GUIDE

The Company secretary's survival guide

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Contents

This guide outlines the key provisions of legislation that will assist company secretaries and company administrators in the day to day administration of a Jersey company. It is only a general guide. Our advice should be sought where appropriate.

What capacity does a Jersey company have?

The Companies (Jersey) Law 1991 (the Companies Law) provides that a company has unlimited capacity, despite anything in its constitutional documents. This is to safeguard third parties in their dealings with a Jersey company.

Nevertheless, the constitutional documents of a company can limit the authority of the directors and if the directors do not observe any limitations they may be in breach of their duties.

What are the constitutional documents of a Jersey company?

A Jersey company has a memorandum and articles of association (M&A). The M&A, which are publicly filed, constitute a contract between the members. The M&A may only be amended by special resolution of the members (see below). Special resolutions (and agreements which amount to special resolutions) must be attached to copies of the M&A.

There is a statutory form of articles of association (Articles) known as the Standard Table. However, it is common practice to disapply the Standard Table and adopt a tailored form of Articles which is appropriate for the company.

A member is entitled to be provided with a copy of the M&A by a company on request, subject to the payment of a fee which may not currently exceed 50 pence per page.

When is a company a public company?

A company is a public company if its memorandum of association so provides.

A private company is treated as a public company if it has more than 30 members, if it circulates a prospectus or if its shares are admitted to trading on an EU or UK regulated market.

A public company is required to appoint auditors but a private company is not required to appoint auditors.

Must a company have a registered office?

A company must have a registered office in Jersey.

The occupier of the premises that are the registered office must authorise their use for that purpose. A company's registered office will normally be the address of the licensed trust company that administers it.

A company must give notice to the registrar of companies (Registrar) of any change in its registered office.

What is the required minimum number of directors?

A private company may have only one director. A public company must have at least two.

Who may not be a director?

Minors, interdicts and disqualified persons may not be directors.

Do directors need to be resident in Jersey?

The Companies Law does not impose any residency restrictions on directors.

If a company carries on a regulated business, it may be required to have Jersey resident directors.

The residency of directors should be considered when assessing where a company is managed and controlled as this will determine its tax residency. If management and control should be in Jersey, a company's Articles may provide that a majority of directors must be resident in Jersey and that a majority of directors must be present in Jersey for a board meeting to be quorate.

May a company have corporate directors?

A Jersey company may have corporate directors. However, a body corporate cannot be a corporate director of a Jersey company unless it is registered under the Financial Services (Jersey) Law 1998 and, under the terms of its registration, it is permitted to act as, or fulfil the requirements of, a director. A body corporate cannot act as a corporate director if any of its directors is a body corporate.

Must a company appoint a secretary?

Every company must have a company secretary. A sole director cannot also be the secretary. A company cannot have a corporate secretary if its sole director is also the sole director of the company.

The secretary of a public company must be appropriately qualified (eg a chartered accountant) or be a person who appears to the directors to be a person who is capable of acting as secretary.

Must a company maintain a register of directors and secretary?

Every company must maintain and keep at its registered office a register of its directors and secretary.

The register must be open to inspection by a member, director or the Registrar without charge.

In addition, in the case of a public company or a subsidiary of it, the register must be open to inspection by any member of the public on payment of such fee which currently may not exceed £5.

It is not necessary to file details of a company's directors or secretary except, in the case of a public company or its subsidiary, upon incorporation and in its annual confirmation statement.

What interests must a director declare?

Under the Companies Law, a director must disclose any direct or indirect interest of which the director is aware in any transaction entered, or to be entered, into by a company or a subsidiary which to a material extent conflicts or may conflict with the interests of the company.

The disclosure should be made at the first board meeting at which the transaction is considered or otherwise as soon as practicable by notice in writing to the company secretary. A director can make a general disclosure that the director is to be regarded as interested in any transaction with specified persons.

If a director fails to disclose an interest, the company or a member may apply to court to have the transaction set aside or for an order that the director account to the company for any profit made.

The Articles of a company may provide that a director with an interest in a transaction who has disclosed his or her interest may (or may not) be counted in the quorum and vote on the transaction.

A company is not required to maintain a register of directors' interests.

Can a company indemnify its directors?

An indemnity given by the company or any of its subsidiaries which indemnifies a director against any liability is void unless it is permitted under the Companies Law. The Companies Law specifies the liabilities in respect of which a valid indemnity can be given. For further information please refer to our guide on directors' indemnities.

Must a company have a minimum number of members?

A private company may have one member. A public company must have at least two members unless it is a wholly owned subsidiary.

