



Guide to
Guernsey
Companies

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PREFACE

This guide is intended to provide broad information as to the types of companies available in Guernsey, the requirements for incorporation, details on taxation and relevant ongoing requirements under the Companies (Guernsey) Law 2008 (the “Law”). This guide does not purport to provide a full synopsis of the Law or the areas covered.

We recognised that this guide will not completely answer detailed questions which you may have. It is designed as a starting-point only. For a more detailed and comprehensive examination of the particular issues applying to your structure, we recommend you contact us.

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1. TYPES OF COMPANIES

Outlined in this section are the features of each type of Guernsey company, their benefits and some potential uses. An important factor in deciding to use a particular type of vehicle is the tax and regulatory treatment that will be applied to the company in a foreign country. It is therefore imperative in all transactions that appropriate legal and tax advice be sought in all relevant jurisdictions to determine the type of corporate vehicle best suited to your circumstances.

The following types of company can be incorporated in Guernsey:

1. Limited liability company;
2. Guarantee company;
3. Unlimited liability company;
4. Mixed liability company;
5. Protected cell company; and
6. Incorporated cell company.

Limited liability company

Shareholders in a limited liability company are only liable for the company's debts to the amount unpaid (if any) on the shares issued to them. That means that if shares of £1.00 are issued to a shareholder and he pays the company £1.00 he will have no further liability. These are the types of company most commonly incorporated as shareholders are protected from creditors of the company in the case of insolvency.

A limited liability company can have one or more shareholders and must have at least one director.

Guarantee company

Members of a guarantee company do not hold shares. Instead, they guarantee a specified amount towards the debts of the company and their liability is limited to the amount of their guarantee. Guarantee companies are often used for charitable, social, political or other non-trading purposes. As a guarantor member is under a contingent liability to the company, the articles of incorporation can provide that his interest be non-transferable, without this provision being attacked as a fraud on the minority, as would be the case were that restriction to be applied to a shareholder.

Depending on the manner in which the articles of incorporation are drafted, it can be easier to protect the rights of minority members in a guarantee company than it is to protect minority shareholders in a traditional company. This may make a guarantee company well suited as a vehicle for sporting or leisure associations, or in any circumstances where shareholdings are unnecessary or undesirable. The fact that a member's interest is a "contingent liability" rather than an asset may also be advantageous in the context of tax and inheritance planning.

Unlimited liability company

The holder of shares in an unlimited liability company has unlimited liability to contribute to the debts of the company while they are a shareholder and for one year after they cease to be a shareholder. The members of the company effectively underwrite the company's liabilities to the extent of their own personal assets. In this respect, an unlimited company has some similarities to a partnership. Unlike a partnership, however, an unlimited liability company has a legal personality, so a creditor of the company can only bring an action directly against a member as part of the process to

wind up the company. In return for accepting the greater risks of unlimited liability, a number of the requirements of the Law will not apply to unlimited liability companies.

As with all of the types of companies, the use of unlimited liability companies is likely to be driven by international tax planning and regulatory considerations.

It is possible to have both limited and unlimited shares in issue.

Mixed liability company

It is possible to have a mixed liability company (also called a “hybrid” company) with both guarantee members and shareholders. The shareholders can hold either limited or unlimited liability shares. Mixed liability companies are particularly adaptable and useful in the context of international tax planning or asset protection structures. The combination of guarantee members and shareholders permits structures to be established creating a split between the legal and beneficial ownership of assets. It may be possible to structure a hybrid company in such a way as to be treated by a foreign tax or regulatory authority as a company, a trust or a partnership, as circumstances may require.

Cell Companies

Guernsey was the first jurisdiction to legislate for the creation of protected cell companies (“PCCs”) and has recently introduced legislation to allow the establishment of incorporated cell companies (“ICCs”). Cellular companies have become popular with the investment fund industry and with the insurance industry, particularly captive insurers. The name of a PCC must end with the words “Protected Cell Company” or “PCC” and the name of an ICC must end with the words “Incorporated Cell Company” or “ICC”.

