

# GUERNSEY

Population:	60,000
Currency:	Pound sterling; £1 = US\$1.77 (mid-2005)
Language:	English
Time zone	GMT plus 1 in summer
Centre's expertise	Well-regulated centre offering global financial services

## General requirements

Type of entity	<b>Limited company; company limited by guarantee; protected cell company</b>
Type of law	<b>Common Law plus statutes</b>
Shelf company available	<b>Yes, but subject to requirement to obtain approval of beneficial ownership</b>
Time to establish a new company	<b>Minimum 48 hours</b>
Minimum cost	<b>None</b>
Annual fees	<b>Annual filing fee £100; tax exempt fee £600</b>
Taxation	<b>Exemption generally available</b>
Double taxation agreements	<b>Only UK and Jersey</b>
Forex restrictions	<b>None</b>
Language & name restrictions on companies	<b>English; restrictions on choice of names (subject to approval by FSC and law officers)</b>

## Share capital

Permitted currencies	<b>Any</b>
Minimum paid up	<b>No minimum</b>
Usual authorised capital	<b>£10,000 or equivalent</b>

## Directors and personnel

Minimum number	<b>1</b>
Local required	<b>No, unless company is carrying on a restricted activity</b>
Company secretary & qualifications	<b>Service providers regulated by Guernsey FSC</b>

## Shareholders and AGM

Minimum number	<b>2</b>
Disclosure requirements	<b>Beneficial owners disclosed to Guernsey FSC and to Crown officers</b>
Publicly accessible records	<b>Yes</b>
Obligations for annual meetings	<b>Yes</b>
Location of AGM	<b>No restriction</b>

## Accounts

Requirement to prepare	<b>Yes</b>
Audit requirements	<b>Audit exemption possible</b>
Account filing obligations	<b>None</b>
Publicly accessible accounts	<b>None</b>

## Other

Requirements to file annual return	<b>Yes</b>
Change in domicile permitted	<b>Yes</b>
Need for registered office	<b>Yes to be maintained in Guernsey</b>
Number of companies set up in last year	<b>1,172</b>
Total number of companies on register	<b>16,400</b>

# GUERNSEY

*Peter Niven, Chief Executive*  
**GuernseyFinance**

For its size, the 24 square mile island of **GUERNSEY**, with just 60,000 people, punches considerably above its weight as a well-regulated and highly regarded top-tier finance centre providing financial services to a global market. Guernsey's dynamic, innovative and service-oriented financial services sector works with an independent regulator to internationally accepted standards. Banking, investment management, insurance and fiduciary professionals provide a global service to corporate and personal clients worldwide supported by legal and accounting services of the highest international standards. In addition, the Channel Islands Stock Exchange is based on Guernsey.

The island is legislatively and fiscally independent of the United Kingdom and has no representation in the British parliament, although the UK Government is responsible for its international representation. The lieutenant governor is the British sovereign's personal representative and official channel of communication between the Crown and the UK Government and the bailiwick.

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. The effect of the protocol is that the bailiwick is within the Common Customs Area and the Common External Tariff (i.e. it enjoys access to EEC countries of physical exports without tariff barriers). Other Community rules do not apply to the Bailiwick.

English speaking, with a centuries-old tradition of political stability and good governance, Guernsey is within one hour's flight of many UK airports and has frequent air links both to London and to other UK cities. The island operates within the same time zone as London, and boasts a sophisticated telecommunications infrastructure.

## 800 years of unique entrepreneurial history

In 2004 Guernsey celebrated 800 years of unique history, which lies at the heart of its independent and entrepreneurial spirit. When England's unpopular King John lost Normandy to King Philip Augustus of France, in 1204, the English withdrawal left the Channel Islands dangerously exposed, presenting islanders with a stark choice: to maintain their allegiance to the Continent, or to side with England. Even though France is slightly closer, 24 miles away, against 60 miles to the English mainland, they chose the latter, which has proved to be the most significant event in the island's history. Guernsey had been part of the Duchy of Normandy, extending over the Channel Islands and part of the mainland of France from before the conquest of England in 1066 when Duke William II of Normandy became King William I of England. From that momentous decision in 1204, Guernsey became, and has remained, a dependency of the British Crown. But at no time has this link involved the island becoming part of the United Kingdom – or falling under the auspices of the UK government.

