



## Company information – Administrative overview

### Guernsey

The following information provides an overview of the aspects of a Guernsey non-cellular company that may be useful when considering the routine administration duties of the company and of its members, directors, officers and resident agent.

This information is not exhaustive and reference should be made to The Companies (Guernsey) Law, 2008, and to any amendments, Regulations, guidelines and other related laws, for specific details.

### Incorporation

- ◆ Time required to incorporate a company
  - Normal service: within 24 hours
  - Rapid incorporation service: within 2 hours (available at additional cost)
  - Special incorporation service: within 15 minutes (available at additional cost)
- ◆ Memorandum of Incorporation
  - Available in standard form with unrestricted objects
  - Must include name, address and signature of founder(s)
- ◆ Articles of Incorporation (available in standard form)
- ◆ A Declaration of Compliance is required (normally completed by Cogent)
- ◆ Founding members and directors
  - Minimum of 1 Founder member (first member)
  - Minimum of 1 director (Guernsey resident directors are not required)
- ◆ Cell companies require the consent of the Guernsey Financial Services Commission

### Shares and shareholders

- ◆ Minimum of 1 shareholder/member required (Guernsey resident shareholders are not required)
- ◆ The liability of member of a limited liability company is limited to amount unpaid on issued shares
- ◆ Shares may be issued in any currency
- ◆ No par value shares are permitted
- ◆ Bearer shares are not permitted
- ◆ Share certificates
  - Do not need to be issued, but the directors may elect to issue certificates
  - Issued certificates should bear the common signature, but no need to affix the common seal
- ◆ Action required of the directors on issuing shares
  - Decide consideration and terms
  - Resolve that consideration and terms are fair and reasonable
  - Approve and sign a 'Certificate'
- ◆ The 'Certificate' should contain
  - Details of the consideration and terms
  - Description of the consideration
  - Statement that the consideration and terms are fair and reasonable

### Directors and officers

- ◆ Minimum of 1 director required (Guernsey resident directors are not required)
- ◆ Corporate directors are permitted
- ◆ Directors may be appointed by Members (ordinary resolution) or by the directors to fill a vacancy
- ◆ Members voting on the appointment of directors must appoint each director individually
- ◆ Before being appointed, every director must consent in writing to act and confirm there is nothing that makes the director appointment ineligible (Cogent can provide a sample letter)
- ◆ It is not necessary to appoint a secretary or other officers
- ◆ If a secretary is appointed, a director may also be secretary even if there is a single director
- ◆ The duties of the secretary (if appointed, otherwise the directors)
  - Maintain registers
  - File and serve documents and notices with Registrar and others
  - Keep records of minutes, resolutions, etc
  - Keep Memorandum and Articles of Incorporation up to date
  - Ensure directors are aware of their obligations



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### Resident agent

- ♦ A resident agent (Guernsey Corporate Service Provider), or resident director is required
- ♦ A record/register of resident agents, with details of name and address, is required
- ♦ Changes in resident agent to be notified to Registrar within 14 days

### Beneficial ownership

- ♦ A Record of (ultimate) Beneficial Ownership must be retained by the resident agent
- ♦ The details required for an individual
  - Name (and any former names)
  - Usual residential address
  - Nationality
  - Date of birth
- ♦ Details required for a beneficial owner that is not an individual
  - Name (and any former names)
  - Address (registered office)
  - Legal form of entity
  - Law governing the entity
  - Register, if any, in which entity is entered
  - Registration number

### Seal and common signature

- ♦ A company is not required to have a common seal, but the directors may elect to have one
- ♦ The common seal may only be used
  - Pursuant to a resolution of the directors
  - With the common signature of the company
- ♦ The common signature comprises the company name and signature of a single director or officer

### Correspondence, communications, contracts, etc

- ♦ The company name, registration number and registered office address must appear on all correspondence, invoices, orders, negotiable instruments, etc.  
The details should also appear on any website maintained by the company and on any documents produced in electronic form including emails  
Failure to include the information could result in the person signing the document being personally liable for the amount in question

