

The accounts and audit rules applicable to Jersey companies

Last reviewed: February 2023

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Introduction

The rules relating to accounts and audit are contained in Part 16 of the Companies (Jersey) Law 1991 (the **Companies Law**). Part 16 was amended in 2010, first, in response to the impact on Jersey based auditors of the EU Statutory Audit Directive 2006/43/EC (the **Directive**) and, secondly, to improve Jersey's compliance with the international standard issued by the International Organisation of Securities Commissions (IOSCO) relating to accounting and auditing matters (commonly referred to as **IOSCO Principle 18**).

Requirement to prepare accounts

The directors of a Jersey company must prepare accounts for a period of not more than 18 months beginning with the company's date of incorporation or, if the company has previously prepared accounts, beginning at the end of the period covered by the most recent accounts. Directors of a holding company are not required to prepare solus accounts for that company where consolidated accounts have been prepared (unless required by the members by ordinary resolution).

The accounts of a Jersey company whose securities are admitted to trading on a UK or EU regulated market (other than a company that is an open ended collective investment fund or an issuer exclusively of debt securities admitted to trading on a UK or EU regulated market the denomination of which is at least €100,000 (or €50,000 before 31 December 2010) or other currency equivalent at the date of issue) (a **market traded company**) must be prepared in accordance with prescribed generally accepted accounting principles which currently are those of Canada, China, India, Japan, South Korea, the UK and the US as well as the International Financial Reporting Standards either adopted by Regulation of the EU Commission or issued by the International Accounting Standards Board.

This requirement enhanced Jersey's level of compliance with IOSCO Principle 18. It states that a jurisdiction should apply accounting and auditing standards that are of a high and internationally acceptable quality and it applies to issuers that make 'public offerings' of securities and issuers whose securities are 'listed and/or publicly traded'. The view was taken that initially Jersey should aim to comply with IOSCO Principle 18 only in respect of market traded companies. Accordingly, Part 16 of the Companies Law does not fully meet the scope of issuers covered by IOSCO Principle 18. Part 16 of the Companies Law provides a mechanism for enforcing compliance with accounting standards and auditing standards that apply to market traded companies.

Jersey companies, other than market traded companies, are required to prepare their accounts in accordance with generally accepted accounting principles of their choice. The accounts of a company must specify which generally accepted accounting principles have been adopted in their preparation.

A public company, a company whose articles of association require the appointment of an auditor and a company that resolves in general meeting to appoint an auditor must appoint an auditor to examine and report upon its accounts and failure to do so is an offence on the part of the company and its directors and liquidator (**officers**) punishable by up to two years imprisonment and/or a fine.

The accounts of a company required to appoint an auditor must give a true and fair view of, or be presented fairly in all material respects, so as to show the company's profit and loss for the accounting period and the state of its affairs at the end of the period and they must also comply with the requirements of the Companies Law. A company's accounts must be approved by the directors and signed on their behalf by one of them.

Entitlement to copies of accounts

A member that has not been furnished with a copy of a company's accounts may make a written request to the company to be furnished with a copy of those accounts and any auditor's report. The company must furnish a copy of the accounts and any auditor's report to the member without charge within seven days of receipt of the request.

Time limits for preparation and filing of accounts

A company's accounts for a financial period must be prepared (and, where required, audited) and laid before a general meeting of the company (together with a copy of the auditor's report where required) within seven months after the end of the financial period covered by the accounts in the case of a public company and within 10 months in the case of a private company.

The requirement to lay accounts before a general meeting:

- does not apply to a private company on or after 1 August 2014 (provided that a pre-existing requirement in its articles of association to hold an annual general meeting (**AGM**) is not confirmed by special resolution after that date and its articles of association are not amended after that date to introduce such a requirement); or
- is dispensed with if all members of a company (whether public or private) agree in writing to dispense with the requirement to hold an AGM,

unless a member, not later than 11 months after the end of the financial period covered by the accounts, requires the company by written notice to do so. In such case the general meeting must be held within 28 days of the notice or approval of the accounts by the directors, whichever last occurs.

The directors of a public company must deliver a copy of the company's accounts for a financial period (signed on behalf of the directors by one of them) and a copy of the auditor's report (along with a certified translation of such documents into English where appropriate) to the registrar of companies in Jersey within seven months after the end of such financial period and pay the relevant filing fee. This is so even if a public company becomes private during a financial period although the requirement to deliver accounts will be satisfied if the accounts relate to either the entire financial period or only to the part of the financial period during which the company was a public company. The directors of a private company do not have to file accounts.

