WALKERS

Client Memo

Jersey - Companies

Advantages of Jersey

Jersey is the premier offshore jurisdiction of choice for many global corporations and financial institutions, and lead onshore counsel. Its enviable position owes much to the excellent quality of its service providers and its flexible and well-developed legal and regulatory framework. The provision of corporate and finance advice and related services represents the core business of Walkers globally and is the primary focus of the Jersey office.

Benefits of using a Jersey company

Jersey companies are used in a wide range of structured finance, capital markets, banking, property and other financing transactions. Jersey is a tax-neutral jurisdiction and using a Jersey company for structuring international financing transactions can therefore be beneficial in terms of company law provisions and tax treatment. Additional benefits include separate legal identity, limited liability for shareholders and ease of transfer of ownership. Share capital can be denominated in any currency and issued in various classes, including redeemable shares. These features enable Jersey companies to be structured to meet a wide variety of business purposes, from commercial trading and joint ventures to investment vehicles.

Legislation

The Companies (Jersey) Law 1991 (the "**Law**") is the principal piece of legislation governing Jersey companies and is a comprehensive, modern statute governing all aspects of the regulation of the formation and administration of private companies in Jersey.

Types of Jersey company

The following types of company are available in Jersey.

Limited companies

Companies whose members' liability is limited to the amount unpaid on their shares.

Par value companies

A par value company issues shares that have a nominal value. The company will maintain a "share capital account" and, where the shares are issued with a share premium, a "share premium account". There is no minimum authorised share capital or issued share capital requirement under the Law.

Distributions by a par value company are permitted from any source (other than the "capital redemption reserve" or the "nominal capital account") without the need to obtain either shareholder or Court approval for a reduction of capital. The directors must make a solvency statement in the prescribed form to authorise any distribution, redemption or buyback.

No par value companies

A no par value company issues shares which are not expressed as having a nominal value (ie 'no par value' shares). As the name suggests, no par value shares have no par or nominal value, nor are they denominated in any currency, and the number of authorised no par value shares can be (but does not have to be) unlimited. Save for those distinctions, they have the same features as par value shares, with their rights set out in the Articles of Association.

Cell companies

Cell companies are companies which, once established, have the ability to create cells separate from themselves. Each cell company may hold separate assets (and liabilities), therefore enabling the assets (and liabilities) of each cell to be isolated from the assets (and liabilities) of the cell companies themselves and of any other cells. This creates a statutory 'ring fencing' of assets and provides increased flexibility for investment business. The Law permits the incorporation of two types of cell company:

1. protected cell companies; and

2. incorporated cell companies.

Guarantee companies

The liability of members of guarantee companies is limited to the amounts they guarantee.

Unlimited companies

The liability of the members of unlimited companies on a winding up of the company is unlimited.

Limited companies (including cell companies) are by far the most common type of Jersey company and this memorandum focuses on such companies. For further information on guarantee and unlimited companies, please contact your Walkers lawyer.

Public companies

A company is a public company if it has more than thirty shareholders or the Memorandum of Association states that it is a public company. In addition to the distinguishing features mentioned above, the following are the principal differences between private and public companies:

1. only a public company may issue a prospectus inviting the public to acquire or apply for securities;

2. the registers of directors and shareholders of a public company may be inspected by the public;

3. the secretary of a public company must hold appropriate qualifications as specified in the Law; and

4. the accounts and auditor's report of a public company must be presented before a general meeting of the company and filed with the Registrar of Companies within seven months of the end of the company's financial year.

Incorporation of Jersey companies

Application to the Registrar of Companies is made by the subscribers to the Memorandum of Association of the company, and includes the Articles of Association and certain further information, including:

1. the proposed company name;

2. the proposed shareholders;

3. the first directors;

4. the authorised share capital;

5. the type of company (public or private, par value or no par value etc);

6. the proposed activities/intended use; and

7. the ultimate beneficial ownership of the company.

The Articles of Association can be amended by special resolution (meaning a majority of not less than two-thirds of shareholders entitled to vote at general meetings or such higher majority as may be set out in the company's Articles of Association) to include any bespoke provisions such as classes of shares, rights attaching to shares, dividend and voting rights, rights on a winding up or return of capital, appointment and removal of directors and pre-emption rights.

The Jersey Financial Services Commission (the "**Commission**") will process the incorporation papers within one to five days. A "fast track" incorporation service is available for an additional fee of £670 (as at the date of this memo), in which case the company can be incorporated within two to five hours.

As is common with all reputable financial centres, Jersey has regulations regarding compliance/due diligence requirements. A Compliance Questionnaire will need to be completed together with the requisite due diligence in relation to, typically, the directors and beneficial owners of the company. However, this information is not available publicly.