As a Crown dependency, the Island has evolved a separate legislature, and, by convention, Guernsey has the right to legislate without the involvement of the United Kingdom in domestic matters, including taxation – there has been a flat rate of income tax, at 20 per cent, for several decades. Whilst the United Kingdom has assumed responsibility for the island's foreign affairs, it acts only with the consent of the Guernsey authorities, who moreover frequently legislate independently to implement international agreements. The democratically elected legislative body for Guernsey is known as the States of Guernsey. There are no political parties and elected members vote individually on matters for consideration.

## Reputation for thoughtful and pragmatic regulation

Guernsey strongly values its reputation as an international finance centre and this reputation depends upon the island's political stability as well as the integrity and quality of service delivered by the institutions licensed to operate within the island. The Guernsey Financial Services Commission (GFSC) is the regulatory body for the finance industry in Guernsey and carries out the supervision of all aspects of finance business. The commission is a statutory, autonomous, non-governmental service body, located in central St Peter Port. The commission's primary objective is to regulate and supervise financial services in Guernsey with integrity and efficiency, to protect the interests of those who deal with these businesses, and to help uphold Guernsey's international reputation. Its policy is to ensure that only those organisations which comply with international anti-money laundering requirements are licensed to operate on the island.

The GFSC ensures that all those institutions authorised to carry on finance business in Guernsey are honest, competent and solvent. This means that they should have adequate capital, are owned and operated by fit and proper individuals and observe internationally accepted standards of practice. The Commission is aware of the need to achieve the right balance between, on the one hand, protecting customers, the public and the financial system by meeting international standards and, on the other, providing an environment that does not smother the industry and stifle innovation. Standards are implemented in a way that is thoughtful and pragmatic, to ensure that the burden on industry is as light as possible, yet the regulations bite effectively. Standards are adequate but not unduly intrusive.

In addition, the GFSC enters into memoranda of understanding with appropriate regulatory bodies and liaises with law enforcement organisations and other agencies. Positive reports on Guernsey's regulatory regime from international bodies clearly indicate that the worldwide regulatory community recognises the island's high standards.

### An island of entrepreneurs

While Guernsey is a relatively small island, its economy depends upon its ability to export its expertise around the world. By far the leading contributor to the island's economic success is the financial services industry, with the island recognised globally as a highly regulated, top-tier finance centre. The sophisticated financial services industry is the dominant force in Guernsey's economy, both in terms of employment and revenue but the island retains a number of traditional industries, such as agriculture, horticulture and fishing, and for many years Guernsey, with its natural and beautiful landscape, has been a popular tourist destination.

Entrepreneurs have thrived in Guernsey, particularly in the pharmaceutical and optical sectors and the island's Commerce and Employment Department is committed to encouraging further business development that will contribute to a diverse and sustainable economy. Today the concentration is on exploring opportunities in the burgeoning areas of E-commerce, intellectual property and patents.

The island's Gross Domestic Product (GDP) was estimated at £1,386 million in 2003 or £23,175 per head of population. According to the 2001 Guernsey Census there were 32,293 people employed in the island, of whom 7,300 were working in the financial services sector and many more in service areas supporting financial services. Unemployment in Guernsey has continued at low levels and stands at less than 1 percent of the workforce.

Guernsey is in the sterling area. Bank of England notes and UK coins circulate within the island, while the States of Guernsey (local government) also issue their own notes and coins.

### Banks lead the way

Banks have played a key role in the development of Guernsey as a world class international financial centre. The first merchant bank was established in 1963 and today there are around 55 licensed banks in the island with deposits totalling almost £80 billion. They represent a number of countries, in particular the UK and Switzerland, while other banks are subsidiaries of parent institutions in Bahrain, Bermuda, Canada, Cyprus, France, Germany, Greece, Hong Kong, Ireland, Italy, Netherlands, South Africa, Qatar and the USA. In recent years globalization has resulted in a trend towards fewer, larger, more efficient Guernsey banks and these are transacting greater levels of business.

There has also been a growth in the provision of banking services to corporate customers, with a split of approximately two-thirds private client banking to one-third corporate. Similarly, there has been an increase in European business, partly attracted to the opportunities provided by the Guernsey-based Channel Island Stock Exchange (CISX).

The banking sector is broadly split into two distinct groups — the retail banks (all major UK Clearing Banks are present on the island) together with the Guernsey subsidiaries of UK building societies, and, secondly, the international banks, representing institutions from countries such as those listed above. All banks are represented on the island by the Association of Guernsey Banks.

