



**FORWARD GROUP**  
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# **GUIDANCE NOTE**

## **LEGAL OBLIGATIONS OF A JERSEY COMPANY**

The Companies (Jersey) Law 1991, as amended (“the Companies Law”) imposes a number of specific duties upon the company itself. A full list of punishable offences under the Companies Law appears in the Schedule to the Companies Law and is repeated at the end of this Guidance Note. Some of the main obligations are set out below (but note that there are other important obligations not covered here).

## Directors

Jersey private companies must have at least one director. A Jersey private company does not need to have directors upon incorporation but cannot function until its directors are appointed. There is, however, no requirement for a director to be resident in Jersey. A register of directors must be maintained at the registered office which is open to inspection by the shareholders and the Jersey Registrar of Companies but, in the case of private companies, such information is not a matter of public record.

Jersey companies are permitted to have corporate directors provided that the body corporate acting as a director is registered to provide such services pursuant to the Financial Services (Jersey) Law 1998, as amended and does not itself have any directors who are bodies corporate. However, the body corporate does not need to be a Jersey company.

Directors may participate in meetings by electronic means, such as via telephone or video conferencing.

If a company is left with no appointed directors, the shareholders may have authority under the company’s articles to appoint directors. Where there is no power in the articles for the shareholders to appoint directors and this power has been delegated to the board, case law has suggested that the general meeting (i.e. the shareholders) can act instead of the board.

It should be noted that any general meeting called to deal with the appointment of directors should be properly called. The articles would need to be checked to ensure that the members have authority to call a general meeting. If there is no such power contained in the articles, an application may be made to the Jersey Court which has the power to order a general meeting where it is impractical to call a meeting in the manner set out in the articles of the company or under Companies Law.

## Registered office

A company shall at all times have a registered office in Jersey to which all communications and notices may be addressed (Article 67(1) of Companies Law).

A company does not comply with the requirement of Article 67(1) unless the occupier of the premises that are the registered office authorizes for the time being their use for that purpose (Article 67(2)).

If there is a failure to comply with (Article 67.1), the company and every officer of it who knowingly and wilfully authorises or permits the default is guilty of an offence punishable by a fine not exceeding £10,000 (Article 67.9).

## Company secretary

Every company shall have a secretary and the sole director cannot also be a secretary (Articles 81(1) and 81(2) of Companies Law).

Article 82 of Companies Law imposes a duty on the directors of a public company to take all reasonable steps to secure that the secretary is a person who appears to them to have the requisite knowledge and experience to discharge the functions of secretary of the company and who is:

1. a member of any of the professional bodies set out in Article 82(2);
2. an advocate or solicitor of the Royal Court in Jersey; or

3. a person who, by virtue of holding or having held any other position or being a member of any other body, appears to the directors to be capable of discharging those functions.

## **Statutory books**

### ***Register of members***

Every company shall keep a register of its members and enter in it, inter alia, the names and addresses of its members and a statement of the shares held (Article 41(1) of Companies Law). If a company fails to comply with Article 41, the company and every officer of it who knowingly and wilfully authorises or permits the default is guilty of an offence punishable by a fine not exceeding £10,000 and a daily default fine not exceeding £1,000 (Article 41(3) of Companies Law).

A company shall give notice to the Jersey Registrar of Companies of the place where the register of members is kept and of any change to that place unless it has always been and continues to be at its registered office (Article 44(2)).

Failure to do so for 14 days is an offence punishable by a fine not exceeding £10,000 and a daily default fine not exceeding £1,000 (Article 44(4)).

The register of members shall be open during business hours to the inspection of a member of the company without charge and of any other person on payment of such sum (if any), not exceeding the published maximum, as the company may require (Article 45(1) of Companies Law). A person may require delivery of a copy of the register of members subject to, in the case of a private company, the payment of such sum (if any), not exceeding the published maximum, as the company may require (Article 45(2)) and, in the case of a public company, a sworn declaration under Article 46.

If there is a failure to comply with Articles 45(1) or 45(2), the company is guilty of an offence punishable by a fine not exceeding £10,000 (Article 45(3)).

### ***Register of directors and secretary***

Every company shall keep at its registered office a register of its directors and secretary containing, inter alia, each of their names and addresses (Article 83(1) of Companies Law). If there is a failure to comply with Article 83(1), the company and every officer of it who knowingly and wilfully authorises or permits the default is guilty of an offence punishable by a fine not exceeding £10,000 and a daily default fine not exceeding £1,000 (Article 83(4)).

The register shall be open during business hours to the inspection of the Jersey Registrar of Companies and of a member or director of the company without charge and, in the case of a public company or a company which is subsidiary of a public company, of any other person on payment of such sum (if any), not exceeding the published maximum, as the company may require (Article 83(2)).

If an inspection required under Article 83 is refused (or the required information is not included in the registers), the company and every officer of it who knowingly and wilfully authorises or permits the default is guilty of an offence punishable by a fine not exceeding £10,000 and a daily default fine not exceeding £1,000 (Article 83(4)).

## Minutes

Every company shall cause minutes of all proceedings at general meetings, meetings of the holders of any class of its shares, meetings of its directors and of committees of directors to be entered in books kept for that purpose, and the names of the directors present at each such meeting shall be recorded in the minutes (Article 98(1) of Companies Law).

