

**PKF**

Accountants &  
business advisers

# Doing business in Guernsey



# About PKF (Channel Islands) Limited



Established in Guernsey over 25 years ago, PKF (Channel Islands) Limited is a multi-disciplinary and multi-lingual professional advisory practice providing a complete and integrated range of services.

Our technical expertise, commercial knowledge and pragmatic approach to business are combined with a commitment to providing first-class personal service to clients from all sectors. We are available and responsive, offering prompt action and comprehensive advice.

The principal services we provide include:

- **Audit and accountancy services** - *The preparation and audit of financial reports and statements in accordance with statutory requirements and both UK and international accounting standards.*
- **Taxation services** - *Advice on relevant taxes, tax planning services and the preparation and completion of tax returns.*
- **Business advisory services** - *The design and improvement of accounting and control systems to meet specific requirements. Anticipating problems and finding solutions. We help ensure that your ideas make sense financially.*
- **French tax services** - *Specialist advice for those purchasing property or investing in France.*
- **Estate planning** - *A comprehensive review of your personal circumstances, advice in relation to inheritance laws and wills and the creation of a successful strategy to meet your needs.*

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# Foreword



If you are considering doing business in Guernsey this guide will lead you through the complexities of personal and corporate taxation, financing and the legislative environment. It does not set out to be a comprehensive analysis of this wide ranging subject but instead provide an overview of the main considerations and suggest appropriate sources for more detailed information.

Whatever your vision PKF (Channel Islands) Limited can offer you technical expertise, commercial knowledge and a pragmatic approach to your business. We provide a comprehensive range of services to many different types of organizations ranging from small owner-managed businesses to professional partnerships and listed companies. We are a member of PKF International Limited, a network of legally independent firms in 440 locations in around 125 countries. Membership of this network allows us to share knowledge, experience and skills vital to those clients who do business in more than one country.

Guernsey is a Crown Dependency. It is not part of the United Kingdom (UK) or the European Union (EU) and, at the time of writing, has no sales tax or VAT. This can make establishing a business here particularly challenging for those not familiar with the local business environment and regulation, and so it is best to seek advice from local specialists. Guernsey's constitutional relationship with the EU, its political stability, skilled and experienced workforce and close proximity to UK and European markets provides a variety of unique business opportunities.

We look forward to working with you.

Tim Cumming MA CA  
PKF (Channel Islands) Limited

# Introduction



## Geography and population

Guernsey is the second largest of the Channel Islands and the largest of the islands that make up the Bailiwick of Guernsey, which includes Alderney, Herm and Sark.

Located in the Gulf of St Malo and covering roughly 24 square miles, Guernsey is around 70 miles south of England and about 30 miles west of Northern France. The Island is in the same time-zone as London and the population of approximately 62,000 people is English speaking.

## Advantages of investing in Guernsey

Guernsey has a long history of financial and political stability. The size and structure of the Government makes it accessible and the decision makers easy to reach. The business environment is supported by a robust financial and professional infrastructure.

Guernsey is in the same GMT (Greenwich Mean Time) time zone as the United Kingdom mainland, and in close proximity to the Western European countries as well as being conveniently placed between the US and Far Eastern time zones.

Guernsey offers individuals and companies an attractive tax regime with the highest rate of personal income tax set at 20%, a standard rate of corporation tax of 0%, and no capital gains tax, wealth or inheritance tax, sales taxes or exchange controls.

## Political environment

Guernsey is a dependency of the British Crown, which means that the Island owes its allegiance to the Monarch rather than the United Kingdom (UK) Parliament. Whilst

Guernsey is part of the British Isles it is not part of the UK. The Island is not represented in the UK Parliament and Acts of Parliament do not apply unless an 'Order in Council' has been made.

Guernsey is governed by the democratically elected States of Deliberation which is responsible for domestic affairs including taxation, expenditure and legislation. New laws are approved by the Monarch through the Privy Council. The UK Government is responsible for the Bailiwick's international representation.

Guernsey is not a member of the European Union. However special terms were negotiated for the Channel Islands on the UK's accession to the EEC. These are contained in Protocol 3 to the Treaty of Accession. In effect, the Bailiwick is within the Common Customs Area and the Common External Tariff and so enjoys access to EEC countries of physical exports without tariff barriers. Other Community rules do not apply to Guernsey.

## Communications

Guernsey has excellent air links with the UK including frequent daily flights to London and other regional airports as well as regular flights to a number of airports in Continental Europe.

The Island's telecommunications sector provides resilient, reliable high capacity links to global networks and high speed internet connectivity via fibre optic cable. English is the native language and given the Islands close proximity to the European mainland, the main European languages are also well represented.

## Economy

Guernsey's Gross Domestic Product (GDP) is £1,905m (£31,750 per head of population) with the finance industry being the mainstay of the economy. The Island plays host to several hundred financial services businesses offering banking, insurance, investment and trust services. Businesses range from global institutions to small independent operations providing niche services. Finance is the most profitable and largest earning economic sector, in terms of remuneration and profits, and employs around 24% of the Island's work force.



Guernsey also boasts a small but dynamic light industrial and services sectors encompassing electronics, plastic and pharmaceuticals manufacturing, together with mail order, fulfillment and franchising operations.

The naturally beautiful landscape gave rise to the development of tourism in the 19th century which today still forms an important part of the local economy.

The States of Guernsey Commerce and Employment Department is committed to encouraging further business development that will contribute to a diverse and sustainable economy.

## Regulatory environment

Businesses and investors coming into Guernsey must comply with local laws and regulations governing how they operate.

Guernsey law was originally based on Norman French customary law, however since the beginning of the 20th century the influence of English common law has predominated. Guernsey lawyers or advocates, as they are known locally, still spend time training in France before they can practice in the Island as certain areas remain in which Guernsey law differs fundamentally from that of England and other jurisdictions. For example, the laws of real property and inheritance continue to reflect their Norman origins. Newcomers are therefore advised to seek advice from a Guernsey Advocate on any legal matters of concern.

## Financial services

Responsibility for the regulation of the finance sector lies with the Guernsey Financial Services Commission (GFSC), a statutory, autonomous, non-governmental body, which ensures that business conducted in Guernsey meets international standards. The GFSC employs a degree of pragmatism that allows enterprising financial institutions to flourish.

Regulated entities include banks, company administrators, directors, insurers, insurance intermediaries, investment firms and intermediaries and trust administrators. Using

their general powers of supervision and statutory powers to enforce compliance with laws regulating the conduct of finance business in Guernsey, the GFSC ensures that institutions authorised to carry out finance business are fit and proper for purpose.

Guernsey is committed to meeting established international standards on anti-money laundering and combating the financing of terrorism and its comprehensive regulatory framework and supervisory structure have been commended by the International Monetary Fund.

## Data protection

The Data Protection Commissioner is an independent public official appointed by the States of Guernsey to administer the Data Protection (Bailiwick of Guernsey) Law, 2001, and the Regulations that implement the Directive on Privacy and Electronic Communications that came into force in 2004.

The Law requires that anyone who records and uses personal information must be open about how the information is used and must follow the principles of good information handling. It also gives individuals certain rights, including the right to see information that is held and have it corrected if it is wrong.

Personal data must be fairly and lawfully processed. It must be processed for limited and specified purposes. The data must be accurate, adequate, relevant and not excessive for those purposes and where necessary, kept up to date. Data must be processed in accordance with an individual's rights and not kept for longer than is necessary. Businesses must have appropriate managerial and technological measures in place to ensure the security of the data and it must not be transferred to countries outside the European Economic Area which do not have adequate data protection.

Most businesses involved in processing data will need to register with the Data Protection Commission and give details of the purposes of their processing, the personal data processed, the recipients of the personal data processed and the places overseas to which the data is transferred.

## Major exports and imports

Guernsey is a major financial services provider and on a smaller scale exports some manufactured goods including optical products and horticulture products. Guernsey also has a thriving tourist industry, with no GST or VAT proving attractive, and is a popular destination for a large number of cruise liners each year.

Major imports include coal, gas, oil, electricity, machinery and equipment.

## Government policy on foreign investment in Guernsey

The States of Guernsey's Commerce & Employment Department has a policy of encouraging investment and strategies designed to promote a favourable climate for the Island's economy and business community. These strategies are outlined in the Government's Business Plan and Strategic Economic Plan.

## Import controls

The Guernsey Border Agency administers controls over the importation of goods. Imports of certain items require an import license. The list of controlled goods is subject to change and more information is available from the Guernsey Border Agency.

## Exchange controls

There are currently no exchange controls in force in Guernsey.

## Source of finance

Guernsey's reputation as a major international centre for the provision of financial services is well established. A number of international banking groups have subsidiaries on the Island alongside independent, boutique providers.

Major sources of finance include equity financing and borrowing.

## Currency

Guernsey's currency is Sterling and the Island issues its own coins and bank notes. These circulate in the Island along with Bank of England notes and coins, however Guernsey currency is not legal tender outside the Channel Islands.

# Business structure



## Types of business structure

It is possible to do business in Guernsey through four main structures: a company, a conventional partnership, a limited partnership, or a sole trader. In addition, on 11 March 2009, the Commerce and Employment Department recommended to the States of Guernsey that it direct the preparation of legislation to give effect to the introduction of Limited Liability Partnerships, but it is not clear at the time of writing when this will come into force.

The main types of business structures are outlined here.

