

# PROCEDURE FOR THE INCORPORATION OF A JERSEY COMPANY

## OCORIAN BRIEFING

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**This briefing provides an outline of the procedure for the incorporation of a Jersey company. Jersey company law is governed by the Companies (Jersey) Law, 1991, as amended (the "1991 Law") which came into force on 30 March, 1992 and repealed the earlier Companies (Jersey) Laws, 1861 to 1968. Part 2 of the 1991 Law contains provisions dealing with the formation and registration of a Jersey company.**

The 1991 Law makes provision for different types of company. These include the following:

- Private and public companies with shares that are expressed as having a par value (e.g. the company's share capital may be expressed as being 100 shares of £1 each). These are known as par value companies.
- Private and public companies with shares that do not have a par value (e.g. the company's share capital may be expressed as just being 100 shares without giving any nominal value to any individual share). These are known as no par value companies. A company cannot have both par value shares and no par value shares.
- Private and public companies with guarantee members. The liability of the guarantee members is limited to the amounts they undertake to contribute on a winding up of the company. These are known as guarantee companies.
- Private and public companies with unlimited members. On the winding up of the company, the liability of the unlimited members is unlimited. These are known as unlimited liability companies. In many respects, unlimited liability companies can be likened to a general partnership where an individual partner has unlimited liability for the debts of the partnership.
- Private and public companies of limited life. These are companies which are to be wound up and dissolved upon (a) the bankruptcy, death,

expulsion, insanity, resignation or retirement of any member of the company or (b) the happening of some other event which is not the expiration of a fixed period of time. These are known as limited life companies.

- A limited life company may also make provision for its winding up and dissolution on the expiration of a fixed period of time. This is a sub-category of limited life companies and these companies are known as fixed life companies.

The 1991 Law also makes provision for cell companies. There are two types of cell company. One type is the "incorporated cell company" and the other type is the "protected cell company". These vehicles are particularly useful in the context of investment funds and structured finance transactions. The cells of an incorporated cell company are companies in their own right. In contrast, the cells of a protected cell company do not have their own separate legal personality. A protected cell company will contract in respect of a particular cell and there are detailed provisions in the 1991 Law which provide that creditors may only have recourse to the assets which are attributable to the relevant protected cell.

In addition, foreign companies can migrate to Jersey (and vice versa).

The steps for incorporating a Jersey company are as follows:

#### **Company name**

The proposed company name must be chosen and submitted to the registrar of companies at the Jersey Financial Services Commission for approval. The approval of the chosen name will depend upon its similarity to existing company names and its suitability from a public policy point of view. Where the company is being incorporated as a subsidiary or group company of another corporate entity and is to bear a related name, the registrar of companies will require a letter of consent from the holding company or promoter agreeing to the use of the name by the proposed Jersey company. The name of a limited company must end with the word "Limited" or the abbreviation "Ltd" or the words "avec responsabilité limitée" or the abbreviation "a.r.l.". However, the name of a public company which is a limited company may end with "public limited company" or the abbreviations "PLC" or "plc".

#### **Memorandum of association**

The memorandum of association, which sets out the fundamental provisions of the constitution of the company, must be prepared. The ultra vires rule in its application to Jersey companies was abolished with effect from 30 March, 1992 and, accordingly, the capacity of a Jersey company is not limited by anything in its memorandum or articles of association or by any act of its members. The memorandum of association does not, therefore, set out the objects or powers of a company, although it is possible to include restrictions on the authority of the directors of the company in the memorandum or articles of association.

The memorandum of association will state:

- the name of the company;
- whether the company is a public or a private company;
- whether the company is a par value company, a no par value company or a guarantee company;
- the full name and address of each subscriber who is a natural person and the corporate name and address of the registered or principal office of each subscriber which is a body corporate;
- as relevant, whether the liability arising from any share is limited or unlimited; whether there are guarantor members; details of any par value share capital or the maximum number of no par value

shares; and details of the extent of liability of any guarantor member.

A private company may be incorporated with one or more subscribers, whereas a public company must have at least two subscribers. The memorandum of association must be signed by or on behalf of each subscriber in the presence of at least one witness.

#### **Articles of association**

The articles of association, which govern the contract between the members (whether shareholders and/or guarantor members) and the company, must be prepared. The 1991 Law provides for a standard table of articles which will be presumed to have been adopted except insofar as the articles registered specifically exclude or modify the standard table. The articles of association can be drafted to meet specific requirements.

The 1991 Law requires that the articles of association are also signed by or on behalf of each subscriber to the memorandum of association in the presence of at least one witness.

The memorandum and articles of association bind the members as between themselves and the company. They may be subsequently altered by special resolution.

#### **Period of existence**

If a company is to be wound up and dissolved upon the expiration of a period of time or upon the happening of some other event, the period or event must be specified in either the memorandum or the articles of association of the company.

#### **Statement of particulars on incorporation**

The agent of the subscribers must prepare a statement to be signed by the subscribers (or their agent), known as the Statement of Particulars on Incorporation. This statement will indicate the intended address in Jersey of the company's registered office upon incorporation, whether the company is to be a public or private company and whether the standard table of articles has been adopted. In the case of public companies, particulars of the first directors of the company and of the period to which the first accounts of the company will relate are also indicated on this statement.

#### **Control of borrowing consent**

In order to issue shares or admit any guarantor member, a Jersey company requires a regulatory consent from the Finance and Economics Committee of the States of Jersey pursuant to the Control of Borrowing (Jersey) Order, 1958, as amended. An application form, requesting such consent, is submitted to the Jersey Financial Services

Commission together with the incorporation papers for the company.

The application form requires information regarding the proposed activities of the company and the identity of the ultimate beneficial owner of the company.

The application form also requires confirmation that the ultimate beneficial owner has not at any time been declared bankrupt or been a director of or otherwise involved in the management of a company which has been the subject of an insolvent liquidation or judicial enquiry.

If the ultimate beneficial owner is a public company, it is standard practice for the registrar of companies to require sight of a copy of the latest annual report and accounts of such company.

#### **Application for incorporation**

The memorandum of association, articles of association, Statement of Particulars on Incorporation and control of borrowing consent application form are lodged at the Jersey Financial Services Commission, together with registration fees of, currently, £200. For a further fee of £200, the Jersey Financial Services Commission will expedite the application for incorporation and will deal with the same on a same day basis.

#### **Incorporation**

The registrar of companies will process the application and, providing satisfactory information has been provided, will issue a certificate of incorporation of the company and control of borrowing consent permitting issuance of the authorised share capital. A certificate of incorporation constitutes conclusive evidence of incorporation.

## KEY CONTACTS

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### JERSEY



**RICHARD HANSFORD**  
**Associate Director**  
T +44 (0)1534 507242  
E [richard.hansford@ocorian.com](mailto:richard.hansford@ocorian.com)

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