Collas Crill explains... Audit requirements for Jersey companies

October 2019

This guide is one in a series of 'Collas Crill explains...' in which we examine areas of Jersey law that frequently arise in practice. Further guides will be released weekly, click here to subscribe to receive the rest of the guides in this series to your inbox.

Jersey is a popular place to establish an asset holding **company** because the **Law** is modern, flexible and modelled on English companies legislation.

This guide looks at the key things you need to know about the audit requirements for a **company** under the **Law**.

Words in bold text are defined at the end of this guide.

Financial records and statements

For information on the requirements regarding financial records and statements for a **company** under the **Law**, see our guide *Financial records and statements for Jersey companies* (click here).

Requirement to audit accounts

A **public company** must appoint an auditor to examine and report on its accounts.

A **private company** is only required to appoint an auditor to examine and report on its accounts if its:

- articles of association require it do so; or
- shareholders require it to do so.

Appointment of auditor

Where a **company** is required to appoint an auditor, at each **AGM**, it must appoint an auditor to hold office until the conclusion of its next **AGM**.

At any time before a **company** holds its first **AGM**, the directors or shareholders may appoint an auditor to hold office until the conclusion of its first **AGM**.

If the shareholders of the **company** that is required to appoint an auditor decide not to hold **AGM**s, any auditor then in office:

- continues to act; and

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

- is taken to be reappointed for each succeeding financial period until the conclusion of the next **AGM** or the shareholders decide to terminate the auditor's appointment.

If a **company** that has decided not to hold **AGMs**:

- becomes required to appoint an auditor; and
- there is no auditor in office,

the directors must appoint an auditor to act until the conclusion of the next **AGM**.

The directors or shareholders may fill any vacancy in the office of auditor and fix the auditor's remuneration.

Who may be appointed auditor?

A **company** may only appoint as its auditor:

- (if it is a **market traded company**) a **recognised auditor**; or
- (if it is not a **market traded company**) a:
  - **qualified person**; or
  - person authorised by the **JFSC** to carry out an audit of the **company**.

A person who acts as auditor is also required to be independent of the **company**. Consequently, a person cannot act as auditor if the person has personal relationships within the **company**.

A person who does not satisfy the applicable qualification requirements must not act as an auditor. It is an offence for a person to do so, and on conviction, the person is liable for up to two years imprisonment, a fine or both.

In the case of a **market traded company**, an audit carried out by a person who is not a **recognised auditor** is of no effect.

Auditor's powers

The **Law** gives an auditor the right to:

- access a **company's** records at any time;
- require any information or explanation deemed necessary to perform their role from any:
  - director, secretary or employee of the **company**; and
  - person who holds or is accountable for any of the **company's** records and who appears to have the information;
- receive notice of and attend any meeting of shareholders and to speak on any part of the business of the meeting that concerns the auditor.

Auditor's duties

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

In preparing an audit report, an auditor must carry out any investigation that will enable the auditor to form an opinion as to whether:

- the **company** has kept proper accounting records;
- proper financial information adequate for the audit have been received from branches not visited by the auditor; and
- the **company's** accounts agree with its accounting records and financial information.

An auditor must state in an audit report:

- that a **company** has not complied with the requirements regarding accounting records and financial information mentioned above where the auditor believes this to be the case; and
- any failure to obtain any information or explanation that was, to the best of the auditor's knowledge and belief, necessary for the audit.

An auditor of a **market traded company** must keep all working papers relating to an audit in English and make them available on request to:

- the **JFSC**;
- any **recognised professional body**; or
- any professional oversight body.

Auditor's report

An auditor must make a report to a **company's** shareholders on the accounts of the **company** examined by the auditor. The report must:

- state whether, in the opinion of the auditor, the accounts:
    - have been prepared in accordance with the **Law**; and
    - give a true and fair view or, alternatively, are presented fairly in all material respects;
- state the name of the auditor;
- mention any failure to obtain from the **company** any information or explanation that (to the best of the auditor's knowledge and belief) was necessary for the audit; and
- be dated and signed by:
    - (if the auditor is an individual) that individual; and
    - (if the auditor is a firm) the individual responsible for examining and reporting on the accounts on behalf of the firm.

