GUIDE

# Companies (Jersey) Law 1991: Public and private companies

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This guide has been prepared as a supplement to Mourant Ozannes (Jersey) LLP's guide in relation to the Companies (Jersey) Law 1991 (the Companies Law) to provide further details as to the distinction made by the Companies Law between public and private companies.

## Definitions of public and private companies

A company will be a public company where:

- the Memorandum of Association of the company states that it is a public company; or
- the company had more than thirty members on its register on 30 March 1992 (the date on which the Companies Law came into force).

All companies which are not public companies are classified as private.

A public company which has fewer than 31 members may become a private company by altering its Memorandum of Association.

A private company which has at least 2 members may become a public company by altering its Memorandum of Association.

## Private company treated as a public company

A company will be subject to the provisions of the Companies Law as a public company even if it does not fall into the definition of a public company if:

- an entry is made on the register of members such that the number of members of the company exceed thirty in number;
- the company issues a prospectus (as defined in the Companies Law); or
- it is a market traded company (which includes a company whose transferable securities have been admitted to trading on a regulated market).

Joint holders of shares in a company are treated as one member of a company for the purpose of determining whether a company is a public company. No account is taken of shareholders who are directors or employees past or present of the company, a subsidiary of the company, the holding company of the company or a subsidiary of the holding company (excluding past directors or employees who have not continued to hold shares in the company or such holding company or subsidiary since ceasing to be a director or employee) in determining how many members a company has.

If a private company issues a prospectus or increases its membership above thirty so that it is treated under the Companies Law as a public company, it will only be able to avoid that consequence by applying to the Royal Court or to the Jersey Financial Services Commission to relieve it from the extra duties imposed on it by virtue of being treated as a public company.

The Takeover Code applies to public companies but it does not apply to a private company which is treated as a public company unless the company issues a prospectus.

## Issue of prospectuses

As mentioned above, a private company may not issue a prospectus without becoming subject to the law as if it were a public company.

- A 'prospectus' is defined in the Companies Law as an invitation to the public to become a member of a company or to acquire or apply for any securities. However, an invitation will not be considered to be made to the public where:
    - the invitation is addressed to qualified investors (as defined in Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017)) or professional investors (as defined in the Financial Services (Investment Business (Special Purpose Investment Business – Exemption))(Jersey) Order 2001, or both;
    - the number of persons (other than qualified investors and professional investors) to whom the invitation is addressed does not exceed 50 in Jersey and 150 elsewhere;
    - the minimum consideration which may be paid or given for securities to be acquired by a person is at least EUR 100,000 (or an equivalent amount in another currency);
    - the securities to be acquired or applied for are denominated in amounts of at least EUR 100,000 (or an equivalent amount in another currency);
    - the invitation relates to scrip dividends (i.e. the issue of shares or other securities to its members in satisfaction of a dividend);
    - the invitation relates to an employee share scheme; or
    - any combination of the above sub-paragraphs applies.

'Securities' are widely defined as:

- shares in or debentures of a body corporate;
- interests in any such shares or debentures;
- rights to acquire any of the foregoing.

A private placement document which otherwise falls outside the definition of an invitation to the public will not result in a private company being treated as a public company although if the result of the placement is to bring the number of members on the register to more than thirty the company will be treated as a public company.

## Public company requirements

The Companies Law contains a number of provisions which relate specifically to public companies:

- The Certificate of Incorporation of a public company will state that the company is a public company.
- A public company must have at least two directors whereas a private company need have only one director.
- A public company must have at least two shareholders, unless it is a wholly-owned subsidiary of a holding company, in which case it may have a single shareholder, whereas a private company may have a single shareholder irrespective of whether it is a wholly-owned subsidiary of a holding company.
- Whilst the register of members of both a public company and a private company may be inspected by anyone on payment of a prescribed sum, copies of a public company's register may only be taken in certain limited circumstances and for certain purposes.
- A public company must notify the Registrar of Companies when shares are allotted with rights which are not specified in the company's Memorandum or Articles of Association.
- The register of directors of a public company must be made available for public inspection.
- The secretary of a public company must be appropriately qualified in accordance with the Companies Law.

- A public company must hold an Annual General Meeting within 18 months of the last Annual General Meeting unless such company has dispensed with the requirement to hold an Annual General Meeting. A private company must hold an annual general meeting within 22 months of the last Annual General Meeting if the private company is required to hold Annual General Meetings under the Companies Law. A private company will be required to hold Annual General Meetings if:
    - this is required by a provision in its Articles of Association made after 1 August 2014; or
    - this was required by a provision in its Articles of Association made before 1 August 2014 and which was confirmed by a special resolution passed after 1 August 2014.
- A public company must appoint auditors qualified in accordance with the Companies Law and have its accounts audited. This is not required in the case of private companies (unless it is a requirement of the private company's Articles of Association or of a resolution of the company in general meeting).
- A public company's accounts must be laid before a general meeting of the company together with the auditor's report within seven months (10 months in the case of a private company required to produce audited accounts by its Articles of Association and which is required to hold annual general meetings under the Companies Law) of the end of the company's financial year unless the company has dispensed with the requirement to hold Annual General Meetings unless a member of the company, not later than 11 months after the end of the financial period covered by the accounts, requires the company to do so by giving written notice to that effect.
- A public company must ensure that its accounts together with the auditor's report are filed with the Registrar within seven months of the end of the financial year to which they relate. Private companies are not required to file accounts with the Registrar.
- Additional formalities apply in the case of a creditor's winding up of a public company.
- The liquidator of a public company must be qualified in accordance with the Companies (General Provisions) (Jersey) Order 1992.

## Contacts

A full list of contacts specialising in corporate law can be found here.



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