

## Jersey company law guide: Q&A

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### What is the general situation for foreign companies in Jersey?

Jersey has been at the forefront of the global finance industry for over 50 years and is acknowledged as one of the world's leading international finance centres for banking, investment funds, capital markets and private wealth. The Island enjoys economic stability, political independence, tax neutrality and a sophisticated legal, regulatory and technological infrastructure. It has a global reputation founded on a robust legal framework and sound corporate governance practices.

Jersey is a Crown dependency of the UK, but is not part of the UK or within the European Union. Jersey has its own government, which is responsible for domestic matters including taxation, and its own court system and judiciary. Jersey is in the same time zone as London.

It is straightforward for a foreign company to establish a presence in Jersey. There is no requirement for a Jersey business to be operated using a Jersey company, nor are there any branch registration requirements for foreign entities.

Depending on the nature of the business to be undertaken, it may be necessary to obtain licences, consents or permits from a local authority. Such requirements apply equally to foreign and local entities. The types of activities that may require local approval include:

- operating a business with a physical presence in Jersey;
- operating a financial or corporate services business;
- operating a business involving gambling/ gaming; and

- operating certain other businesses that are not regulated businesses in Jersey but are required to comply with local 'know your client', anti-money laundering and anti-terrorist financing laws and regulations ('Jersey KYC Obligations').

It may also be necessary for a foreign entity operating a business in Jersey to register with the local tax office (for income and goods and services tax) and social security department (for collection and payment of social security contributions).

### What are the key laws and regulations that govern company law?

The principal Jersey companies legislation is the Companies (Jersey) Law 1991 ('Jersey Companies Law').

Other relevant legislation includes:

- the Companies (General Provisions) (Jersey) Order 2002 ('CGPO'), which supplements the provisions of the Jersey Companies Law in relation to company establishments, prospectuses, annual returns and certain provisions relating to winding up a Jersey company; and
- the Control of Borrowing (Jersey) Order 1958 ('COBO'), which makes provision for certain consent requirements on the establishment of a Jersey company (being, in short, a consent to enable it to raise capital by the issue of shares) and on certain subsequent corporate actions, including the issue of non-equity securities in certain circumstances.

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## What are the most common types of companies?

Most companies incorporated in Jersey are private limited liability companies with par value shares (i.e. each share has a nominal or 'par' value). This type of company is similar to an English private limited company.

The Jersey Companies Law also permits a private limited liability company to be established with no par value shares. Capital paid up on each class of no par value shares is credited to a 'stated capital account' for that class. Stated capital accounts are treated as share premium under the Jersey Companies Law, and both share premium and stated capital are prima facie distributable (subject, in most cases, to the directors who authorise a distribution making a statutory solvency statement). Nominal capital is not distributable under the Jersey Companies Law and must therefore be dealt with by an alternative mechanism such as a reduction of capital, repurchase or redemption. These and certain other advantages in terms of capital and capital maintenance give no par value companies greater flexibility than par value companies, and so they are also popular.

There are also a significant number of public limited liability companies incorporated in Jersey (with both par value and no par value shares), including many that are listed on the UK, US and other markets. At the time of writing, 92 Jersey companies are listed on global stock exchanges, and Jersey has the greatest number of FTSE 100 companies registered outside of the UK.

It is also possible to incorporate unlimited companies, companies limited by guarantee and cell companies in Jersey, although these types of companies are generally used for specific purposes and are therefore not as popular as limited liability companies.

## How long does it take to set up a company?

It is possible to incorporate a Jersey company on a same-day basis.

However, both the incorporation of, and the provision of ongoing corporate services to, a Jersey company are regulated activities in Jersey, and as such are subject to Jersey KYC Obligations. This means that the incorporation cannot be completed until the person who undertakes the incorporation and/or is to provide ongoing corporate services works through the Jersey KYC Obligations and requests and obtains the necessary information and documentation from the client. The time taken to complete this process depends on the complexity of the proposed ownership structure, and where a client is of a higher risk or has a complex ownership structure, this process can take more time.

There are certain activities that have been identified by the Jersey Financial Services Commission ('JFSC') as representing a higher risk to the island's reputation that require additional work to be undertaken (and may require the prior approval of the JFSC) before the relevant company can be incorporated. This can also extend the practical timeframe for completing the incorporation of a Jersey company. Examples of such activities include most types of financial services business,

certain types of 'higher risk' commercial businesses (for example time share activities) where not subject to consumer protection, and businesses involving military or defence equipment or personnel, unlicensed pharmaceuticals, the conduct of scientific research or natural resources.