The scope of services offered have grown to include traditional banking activities such as deposit taking, lending, brokerage and investment management as well as more esoteric services such as the provision of structured products and derivatives.

Fund business is a mature sector of Guernsey's finance industry, administering everything from traditional investment vehicles for retail and institutional investors to property, private equity, hedge funds and funds of hedge funds.

At the end of March 2005 the overall value of funds under administration in Guernsey totalled around £75 billion. The island's mature financial services centre has made it a jurisdiction of choice for the launching of funds, in particular alternative investment funds. Guernsey's fund sector has benefited from an upsurge in hedge funds, real estate funds and private equity funds, which are growing in popularity as an asset class in many investors' portfolios.

The GFSC has developed professional funds, known as qualifying investor funds (QIFs), to speed up the licensing of funds where investors meet certain criteria. The introduction of QIFs placed Guernsey at the forefront of the international investment funds industry.

### Guernsey innovation shown in PCC structure

A significant number of funds are constituted within the protected cell company (PCC) structure, a Guernsey innovation. The PCC structure has lent itself not just to the growth of alternative investment fund activity, but also to the use of special purpose vehicles for securitisations. This facility is not generally available in other jurisdictions, and its innovative use is another advantage for the island. In fact, Guernsey administrators are experienced at managing a wide range of investment vehicles including oeics, closed-ended companies, PCCs and partnerships of various types.

Guernsey's fund sector comprises primarily professional firms involved with the structuring, launch and administration of fund structures by providing high quality legal, accounting, valuation, company secretarial and audit services. These firms administer investment funds, on behalf of many world renowned investment management companies.

The Channel Islands Stock Exchange (CISX), which is based in St Peter Port, offers a professional, timely, cost effective and personalised service. Its flexible and pragmatic approach is in keeping with the way business is done in the Channel Islands and is one of the reasons why the CISX has become the exchange of choice for a growing number of quality international issuers.

### Highly diverse fiduciary services

Fiduciary business in Guernsey is highly diverse, comprising a variety of providers ranging from bank- or institutionally-owned trust companies to privately-owned businesses controlled by professional firms or individuals. These companies provide a wide range of services aimed at high net worth individuals and corporations resident in all parts of the world.

Fiduciary services include the administration of trusts commonly used to protect a family's wealth, or in the case of a corporate settlor, to administer pension schemes and employee share plans. Corporate management and secretarial services are utilised to undertake trading activities, own intellectual property rights, manage yachts and own both residential and commercial property along with other assets such as a portfolio of stocks and shares. Estate planning and inheritance planning are other elements of the wealth management suite offered by Guernsey's fiduciary sector.

Guernsey was one of the first jurisdictions to introduce an effective licensing and supervision system in relation to trust administration services, company management and ancillary services. This legislation further enhanced Guernsey's reputation as one of the most effectively regulated and secure offshore jurisdictions.

The most recently available statistics show that fiduciary licences are currently held by 147 full licencees and 54 personal licencees, employing between them 2,650 staff. In 2000 the value of assets held in the sector was estimated to be £140 billion.

### Europe's leading captive insurer

Insurance business is highly significant for Guernsey, as the leading captive insurance domicile in Europe and it is in the top four in the world with more than 300 captives and over 229 cells in almost 70 protected cell companies. Experienced captive managers with a wide knowledge base, a highly regarded but flexible regulatory authority and a sound platform of skills in legal, accounting and investment expertise have led to this pre-eminent position.

Although the level of pure captive insurance business has been maintained, the protected cell company vehicle that has assured Guernsey's status as the premier innovating insurance domicile. Originally introduced in 1997, the PCC concept is now supported by a solid management infrastructure in Guernsey using experienced captive managers possessing the breadth of knowledge required to implement these solutions within a business risk environment. The innovative thinking that led to the creation of PCCs is

still employed to keep Guernsey at the leading edge of insurance matters.

As the island's insurance sector has matured alongside the needs of this global insurance market there is an identifiable move away from the use of captives for risk financing towards the provision of insurance solutions, through captives and other vehicles, in a much wider ambit.

The use of captive insurance has also extended into other areas of financial services business, such as employee benefits schemes. The innovation so much in evidence through pioneering PCCs is echoed by the quality of thinking behind today's best practice insurance solutions that have naturally evolved from the island's recognised strong position in the captive insurance market.