If a public company that is not a wholly owned subsidiary carries on business for more than six consecutive months with only one member and the member is aware of this fact, the member will be jointly and severally liable with the company for the debts incurred by it while it carries on business with only one member.

Are there any restrictions on who can be a member?

A subsidiary cannot be a member of its parent company (unless it held shares in the parent when it became a subsidiary) and an allotment or transfer of shares by a company to a subsidiary is void.

A minor or mentally incapacitated person may not become a member of a company except by operation of law on the death of a shareholder.

Must a company maintain a register of members?

A company must keep a register of members in Jersey. If the register is not kept at a company's registered office, notice of where it is kept must be given to the Registrar.

The register must record (among other things) the name and address of each member, the number and class of shares held by each member, the amount paid up on the shares, the date on which the member became or ceased to be a member and, if the company is listed, whether shares are held in certificated or uncertificated form.

A public company may maintain an overseas branch register.

No notice of any trust should be entered on the register.

Must a register of members be made open for inspection?

A register of members must be open to inspection during business hours by members without charge and by any other person on payment of a fee which may currently not exceed £5.

A person who is not a member may also require a company to supply a copy of its register of members on payment of such fee which may currently not exceed 50 pence per page. A copy of the register of members must be delivered within ten days of payment or delivery of the declaration referred to below.

A person requesting a copy of a register of members of a public company must also submit a declaration to the company containing an undertaking only to use the information to call a general meeting, to seek to influence voting at any such meeting or to offer to acquire shares in the company.

Can the class rights of members be varied?

A company's Articles may make provision for the variation of class rights. If no provision is made, then the variation must be sanctioned by a special resolution passed at a separate meeting of the relevant class or written consents must be obtained from the required persons being (in the case of a par value company or a no par value company) the following:

- in the case of any class of par value shares, the holders of not less than two thirds in nominal value of the issued shares of that class; and
- in the case of any class of no par value shares, the holders of not less than two thirds in number of the issued shares of that class.

If a public company issues shares with rights not stated in its M&A, a statement of those rights must be filed with the Registrar.

How does a Jersey company execute contracts?

The Companies Law provides that any person acting under the express or implied authority of a company may execute a contract on its behalf. The Companies Law does not stipulate any specific formalities concerning the execution of contracts by companies.

Subject to its Articles, a company may execute contracts (including deeds) in the manner authorised by a resolution of the directors. Normally, one or more persons (usually directors) are authorised to sign on a company's behalf.

Does a company have to maintain a register of security interests?

A Jersey company does not have to maintain a register of security interests, but if it grants security over its property, the secured party will probably register the security on the Jersey register of security interests, or in the case of land, in the land registry.

Must a company hold annual general meetings?

A private company is not required to hold annual general meetings (AGMs) unless:

- it is required to hold AGMs by a provision made in its Articles which came into force after 1 August 2014; or
- it was required by a provision in its Articles made before 1 August 2014 to hold AGMs and this requirement is confirmed by a special resolution passed after 1 August 2014.

A public company is required to hold AGMs (not more than 18 months apart) unless all its members agree in writing that such requirement can be dispensed with. However, a member may still, despite any such agreement, require an AGM to be held.

What are the main requirements applicable to general meetings?

All meetings must be called by a least 14 days' written notice (unless a prescribed majority of members agree to short notice).

General meetings need not be held in Jersey unless a company's Articles so provide.

Notice of any general meeting must be given to members entitled to attend and vote and to the company's auditors.

Notice of a meeting must include a statement to the effect that a member may appoint a proxy who need not be a member.

A proxy may speak at a meeting of the members of a company. In the case of a private company, a proxy appointed to attend a meeting does not have the right to vote, except on a poll, unless the company's Articles provide otherwise.

A provision in the Articles is void if it requires the proxy appointment to be received more than 48 hours before the meeting. If proxy forms are issued, they must be issued to all members entitled to vote.

A corporate member may appoint more than one corporate representative.

Members holding at least ten per cent of the total voting rights of members (or a class of members) may require the directors to:

- convene a general meeting (or class meeting) to be held as soon as practicable, and in any event, within two months of the requisition being made; or
- circulate written resolutions to members.

Unless a company's Articles require otherwise, a meeting of members may be held by way of video or telephone conference if each member participating can hear and speak.

What constitutes a special resolution?

Under the Companies Law, a special resolution is a resolution that is required to be passed by a majority of two thirds (or such higher majority as may be specified in the company's Articles) of members who are entitled to vote at the relevant meeting.

