

• COMPANY LAW IN THE CHANNEL ISLANDS: A COMPARATIVE NOTE

	GUERNSEY	JERSEY
GENERAL		
Basis of legal system	Common Law	
Jurisdiction	Both the Bailiwick of Guernsey and Bailiwick of Jersey are British Crown Dependencies and do not form part of England, the UK or the EU. Each Bailiwick is self-governing and responsible for its own laws (subject to approval, in certain circumstances, by the Privy Council in London).	
Principal law	The Companies (Guernsey) Law, 2008	Companies (Jersey) Law 1991
Company types	Limited by shares Limited by guarantee Mixed liability Unlimited liability Protected cell company (PCC) Incorporated cell company (ICC)	Limited by shares (public / private, par value / no par value) Limited by guarantee Unlimited liability Limited life companies PCC ICC
Companies registry	Guernsey Registry	Companies Registry, Jersey Financial Services Commission (JFSC)
INCORPORATION AND ANNUAL FILINGS		
Timing and cost	Standard (24 hours): £100 Rapid (2 hours): £350 Special (15 minutes): £750 Incorporated cell registration (24 hours): £100	Standard (1 - 2 days): £200 Fast (4 hours): £400 Cell registration / recognition (1 - 2 days): No fee
Government regulatory consents	Control of Borrowing consent under limited circumstances	Control of Borrowing consent before issuance of shares on incorporation and, in certain circumstances, for any transfer and further issuance of shares
Constitutional documents	Memorandum and articles of incorporation	Memorandum and articles of association
Permitted objects	Unrestricted, unless otherwise provided by law or its memorandum	
Minimum shareholders	One	One (private) or Two (public)
Annual filing (cost)	Annual validation (Non-regulated: £250, Financial product companies: £500, PCC / ICC: £750+£10 per PC / £100 per IC) NB: No requirement to disclose members	Annual return (£150 + £150 per cell of PCC/ICC) NB: Must disclose details of members holding > 1% of shares
DIRECTORS, SECRETARIES, AUDITORS AND REGISTERED OFFICE		
Minimum directors	One	One (private) or Two (public)
Corporate directors	Permitted	Permitted, subject to certain safeguards

	GUERNSEY	JERSEY
DIRECTORS, SECRETARIES, AUDITORS AND REGISTERED OFFICE (continued)		
Powers and liabilities of directors	Business and affairs of the company must be managed by, or under the direction or supervision of, the board. Directors owe common law duties. If breached, the directors may be personally liable.	The articles will customarily vest the management of the company in the board. Directors owe common law and statutory duties. Statutory duties include a duty to (i) act honestly and in good faith with a view to the best interests of the company and (ii) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. If breached, the directors may be personally liable.
Director indemnities	Permitted except in connection with any negligence, default, breach of duty or breach of trust (although insurance may be purchased)	Permitted in certain limited circumstances (although insurance may be purchased)
Company secretary	Not required (if not appointed, directors responsible)	Every company must have a company secretary (may be a director, but not a sole director). Secretary of a public company must satisfy certain requirements set out in the law.
Auditors	Requirement may be waived by waiver resolution, except for a large company (i.e. satisfies at least two of: (i) annual net turnover \geq £6.5m (ii) net balance sheet \geq £3.26m (iii) average no. employees \geq 50, unless it is dormant, asset holding or has 10 or fewer members)	Must be appointed if (i) it is a public company (ii) its articles so provide or (iii) a resolution in general meeting so requires
Registered office	Must be located in Guernsey	Must be located in Jersey
Residency requirements	There are no residency requirements for shareholders, directors or company secretaries (with some exceptions)	
SHARES		
Share capital	<p>Authorised share capital: Companies incorporated on or after 1 July 2008 do not require an authorised share capital. Companies incorporated prior to that date have until 1 July 2012 to abolish their authorised share capital. Until such date, any increase in share capital will continue to be subject to ordinary resolutions.</p> <p>Authority to issue shares: Directors must have authority (lasting up to a maximum of 5 years) to issue shares in the case of companies with more than one class of share capital. Companies incorporated before 1 July 2008 are not subject to the authorisation regime until 1 July 2012.</p> <p>Consideration for issue of shares: There are detailed provisions governing the determination of the value of the consideration as being fair and reasonable to the company and all existing members.</p> <p>Pre-emption rights: There are no statutory pre-emption rights on issue or transfer of shares.</p>	<p>Authorised share capital: A company's authorised share capital must be stated in its memorandum of association. Any increase in authorised share capital requires a special resolution amending the memorandum of association.</p> <p>Authority to issue shares: The articles of a company will invariably authorise the directors to issue shares up to the authorised share capital.</p> <p>Consideration for issue of shares: There are no provisions governing the determination of the value of the consideration, but the directors do have corporate benefit issues to satisfy.</p> <p>Pre-emption rights: There are no statutory pre-emption rights on issue or transfer of shares.</p>