### Meetings, minutes and resolutions

- ♦ An AGM of shareholders is not required if there is waiver resolution by the members
- ♦ There is no restriction on where meetings of the members or the directors may be held
- ♦ The original or a copy of the Minute Book must be held in Guernsey
- ♦ Requirements for different types of members' resolution
  - Ordinary resolution - Simple majority of members
  - Special resolution - Majority of not less than 75% of members (Copy to Registrar)
  - Waiver resolution - Majority of not less than 90% of members (Copy to Registrar)
  - Unanimous resolution - Agreement by every member (Copy to Registrar)
- ♦ Written resolutions (as opposed to minutes)
  - Acceptable, except when removing an auditor
  - Must state the date by which the resolution must be passed, to avoid lapsing
- ♦ Notice of a members meeting must be sent to all directors and members, and provide:
  - 10 days notice for a general meeting and 28 days if special notice required
  - Date, time, place of meeting and details of proposed resolutions
  - Details of members right to appoint proxy
- ♦ The required quorum for a meeting is
  - Directors meeting - 2 or as directors decide (1 if only a single director)
  - Members meeting - 2 with a minimum of 5% of shares (1 if only one member) ①
- ♦ The nature, extent and monetary value of a transaction needs to be disclosed where a director has an interest in the transaction
- ♦ If an annual general meeting is held, there should be 1 meeting per calendar year, with the first within 15 months of incorporation and no more than 15 months between AGMs
- ♦ If an annual general meeting is waived, the waiver may be for an indefinite period, but can be rescinded at the request of members holding at least 10% of shares

① A minimum of the required majority is needed for resolutions other than ordinary resolutions

## Registers and records

- ◆ **Members register**
- ◆ The original or a copy of the register must be held at the registered office and be available for inspection
- ◆ The register should contain the following information for each Member
  - Name
  - Address
  - Date person became a member
  - Date person ceased to be a member
  - Number of shares held
  - Share numbers (if used)
  - Share class
  - Amount paid up on each share
  - If not paid up in cash, details of how paid up
- ◆ **Directors register**
- ◆ The original or a copy of the register must be held at the registered office and be available for inspection
- ◆ Register must record for an individual
  - Name (and any former names)
  - Address (residential address or service address) ②
  - Nationality
  - Business occupation
  - Date of birth
- ◆ Register must record for a director that is not an individual
  - Name (and any former names)
  - Address (registered office)
  - Legal form of entity
  - Law governing the entity
  - Register, if any, in which entity is entered
  - Registration number
- ◆ Changes in directors or an entry in Directors register to be notified to Registrar within 14 days ③
- ② If the register contains a service address, the company must retain separately the usual residential address and the address must be provided to the Registrar
- ③ Notification should be accompanied by a statement of the details contained in the Directors register and a copy of the director's consent and confirmation letter
- ◆ **Secretaries register**
- ◆ The original or a copy of the register must be held at the registered office and be available for inspection
- ◆ Register must record for an individual
  - Name (and any former names)
  - Address (service address)
- ◆ Register must record for a secretary that is not an individual
  - Name (and any former names)
  - Address (registered office)
  - Legal form of entity
  - Law governing the entity
  - Register, if any, in which entity is entered
  - Registration number
- ◆ **Annual Validation register**
- ◆ A company must retain a copy of every Validation report submitted
- ◆ **Record of usual residential addresses**
- ◆ Details for all directors to be retained by resident agent

## Accounts and audit

- ◆ Annual accounts need to be prepared
- ◆ Accounting records need to be kept in Guernsey ④
- ◆ The annual accounts should contain the following information:
  - Profit and Loss account
  - Balance Sheet
  - Statement they give a true and fair view
  - Statement they are prepared with generally accepted accounting principles
  - Disclose of accounting principles adopted
  - Approved by the directors and signed by at least 1 director
  - Directors must prepare an accompanying or separate report