The time periods stipulated for the preparation and audit of accounts, the laying of accounts before general meeting and the delivery of accounts to the registrar of companies can be extended by the Jersey Financial Services Commission (**JFSC**) if the JFSC is satisfied that a special reason for doing so exists provided that a written application for extension is made to the JFSC not later than one month before the end of the relevant time period.

Interim accounts

A company must not publish interim accounts (whether or not audited) unless they have been prepared in accordance with generally accepted accounting principles and, in the case of market traded companies, the prescribed generally accepted accounting principles.

Accounting records

A Jersey company is required to keep accounting records that are sufficient to show and explain its transactions, disclose with reasonable accuracy (at any time) the financial position of the company and enable its directors to ensure that any accounts prepared by the company comply with Part 16 of the Companies Law. Such accounting records must be preserved for 10 years. A company's accounting records must be kept where the directors think fit and must be open to inspection by the company's officers and secretary. If accounting records of a public company are maintained outside Jersey, returns with respect to the business dealt with in the records must be sent to and kept in Jersey and be open to inspection by the company's officers and secretary. The returns must be such as to disclose with reasonable accuracy the financial position of the business in question at intervals of not more than six months and enable the directors to ensure that any accounts prepared by the company comply with the requirements of Part 16 of the Companies Law.

Criminal liability

A breach of the requirements set out above is an offence by the company and, in the case of a public company, by its officers punishable by a fine of up to £10,000.

Appointment of auditors

A company that is required to appoint an auditor must at each AGM appoint an auditor until the conclusion of the next AGM. The directors, or failing them the company in general meeting, may at

any time before the holding of the first AGM appoint an auditor to hold office to the conclusion of that meeting. If a company that is required to appoint an auditor has dispensed with the requirement to hold AGMs, any auditor then holding office shall be taken to have been re-appointed for each succeeding financial period until the conclusion of the next AGM or until the company in general meeting resolves that the auditor's appointment be terminated. If a company that has dispensed with the requirement to hold AGMs becomes bound to appoint an auditor and there is no auditor in office, the directors must appoint an auditor to continue to act until the conclusion of the next AGM. The directors or the company in general meeting may fill any casual vacancy in the office of auditor and fix the auditor's remuneration. A company may by resolution remove an auditor despite anything in any agreement between it and the auditor although this does not deprive an auditor of any right to compensation or damages for loss of office.

An auditor is entitled to receive notice of and to attend any general meeting of a company and to be heard on any part of the business of the meeting that concerns the auditor.

Auditor's report

An auditor must make a report to a company's members on the accounts of the company examined by such auditor. The report must state whether in the opinion of the auditor the accounts have been prepared in accordance with the Companies Law and give a true and fair view or, alternatively, are presented fairly in all material respects. An auditor's report must state the name of the auditor and be signed and dated. If the auditor is an individual then the report must be signed by the auditor and if the auditor is a firm, the report must be signed by the individual responsible for reporting on the accounts on behalf of the firm. The fact that an auditor's report is signed by an individual does not expose such individual to any civil liability to which the individual would not otherwise be liable.

Auditor's duties and powers

An auditor must, in preparing an audit report, carry out such investigations as will enable the auditor to form an opinion as to whether (a) proper accounting records have been kept by a company, (b) proper returns adequate for the audit have been received from branches not visited by the auditor and (c) the company's accounts are in agreement with its accounting records and returns. If an auditor forms the opinion that such requirements have not been met then the auditor must state this in the auditor's report. An auditor has a statutory right of access to a company's records at all times and is entitled to require from the company's officers and secretary such information and explanations as the auditor thinks necessary for the performance of the auditor's duties. An auditor must mention in the auditor's report any failure to obtain such information and explanations that were, to the best of the auditor's knowledge and belief, necessary for the audit. An officer or secretary of a company that makes a false or misleading statement to an auditor is guilty of an offence punishable by up to five years' imprisonment and/or a fine.

An auditor of a market traded company must keep all working papers relating to an audit of a company in English and make them available to the JFSC, a recognized professional body (defined below) or to a professional oversight body upon demand. Failure to do so is an offence by the auditor and its officers punishable by a fine.

Auditor's resignation

An auditor may resign from office by depositing at a company's registered office written notice of resignation along with a statement to the effect that there are no circumstances connected with the auditor's resignation that the auditor considers should be brought to the notice of members or creditors of the company or, if there are such circumstances, a statement setting out what they are. Failure to do so is an offence by the auditor and its officers punishable by a fine. Such a notice operates to bring the auditor's term of office to an end on the date on which it is deposited or on such later date as is specified in the notice.

A company that receives notice from an auditor that there are circumstances connected with the auditor's resignation that should be brought to the attention of members and creditors must, within 14 days of receipt of notice, send a copy of it to each member of the company and to each person entitled to receive notice of a general meeting of the company. Failure to do so is an offence by the company and its officers punishable by a fine.

