

DISTINCTIONS BETWEEN PUBLIC AND PRIVATE COMPANIES IN JERSEY

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PREFACE

The purpose of this Memorandum is to distinguish between public and private companies in Jersey. It is designed as a starting-point for a more detailed and comprehensive discussion of the issues. Reference in this Memorandum is made to Jersey law only.

We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they may be addressed to any member of the Corporate team in Jersey, using the [contact information](#) provided at the end of this Guide.

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1. INTRODUCTION

Companies in Jersey may be incorporated as either private or public companies in accordance with the provisions of the Companies (Jersey) Law, 1991, as amended (the **Law**). The Law distinguishes between public and private companies.

2. WHEN IS A JERSEY COMPANY A PUBLIC COMPANY?

A Jersey company will be a public company if stated as such in the memorandum of association. In addition, a Jersey private company will be subject to the additional provisions of the Law applicable to a public company as though it were a public company if it has more than 30 members.

However, under the Law a company may be registered as a private company if it has no more than 30 members or if the Jersey Financial Services Commission (**JFSC**) is satisfied that by the nature of the company's intended activities its affairs may properly be regarded as the members' domestic concern.

3. DIFFERENCES BETWEEN PUBLIC AND PRIVATE COMPANIES

3.1 The Law sets out the following provisions:

3.2 Incorporation

Any two or more persons associated for a lawful purpose may apply for the formation of an incorporated public company, with or without limited liability, by signing and delivering to the registrar a memorandum of association that states that the company is to be a public company. In the case of a private company, any person or two or more persons may apply for the formation of a private company.

The name of a limited company shall end with the word "Limited" or the abbreviation "Ltd"; or with the words "avec responsabilité limitée" or the abbreviation "a.r.l".

The name of a public company that is a limited company may end with the words "public limited company" or the abbreviation "PLC" or "plc".

With the memorandum of association there shall be delivered to the Registrar of Companies in Jersey (the **Registrar**) a statement containing the intended address of the company's registered office on incorporation and any other published particulars; and the statement shall be signed by or on behalf of the subscribers of the memorandum. Where the company is a public company, the statement shall specify the director's full name, former names, business or residential address, nationality, occupation (if any) and date of birth with respect to each director.

3.3 Members

A public company must have at least two members whereas a private company can have just one member. Where a public company has less than two members for more than six consecutive months, and the member knows that it is carrying on business with only one member, the sole member is jointly and severally liable with the company for the debts of the company (Article 27 of the Law). However, this provision does not apply to a company whose issued shares are held by a nominee for a holding company or by the holding company.

3.4 Prospectus and Securities

If a private company circulates a prospectus relating to its own securities or it is a market traded company, the company shall be treated as though it were a public company.

Market traded is defined by Article 102(1) of the Law as a company whose transferable securities have been admitted to trading on a regulated market; or a company in respect of which transferable

securities have been admitted to trade on a regulated market, but does not include an exempt company (as defined in the Law).

3.5 **Directors**

A public company must have at least two directors.

A private company can have one director. In certain circumstances, the Law allows a company to be a director of a public or a private company.

3.6 **Company Secretary**

Article 82 of the Law imposes a duty on the directors of public companies to take all reasonable steps to secure that the secretary of the company is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company and who fulfils the requirements of Article 82(1) of the Law in relation to being suitably qualified to hold the position.

A private company with a sole director must appoint a different person to act as company secretary.

3.7 **Annual Return**

Every company, whether public or private (other than a company which is the subject of a creditors' winding-up or *désastre* declaration (bankruptcy)), shall, before the end of February each year following the year of incorporation, deliver an annual return to the Registrar. The annual return should contain the information set out in Article 71(1) of the Law. In addition, in the case of a public company or a subsidiary of a public company, the annual return should also include the particulars required by the Law in relation to the directors of the company as at 1st January of the year of the annual return. The Registrar shall not provide to any person a copy of a return made by a public company unless that person has delivered to the registrar a declaration in accordance with the provisions of Article 46 of the Law in respect of the return. There is no requirement in the Law to provide these particulars in relation to the directors of a private company.

3.8 **Annual General Meeting**

Article 87 of the Law provides every public company or "relevant private company" shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notice calling it. In the case of a public company, not more than 18 months, and in the case of a relevant private company, not more than 22 months shall elapse between the date of one annual general meeting and the date of the next. A public company or relevant private company may, with the consent of all the shareholders, dispense with the requirement to hold an annual general meeting.