If there is a failure to comply with Article 98(1), the company and every officer of it who knowingly and wilfully authorises or permits the default is guilty of an offence punishable by a fine not exceeding £10,000 and a daily default fine not exceeding £1,000 (Article 98(3)). Members are entitled to inspect the minute books (for shareholder meetings) (Article 99).

## General meetings

Every public company and every 'relevant private company' shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notice calling it (Article 87(2) of Companies Law). In the case of a public company, not more than 18 months and in the case of a relevant private company not more than 22 months shall elapse between the date of one annual general meeting and the date of the next (Article 87(3)). A public company or a relevant private company may, with the consent of all the shareholders, dispense with the requirement to hold an annual general meeting (Article 87(4)).

Article 87(2A) states that a 'relevant private company' means a private company:

1. which is required to hold annual general meetings by provision made in its articles of association after the coming into force of the Companies (Amendment No. 11) (Jersey) Law 2014 (which occurred on 1 August 2014); or
2. in whose case a requirement for the holding of annual general meetings was imposed by provision made in its articles of association before the coming into force of that Law and confirmed by a special resolution passed after the coming into force of that Law and remaining in effect.

Article 87(2B) goes on to state that any requirement for the holding of annual general meetings imposed by provision made in the articles of association of a private company before the coming into force of the Companies (Amendment No. 11) (Jersey) Law 2014 is of no effect unless confirmed by special resolution passed after the coming into force of that Law and remaining in effect.

If a public company fails to comply with Articles 87(2) or 87(3), the company and every director of it who knowingly and wilfully authorises or permits the default or is in default is guilty of an offence punishable by a fine not exceeding £10,000 (Article 87(8)).

In every notice calling a general meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, one or more proxies to attend and vote instead of him, and that a proxy need not also be a member. In the event of failure to comply, every officer of the company who knowingly and wilfully authorises or permits the default is guilty of an offence (Article 96(3) of Companies Law).

## Accounts

Every company must keep accounting records that are sufficient to show and explain its transactions and are such as to disclose with reasonable accuracy, at any time, the financial position of the company (Article 103 of Companies Law).

A company's accounting records shall be kept at such place as the directors think fit and shall at all times be open to inspection by the company's officers and the secretary (Article 104). If accounting records of a public company are kept at a place outside Jersey, returns with respect to the business dealt with in such accounting records shall be sent to, and kept in, Jersey and shall be such as to disclose with reasonable accuracy the financial position of such business at intervals of not more than 6 months and to enable the directors to ensure that any accounts prepared by the company comply with the requirements of the Companies Law (Article 104).

The accounting records that a company is required by Article 103 to keep must be preserved by it for 10 years from the date on which they are made (Article 104(4)).

Except where consolidated accounts are produced in respect of a Jersey incorporated holding company (Article 105(11)), the directors of a company must prepare accounts for a period of not more than 18 months beginning on the date of its incorporation or, if the company has previously prepared a profit and loss account, beginning at the end of the period covered by the most recent accounts (Article 105(1)).

Accounts must be prepared in accordance with generally accepted accounting principles (and, in the case of a market traded company, generally accepted accounting principles prescribed by Jersey law) and show a true and fair view of or be presented fairly in all respects so as to show the profit or loss and the state of affairs of the company for the period. The accounts must be approved by the directors and signed on their behalf by one of them (Articles 105(2) to (5)).

Except where the shareholders have dispensed with the requirement to hold an annual general meeting, in the case of a public company within 7 months and, in the case of a relevant private company, within 10 months after the end of each financial period, the accounts for that period shall be (Articles 105(6) to (8)):

1. in the case of a private company, prepared and, where it is required under the Companies Law, examined and reported upon by an auditor and laid before a general meeting together with a copy of the auditor's report (if any); and
2. in the case of a public company, examined and reported upon by an auditor and laid before a general meeting together with a copy of the auditor's report.

In respect of each financial period, the directors of a public company shall deliver to the Jersey Registrar of Companies within 7 months after the end of the financial period to which they relate, a copy of the accounts for the period signed on behalf of the directors by one of them together with a copy of the report thereon by the auditor (Article 108).

If there is a failure to comply with Articles 103 to 108, the company is guilty of an offence punishable by a fine not exceeding £10,000 and, in respect of non-compliance with Articles 107 or 108, a daily default fine not exceeding £1,000. Every officer of a public company which fails to comply with Articles 103 to 108 who knowingly and wilfully authorises or permits the default is guilty of an offence punishable by imprisonment for a term not exceeding 2 years and/or a fine (Article 109).

### Nominated person

Every company must appoint a nominated person (Article 6 of the Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020).

If the appointment of a nominated person is revoked or a nominated person resigns and the entity has no other nominated person, the entity must, not later than 21 days after the revocation or resignation:

- (a) appoint at least one nominated person, being an eligible person; and
- (b) notify the Jersey Financial Services Commission (“the Commission”) of the appointment.

If an entity does not appoint a nominated person, the company is guilty of an offence and subject to a fine not exceeding £10,000 and a daily default fine not exceeding £1,000 (Article 16(1) of the Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020).

### Annual confirmation statement

An entity must, within the relevant period, provide a statement (an “annual confirmation statement”) to the Commission (Article 5 of Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020) verifying that the beneficial owner information, significant person information and any other prescribed information provided to the Commission in relation to the entity is accurate as of 1st January of the year in which the statement is being provided.

If an entity does not provide an annual confirmation statement, the company is guilty of an offence and subject to a fine not exceeding £10,000 and a daily default fine not exceeding £1,000 (Article 16(1) of the Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020).



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