

## JERSEY COMPANIES A MOORE STEPHENS GUIDE TO THE TYPES OF COMPANIES

Jersey companies are regulated by the Companies (Jersey) Law 1991, which suits the requirements of international investors, and by but not applying the doctrine of ultra vires, a Jersey company has all the powers of a natural person.

Until September 2002, Jersey Companies could only be incorporated with limited liability. A number of legislation changes were subsequently made by the States of Jersey designed to make the corporate infrastructure more attractive by enhancing the flexibility of its corporate vehicles together with a relatively straightforward process for mergers and redomiciliation

The Law now provides for several new forms of company including no par value companies, guarantee companies, single member companies, unlimited companies, protected cell companies and incorporated cell companies. The majority of companies tend to be limited liability but we are able to form other company types upon request.

### **New forms of company available in Jersey**

#### **No par value companies**

A no par value company will issue shares that are not expressed as having a nominal value. On the issue of shares, the proceeds, whether cash or not, will be credited to a stated capital account. Shares may be redeemed from this stated capital account subject to certain solvency tests.

This type of company would be particularly useful where transactions involving the redemption or repurchase of shares are contemplated such as collective offshore funds.

#### **Guarantee companies**

This type of company does not have shareholders but only guarantor members. These members are obliged, on a winding up, to make a contribution to the assets of a company, subject to an agreed guarantee limit. Guarantee companies may have tax advantages in jurisdictions where payments from guarantor companies are treated as capital gains rather than income.

#### **Single member companies**

The amended law now provides for private companies to have a single registered shareholder and makes provisions for quorum at meetings.

This will assist in the management of private companies and ensure that the limitation of shareholder liability is preserved.

#### **Unlimited companies**

An unlimited company is one, which has only unlimited shares in issue and has no guarantor members. On winding up, the holder of the unlimited shares has unlimited liability to contribute to the assets of a company. This type of company may provide tax advantages in certain jurisdictions where such companies are regarded as tax transparent.

The Amendment Law does not prohibit hybrid companies. Therefore a company may have guarantor members and shareholders whether of par value or of no par value shares. This may provide benefits where guarantor members and shareholders are to be treated differently in terms of dividends or on return of capital.

#### **Protected cell companies**

These are companies where assets and liabilities may be attributed to separate cells within the cell company, or to the cell company itself. A protected cell company is a separate legal entity whilst the protected cells do not have legal personality independent of the protected cell company.

### **Incorporated cell companies**

These are quite similar to the protected cell companies in that they consist of a cell company with separate "incorporated cells". However, in an innovative step, the amended Law provides for each incorporated cell to be a separate corporate entity.

The incorporated cell company is an entirely new vehicle in the offshore market, aimed at providing a greater degree of certainty to the segregation through separate corporate identity of the incorporated cell company and each of its incorporated cells, while seeking to benefit from the costs savings associated with cell companies.

### **Mergers**

Two or more companies, if they have limited shares, will be able to merge and continue as a single company. This will normally be subject to the approval of their members, though there are alternative procedures for the merger of wholly-owned subsidiaries of a holding-company. Minority shareholders are safeguarded by provisions that allow members to apply to the Royal Court for an order giving relief for unfair prejudice; whilst creditors are safeguarded through provisions that require notice of the merger to be given to them, enabling them to apply to the Court for an order to restrain the merger.

### **Re-domiciliation**

The amended Law introduced arrangements that permit the re-domiciliation of companies into and also out from Jersey. These arrangements allow a company incorporated in any jurisdiction outside Jersey that has equivalent provisions in its laws, to cease to be incorporated there and instead to become a Jersey registered company. Similarly, a Jersey incorporated company able to change its domicile to another jurisdiction. Consent for either inward or outward migration will be required from the regulator and before granting such a request, the regulator will have to be satisfied that the interests of the creditors and members of the company will not be prejudiced by the proposal.

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This information sheet provides a brief outline only and is not comprehensive as such and should you require further specific advice, please contact either Kathy Gillen or Paul Camara:

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