A "relevant private company" is a private company which prior to 1st August 2014 was required by its articles of association to hold an annual general meeting and confirmed by special resolution of the company that such requirement should continue or has such a provision in its articles of association after 1st August 2014.

If a public company fails to hold an annual general meeting within 18 months of incorporation or within 18 months of the previous annual general meeting, it and every director of it in default is guilty of an offence.

3.9 **Accounts**

A company must keep accounting records which are sufficient to show and explain its transactions and are such as to disclose with reasonable accuracy, at any time, the financial position of the company and enable the directors to ensure that any accounts prepared comply with the requirements of Article 103 of the Law.

A company's accounting records must be kept at such place as the directors think fit and shall at all times be open to inspection by the company's officers and the secretary. If accounting records of a public company are kept at a place outside the Island, returns with respect to the business dealt with in such accounting records shall be sent to, and kept in, Jersey and open at all times to inspection by the company's officers and its secretary. The returns must be such as to disclose with reasonable accuracy the financial position of such business at intervals of not more than six months and to enable the directors to ensure that any accounts prepared by the company comply with the requirements of Article 104 the Law.

Accounting records which a company is required by Article 103 to keep must be preserved by it for ten years from the date on which they are made (Article 104(4)).

The directors of a company (public or private) must prepare accounts for a period of not more than 18 months beginning on the date of the company's incorporation or, if the company has previously prepared a profit and loss account, beginning at the end of the period covered by the most recent accounts (Article 105(1)).

Accounts must be prepared in accordance with generally accepted accounting principles which, in the case of a market traded company, are prescribed for the purposes of Article 105(2) and show a true and fair view of the profit or loss of the company for the period and the state of its affairs at the end of that period. The accounts must be approved by the directors and signed on their behalf by one of them (Article 105).

The accounts for a financial period of a public company must be prepared, examined and reported upon by an auditor and laid before a general meeting together with a copy of the auditor's report on them within seven months after the end of the financial period, unless the members of the company have agreed to dispense with the holding of an annual general meeting. Where a company has dispensed with the holding of an annual general meeting, a member of that company or of a private company, not later than 11 months after the end of the financial period covered by the accounts, may request by written notice that the such company lay the accounts or a copy of the auditor's report before a general meeting.

The directors of a holding company need not prepare separate accounts if consolidated accounts for the company are prepared, unless required by the members of the company.

A market traded company must not publish interim accounts, whether audited or not, unless such accounts have been prepared in accordance with generally accepted accounting principles for the purposes of Article 105(2)(a) of the Law. All other companies must not publish interim accounts unless they are prepared in accordance with general accepted accounting principles.

In respect of each financial period, the directors of a public company shall deliver to the Registrar within seven months after the end of the financial period to which they relate a copy of the accounts for the period signed on behalf of the directors by one of them together with a copy of the report thereon by the auditors (Article 108).

By written application to the JFSC, a company may request an extension to the period of time for delivering accounts to the Registrar and the JFSC, may by written notice to the company, extend such period if it is satisfied that a special reason exists.

If a company fails to comply with the provisions of the Law in relation to accounts as set out above, the company and, in the case of a public company, each officer of the company is guilty of an offence. In the case of a company in default, punishment will be by a fine and in the case of an officer of a public company, punishment will be a fine and/or a term of imprisonment not exceeding two years.

3.10 Auditors

Where a company is a public company; or the articles of association of the company so require; or a resolution of the company in general meeting so requires, the company shall appoint auditors who shall examine and report in accordance with the Law upon the accounts prepared.

A company which is required to appoint auditors shall at each annual general meeting appoint auditors to hold office from the conclusion of that meeting to the conclusion of the next annual general meeting.

If the company has dispensed with the requirement to hold annual general meetings, any auditor then in office shall continue to act and be taken to have been re-appointed for each succeeding financial period until the conclusion of the next annual general meeting or the company in general meeting resolves that the appointment of the auditor be brought to an end.

If a company has dispensed with the requirement to hold an annual general meeting and becomes bound to appoint an auditor and there is no auditor in office, then the directors must appoint an auditor to continue to act until the conclusion of the next annual general meeting.

3.11 Liquidator

A company may, on or after the commencement of its summary winding-up, by special resolution, appoint a person to be liquidator for the purposes of the winding-up.