PCCs

A PCC is a company which allows for the creation of cells in which assets and liabilities are statutorily segregated. A PCC is a single legal entity that attributes its assets and liabilities either to the protected cell company itself (the “core”) or to the individual cells it creates. The assets and liabilities of the protected cell company and those attributed to each cell are ‘ring-fenced’ from each other. This means that the creditors of a cell are unable to seek recourse from the assets of any of the other cells or of the core.

The directors of a PCC must (i) keep the assets and liabilities of the cells (cellular assets) separate and separately identifiable from the assets and liabilities of the core; and (ii) the assets and liabilities of each cell separate and separately identifiable from the assets and liabilities of each of the other cells. The cells of a PCC do not have separate legal personality.

ICCs

Each cell of an ICC is itself an individual incorporated company which can hold assets and incur liabilities in its own name without contamination of or by the assets and liabilities of another cell. The chief difference between an ICC and a PCC is that each cell of an ICC has separate legal personality.

The rights of the shareholders in the cells of an ICC are fettered in that the board of each cell is the same as the board of the ICC. This means that the cells, although individual companies, cannot act independently of the incorporated cell company that created them. However, where this is problematic, the shareholders can resolve for the cell to convert to a stand alone company.

ICCs are often used in the insurance and investment industries.

Public and private companies

Guernsey company law does not distinguish between public and private companies.

2. FORMATION OF COMPANIES

Name

The chosen name of the company must not be misleading or undesirable. The name of a limited company must end with “Limited”, “Ltd”, “avec responsabilité limitée” or “a.r.l.”.

An informal indication as to whether a name is likely to be approved can be obtained from the Registrar of Companies and the name can be reserved.

Memorandum and articles of incorporation

The memorandum of incorporation sets out the constitution of the company. As well as stating the company’s name, generally it must state the following, inter alia:

- a. whether it is a limited liability, unlimited liability or guarantee company;
- b. whether the company is a cellular company;
- c. the full name and the address of each founder member and the number of shares (together with the aggregate value thereof) subscribed for on incorporation;
- d. the amount paid up on the shares and, if the company has issued partly paid shares to the founder members, the amount, which is unpaid on those shares;
- e. for a guarantee company, the memorandum must state the amount which each member undertakes to contribute to the assets of the company on a winding up; and
- f. any restrictions on the objects of the company.

Guernsey companies are deemed to have unlimited objects unless restrictions are imposed in the memorandum. Generally the memorandum will state that the business of the company is unrestricted.

The articles of incorporation set out the regulations governing the internal management and procedures of the company (including rights attaching to shares) and, together with the memorandum, on incorporation form a binding contract between the company and the shareholders. The Law provides for a set of prescribed articles which apply upon the incorporation of a company unless excluded. A company may change its articles at any time by special resolution of the members (or as otherwise set out in the articles).

At least one subscriber must sign the memorandum and articles of incorporation to incorporate a company. In practice it is easier to use a corporate nominee which can attend to all registration formalities and, following formation, transfer the shares to the ultimate beneficial owner or its nominees.

The memorandum and articles of incorporation must be filed with the Registrar of Companies together with the incorporation fee and an application for incorporation which must be signed by a licensed corporate services provider in Guernsey. Guernsey companies are incorporated within 24 hours, 2 hours or 15 minutes of the application being lodged, with the faster processes incurring a higher statutory fee. If incorporating a company within 15 minutes then the standard Guernsey

Companies Registry memorandum and articles must be used for the purposes of incorporation. A certificate of incorporation is issued following incorporation.