## Companies

The Companies (Guernsey) Law, 2008 (Companies Law) came into force on 1 July 2008.

The Companies Law draws a distinction between ‘cell’ companies, being either protected cell companies or incorporated cell companies, incorporated cells and non-cellular companies, being companies limited by shares or guarantee, unlimited companies or mixed liability companies.

The Companies Law draws no distinction between public and private companies.

### Companies limited by shares

The liability of the members of a company limited by shares for the company’s debts is limited to the amount (if any) unpaid on the shares held by them. The effect of this is that once the subscription price for the shares has been paid, then any liability attached to the shares will have been discharged, as they will be fully paid. The holders of the shares have no further liability for the company’s debts.

## **Companies limited by guarantee**

A company is limited by guarantee if the liability of its members for the company's debts is limited to a guaranteed amount. The guaranteed amount is the amount that the member undertakes to contribute to the assets of the company if it is wound up while he is a member or within a period of one year after he ceases to be a member.

Although by no means restricted in their applications, companies limited by guarantee are best suited to be used where the members do not intend to receive any payment for their interest (e.g. dividends or return of capital on a winding up), their interests are not to be readily transferable and their interests will automatically cease upon retirement or death. As such, companies limited by guarantee are often used to incorporate charities and sporting and social clubs. Incorporation limits liability. It also enables assets to be held more easily than through an unincorporated body of persons. Shares are not often issued in these circumstances.

## **Unlimited liability companies**

An unlimited liability company must have members whose liability for the company's debts is unlimited while they are members or within a period of one year after they cease to be members and where the company has a share capital, it may also have shareholders, otherwise it must have no other type of member.

The use of unlimited liability companies is by their very nature likely to be limited. They could be used where there is a necessity to hold assets or contract through a body corporate in circumstances where creditors require the members to stand behind the company's obligations.

## **Mixed liability companies**

A mixed liability company is a company, which may have guarantee members, unlimited members and, where the company has a share capital, shareholders. A mixed liability company may have a share capital.

There are no uses for mixed liability companies which are immediately obvious and mixed liability companies are likely to be used infrequently and for highly specialist purposes.

## Protected cell companies (PCC)

One of the great innovations of Guernsey company law, a PCC is a single legal person. The significance of the PCC is its ability to have separate and distinct 'cells'. The assets and liabilities of each cell are legally segregated from those of other cells and those assets are not available to creditors of other cells in an insolvency of a cell. A cell is not a legal person. It is a pool of segregated assets and liabilities. The creation by a PCC of a cell does not create in respect of that cell a legal entity or person separate from the PCC itself.

Companies, which can be established as, or converted into, protected cell companies are:

- *collective investment schemes authorised under Section 8 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (POI Law);*
- *closed-ended investment companies;*
- *insurers licensed under The Insurance Business (Bailiwick of Guernsey) Law, 2002 or those insurers which are exempt from licensing by virtue of Section 5 of it;*
- *any class or description of company other than a licensed person (i.e. licensed to carry on banking business, insurance business, investment business or as a fiduciary) provided that the company and its affairs are administered by a licensed person with a place of business in Guernsey.*

The written consent of the Guernsey Financial Services Commission (GFSC) must be obtained before the incorporation of a protected cell company or the conversion of a company into a protected cell company. The GFSC may impose conditions for its consent.

## Incorporated cell companies (ICC)

An ICC is an extension of the principle of the PCC but with a number of significant differences.

The significance of the incorporated cell company concept is that it permits the existence of separate legal entities (incorporated cells) within another legal entity (the incorporated cell company).

Unlike a PCC, an ICC houses one or more incorporated cells within it, each ring-fenced by virtue of their separate legal existence from other incorporated cells and the ICC itself.

Uses of an incorporated cell company are the same as for protected cell companies.

### **Incorporated cells (IC)**

An IC is a single legal person separate from other ICs and its ICC, although it must have common officers and the same registered office as its ICC. It is effectively a 'company within a company'. It is not a subsidiary of the ICC and may not be a member of its ICC. As a distinct legal entity, an ICC has no power by virtue of its position to transact on behalf of its ICs, nor can an IC transact on behalf of its ICC or any other incorporated cell within the ICC.

An IC cannot be incorporated unless its ICC has passed a special resolution authorising an application for the IC's incorporation.

### **Directors**

The business and affairs of a company must be managed by, or under the direction or supervision of the board of directors. A company must have at least one director.

Guernsey's legislation states that a company may have a secretary who can also be a director of a company. The duties of the company secretary include ensuring that:

- *all registers and indexes are maintained in accordance with the law,*
- *all notices and documents required are filed appropriately,*
- *all resolutions, records, minutes are maintained correctly,*
- *the Memorandum and Articles are kept fully up to date and the board of directors is aware of any obligations imposed on it by the Memorandum and Articles or the rules of any Stock Exchange that the company is listed on.*

### **Incorporation**

With effect from 1 July 2008, the incorporation of companies ceased to be a judicial act and, except where the Commission's consent is still required, the consent of the Companies Law Officers of the Crown or the GFSC is no longer generally required.



Application must now be made to the Registrar of Companies in the prescribed form.

A company must have at least one founder member who subscribes to the memorandum of incorporation. He must not be a minor or a person under legal disability.

The applicant must be a corporate service provider i.e. the holder of a full fiduciary license under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000. Prior to 1 July 2008, only Guernsey advocates could make an application to incorporate a company.

If the Registrar grants the application for incorporation the memorandum (and articles as the case may be) will be registered in the Register and upon registration the company will be incorporated. The Registrar will issue a certificate of incorporation together with a registration number unique to the company. This certificate is conclusive evidence that the company has been duly incorporated.

### **Registration requirements and filing procedures for public securities (shares)**

The Channel Islands Stock Exchange offers a full listing facility to a wide range of investors who require securities to be listed on a recognised stock exchange. Full details of the listing requirements can be found at [www.cisx.com](http://www.cisx.com)

### **Shareholdings by non-residents**

Shares in Guernsey companies do not have to be held by Guernsey resident shareholders. Distributions to non-Guernsey resident shareholders are payable without deduction of Guernsey tax.

## **Foreign Companies**

A foreign company wishing to carry on business in Guernsey is not required to file any documentation with the Guernsey Registrar of Companies, however consent will be required if business activities of the company include banking, trustee, investment or insurance business.

# Partnerships

## Conventional partnership

A partnership exists where persons carry on business with a view to making a profit, in accordance with their agreement. The partners divide the profits and losses of the business between them. The Partnership (Guernsey) Law, 1995 codified what was believed to be the existing partnership law in Guernsey at the time. This law is similar to the English Partnership Act 1890.

The major disadvantage of a partnership is unlimited liability for the debts of the partnership both jointly and severally i.e. all the partners may be liable for the acts or defaults of just one partner.

## Limited partnership (LP)

A limited partnership is a partnership between one or more general partners, who are solely responsible for managing the partnership, and one or more limited partners, who invest in the partnership, but do not take part in its management.

A Guernsey LP is operated in accordance with a partnership agreement, and the Limited Partnerships (Guernsey) Law, 1995, as amended.

Generally, an LP does not have separate legal personality from its partners, however on registration an LP can elect to register with separate legal personality.

There is no restriction on what type of business can be conducted through a limited partnership structure. LPs are very popular vehicles for private equity funds and property holding vehicles, but also have a wide variety of other uses.

LPs can be used for asset protection arrangements. Somebody wishing to protect a portion of his wealth from creditors, whilst still retaining control over and use of those assets, could establish an LP whose general partner is a company owned and controlled by him. He would transfer certain assets into the partnership in consideration of a limited partnership interest and then settle that limited partnership interest on trustees. He would retain control over the general partner (and so over the LP's assets) whilst the trustees control the limited partnership rights.

An LP can also be used by someone wishing to invest capital in a new business venture which is likely to generate a sufficient cash flow to allow the capital, or part of it, to be returned to the investors within the foreseeable future.

The partnership interests of an LP can also be listed on a stock exchange, indeed a number have been listed on the Channel Islands Stock Exchange.

## Joint ventures

A joint venture involves co-operation on a project between two or more parties, where they may agree to share expenses and/or income from the project. This is not a partnership and its legal implications need to be clearly understood by the parties concerned.

## Trusts

A trust is a concept recognised by many jurisdictions around the world, including Guernsey. A trust separates the legal ownership of an asset from the beneficial ownership (i.e. the enjoyment) of the asset. Trustees legally own the assets, but the beneficiaries may benefit from them. This has taxation implications and establishing trusts may result in a substantial tax saving.

Although a trust should not trade in its own right, it can own all the shares of a trading company or the assets with which the trade is carried on (for example, it might own the trading premises).

A person who creates the trust and transfers assets into it is known as the settlor. The settlor appoints persons as trustees to hold the assets. The trustees owe a duty to the beneficiaries to manage the assets in the beneficiaries' best interests. It is not uncommon for the settlor to be also a trustee and a beneficiary of the trust. Trusts are commonly used to address family issues, mitigate tax liabilities and to protect business assets.

# Business finance



As with other jurisdictions, the most common means of raising business finance in Guernsey include equity financing and borrowing. When a bank or other person lends money, it is often the case that they will insist that such a loan must be secured against the assets of the borrower. Guernsey law has detailed provisions governing the creation of such security.