On completion of a creditors' winding-up, the liquidator should make up an account of the winding-up to be laid at a meeting of the creditors of the company. Within seven days after the date of the last meeting, the liquidator shall make a return to the Registrar of the holding of the meetings and of their dates and in the case of a public company a copy of the account.

The liquidator of a public company must be qualified in accordance with Part 5 of the Companies (General Provisions) (Jersey) Order 2002.

The term "officer" is defined in the Law as being, in relation to a body corporate, a director or a liquidator.

The provisions in Article 83 the Law relating to the register of directors apply to liquidators.

3.12 Registers

Every company shall keep at its registered office a register of its directors and secretary containing, *inter alia*, each of their names and addresses.

The register of directors and secretary shall during business hours be open to the inspection of the Registrar and of a member or director of the company without charge and, in the case of a public company or a company which is a subsidiary of a public company, of any other person on payment of such sum (if any), not exceeding the published maximum, as the company may require.

Every company shall also keep a register of its members and enter in it, *inter alia*, the names and addresses of its members together with, in respect of a company with shares, a statement of the shares held and the amount paid up on those shares.

A company shall give notice to the Registrar of the place in Jersey where the register of members is kept and of any change to that place.

The register of members shall be open during business hours to the inspection of a member of the company without charge and of any other person on payment of such sum (if any), not exceeding the prescribed maximum, as the company may require.

A person may require delivery of a copy of the register of members subject to, in the case of any company, the payment of such sum (if any), not exceeding the prescribed maximum, as the company may require and in the case of a public company, on submission to the company of a declaration made under oath in accordance with Article 46 of the Law and the company shall, within ten days after the receipt of the payment and (in the case of a public company) the declaration, cause the copy to be available at the place where the register is kept, for collection by that person during business hours.

A public company which transacts business in any country, territory or place outside Jersey may cause to be kept there an overseas branch register of (a) members who are resident in that country, territory or place; and (b) all or any of its other members.

Notice of the overseas branch register should be given to the Registrar in accordance with the provisions of the Law and a duplicate register should be kept at the place where the register of members is kept. The overseas branch register should be kept in the same manner as the register of members.

There are no provisions in the Law for a private company to have an overseas branch register.

3.13 Proxies

A member of a company entitled to attend and vote at a meeting of it is entitled to appoint another person (whether a member or not) as the member's proxy to attend and vote instead of the member; and in the case of a private company a proxy appointed to attend and vote instead of a member has also the same right as the member to speak at the meeting; but, unless the articles otherwise provide, a proxy is not entitled to vote except on a poll. There is no provision in the Law for the proxy of a member of a public company to speak at a meeting.

3.14 Service of Documents

A document may be served on a company in the manner set out in the Law at its registered office. In the case of an existing company if no office is registered it may be served by sending it by post; in the case of a public company, to any director or secretary of the company at the address entered in that register of directors and secretary; and, in any other case, by sending it to any person shown as a member of the company in the register of members or in the latest annual return delivered to the Registrar, under Article 71, at the person's address entered in that register or, as the case may be, in that return.

3.15 Additional Rights

Pursuant to Article 54(1) of the Law (registration of particulars of special rights), a public company, which admits a member or allots shares with rights which are not stated in its existing memorandum or articles, or which by a resolution or agreement of which a copy is required by Article 100 of the Law to be delivered to the Registrar confers the same rights on a member, must deliver to the Registrar a statement containing particulars of those rights within one month of the admission or allotment. However, the rule does not apply if the rights are in all respects uniform with the rights of existing members.

Likewise, where the rights of members of a public company are varied otherwise than by an amendment of the company's memorandum or articles or by a resolution or agreement subject to Article 100, the company shall within one month from the date on which the variation is made deliver to the Registrar a statement containing particulars of the variation.

These provisions only apply to a public company.

4. CHANGE OF STATUS

A public company which has not more than 30 members may become a private company by altering its memorandum to state that it is a private company. A public company with more than 30 members may apply to the JFSC for a direction by the JFSC that it is satisfied that by the nature of the company's intended activities its affairs may properly be regarded as the members' domestic concern. The public company may then become a private company by altering its memorandum to state that it is a private company. A private company shall be subject to the Law as though it were a public company if:

- (a) it enters the name of a person in its register of members so as to increase the number of its members beyond 30, and their number for the time being remains above 30;
- (b) it circulates a prospectus relating to its securities; or
- (c) it is a market traded company within the meaning of Part 16 of the Law.

For more specific advice on company law in Jersey, we invite you to contact:

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