The matters for which a special resolution is required include:

- amending the M&A;
- a change of name;
- an alteration or reduction of share capital;
- a purchase of its own shares;
- a change of status from a public to a private company or vice versa; and
- any other matter requiring approval by special resolution under the Articles.

A copy of the special resolution must be filed with the Registrar within 21 days of being passed. Late filing fees apply.

Resolutions (or agreements) agreed to by all the members that would otherwise have to be passed as special resolutions also must be filed.

Can members pass written resolutions?

Unless the Articles provide otherwise, all the members entitled to vote on a resolution may pass a written resolution (other than to remove an auditor).

If Articles provide that a written resolution may be passed by way of a specified majority, then a written resolution may be passed by such majority (not being less than two-thirds in the case of matters requiring approval by special resolution). The Companies Law sets out detailed provisions that must be complied with relating to the circulation of majority written resolutions and it is a criminal offence not to comply with them.

Must a company keep minutes of meetings?

Every company must ensure that minutes of proceedings of all meetings of the board or any committee and of members or any class of members (signed by the chairman) are entered in books kept for that purpose.

Minutes of general meetings and class meetings must be kept at the company's registered office and be made available for inspection by members without charge. A member may request a copy of such minutes and the company must, within seven days after the receipt of the request and payment of such sum currently not exceeding 50 pence per sheet, make the copy available at the registered office of the company for collection during business hours.

What must appear in a company's correspondence?

A company's:

- name must appear on all its business letters, statements of account, invoices, order forms, notices, negotiable instruments, letters of credit and other official publications;
- registered office address must appear on all its letters and order forms; and
- registered number may, but need not, appear in its stationery.

Must a company have a seal?

A company may, but need not, have a common seal.

A common seal must have the company's name, but need not have the company's registered number, engraved legibly on it.

A company may have a securities seal and, if authorised by its Articles, an overseas branch seal.

How are shares transferred?

Shares in certificated form may only be transferred by instrument in writing. Currently, shares can only be held and transferred in uncertificated form in the CREST system or to or from an approved central securities depositary or by means of a computer system where the transfer is in accordance with the relevant laws applicable to, and relevant rules and regulations of, an approved stock exchange on which the shares are listed. Approved stock exchanges include the New York Stock Exchange, NASDAQ, NYSE Euronext Paris, Toronto Stock Exchange and the Luxembourg Stock Exchange.

Transfers of shares between living persons do not attract Jersey stamp duty. Stamp duty may be payable on the value of the shares in a Jersey company on the grant of probate or letters of administration of a deceased shareholder.

Where a requested transfer is refused, notification must be given to the transferor and transferee within two months.

Must share certificates be issued?

A share certificate must be issued within two months after the allotment of shares or after the date on which a share transfer is lodged with the company unless the shares are held in uncertificated form or the

company is an open-ended investment company the Articles of which do not require share certificates to be issued.

A share certificate is *prima facie* evidence of the member's title to shares if the certificate is either sealed by the company or signed by two directors or by one director and the company secretary.

Must a company keep accounting records?

A company must keep accounting records that are sufficient to show and explain its transactions and its financial position with reasonable accuracy and that enable its accounts to be prepared. The accounts must be kept at any location approved by the directors and must be available for inspection by directors and the company secretary.

If a public company keeps its accounting records outside Jersey, it must make returns to be sent to, and kept in, Jersey which disclose the financial position of the company at intervals of not more than six months.

The company's accounting records must be retained for ten years.

Must a company prepare accounts?

Directors must prepare accounts for a period of not more than 18 months beginning with a company's date of incorporation or beginning at the end of the period covered by a company's most recent accounts.

The Companies Law does not specify what constitutes accounts but this is generally accepted to mean a balance sheet and a profit and loss account. The Companies Law does not prescribe the contents of, or format for, the accounts. There is no requirement to prepare a cash flow statement or a directors' remuneration report.

A holding company need only prepare consolidated accounts for the group unless its members resolve by ordinary resolution that it must prepare separate accounts.

The accounts of a company whose shares are admitted to trading on an EU or UK regulated market must be prepared in accordance with prescribed generally accepted accounting principles (GAAP) (including those of the US, UK or IFRS). In other cases, accounts may be prepared in accordance with any GAAP selected by the company which must be specified in the accounts.

A company's accounts must show a true and fair view of, or be presented fairly in all material respects so as to show, its profit or loss for the financial period and the state of its affairs at the end of the financial period.

A company's accounts must be approved by its directors and signed by a director on behalf of all the directors.

