mourant

GUIDE

Jersey companies law: A guide

Last reviewed: February 2023

Contents

The Companies (Jersey) Law 1991 (the **Companies Law**) came into effect on 30 March 1992 and replaced the Loi (1861) sur les Sociétés avec Responsabilité Limitée and the Companies (Supplementary Provisions) (Jersey) Law 1968 (the **old Laws**). This guide outlines the principal features of the Companies Law.

Formation

In order to form a Jersey company, it is necessary to obtain a consent under the Control of Borrowing (Jersey) Order 1958 (**COBO Consent**) from the Jersey Financial Services Commission (**JFSC**), which will require certain information on a confidential basis regarding the proposed company, its activities and beneficial ownership and control, including:

- the full names, residential addresses and occupations of the beneficial owners and controllers of the company; and
- confirmation that the beneficial owners have never been bankrupt or associated with a bankrupt company.

The constitutional documents (**Memorandum and Articles of Association**) must be prepared and submitted to the Jersey authorities. Although we have standard forms of these documents, they can also be tailored to suit specific requirements.

Application for incorporation is by a minimum of two persons as subscribers to the Memorandum and Articles of Association, in the case of a public company and one person in the case of a private company. Incorporation is an administrative act undertaken by the Registrar. Where the public interest is involved, however, the Royal Court is given the right to refuse to authorise the incorporation of a company.

The items that must be set out in a company's Memorandum of Association include its name, whether it is public or private, the type of company it is (ie whether it is a par value, no par value or guarantee company), what its capital is and whether the liability of its members is unlimited or limited by shares or guarantee. An 'objects' clause is not required.

A set of standard Articles of Association (the **Standard Table**) has been prescribed by the Companies (Standard Table) (Jersey) Order 1992. The Standard Table is deemed to constitute the Articles of Association if articles are not filed for a par value company with no unlimited or guarantor members. A company is also able either to adopt its own Articles of Association (which should specifically exclude the Standard Table which would otherwise apply on any matter on which its own Articles are silent) or Articles varying certain provisions of the Standard Table but otherwise accepting its application.

The Memorandum and Articles of Association bind the members as between themselves and the company. They may be altered by special resolution.

A certificate of incorporation is issued and constitutes conclusive evidence of incorporation. A new certificate is issued on a change of company name.

The formation of a Jersey company is normally completed within one to five working days of an application being made to the Registrar of Companies and upon payment to the JFSC of a fee of between £165 to £425. However, upon payment to the JFSC of a fee of £670, the Registrar will complete the incorporation of a company on a same day basis.

The Registrar is responsible for the maintenance of the companies registry where documents filed in respect of all companies may be inspected. The current location of the registry is PO Box 267, 14-18 Castle Street, St Helier, Jersey JE4 8TP.

Types of Company

The Companies Law provides for the creation of the following types of company:

- private and public companies with members whose liability is limited to the amounts they guarantee (guarantee companies);
- private and public companies with shares that are not expressed as having a par value, in other words a nominal value (no par value companies);
- private and public companies with shares that are expressed as having a par value. Par value shares may be issued at par or at any level of premium; and

- private and public companies with unlimited shares, in other words on the winding up of such a company the liability of the holder of the shares is unlimited (unlimited liability companies).

A company is not permitted to have both par value shares and no par value shares. However, a limited company can combine members having limited liability, members having unlimited liability and members whose liability is limited by guarantee. An unlimited company can only have members having unlimited liability.

Par value companies may convert all their shares into no par value shares and no par value companies may convert all their shares into par value shares, in each case by following the procedure set out in the Companies Law.

Company name

The name of a limited company must end with 'Limited', the abbreviation 'Ltd', 'avec responsabilité limitée' or the abbreviation 'arl'. However, the name of a public company which is a limited company may (but is not required to) end with 'public limited company', 'PLC' or 'plc'.

The Companies Law allows for refusal of the names of proposed companies and of changes of name where the intended name is undesirable. The Registrar has power to require a company to change its name in certain circumstances subject to a right of appeal to the Royal Court.

A company that has an interest in immovable property in Jersey must register name changes in the Public Registry of Contracts.

Public and private companies

A company will be a public company if it states in its Memorandum of Association that it is a public company. A private company which increases the number of its members beyond thirty or circulates a prospectus (other than to a limited number of persons in specified circumstances) must comply with the Companies Law as if it were a public company. A company must notify the Registrar if its membership increases beyond thirty.

Subsidiary and holding companies

The Companies Law determines which companies will be holding and subsidiary companies. A subsidiary is prohibited from owning shares in its holding company.

Corporate capacity

The Companies Law abolished the doctrine of *ultra vires* in its application to a company and the capacity of a company is not limited by anything in its Memorandum and Articles of Association. However, until a special resolution giving authority to act otherwise is passed, the directors of a company incorporated under the old Laws are not authorised to undertake business not authorised by the Memorandum of Association of such company.

