

# Formation of a Guernsey company

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## Introduction

Guernsey companies can only be incorporated by a corporate service provider (**CSP**), ie a licence holder under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, as amended (the **Fiduciaries Law**).

We are pleased to be able to incorporate Guernsey companies through our associated company, Mourant Governance Services (Guernsey) Limited (**MourantGS**) which is a CSP and licence holder under the Fiduciaries Law.

## Types of Guernsey company

Guernsey offers a variety of types of company which fall into two categories:

1. **Non-cellular**, which includes:
  - a **company limited by shares**: the most familiar type of company, a company limited by shares has a share capital and its members (shareholders) have limited liability whereby any liability for the company's debts is limited to the amount (if any) unpaid on the shares held
  - a **company limited by guarantee (LBG)**: an LBG can, but does not have to, have a share capital. Liability for the LBG's debts is also limited but in the case of an LBG, liability is limited to the guaranteed amount made by its guarantee members, ie the amount a guarantee member has agreed to contribute to the assets of the LBG in the event of its winding up (which continues for one year after ceasing to be a member)
  - an **unlimited liability company**: similar to an LBG, an unlimited liability company can have a share capital (but does not have to). The liability of its members is however **unlimited** both while a member of the company and for one year after ceasing to be a member
  - a **mixed liability company**: a mixed liability company gives the option of having a share capital (if preferred) and a variety of different types of members, eg guarantee members, unlimited members and shareholders (if it has share capital). Members' liability can be prescribed by the company's memorandum and articles of incorporation or, in the absence of such, members' liability will be joint and several to the maximum extent of their liability.
2. **Cellular**, which includes:
  - a **protected cell company with limited liability (PCC)**: a PCC is a company which has a non-cellular core and separate cells. It is a single legal person; however the protected cells (a **cell**) are **not** (although each cell must have its own name or designation and have its own cell capital). Assets in a PCC are either 'cellular', ie attributable to a particular cell or 'non-cellular', ie core assets. Subject to certain exceptions, the assets of one cell are **not** available to shareholders or creditors of another cell, or to shareholders or creditors of the core. Assets held by the PCC which are not distinctly held by a particular cell are deemed to be assets of the core. For further information read our guide on [Protected Cell Companies](#).

- an **incorporated cell company with limited liability (ICC)**: an ICC is a company with the ability to create its own incorporated cells (**IC**) as part of its corporate structure for the purpose of segregating and protecting the assets of the incorporated cells. An ICC is based on the same principles as a PCC in that an ICC may comprise any number of ICs however, unlike a protected cell of a PCC, an IC is a single legal person separate from its ICC with many of the attributes of a non-cellular company.

## Company Incorporation

Company incorporations can only be conducted by a CSP which are processed online using the Guernsey Registry's Online Services Portal. Note that the incorporation of a cellular company, ie a PCC and an ICC requires the prior approval of the Guernsey Financial Services Commission (the **Commission**).

## Timing

There are three service options:

1. **Incorporation Normal**: a standard company incorporation which can be processed within 24 hours
2. **Incorporation Rapid**: a same day two hour incorporation (used in exceptional circumstances)
3. **Incorporation Special**: a 15 minute incorporation for basic asset holding companies with standard articles of incorporation (**Articles**),

in each case, subject to receipt and satisfaction of requisite information/documentation.

## Fees

The incorporation fees of the Guernsey Registry (the **Registry**) are very competitive and range from £100 for a standard 24 hour incorporation, £350 for a same day two hour incorporation and to £750 for a 15 minute incorporation.

As a CSP, MourantGS charges a fee for collecting all requisite due diligence information and dealing with the incorporation of the company. Fees vary depending on the timing and urgency of the incorporation and will be agreed at the outset. For these purposes, it is assumed that the subscribers to the Memorandum of Incorporation (**Memorandum**) will adopt MourantGS' standard form Memorandum and Articles and that all client due diligence (**CDD**) will be provided in a timely and complete manner.

## Client Due Diligence

CDD is required in respect of every person holding more than 25 per cent of the company's shares (if applicable), voting rights and/or the right to appoint/remove a majority of the board of directors, **and** each director of the company.

## Share Capital

For a company with a share capital, there is no requirement that it has an authorised share capital, although it may do so, if preferred. There is no document duty payable on the incorporation of a Guernsey company. Shares may be issued with or without a par value.

MourantGS can provide a nominee shareholder for the purposes of incorporation after which the subscriber share(s) will be transferred to the beneficial owner. If a nominee shareholder is not required, MourantGS will prepare the Memorandum which will be sent by email for signing on behalf of the subscriber. If more than one shareholder is required, the percentages to be held by each shareholder will need to be specified.

## Members

A Guernsey company must have at least one member which can be a natural person or a body corporate.

## Registered Office

The registered office of a Guernsey company must be in Guernsey at all times.

## Directors

Each individual proposed as a director must consent in writing to their appointment and declare that they are not ineligible to become a director for the purposes of the Companies (Guernsey) Law, 2008 as amended.

All directors must also be registered with the Registry. Proposed directors that are not already registered with the Registry must complete the Person/Director Registration Form (MourantGS can provide assistance with this if required). Please note that MourantGS require CDD and the original director consent form before it is able to request registration of a new director.

It is not a requirement for a Guernsey company to have a Guernsey-based director, unless the intention is for the new company to be regulated. If this is the case, the Commission will, as a matter of policy, require a Guernsey director.

## Resident Agent

All Guernsey companies are required to have a resident agent, unless the company is exempt. To be exempt, the company must be one of the following:

- a company, or any subsidiary, listed on a stock exchange recognised by the Registry;
- an open-ended or a closed-ended company (or any subsidiary);
- a company regulated by the Commission; or
- a States of Guernsey trading company.

A resident agent can be either a Guernsey-resident individual director or a CSP and is responsible for taking reasonable steps to ascertain the identity of the beneficial owners of the company, in accordance with the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017, the details of which must be recorded and maintained on an ongoing basis and which must be produced, on request, to the authorities.

## Secretary

The company may choose to have a secretary but it is not a legal requirement.

## Memorandum

The Registry has a standard form memorandum of incorporation. Alternatively MourantGS can provide either a standard form or bespoke memorandum of incorporation which the original subscriber(s) is/are required to sign.

## Articles

The articles set out the regulations for administering the company. The Registry provides a standard form or alternatively MourantGS can provide either its standard form (equivalent to 'Table A' articles) or bespoke articles, in which case the Registry's standard articles must be expressly disapplied. Related shareholder agreements can also be provided, if required.

## Conclusion

There are other types of vehicles available in Guernsey, including partnerships, limited partnerships, limited liability partnerships, unit trusts, trusts and foundations. There are also proposals to introduce limited liability companies (LLCs), a flexible hybrid structure combining the features of a company and a partnership (further details [here](#)).

## Contacts

If you would like further information, please get in touch with one of our contacts [here](#).

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this guide, please get in touch with one of your usual contacts. You can find out more about us, and access our legal and regulatory notices at [mourant.com](https://www.mourant.com). © 2021 MOURANT OZANNES ALL RIGHTS RESERVED