Within seven months of the end of a financial period, a public company's accounts must be audited and filed (along with the auditor's report) and they must be laid before an AGM unless the members have agreed to dispense with the requirement to hold AGMs. A private company does not have to file its accounts but it must lay its accounts before an AGM within 10 months of the end of a financial year unless it is not required to hold AGMs.

A company is not obliged to send a copy of its accounts to its members but a member is entitled to receive a copy free of charge on request.

Must a company appoint an auditor?

A company must appoint a qualified auditor if it is a public company, if its Articles so require or if a resolution of the company in general meeting so requires. Companies listed on an EU or UK regulated market must appoint a recognised auditor. Where required, auditors must be appointed at every AGM to hold office until the next AGM unless the holding of AGMs has been dispensed with, in which case an auditor will continue in office so long as the agreement to dispense with AGMs remains in force or the company in general meeting resolves that the appointment of an auditor be brought to an end.

Auditors have a right of access at all times to company records and may seek information from officers and the company secretary.

For more information about the qualifications of auditors and the requirements of the Companies Law relating to accounts please see our guide regarding the accounts and audit rules applicable to Jersey companies.

Must a company file an annual confirmation statement?

A company must file an annual confirmation statement with the Jersey Financial Services Commission (JFSC) by the end of February in each year. This replaces the annual return.

A company's annual confirmation statement verifies to the JFSC that the beneficial owner information, significant person information and any other prescribed information provided to the JFSC in relation to the company is accurate. Late filing fees apply.

Can a company make distributions?

A company may make a distribution (including a dividend) to its members in accordance with the Companies Law. A company may make a distribution from any source other than nominal capital (if a par value company) or any capital redemption reserve.

A distribution must be supported by a solvency statement made by the directors who authorise the distribution confirming that the company will remain able to carry on business and pay its debts as they fall due for 12 months after the distribution is made.

For further information please see our guide on distributions and dividends.

Can a company purchase or redeem its own shares?

The Companies Law contains procedures which allow a company to purchase or redeem its own fully paid limited shares or purchase its own depositary receipts. Unless a company is a wholly owned subsidiary, a purchase of shares must be approved by a special resolution. An off-market purchase of shares or depositary receipts may only be effected under a contract approved in advance by an ordinary resolution of the company.

The directors who authorise the purchase or redemption must make a solvency statement in equivalent terms to that required for distributions.

A company may fund a share purchase or redemption from any source including its nominal capital account and share premium account (if it is a par value company) or its stated capital account (if it is a no par value company).

Shares which are redeemed or repurchased may be held as treasury shares provided that this is authorised by an ordinary resolution of the members and it is not prohibited by a company's Articles.

Can a company reduce its capital?

There is a court sanctioned process for a company to reduce its capital and a non-court sanctioned process. A company can pass a special resolution to reduce its capital which is then confirmed by the court. Alternatively, a company's directors can make a statement of solvency in equivalent terms to that required for distributions and its members can then pass a special resolution authorising the reduction.

Although a company can distribute share premium (if a par value company) and stated capital (if a no par value company) without the need for a special resolution or court sanction (and without it constituting a reduction of capital), par value companies frequently reduce their share premium account in order to credit the reduction to their profit and loss account as this will constitute an income source from which dividends can be paid.

What consents are needed and what other requirements apply to share issues?

A company must have a consent under the Control of Borrowing (Jersey) Order 1958 (COBO Consent) to issue shares and may require a COBO Consent to issue other types of securities such as warrants, bonds, notes, loan notes and debentures. COBO Consents to issue shares granted:

- prior to March 2010 authorise the issue of a maximum number of shares; and
- since March 2010 authorise a company to issue an unlimited number of shares.

Most Jersey companies are required to notify any change of beneficial ownership to the JFSC within 21 days.

A company is not required to make filings in respect of share issues or other securities.

A par value company may issue shares at par, at a premium or at a discount.

While the Companies Law does not provide for pre-emption rights or require members to give directors the authority to issue shares, provisions can be included in a company's Articles that confer these rights.

A company may give financial assistance in connection with the purchase of its own shares.

A company may pay commissions in connection with subscriptions for its own shares.

In what circumstances can a company make a public offer of securities?

A Jersey company may only make a public offer of securities pursuant to a prospectus that has been approved by the Registrar and which complies with the Companies (General Provisions) (Jersey) Order 2002.

A public offer is an offer or invitation to acquire or apply for securities made to persons (other than qualified investors and professional investors) exceeding 50 in number in Jersey and 150 elsewhere. An exemption applies to employee share schemes.

Please see our guide on the potential liability of a director in connection with a prospectus.

Does a company have to pay income tax in Jersey?