Persons acting under express or implied authority of a company may make contracts and sign instruments on behalf of that company.

Pre-incorporation transactions

Transactions entered into prior to incorporation may be adopted by a company once it has been incorporated. Transactions not so adopted will remain the personal obligations of the person who purported to act on behalf of the company.

Prospectuses

The Companies Law and the Companies (General Provisions) (Jersey) Order 2002 together control the circulation of prospectuses in Jersey and also the circulation of prospectuses by a Jersey company whether in Jersey or elsewhere, and include requirements as to the content and filing of certain prospectuses. The Companies Law also includes provisions placing on particular persons responsibility to pay compensation and creating criminal liability in respect of untrue or misleading statements in, or material omissions from, prospectuses.

Shareholders

A private company is permitted to have a single shareholder.

A public company must have at least two shareholders, who may be nominees for a single beneficial owner. A public company may also be a wholly owned subsidiary of a single holding company.

If a public company has fewer than two members for a period in excess of six months, limited liability will not apply as regards to debts incurred after that period and the remaining member will have unlimited personal liability save where all of the issued shares are held by, or by a nominee for, a body corporate.

Shares and share capital

Jersey companies can be incorporated with an authorised share capital denominated in any currency.

The following points should be noted:

- different amounts may be paid up on shares;
- partly paid shares may be forfeited;
- different voting rights may be attached to different classes of shares;
- the payment of commissions is not prohibited;
- par value shares may be issued at a discount to par value;
- the issue of fractions of shares is authorised;
- non-voting shares may be issued;
- the issue of bearer shares is not permitted and the Companies Law includes detailed provisions as to the keeping of a share register; and
- minors and interdicts may not hold shares except following transmission on death of a member.

An instrument of transfer will be required to transfer shares, unless the shares are uncertificated and the provisions of the Companies (Uncertificated Securities) (Jersey) Order 1999 or the Companies (Transfer of Shares – Exemptions) (Jersey) Order 2014 apply.

The share register is required to be available for inspection and copies of the register may be obtained subject to certain conditions including (in the case of public companies) the making of a declaration under oath as to the purpose for which the copy is obtained. The Royal Court can order the rectification of the register of members of a company. The Companies Law requires that share certificates be issued by a company within two months of allotment or transfer save in certain limited circumstances including where shares are uncertificated.

A public company is required to deliver to the Registrar particulars of the rights attaching to each and every class of its shares that are not otherwise stated in its Memorandum and Articles of Association. The Companies Law sets out conditions, procedures and protections in relation to the variation of class rights in the absence of contrary provision in a company's Memorandum and Articles of Association.

The Companies Law includes provisions in relation to redeemable shares, whether preference or otherwise, which are permitted, so long as the company has in issue at least one share which is not redeemable. There are no restrictions as to the sources of the funds used for redemption and the directors authorising the redemption must make a solvency statement in the required form. Shares may only be redeemed if they are fully paid-up.

Subject to the sanction of a special resolution, the directors making the required solvency statement and to certain safeguards, a company may purchase its own shares.

When purchasing or redeeming shares a company may, if permitted by its articles and authorised by its shareholders, hold such shares as treasury shares and then may cancel such shares, sell them, transfer them to an employee's share scheme or hold them in treasury.

A company may reduce its share capital by special resolution, where the reduction is in respect of limited shares, subject to the directors authorising the reductions making a prior solvency statement.

There is no prohibition in Jersey against a company giving financial assistance for the acquisition of its own shares, although if such assistance amounts to a distribution of assets by the company it may need to be sanctioned as such.

Administration

A company must:

- have a registered office in Jersey, the address of which must be given on business stationery;
- display its full corporate name on all relevant papers;
- file an annual confirmation statement with the JFSC before the end of February in each year after the year of its incorporation giving certain details as to its share capital, beneficial owners and other significant persons (for example, the company secretary and directors);
- under a company's COBO Consent, subject to certain exceptions (including being administered by a regulated trust company), changes of beneficial ownership or control of a company require the prior approval of the JFSC;
- under a company's COBO Consent, subject to certain limited exceptions, changes in beneficial ownership or control must be notified to the JFSC within 21 days;
- keep a share register, either at its registered office or at an address in Jersey notified to the Registrar;
- public companies may also maintain branch registers overseas; and
- keep minutes of directors' and shareholders' meetings.

Records may be kept in any form so long as information can be reproduced in intelligible form within a reasonable time and steps are taken to safeguard information.

Directors and secretary

A public company must have at least two directors. A private company must have a least one director. Minors and interdicts are not permitted to act as directors. A body corporate may be a director provided that it is registered to do so under the Financial Services (Jersey) Law 1998 and the corporate director does not itself have any corporate directors.