Formalities

Registered office

The registered office of a Jersey company must be located in Jersey. Walkers' affiliates can provide the full range of company administration services.

Directors

A private company must have at least one director, and a public company at least two. Directors' meetings can, but need not, be held in Jersey and the directors themselves can, but need not, be resident in Jersey.

Shareholders

A private company is permitted to have just one shareholder; a public company must have at least two (who may be nominees for a single beneficial owner).

General meetings

A private company is not required to hold annual general meetings (an "**AGM**") unless specifically required to by its constitution. A public company may dispense with the requirement to hold AGMs if all its members agree. There is no requirement for shareholders' meetings to be held in Jersey.

Auditors

All companies are required to keep accounting records that are sufficient to show and explain their transactions and their financial position. Only public companies are required to have auditors.

Annual confirmation statement

A company must file an annual confirmation statement before the end of February in each year confirming that the details held by the Jersey company registry (the "**Registry**") are accurate (in particular, in respect of the company's registered office and the company's beneficial owners and controllers (this information will not be made public), significant persons (including directors and secretary) and members. The company must notify the Registry of changes to the beneficial owner, controller or significant person information within 21 days.

Registers

A Jersey company must maintain registers of its directors and shareholders. There is no requirement to maintain a register of mortgages and charges.

Tax status of Jersey companies

The new "zero rate" regime

Jersey is a tax neutral jurisdiction and has a "Zero Rate" tax regime. Except in certain limited circumstances a Jersey resident company (incorporated or managed and controlled in Jersey) will be charged to Jersey income tax at zero per cent, and shall not be entitled to make any deduction in respect of Jersey tax from dividend or interest payments made by it.

Exceptions to the Zero Rate are:

1. financial service companies (as defined in the Income Tax (Jersey) Law 1961, the "**Income Tax Law**") which are taxed at 10%;

2. utility companies (as defined in the Income Tax Law) which are taxed at 20%;

3. income specifically derived from Jersey property rentals or Jersey property development taxed at 20%; and

4. large corporate retailers with cumulative Jersey retail turnover of £2 million or more, taxed at a variable rate up to 20%.

Tax residency

The applicability of the Zero Rate regime requires that the company be resident in Jersey. However, a Jersey company may be exclusively tax resident in a foreign jurisdiction if:

1. it is managed and controlled from a jurisdiction outside Jersey;

2. it is tax resident in that other jurisdiction; and

3. the highest rate of corporation tax in that other jurisdiction is ten per cent or higher.

Regulatory requirements

The Control of Borrowing (Jersey) Order 1958 ("COBO")

COBO, amongst other things, regulates the issue by Jersey entities (whether companies, limited partnerships, unit trusts, and so on) of shares, units, interests and other securities. All Jersey companies must therefore obtain prior approval in the form of a COBO consent to the issue of shares. Application for such consent is submitted to the Commission together with the incorporation documentation.

Transaction specific consents may be required

If a Jersey company intends to carry out a business which is regulated in Jersey, further consents or approvals may be required. This is particularly the case for collective investment funds, financial services, banking businesses and trust company businesses. Your Walkers lawyer will be able to advise you on the need for any such consents at the preliminary discussion stage of any transaction.

Economic Substance

1 January 2019 brought with it the introduction of new legal substance requirements for the jurisdiction. The legislation is part of Jersey's commitment to the OECD's Base Erosion and Profit Shifting project and is enacted through the Taxation (Companies – Economic Substance) (Jersey) Law 2019 (the "**ES Law**") and associated regulations and guidelines.

From an industry perspective, the requirements formalised in the legislation are largely in line with current practice and the majority of companies and administrators within the jurisdiction would not consider the changes material to their current economic substance practice in Jersey. However, all Jersey companies should ensure that they meet the economic substance test if a 'resident company' and engaged in a 'relevant activity' as defined in the ES Law. A company required to meet the economic substance test must be able to demonstrate that they are 'directed and managed' in Jersey, that they have an 'adequate' number of employees, expenditure and presence in Jersey proportionate to its level of relevant activity and that their 'core income generating activities' are undertaken in Jersey. Jersey companies will need to determine what functions need to be carried out in Jersey, depending on the function and purpose of the company, to the extent they are currently in compliance, and any areas that may need to be addressed to ensure adequacy pursuant to the ES Law.

The Jersey ES Law includes robust, progressive and dissuasive sanctions:

1. where the economic substance test is not met;

2. for failure to provide information or for inaccurate information;

3. obstructing an authorised person; and

4. altering, suppressing or destroying any business document.

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For further information please refer to your usual Walkers lawyer or contact:

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