

Guernsey companies – an overview

Insights - 07/10/2020

What are the attributes of a company under Guernsey Law?

The benefits of using a Guernsey company in terms of company law provisions and tax treatment are extremely wide but generally include separate legal identity, limited liability for shareholders and ease of transfer of ownership.

Companies in Guernsey are governed by the Companies (Guernsey) Law 2008 (the **Law**).

The Law defines a company as "a legal person, separate from its members, which comes into existence upon incorporation and continues until it is removed from the Register of Companies". There are various types of company under the Law, including limited liability non-cellular companies and cellular companies (protected cell companies and incorporated cell companies).

In respect of the liability of its members, a limited liability company can either be limited by shares or by guarantee, unlimited, or of mixed liability. Guernsey law does not distinguish between private and public companies in the same way as English law does.

The Law enables shares to be denominated in any currency and issued either with a par value or with no par value in one or more classes with differing attributes including as to participation in voting, capital, income and as to conversion or redemption.

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

Companies Limited by Shares

A company limited by shares must have a share capital and have members who are liable for the company's debts and limited to the amount unpaid (if any) on the shares issued to them and must have no other type of member. That means that if shares of £1.00 are issued to a

shareholder and the shareholder pays the company £1.00 they will have no further liability to the company.

Guernsey law does not provide for the concept of a share premium account; accordingly, dividends and/or distributions can be made from any source provided that the company meets the statutory solvency test, which the directors must certify.

Subject to its constitutional documents, a Guernsey company limited by shares can issue different classes of shares. The shares can be issued as redeemable, confer preferential rights, do not entitle the holder to voting rights or entitle the holder to restricted voting rights. A Guernsey company limited by shares can also issue shares of no par value, fractional shares and shares of a low value.

Companies Limited by Guarantee

A company limited by guarantee must have a share capital and have members who are only liable for the company's debt to the amount guaranteed by them. A company limited by guarantee may have a share capital. However, unlike a company limited by shares, a company limited by guarantee must have members whose liability for the company's debts is limited to the guaranteed amount (these are known as "guarantee members") and, where the company has share capital, have shareholders.

Where a company is limited by guarantee, and also has shareholders, the memorandum or articles may, require a guarantee member also to be a shareholder, or prohibit a guarantee member from also being a shareholder. If the memorandum and articles do not make provision for this, a guarantee member may also be a shareholder.

The guaranteed amount is defined in the Law as the amount a guarantee member undertakes to contribute to the assets of the company in the event of its being wound up whilst he is a member or within a period of one year after he ceases to be a member:

- for the payment of the company's debts incurred before he ceased to be a member and of the costs, charges and expenses of winding up; and
- for any adjustment of the rights of the contributories as between themselves.

Unlike a traditional shareholding, if the guaranteed amounts are different for different members, the different amounts shall not of themselves create different interests in the company as between those guarantee members.

Companies limited by guarantee are often used for charitable purposes.

Limited liability companies are the most commonly incorporated types of companies as shareholders are protected from the company's creditors in the case of insolvency. A limited

liability company must have at least one founder member, and must have at least one director. No minor or person under legal disability may be a founder member of a company.

Constitutional documents

The company must have a memorandum of incorporation which states the main constitutional details pertaining to the company, including its name (which must be in compliance with the Law), its registered office, the type of company it is and details of each founder member, including the number, value and amount paid up on the shares subscribed by each founder member. In the case of a limited liability company with a founder member who is a guarantee member, the memorandum must also include the guaranteed amount of each member. The memorandum must also state, in the case of a company limited by guarantee, the guarantee amount of each member.

Whilst the Law provides that a Guernsey limited liability company may have unrestricted objects (being a list of the activities a company is able to undertake), it may also have restricted objects. In this case, the objects must be set out in the memorandum.

In addition, the company must have articles of incorporation. These state the way in which the company will conduct itself. Different articles may apply for different types and descriptions of company and may be provided as standard by the Registrar of Companies (the **Registrar**) or bespoke.

The articles are in respect of matters concerning the constitution of the company, a binding contract between the company and its members and may be amended by a special resolution of the members.

Directors

A Guernsey limited liability company must have at least one director.

The business and affairs of a Guernsey limited liability company must be managed by, or under the supervision of, the board of directors of the company.

Provided someone is not a minor or subject to a disqualification order under Part XXV of the Law, anyone can be a director of a Guernsey limited liability company.

A person must not be appointed as a director unless they have in writing:

- consented to being a director; and
- declared that they are not ineligible to be a director.

Company Records

In compliance with the Law, a Guernsey limited liability company is required to keep certain records and registers at its registered office address, including (but not limited to), a register of members, register of directors (see further below), register of secretaries and minute book. Such records must be made available for inspection, where permitted under the Law.

Company records may be kept in hard copy or electronic form and may be arranged in such manner as the directors or secretary think fit, provided that the information in question is adequately recorded for future reference.

Where company records are kept in electronic form:

- they must be capable of being reproduced in hard copy; and
- they are deemed for the purposes of the Law to be kept at a place if access to them and a hard copy can be obtained at that place.

Register of Members

A Guernsey limited liability company must keep a register of its members at its registered office.

The following details must be entered in the company's register of members:

- the names and addresses of the members;
- the date on which a person was registered as a member; and
- the date on which a person ceased to be a member.

Register of Directors

A Guernsey limited liability company must keep a register of directors at its registered office.