The directors of a Jersey company are not required to be resident in Jersey (subject to certain exceptions in the case of companies undertaking certain regulated activities). Directors do not need to hold shares, unless so required by the Articles of Association of the company. Directors' meetings may be held in Jersey although there is no requirement that they must be held here. It is permissible to hold meetings by telephone and to pass resolutions in writing.

The Companies Law requires directors to act honestly and in good faith with a view to the best interests of the company and to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. A director is required to disclose conflicts of interest to the company and may be subject to a Royal Court order requiring him to account to the company for any profit or gain if he fails to do so.

Limits are placed on the extent to which a company is able to give indemnities to directors. The Companies Law does not prevent companies from purchasing and maintaining insurance for officers against liabilities which attach to them as such officers.

A person may be disqualified by the Royal Court from acting as a director (for up to 15 years) and the Companies Law provides for personal liability for a company's debts to attach to such a director if he acts as a director whilst disqualified.

A company must appoint a secretary. The secretary of a company which is a public company must be appropriately qualified (as set out in the Companies Law), for example as a Chartered Accountant, Advocate or Solicitor of the Royal Court.

Particulars of the directors and secretary must be maintained in a register kept by each company and open to inspection by members of the company and by the Registrar. The Registrar may not disclose information on the register except for the purpose of enforcing any provisions of the Companies Law or any obligation owed to the company by a director or secretary. In the case of a public company, however, the register is open to public inspection.

Meetings

Provision is made for the holding of meetings other than by a physical gathering together, so long as each party can hear what is said by all other parties, for example on a telephone conference call.

Provision is also made to allow resolutions to be passed by all members (or a specified majority being not less than two-thirds in the case of special resolutions) in writing (including special resolutions, but not a resolution removing an auditor).

A private company is not required to hold annual general meetings unless specifically required to do so by its constitution. A public company may dispense with the requirement to hold annual general meetings if all shareholders agree. The Jersey Financial Services Commission has the power to call an annual general meeting if a company fails to do so, and it is possible for the holders of at least one tenth of the voting shares to requisition the calling of a meeting by the directors.

At least 14 days' notice of any general meeting is required. An annual general meeting may, however, be held at short notice provided that all the members entitled to attend and vote thereat agree. Any other meeting may be held at short notice if a majority of members together holding at least ninety per cent of shares giving a right to attend and vote at such a meeting so agree.

The Companies Law gives members the statutory right to vote by proxy, allows members to inspect minute books of shareholders' meetings, and provides for representation at meetings, voting and polls.

The Royal Court is also empowered in certain circumstances to call a meeting of a company.

There is no requirement for shareholders' meetings to be held in Jersey.

Special resolutions

A special resolution must be passed by a majority of not less than two thirds (or such greater majority as the Articles of Association may prescribe) of votes cast in person or by proxy at a meeting called (save as noted above) by at least 14 days' notice specifying the intention to propose a special resolution. A copy of a special resolution must be filed with the Registrar within 21 days of it being passed. A special resolution is required for a number of purposes, including for the following:

- alteration of Memorandum and Articles of Association;
- change of company name;
- change of status (public or private company);
- extension of powers of directors of companies incorporated under the old Laws;
- alteration of share capital;
- variation of class rights (by resolution of the class) unless the Articles of Association provide otherwise;
- purchase of own shares;
- reduction of share capital;
- relief of directors failing to disclose interests;
- for winding up (other than by order of the Royal Court);
- appointment of liquidator in a (solvent) summary winding up;
- termination of liquidator's office (in a summary winding up);
- disposal of records of a company after a summary winding up;
- merger of two or more companies; and
- to continue as a company incorporated overseas.

Accounts and audit

Companies are required to keep adequate accounting records, which may be held in any location, although in the case of public companies certain information must be available in Jersey.

The form and content of company accounts are not specified in the Companies Law. However, accounts must be prepared in accordance with the generally accepted accounting principles adopted by the company.

There is no requirement that the accounts of a private company be audited. An audit is, however, required if the company is a public company, or if required by a company's Articles of Association or if a resolution of members so requires. An audit must be carried out by suitably qualified persons as specified in the Companies Law. An auditor is given certain powers and has certain duties to fulfil. It is an offence to make false statements to auditors.

A public company's accounts are required to be available to the public and filed with the Registrar. For private companies it is sufficient that accounts are available to shareholders.

Additional requirements apply to companies listed on a UK or EU regulated market.

Distributions

Distributions may be made out of profits or any other accounts of the company (other than capital redemption reserve or nominal capital) provided that the company is able to meet its liabilities as they fall due for a period of 12 months (or until dissolution, if earlier) after the distribution. However, an open-ended investment company (as defined in the Companies Law) which is an open-ended collective investment fund may make distributions subject only to a cash flow solvency test.

