

## Compliance and Corporate Structure

### Compliance

There are many changes from the previous companies law in the Companies (Guernsey) Law 2008. Some of the key changes are in the area of corporate governance and the responsibilities of Directors – perhaps the most significant is the solvency test.

Under the former companies law the distribution of profits and payment to shareholders was restricted by complex and antiquated rules that were formed in Victorian times. The rules were designed to protect creditors under a business model which was based on capital maintenance.

Using the successful experience of New Zealand, the British Virgin Islands, the Isle of Man and Bermuda, Guernsey has adopted a solvency test for distributions doing away with the complex, expensive and restrictive provisions associated with capital maintenance. Under the solvency model, provided the company satisfies the solvency test it may make distributions and pay dividends as it sees fit. The solvency test requires the directors to ensure that:

- The company can pay its debts as and when they fall due (a cash-flow test).
- The value of its assets is greater than the value of its liabilities (a balance sheet check).

The solvency test provides greater commercial flexibility to manage company finances in the 21st century trading environment and provides far greater creditor protection.

Another significant area of change in the level of compliance expected is that of company strike-offs. Given that voluntary strike-offs are available on-line and for free, it will simply not be acceptable for a company not to file an annual validation and then expect to be struck off by the Registrar without further sanction.

The law allows greater flexibility for companies to operate in a modern environment, but at the same time places real responsibility and accountability on company Directors which is beneficial in terms of consumer protection and ensures high standards of corporate governance. Guernsey is rightly regarded as a high quality offshore jurisdiction that adheres to international standards.

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## Choice of Corporate Vehicle

Guernsey offers choice and flexibility with regard to the type of corporate entity best suited to a particular business model. Guernsey was the first jurisdiction to introduce legislation with respect to protected cell companies (PCCs) in 1997. Incorporated cell companies (ICCs) were introduced in 2006. The provisions for both PCCs and ICCs were made in the revision of the new companies law 2008. The benefit of the cellular structure is the ability to segregate and manage risk – a feature which has made the use of these structures popular with the investment and insurance industries. The ICC provides additional inter-cell security in the event of insolvency and unlike the PCC, permits each cell of the ICC to contract with each other.

The standard non-cellular company is also available and this remains the incorporation vehicle of choice for most standard companies.

In respect of liability of its members, a company can be either:

- Limited –
  - (i) by shares, or
  - (ii) by guarantee
- unlimited, or
- of mixed liability.

The options available and the ability under the Companies (Guernsey) Law, 2008 to convert, amalgamate and migrate companies provide the means to manage corporate structures in a dynamic and changing global environment. The law allows companies to quickly and effectively convert from one type of company to another in a single process, a service that is not available in many jurisdictions.

## Do you need further information or assistance?

The Registry is open between the hours of 9.30am and 4.00pm Monday to Friday with the exception of Wednesdays where we open at 10.00am. The Registry is located on the 4th floor of the market building and can be accessed through the main doors at the lower end of Fountain Street.

If you have any other issues or queries you can contact the Registry by telephone or you can email your query to [enquiries@guernseyregistry.com](mailto:enquiries@guernseyregistry.com).

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