Specialist professional services have developed alongside Guernsey's financial services industry. This professional infrastructure enables Guernsey to punch well above its weight in the global business arena and has itself become instrumental as a key introducer of new business through professional networks that span the business world.

Principally the financial services industry is supported by top quality commercial lawyers, some of them City of London "Magic Circle" law firm partners who have relocated to the island for lifestyle reasons, yet still maintain the opportunity to participate in City quality work. In addition, senior accountants for the Big Four UK firms, many of them with an international track record, provide sophisticated advice and structuring expertise as well as the auditing services upon which many financial services products depend.

### Culture of training and development

The GFSC has worked closely with finance industry associations, in conjunction with the island's unique Guernsey Training Agency, to assist them in producing training matrices. This was a major exercise to identify an appropriate education/qualifications regime intended to achieve good standards of training and competence without resorting to regulatory compulsion as has been the case in some other jurisdictions. The long-term objective of the training agency is to engender a training and development culture within all organisations throughout the island and to procure and facilitate high quality training and development programmes. This generates a highly-qualified, knowledge-based workforce required to compete in a global marketplace.

### Foundation of focussed expertise

Guernsey is a world leader in the provision of specialist financial services. As this global area of business becomes more sophisticated, Guernsey's proven and recognised areas of strength become better valued and more apparent. Its reputation is based upon four decades of focussed expertise and this legacy is a strong base upon which the island will develop its financial services industry further to meet the demands of international financial markets.

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# HONG KONG

Population:	6.9 million
Currency:	HK dollar linked to the US dollar at HK\$7.8 to US\$1
Language:	Cantonese and English, with increasingly widespread use of Mandarin
Time zone:	GMT plus 8
Centre's expertise:	A major international financial centre, not an offshore tax haven

## General requirements

Type of entity	<b>Limited company</b>
Type of law	<b>Common Law</b>
Shelf company available	<b>Yes</b>
Time to establish a new company	<b>1 to 2 weeks</b>
Minimum cost	<b>HK\$10,000</b>
Annual fees	<b>HK\$2,705</b>
Taxation	<b>17.5% profits tax only, no capital gains tax</b>
Double taxation agreements	<b>Treaty with Belgium; some provisions with mainland China; some shipping and aviation treaties</b>
Forex restrictions	<b>None</b>
Language & name restrictions on companies	<b>None</b>

## Share capital

Permitted currencies	<b>Any</b>
Minimum paid up	<b>HK\$1</b>
Usual authorised capital	<b>HK\$1,000</b>

## Directors and personnel

Minimum number	<b>1</b>
Local required	<b>None</b>
Company secretary & qualifications	<b>Yes, no qualifications specified</b>

## Shareholders and AGM

Minimum number	<b>1</b>
Disclosure requirements	<b>Not under trust arrangement</b>
Publicly accessible records	<b>Yes</b>
Obligations for annual meetings	<b>Yes</b>
Location of AGM	<b>Anywhere</b>

## Accounts

Requirement to prepare	<b>Yes</b>
Audit requirements	<b>Yes</b>
Account filing obligations	<b>No</b>
Publicly accessible accounts	<b>No</b>

## Other

Requirements to file annual return	<b>Yes</b>
Change in domicile permitted	<b>No</b>
Need for registered office	<b>Yes</b>
Number of companies set up in last year	<b>15,500</b>
Total number of companies on register	<b>535,886</b>

# HONG KONG

*Sytske Kimman, Managing Director*  
**Amicorp Hong Kong Limited**

**HONG KONG** got its start as a manufacturing city, entrepot port and international financial centre as a Crown Colony of the United Kingdom for more than 150 years until mid-1997. In July 1997, Hong Kong was reunified with the People's Republic of China (PRC). But it was not simply absorbed into the mainland: it became a Special Administrative Region (SAR), with its own mini-constitution, the Basic Law, that enacted Beijing's promises that under the "One Country, Two Systems" concept, Hong Kong SAR would enjoy a high level of general autonomy from the PRC for at least 50 years from 1997.

The Chief Executive is the head of the SAR Government. Donald Tsang Yam-kuen, previously Chief Secretary, was elected in mid-2005 by the 800-member election committee to take over from first Chief Executive Tung Chee-hwa and to serve the remaining two years of Tung's second term.

Hong Kong's legal system is based on English Common Law. Most ordinances are modelled on English acts and generally standard English Common Law rules apply. The Basic Law guarantees Hong Kong citizens freedom and liberty and contains safeguards ensuring the independence of judges. Court procedures are similar to those in England and foreign judgments from certain Commonwealth jurisdictions are indirectly enforceable. The highest court in Hong Kong SAR is the Court of Final Appeal.