Until recently, both raising of capital and borrowing by a Guernsey company were regulated by The Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959, as amended, commonly referred to as 'COBO'. With the introduction of the Companies Law, together with amendments made in 2008 to the Protection of Investors (POI) Law, COBO is now only relevant in limited circumstances when raising money by the issuance of securities but continues to apply in respect of lending transactions. However, there are a number of issues that need to be considered where a Guernsey company intends to raise capital, borrow or grant security.

## Equity financing

### Raising capital by issuing securities

Prior to the Companies Law and the POI Law, it was necessary to obtain the consent of the States of Guernsey Policy Council, acting by the GFSC, for the issue of shares of a Guernsey company. This requirement was subject to an overall exemption where the amount raised during any 12 month period was less than £500,000. Under the new regime, it is not necessary to obtain consent under COBO for the issue of shares, unless shares are:

- *paid for (partly or in whole) otherwise than in cash;*
- *issued to discharge (partly or in whole) any capital liability; or*
- *redeemable shares if the purpose or effect of the transaction consists of or includes the capitalisation of profits or reserves.*

## Collective investment schemes

Where a company is classified as a collective investment scheme under the POI Law, it must be either authorised by or registered with the GFSC, thereby regulating its ability to raise capital.

## Flotation

Offering shares for sale on one of the public markets may provide the solution to businesses seeking to expand further. Such a listing will not only provide access to capital, and a market for trading in the shares, but will also increase public profile and credibility. It also offers the advantage that a company may use its own quoted paper to fund acquisitions.

The London Stock Exchange offers two different markets: the Official List and the Alternative Investment Market (AIM). The former offers a higher profile and access to greater funds, but has more demanding criteria including a three-year track record of trading and earnings. It also offers some specialist segmentation in techMARK™ and techMARK mediscience™. The AIM market is frequently more attractive for smaller, growth orientated businesses where the amount of funding required is in the range of £10 million to £50 million. The costs of listing on AIM are slightly less than the Official List but the big advantage is that the compliance requirements in connection with acquisitions are less onerous and hence less expensive. Other advantages include tax reliefs for investors and lower ongoing compliance and corporate governance costs. Another market to consider for smaller fund raisings is the self-regulated PLUS market.

The costs of flotation and ongoing corporate governance are key considerations for any company contemplating a float as well as the risk of takeover. The pressure from institutional shareholders and market volatility can be a significant distraction to the day-to-day management of the company and longer term strategies may be more difficult to pursue.

## Vendor funding

In recent years, vendor funding has become more popular in the financing of acquisitions, partially as a result of the limited availability of private equity at the smaller funding levels. Deferred consideration is a means of allowing the vendor to effectively

leave some equity finance in the business until it is in a position to pay it. In addition, vendors can provide loan type funding via loan notes which can be redeemed over a period of time. Vendor finance is generally unsecured or will rank behind funding from third parties. Whilst vendor finance does provide an alternative to private equity in smaller deals, it does have the disadvantage that, should the business require further equity at some point in the future, it will need to source this from third parties. Should the need arise from an adverse fluctuation in trading, the company may struggle to secure external equity and, even if successful, the terms of the investment are likely to be onerous and the returns sought high.

## Borrowing and granting security

Unless a company's memorandum specifically limits its objects, its objects are unrestricted. As such, the default position under the Companies Law is that a company has the power to borrow and give security over its assets. However, in certain instances the ability of a company may be restricted by its memorandum of articles and such borrowing restrictions may need to be observed or modified.

Borrowing, however, remains regulated by COBO (the Control of Borrowing Ordinance), which is concerned with borrowing in the Bailiwick and the raising of money outside of the Bailiwick by either a Guernsey company or a company whose shares are or are to be registered in the Bailiwick.

In the context of COBO, the word 'borrowing' has a more extensive meaning than it has in ordinary language and includes:

- *the making available of money in the Bailiwick;*
- *the giving of security over property in the Bailiwick; and*
- *the giving of any guarantee.*

COBO states that if moneys borrowed are not made available in the Bailiwick to the borrower either initially or subsequently, then COBO consent is not required, unless the borrowing is secured on Guernsey situate assets.

Subject to certain exemptions (see 'Borrowing from a bank'), COBO forbids borrowing of money in the Bailiwick without consent of the Policy Council of the States of Guernsey where the aggregate of the amount of money borrowed by that person in the previous 12 months exceeds £500,000.

### **Borrowing from a bank**

COBO does not apply to the borrowing of money by any person in the ordinary course of the borrower's business where it is borrowed from a person carrying on a banking undertaking. A bank for this purpose is either a licensee under the Banking Supervision (Bailiwick of Guernsey) Law, 1994 or a person recognised as a 'bank' by its jurisdiction of incorporation.

Consequently ordinary banking transactions, such as the arrangement of an overdraft, do not require COBO consent irrespective of the amount in question.

Borrowing in the ordinary course of business will, as a rule, be simple to interpret, but occasions may arise when a company may borrow money for purposes which are not usual for its business, for example, significant acquisitions. This is largely a question of fact. If there is any doubt COBO consent should be applied for.

Where the borrowing is from a bank and is in the ordinary course of the borrower's business, it is irrelevant whether it is secured or unsecured or whether or not it is guaranteed.

Consent under COBO is not required for loans, subject to certain exemptions, where the money borrowed is:

- *repayable on demand;*
- *repayable not more than six months after demand;*
- *wholly unsecured or is secured only by a bill of exchange payable on demand or at a fixed period not exceeding six months.*

A loan which is guaranteed is, for the purposes of this provision, not an unsecured loan. This would, for example, apply where a director guarantees a loan granted to a company.

## Summary of COBO

To summarise COBO, if the borrowing in question is in excess of the overall exemption (£500,000 in aggregate in any 12 month period) from a person who is not a bank, or the borrowing is from a bank otherwise than in the ordinary course of the borrower's business, then unless the loan is repayable not later than six months after demand and is unsecured, COBO consent is required.

## Debt funding

Debt funding provides a business the opportunity to grow using external funds without any loss of control. Unlike equity, debt funding has defined servicing costs and must be repaid within a defined period. In considering how much debt a business takes on, it must consider the servicing costs and repayment profile and ensure this can be comfortably met from the projected cashflows. Debt demands a lower return than equity although the return will be closely linked to the security and strength of future cashflows.

## Overdraft

Borrowing from a bank by way of overdraft remains the simplest form of external funding. However, as an overdraft can be called in at short notice, its use should generally be restricted to short-term cash flow funding, with longer term needs met by more structured loans.

## Term loans

Fixed-term loans may provide a better solution to fund longer term borrowing requirements such as an acquisition, since repayment schedules and interest rates can be agreed and budgeted for from the outset. Provided the business can comply with the banking covenants (for example, defined earnings to debt serving cost ratios) the business has the certainty that the loan may be repaid within the agreed timetable.

Such loans are usually secured by charges over land and buildings, debtors or plant and machinery. For smaller companies, the lender may also require personal guarantees from the directors or controlling shareholders. Fixed or variable interest rates may be available, with more complex arrangements available for larger loans, including 'caps', 'collars' and 'floors'. These restrict fluctuations in the interest rate chargeable and hence offer a degree of certainty in the financial planning for the business but do come at a cost.



## **Mezzanine loans**

Mezzanine loans are higher cost loans that effectively sit between equity and term loans. Generally they are used where the business has the capacity to service further debt but has no further security to offer. The return on this type of loan will range from 5% to 10% above base rates to compensate for the risk to funders. They also tend to be used on larger transactions which can incorporate more complex debt structures.

## **Asset-based lending**

For many businesses, these methods can provide a means of securing funding on the strength of the company's assets, typically fixed assets (particularly those with a ready resale value such as property), and trade debtors, although lesser amounts may also be available in certain circumstances to borrow against stock.

As any debt is secured over specific assets, this typically provides the lender with better security than is available against traditional overdraft lending. For this reason it has become the preferred method of funding in many transactions over recent years. It also offers the advantage that, as the facility is typically set as a percentage of the value of qualifying assets, it can increase and decrease in line with the working capital requirements of the company and is therefore better able to address seasonal working capital requirements.

In the vast majority of cases of finance secured against trade debts, the company retains the credit risk against the receipt of debtors with the lender merely lending money secured against those assets.

The level of involvement of the lender in collecting the debts can vary from case to case and typically depends on the size of the business. For example, with smaller businesses the lender may, in effect, carry out the sales ledger function on behalf of the customer whereas for larger businesses it may just periodically monitor the position.

The disadvantage of asset-based lending is that, taking into account administration and monitoring fees, it may be more expensive than traditional overdraft or term lending.

## **Types of security**

As stated, a Guernsey company will often be required to give security over its assets to secure borrowings and the question arises whether and to what extent security can be granted. The types of property that can be used can be categorized as 'tangible moveable property' and 'intangible moveable property'.

The general principle is that tangible moveable property is not susceptible to be secured or charged unless possession of it is delivered to the creditor with the right to retain it and sell it in the event of default. This form of pledge is rarely used in practice. One form of quasi security used in respect of this class of assets is a sale and lease back or a hire-purchase arrangement.

The Security Interests (Guernsey) Law, 1993 (as amended) applies to the granting of security interests in intangible moveable property other than a lease. The terminology used is that of a security interest and not a charge.

## **Security agreement**

The Security Law requires a security interest to be created pursuant to a security agreement. Security can be taken over, for example, securities, life policies and bank accounts and any other intangible moveable property other than a lease. It is not possible to register a security interest in any public register in Guernsey.

