Articles of Association

The articles of association, which govern the contract between the members (whether shareholders and/or guarantor members) and the company, must be prepared.

Statement of Particulars

The agent of the subscribers must prepare a statement to be signed by the subscribers (or their agent), known as the Statement of Particulars on Incorporation.

Control of Borrowing Consent

In order to issue shares or admit any guarantor member, a Jersey company requires a regulatory consent from the Finance and Economics Committee of the States of Jersey pursuant to the Control of Borrowing (Jersey) Order, 1958, as amended. An application form, requesting such consent, is submitted to the Jersey Financial Services Commission together with the incorporation papers for the company.

The application form requires information regarding the proposed activities of the company and the identity of the ultimate beneficial owner of the company.

The application form also requires confirmation that the ultimate beneficial owner has not at any time been declared bankrupt or been a director of or otherwise involved in the management of a company which has been the subject of an insolvent liquidation or judicial enquiry.

If the ultimate beneficial owner is a public company, it is standard practice for the registrar of companies to require sight of a copy of the latest annual report and accounts of such company.

Application for incorporation

The memorandum of association, articles of association, Statement of Particulars on Incorporation and control of borrowing consent application form are lodged at the Jersey Financial Services Commission, together with registration fees of, currently, £200. For a further fee of £200, the Jersey Financial Services Commission will expedite the application for incorporation and will deal with the same on a same day basis.

Incorporation

The registrar of companies will process the application and, providing satisfactory information has been provided, will issue a certificate of incorporation of the company and control of borrowing consent permitting issuance of the authorized share capital. A certificate of incorporation constitutes conclusive evidence of incorporation.

Formalities

Registered Office

The registered office of a Jersey company must be located in Jersey.

Directors

A private company must have at least one director and a public company at least two. Directors' meetings can, but need not, be held in Jersey and the directors themselves can, but need not be, resident in Jersey. Directors may be individuals or, subject to certain restrictions, corporate entities.

Shareholders

A private company is permitted to have just one shareholder, a public company must have at least two (who may be nominees for a single beneficial owner).

General meetings

A private company has the ability to dispense with the need to hold an annual general meeting, a public company may not.

Auditors

All companies are required to keep adequate records sufficient to show their financial position. Only public companies are required to have auditors.

Requirement to prepare accounts

The Law requires that accounts be prepared for all Jersey Companies. Subject to the terms of the consent given by the Registrar of Companies on incorporation of a company, only public companies need file their accounts with the Registrar. Companies that are subject to tax in Jersey must file their accounts with the Jersey Comptroller of Income Tax.

Annual Return

A company must submit an annual return before the end of February in each year giving certain details of its share capital. For public companies information must also be supplied regarding its directors.

Registers

A Jersey company must maintain registers of directors and shareholders.

Distributions, Share Buyback and Redemptions

The Law allows a Jersey incorporated company to make a distribution from any source, not merely from distributable profits; but the directors of a company have to certify the solvency of the company at the time of the distribution.

Recent changes to the Law now permit fully paid up limited shares of both par value and no par value companies to be redeemed or bought back from any capital source.

Transaction specific consents

If the Jersey company intends to carry out a business which is regulated in Jersey, further consents or approvals may be



required. Areas where consents of this type might be required are collective investment funds business, financial services business, banking business and trust company business.

Administration of foreign companies in Jersey

Companies registered in other jurisdictions may be managed and controlled from and establish an administrative office in Jersey. Many such jurisdictions permit corporate directorships. Such companies are subject to the same zero/ten tax regime that applies to Jersey incorporated companies.

Taxation

Jersey companies (excluding Jersey financial services or utility companies) are subject to tax at 0% in Jersey. They would also benefit from Goods and Services Tax exemption when registered for such.

This information is intended to provide a brief guide on the subject of Jersey companies. It is not to be regarded as giving legal or financial advice that may be acted or relied upon. For further information in relation to the above or in relation to any specific circumstances please contact:

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