## What are the main registration requirements for companies? What are the fees?

To incorporate a Jersey company, it is necessary to file the following documents with the Jersey Companies Registrar:

- a COBO consent application form (including, where the company is not to be incorporated by a law firm or corporate services provider, certain 'know-your-client'-type documents and information);
- a 'statement of particulars' setting out certain basic company information; and
- a copy of the memorandum and articles of association of the company (in the case of the articles, if the standard table prescribed by statute is not used), executed by the initial subscriber(s).

It is also necessary to reserve a name for the company. In general terms, any name can be used, but there are certain limitations on names which are broadly similar to those in England and other English-derived companies law jurisdictions.

A registration fee is payable to the Jersey Companies Registrar, the amount of which being dependent on the registry turnaround time for the incorporation. At the time of writing, this ranges from £150 for incorporation within five business days to £550 for incorporation within two hours, and an 'out of hours' service is also available by agreement with a minimum fee of £1,000.

If a law firm or corporate services provider is to be used to incorporate and/or provide ongoing corporate services to the company, they will also charge a fee for the incorporation and the provision of those services.

## What are the main post-registration reporting requirements for companies?

Jersey companies must file an annual return with the Jersey Companies Registrar. For a private company, this must include details of the legal shareholders, but not those of the beneficial shareholders or directors, and share capital. For a public company, it must additionally include director details. The annual return is a public document.

At the time of writing, there is an annual fee of £200 (online filing) or £210 (paper filing) for filing an annual return, payable to the Jersey Companies Registrar. Annual returns must be filed by 28 February each year and be made up as at 1 January in that year.

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A Jersey private company is not required to file accounts on the public register. A Jersey public company must file accounts with the Jersey Companies Registrar, which then become a public document (it is possible to file consolidated rather than stand-alone accounts in certain circumstances). At the time of writing, there is a fee of £100 for filing public company accounts, payable to the Jersey Companies Registrar. Public company accounts must be filed within a period of seven months after the end of the financial period to which they relate.

Jersey companies must file certain documents (including special resolutions) that affect share rights and/or its constitutional documents with the Jersey Companies Registrar within a period of 21 days from their being passed/ taking effect. At the time of writing, there is no fee in relation to the making of such filings, and such documents when filed become public documents.

There are also certain filings required in connection with other specific company actions, such as the issuing of a prospectus and on a reduction of capital, winding-up, change of name or change of status, certain of which at the time of writing require fees to be paid to the Jersey Companies Registrar. Again, when filed, those documents become public documents.

Subject to the precise requirements of their consent(s) issued under COBO, Jersey companies must notify material changes in beneficial ownership or control to the JFSC, or seek the consent of the JFSC to such changes. At the time of writing, beneficial ownership and control information is not available on any public register (and there is no present intention to make it available on a public register), but it may be shared by the JFSC with (for example) local and foreign tax authorities or police forces as required by applicable laws, regulations and international agreements and commitments to which Jersey and/or the JFSC is party. In general, the requirement for consent from the JFSC to such changes applies only where the company is not provided with corporate services by a locally-regulated corporate services provider.

Jersey companies must have a registered office in Jersey. The company's register of members must be kept in Jersey at the registered office or some other place in Jersey, and its registers of directors and secretary and minutes of general meetings and class meetings must be kept at the registered office.

A Jersey company must have a company secretary, who need not be locally resident and, for a private company, need not have any particular qualifications.

Given the above, it is common for the owners of a Jersey company to appoint a corporate services provider to provide a registered office, act as company secretary and attend to ongoing Jersey filings.

Please note that the foregoing requirements are without prejudice to any specific filings or notification requirements that apply due to the regulatory or other status of a particular entity in Jersey.

## Are there any controlling factors or restrictions on foreign companies?

There are no controlling factors or restrictions on foreign companies in Jersey.

## What is the typical structure of directors (or family management structure) and liability issues for companies?

Jersey companies are managed by their directors, who may delegate the exercise of their powers to specific directors, committees or other persons in accordance with the relevant company's constitutional documents.