## **Floating charges**

Although Guernsey law permits the taking of security over most types of assets, e.g. land, securities, bank accounts, debts and life policies, it is not possible to take a floating charge over assets situated in Guernsey. However, a Guernsey company can give a floating charge governed by foreign law over property situated outside Guernsey.

## **Property**

It is not possible to create valid security over a leasehold interest. Security is taken over real property in Guernsey by way of a bond. Bonds must be consented to by the borrower in the conveyancing court before a Jurat of the court. The bond must be then registered at HM Greffe (the local land registry).

A bond does not create a valid charge over moveable assets despite the customary wording in it and it can only charge property owned by the debtor at the date of registration of the bond.

A bond will act as a charge against all of the debtor's real property owned at the date of its registration, unless expressly limited by the terms of the bond, known as a specific charge as opposed to a general charge. Real property acquired after registration of the bond, or not charged by the bond, can therefore be sold without requiring creditor's consent.

The priority of a bond depends on the date of registration, earlier registered bonds have priority over later ones. If registered on the same date they will have equal priority, although priorities can be varied by agreement of creditors which must be registered.

A bond is enforced by a creditor through saisie proceedings which is a customary law procedure and significantly different from the enforcement of an English legal mortgage or charge.

## Grants

Except in very specific areas of business, such as the dairy industry, there are no Guernsey-specific sources of such funding.

# Accounting



## Financial statements: Statutory accounting requirements

The Companies Law requires a company to keep accounting records which are sufficient to show and explain its transactions and are such as to disclose, with reasonable accuracy at any time, the financial position of the company at that time and enable the directors to ensure that any accounts prepared by the company are prepared properly and in accordance with any relevant enactments for the time being in force.

Accounting records of a Guernsey company must be kept for a period of six years, and if the original records are not kept in Guernsey, accounts and returns in respect of the business must be available in Guernsey 'sufficient to disclose with reasonable accuracy the financial position of the business at intervals not exceeding six months'.

There is no filing requirement in respect of the financial statements of a Guernsey company. Regulated entities must however file their annual financial statements with the Guernsey Financial Services Commission (GFSC).

The Companies Law contains very little by way of specific disclosure requirements, however it stipulates that the accounts shall be in accordance (and state that they are in accordance) with generally accepted accounting principles and state which principles have been adopted. In practice therefore nearly all companies use United Kingdom (UK) or International Accounting Standards, although other recognised standards such as US can be used.

Holding companies that produce group financial statements are not obliged to prepare individual financial statements of the holding company itself.

## Audit requirements and the role of an auditor

The members of a company may pass a resolution exempting the company from the requirement to have its annual financial statements audited, provided the company meets the qualifying conditions set out in the Audit Exemption Regulations and it is not a regulated entity.

These regulations came into force on 22 July 2008 and state that a company may be exempt if two of the following conditions are met in both the financial year and the previous financial year:

- *annual turnover less than £6.5 million,*
- *net balance sheet less than £3.26 million,*
- *average number of employees less than 50.*

In addition dormant companies, asset holding companies and companies with ten or fewer members can elect for audit exemption irrespective of the qualifying conditions.

For an audit waiver to be effective, it must be passed before the commencement of the financial year to which it relates.

To qualify to act as an auditor of a Guernsey company, a person must be a member of either one of the Institutes of Chartered Accountants in England and Wales, Scotland or Ireland, a member of the Chartered Association of Certified Accountants, or a member of the Association of Authorised Public Accountants. The Department of Commerce and Employment normally through the GFSC has the power to authorise a person of similar qualifications to act as an auditor.

An auditor can be a partnership or a body corporate.

Although not prescribed in law, audits of Guernsey companies are normally carried out in accordance with either UK or International Auditing Standards.

# Taxation



## a) Overview of taxes within Guernsey

The enforcement of taxation legislation and the assessment and collection of tax is the responsibility of States Income Tax, part of the States of Guernsey Treasury & Resources Department.

### Fiscal Year

Guernsey tax residence for individuals is established purely on the basis of the number of days spent in the Island. A tax year, or 'year of charge', in Guernsey is the calendar year, beginning on 1 January and ending on 31 December. There are four categories of residence 'non-resident', 'resident only', 'solely resident' or 'principally resident'. See Chapter 6 – 'Foreign personnel' for more information.

### Payment of tax

A taxpayer's taxable income is assessed annually on a calendar year basis on the lodgement of an income tax return. Tax is payable in two instalments on 30 June and 31 December each year although there is a system of deduction by monthly instalments through payroll from employment income.

### Lodgement of returns

Taxpayers are required to lodge returns with the Guernsey Tax Department on an annual basis.

Income tax is levied on individuals at the rate of 20%. Under The Income Tax (Zero 10) (Guernsey) Laws which came into effect on 1 January 2008, three rates for companies, depending upon the source of income, were introduced.

For income tax purposes Guernsey comprises all the islands in the Bailiwick except Sark (including Breghou) and Jethou.

Whilst not strictly a tax, Guernsey residents and employers are also liable to pay social security contributions in respect of earnings.

Guernsey levies no capital gains, inheritance, capital transfer, value added/sales taxes or stamp duty.

## Income tax

Income tax is payable on assessable income of individuals less allowable deductions at the standard rate of 20%. Assessable income includes business income, employment income, pension income, dividends, rent and interest received.

Bank deposit interest arising to non-Guernsey residents is not subject to deduction of Guernsey tax. However, please refer to the section 'EU Savings Tax Directive'. Guernsey state pensions are exempt from Guernsey income tax when paid to a non-resident.

Allowable deductions include fees and subscriptions to professional bodies and learned societies, pension scheme contributions, retirement annuity premiums, interest paid on mortgages up to £400,000 and in relation to commercially let property and business loans. Deductions are also available in relation to covenanted donations to charity.

All employed taxpayers and Guernsey resident directors have tax withheld from their salaries or wages under the Employees Tax Instalment Scheme by their employers. Self-employed and non-employed individuals pay their tax liability in two instalments on 30 June and 31 December each year.

Benefits in kind are taxable on individuals who receive benefits by virtue of their employment, i.e. the provision of food, rent free accommodation, private use of a company motor vehicle. Benefits are valued in different ways including the cost to the employer and in terms of assets provided to the employee, the market value. With effect from 1 January 2009 the tax on benefits in kind is to be paid by the employer on behalf of the employee.

Individuals principally resident in Guernsey during a calendar year are entitled to relief from income tax at the standard rate for that calendar year in respect of personal allowances available according to their respective personal circumstances. Details of all allowances can be found on the States of Guernsey website at [www.gov.gg](http://www.gov.gg).

### **Employee benefit trusts (EBT)**

Under the new Zero 10 Law no deduction will be available to companies for any contributions to an EBT until the contribution is paid out to beneficiaries in the form of taxable income. Relief will only be available when the benefits are paid by the scheme and are taxed in the hands of the employee. This does not apply to approved pension schemes and EBTs used as part of a share option scheme. Deductions are available in relation to contributions funding the maintenance and administration of the EBT.

Where an employee is non-Guernsey resident and his earnings are not subject to Guernsey tax because the employment is wholly carried on abroad, a deduction would still be available to the company despite the fact that the employee will not be taxable in Guernsey.

### **Tax capping for wealthy residents**

A cap has been set to restrict an individual's tax liability on certain forms of income. For 2008 there is a maximum liability of £250,000 on qualifying income. The qualifying income was any income derived from non-Guernsey sources including income from business, income from offices and employments, income from ownership of land and buildings and income from other sources. Qualifying income also included investment income from exempt bodies and Guernsey deposit interest.

With effect from 1 January 2009, the tax cap is reduced to £100,000 in relation to foreign source income and a further £100,000 for Guernsey source income. The limit is the same for a single person as it will be for a married couple.

### **The treatment of income payable to non-residents**

Income arising to non-residents is dealt with in such a way to ensure that most such income is not taxable. The objective is to retain the ability for income such as dividends, deemed distributions (see 'Deemed distributions and investment holding companies'), interest and royalties to be paid to non-residents without any liability or deductions in respect of Guernsey income tax. The income arising to non-Guernsey residents which



is not liable to Guernsey tax is called 'disregarded individual income' and is in general, company distributions and deemed distributions, deposit interest, royalties, any other income of a similar nature (not income from Guernsey situated land and buildings) and director's fees.

## **Trust issues**

A Guernsey principally resident settlor of a trust is liable to Guernsey income tax on the whole of the income arising to the trustees, regardless of the resident status of the trust, unless the settlor and any spouse have specifically been excluded as beneficiaries. The term 'settlor' also includes any person who has provided funds or other property directly or indirectly to a settlement or for any entity owned or controlled directly or indirectly by the trustees of the settlement. Any transaction on 'arms length' commercial terms would not be caught by the definition.

Guernsey resident trustees are exempt from Guernsey tax on trust income provided there are no Guernsey resident beneficiaries. Guernsey source income (other than bank deposit interest, dividend and income from exempt bodies) will however be taxable on the trustees notwithstanding that the beneficiaries are non-Guernsey resident.

## **Partnerships**

Partnerships are transparent for tax purposes and are not required to submit tax returns. Any tax liabilities are in the hands of the investors and therefore partners are personally liable to pay tax on their respective share of the partnership profits.

## **Personal allowances**

The total amount of the personal allowances due to an individual for a calendar year is deducted from the total amount of his income that is chargeable to income tax and the balance is charged at the standard rate of 20%.

