

## Audit Exemption Waiver Resolutions

### Requirement for audit

Part XVI Section 255 of the Companies (Guernsey) Law, 2008 requires that a company's accounts for a financial year must be audited in accordance with the provisions of Part XVI unless a company is exempt from audit under the provisions of Section 256.

### Section 256—Exemptions from audit:

The members of certain companies may pass a waiver resolution exempting the company from the requirement to have its accounts audited for the financial year.

**A resolution must be passed by the Members of the company in the financial year before the year to which it relates or, in the case of a newly incorporated company, in the first financial year.**

**The resolution can waive the requirement for audit for one year, multiple years, or indefinitely.**

Details of those companies that are prohibited from being audit exempt: <http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=73913&p=0> ) and as amended: <http://www.guernseylegalresources.gg/article/114999/No-65---The-Companies-Audit-Exemption-Amendment-Regulations-2014>

When considering passing a waiver to exempt a company from the requirement to audit accounts, the Registry recommends that independent legal advice is sought by members on the effect of the waiver (either for a specific financial year or indefinitely) and whether it is suitable for the individual circumstances of the company.

## How do I file an audit waiver resolution?

Guidance on how to submit the resolution to exempt the company from audit using the online services portal can be found here :

<http://www.guernseyregistry.com/CHttpHandler.ashx?id=1693&p=0>

A template audit waiver resolution is attached to this document.

*Please note: there is a £10 charge for submitting this waiver using the online services portal. If you make the submission by post or over the counter there is a £20 charge.*

## Annual Validation Audit Waiver indicator

Each year in January a company is required to make its annual validation submission. With effect from January 2014 part of this submission will include a pre-populated data field which will indicate whether the company has submitted an audit waiver resolution (indefinite or not) between 1 October 2012 and 31 December 2014. If, when completing your annual validation submission you believe that this pre-populated data filed is incorrect please contact the Registry.

**Please note that for the Audit Waiver indicator to show correctly on the Annual Validation form the Audit Waiver must be submitted before the Annual Validation form is completed.**

## What if I haven't filed an audit waiver resolution for previous years?

If a company has not filed an audit waiver resolution to exempt the company from audit and HAS NOT had its accounts audited then it is possible that it is in breach of section 255 of the Companies (Guernsey) Law, 2008.

However, section 257(1)(b) of the legislation allows directors to reasonably resolve that an auditor need not be appointed on the grounds that audited accounts are unlikely to be required. This is a matter for directors to consider – taking into account the circumstances of the particular company.

Independent legal advice should be sought on this matter.

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## What if I have already filed an indefinite audit waiver resolution prior to the 2013 update?

The Registry is aware of a number of companies that passed an audit waiver for an indefinite period between 2008 and 2011. This resolution was clearly in breach of the legislation and we do not believe this should be relied upon and would consider it appropriate for a company which has submitted such a waiver to submit a new waiver resolution following the guidelines above.

## But what if the company is in liquidation ?

Even if a company has been put into liquidation, it is still obliged to comply with Part XVI of the Law and, therefore, the default position is that the companies' accounts must be audited in each financial year.

Members should ask themselves the following questions when considering the requirement for audit:

1. Has an audit waiver resolution been passed in the preceding year (Section 256) or,
2. Have the directors reasonably resolved otherwise on the grounds that audited accounts are unlikely to be required (see Section 257 (1)(b) - this is a matter for the directors to consider—taking into account the circumstances of the particular company.

## Don't directors powers cease upon the appointment of a liquidator ?

It is true that directors powers do cease upon the appointment of a liquidator in a winding up. However, under both a voluntary and a compulsory winding up, the liquidator can sanction the continuance of the directors' powers.

The liquidator can, therefore, sanction the continuance of the directors' powers under section 257(1)(b) to resolve that audited accounts are not reasonably required.

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## Why can't a blanket audit waiver be applied to all companies in liquidation ?

A blanket waiver for all companies in liquidation is not desirable. There will be cases of companies in liquidation where audited accounts are likely to be required.

The purpose of this guidance note is to provide a prompt for directors on certain issues that should be considered with regard to audit waiver resolutions for companies in liquidation.

**It is not intended to be definitive legal advice and should not be relied upon as such.**

The interpretation of the Companies (Guernsey) Law, 2008 is a matter on which the Guernsey Registry cannot advise and companies need to form their own view on compliance with the legislation.

Independent legal advice is advised where there is any uncertainty.

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# Audit Waiver

## Section 256 of the Companies (Guernsey) Law, 2008

### Members Resolution (Audit Waiver)

Company name:

Company number:

Registered office details:

Resolution in accordance with section 179 of the Companies (Guernsey) Law, 2008 of the members of the company at the meeting held on:

dd/mm/yy

#### Waiver of audit

IT WAS RESOLVED pursuant to section 256 of the Companies (Guernsey) Law, 2008 that the company waives the requirement under section 255 to have its accounts audited.

This members resolution shall apply as follows:

Indefinitely:  or

*N.B. if the resolution exempts the company for an indefinite period it should be passed before the first financial year to which it relates. If the financial year is the company's first financial year, in that financial year.*

For the financial year ending:  or

*N.B. if it relates to only one financial year then the resolution must be passed in the financial year before the financial year to which it relates. If the financial year is the company's first financial year, in that financial year.*

For the financial years ending:  to

*N.B. if the resolution relates to more than one financial year it should be passed before the first financial year to which it relates. If the financial year, or one of the financial years to which it relates, is the company's first financial year, in that financial year.*

IT WAS FURTHER RESOLVED to file a copy of the resolution with the Registrar of Companies.

For and on behalf of:

Signature

Please submit this resolution, with the necessary fee, to the Guernsey Registry using the online services portal or by post. The fee is £10 for an online submission and £20 for a paper submission.