Where a director is an individual, the following particulars must be entered in the register of directors:

- their name and any former name;
- their address, which may be either:
 - their usual residential address, or
 - their service address (which may be stated as "the company's registered office")
- their nationality;
- their business occupation (if any); and
- their date of birth.

Where a director is not an individual, the following particulars must be entered in the register of directors:

- its corporate or firm name and any former such name it has had within the preceding 5 years;
- its registered office (or, if it has no registered office, its principal office);
- its legal form and the law by which it is governed; and
- if applicable, the register in which it is entered and its registration number in that register.

How to set up a Guernsey limited liability company

In order to establish a Guernsey limited liability company, an application must be made to the Registrar, accompanied by the following:

- the memorandum of incorporation;
- a statement of the proposed first director(s), such statement to include specific information set out in the Law;
- a statement of the proposed address of the company's registered office;
- a statement of the proposed first resident agent;
- the name and address of the company's founder member(s);
- if the founder member is a guarantee member, a statement of initial guarantee, such statement to include specific information set out in the Law;
- if the company has share capital, there must be a statement of initial share capital and where such statement must include specific information set out in the Law;
- a declaration of compliance (incorporation), being a declaration that is signed by the company confirming all the requirements of the Law in respect of the incorporation of a company have been fulfilled; and
- the application fee.

The application may propose a date on which the incorporation will take effect, provided that the date is no longer than 3 months after the date of the application.

If the Registrar is satisfied with the application, the Registrar will register the company and issue the certificate of incorporation.

How much does it cost to incorporate a Guernsey limited liability company?

The fees for incorporating a Guernsey limited liability company depend on how quickly the client wants the application to be processed. In summary, the costs are as follows:

- £100 for a 24 hour incorporation;
- £350 for a 2 hour incorporation; or
- £750 for a 15 minute incorporation – though the company would only be able to be incorporated with Registry standard memorandum and articles for this option.

Who can set up a Guernsey limited liability company?

Guernsey limited liability companies can only be incorporated by (i) a corporate service provider (CSP) who holds a full fiduciary licence from the Guernsey Financial Services Commission or (ii) a person prescribed by the States of Guernsey.

Annual Validation

Every year, before the last day of February, a Guernsey limited liability company must submit an annual validation to the Registry.

Effect of incorporation

If the Registrar grants the application for incorporation, it will register the memorandum and articles, issue a certificate of incorporation and allocate a registration number to the company.

Naming a Guernsey limited liability company

There are few limitations on the naming of a Guernsey limited liability company and the Law allows incorporated companies to apply to the Registrar to change their name, so long as certain formalities are met. In the case of a company limited by shares, the name must include "Limited", "Ltd", "with limited liability" (or similar). In the case of a company limited by guarantee, it must include "limited by guarantee" or "LBG" or similar.

However, a company cannot have the same name as another company registered with the Registrar, or another company that has reserved that name. A Guernsey limited liability company's proposed name may also be rejected by the Registrar if it is deemed likely to cause confusion to the public, be misleading, contrary to public policy or contrary to the accepted principles of morality. In addition to this, the proposed name cannot imply association with royalty or government, though the Law does allow for this in limited situations where Her Majesty's Procurer has given written permission for the use of the name.

Register of Beneficial Ownership (the Register)

When incorporating a Guernsey limited liability company, the Registry require the submission of

details of its beneficial owner. Accordingly, a Guernsey limited liability company must also keep a register of its beneficial owners.

Beneficial owners are all persons that:

- hold, directly or indirectly, more than 25% of the voting rights in the conduct and management of a Guernsey limited liability company; or
- hold directly or indirectly, the right to appoint or remove a majority of the officials.

The following details are required of all natural persons on the register of beneficial owners, maintained by the resident agent:

- name;
- nationality;
- date of birth;
- principal residential address;
- date of becoming a beneficial owner (if after 15 August 2017); and
- grounds for being a beneficial owner.

A beneficial owner is under a duty to update the resident agent within 21 days of a change of any of these particulars.

If the beneficial owner is a corporate beneficial owner, then the name of that entity must be reported.

If the resident agent has ascertained that there are no beneficial owners in relation to a Guernsey limited liability company then this must be recorded in the register.

It has always been the intention that the Register would remain inaccessible to the public and, in fact, the States of Guernsey have gone to extraordinary lengths to limit the accessibility of it. Data received by the Registrar in accordance with the Law is centralised and retained in electronic format but on a closed system such that access to the information requires access to the physical building in which the server is held. Furthermore, the number of people with authority to access the data is limited to an extremely restricted number and even with such authority, the search parameters controlling access are sufficiently restrictive to ensure that only specific and detailed requests from law enforcement agencies gain any benefit from the Register.

How much information about a limited liability company is available to the public?

Subject to a small fee, any person may obtain copies of any of the below documents from the Guernsey Registry:

- the certificate of incorporation;
- the memorandum and articles of incorporation;
- annual validation filings;
- special, waiver and unanimous resolutions;
- change of director and resident agent forms; and
- any other public filings (for example, applications to migrate or amalgamate).

The public can also obtain information as to the registered office and registered number of a Guernsey limited liability company and its current status (i.e. whether it is normal, dissolved or in liquidation) for free on the Guernsey Registry's website.

Further information

If you require specific information about incorporating a company in Guernsey 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.

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