Arbitration is available in Hong Kong. Arbitration awards from other countries that are part of the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards can be enforced in Hong Kong.

The official currency is the Hong Kong dollar (HK\$). There are no currency controls in Hong Kong. The Hong Kong dollar's value is fixed to the US dollar at a rate of US\$1 to HK\$7.8. The exchange rate is managed by the Hong Kong Monetary Authority.

## Economy

Hong Kong is the third largest international financial centre in the world and an excellent market for capital raising. It is the only place outside mainland China where banks will transact business using the Chinese renminbi (RMB). It is also the world's busiest container shipping port.

Above all, Hong Kong has one of the most open, externally-orientated economies in the world. The Heritage Foundation and Fraser Institute of Canada have both consistently named Hong Kong as having the world's freest economy for 11 consecutive years. The cornerstone of the economy rests on free enterprise, free trade and free markets. It is the only country in Asia where no economic distinction is made between foreigner and local. There are no barriers to trade, no tariffs, no quotas, no exceptions. There are no restrictions on investments, inward or outward and no nationality restrictions on corporate ownership.

Besides developing expertise as a centre for financing deals, particularly for Chinese mainland IPOs, Hong Kong has also become highly regarded for hi-tech software development, fashion design (including jewellery), and IT. Principal trading partners include China, USA, Japan, Taiwan, Singapore, Europe and South Korea. Hong Kong has enjoyed economic growth in the past because of its strong manufacturing sector. In recent years the service sector has surpassed it in importance and now accounts for the major part of the GDP. The major parts of the service sector are shipping, civil aviation, financial services and tourism. Hong Kong has the world's most sophisticated telecommunication and information technology infrastructures.

Many of China's direct foreign investments are arranged through Hong Kong, although sometimes another jurisdiction may be interposed. As such, Hong Kong's financial specialists have developed great expertise in managing risk factors relating to investment into China. Further advances in the Closer Economic Partnership Arrangement (CEPA) between the People's Republic of China and Hong Kong will ensure that Hong Kong companies will continue to benefit from favourable business terms when investing into China.

## Doing business in Hong Kong

Establishing a private limited liability company is a simple process that takes a little more than a week. However, shelf companies are readily available for immediate use. All companies must include the word "limited" at the end of their name. There are no restrictions on foreign ownership.

Other provisions are straightforward and simple. A limited company must have at least one director and one shareholder. These may be either an individual or a company of any nationality and domicile; identification of direct shareholders and directors is required, but there are no requirements for the identification of the beneficial owners; a corporate secretary is required, and must be an individual or company resident in Hong Kong with a registered Hong Kong address; the register of members, directors, managers, and their interests in the company and the minutes of board meetings must all be maintained at the registered address of the company; there is no minimum share capital requirement and the shares may be denominated in any currency; bearer shares are not allowed.

Companies that provide trust, insurance, custodial and financial services need to get special licences to do business. Once in business, the Hong Kong corporate playing field is even and open. A limited company must prepare and file an annual return with the Company Registry and its annual accounts must be audited. Although annual general meetings must be held, there is no requirement that the meeting be held locally (in Hong Kong). Annual government fees total about US\$350.

### Tax highlights

Hong Kong's tax law is extraordinarily simple. The entire Inland Revenue Ordinance is only about 200 pages short. Only three direct taxes exist, corporate, salary and property, and all are low, with profits tax at 17.5 percent and salaries and rental income tax at 16 percent. Only income generated from sources within Hong Kong is liable for tax, and income generated from sources outside Hong Kong is exempt from taxation. Losses may be carried forward, but cannot be sold. In addition, there is no withholding tax on dividends or on interest received or distributed. Interest income from deposits held in Hong Kong is exempt from tax in Hong Kong. There is no capital gains (or capital revenue) tax. Hong Kong is absent from the black lists of most countries. If anyone is in doubt about a tax matter, it is possible to seek an advance ruling from the Hong Kong Inland Revenue Department.