Beneficial ownership

The identity of the ultimate beneficial ownership must be known to, and a register containing such details must be kept by, a resident agent appointed by the company. The resident agent must be either a Guernsey resident director of the company or a licensed corporate services provider. If the shares are held in trust, the name of the trust, trustees and name and address of the settlor must be disclosed. Certain companies, such as those listed on recognised stock exchanges and those licensed by the Guernsey Financial Services Commission, are not required to appoint a resident agent.

Share capital

A Guernsey company may issue shares with a par value or with no par value. Guernsey companies are not required to state in the memorandum and articles of incorporation a limit on the share capital which the company may issue and, in most cases, their articles will allow the issue of an unlimited number of shares. However, where a company has more than one class of shares, shareholders must grant authority to issue shares and identify the limit of that authority. The authority can only be granted for a maximum of five years but, as a matter of practice, it is renewed at each annual general meeting.

Shares must be issued in registered form with or without a share certificate. Bearer shares are not permitted. Fractional shares may be issued.

Specific legislation permits securities to be uncertificated which facilitates the listing of shares via CREST. The company's articles of incorporation usually include corresponding provisions, enabling the directors to resolve that the shares be uncertificated.

Non-voting shares are allowed and a company may issue different classes of shares which each have different rights in respect of voting, rights to dividends, distributions on a winding up and the like. Subject to obtaining relevant shareholder consents and meeting certain solvency requirements a company may purchase its own shares.

Subject to shareholder approval, a company may hold shares it has purchased as treasury shares instead of cancelling them. Treasury shares do not have any voting or other rights.

Stamp duty is not payable in respect of the issue or transfer of shares in a Guernsey company.

Dividends and distributions of capital

Guernsey has moved away from a capital maintenance model to a solvency model. In practice, this means that distributions, including dividends, may be made out of any source, including any capital account, provided the directors certify that the company passes the statutory solvency test. A distribution includes the redemption or purchase of shares and there are no requirements that these funds must be partly or wholly derived from the proceeds of a new issue of shares or otherwise from profits. Dividends may be paid on all or some only of the classes of shares in issue. Normally, the directors recommend the level of dividend and this is often subject to approval by the shareholders.

The statutory solvency test is made up of both a cash flow and balance sheet test.

Capital distributions are permitted by the redemption of fully paid redeemable shares, or the company purchasing its own fully paid shares. These distributions may be made from any source provided again that the directors make the required solvency statements.

No court sanction is required in Guernsey for the reduction of issued share capital.

A Guernsey company may give financial assistance to acquire its shares or shares in its direct or indirect holding company again subject to passing the statutory solvency test.

Incorporation fee

The fees charged by the Guernsey Companies Registry for incorporation are:

1. £100 for a 24 hour incorporation;
2. £350 for a 2 hour incorporation; and
3. £750 for a 15 minute incorporation.

Corporate purposes

The Registrar of Companies needs to know the type of business the company will be carrying out. If the company will be involved in banking, insurance, custodian, investment or financial services or certain other sensitive activities, certain information regarding the proposed activities will need to be disclosed and a regulatory licences may be required.

Registered office

Every Guernsey company must have its registered office in Guernsey.

Directors and secretary

A company must have at least one director. Guernsey companies may have corporate directors. There is no requirement for the directors to be resident in Guernsey although, as mentioned above, if a company does not have a Guernsey resident director it will need to appoint a licensed corporate services provider as its resident agent. We can assist you in the provision of directors in most circumstances. If you wish to use directors who are not already directors of a Guernsey company, they will need to be registered with the Guernsey Registry. Again, we can assist with this requirement.

A company's affairs are usually managed by the directors in accordance with the articles of incorporation which may contain restrictions on the exercise of their powers.

Incorporated cells of ICCs must have the same secretary, directors and registered office as the ICC.

A director owes fiduciary and other duties to the company. Directors must disclose to the company the nature and extent of their direct or indirect interests in any transaction to be entered into by the company.

In certain circumstances, the directors may be personally liable for the debts of the company if it can be shown that they knew there was no reasonable prospect of avoiding an insolvent winding-up but carried on trading or if they were reckless as to whether or not the company could avoid an insolvent winding-up.