A person who receives an unlawful distribution and who, at the time, knows or has reasonable grounds for believing it is unlawful is liable to repay it.

Takeover offers

If the holders of ninety per cent of the shares in a company, or of any class of its shares, have accepted an offer to acquire their shares, the offeror is entitled to compel the sale of the remainder of the relevant shares on the same terms. A shareholder who has not accepted the offer is entitled, within a specified period, to require the offeror to acquire his shares on the same terms. There are provisions allowing applications to the Royal Court with regard to the detail of these matters.

The UK City Code on Takeovers and Mergers applies to Jersey companies.

Compromises and arrangements

The Royal Court has the power to make binding compromises or arrangements between a company and its creditors or members.

Mergers

Two or more Jersey companies may merge (without any sanction of the Royal Court provided that all the merging Jersey companies are solvent) if a merger agreement is approved by a special resolution of each company and of each class of shareholders if there is more than one class. The Companies Law also permits the merger of Jersey companies with non-Jersey companies, irrespective of whether the resulting company is a Jersey company or not. Such cross-border mergers require the consent of the JFSC.

Investigations

The Chief Minister and the JFSC have power under the Companies Law to appoint inspectors on the application of the Registrar, the company or a member, director, liquidator or creditor of the company if they are satisfied that there is good reason to do so. Inspectors also have powers to investigate the affairs of other closely related companies and to inform the Attorney General of matters tending to show that an offence has been committed. They have powers to require the production of records and information and, on the authority of a warrant from the Bailiff, to search specified premises.

The Chief Minister and JFSC may send the report of the inspectors to the registered office of the company or to specified persons or cause it to be printed and published. The Chief Minister and the JFSC also have power to bring civil proceedings in the name of a company.

The usual legal professional privilege is maintained, as is a banker's duty of confidentiality regarding its customers' affairs (other than the affairs of the company under investigation).

These provisions also apply to non-Jersey companies which conduct business in Jersey or through an address in Jersey.

Unfair prejudice

Any member who can show that the affairs of a company are being, or have been, conducted in a way that is unfairly prejudicial to members has the right to apply for an order of the Royal Court giving him relief. The Chief Minister and the JFSC are also able to make such an application following an investigation of a company's affairs.

Winding up of companies

The Companies Law sets out procedures as to:

- winding up at the end of the period of a company's existence;
- (solvent) summary winding up;
- winding up on just and equitable grounds;
- (insolvent) creditors' winding up (which can be initiated by a creditor or the shareholders of an insolvent Jersey company).

The Companies Law also includes provisions of general application relating to liquidation and the liquidator, including, on a creditors' winding up, provisions enabling the Royal Court to order restitution where transactions at an undervalue or preferences to creditors have been entered into or given within specified periods prior to the winding up.

The Royal Court may make a director personally liable for the debts of a company incurred after the time at which such director knew that a creditors' winding up was unavoidable or was reckless as to whether or not such a winding up was avoidable.

Persons knowingly party to fraudulent trading on the part of an insolvent company may be required to contribute to its liabilities.

In a creditors' winding up, the Royal Court has power to set aside or vary 'extortionate' terms of credit obtained by the company in the three years prior to the winding up.

Where monies are paid out on a redemption of shares without full compliance with the Companies Law as it relates to redemptions within a year of a winding up commencing, the payees and directors may be required to contribute in the winding up to the extent of the monies paid out on such redemption.

A company which is being wound up must state that it is in liquidation on its letters and certain other papers.

Striking off

The Registrar has power to strike off a company (subject to certain procedures first being undertaken) which he believes not to be carrying on business or in operation. This is without prejudice to liabilities of directors and members under the Companies Law.

Jersey taxation

A Jersey company is regarded as resident in Jersey and therefore liable to Jersey income tax at zero per cent unless it undertakes, amongst other things, certain classes of financial services business (in which case the applicable income tax rate is 10 per cent) or it undertakes certain utilities business in Jersey (in which case the applicable rate is 20 per cent). However a company is not regarded as resident in Jersey if its business is centrally managed and controlled outside Jersey in a country or territory where the highest rate at which any company may be charged to tax on any part of its income is 10 per cent or higher, and the company is resident for tax purposes in that country or territory. A Jersey company deriving income from Jersey real estate or from the importation of hydrocarbons into Jersey is subject to taxation on that income at a rate of 20 per cent. A Jersey company that is a collective investment fund or special purpose vehicle that has registered with the Comptroller of Taxes and has paid the annual fee of £500 is exempt from Jersey income tax.

If a company is managed and controlled in a jurisdiction outside Jersey, such jurisdiction may levy taxes on the company by virtue of it being controlled there. Specific advice should be taken in any such jurisdiction.

Contacts

A full list of contacts specialising in corporate law can be found here.