The Inland Revenue Department makes the final determination regarding both on and offshore profits. A company is taxable on its profits provided: the company carries on a business or trade in Hong Kong; and the profits arise from such trade or business in Hong Kong; and the profits are derived or sourced from within Hong Kong. All three conditions must be met before income is subject to taxation in Hong Kong. Income realized from sources outside or without Hong Kong is not subject to taxation. Non-taxed income may be received or distributed to Hong Kong without further tax results. Nonresident corporate branches fall under the same rules as domestic Hong Kong companies. A company's tax residence is determined by where its central management is located. Hong Kong does not provide a unilateral tax credit relief for foreign withholding taxes paid on cross-border distributions. The treaty benefits can be obtained, however, where a foreign company, in a country with a favourable tax treaty network (e.g., Netherlands, Singapore) has established a Hong Kong branch.

### Ideal for international trading

Hong Kong is ideal for international trading. Such business includes the purchase and resale of goods or services globally. Such trading operations can generate tax-free profits in Hong Kong where profits are not sourced in Hong Kong (offshore profits).

To claim offshore profit status the following must be satisfied:

A) Goods in trade:

- The purchase contracts are executed (physically) outside Hong Kong;
- The sales contracts are executed (physically) outside Hong Kong;
- The goods shipped have not entered Hong Kong (i.e., passed through customs; goods in transit, however are allowed.)

B) Consulting services:

- Service consultants perform their activities physically outside Hong Kong; and
- All contracts are concluded (effected) physically outside Hong Kong.

At the moment, Hong Kong has only one double taxation agreement, with Belgium, although the government has said it is a priority to conclude deals with other countries with which it is negotiating. In addition, there are bilateral arrangements for shipping and air transport purposes. The "One Country, Two Systems" arrangement also provides favourable arrangements between the SAR and the mainland to obviate double taxation. Indeed, under CEPA, Hong Kong companies have numerous advantages in dealings with China for trading goods, services and trade and investment facilitation. For example, a

zero import tariff will be maintained by China for certain goods exported by Hong Kong companies and liberalisation permits earlier access to China for Hong Kong companies, ahead of and beyond China's WTO commitments.

### Foreign companies doing business in Hong Kong

Foreign companies wishing to do business in Hong Kong must apply for a Business Registration Certificate with the Registrar of Companies and the Inland Revenue Department. There are currently 11,098 foreign companies using Hong Kong as their regional headquarters.

Hong Kong is legendary as an international financial centre. All major global financial institutions have offices in Hong Kong. There are many international calibre quality financial professionals working in the financial marketplace, some originally with their homes in the US or Europe, others from mainland China and many who are Hong Kong born and bred, though often educated abroad.

Hong Kong is a preferred location for corporate financing. With the growth and listing of mainland companies it is the preferred international centre for fund-raising. More than 890 companies are listed on the Hong Kong Stock Exchange (HKSE), which has a total market capitalization of more than HK\$9.6 trillion. The government is actively looking into amending the rules to stimulate the financial services sector. The existence and the broad powers of the Independent Commission Against Corruption have ensured that Hong Kong is generally free of corruption that has bedevilled and undermined other economies.

### Structuring through Hong Kong

#### A) The trading structure

A Hong Kong trading company is often used for either re-invoicing or as an added value or risk manager for doing business in the Far East. This offers manifold advantages, including superior logistics, centralised quality control, easy banking, an excellent location for managing IP rights and easy communication since documents are kept in English. Summarised mechanics of a Hong Kong re-invoicing structure:

- A Hong Kong company operates as a bridging link between the product supplier (producer) and the buyer;
- It performs its sales activities pursuant to instructions from its principal;
- Product shipments are routed directly from the supplier to the ultimate buyer ("drop shipment");
- A Hong Kong company receives, invoices and pays the cost of the goods to the supplier;
- A Hong Kong company then resells and re-invoices the buyer for the same product, adding a profit margin for the added value services and assisting in the risk managing role;
- The settlement of purchases and sales are monitored through the bank accounts of a Hong Kong company.

For principals operating manufacturing businesses, this Hong Kong trade structure can provide significant reductions in profit taxation.

#### B) The manufacturing structure

Many Hong Kong companies have moved their manufacturing plants to China. Consequently, the Hong Kong company now acts as a vehicle between the Chinese manufacturing/processing unit. The Hong Kong company signs a processing or assembly contract with a Chinese manufacturing unit whereby the Hong Kong company provides the raw materials, technical know-how, designing, training, management and supervision and the mainland factory only provides the factory premises, land and labour. They are responsible for only the processing, manufacturing and assembling of goods. This arrangement can enjoy 50 percent exemption from profits tax in Hong Kong, even if the local office does all the management and marketing. The effective rate falls to 8.75 percent.