Indemnities in favour of the directors in the company's articles of incorporation are allowed although a company may not indemnify a director for negligence, default, breach of duty or breach of trust in relation to the company. In addition, a company may purchase insurance cover in respect of its directors' liabilities.

A secretary may be appointed by the directors but there is no obligation to do so. There are no qualifications for the office of secretary although the directors will need to be satisfied the appointed secretary can satisfactorily fill the role. A sole director may also be secretary. We can arrange for the provision of a corporate secretary if required.

Inaugural board meeting

Prior to commencing trading, the initial directors of the company, having been appointed by the subscribers, will hold an inaugural board meeting to undertake, amongst other things, the following:

- a. determine the location of registered office in Guernsey;
- b. adopt corporate seal (if required);
- c. allot shares to the subscribers and the first shareholders and, if required, issue share certificates;
- d. approve any share transfers;
- e. appoint bankers;
- f. appoint a resident agent;
- g. approve an administration agreement (if a corporate services provider has been appointed);
- h. fix a financial year; and
- i. (if required) appoint a secretary.

We are able to assist you to prepare board minutes and attend to completion of all incorporation formalities.

3. CONTINUING REQUIREMENTS

Annual validation

Before the end of January each year, every company must complete an annual validation, lodge it with the Registrar of Companies and pay the filing fee (which varies according to the type of company). The annual validation must set, inter alia, details of its directors, particulars of its resident agent, the category of business it undertakes, whether the company is exempt from audit, details of the company's issued share capital including the aggregate value of the issued share capital. Failure to file the annual validation in time will result in a late filing fee becoming payable and the company will be guilty of an offence. If no annual return has been delivered by the end of June, the company may be liable to be struck off by the Registrar of Companies.

Shareholder meetings

A company must hold its first annual general meeting within 18 months of incorporation. Thereafter it must hold an annual general meeting in every calendar year provided that no more than 15 months shall elapse between each annual general meeting. Shareholders may pass a waiver resolution (requiring a majority of 90% of those in attendance and voting to be approved) to waive the requirement to hold an annual general meeting for any particular year or indefinitely.

Meetings of members may be convened by the secretary or by a request from members holding at least one-tenth of the total voting rights.

Annual general meetings, meetings at which special resolutions are proposed to be passed and other meetings of members can all be convened on 10 days' notice. Meetings at shorter notice can be approved by the members.

There are no Guernsey law restrictions on the place where meetings may be held and members may, unless the company's articles of incorporation otherwise provide, participate by telephone. Written resolutions of members are also permitted.

Accounts

Every company must keep accounting records sufficient to show and explain its transactions and which disclose with reasonable accuracy the financial position of the company at any time and enable the directors to ensure that any accounts comply with the requirements of the Law. It is not necessary that the accounting records be kept in Guernsey. The records must be kept for at least 6 years.

Accounts must be prepared for each financial year of the company. The accounts must be prepared in accordance with generally accepted accounting principles and must show a true and fair view of the profit or loss of the company. There is no public filing required in respect of the accounts of a Guernsey company.

Certain Guernsey companies may be exempt from having their accounts audited. For those companies eligible to be exempt from audit, the shareholders must pass a waiver resolution resolving that it be exempt for the financial year in question. This resolution must be passed prior to the commencement of the relevant financial year. The effect of such a resolution may be rescinded if the company receives requests to do so from members holding at least one-tenth in value of the total share capital.

Companies which fall within the definition of a "large company" are not eligible to be audit exempt. A company is a large company if it meets two of the following conditions in a financial year and the preceding financial year:

1. It has annual net turnover of £6.5 million or greater;
2. It has a net balance sheet of £3.26 million or greater; or
3. It has an average of 50 or more employees.

