

## **The Jersey Company**

### **Introduction**

Jersey company law is governed by the Companies (Jersey) Law 1991, as amended (the "1991 Law"). The 1991 Law makes provision for different types of company. These include the following:

- Private and public companies with shares that are expressed as having a par value.
- Private and public companies with shares that do not have a par value (A company cannot have both par value shares and no par value shares.)
- Private and public companies with guarantee members. The liability of the guarantee members is limited to the amounts they undertake to contribute on a winding up of the company.
- Private and public companies with unlimited members. On the winding up of the company, the liability of the unlimited members is unlimited.
- Private and public companies of limited life. These are companies which are to be wound up and dissolved upon (a) the bankruptcy, death, expulsion, insanity, resignation or retirement of any member of the company or (b) the happening of some other event which is not the expiration of a fixed period of time. These are known as limited life companies.

### **Cell companies**

The 1991 Law also makes provision for cell companies. The two types of cell company are the "incorporated cell company" and the other type is the "protected cell company". Mainly used in the context of investment funds and structured finance transactions the cells of an incorporated cell company are companies in their own right, whereas the cells of a protected cell company do not have their own separate legal personality. There are detailed provisions in the 1991 Law which provide that creditors may only have recourse to the assets which are attributable to the relevant cell. (*for further information see our separate brief on cell companies and their uses*)

### **Incorporating a Jersey company**

#### **Memorandum of association**

The ultra vires rule in its application to Jersey companies was abolished with effect from 30 March, 1992 and, accordingly, the capacity of a Jersey company is not limited by anything in its memorandum or articles of association or by any act of its members. A Jersey Company has the same contractual powers as a natural person.

The memorandum of association will state:

- the name of the company
- whether the company is a public or a private company
- whether the company is a par value company, a no par value company or a guarantee company
- the full name and address of each subscriber who is a natural person and the corporate name and address of the registered or principal office of each subscriber which is a body corporate
- whether the liability arising from any share is limited or unlimited; whether there are guarantor members; details of any authorised par value share capital or the maximum number of no par value shares; and details of the extent of liability of any guarantor member.

### **Directors**

A Jersey company requires a minimum of one director who need not be resident in Jersey. Directors meetings need not be held in Jersey although it is common for tax planning that this is desirable.

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## Secretary

A Jersey company must have a company secretary who need not be resident in Jersey. Where a company has a sole director, that director cannot also be the company secretary.

## Shareholders

A Jersey company may be incorporated with one or more subscribers.

## Articles of association

The 1991 Law provides for a standard table of articles which will be presumed to have been adopted except insofar as the articles registered specifically exclude or modify the standard table. The articles of association can be drafted to meet specific requirements.

## Accounts

Accounts are required unless otherwise stated in the articles and there is no filing requirement with the authorities.

## Control of borrowing consent

A Jersey company requires a regulatory consent from the Finance and Economics Committee of the States of Jersey pursuant to the Control of Borrowing (Jersey) Order, 1958, as amended. The application form requires information regarding the proposed activities of the company and the identity of the ultimate beneficial owner of the company.

If the ultimate beneficial owner is a public company, the registrar of companies requires sight of a copy of the latest annual report and accounts of such company.

## Application for incorporation

The memorandum of association, articles of association, statement of particulars on incorporation and control of borrowing consent application form are lodged at the Jersey Financial Services Commission, together with registration fees of, currently, £200. For a further fee of £200, the Jersey Financial Services Commission will expedite the application for incorporation and will deal with the same on a same day basis.

## Incorporation

The registrar of companies will process the application and, providing satisfactory information has been provided, will issue a certificate of incorporation of the company and control of borrowing consent permitting issuance of the authorised share capital. A certificate of incorporation constitutes conclusive evidence of incorporation.

### Further information

For further information on this brief and other services we can offer please contact;

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