



Corporate

Incorporating a Guernsey Company



Introduction

Guernsey is a popular jurisdiction in which to incorporate companies for use on a wide range of transactions, including investment funds, private equity, structured finance and securitisations. Guernsey companies are also capable of being listed on the Main Market and Alternative Investment Market of the London Stock Exchange as well as, among others, the New York Stock Exchange, Euronext, the Channel Islands Stock Exchange and the Hong Kong Stock Exchange.

This briefing note highlights the types of company available under Guernsey law, the main steps involved in incorporating a Guernsey company and typical issues to be addressed as part of the incorporation process.

The Companies (Guernsey) Law, 2008, as amended (the “CGL”) came into force on 1 July 2008. Further information on the effect of the CGL on company structures such as protected and incorporated cell companies, as well as on processes such as amalgamations and migrations can be found in our separate briefings on those subjects.

Types of Guernsey company

The CGL governs the incorporation of companies in Guernsey and it provides that a company may be formed as a non-cellular or a cell company. A cell company may either be a protected cell company (which can create cells, not having their own separate legal personality), or an incorporated cell company (which can create incorporated cells with their own separate legal personality). Cell companies require the consent of the Guernsey Financial Services Commission (the “GFSC”) prior to incorporation.

A company may incorporate with the liability of all or any of its members being:

- (a) limited by shares (i.e. limited to the amount, if any, unpaid on their shares);
- (b) limited by guarantee (i.e. limited to the amount which they undertake to contribute to the company if it is wound up whilst they are a member or within a year after they cease to be a member);
- (c) unlimited (i.e. unlimited whilst a member and for a year after they cease to be a member); or
- (d) mixed liability (i.e. with guarantee members and/or unlimited members and/or shareholders).

Guernsey does not have the same distinction between public and private companies as exists in English law.

A company may issue shares of nominal or no par value. The directors of a company with one share class may issue shares except to the extent they are prohibited by the company’s memorandum or articles or by a resolution of the shareholders. The directors of a company with more than one share class must be authorised to issue shares either by the company’s memorandum or articles, or by a resolution of the shareholders. For maximum flexibility under the CGL we advise all companies to incorporate with an unlimited number of shares of no par value. However a particular limit on share capital may be stated if there is a commercial reason for doing so.

The CGL provides mechanisms whereby companies formed as one type of company can be converted into another type of company.

Main incorporation steps

To incorporate a company under the CGL, a corporate service provider (a “CSP”), being a person holding a full fiduciary licence under The Regulation of Fiduciaries etc. (Guernsey) Law, 2000, must make an application to the Registrar of Companies. This may be done online, and the CSP must confirm that all the requirements under the CGL in respect of the incorporation of the company have been complied with. The application must include the following:

- the memorandum of incorporation, containing the provisions required under the CGL;
- bespoke articles of incorporation, if required, otherwise the standard set of articles will apply;
- a statement of the proposed first directors;
- a statement of the proposed address of the company’s registered office;
- the name and address of the founder member (there need only be one);
- in the case of a company with a share capital, a statement of the initial share capital;
- in the case of a company with a founder member who is a guarantee member, a statement of initial guarantee;
- in the case of a cell company, a copy of the requisite consent from the GFSC; and
- a cheque or other payment to cover the prescribed fees, which are currently £100 for a 24 hour incorporation or £350 for a 2 hour incorporation. A 15 minute service for a fee of £750 is also available, subject to certain restrictions.

In addition, the application must specify the proposed resident agent of the company. A resident agent must be either: (a) a

natural person, resident in Guernsey, who is a director of the company; or (b) a CSP. It is the responsibility of the resident agent to ascertain and keep a record of the ultimate beneficiaries of the company or, if applicable, each class of beneficiary. In determining the beneficial owners the resident agent need only concern itself with those beneficial owners who have an interest of 10% or more in the company. All Guernsey companies are required to have a resident agent, except for:

- (a) companies which are listed on a recognised stock exchange and their subsidiaries;
- (b) open-ended and closed-ended investment companies and their subsidiaries;
- (c) a company with a Protection of Investors Licence, a Banking Licence, an Insurance Licence, an Insurance Managers Licence or a Fiduciary Licence; and
- (d) States of Guernsey trading companies.

Other issues

A. Anti-money laundering and know your client

Service providers in Guernsey, including law firms, require certain information from clients to satisfy applicable anti-money laundering and KYC rules.

B. Administrators

A Guernsey company without its own local operating presence will need certain ongoing administration services provided by a local service provider. These may include the provision of a simple registered office service (including holding the statutory records) or a fuller service to include the

provision of professional local directors to sit on the board. There are various professional administration firms in Guernsey which can provide such services.

C. Tax status

A Guernsey incorporated company is currently subject to Guernsey income tax at a flat 0% rate in respect of its income, unless it is involved in banking activities; is a resident utility company; or qualifies and applies for tax exempt status.

A Guernsey resident company engaged in specific banking activities is currently subject to Guernsey income tax at a 10% rate. A utility company, which provides local utility services, is currently subject to Guernsey income tax at a 20% rate.

Please note that this briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such.

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Contact us

For further information or professional advice please contact our lawyers below.

Carey House PO Box 98 Les Banques
St Peter Port Guernsey GY1 4BZ
Tel: +44 (0)1481 727272 Fax: +44 (0)1481 711052



Graham Hall, Partner
graham.hall@careyolsen.com
Telephone: +44 (0)1481 732028



Ben Morgan, Partner
ben.morgan@careyolsen.com
Telephone: +44 (0)1481 741557



Andrew Boyce, Partner
andrew.boyce@careyolsen.com
Telephone: +44 (0)1481 732078



Tom Carey, Partner
tom.carey@careyolsen.com
Telephone: +44 (0)1481 741559



Christopher Anderson, Partner
christopher.anderson@careyolsen.com
Telephone: +44 (0)1481 741537



Fiona Fleming, Partner
fiona.fleming@careyolsen.com
Telephone: +44 (0)207 614 5619