The fact that an auditor's report is signed by an individual does make the individual subject to any civil liability, to which the individual would not otherwise be liable.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

Removal of auditor

A **company** may remove an auditor despite anything in the engagement letter between it and the auditor. The removal of an auditor does not deprive an auditor of the right to compensation or damages for loss of office.

Resignation of auditor

An auditor may resign from office by sending to a **company's** registered office a:

- notice of resignation; and
- statement:
    - that there are no circumstances regarding the auditor's resignation that the auditor considers should be brought to the notice of the **company's** shareholders or creditors; or
    - (if there are any circumstances of that kind) which sets out those circumstances.

If a **company** receives a statement that there are circumstances regarding the auditor's resignation that the auditor considers should be brought to the notice of its shareholders or creditors, it must send a copy of the statement to each shareholder, and person entitled to receive notice of a meeting of shareholders, within 14 days of receiving the statement.

It is an offence if the **company** fails to do so, and on conviction, the **company** and its directors are liable to a fine.

An auditor's resignation takes effect on the date it is received at the **company's** registered office or, the date specified in the resignation (if later than when received).

Terms used

AGM means annual general meeting.

company means a Jersey company that does not carry on a regulated activity and is not an open ended investment company.

controlled by auditors means that a body corporate is controlled by:

- individuals who are members of a **recognised professional body** or a partnership or body corporate that is a **qualified person**;
- partnerships and bodies corporate accepted by a **recognised professional body** as being qualified for appointment as auditors of companies incorporated in the United Kingdom; and/or
- individuals who hold a qualification to audit accounts under the law of an European Economic Area member state other than the United Kingdom or Ireland.

Each individual, partnership and body corporate mentioned above 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;

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

- (in the case of 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.

JFSC means the Jersey Financial Services Commission.

Law means the Companies (Jersey) Law 1991.

market traded company means a **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 which have a denomination of at least €100,000 (or its equivalent in another currency).

private company means a **company** which specifies in its memorandum of association that it is a private company.

public company means a **company** which specifies in its memorandum of association that it is a public company.

qualified person means:

- in the case of individual, the individual is:
- a member of a **recognised professional body**; and
- permitted by that **recognised professional body** to engage in public practice;

in the case of a partnership:

- more than half of its partners are:
- individuals who are members of a **recognised professional body**;
- individuals who hold a qualification to audit accounts under the law of a European Economic Area member state other than the United Kingdom or Ireland;
- partnerships that are **qualified persons**;
- bodies corporate that are **qualified persons**;
- more than half of the voting rights in the partnership and (if it has one) its management body are held by the persons mentioned above; and
- each individual who is responsible for examining and reporting on the accounts is a **qualified person**; or

in the case of a body corporate:

- the body corporate is **controlled by auditors**; and

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

- each individual who is responsible for examining and reporting on the accounts is a **qualified person**.

recognised auditor means a person:

- who is a **qualified person**;
- who is bound by:
- rules governing the audit of **market traded companies** issued by a **recognised professional body** and approved by the **JFSC**; or
- if no rules have been issued by a **recognised professional body** or (if issued) have not been approved by the **JFSC**, rules governing the audit of **market traded companies** published by the **JFSC**; and
- whose name is recorded in the register of recognised auditors kept by the **JFSC**.

recognised professional body means the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland, the Association of Chartered Certified Accountants or the Institute of Chartered Accountants in Ireland.

About Collas Crill

We are a leading offshore law firm. We are easy to do business with and give practical advice to overcome tough challenges. Through our network of offices, we practise British Virgin Islands, Cayman Islands, Guernsey and Jersey law.

About this guide

*This guide is one of a series of **'Collas Crill explains...'** and gives a general overview of this topic. It is not legal advice and you may not rely on it. If you would like legal advice on this topic, please get in touch with one of the authors or your usual Collas Crill contacts.*

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

For more information please contact:

Matt Gilley

Advocate // Jersey

t:+44 (0) 1534 601691 // *e:*matthew.gilley@collascrill.com

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.