Auditor's qualifications

If a Jersey company is required to appoint an auditor then the auditor must meet certain qualification requirements that are set out in the paragraphs that follow. A person who does not meet the qualification requirements must not act as an auditor and breach of this requirement is an offence punishable by up to two years' imprisonment and/or a fine. An auditor is also required to meet certain prescribed independence requirements.

For an individual to qualify as an auditor he or she must be a member of the Institute of Chartered Accountants in England and Wales (**ICAEW**), the Institute of Chartered Accountants of Scotland, the Association of Chartered Certified Accountants or the Institute of Chartered Accountants in Ireland (each a **recognised professional body**) that is permitted by that body to engage in public practice.

For a Jersey or foreign partnership or Jersey or foreign limited liability partnership (other than one that is a body corporate such as a UK LLP) to qualify as an auditor more than half its partners must be any or a combination of:

- individuals who are members of a recognized professional body;
- other partnerships that themselves qualify as auditors;
- bodies corporate that themselves qualify as auditors; or
- individuals who hold a qualification to audit accounts under the law of an EEA member state (other than the UK or the Republic of Ireland),

and more than half of the voting rights in the partnership and in its management body (if any) must be held by individuals who are members of a recognized professional body and each of the persons who is responsible to it for reporting on accounts must be a member of a recognized professional body that is permitted by that body to engage in public practice.

For a body corporate (wherever incorporated) to qualify as an auditor it must be controlled by any combination of the following persons or entities:

- individuals who are members of a recognised professional body;
- partnerships or bodies corporate that themselves qualify as auditors;
- partnerships and bodies corporate accepted by a recognised professional body as being qualified for appointment as auditors of companies incorporated in the UK; or
- individuals who hold a qualification to audit accounts under the law of an EEA member state other than the UK or the Republic of Ireland,

and such persons or entities must:

- constitute more than half the number of members of the body corporate;
- hold more than half the voting rights of each class of members of the body corporate;
- (who being individuals) make up more than half the number of directors of the body corporate; or
- hold more than half of the voting rights in the board of directors, committee or other management body of the body corporate,

and each of the persons who is responsible to it for reporting on accounts must be a member of a recognised professional body that is permitted by that body to engage in public practice.

In the case of companies that are not market traded companies, the JFSC can authorise an individual or firm to act as an auditor of a Jersey company where they would not otherwise qualify under the requirements set out above. For these purposes, the JFSC has a policy of only approving: (a) auditors approved by the competent authority of an EEA member state in accordance with domestic legislation implementing the Directive (an **EEA approved auditor**); (b) the 'Big 4' accountancy firms (ie Deloitte, Ernst & Young, KPMG and PricewaterhouseCoopers); and (c) auditors registered with a competent authority of a G7 country or registered with a competent authority of a jurisdiction that has been determined by the European Commission to have systems of auditor oversight equivalent to those specified in articles 29, 30 and 32 of the Directive (an **EU equivalent jurisdiction**) to carry out statutory audits of companies incorporated in the G7 or the EU equivalent jurisdiction respectively. The G7 countries are Canada, France, Germany, Italy, Japan, the UK and the USA.

In addition, the JFSC must be satisfied that the individual who will sign the audit report on behalf of the auditor is conversant with generally accepted accounting principles, generally accepted auditing standards

and the legislative and regulatory environment applicable to auditors in Jersey. The JFSC does not have power to approve an EEA approved auditor as the auditor of a market traded company.

Market traded companies must appoint a **recognised auditor** (and an audit of such company's accounts by any other person is of no effect). The qualification requirements for recognised auditors are considered in the paragraphs that follow. A person who is not a recognised auditor must not act as the auditor of a market traded company and a breach of this requirement is an offence punishable by up to two years' imprisonment and/or a fine.

The Directive introduced harmonised provisions relating to auditor eligibility and independent auditor oversight in all EU Member States. The Directive subjects auditors of market traded companies incorporated outside the EU (including Jersey) (**third country auditors**) to the auditor registration and oversight provisions in the relevant Member State where the company's securities are admitted to trading. However, an EU Member State may grant a derogation from this requirement (but is not obliged to do so) where the third country auditor is subject to an EU equivalent system of regulation.

Part 16 of the Companies Law contains an auditor oversight regime designed to meet the equivalence requirements of the Directive. The adoption of such a regime may avoid the need for a Jersey auditor:

- to have to apply for registration in each Member State in which it acts as an auditor to a Jersey market traded company (or allow it to benefit from 'lighter touch' registration); and
- to be subject to the systems of regulation in each Member State in which it is registered, although it will be up to each Member State to determine the extent to which it recognises the equivalence of regimes outside the EU.

