

Private Companies in Jersey

Insights - 21/05/2020

Preface

This briefing has been prepared for the assistance of clients considering incorporating a private company under the laws of Jersey. It is intended to provide only a summary of the main legal requirements and general principles applicable to the establishment of a private company in Jersey and it is not intended to be comprehensive in its scope. It is recommended that a client seeks legal advice on any proposed transaction prior to taking steps to implement it.

A series of briefings on other aspects of Jersey law has been produced by Ogier; these briefings are available on request. This briefing has been prepared on the basis of Jersey law and practice as at May 2020.

INTRODUCTION

Constitutional position of Jersey

Jersey is a self-governing dependency of the British Crown and does not form part of the United Kingdom. By constitutional convention established over some 900 years, the Island has complete autonomy in all matters of internal government, including taxation.

The Island's special constitutional position has been recognised by the European Union in a protocol (No.3) attached to the United Kingdom's Act of Accession to the EU. The protocol provides that the Treaty of Rome shall apply to Jersey only to the extent necessary in relation to the arrangements for the free movement of goods.

The Government of Jersey has restated its total commitment to the highest standards of tax transparency and information exchange (which has been proven on many occasions) having signed the FATCA agreement with the United States of America in 2013 and implemented the OECD's Common Reporting Standards (CRS). In doing so, Jersey became one of only a few

jurisdictions internationally to adopt the FATCA standards and full CRS rules which further affirms Jersey's commitment to its international cooperation obligations. As a result of its ongoing legislative and regulatory developments to comply with OECD's anti-money laundering and transparent tax practice initiatives, Jersey has been able to develop efficient infrastructure, systems and practices which have already efficiently facilitated automatic information sharing with the United Kingdom for over a year.

Recent industry figures also show that Jersey's banking, funds, private wealth and capital markets activities have continued to improve year on year which serves as affirmation of its long standing international reputation and increasing recognition. Excluding UK incorporated companies, this includes more listed companies in London than in any other jurisdiction.

Jersey company law

The Companies (Jersey) Law 1991 (the **Companies Law**) is a comprehensive modern statute governing all aspects of the formation and administration of private companies in Jersey.

Benefits of using a Jersey company

The benefits of using a Jersey company in terms of company law provisions and tax treatment are extremely wide but generally include separate legal identity, limited liability for shareholders, ease of transfer of ownership and tax status. The Companies Law enables capital to be denominated in any currency and share capital of either par value or no par value shares to be issued in various classes, including redeemable shares. The Companies Law also allows for the incorporation of guarantee companies, unlimited companies and protected cell companies (the latter providing particular flexibility for investment business).

These features, coupled with a tax neutral environment, enable Jersey companies to be structured to meet a wide variety of business purposes, from commercial trading and joint ventures to investment holding vehicles.

If you require specific information about incorporating a company in Jersey or professional advice in respect of your particular circumstances or the services we are able to provide, please contact any of the contacts listed on the side of this briefing.

COMPANY FORMATION

Name

The first step, though not compulsory, when incorporating a company is to reserve a proposed company name with the Registrar of Companies (the **Registrar**) and await formal approval of that name. An informal indication as to whether a name is likely to be approved can usually be obtained within 24 hours and formal confirmation will be obtained shortly afterwards.

The chosen name must not be confusingly similar to any existing company (including a UK registered company) or misleading with regard to the company's intended activities. The name of a private Jersey company should end with 'Limited', 'Ltd', 'avec responsabilité limitée' or 'a.r.l.'. A company which uses any of the above may, in setting out or using its name for any purpose under the Companies Law, do so in full or in the abbreviated form.

If a name is regarded as similar to an existing company, details will be required by the Registrar as to the reason for the similarity and the existing company's permission for using the name may need to be obtained.

Memorandum and articles of association

The memorandum of association contains the constitution of the company and, amongst other things, sets out the company's name, a statement as to its corporate capacity and details of the following, where applicable:

- the fact that there is no limit on the number of shares the company may issue (for a no par value company);
- the number of shares of each class that the company is authorised to issue (for a par value company);
- the amount which each member undertakes to contribute to the assets of the company upon winding up (for a guarantee company); or
- the fact that there is no limit on the liability of the company's members (for an unlimited company).

Upon incorporation, the memorandum and articles of association constitute a contract which binds the company and its shareholders. Ogier is able to provide standard form memorandum and articles of association for consideration prior to incorporation of a company.