For 2011, the single persons allowance is £9,050 and the married persons allowance is £18,100. There are also various other statutory allowances available. Details can be found on the States of Guernsey website [www.gov.gg](http://www.gov.gg).

## **Foreign tax relief**

Guernsey has double taxation agreements with the United Kingdom (UK) and Jersey. Excluding dividends received (see 'Matters relating to dividends'), and debenture interest,

double taxation relief is available on all other income taxed at source. Unilateral relief is available on all foreign sourced income from countries other than the UK and Jersey including dividends which have had withholding taxes deducted (see 'Matters relating to dividends').

## **Pension schemes**

**Guernsey residents** - Guernsey tax legislation allows for the establishing of a form of self-administered pension scheme, known as a Retirement Annuity Trust Scheme. The contributor to the scheme, who must be resident for Guernsey tax purposes, is able to directly influence the investment of the pension funds, and subject to certain restrictions, draw loans, provided there is a normal commercial return and sufficient security. On retirement, between the ages of 50 and 75, there is no requirement for the trustees to purchase an annuity from an insurance company. The trustees may pay an annuity directly from trust funds. The annuity will be subject to tax at the normal Guernsey rate. Any trust funds remaining on the beneficiary's death are then available for distribution between family members, in accordance with the terms of the trust.

**Non-Guernsey residents** - Pension schemes for non-Guernsey residents can be established under sections 40(o) and 40(ee) of the Income Tax (Guernsey) Law 1975. Such schemes offer a method of accumulating wealth free of any Guernsey income tax liability. The subsequent payment of benefits from the scheme will also be free of any Guernsey tax liability.

**Both Guernsey residents and non-Guernsey residents** - Pension schemes in the form of Guernsey Retirement Annuity Trusts which are open to both Guernsey and non-Guernsey residents are capable of obtaining approval as Qualifying Recognised Overseas Pension Schemes (QROPS) by HM Revenue & Customs in the UK. This enables the tax free transfer of UK pension funds (and other overseas pension funds depending on the tax rules in the overseas jurisdiction) to Guernsey.

## **Foreign personnel**

A foreign non-resident individual will be liable to Guernsey income tax in relation to employment exercised in Guernsey (see below in relation to UK residents). Employment will be treated as exercised in Guernsey where the whole or part of the duties are performed in Guernsey. If the duties are performed mainly outside Guernsey then only the duties performed in Guernsey will be treated as Guernsey employment.

In accordance with the Guernsey/UK double taxation agreement, a UK resident can be employed in Guernsey by a UK resident entity and be exempt from Guernsey tax on remuneration provided he spends less than (prior to 2008) 183 days in Guernsey and the remuneration is subject to tax in the UK. With effect from 1 January 2008 this time limit was reduced to less than 91 days. Different rules apply in relation to Guernsey tax liability on other personal sources of income, (see Chapter 7 – ‘Foreign personnel, Principally resident’).

### **Non-resident directors of Guernsey resident companies**

With effect from 1 January 2008 directors fees paid to non-Guernsey resident directors of Guernsey resident companies are not subject to Guernsey tax. Prior to this they were treated as a Guernsey source of income and subject to deduction of tax at the rate of 20%.

## **Corporation tax and the Zero 10 tax regime**

Prior to 2008 all companies incorporated in Guernsey were treated as either resident and chargeable to income tax at the rate of 20% on total worldwide income or were given exempt status (see ‘Exempt companies’).

From 1 January 2008 the company standard rate of tax has reduced to 0% although certain types of Guernsey source income will continue to be taxed on companies. Income arising from Guernsey property development or Guernsey rental income will be taxable at the company higher rate of 20%. The profits of utilities regulated by the Office of Utility Regulation are also subject to the 20% rate. Profits arising from certain banking activities and the provision of credit facilities during the ordinary course of a company’s business are subject to tax at the company intermediate rate of 10%.

### **Non-Guernsey registered companies**

Non-Guernsey registered companies are treated as resident for tax purposes where they are controlled in Guernsey. In this respect ‘control’ means the power of a person to direct the affairs of the company through that person’s share ownership (although other forms of control can be taken into account where appropriate).

## **Exempt companies**

Prior to 2008, Guernsey registered companies which were beneficially owned by non-residents were able to claim exempt status on payment of an annual exemption fee of £600. An exempt company paid no tax on income from sources outside Guernsey. Income arising from any source in Guernsey was subject to Guernsey income tax (except for bank deposit interest). With effect from 1 January 2008, exempt status has been abolished for privately owned companies. Exempt status is still available to Guernsey collective investment schemes established as either companies or trusts.

## **Resident companies**

The tax year runs from 1 January to 31 December, although companies may adopt a year end of their choice. Until 2005, business profits were assessable on a prior year basis. From 1 January 2006, the assessment of business profits changed to a current year basis. Certain transitional rules applied during 2005 effectively resulting in an assessment of the average profits for the two years ending in 2005.

Tax is payable in two instalments on 30 June and 31 December in the year of charge or 30 days following the issue of the assessment if issued after these dates. Tax returns are issued at the beginning of January each year and should be submitted along with a copy of the profit and loss account and the balance sheet of the company for the usual accounting period ending in the previous year to 31 December. Where a return has not been submitted by mid-June and the company has historically received income taxable at either the company higher rate of tax (20%) or the company intermediate rate of tax (10%), an estimated assessment will be raised, based on the previous year's figures adjusted for RPI.

It should be noted that where Guernsey registered companies have no sources of income taxable at a rate other than the standard company tax rate of 0% and have no Guernsey resident beneficial owners and no Guernsey employees other than directors, they will only need to complete a simple annual tax return and will not be required to submit annual financial statements to the Guernsey tax authorities.

## **Protected cell companies (PCC)**

Under the PCC legislation introduced in 1997, investors in, and creditors of, one particular cell of the company are protected from the liabilities (including the tax

liability attributable to the profits) of other cells. The taxable profits of each cell will be computed separately, with the profits and losses being apportioned between the cells in accordance with arrangements set out in the articles of association of the company or other relevant agreements affecting the company. Tax adjusted losses should be allocated to individual cells, in accordance with the liability for those losses concerned, although it should be possible to elect to surrender the loss against the profits of other cells. As well as being Guernsey resident, a PCC can achieve exempt company status as a collective investment scheme (see 'Exempt companies'). Exempt status will apply to the company as a whole and not just to individual cells.

### **Incorporated cell companies (ICC)**

Each cell of an ICC has its own legal personality and the tax treatment adopted reflects the fact that each incorporated cell is a separate entity for tax purposes (contrast this with the treatment of a PCC). It is possible for an ICC to have incorporated cells which are treated as resident for tax purposes as well as incorporated cells that are able to claim exempt status as collective investment schemes (see 'Exempt companies'). Each incorporated cell claiming exempt status will be responsible for making its own claim and paying its own £600 exempt fee.

Each incorporated cell which is liable to pay Guernsey tax (i.e. has not claimed exempt status) will have a separate income tax record and will receive its own income tax returns and assessments and will be responsible for paying its respective income tax liabilities.

### **Captive insurance companies**

Prior to 2008, there were special rules for the taxation of overseas controlled captive insurance companies. There were three methods of taxation of captives in Guernsey. The captive insurance company could be assessed at 20% on net taxable profits and could postpone part of the tax due in accordance with the proportion of claims reserve. Alternatively, it could elect to be taxed on a sliding scale basis which excluded income derived from underwriting activities outside Guernsey and taxed the remainder of its chargeable profits at decreasing rates. The other alternative was to elect to be an exempt company in which case it would pay an annual fee of £600. These options ceased to apply with effect from 1 January 2008. From this date captive insurance companies will be subject to Guernsey tax at the rate of 0% unless in receipt of a source of income which is taxable at either the companies intermediate or higher rates.

## **Matters relating to dividends**

Until 31 December 2007 dividends received by resident companies from other resident companies were not subject to withholding tax but would carry with them a tax credit making them effectively tax free. Dividends received from a UK resident company do not qualify for double tax relief and recipients are, therefore, taxed on the net amount received. Foreign dividends received qualify for unilateral tax relief which is calculated by applying the lesser of:

- (i) three quarters of the Guernsey effective rate; or*
- (ii) the foreign effective rate, to the amount of the grossed up foreign income brought into charge.*

With effect from 1 January 2008 the rules relating to tax credits on Guernsey dividends were abolished. Dividends are treated as being declared gross. While companies are taxed at 0% on their profits, the new tax law makes each company responsible to deduct tax at the rate of 20% from dividend payments to Guernsey resident shareholders (in the case of corporate shareholders, tax will only be deducted if there is an ultimate Guernsey resident shareholder). Dividends paid to non-resident shareholders can be paid without deduction of tax. The company must report to the Director of Income Tax on a quarterly basis any dividends paid to Guernsey resident shareholders and remit the tax deducted.

Where dividends are paid out of income already taxed on the company, for instance income from ownership of land and buildings in Guernsey, there will be no further tax charged at the time of the distribution. Both Guernsey and non-Guernsey resident shareholders will be entitled to a credit for the tax suffered by the company.

The company will be required to provide a certificate to the shareholder detailing the gross dividend, the tax deducted and the net amount.

Dividends are treated as paid out of taxed income, as such a deduction is not available for tax purposes for the payment of dividends.