Directors of a Jersey company are subject to fiduciary duties owed to the company. Those duties are prescribed by the Jersey Companies Law as being to:

- act honestly and in good faith with a view to the best interests of the company; and
- exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

The Jersey courts have regard to English and other Commonwealth jurisprudence in interpreting the nature and scope of those duties, and so the overall position on directors' duties in Jersey is very similar to that in other English-derived companies law jurisdictions (although there are some specific points of difference).

The Jersey Companies Law includes an unfair prejudice regime, which has been applied by the Jersey courts in a manner broadly consistent with the equivalent regime under English law, and the Jersey courts also broadly follow the established English law principles around when it is permissible for shareholders to bring claims on behalf of a company against its directors. The Jersey Companies Law also includes various offences which may be committed by directors of a Jersey company in connection with certain specified actions, such as improperly making a solvency statement, and various creditor protections (which are discussed further below), and imposes additional obligations on directors where a company issues a prospectus.

Directors and certain other officers of a body corporate (including a Jersey company) may be liable under Jersey law for statutory offences committed by that body corporate.

## What is the minimum number of directors and shareholders required to set up a company? Are there any requirements that a director must be a natural person?

A Jersey private company must have at least one director and one subscriber (shareholder) on incorporation. A Jersey public company must have at least two directors and two subscribers on incorporation.

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A director of a Jersey company need not be a natural person, but any body corporate that is a director of a Jersey company must:

- be permitted to act as a director by registration under the Financial Services (Jersey) Law 1998; and
- itself have no director that is a body corporate.

Further, incorporated limited partnerships, separate limited partnerships and limited liability partnerships established under Jersey law are prohibited from acting as a director of a Jersey company.

### What are the requirements on how shares are offered?

The Jersey Companies Law does not include any statutory pre-emption rights on the issue of shares. Consequentially prima facie the issue of shares by a Jersey company falls within the power of its directors, although it is common for public listed companies and companies held by multiple shareholders that the company's articles of association (or in the case of a private company, a shareholder agreement) include pre-emption rights or some other restrictions on such power.

An invitation to the public to become a member of a Jersey company or to acquire or apply for any of its securities is treated for the purposes of the Jersey Companies Law as a prospectus, and (subject to certain limited exceptions, including an exception for employee share schemes) must be approved in advance by the Jersey Companies Registrar and filed on the public register. The CGPO prescribes the content of any such prospectus, and the Jersey Companies Registrar has the power to give derogations from such content requirements.

An invitation will be an 'offer to the public' unless it is addressed exclusively to a restricted circle of persons, and an invitation is treated as being addressed to a restricted circle of persons only where:

- it is addressed to an identifiable category of persons to whom it is directly communicated by the inviter or the inviter's agent;
- the members of that category are the only persons who may accept the offer and they are in possession of sufficient information to be able to make a reasonable evaluation of the invitation; and
- the aggregate number of persons anywhere in the world to whom the invitation is communicated does not exceed 50.

The Jersey Companies Law also includes anti-avoidance provisions to deal with a situation where shares are allotted or issued to fewer than 50 persons for onward sale to the 'public'.

Offers to the public in Jersey of shares, units and certain other securities of a non-Jersey body corporate may also require a prospectus to have been approved prior to its circulation in Jersey pursuant to COBO. COBO does not prescribe the content of any such prospectus, and the approval is given by

the JFSC rather than the Jersey Companies Registrar.

At the time of writing, no fee is chargeable in connection with obtaining such consents.

### What is the nature of the corporate governance regime in effect? What agencies or government bodies regulate corporate governance?

Jersey does not have a general corporate governance regime (although specific corporate governance requirements apply to locally regulated businesses). Rather, Jersey companies that operate outside of Jersey, and in particular Jersey companies that are listed on markets outside of Jersey, will be subject to the corporate governance requirements of those jurisdictions or markets, to the extent they extend to Jersey companies.

### When is a company subject to tax? What are the main taxes that may apply to companies?

A Jersey company is regarded as resident for tax in Jersey unless:

- (a) its business is centrally managed and controlled outside Jersey in a country or territory where the highest rate at which any body corporate may be charged to tax on any part of its income is 10% or higher; and
- (b) the company is resident for tax purposes in that country or territory.

A body corporate incorporated outside Jersey is regarded as resident for tax in Jersey if its business is managed and controlled in Jersey. Jersey permits dual tax residency for bodies corporate.