The memorandum and articles of association are required to be subscribed by at least one subscriber who agrees to become a shareholder in the company. There can be more than one subscriber and, generally, the memorandum of association is subscribed by two subscribers.

Application documents and fees

An application for incorporation signed by a person licensed to conduct trust company business pursuant to the Financial Services (Jersey) Law 1998 together with the completed memorandum and articles of association, certain other prescribed information and the appropriate fee (currently £165), is then filed with the Registrar of Companies in Jersey.

Following the registration of the memorandum and articles of association of the company, the Registrar will issue a Certificate of Incorporation and, from the date stated therein, the

company comes into existence as a legal person.

The Companies Law confirms that the Certificate of Incorporation is conclusive evidence of the valid incorporation of the company. In the ordinary course, the Certificate of Incorporation will be issued within two days of application for incorporation. However, in cases of urgency, companies can be incorporated within one working day upon payment of a supplemental fast-track fee (currently £385) or within 2 hours upon payment of £605, provided that all of the prescribed information is supplied to the Registrar.

Subscribers

It is generally most convenient for a Jersey company to be incorporated by shareholders resident in Jersey who are available to attend to all registration formalities.

Beneficial ownership

The identity of the ultimate beneficial owners of holdings of more than 10% of the shares in a Jersey company needs to be disclosed on a confidential basis to the Registrar on incorporation. The Registrar may ask that information regarding ultimate beneficial owners with holdings of less than 10% be provided. Any changes to beneficial ownership and control will have to be notified to the Companies Registry within 21 days.

If the shares are to be held in a trust, the name of the trust, the names of the trustees and the name and address of the settlor (or instigator) of the trust must also be disclosed. However, if the shares are to be owned by a quoted public company whose shares are listed on a recognised stock exchange, the requirement to disclose ultimate beneficial ownership is dispensed with and, instead, a copy of the latest audited consolidated accounts and report of the directors of the quoted company must be submitted to the Registrar.

Where the proposed ultimate beneficial ownership is widely diffuse (that is to say no individual by himself or in concert with any associates will control more than 10% of the shares), the Registrar may be willing to relax the disclosure requirements. If it is expected that further beneficial owners will be introduced within six months of the date of incorporation, details of the proposed arrangements need to be provided to the Registrar.

While the register of beneficial ownership kept by the Registrar is available to law enforcement agencies and tax authorities on request, it is not publically available.

SHARE CAPITAL

Par value companies

A par value company can issue shares that have a nominal element (and possibly a premium

element). The company will thus maintain a share capital account and (where the shares are issued at a premium) a share premium account. The total amount of the initial authorised share capital and the par value of each authorised class of share is stated in the memorandum of association. There is no minimum authorised or issued share capital requirement under Jersey law.

In the case of a par value company, monies payable on the redemption or buy back of shares may be funded from any source (other than the capital redemption reserve or the nominal capital account) including capital. The directors who authorise the redemption or buyback will be required to make a solvency statement in a prescribed form.

Distributions by a par value company are permitted from any source (other than the capital redemption reserve or the nominal capital account) without the need to obtain either shareholder or Court approval for a reduction of capital. The directors must make a solvency statement in the prescribed form for any distribution, redemption or buyback.

No par value companies

A no par value company issues shares which are not expressed as having a nominal value. On the issue of shares of a no par value company, the proceeds, whether in the form of cash or otherwise, will be credited to a stated capital account. The number of shares of each class which a no par value company is authorised to issue is stated in the memorandum of association.

The provisions set out above for par value companies - both in respect of the redemption or repurchase of shares and the making of distributions - also apply to no par value companies. As regards distributions, however, a no par value company is additionally permitted to make a distribution out of its stated capital account.

Unlimited companies

An unlimited company is one which has shares in issue and no guarantee members. The shares that are issued by an unlimited company are called unlimited shares. On a winding up, the holder of unlimited shares has unlimited liability to contribute to the assets of the company.

Guarantee companies

A guarantee company is one which has only guarantee members. These members are obliged, on a winding up, to make a contribution to the assets of the company, subject to an agreed guarantee limit.

The law does not prevent the incorporation of "hybrid" companies which have guarantor members and shareholders with either par value shares or no par value shares. This may be of benefit where the guarantor members and the shareholders are to have different rights (such as

the right to receive dividends or a distribution upon winding up).

