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Is there a requirement to file a Shareholders' Agreement under Jersey law?

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A question we are regularly asked by clients is whether a shareholders' agreement (**Shareholders' Agreement**) should be filed with the Jersey Companies Registry (the **Registry**).

Until relatively recently, the circumstances in which it is necessary to file a Shareholders' Agreement in Jersey has indeed been the subject of much debate amongst local practitioners.

However, thankfully there is now a broad consensus on this matter, with the prevailing view being that a Shareholders' Agreement in Jersey would only need to be filed with the Registry in extremely limited circumstances.

This view has been reinforced by a consultation (the **Consultation**) which was launched in October 2024 in relation to proposed changes to the Companies (Jersey) Law 1991 (the **Law**) and which is examined in more detail below.

Shareholders' Agreement – current Jersey position under the Law

A company's constitutional documents are filed with the Registry and are publicly available in order to ensure that the shareholders who are party to the statutory contract (namely the articles of association) (the **Articles**) have access to them, and to also enable third parties (for example creditors), to view the company's constitution and understand what the company can or cannot do and how it must reach decisions.

Under article 100 of the Law there is a requirement to file with the Registry a copy of all *'resolutions or agreements which have been agreed to by all the members of a company but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions'*.

Therefore, there is an argument that if there is a Shareholders' Agreement to which all the shareholders of a company are party and the effect of the Shareholders' Agreement is to vary the Articles, then because the Articles can only be varied by a special resolution, the Shareholders' Agreement would need to be filed with the Registry.

Of course, filing a Shareholders' Agreement in Jersey with the Registry is likely to be highly unpopular with the shareholders as the Shareholders' Agreement is usually intended to be a private document which contains commercially sensitive terms. Therefore, certain practical steps should be taken to avoid such filing requirements.

Steps to take to help avoid a filing requirement with the Jersey Registry

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1. The Shareholders' Agreement should include a standard provision to the effect that, to the extent the Shareholders' Agreement and the company's Articles conflict, the provisions of the Shareholders' Agreement shall apply only between the shareholders (and shall not bind the company) and the shareholders will amend the Articles so that they accord with the provisions of the Shareholders' Agreement. Such a provision provides evidence that the shareholders did not intend to amend the Articles by entering into the Shareholders' Agreement and further provides evidence that it was not the parties' intention that the Shareholders' Agreement was required to be passed as a special resolution in order for it to be effective for its purpose.
2. Although it is not necessary for the provisions of the two documents to be identical, the Articles should be checked against the Shareholders' Agreement to ensure that there is no direct conflict. For example, if the Articles set a maximum number of directors but the Shareholders' Agreement specifies that a greater number of directors must be appointed, the Articles would need to be amended.
3. It is also common practice, for the specific articles of the Articles to cross refer to the Shareholders' Agreement and to state that they are *'subject to the terms of the Shareholders' Agreement'*. For example, if there are special provisions in the Shareholders' Agreement which relate to appointment and removal of directors, the Articles which refer to such appointment and removal may state that they are subject to the terms of the Shareholders' Agreement. It is however important to draft the Articles so that the nature of such cross referencing is sufficiently certain so as to ensure that the Articles are not rendered fundamentally uncertain or unclear. As a result, general statements such as the Articles are to be read subject to the Shareholders' Agreement should be avoided, with the safer approach being the insertion into of the Articles of specific references and cross-references to the Shareholders' Agreement.
4. It is also important to ensure that the provisions of a Shareholders' Agreement do not impose any obligations on the Jersey company that would constitute a fetter on its statutory powers (for example, a company is empowered by statue to alter its Articles by special resolution and any provision purporting to deprive the company of this power is invalid on the grounds that it is contrary to statue). Ideally, therefore, the Shareholders' Agreement should include a provision to the effect that the company is not bound by such obligations but the shareholders of the company shall exercise their respective powers as shareholders to procure that the company complies with them.

If the aforementioned steps are carried out, the risk that a Shareholders' Agreement would need to be filed with the Registry would be very low.

Circumstances which may lead to a filing requirement in Jersey with the Registry

There are, however, a number of limited exceptions, where a Shareholders' Agreement may need to be filed.

1. The first exception is where the company is a public company and the relevant external document contains a statement of rights, where a filing requirement would apply pursuant to article 54 (1) of the Law. Pursuant to article 54 (1) of the Law, if a public company admits a member or allots shares with rights which are not stated in its memorandum or articles, or in a resolution or agreement of which a copy is required by article

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100 of the Law to be delivered to the registrar, the company shall deliver to the registrar within one month after admitting the member or allotting those shares a statement containing particulars of those rights. As a result, in relation to public companies, it will be important to consider the extent to which the Shareholders' Agreement contains rights and obligations which attach to the relevant shares, in order to ensure that article 54 (1) of the Law is complied with.

2. As highlighted above, another exception is where there is a concern that the extent of a reference to an external document could render the Articles uncertain or meaningless in some fundamental respect and it would be in the public interest for the Shareholders' Agreement to be filed. However, in the vast majority of cases, it should be possible to avoid such a filing requirement in Jersey, by ensuring that all the shareholders can ascertain the terms of the Shareholders' Agreement by being a party to the Shareholders' Agreement and by ensuring the cross references in the Articles are sufficiently certain so as to ensure that the Articles are not rendered fundamentally uncertain or unclear. A further practical step would also include making it a requirement that before any person is registered as a holder of any shares in the company such person shall enter into an Instrument of Adherence covenanting to be bound by all the terms of the Shareholders' Agreement.

Proposed changes to the Law in Jersey

The Consultation, which was launched in October 2024 proposes a number of wide ranging amendments to the Law, including to provide that an agreement, such as a shareholders' agreement, will not have to be filed with the Registry under article 100 of the Law if it contains a term stating that in the event of a conflict between that agreement and the Articles then the agreement will prevail and the shareholders will amend the Articles.

This proposed change to the Law, which is due to come into force in January 2026, is a very helpful amendment which provides further clarity and indeed aligns with the current market practice outlined above.

Conclusion

As long as the aforementioned steps are taken to help avoid a filing requirement, the circumstances in which a Shareholders' Agreement in Jersey would need to be filed with the Registry is extremely limited. The proposed changes to the Law will also help provide further clarity and comfort that a Shareholders' Agreement will not have to be filed with the Registry provided that the provisions of the revised Law are fully complied with.

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