In order to introduce an auditor oversight regime that meets the equivalence requirements of the Directive, Part 16 of the Companies Law, in summary, provides that an auditor of a Jersey company that is a market traded company will:

- need to be entered on a register of recognised auditors (the **Register**) (and once entered on the Register the auditor will qualify as a recognised auditor);
- need to meet certain criteria before being entered on the Register (principally, meet the auditor qualification requirements set out above);
- have to comply with rules (**Audit Rules**) issued by a recognised professional body governing the conduct of the audit of market traded companies; and
- be monitored for compliance with those Audit Rules by the recognised professional body that issued them and be liable to disciplinary action where breaches occur.

In addition, to meet the equivalence requirements of the Directive, Part 16 of the Companies Law provides that the auditor monitoring work of a recognised professional body is itself subject to oversight by an independent body. This allows Jersey to 'piggyback' on the UK's existing auditor oversight regime. To this end, the ICAEW issues the Audit Rules referred to above, monitors the compliance of recognised auditors with them, and, if breaches occur, takes disciplinary action when necessary. To meet the equivalence requirements of the Directive, the JFSC as the body responsible for maintaining the Register, is also granted powers under the Companies Law to take action against recognised auditors.

The Financial Reporting Council Limited (**FRC**) fulfils the role of the independent body overseeing the monitoring work of the ICAEW, as it does in the UK's auditor oversight regime. To meet the equivalence requirements of the Directive, the ICAEW monitors each recognised auditor's compliance with Audit Rules governing the conduct of audit work for market traded companies and the FRC is responsible for overseeing the auditor monitoring work of the ICAEW. In the unlikely event that the ICAEW and/or the FRC are unable to undertake their roles in the oversight regime the JFSC can take their place.

As at 9 December 2022, Baker Tilly Channel Islands Limited, BDO Limited, Deloitte LLP (Jersey office), Ernst & Young LLP (Jersey office), Grant Thornton Limited, KPMG Channel Islands Limited, PricewaterhouseCoopers CI LLP (Jersey office) and RSM Channel Islands (Audit) Limited are on the Register as Jersey based recognised auditors.

As at 9 December 2022, AO Business Solutions and Technologies (Russia), BDO (Ireland), BDO LLP (UK), Crow U.K LLP, Deloitte LLP (UK), Ernst & Young (Ireland), Ernst & Young LLP (UK), JSC Kept (Russia), Haines Watts (City) LLP (UK), KPMG (Dublin, Ireland), KPMG LLP (UK), MacIntyre Hudson LLP (UK), Mazars (Dublin),

Mazars LLP (UK), PKF Littlejohn LLP (UK), PricewaterhouseCoopers (Dublin, Ireland), PricewaterhouseCoopers LLP (UK), RSM UK Audit LLP (UK) and Shipleys LLP (UK) are on the Register as recognized auditors based outside Jersey.

In the past, audit firms auditing a Jersey market traded company that did not qualify as an auditor could be granted a discretionary authorisation by the JFSC. Such discretionary authorisations are only retained in respect of non-market traded companies. Market traded companies must appoint a recognised auditor.

The auditor oversight regime does not impact on the audit arrangements of companies that are not market traded companies.

Conclusion

Businesses located outside the UK or EEA wishing to list on a UK or EU regulated market should bear in mind that, irrespective of where the company to be listed is incorporated, an auditor registered under the registration and oversight regime established by the UK or Member State in which the relevant regulated market is situated will have to be appointed.

The existence of an equivalent system of registration and oversight in Jersey is designed to result in derogations being granted by the UK or Member States to Jersey based auditors of market traded companies so that businesses seeking a UK or EU listing will not be precluded from appointing Jersey auditors should they wish to do so. Those businesses wishing to use a Jersey company to achieve a listing on a UK or EU regulated market who do not wish to appoint a Jersey based recognised auditor will still have to appoint an auditor that otherwise meets the qualification requirements for auditors of Jersey companies set out above and who is entered on the list of recognised auditors in Jersey. Those businesses wishing to use a Jersey company to achieve a listing on a market other than a UK or EU regulated market will be able either to appoint an auditor that meets the qualification requirements for auditors of Jersey companies set out above (but who does not need to be on the list of recognised auditors) or to appoint another auditor based in their own jurisdiction approved by the JFSC.

Our services

Mourant Ozannes (Jersey) LLP provides legal advice in connection with the incorporation and listing of Jersey companies and the administration of Jersey companies generally.

Contacts

A full list of contacts specialising in corporate law can be found [here](#).