

JERSEY COMPANIES

Jersey companies are used by people all over the world. There are many reasons for this, including the high quality reputation of Jersey, the ease of formation, the existence of a modern statutory framework and advantageous tax treatment. This article sets out the procedure for forming a Jersey company, the statutory framework in which Jersey companies operate and spells out the responsibilities of the Directors and Officers. Finally it looks at the taxation of Jersey companies.

Company formation

1. Jersey companies are normally formed through licensed company formation agents, such as Channel House Trustees Limited who will complete the requisite paperwork.
2. The first step is to decide on a name and to have it accepted by the Registrar of Companies. The Registrar will not accept names which are the same/similar to existing Jersey companies nor which they consider are misleading or undesirable.
3. Following acceptance of the name there are a number of forms to be completed for submission to the Companies Registrar. These disclose details of the beneficial owners, the proposed activities and the tax status of the company. The identity of the beneficial owners is confidential and will not be released by The Jersey Financial Services Commission without a Court Order.
4. Stamp duty at 0.5% of the Authorised Share Capital (subject to a minimum of £50), plus a Registration fee, currently £130, is payable to the Jersey Financial Services Commission. The Registration fee will be levied annually in January thereafter.
5. Company formation usually takes up to four working days, although it is possible to achieve a fast track incorporation within four hours, on the payment of an additional fee, currently £200.

Statutory framework

The Companies (Jersey) Law 1991, as amended, is the main legislation governing the conduct of companies in Jersey. It is an extensive piece of modern legislation, covering everything from the formation of the company through to its dissolution. The significant points to note are:

- Bearer shares are not allowed. Two shareholders are required but they may be nominees who will hold shares under a declaration of trust to the beneficial owner(s).
- The company must have a registered office in Jersey.
- The company must have at least one director. Corporate directors are not allowed. Where there is only one director that person may not also be the Secretary. Corporate secretaries are allowed.
- The concept of "Ultra Vires" in its application to a Jersey Company no longer exists. Accordingly the capacity of a company is not limited by the terms of its incorporation documents nor by acts of its members.
- There is a distinction between private companies (thirty members or less) and public companies (in excess of thirty members).

- Private companies may not issue a prospectus to the public. Any offer to subscribe for shares by a private company must be addressed exclusively to a restricted circle of persons, who must not exceed 50 in number.
- All companies are required to maintain proper accounting records.
- All companies must prepare accounts, covering a period not exceeding eighteen months, in accordance with generally accepted accounting principles. The accounts must show a true and fair view of the profit or loss for the period and the state of the company's affairs on the balance sheet date. Accounts must be produced within 10 months of the period end (seven months for a public company).
- Accounts must be given to all shareholders.
- Public companies must have audited accounts, which must be filed with the Registrar of Companies within seven months of the end of the financial period.
- Private companies, unless required by the Articles of Association, do not have to have audited accounts and do not have to file their accounts with the Registrar of Companies.
- Failure to maintain proper accounting records and to prepare accounts is a criminal offence.
- Jersey law does not recognise the concept of 'nominee directors'. Thus directors are individually and jointly responsible for the actions of the company.
- The concept of 'shadow directors', whilst not mentioned in the Companies (Jersey) Law 1991, is widely recognised by Courts in many jurisdictions. Therefore the named directors must be, and be seen to be, in control of the company, otherwise there can be severe implications for the company and the shadow director, such as the taxation status of the company.
- Every company must make an Annual Return before 28 February each year to the Registrar of Companies and pay an appropriate fee, currently £130. Late filing incurs an automatic penalty and continued failure to file will result in the company being struck off. If a company is struck off the beneficial owners may find it very difficult to ever form another Jersey company.

Jersey companies can be subject to three types of winding up procedure

1. Summary winding up. The company is solvent but the shareholders decide to wind it up.
2. Creditors winding up. The company can not meet all its obligations.
3. Winding up on just and equitable grounds following an Order of the Royal Court, normally following a request to the Royal Court by an aggrieved shareholder claiming unfair treatment by the directors/other shareholders.

The law makes provision for the appointment and remuneration of a liquidator covering each of the above.

The Law enables the Royal Court to order restitution where transactions have taken place prior to a winding up at an undervalue or are deemed to have been detrimental to creditors. Director(s) may be personally liable for the debts of a company where it is evident that they knew or should have known that a creditors' winding up could not be avoided. This may result, if proper accounting records were not maintained, thus leading the Royal Court to conclude there was reckless trading.

Taxation

There are three different regimes under which companies are taxed in Jersey.

1. Jersey companies, and companies incorporated elsewhere but resident or trading in Jersey, are subject to taxation on their profits.
2. When the beneficial owners are not resident in Jersey and a company does not trade in Jersey application may be made for Exempt company status. If granted the company will pay an annual fee, currently £600. If a company is to receive no or little income e.g. when it is a special purpose vehicle which will earn only capital gains, it may be more beneficial for it to be resident in Jersey for taxation purposes.
3. When non-Jersey investors wish to negotiate a favourable rate of tax, they may opt for an International Business Company. Under this regime favourable rates of tax may apply to income and profits from international activities. This requires careful management and may not be suitable for investors resident in certain countries.

Investors must ensure that they obtain full tax advice appropriate to their circumstances as other jurisdictions may tax the profits of a Jersey company.

The above points are intended purely as an introduction to the legislation in relation to Jersey companies. Interested parties must obtain appropriate advice and should not rely on the information in this article.