

Incorporating a Guernsey company

Service area / [Corporate](#)

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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 AIM Market of the London Stock Exchange as well as, among others, the New York Stock Exchange, Euronext, the Channel Islands Securities 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 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:

- limited by shares (i.e. limited to the amount, if any, unpaid on their shares);
- 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);
- unlimited (i.e. unlimited whilst a member and for a year after they cease to be a member); or
- 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 may to the extent authorised by the company's memorandum or articles or by resolution of the company issue shares except to the extent they are prohibited by the company's memorandum or articles or by a resolution of the company. 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.

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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, as amended, 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:

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

Other issues

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.

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.

Tax status

A Guernsey incorporated company is currently subject to Guernsey income tax at a flat 0% rate in respect of its taxable income. A 10% tax rate is applied to a company's income which is derived from a banking business, insurance business, custody services business, certain licensed fund administration businesses and certain licensed fiduciaries. A 20% rate applies to income of a resident utility company; income from the ownership of Guernsey land and buildings, income from certain Guernsey retail businesses (where taxable profits are above £500,00) and income from the importation and/or supply of hydrocarbon oil and gas.

Alternatively, certain Guernsey companies may qualify and apply for tax exempt status.

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