## **Deemed distributions and investment holding companies**

The Zero 10 Law introduced the concept of 'deemed distributions' and set out the events that create a deemed distribution. For tax purposes a deemed distribution is dealt with in the same way as a dividend payment. A deemed distribution will occur if there

is untaxed undistributed income arising on or after 1 January 2008 which has been accumulated within the company. If a shareholder owns 1% or less in a company the deemed distribution rules will not be applied.

'Untaxed undistributed income' does not include any income that has been taxed at the rate of 20% or higher in a foreign jurisdiction. If the overseas tax suffered is less than 20%, the company will be required to deduct additional tax up to 20% on a deemed distribution of this income and pay it over to the Income Tax Office. Income taxed as a deemed distribution will not be taxed again, for instance once it is distributed, and the company will need to maintain careful records of the 'pool' of deemed distribution income.

Where a company claims exempt status as a collective investment scheme, the deemed distribution rules do not apply.

A distribution or deemed distribution will be treated as being paid out of income, in priority to being paid out of capital.

The Law identifies various trigger events that will be treated as deemed distributions of untaxed undistributed income. The trigger events are as follows:

- *The disposal, repurchase and/or redemption of shares in the company.*
- *The death of a shareholder, although a tax deferral scheme will be available in certain circumstances.*
- *The departure from the Island of a shareholder.*
- *The migration of a company.*
- *The amalgamation of a company, although there will be an exemption where the members and their interests are the same before and after the amalgamation i.e. in a paper for paper transaction.*
- *The dissolution of a company.*
- *There being undistributed net investment income at the end of a calendar quarter (although it may only be necessary to make returns on a half yearly basis). This will not apply if the net annual investment income is £500 or less.*
- *The cessation of a business or substantially the whole of the business.*

The net untaxed income arising to investment companies will always be deemed to be distributed to Guernsey resident shareholders pro-rated in accordance with their percentage shareholding.

With effect from 1 January 2009 the States of Guernsey introduced an exemption from the deemed distribution regime. An existing company can irrevocably elect to distribute a minimum of 65% of its profits within one year from the end of its accounting period. In return for the election, the deemed distribution trigger events as noted above will not apply. For a company distributing the minimum 65%, this exemption will reduce the effective Guernsey tax rate on its profits to 13%. It should be noted that investment income arising to the company would still be subject to the deemed distribution regime.

For new companies making the election, exemption from the deemed distribution regime will not be available for the first five years after the election.

### **Interest deductions**

Interest is deductible to the extent that the borrowing is incurred wholly and exclusively for the purposes of the business. Interest relief is also available for investment in local and overseas rental businesses and also for individuals borrowing to acquire an interest in a business.

### **Corporate groups**

Loss relief can be transferred between group companies. Companies form a group for loss relief purposes where one is beneficially entitled to 90% or more of the capital of another company, or 90% or more of the capital of each company is beneficially owned by another company or individual.

### **Related party transactions**

There is no transfer pricing or related party legislation in Guernsey.

### **Computation of taxable income**

The taxable income of a company (regardless of whether the tax rate is 0%, 10% or 20%) is determined by ascertaining assessable income and then subtracting all allowable deductions. Generally, to be deductible, expenditure must be wholly and exclusively expended for the purposes of the business.



## **Repatriation of profits, transfer pricing and related party transactions**

Methods of repatriating profits include the payment of interest and dividends as well as management and service fees and royalties. There is no transfer pricing or related party transactions legislation in Guernsey although in general, a deduction will only be available if the expense is incurred wholly and exclusively for the purposes of the business. There is no withholding tax from management or service fees payable to non-resident entities.

## **EU Savings Tax Directive**

Under agreements with several EU countries, EU resident individual investors have the option of receiving bank interest gross by opting for an exchange of information on their savings income with their domestic tax authority, or alternatively accepting a deduction of retention tax. Under the terms of the Directive the retention tax rate increased from 15% to 20% with effect from 1 July 2008.

With effect from 1 July 2011 Guernsey abolished the retention option and will now only exchange information with the EU countries that signed up to the directive in relation to interest payable to residents in those countries.

## **Social security**

Depending on their particular circumstances Guernsey residents are liable to pay either Class 1 (employed), Class 2 (self-employed) or Class 3 (non-employed) social security contributions. Guernsey employers are also liable to pay Class 1 (employers') contributions in relation to employees' salaries.

There is an upper earnings limit of £91,884 for all categories for 2011. The upper earnings limit for employers' contributions is £120,900 for 2011.

The rates of contributions can found on the States of Guernsey website at [www.gov.gg](http://www.gov.gg).

Guernsey has reciprocal arrangements with various jurisdictions. These allow for the aggregation of contributions paid by an individual in Guernsey with those paid in other jurisdictions for the purposes of establishing an appropriate level of state pension.

## Taxation on property/land

Rental income arising from property or land in Guernsey is, after deduction of certain statutory allowances, subject to income tax at the rate of 20%. Non-Guernsey resident owners of property or land in Guernsey are also subject to 20% tax. In these circumstances, tax is withheld by a Guernsey paying agent and paid over to the Guernsey tax authorities on a regular basis. With effect from 1 January 2008, profits arising from the development of Guernsey situated land and buildings is subject to tax at the rate of 20%.

## Customs duty

Customs duty is imposed on various goods imported into Guernsey. The rates of duty vary according to the commodity. Import duties are assessed in line with the Annual Tariff produced by the UK's HM Revenue and Customs which is based on the Combined Nomenclature (CN) of the European Community. The CN is published annually as a Commission regulation (amending Council Regulation (EEC) No 2658/87) in the legislation series of the Official Journal of the European Communities (OJ). The CN, in turn, is based on the Harmonised Commodity Description and Coding System used world-wide.

## Tax implications of a place of business, branch or Guernsey company

Businesses that are carried on through a permanent establishment in Guernsey are subject to income tax at the rate of 20%. Under the Zero 10 tax regime, if the business is carried on by a Guernsey corporate entity the rate will be 0% dependent on the nature of the trade (see 'Corporation Tax and the Zero 10 Tax Regime'). A permanent establishment can be a branch, factory, shop, workshop, quarry, building site or place of management.

## Selling into Guernsey

There are no restrictions on foreign entities selling into Guernsey. Where there is a Guernsey based agent, the agent will be liable to Guernsey tax on commissions or fees

received by virtue of the agent's tax residence status. If he operates from a permanent establishment in Guernsey the agent will be treated as trading in Guernsey and therefore liable to 20% tax. A Guernsey based distributor will be subject to income tax at 20% (if unincorporated) or corporation tax at 0% (if incorporated) on its profits arising from its operations in Guernsey.

## **b) Ceasing to have a presence in Guernsey**

A business could cease to have a presence in Guernsey because the owners decide to close it down by a process of winding-up, or because the company has become inactive and the owners wish to cancel its registration at the Registry.

## **Striking a company off the Guernsey Register of Companies**

This is the removal of a company from the Register. The company then ceases to exist as a legal entity although the court is still able to wind it up. It may be struck off if it is defunct, in default under the Companies Law or voluntarily.

### **Striking off defunct companies**

The Registrar may strike off defunct companies where he has reasonable cause to believe that a company is not carrying on business or is not in operation, or, in the case of a company which is being wound up that no liquidator is acting, or that the affairs of the company are fully wound up.

The Registrar must give notice stating the grounds upon which he is seeking to strike the company off and that at the end of a period of two months beginning with the date of the notice, the company will be struck off the Register and be dissolved, unless cause is previously shown to the contrary. The notice will be published on the Companies Registry website.

To avoid being struck-off, a company must therefore demonstrate that it is carrying on business or is in operation or, in the case of a company which is being wound up, that a liquidator is acting.

At the end of the notice period the Registrar will, unless cause to the contrary has been shown, strike the company off the Register and the company will be dissolved. The Registrar will publish notice of the striking off on the Registry website.

### **Defaulting companies**

The Registrar may strike off a company where:

- *it has failed to deliver to the Registrar an annual validation before the end of January in any year; or*
- *he has received a notice together with a declaration of compliance (ineffective office) from a corporate services provider in respect of a company;*
- *the Registrar is of the opinion that there have been persistent or gross contraventions of the Companies Law or the Companies (Guernsey) Law, 1994; or*
- *a company does not have a resident agent.*

### **Voluntary striking off**

On an application by a company, the Registrar may strike the company off the Register.

The application must be made by the board of directors, and be accompanied by a declaration of compliance (voluntary striking off) and contain such information as may be required by the Registrar. A declaration of compliance (voluntary striking off) is a declaration, signed by a director, that all the requirements of the Companies Law in respect of an application for the striking off of a company have been fulfilled.

There are certain circumstances where an application for voluntary striking off must not be made i.e. if the company's affairs have been declared to be in a state of *désastre* at a meeting of its arresting creditors held before a Commissioner.

## **Winding up and insolvency – liquidation**

The winding up regime under the Companies Law is far from as detailed and comprehensive as the regime in the United Kingdom under the Insolvency Act 1986. A practitioner familiar with the United Kingdom regime will inevitably notice various differences and omissions. Much of the day-to-day conduct of a winding up is still left

to 'usual practice' and does not find statutory expression. The winding up regime will be one of the first parts of the Companies Law to undergo substantial amendment and a working party has been set up for this purpose.

A further point, which should be addressed, is funding, particularly whether there are sufficient assets or indeed liquid assets to fund the liquidator. The assets of the company may indeed not be assets of the company at all if held under retention of title arrangements or may be depleted by set-off agreements or security interests granted.