Form and structure of shares

Shares must be issued in registered form, as bearer shares are not permitted. However, it is possible to achieve an effect similar to transferability on delivery by the use of bearer depositary receipts. Non-voting shares are allowed and proportional voting structures may be achieved by the use of weighted voting rights. The issue of fractional shares is also permitted.

Share capital may be structured with different rights attaching to different classes of shares, for example:

- Ordinary Shares - may be further divided into separate classes, each having different class rights.
- Preference Shares - may be issued having preferential and cumulative entitlement to dividends as well as preferential rights to distributions on a winding-up over ordinary shares.
- Redeemable Shares - may be issued on the basis they will be redeemable in cash at the option of either the shareholder or the company. Ordinary shares may be converted into redeemable shares provided a class of non-redeemable shares remains in issue.

A Jersey company is also permitted to hold its own shares as treasury shares and will not be treated as a member by virtue of holding such shares. The holding of such shares is of particular value to investment funds where a fund manager may want to have shares of the fund available to investors on short notice.

Corporate purposes

The Registrar must be informed of the company's corporate purposes. If the company will be involved in the provision of banking, insurance, trust, investment or financial services or certain other sensitive activities, detailed information regarding the proposed activities will need to be disclosed and various other licenses may be required.

Registered office

A company is required to have its registered office at an address in the Island, which must be notified to the Registrar at the time of its incorporation. The registered office functions as an official address for a company where statutory communications can be sent or documents served.

Directors

Jersey private companies must have at least one director. A Jersey private company does not need to have directors upon incorporation but cannot function until directors are appointed.

There is, however, no requirement for a director to be resident in Jersey. A register of directors must be maintained at the registered office which is open to inspection by the shareholders and the Registrar but, in the case of private companies, such information is not a matter of public record.

Jersey companies are permitted to have corporate directors provided that the body corporate acting as a director is registered to provide such services pursuant to the Financial Services (Jersey) Law 1998 and does not itself have any directors who are bodies corporate. However, the body corporate does not need to be a Jersey Company.

Directors may participate in meetings by electronic means, such as via telephone or video conferencing.

Secretary

A secretary must be appointed by the board of directors. A sole director may not act as secretary, and no company may have as secretary a body corporate whose sole director is sole director of the company. The secretary's duties are principally the keeping of minutes of directors' and shareholders' meetings, maintenance of the register of shareholders, recording transfers and the new issues of shares, maintenance of the register of directors and ensuring that the statutory requirements such as filing of the annual return (see below) are fulfilled.

Pre-incorporation contracts

Where a person purports to enter into a contract in the name of or on behalf of a company which has not yet been incorporated, the contract will take effect as one entered into by that person, who will be personally liable under it. After incorporation, the Company may within a reasonable time unilaterally adopt the contract and become bound by it as if the contract had been entered into by it after its incorporation. Such adoption will release the person who purported to act on the company's behalf.

Inaugural board meeting

Prior to commencing trading, the initial directors of the company, having been appointed by the subscribers to the memorandum of association, will hold the inaugural board meeting to resolve the following:

- the location of the registered office
- to adopt the Corporate Seal (if one is required)
- to allot shares to the subscribers and first shareholders and issue the share certificates to approve any share transfers
- to appoint bankers

- to approve a secretarial and management agreement to fix a financial year end
- to adopt an accounting currency and standards

Operation of a Jersey company

The directors of a company are usually authorised generally to manage its business and to exercise the company's powers in accordance with the provisions of the memorandum and articles of association and the Companies Law. A newly incorporated company will have unrestricted corporate capacity. The directors owe a fiduciary duty to the company to act honestly and in good faith with a view to the best interests of the company. Directors have ostensible authority to bind the company to contractual obligations but are required to disclose to the company any interest in a transaction which may conflict with the interests of the company. Failure to do so may render the transaction voidable at the instance of the company or a shareholder.

CONTINUING REQUIREMENTS

Annual return

Every Jersey company is required to file an Annual Return signed by a director or the secretary by the end of February in each year made up to 1 January in that year accompanied by the filing fee which currently stands at £235 for the filing of the return in paper form or £225 for using the online filing facility for a company. The Annual Return must:

- disclose the names and addresses of the registered shareholders with details of their holdings
- disclose the authorised and issued share capital

Annual Returns are available for inspection by the public. Financial penalties are imposed for late filing of an Annual Return and failure to file could result in the company being struck-off the Companies Register.

Accounts

The Companies Law requires a company to maintain accounting records which are sufficient to show and explain its transactions and disclose with reasonable accuracy the financial position of the company. There is no need for a private company's accounts to be audited, unless this requirement is included in its articles of association.