### Accounts and audit, continued

- ♦ The Directors Report should contain:
  - Details of the principal activities of the company
  - Statement that the accounts are exempt from audit and have not been audited, or
  - If the accounts have been audited, additional disclosures are required
- ♦ Annual accounts do not need to be filed with the Registrar
- ♦ The Directors Report should be
  - Sent to every member within 12 months of year end
  - Tabled at AGM (if an AGM is held)
- ♦ Audit
  - Many companies will be able to waive the need for an audit
  - Members may waive audit by waiver resolution (with copy to Registrar)
  - All companies, except 'Large Companies' may be exempt from audit
- ♦ A 'Large Company' is a company that satisfies 2 of the following 3 provisions
  1. Annual turnover > £6.5m
  2. Net Balance Sheet > £3.26m
  3. Average number of employees is 50 or greater
- ♦ The following are not 'Large Companies' regardless of the preceding tests
  - 'Dormant' companies
  - 'Asset holding' companies
  - Companies with fewer than 10 members
- ♦ Members holding >10% of shares may demand an audit
- ④ the records in Guernsey should disclose financial position at not more than 6 month intervals

### Dividends and Solvency test

- ♦ On declaring a dividend the directors must approve and sign a 'Certificate':
- ♦ The 'Certificate' should contain:
  - Confirmation that the company satisfies the Solvency test
  - Details of how the directors can make such a confirmation
- ♦ The Solvency test requires:
  - The company is able to pay its debts as they become due ⑤
  - The value of the company's assets to be greater than value of its liabilities ⑤
- ⑤ By reference to the latest accounts and information available

### Registered Office

- ♦ A physical registered office is required in Guernsey
- ♦ The documents and records that need to be maintained at the registered office are:
  - Display the Company name ⑥
  - Copies of the Memorandum and Articles of Incorporation
  - Original or copy of the Members register
  - Original or copy of the Directors register
  - Original or copy of the Secretaries register (if maintained)
  - Original or copy of the Minute Book ⑦
  - Copies of the Annual Validation reports/annual returns
  - Accounting records (see Accounts and audit above) ⑦
- ⑥ The name should also be displayed at any place where company carries on business
- ⑦ At the registered office or at another place in Guernsey approved by the directors

### Annual Validation

- ♦ An Annual Validation return needs to be submitted by 31 January
- ♦ The Annual Validation should contain the following information current at 31 December:
  - Registered office address
  - Details of directors as contained in Directors register
  - Confirmation that the company and Registrar have the current usual residential address of all directors
  - Details of the resident agent
  - Business category data (Cogent can provide details)
  - Confirmation of whether the company is exempt from audit
  - Confirmation that the Members register is up to date
  - Number of issued shares and amounts paid-up or unpaid
  - Aggregate value of the shares
  - Distinction between shares issued for cash and those for other consideration
  - Shares redeemed during the year
  - Details of any treasury shares held
  - Declaration of compliance

**Annual Validation, continued**

- ♦ A Declaration of compliance is a declaration, signed by a director or the secretary, confirming the requirements of the Law have been fulfilled
- ♦ Annual Validation fee is due by 31 January
- ♦ There is a penalty for late payment of £5 per day

**Guernsey Registry documents**

- ♦ The following documents can be obtained from the Registry:
  - Certificate of Good Standing
  - Certificate of Incorporation
  - Company Profile (equivalent to a Certificate of Incumbency)
  - Copies of various other documents
- ♦ Documents available from the Registry may be in Certified or Electronic form with Certified documents generally attracting a higher charge

**General**

- ♦ Records normally need to be retained for 6 years
- ♦ Is Guernsey tax payable by the company? Only on distributions to Guernsey resident owners
- ♦ Are any tax returns submitted? Only by Guernsey resident owners
- ♦ Are there any double tax treaties? UK and Jersey with limited application
- ♦ The company is not subject to any exchange controls

The Companies (Guernsey) Law, 2008 came into effect on 1 July 2008 and it consolidated much of the then existing company legislation and made a number of improvements; nevertheless, certain sections of the Law were made effective subject to transitional provisions. The effect of the transitional arrangements means that for Guernsey companies in existence prior to 1 July 2008 a number of the new sections of the Law became effective on 1 January 2009 while others will not become effective until 1 January 2010 and for certain actions already commenced on 1 July 2008 the former law(s) may still apply.

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