### **Voluntary winding up**

A company may be wound up voluntarily if either the period (if any) fixed by the memorandum or articles for the duration of the company expires, or an event (if any) occurs on the occurrence of which the memorandum or articles provide that the company must be dissolved and the company passes the requisite resolution that it be wound up voluntarily.

### **Commencement and consequences of voluntary winding up**

A voluntary winding up commences upon the passing of the resolution for voluntary winding up, which must be delivered by the company to the Registrar within 30 days of being passed.

From the commencement of the voluntary winding up, the company must cease to carry on business, except in so far as may be expedient for the beneficial winding up of the company. The company, however, continues in existence until dissolution. A company which fails to cease to carry on business is guilty of an offence.

On the appointment of a liquidator, all powers of the directors cease, except to the extent that the company by ordinary resolution or the liquidator sanctions their continuance. Any person who purports to exercise any powers of a director after the appointment is guilty of an offence.

### **Appointment of liquidator**

The company must, by ordinary resolution, appoint one or more liquidators and fix his/their remuneration. If for whatever reason no liquidator is appointed by the company or the creditors the court may, on the application of any member or creditor, appoint a liquidator.

The liquidator must realise the company's assets and discharge the company's liabilities, and having done so, distribute any surplus amongst the members according to their respective entitlements. This entitlement will be set out in the articles or the terms of issue of shares.

### **Final meeting prior to dissolution**

As soon as the company's affairs are fully wound up, the liquidator must prepare an account of the winding up, giving details of the conduct of the liquidation and the disposal of the company's property. In addition, the liquidator must state in his report whether there are issues of misappropriation of the company's assets or misfeasance or fraudulent or wrongful trading.

He must then call a general meeting of the company at which the account is presented and an explanation given of it. Once the meeting is held the liquidator must inform the Registrar of the meeting including the date it was held.

The Registrar must publish the fact that the final meeting has taken place and that the company is to be dissolved in such manner and for such period as he thinks fit. This is published on the Registry website.

Finally, on the expiration of three months beginning on the date of delivery of the notice by the liquidator to the Registrar, the company is automatically dissolved and thereby ceases its corporate existence.

### **Delegation of company's powers to creditors**

A company which is to be voluntarily wound up may, by special resolution, delegate to its creditors or to any committee of creditors the power to appoint a liquidator and to fill any vacancy in the office of liquidator, to enter into any arrangement concerning the powers to be exercised by the liquidator and the manner in which they are to be exercised. Any act done by the creditors in pursuance of any such delegated power has effect as if done by the company.

### **Expenses of voluntary winding up**

All costs, charges and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator, are payable from the company's assets in priority to all other claims.

## **Compulsory winding up**

A company may be wound up by the court for a number of reasons, including if the company is unable to pay its debts or if the company has failed without good reason to hold its annual general meeting.

In addition, a company may be wound up by the court if it is of the opinion that it is desirable that it should be wound up for the protection of the public or of the reputation of the Bailiwick of Guernsey. An application for the compulsory winding up of a company in these circumstances may be made only by the Commerce and Employment Department or by the Guernsey Financial Services Commission (GFSC). If made, the order operates for the benefit of all the company's creditors in the same way as if they had presented the application.

An application for the compulsory winding up of a company may be made by the company itself, or by any director, member or creditor of it or by any other interested party.

## **Appointment of liquidator**

On the making of a compulsory winding up order, the court must appoint the liquidator nominated by the applicant or, where no person has been nominated, make such appointment as it thinks fit. The court may, before appointing a person to the office of liquidator, satisfy itself as to whether he is qualified to be appointed. The liquidator will normally be an experienced locally resident accountant. There is no requirement for a liquidator to be a licensed insolvency practitioner and the court will (unless the proposed liquidator is known to the court) normally require evidence of his experience. The court will usually also require that the liquidator (or if there are joint liquidators, at least one of them) is resident within the jurisdiction in order that the court is able to properly exercise its supervisory role. In complex liquidations it is common practice for a liquidator from both the London and Guernsey offices of a firm of accountants to be appointed joint liquidators in order to take advantage of the experience of a specialised liquidator from the London office (which will inevitably be larger) whilst also having the advantages of a local liquidator resident within the court's jurisdiction.

The court may, whether before or after appointing a person to the office of liquidator, require such security as it thinks fit from him, and order that moneys received by him be paid into an account specified by the court.

## **Consequences of appointment of liquidator and compulsory winding up order**

Upon the appointment of a liquidator in a compulsory winding up, all the powers of the directors cease, except to the extent that the liquidator or the court sanctions their continuance and any person who purports to exercise any powers of a director at a time when, those powers have ceased is guilty of an offence.

On the making of a compulsory winding up order, the company must cease to carry on business except in so far as may be expedient for the beneficial winding up of the company.

## **Distribution of company's property**

Subject to the rights of secured creditors, a company's assets in a winding up must be realised and applied in satisfaction of the company's debts and liabilities, subject to the provisions of the Companies Law or any relevant agreement between the company and any creditor.

Any surplus must then be distributed (unless the memorandum or articles provide otherwise) among the members according to their respective rights and interests in the company.

## **Winding up and insolvency – administration**

Until recently, Guernsey did not have a general administration regime except in relation to protected cell companies.

The administration regime under the Companies Law is similar to that under the United Kingdom Insolvency Act, 1986 prior to the Enterprise Act, 2002 coming into force. It is not, however, as detailed and comprehensive as the regime under the Insolvency Act, 1986 or the Enterprise Act, 2002. For example, as well as the omission of an express power conferred on an administrator in the United Kingdom to make an interim distribution, there is no statutory obligation upon utility providers to continue to supply companies in administration, as there is in the United Kingdom.

An administration order is an order directing that, during the period for which the order is in force, the affairs, business and property of a company or a cell of a protected



cell company are to be managed by an administrator appointed by the court. The administrator will usually be an experienced locally resident accountant. However, there is no formal requirement for the administrator to have any specific qualifications. Where the company has assets outside Guernsey it is common for the locally resident administrator to be jointly appointed with a United Kingdom licensed insolvency practitioner.

An administrator may do all things as may be necessary or expedient for the management of the affairs, business and property of the company or cell of a protected cell company.

## Company migration

It is possible for a Guernsey company to migrate to another jurisdiction. The company must apply to the Registrar to be removed from the Register of Companies and provide evidence that:

- *if appropriate, the GFSC has given consent for the company to be removed from the Register,*
- *a special resolution has been passed to remove the company,*
- *written notice of the company's intentions has been given to all creditors,*
- *the company would satisfy the statutory solvency test.*

Once removed from the Register the company must provide the Registrar with documentary evidence that the company has been incorporated in accordance with the law of the jurisdiction to which the company has migrated.

It is also possible for a foreign company, if permitted by the laws of its place of incorporation, to migrate to Guernsey provided similar conditions are satisfied.

# Intellectual and industrial property



## Copyright

The Copyright (Bailiwick of Guernsey) Ordinance, 2005 provides equivalent protection to that in the UK with particular provision for electronic commerce and digital rights management.

## Trade marks

Registration of a trade mark under The Trade Marks (Bailiwick of Guernsey) Ordinance, 2006 provides protection to the owner and grants exclusive rights to the use of the trade mark to distinguish their goods and services. Owners of trade marks in other countries must register them in Guernsey to benefit from the protection.

## Trade names

There is no register of trade names in Guernsey.

## Patents

Pending the introduction of new legislation, patent protection in Guernsey can be obtained through the Royal Court which is responsible for judicial processes in relation to applying for a patent.

# Foreign personnel



## Entry into Guernsey

Guernsey is a small island and the population is maintained at a sustainable level by a system of housing controls.

The following individuals have the right to live and work in Guernsey subject to certain criteria:

- *British citizens*
- *individuals with a right of abode in the UK*
- *nationals of the European Economic Area and Switzerland.*

Any other individuals must obtain leave to enter Guernsey from the States of Guernsey Home Department.

Whilst there are no restrictions on owning property in Guernsey, the occupation of most dwellings in the Island is strictly controlled by the States of Guernsey Housing Department via a series of housing licences. In addition individuals, including the self-employed, are not permitted to work in Guernsey unless they hold a 'Right to Work Document' which is only issued to those who can demonstrate that they are legally housed.

Guernsey's residential properties are designated in the Housing Register as either a Local Market controlled dwelling or an Open Market dwelling. Those individuals, described earlier, who have the right to live and work in Guernsey are able to occupy an Open Market property without any restriction. The occupation of Local Market properties is restricted to qualified residents or those holding a valid housing licence.

Generally speaking housing licences are employment related and are issued to those who are considered to work in areas where there is a shortage of staff. 'Essential Licences' are issued to skilled workers and are usually for periods ranging from three to five years, although in exceptional circumstances licences can be granted for any period up to 15 years. 'Short Term Licences' are available for periods up to nine months for temporary or seasonal work or for three years for other types of employment.

As already mentioned anyone wishing to work in Guernsey must hold a Right to Work Document. These are only available to those people who can prove that they are legally occupying a dwelling in the Island. Right to Work Documents are issued by the States of Guernsey Housing Department and are dependent on an individual's circumstances such as whether they hold an employment related housing licence, or are living with a spouse or as a member of the household of a qualified resident or licence holder.

Guernsey's housing and Right to Work laws are extremely complex and this is by no means a comprehensive summary. Further information is available from the States of Guernsey Housing Department.