The accounts must be prepared in accordance with generally accepted accounting principles and specify the accounting principles adopted. In the case of any private company that is required by its articles of association to appoint an auditor it must prepare accounts which

“show a true and fair view of” or “present fairly in all material respects” the financial position of the company.

Annual accounts are required to be prepared within ten months of the end of the company’s financial year and should be made available to shareholders. It is not necessary for the accounts to be filed with the Registrar nor do they have to be filed with the Income Tax Department.

Annual general meeting

A private company is not required to hold an annual general meeting (**AGM**), unless it is deemed a relevant private company. A relevant private company is one where either provision was made in its articles after the coming into force of the Companies (Amendment No. 11) (Jersey) Law 2014 (on 1 August 2014) requiring it to hold an AGM, or such provision was made prior to the coming into force of the law and ratified after its coming into force by special resolution. Even if a company is a relevant private company, the requirement to hold an AGM can be waived by written agreement of all the shareholders.

A public company is required to hold an AGM each year and its first AGM shall be held within 18 months of incorporation.

All members of a public or relevant private company can agree in writing to dispense with the requirement for an AGM.

The AGM need not be held in Jersey. The notice period for calling an AGM is 14 days. If all the shareholders entitled to attend and vote at the AGM so agree, an AGM may be held on shorter notice.

Register of shareholders and officers

A private company must maintain registers of shareholders, directors and secretary at its registered office. The registers must be available for inspection by the shareholders and the Registrar. Any change in location must be notified to the Registrar.

Special resolutions

A company is required to file with the Registrar a copy of any special resolution passed by its shareholders. A special resolution is one passed by a majority of not less than two-thirds of shareholders or such greater percentage as specified in the articles who vote in person or by proxy at a general meeting of the shareholders of which not less than 14 days’ notice of the special resolution has been given. It is also possible for a majority in number of the shareholders entitled to attend and vote at the meeting and holding at least 95% of the total voting rights in question to consent to shorter notice. A special resolution must be filed with the Registrar within 21 days of being passed and there are fixed penalties for late filing. Special Resolutions of a company are required for the following (although this list is not exhaustive):

- Change of company name
- Alteration to the memorandum of articles of association
- Alterations of share capital
- Purchase of own shares by a company
- Winding-up

Shareholders' resolutions, both special and ordinary, may be passed without a meeting by means of written resolutions signed by all shareholders of the company if not prohibited by the company's articles of association.

Tax regime

As noted above, the States of Jersey passed legislation to introduce a general zero rate of income tax with effect from January 2009. This zero rate of income tax applies to virtually all companies unless the company is managed and controlled in a jurisdiction outside Jersey (see below), or an exception applies.

A Jersey company may be exclusively tax resident in a jurisdiction outside Jersey provided that:

- It is centrally managed and controlled in another jurisdiction outside Jersey;
- It is tax resident in that other jurisdiction; and
- The highest rate of corporation tax in that other jurisdiction is 10% or above.

The exceptions to the standard zero rate are:

- financial service companies (defined in the Income Tax Law) which are taxed at 10%;
- utility companies which are taxed at 20%; and
- income specifically derived from Jersey property rentals or Jersey property development taxed at 20%.

No stamp duty is payable on the transfer of shares in a Jersey company, and there is no corporation or capital gains tax in Jersey. The Island also levies no annual taxes or charges by reference to a company's authorised or issued share capital. Although there is a goods and services tax at a rate of 5 per cent, companies beneficially owned outside Jersey which do not supply goods or services in Jersey will generally qualify for "international service entity" status - effectively bringing them outside the scope of the goods and services tax regime provided that a fee is paid each year.

Substance

From 1 January 2019 the new proposed requirements for an economic substance test for Jersey tax-resident entities applies. The new substance requirements were implemented to meet the requirements of the EU Code of Conduct Group and establish new tests for certain tax resident companies carrying on "relevant activities" in respect of demonstrating that they are "directed and managed" in Jersey, and that their "core income generating activities" are undertaken here. The law requires a company to carry out "all activities related to their business" in Jersey. This will require each company to carry out an analysis as to what functions need to be carried out in Jersey, which is likely to vary depending on the function and purpose of the company. As set out above, a company will be tax resident in Jersey unless it is deemed exclusively resident elsewhere.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

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Regulatory information can be found under [Legal Notice](#)

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