#### C) The Hong Kong/Belgium route operation

As noted, Hong Kong has a double tax treaty with Belgium, under which withholding taxes from Belgium are reduced or eliminated if the Hong Kong company holds a substantial interest in the share capital of the Belgian company. The treaty with Belgium can provide a direct tax-free business route into Europe and the ability to utilize the European Union's Parent/Subsidiary Directive and the Belgian treaty network. As such, substantial overall tax savings can be achieved.

Example: A Belgian subsidiary of a Hong Kong company (i.e., the investor) can function as the operational holding company for the Hong Kong company's business interests and investments in different

European Union countries. Dividend, interest and royalties earned from these European jurisdictions can be remitted to Hong Kong through the Belgian company free from both withholding and income tax. Ultimately this can save the Hong Kong investor 20 to 30 percent tax on profit distributions. Through careful planning the Hong Kong investor can choose to dispose of or reorganize their interests in the European Union, through Belgium, without adverse local tax consequences. In March 2005, the Belgian minister of finance issued a tax degree providing a full tax exemption on offshore profits distributed by Hong Kong subsidiaries to their Belgian parent companies. Other common uses for a Hong Kong company

- Asset holding structures: Under this, income from a number of asset types — real estate (non-Hong Kong), security portfolios, intellectual properties — may be received tax free;
- Savings structures: Often used to remove foreign exchange controls and eliminate European withholding taxation related to the Savings Directive;
- Royalty structures: Foreign sourced royalties from the licensing (or the sublicensing) of technology, copyrights, music, films and know-how, patents, published materials and mineral rights are not subject to taxation in Hong Kong. Royalties are taxable in Hong Kong at 17.5 percent only where the intellectual property rights are used in Hong Kong related business or trade. Royalties paid by a Hong Kong company engaging in business outside Hong Kong are deemed by the Hong Kong Inland Revenue Department to have a profit element of 30 percent. This provides an effective tax rate of 5.25 percent (30 percent of 17.5 percent);

### Legislative prospects

In an effort to broaden the attractiveness of Hong Kong, the Inland Revenue is shortly expected to re-examine the Revenue Ordinance. Among changes that are being evaluated are the following:

- The possible introduction of a goods and sales tax of not more than 4 percent;
- Further clarification defining onshore (vs. offshore) income;
- The conclusion of additional double taxation agreements;
- Further refinements to the transfer pricing legislation;
- The possible introduction of group tax relief;
- The modernising of loss carry back rules;
- The fulfilment of promises by the authorities that estate tax duties will shortly be abolished.

So far Hong Kong does not have extensive transfer pricing legislation and the Inland Revenue has not been aggressive in policing transfer pricing issues. This may change with increasing external pressures, including from China. Hong Kong's new Chief Executive Donald Tsang has set as a priority negotiating new double taxation agreements, which will substantially affect Hong Kong's position in international structuring.

### Hong Kong's bright future as gateway to China

Close relations between mainland China and Hong Kong provide Hong Kong with very favourable conditions for China related business and investment. Hong Kong often provides the risk management role for investment in China, rendering expertise and independence for quality control, legal protection, efficient transport/warehousing, payments and generally as the Hong Kong entrepreneurs have the longest experience in doing business with China. In addition, Hong Kong offers important business and tax opportunities as a gateway to the mainland. What is equally or perhaps more important is that China not only strongly endorses Hong Kong's role as its gateway, but wants Hong Kong to be a success in this role.

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# IRELAND

Population:	4 million
Currency:	Euro; 1 euro worth US\$1.22 (mid-2005)
Language:	English and Irish (Gaelic)
Time zone:	GMT
Centre's expertise:	English-speaking euro zone country with low tax rates

## General requirements

Type of entity	<b>Private or public, limited or unlimited; limited by guarantee</b>
Type of law	<b>Common Law</b>
Shelf company available	<b>No</b>
Time to establish a new company	<b>5-15 working days; company must have a seal with its name engraved in legible characters</b>
Minimum cost	<b>60 euros for incorporation plus capital fee of 0.5 percent on issued capital of company limited by shares with 1 euro minimum</b>
Annual fees	<b>30 euros for annual return</b>
Taxation	<b>12.5% corporation tax</b>
Double taxation agreements	<b>Extensive range of double taxation agreements</b>
Forex restrictions	<b>None</b>
Language & name restrictions on companies	<b>Names must be approved by Registrar of Companies, must be distinguishing so as not to conflict with existing companies and must not be offensive or suggest state sponsorship; must end in Limited or Teoranta for limited company</b>

