



## **Policy Statement**

# **Companies (Jersey) Law 1991: Discretionary Authorisation of Auditors of Companies that are not Market Traded Companies<sup>i</sup>**

**12 February 2013**

# Contents

<b>1</b>	<b>Introduction.....</b>	<b>3</b>
<b>2</b>	<b>Policy on granting authorisation pursuant to Article 113D(6) .....</b>	<b>3</b>
<b>3</b>	<b>Making an application .....</b>	<b>4</b>
<b>4</b>	<b>Granting authorisation – conditions and limitations.....</b>	<b>4</b>
<b>5</b>	<b>Appeals.....</b>	<b>5</b>

## 1 Introduction

- 1.1 Article 102 of the Companies (Jersey) Law 1991 (the **Companies Law**) sets out, amongst other things, the 'standard' qualifications<sup>ii</sup> that an auditor must normally meet to be able to audit a Jersey company.
- 1.2 The most significant of these standard qualifications are:
  - 1.2.1 where an individual is to be the auditor – the requirement for the person to be a member of one of certain specified professional accountancy bodies in the United Kingdom or Ireland<sup>iii</sup>;
  - 1.2.2 where a partnership or body corporate is to be the auditor – the requirement for a certain percentage of its partners/owners to be members of one of certain specified professional accountancy bodies in the United Kingdom or Ireland<sup>iv</sup>, or hold a qualification to audit accounts under the law of another European Economic Area (EEA) member state.
- 1.3 Where an auditor wishes to audit a particular Jersey company that is not a market traded company but does not meet the standard qualification criteria set out in the Companies Law, it may apply to the JFSC, pursuant to Article 113D(6) of the Companies Law, to be granted authorisation to audit the company.

## 2 Policy on granting authorisation pursuant to Article 113D(6)

- 2.1 The JFSC would ordinarily expect to use its discretion to authorize an auditor where:
  - 2.1.1 the auditor has been approved, by the competent authority of an EEA member state in accordance with domestic legislation that implements European Union Directive 2006/43/EC (the **EU Statutory Audit Directive**), to carry out statutory audits of companies incorporated in the EEA member state; or
  - 2.1.2 the auditor is registered with a competent authority of a G7 country<sup>v</sup>, or registered with a competent authority of a jurisdiction that has been determined by the European Commission to have systems of auditor oversight, quality assurance, investigations and penalties that are equivalent to those specified in Articles 29, 30 and 32 of the EU Statutory Audit Directive (an **EU Equivalent Jurisdiction**)<sup>vi</sup>, to carry out statutory audits of companies incorporated in the G7 country or the EU Equivalent Jurisdiction<sup>vii</sup>, respectively; or
  - 2.1.3 the auditor is a member of one of the 'Big Four' audit firms<sup>viii</sup>;
- and
- 2.1.4 the JFSC is satisfied that the individual who will sign the audit report for and behalf of the auditor (the **Responsible Individual**) pursuant to Article 113A(4) of the Companies Law is conversant with the generally accepted accounting principles (**GAAP**) and the generally accepted auditing standards (**GAAS**) to be used, and with the statutory and regulatory requirements in Jersey applicable to an auditor of the company,

SAVE WHERE the JFSC is of the opinion that, on the basis of the information available to it, the authorisation of the auditor would most likely be detrimental to:

- 2.1.5 the reduction of the risk to the public of financial loss due to dishonesty, incompetence or malpractice by or the financial unsoundness of an auditor;
- 2.1.6 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
- 2.1.7 the best economic interests of Jersey; or
- 2.1.8 the need to counter financial crime both in Jersey and elsewhere.

## 3 Making an application

- 3.1 [Applications for authorisation pursuant to Article 113D\(6\) should be made using the application form published by the JFSC.](#)
- 3.2 Where reliance is placed on 2.1.1 or 2.1.2 above, the application should be accompanied by evidence of approval/registration.
- 3.3 In relation to the obligation pursuant to paragraph 2.1.4 above for the Responsible Individual to be conversant with the statutory and regulatory requirements in Jersey applicable to an auditor of the company, the JFSC would ordinarily expect this obligation to be met by the Responsible Individual:
  - 3.3.1 prior to signing an audit report on the financial statements of the company, requesting an auditor based in Jersey, who is qualified to sign an audit report pursuant to Article 113A(4) of the Companies Law, to provide guidance as to the relevant Jersey statutory and regulatory requirements applicable to an auditor of the company; and
  - 3.3.2 having due regard to the guidance provided by the Jersey based auditor.

## 4 Granting authorisation – conditions and limitations

- 4.1 Article 113D(8) provides that the JFSC may, when authorizing an auditor under Article 113D(6), make the authorisation subject to the auditor complying with such conditions and limitations as the JFSC considers appropriate, including, in particular, in the case of a firm, a condition or limitation that would set out who, in the firm, may be the Responsible Individual.
- 4.2 In line with the criterion in paragraph 2.1.4 above, the JFSC will condition an authorisation granted to an audit firm pursuant to Article 113D(6) so that an audit report may only be signed by a named individual in the firm that the JFSC is satisfied is conversant with the GAAP and the GAAS to be used, and with the legislative and regulatory environment in Jersey.
- 4.3 In addition, in line with the provisions of paragraph 3.3 above, the JFSC will ordinarily condition an authorisation granted to an audit firm pursuant to Article 113D(6) so as to require the firm to provide to the JFSC, in confidence, as soon as practicable after the signing of the audit report, written confirmation that the Responsible Individual has had due regard to the guidance provided by the auditor based in Jersey.

## 5 Appeals

5.1 Article 113D(16) provides for an appeal to be made to Jersey's Royal Court against a decision of the JFSC to, amongst other things, refuse to authorize an auditor pursuant to Article 113D(6) or to make an authorisation subject to conditions or limitations. An appeal may only be made on the ground that it was unreasonable for the JFSC to take the action in all the circumstances of the case.

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<sup>i</sup> A 'market traded company' is defined in Article 102 of the Companies Law.

<sup>ii</sup> See the definition of 'auditor' in Article 102.

<sup>iii</sup> The Institute of Chartered Accountants in England and Wales; the Institute of Chartered Accountants of Scotland; the Association of Chartered Certified Accountants; the Institute of Chartered Accountants in Ireland.

<sup>iv</sup> As footnote 3.

<sup>v</sup> Canada, France, Germany, Italy, Japan, the United Kingdom, the United States of America.

<sup>vi</sup> Currently, EU Equivalent Jurisdictions are: Abu Dhabi, Australia, Brazil, Canada, China, Croatia, Dubai International Financial Centre, Guernsey, Indonesia, Isle of Man, Japan, Jersey, Malaysia, Mauritius, New Zealand, Singapore, South Africa, South Korea, Switzerland, Taiwan, Thailand, Turkey and the United States of America. See European Commission Decision 2011/30/EU, as amended and European Commission Decision 2016/1155.

<sup>vii</sup> For example, registration as a 'public accounting firm' with the United States' Public Company Accounting Oversight Board.

<sup>viii</sup> Deloitte, Ernst & Young, KPMG, PricewaterhouseCoopers.