However, a company which is a "small company" may be audit exempt irrespective of whether it fits within the definition of a large company. A small company is defined as:

1. A dormant company (as defined);
2. An asset holding company (as defined); or
3. A company with 10 or fewer members.

Registers

Every company must keep registers containing specified details of its members, its directors, its resident agent and, if appropriate, its secretary which must be kept at the company's registered office. Where shares are held by a nominee, there is no requirement that details of the beneficial owner be entered in the register of members. The register of members must be open to inspection by any member or director of the company.

Any other person may seek to inspect or obtain a copy of the register of members upon providing certain details to the company including the purpose for which the information is to be used and whether it will be disclosed to any other person. If the company does not wish to comply with the request it can apply to the court following which the court will determine whether the request is for a proper purpose.

Resolutions

A printed copy of every:

- a. special resolution;
- b. waiver resolution; and
- c. unanimous resolution;

must be delivered to the Registrar of Companies within 30 days of the resolution being passed.

Information available to the public

The Registry of Companies in Guernsey maintains a register of companies registered in Guernsey. The following information is available to the public from the Registry:

- a. a copy of the certificate of incorporation;
- b. a copy of the memorandum and articles of incorporation;
- c. annual validations filed by a company;
- d. all special, waiver and unanimous resolutions filed by a company.
- e. all changes of directors and resident agents
- f. details of the registered office of a company, its registered number and the type of company it is.

Seal and stationery

A Guernsey company is not required to have a common seal, but if it does the seal (and any duplicate seal) must bear the company name in full. The full name of the company, its registration number and the address of its registered office must appear on its stationery (or on emails sent by the company. Where a company is limited by guarantee, that fact should also be included.

4. TAX REGIME

Although not part of the EU, Guernsey has legislated to achieve a uniform income tax system for the whole business sector. Guernsey companies are currently subject to tax at a rate of 0% with the exception of:

1. Investment funds which are, on application and payment of a fee of £600, exempt from tax;
2. Certain regulated business, principally deposit taking banks, on which a rate of 10% is levied;
3. Companies regulated by the Office of Utility Regulation on which a rate of 20% is levied; and
4. Companies deriving income from Guernsey property on which a rate of 20% is levied.

However, the States of Guernsey are currently engaged in discussions with the EU to review the standard rate of tax albeit that any changes to the regime are not expected to change the exempt status of investment funds.

Companies incorporated in Guernsey may be considered tax resident in another jurisdiction where they are centrally managed and controlled in that other jurisdiction.

There is no inheritance tax, capital gains tax or goods and services tax in Guernsey.

5. INCORPORATION AND ADMINISTRATION SERVICES

Legal advice is available from the firm's team of qualified company lawyers, both before incorporation, so that the company's constitution can be tailored to meet a client's objectives, and thereafter as required. In addition, we are able to assist you in respect of incorporation and administrative services for companies in Guernsey.

If you wish to proceed with the incorporation of a Guernsey company, please contact us to discuss your requirements and to enable us to send you an incorporation questionnaire and application form.

For more specific advice on Companies in Guernsey, we invite you to contact the following:

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Appleby is the leading provider of offshore legal, fiduciary and administration services. With an unparalleled presence in the key offshore jurisdictions of Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, Isle of Man, Jersey, Mauritius and the Seychelles, the group offers advice on offshore law. We also have offices in the international financial centres of London, Hong Kong, Zurich and Bahrain.

Over 800 lawyers and professional specialists deliver sophisticated, specialised services, primarily in the areas of Corporate and Commercial; Litigation and Insolvency; Private Client and Trusts; and Property. We advise global public and private companies, financial institutions, and high net worth individuals, working with them and their advisers to achieve practical solutions, whether in a single location or across multiple jurisdictions.

This publication is intended only to provide a summary of the subject matter covered. It does not purport to be comprehensive or to provide legal advice. No person should act in reliance on any statement contained in this publication without first obtaining specific professional advice.

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