	GUERNSEY	JERSEY
SHARES (continued)		
Beneficial ownership	Every company (with some exceptions) must have a Resident Agent. It is the agent's duty to take reasonable steps to ascertain the identity of beneficial owners and to maintain a register of beneficial owners if different from the legal owners. Certain government bodies have the right to request this information.	Generally companies must inform the JFSC of the identity of beneficial owners of shares on incorporation and of any subsequent changes
Treasury shares	Permitted	
Purchase of own shares	<p>On market: authority in articles + ordinary resolution</p> <p>Off market: authority in articles + purchase contract approved by special resolution</p>	<p>On market: authority in articles + solvency statement + special resolutions</p> <p>Off market: authority in articles + solvency statement + special resolution + purchase contract approved by ordinary resolution</p>
Financial assistance	Permitted: deemed to be a distribution (see below)	Permitted: may be deemed to be a distribution
MEETINGS AND RESOLUTIONS		
Types of resolution	Ordinary (>50%) Special (≥75%) Waiver (≥90%) Unanimous (100%)	Ordinary (>50%) Special (≥2/3, unless the articles provide for a greater majority)
Written resolutions	<p>Any type of resolution may be passed by Written Resolution once the requisite majority of members (dependent on type of resolution proposed) have consented.</p> <p>Members holding ≥ 5% have a right to demand circulation of a Written Resolution (and written statement up to 1,000 words).</p>	<p>Written Resolutions will require 100% consent regardless of type of resolution.</p> <p>Members do not have a right to demand circulation of a Written Resolution.</p>
Annual general meeting	May be waived (for a defined period or indefinitely) by waiver resolution (may be rescinded by members holding ≥10% shares)	May be waived by agreement in writing of all members for so long as all members continue to agree (including any new members)
Extraordinary general meeting	May be requisitioned by members holding ≥ 10% voting rights	
ACCESS TO INFORMATION		
Books and records (persons with right of access)	<ul style="list-style-type: none"> • memorandum and articles of incorporation (director, member or public) • registers of directors and secretaries (if applicable) (director, member or public) • register of members (director, member or public) • minute book of board meetings (director) • minute book of general meetings (director or member) • accounting records (director) • accounts, directors' report and auditor's report (director or member) <p>NB: certain rights of access above are subject to payment of a fee</p>	<ul style="list-style-type: none"> • memorandum and articles of association (director, member or public) • registers of directors and secretaries (private company: director or member; public company: director, member or public) • register of members (director, member or public) • minute book of board meetings (director) • minute book of general meetings (director or member) • accounting records (director) • accounts and auditor's report (private company: director or member; public company: director, member or public) <p>NB: certain rights of access above are subject to payment of a fee</p>