Income tax in Jersey is charged on bodies corporate at 0%, with the exception of:

- locally regulated financial services businesses, which are subject to income tax at 10%;
- local utilities businesses, which are subject to income tax at 20%; and
- income specifically derived from Jersey property rentals or Jersey property development, which is subject to income tax at 20%.

Jersey does not impose capital gains tax or equivalent.

A Jersey business may be required to account for goods and services tax in Jersey (currently 5%). A business that has Jersey employees is required to make social security contributions, and to make withholdings from salaries for employees' social security contributions and income tax payments. At the time of writing, an employer's social security contributions are 6.5% of an employee's income up to £4,094 per calendar month and 2% of any income between £4,094 per calendar month and £13,542 per calendar month.

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## What is the law on corporate insolvency?

A corporate insolvency in Jersey would generally take one of the following forms:

- a creditors' winding-up under the Jersey Companies Law; or
- a declaration of the company's property as being *en désastre* under the Bankruptcy (Désastre) (Jersey) Law 1990 ('Jersey Bankruptcy Law').

To commence a creditors' winding-up, it is necessary under Jersey law for the shareholders to pass a special resolution to commence a winding-up. The difference between a creditors' winding-up and a solvent winding-up is that, in the former, the directors have not made the necessary solvency statements required to wind up the company on a solvent basis (or the company has become insolvent during a solvent winding-up process). When a creditors' winding-up has been commenced, a liquidator must be appointed, who will realise assets and deal with liabilities and claims before the company is wound up.

The *désastre* regime under the Jersey Bankruptcy law is the process that is more similar to a voluntary or involuntary bankruptcy process in other jurisdictions. A creditor with a qualifying claim (and in certain circumstances the debtor) can apply to the court to have the assets of the company declared *en désastre*, at which point those assets vest in the Viscount (a Jersey court officer), who will realise the assets and deal with liabilities and claims before the company is dissolved.

There are instances where the Jersey courts have used a just and equitable winding-up process under the Jersey Companies Law to implement a form of corporate rescue procedure similar to an administration in the UK, but the circumstances in which such a remedy may be available are limited, and this is an evolving area of law.

Jersey also has two customary law insolvency procedures:

- *dégrévement*: where encumbrances are removed from real property owned by the debtor at the request of a petitioning or enforcing creditor; and
- *réalisation* (which applies to movable property): pursuant to which a debtor's assets are realised for the benefit of its creditors.

These processes are less often seen in an international context.

Finally, the Jersey Bankruptcy Law makes provision for cooperation by the Jersey courts with courts in certain foreign jurisdictions in an insolvency context (and the Jersey courts may cooperate with other foreign courts on a case-by-case basis, having regard to the principles of legal comity). It is also possible for a UK administrator to be appointed in relation to a Jersey company, which is achieved by the Jersey court (on an application having been made to it) requesting that a UK court makes such appointment.

The directors of a Jersey company in financial difficulty are subject to additional duties and potential liabilities and may be required to take steps to safeguard the interests of the company's creditors. When exercising fiduciary duties, the directors of a company that is, or is nearly, insolvent should have regard to the interests of creditors.

In addition, provisions of the Jersey Companies Law and the Jersey Bankruptcy Law are intended to provide protection to creditors, by possible liability of directors, where the company has entered into a creditors' winding-up or where its property has been declared *en désastre*. For example, the Jersey Companies Law and Jersey Bankruptcy Law each include provisions relating to the responsibility of directors for wrongful trading (i.e. in summary, continuing to trade when there was no reasonable prospect of the company avoiding a creditors winding-up or declaration of *désastre*) and fraudulent trading (i.e. in summary, carrying on business with the intent to defraud creditors). There are also provisions around, for example, the setting aside of transactions at an undervalue and transactions which constitute unlawful preferences given to a creditor, as well as certain potential offences which may be committed by directors in relation to a creditors' winding-up and/or a *désastre*.

## Have there been any recent proposals for reforms or regulatory changes that will impact company law?

The Jersey government is receptive to suggestions from industry around improvements to the Jersey Companies Law, and there are a number of possible amendments to the Jersey Companies Law in discussion. None of the current proposals are anticipated to impact materially on companies laws in Jersey, but will instead streamline certain provisions of existing laws. Both government and industry in Jersey are also considering whether the availability of any additional or alternative corporate structures for Jersey entities may be beneficial.

The Jersey competition regime as it applies to mergers and acquisitions is currently under review, and Jersey's data protection legislation is likely to be amended to deal with upcoming European Union changes.

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