## Employee rights

An employee's rights in Guernsey are not as extensive as in the UK, for example there are currently no laws regarding the provision of paid maternity leave, dealing with grievances, maximum working hours or minimum rest breaks.

The following areas are covered by legislation:

- *employment contracts*
- *unfair dismissal*
- *discrimination.*

## Taxation of residents and non-residents

Guernsey tax residence is established purely on the basis of the number of days an individual spends in the Island. A tax year in Guernsey is based on the calendar year. The rules are incorporated in the Income Tax (Residence) (Guernsey) (Amendment) Law,

2005. The rules establish whether an individual is “non-resident”, “resident only”, “solely resident” or “principally resident” for Guernsey tax purposes.

### **Non-resident**

A non-resident is defined as an individual who does not fall within the categories resident only, solely resident or principally resident.

An individual who is non-resident is liable to Guernsey income tax on Guernsey source income other than Guernsey bank interest and (with effect from 1 January 2008) dividends received from Guernsey companies.

A non-resident individual who is employed in Guernsey will be entitled to 1/52nd of the full year’s personal allowance for each week he works in the Island.

Individuals in receipt of Guernsey pensions, and who have become non-resident, will be entitled to a personal allowance on the basis of the period in the year during which a pension is received. For instance, if a pension is received for 12 months in the year, a full year’s personal allowance will be received.

### **Resident only**

An individual is regarded as resident only in Guernsey for tax purposes in a calendar year if:

- (a) he spends 91 days or more in Guernsey during the year, or*
- (b) he spends 35 days or more in Guernsey in that year and, during the four preceding years, he spent 365 days or more in Guernsey.*

An individual who is resident only is liable to Guernsey income tax on all Guernsey source income and (until 31 December 2008) on remittances of foreign income to Guernsey. With effect from 1 January 2009 the remittance basis of assessment was abolished. Individuals who are resident only will either be liable to pay Guernsey tax on their total worldwide income (subject to double taxation relief) or will be entitled to elect to pay a minimum annual charge of £25,000 and if their Guernsey source income exceeds £125,000 they will be liable to pay 20% on the excess. In return for this payment they will not be liable to pay Guernsey tax on their foreign income.

There is an exclusion for resident only individuals who are in Guernsey solely for employment purposes. Where the exclusion applies, individuals will be liable to pay Guernsey tax on foreign source income only to the extent that it is remitted to Guernsey.

### **Solely resident**

An individual will be treated as solely resident in Guernsey in a calendar year if:

- (a) he is treated as resident only (as above), and*
- (b) he spends less than 91 days in one other place during a calendar year. In other words, if an individual cannot be treated as resident (under Guernsey tax rules) in one other country during a year, he will be treated as solely resident in Guernsey.*

An individual who is solely resident in Guernsey is liable to Guernsey income tax on their total worldwide income wherever it arises.

### **Principally resident**

An individual who is not solely resident in Guernsey will be treated as principally resident in a calendar year if:

- (a) he spends at least 182 days in Guernsey during the year, or*
- (b) he spends at least 91 days in Guernsey during the year and, during the four preceding calendar years, he has spent at least 730 days in Guernsey, or*
- (c) he takes up permanent residence in the Island. For this purpose, an individual will be treated as taking up permanent residence in a calendar year if he is treated as resident only in the year, as described above, and is solely resident or principally resident in the following calendar year.*

An individual who is principally resident in Guernsey is liable to Guernsey income tax on their total worldwide income wherever it arises.

### **Day in Guernsey**

For Guernsey tax purposes, a day is treated as being spent in Guernsey if an individual is in the Island at midnight. As such, days of arrival are counted but days of departure are ignored.

## Note

Of particular note is the definition of resident only.

Under the rules, an individual may choose to spend 180 days (i.e. less than 182 days) in Guernsey per annum and say 95 days in France. He cannot be treated as solely resident because (under Guernsey tax rules) he will be regarded as resident in France, and he cannot be treated as principally resident because he has not been in the Island for at least 182 days. Consequently, he will be treated as resident only and liable to Guernsey tax on Guernsey source income and remittances of foreign income to Guernsey.

An individual who is currently principally resident leaves the Island but continues to visit on a regular basis will remain principally resident if he has been in Guernsey for more than 730 days in the previous four years before his departure and visits Guernsey for more than 91 days in the following years. As such, it may be two or three years before he becomes either resident only or non-resident.

Another interesting feature is that an individual can be treated as solely resident in Guernsey if he spends say 95 days in the Island but does not spend at least 91 days in one other country. As such an individual could be liable to Guernsey tax on their total worldwide income even though they spend only approximately one quarter of the year here.

# Useful contacts



## Government bodies

### States of Guernsey

Sir Charles Frossard House  
La Charroterie  
St Peter Port  
Guernsey  
GY1 1FH  
Tel: +44 (0) 1481 717000  
Web: [www.gov.gg](http://www.gov.gg)

### Commerce & Employment

Tel: +44 (0) 1481 234567

### Home Department

Tel: +44 (0) 1481 717000  
Email: [home@gov.gg](mailto:home@gov.gg)

### Housing

Tel: +44 (0) 1481 717000  
Email: [housing@gov.gg](mailto:housing@gov.gg)

### Income Tax

Tel: +44 (0) 1481 724711  
Email: [enquiries@tax.gov.gg](mailto:enquiries@tax.gov.gg)

### Social Security

Tel: +44 (0) 1481 732500  
Email: [enquiry@ssd.gov.gg](mailto:enquiry@ssd.gov.gg)



## Regulatory & supervisory bodies

### Data Protection Commission

PO Box 642  
Frances House, Sir William Place  
St Peter Port  
Guernsey  
GY1 3JE  
Tel: +44 (0) 1481 742074  
Email: [dataprotection@gov.gg](mailto:dataprotection@gov.gg)

### Guernsey Financial Services Commission

PO Box 128  
Gategny Court, Gategny Esplanade  
St Peter Port  
Guernsey  
GY1 3HQ  
Tel: +44 (0) 1481 712706 / 712801  
Email: [info@gfsc.gg](mailto:info@gfsc.gg)  
Web: [www.gfsc.gg](http://www.gfsc.gg)

### Guernsey Registry

PO Box 451  
Market Building, Fountain Street  
St Peter Port  
Guernsey  
GY1 3GX  
Tel: +44 (0) 1481 743800  
Email: [enquiries@guernseyregistry.com](mailto:enquiries@guernseyregistry.com)  
Web: [www.guernseyregistry.com](http://www.guernseyregistry.com)

## **Intellectual Property Office**

Market Building  
PO Box 451  
Fountain Street  
St Peter Port  
Guernsey  
GY1 3GX  
Tel: +44 (0) 1481 743000  
Fax: +44 (0) 1481743801  
Email: [ipo@guernseyregistry.com](mailto:ipo@guernseyregistry.com)  
Web: [www.ipo.guernseyregistry.com](http://www.ipo.guernseyregistry.com)

## **Stock market**

### **Channel Islands Stock Exchange**

PO Box 623  
One Lefebvre Street  
St Peter Port  
Guernsey  
GY1 4PJ  
Tel: +44 (0) 1481 713831  
Web: [www.cisx.com](http://www.cisx.com)

## **Trade & advisory services**

### **Collas Crill Advocates**

PO Box 140  
Gategny Court, Gategny Esplanade  
St Peter Port  
Guernsey  
GY1 4EW  
Tel: +44 (0) 1481 723191  
Email: [guernsey@collascrill.com](mailto:guernsey@collascrill.com)  
Web: [www.collascrill.com](http://www.collascrill.com)

### **Chamber of Commerce**

Suite 1, 16 Glatigny Esplanade  
St Peter Port  
Guernsey  
GY1 1WN  
Tel: +44 (0) 1481 727483  
Email: [office@guernseychamber.com](mailto:office@guernseychamber.com)  
Web: [www.guernseychamber.com](http://www.guernseychamber.com)

### **Confederation of Guernsey Industry**

Richmond House  
St Anne's Place  
St Peter Port  
Guernsey  
GY1 2NU  
Tel: +44 (0) 1481 721555  
Email: [enquiries@thecgi.net](mailto:enquiries@thecgi.net)  
Web: [www.thecgi.net](http://www.thecgi.net)

### **Guernsey Bar**

Web: [www.guernseybar.com](http://www.guernseybar.com)

### **Guernsey Enterprise Agency**

PO Box 149  
Guernsey Information Centre  
North Plantation  
St Peter Port  
Guernsey  
GY1 3JB  
Tel: +44 (0) 1481 710043  
Email: [info@gea.gg](mailto:info@gea.gg)  
Web: [www.guernseybusiness.net](http://www.guernseybusiness.net)

### **Guernsey Finance**

PO Box 655  
Guernsey Information Centre, North Plantation  
St Peter Port  
Guernsey  
GY1 3PN  
Tel: +44 (0) 1481 720071  
Email: [info@guernseyfinance.com](mailto:info@guernseyfinance.com)  
Web: [www.guernseyfinance.com](http://www.guernseyfinance.com)

### **Guernsey Legal Resources**

Web: [www.guernseylegalresources.gg](http://www.guernseylegalresources.gg)

### **Guernsey Society of Chartered & Certified Accountants**

Web: [www.gscqa.gg](http://www.gscqa.gg)

### **Live Guernsey**

Web: [www.liveguernsey.com](http://www.liveguernsey.com)