	GUERNSEY	JERSEY
REORGANISATION		
Amalgamations / Mergers	<p>Short form (holding company-subsiary): board approval</p> <p>Long form: amalgamation proposal + special resolution</p> <p>All companies must be of the same type (PCC, ICC, IC, non-cellular)</p> <p>A Guernsey company may amalgamate with an overseas company</p>	<p>Short form (holding company-subsiary or inter-subsiary):special resolution</p> <p>Long form: merger agreement + special resolution</p> <p>At least one body must be a non-cellular company with no unlimited or guarantee members</p> <p>A Jersey company may amalgamate with an overseas company or other body</p>
Conversions between company types	Yes	
Migrations / Continuance	Yes	
Schemes of arrangement	Yes, on approval of $\geq 75\%$ of shareholders or creditors (as applicable)	
Takeovers	Right of purchase / compulsory purchase if offeror acquires $\geq 90\%$ of shares (or class of shares)	
Takeover Panel	The City Code on Takeovers and Mergers applies to publicly listed companies (does not apply to open-ended investment companies)	
DISTRIBUTIONS AND TERMINATION		
Distributions and dividends	<p>Distributions may be declared provided the directors are satisfied the company will, immediately after, satisfy the "solvency test", meaning: (i) it is able to pay its debts as they become due (ii) its assets are greater than its liabilities and (iii) if the company is a regulated entity, any requirements imposed by the Guernsey Financial Services Commission as to maintenance of its solvency margin are met.</p> <p>Dividends are a form of distribution. No requirement for dividends to be paid out of "profits available for the purpose".</p>	<p>Distributions may be declared provided the directors authorise the distribution by signing a "solvency statement" confirming that, in their opinion, the company will (i) immediately after the distribution, be able to pay its liabilities as they fall due and (ii) having had regard to various criteria, carry on business and discharge its liabilities for a further 12 months.</p> <p>Dividends are a form of distribution. No requirement for dividends to be paid out of "profits available for the purpose".</p>
Winding up	<p>Voluntary: Members approve winding up (special resolution) Duration expires Event in articles requires dissolution</p> <p>By Court: Members approve winding up by court (special resolution) Court of the opinion that it is just and equitable Unable to pay debts Not conducted business for 1 year No members Failure to hold AGM (where required) Failure to send members accounts or reports</p> <p>Other customary law methods</p>	<p>Voluntary: Members approve winding up (special resolution) Duration expires Event in articles requires dissolution</p> <p>By Court: Court of the opinion that it is just and equitable Court of the opinion that it is in public interest Declared en désastre</p> <p>Other customary law methods</p>

	GUERNSEY	JERSEY
DISTRIBUTIONS AND TERMINATION (continued)		
Administration	<p>Court may appoint an administrator where a company does not satisfy (or is likely to become unable to satisfy) the solvency test and such appointment may achieve (i) the survival of the company, and the whole or any part of its undertaking, as a going concern or (ii) a more advantageous realisation of assets than would be effected on a winding up</p> <p>Application for an administration order may be made by the company, the directors, a member or a creditor (among others)</p>	Not recognised under Jersey company law, but court can permit a liquidator to carry out the function of an administrator in a just and equitable winding up
Receivership	<p>Court may appoint a receiver (only in respect of a cell of a PCC) where an administration order would not be appropriate and such appointment may achieve (i) the orderly winding up of the cell and (ii) the distribution of its assets to those entitled to have recourse similar in effect to a winding up.</p>	Not recognised under Jersey company law, but court can permit a liquidator to carry out the function of a receiver in a just and equitable winding up
Strike off	Voluntary or by Registrar of Companies	By Registrar of Companies
Restoration / Reinstatement	Application must be made to the court within 10 years following strike off. Assets vested bona vacantia may be returned to the company if restored within 6 years (subject to discretion of the court).	Application must be made to the court within 10 years following dissolution.
TAXATION		
Tax Rate	All companies are taxed at zero percent (with limited exceptions). Investment funds may continue to apply for exemption from tax on an annual basis (Fee: £600).	All companies are taxed at zero percent (with limited exceptions)
Value Added Tax	None	Goods and services tax (5%) (not payable where services are provided to Jersey non-residents)

FOR MORE INFORMATION,
PLEASE CONTACT:



IAN KIRK
PARTNER
t: +44 (0)1481 734247
e: ian.kirk@collascrill.com



PAUL WILSON
PARTNER
t: +44 (0)1534 601752
e: paul.wilson@collascrill.com

Collas Crill **Guernsey**

Glategny Court, PO Box 140,
Glategny Esplanade, St Peter Port,
Guernsey, GY1 4EW
t: +44 (0) 1481 723191
f: +44 (0) 1481 711880
e: guernsey@collascrill.com
w: www.collascrill.com

Collas Crill **Jersey**

40 Don Street,
St Helier,
Jersey, JE1 4XD
t: +44 (0) 1534 601700
f: +44 (0) 1534 601701
e: jersey@collascrill.com
w: www.collascrill.com