

## The Companies (Amendment No.4) (Jersey) Regulations 2010 and the amendment of the accounts and audit rules applicable to Jersey companies

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### Introduction

The Companies (Amendment No.4) (Jersey) Regulations 2010 (the **Regulations**) came into force on 5 April 2010. The amendments to the rules contained in Part 16 of the Companies (Jersey) Law 1991 (the **CJL**) relating to accounts and audit effected by the Regulations were made for two reasons. Firstly, to respond to the impact on Jersey based auditors of the EU Statutory Audit Directive 2006/43/EC (the **Directive**). Secondly, to improve Jersey's compliance with the international standard issued by the International Organisation of Securities Commissions (**IOSCO**) relating to accounting and auditing matters (commonly referred to as **IOSCO Principle 16**). This guide will consider the principal accounts and audit rules contained in the Regulations and will highlight how they differ from the rules that preceded them.

### Requirement to prepare accounts

The directors of a Jersey company must prepare accounts for a period of not more than 18 months beginning with the company's date of incorporation or, if the company has previously prepared accounts, beginning at the end of the period covered by the most recent accounts. Directors of a holding company are no longer required to prepare solus accounts for that company where consolidated accounts have been prepared (unless required by the members by ordinary resolution).

The accounts of a Jersey company whose securities are admitted to trading on an EU regulated market (other than a company that is an open ended collective investment fund or an issuer exclusively of debt securities admitted to trading on an EU regulated market the denomination of which is at least €50,000 or other currency equivalent at the date of issue) (a **market traded company**) must

be prepared in accordance with prescribed generally accepted accounting principles which will initially be those of Canada, China, India, Japan, South Korea, the UK and the US as well as the International Financial Reporting Standards either adopted by Regulation of the EU Commission or issued by the International Accounting Standards Board.

This new requirement has been introduced to enhance Jersey's level of compliance with IOSCO Principle 16. It states that a jurisdiction should apply accounting and auditing standards that are of a high and internationally acceptable quality and it applies to issuers that make public offerings of securities and issuers whose securities are publicly traded. In preparing the Regulations, the view was taken that initially Jersey should aim to comply with IOSCO Principle 16 only in respect of market traded companies. Accordingly, the Regulations do not fully meet the scope of issuers covered by IOSCO Principle 16. The Regulations in this regard also amended the CJL to provide a mechanism for enforcing compliance with accounting standards and auditing standards that apply to market traded companies.

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

A public company, a company whose articles of association require the appointment of an auditor and a company that resolves in general meeting to appoint an auditor must appoint an auditor to examine and report upon its accounts and failure to do so is an offence on the part of the company and its directors and

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liquidator (**officers**) punishable by up to two years imprisonment and/or a fine.

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

### **Entitlement to copies of accounts**

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

### **Time limits for preparation and filing of accounts**

A company's accounts for a financial period must be prepared (and where required audited) and laid before a general meeting of the company (together with a copy of the auditor's report where required) within seven months after the end of the financial period covered by the accounts in the case of a public company and within ten months in the case of a private company. However, the requirement to lay accounts before a general meeting is dispensed with if all shareholders of the company agree in writing to dispense with the requirement to hold an annual general meeting unless a shareholder, not later than 11 months after the end of the financial period covered by the accounts, requires the company by written notice to do so. In such case the general meeting must be held within 28 days of the notice or approval of the accounts by the directors, whichever last occurs.

The directors of a public company must deliver a copy of the company's accounts for a financial period (signed on behalf of the directors by one of them) and a copy of the auditor's report (along with a certified translation of the such documents into English where appropriate) to the registrar

of companies in Jersey within seven months after the end of such financial period and pay the relevant filing fee. This is so even if a public company becomes private during a financial period although the requirement to deliver accounts will be satisfied if the accounts relate to either the entire financial period or only to the part of the financial period during which the company was a public company. The directors of a private company do not have to file accounts.

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

### **Interim accounts**

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

### **Accounting records**

A Jersey company is required to keep accounting records that are sufficient to show and explain its transactions, disclose with reasonable accuracy (at any time) the financial position of the company and enable its directors to ensure that any accounts prepared by the company comply with Part 16 of the CJL. Such accounting records must be preserved for ten years. A company's accounting records must be kept where the directors think fit and must be open to inspection by the company's officers and secretary. If accounting records of a public company are maintained outside Jersey, returns with respect to the business dealt with in the records must be sent to and kept in Jersey and be open to inspection by the company's officers and secretary. The returns must be such as to disclose with reasonable accuracy the financial position of the business

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in question at intervals of not more than six months and enable the directors to ensure that any accounts prepared by the company comply with the requirements of Part 16 of the CJL.

### **Criminal liability**

A breach of the requirements set out above is an offence by the company and, in the case of a public company, by its officers punishable by a term of imprisonment of up to two years and/or a fine.

### **Appointment of auditors**

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

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

### **Auditor's report**

An auditor must make a report to a company's members on the accounts of the company examined by him. The report must state whether in the opinion of the auditor the accounts have been prepared in accordance

with the CJL and give a true and fair view or, alternatively, are presented fairly in all material respects. An auditor's report must state the name of the auditor and be signed and dated. If the auditor is an individual then the report must be signed by him and if the auditor is a firm, the report must be signed by the individual responsible for reporting on the accounts on behalf of the firm. The fact that an auditor's report is signed by an individual does not expose him to any civil liability to which he would not otherwise be liable.