If a company is tax resident in Jersey, it will be subject to Jersey income tax at the rate of zero per cent unless it is a financial services company, a utility company, an importer to Jersey or supplier in Jersey of hydrocarbon oil or a company in the cannabis industry.

A Jersey company will not, however, be tax resident in Jersey if:

- its business is centrally managed and controlled outside Jersey in a country or territory where the highest rate at which the company may be taxed is 10 per cent or higher; and
- it is resident for tax purposes in that country or territory.

Whether or not a company is tax resident in Jersey:

- if it holds immovable property in Jersey it will be subject to income tax on any profits or gains arising from the sale of, or rents received from, that property; and
- it must submit an income tax return each year to the Comptroller of Revenue. The return only requires limited information to be provided and it must be filed by the last Friday in July.

Does a company have to levy or pay GST?

Under the Goods and Services Tax (Jersey) Law 2007 (the **GST Law**), goods and services tax (GST) is charged at five per cent on the supply of goods and services in Jersey.

A special regime applies to international services entities (**ISEs**) (being entities which, among other things, supply less than ten per cent of their goods or services to persons in Jersey unless the supplies are made to ISEs). An ISE is not required to be registered as a taxable person under the GST Law, to charge GST on supplies made by it or (subject to limited exceptions) to pay GST on supplies made to it. An ISE must have its name entered on a list of ISEs maintained by the Comptroller of Revenue or a trust company authorised to maintain such a list and must pay an annual fee (normally £300).

For more information about the ISE regime, please refer to our guide entitled Goods and Services Tax: Ring Fencing of Finance, Fund and Trust Structures and Vehicles.

Data Protection (Jersey) Law 2018

The Data Protection (Jersey) Law 2018 and the Data Protection Authority (Jersey) Law, 2018 (together the DP Laws) set out rules for the processing of data relating to individuals (personal data).

Pursuant to the DP Laws, personal data may be processed by either a 'controller' or a 'processor'. The controller, as the decision maker, is the natural or legal person who "alone or jointly with others, determines the purposes and means of the processing of personal data". The processor "processes personal data on behalf of the controller", acting on the instructions of the controller, but does not include an employee of the controller. The DP Laws impose direct obligations on both the controller and the processor.

Both controllers and processors established in Jersey must be registered with the Jersey Office of the Information Commissioner and comply with data protection principles. The DP Laws set out the requirements for organisations to register with the Office of the Information Commissioner. To register, data controllers and processors are required to submit an online notification which is renewable annually and pay an annual fee.

Other consents and licences

Depending on the nature of a company's business, regulatory consents may need to be obtained by the company under Jersey legislation including, for example, the Financial Services (Jersey) Law 1998 (if financial services business is being undertaken in or from within Jersey) and the Control of Housing and Work (Jersey) Law 2012 (if employees are hired in Jersey).

Winding up or Liquidation

A solvent Jersey company is wound up using the summary winding up procedure in the Companies Law. A company can commence the procedure by passing a special resolution without the need to appoint a liquidator. For further information on this procedure please refer to our guide on summary winding up.

Where a company is insolvent, there are two main ways to liquidate the company. A creditor can institute bankruptcy proceedings under the Bankruptcy (Désastre) (Jersey) Law 1990. Alternatively, a creditors' winding up is a procedure which may commenced by either the members of the insolvent company (by passing a special resolution to this effect) or, since March 2022, by a creditor. The company and the creditors may each nominate a liquidator, however, the creditors' choice will prevail unless the Royal Court determines otherwise

For further information on both these proceedings please refer to our guide on Liquidating an insolvent Jersey company.

Checklists

Customary filings

The filings that the company will customarily need to make include:

Action or filing	Deadline
Annual confirmation statement	before the end of February
Annual audited accounts	within seven months of the end of the financial year
Any special resolution	within 21 days of being passed
Tax return	midnight on 30 November
Payment of ISE fee	before the end of March
Data protection notification renewal	before expiry
Change of information recorded in register of notifications (data protection)	within 28 days of change
Change of registered office	prior to the change
Change of location of register of members	within 14 days of change

Change of beneficial ownership	within 21 days

Notifications to registered office provider

To permit the company's registers to be kept up-to-date, the company must notify its registered office provider of any change of (or the details of) the company's:

- directors;
- secretary; and
- (if the company's share are not listed on a securities exchange) members.

In addition, if the company's accounting records are kept outside of Jersey, returns regarding the company's financial position must be sent to the company's registered office at least every six months. This requirement will be satisfied by sending a copy of the company's half yearly management accounts.

Contacts

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

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