### **Auditor's duties and powers**

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

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

### **Auditor's resignation**

An auditor may resign from office by depositing at a company's registered office written notice of resignation along with a statement to the effect that there are no circumstances connected with his resignation that he considers should be brought to

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the notice of members or creditors of the company or, if there are such circumstances, a statement setting out what they are. Failure to do so is an offence by the auditor and its officers punishable by a fine. Such a notice operates to bring the auditor's term of office to an end on the date on which it is deposited or on such later date as is specified in the notice.

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

### Auditors' qualifications

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

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

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

- individuals who are members of a recognized professional body;
- other partnerships that themselves qualify as auditors;
- bodies corporate that themselves qualify as auditors; or

- individuals who hold a qualification to audit accounts under the law of an EEA member state (other than the UK or the Republic of Ireland),

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

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

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

and such persons or entities must:

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

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

In the case of companies that are not market traded companies, the JFSC can authorise

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an individual or firm to act as an auditor of a Jersey company where they would not otherwise qualify under the requirements set out above. For these purposes, the JFSC has a policy of only approving (a) auditors approved by the relevant authorities of EU Member States in accordance with domestic legislation implementing the Directive (an **EU approved auditor**), (b) the 'Big 4' accountancy firms, (c) auditors qualified to audit English companies and (d) auditors registered as a 'public accounting firm' with the US Public Company Accounting Oversight Board provided that in any such case the JFSC is satisfied that the auditor is conversant with generally accepted accounting principles, generally accepted auditing standards and the legislative and regulatory environment in Jersey. The JFSC does not have power to approve an EU approved auditor as the auditor of a market traded company.

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

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

The Regulations amended the CJL so that Jersey adopted an auditor oversight regime designed to meet the equivalence requirements of the Directive. The adoption of

such a regime may avoid the need for a Jersey auditor:

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

In order to introduce an auditor oversight regime that meets the equivalence requirements of the Directive, the Regulations, in summary, provide that an auditor of a Jersey company that is a market traded company will:

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

In addition, to meet the equivalence requirements of the Directive, the Regulations amended the CJL to provide that the auditor monitoring work of a recognized professional body is itself subject to oversight by an independent body. The intention is that the Regulations allow Jersey to 'piggyback' on to the UK's existing auditor oversight regime. To this end, the ICAEW issues the Audit Rules referred to above, monitors the compliance of recognized auditors with them, and, if breaches occur, takes disciplinary action when necessary. To meet the equivalence requirements of the Directive, the JFSC as the body responsible for maintaining the Register, is also granted powers under the CJL to take

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action against recognized auditors.

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

As at 30 June 2011, PricewaterhouseCoopers CI LLP, Deloitte LLP (Jersey office), Ernst & Young LLP (Jersey office), KPMG Channel Islands Limited, Grant Thornton Limited, Reads (Audit) Limited, HLB Jackson Fox Limited, BDO Alto Limited, Mazars Channel Islands Limited, Moore Stephens and Baker Tilly Channel Islands are on the Register as Jersey based recognized auditors.

As at 30 June 2011, ZAO KPMG (Moscow), PFK (UK) LLP (UK), Deloitte LLP (UK), PricewaterhouseCoopers LLP (UK), KPMG LLP (UK), KPMG Audit Plc (UK), Baker Tilly UK Audit LLP (UK), KPMG (Dublin), Ernst & Young LLP (UK), BDO LLP (UK), Mazars LLP (UK), RSM Tenon Audit Limited (UK), Campbell Dallas LLP (Scotland) and PricewaterhouseCoopers Auditing Company SA (Athens) are on the Register as recognized auditors based outside Jersey.

Prior to the coming into force of the Regulations, audit firms auditing a Jersey market traded company that did not qualify as an auditor were able to be granted discretionary authorisation by the JFSC. Such discretionary authorisations are retained in respect on non-market traded companies. Market traded companies have to appoint a recognized auditor and should have done so by the end of a transitional period that expired on 5 April 2011 (although the JFSC has discretion to extend the transitional period by a further year). It is thought that there are only a small number of market traded companies that have had to appoint a recognized auditor to replace an unqualified auditor and

these were probably only cases where the company's assets and existing auditor were located in a jurisdiction outside the EEA.

One solution for companies affected by this problem was to appoint a recognized auditor and request the existing auditor to assist in the audit process.

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

### Conclusion

The changes effected by the Regulations in large part have only affected market traded companies by requiring their auditors to be recognized auditors and requiring them to adopt specified generally accepted accounting principles. Only a small number of market trading companies have had to or, where the JFSC has agreed to extend the transitional period for the appointment of recognized auditors, will have to appoint recognized auditors to replace or work alongside their existing auditors.

Businesses located outside the EEA wishing to list on an EU regulated market (such as the Official List of the London Stock Exchange) should bear in mind that, irrespective of where the company to be listed is incorporated, an auditor registered under the registration and oversight regime established by the Member State in which the relevant regulated market is situated will have to be appointed either to replace or work alongside existing auditors (assuming they are not otherwise registered).

It is hoped that the introduction of an equivalent system of registration and oversight in Jersey will result in derogations being granted by Member States to Jersey based auditors of market traded companies so that businesses seeking an EU listing will not be precluded from appointing Jersey auditors should they wish to do so. Those businesses wishing to use a Jersey company to achieve a listing on an EU regulated market who do not wish to appoint a Jersey based recognized auditor will still have to appoint an auditor that otherwise meets the qualification requirements for auditors of Jersey companies set out above and who is entered on the list of recognized auditors in Jersey. Those businesses wishing to use a Jersey company to achieve a listing on a market other than

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an EU regulated market will be able either to appoint an auditor that meets the qualification requirements for auditors of Jersey companies set out above (but who does not need to be on the list of recognized auditors) or to appoint another auditor based in their own jurisdiction approved by the JFSC.

### **Our services**

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

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