## Share capital

Permitted currencies	<b>Normally euros, others permitted but shares in a foreign currency cannot be converted into another except by law</b>
Minimum paid up	<b>1 or 2 shares must be subscribed for on incorporation but no minimum</b>
Usual authorised capital	<b>Normally 1,000 or 100,000 euros to avoid having to go back for further authorisation</b>

## Directors and personnel

Minimum number	<b>2, one of whom must be Irish resident; both must be individuals</b>
Local required	<b>Residency requirement can be waived on payment of bond of 25,394.76 euros with the Company Registry</b>
Company secretary & qualifications	<b>Yes</b>

## Shareholders and AGM

Minimum number	<b>1</b>
Disclosure requirements	<b>Yes</b>
Publicly accessible records	<b>Yes</b>
Obligations for annual meetings	<b>Yes</b>
Location of AGM	<b>Anywhere</b>

## Accounts

Requirement to prepare	<b>Yes</b>
Audit requirements	<b>Yes, if turnover exceeds 317,434.51 euros</b>
Account filing obligations	<b>Yes</b>
Publicly accessible accounts	<b>Yes</b>

## Other

Requirements to file annual return	<b>Yes, and 100 euros penalty for late return plus 3 euros per day late</b>
Change in domicile permitted	<b>Yes</b>
Need for registered office	<b>Yes and must be in Ireland</b>
Number of companies set up in last year	<b>15,592</b>
Total number of companies on register	<b>157,502</b>

# IRELAND

*Fiona Mulhall, Head of Investment Funds and Specialist Securities*

**NCB Stockbrokers Limited, Ireland**

**IRELAND** is an island in the Atlantic Ocean to the northwest of mainland Europe, with a population of slightly more than four million. It is a member of the European Union and of the Organisation for Economic Cooperation and Development, as well as being in the euro zone.

A distinctive legislative framework has been created in Ireland for the establishment of fund structures, which has helped to make it the European centre of choice for fund services and the fastest growing international fund domicile. The Irish Financial Services Regulatory Authority (IFSRA) authorises and supervises Irish domiciled investment funds and works under a sophisticated and well regulated legal and financial system.

## Setting Up Irish Domiciled Funds

IFSRA authorises a number of different legal structures for investment funds domiciling in Ireland, for example: unit trust, investment company; investment limited partnership and common contractual fund. In addition, there are two distinct types of regulatory status for Irish domiciled funds namely, UCITS (Undertaking for Collective Investment in Transferable Securities) and non-UCITS.

There are two steps to establishing a fund in Ireland. The first is to obtain promoter approval – the promoter is the party responsible for lodging the application for fund authorisation with IFSRA. The authority will assess whether the promoter meets requirements relating to competency, integrity and adequate financial resources. The second step is to obtain fund authorisation. The application is usually made on behalf of the fund by its appointed professional advisers in Ireland and involves presenting constitutive documents and prospectus for review.

## Listing an investment fund in Ireland

Since 1989 the Irish Stock Exchange has a successful track record in the listing of investment funds and other specialist securities. Listing facilitates the marketing of the security to specific categories of investors. An application to list on the Irish Stock Exchange must be made through an approved Irish sponsoring broker, appointed by the stock exchange. A fund applying for listing may be domiciled in any jurisdiction. Retail funds are however, only eligible for listing if they are regulated and domiciled in certain specific jurisdictions.

## Limits and permissions

Investment funds wishing to sell their shares/units to the public to or from Ireland may only do so after receiving authorisation from IFSRA. Requirements in respect of investment and/or borrowing restrictions for a retail fund and specific restrictions for different structures of funds are relaxed for professional investor funds and disapplied for qualifying investor funds. It normally takes approximately eight to ten weeks from the date of the initial submission of documentation to IFSRA for a fund to obtain authorisation. The units of Irish funds can be designated in any currency. It is common for funds to have more than one class of units that are denominated in different currencies.

As regards share capital, for investment companies, whether UCITS or non-UCITS, they must have a minimum issued share capital of two shares of at least one euro each. Two directors must be Irish resident. For unit trusts, the manager must have minimum paid up share capital of 125,000 euros or three months expenditure, whichever is the greater. Again, two of the directors must be Irish resident. For an investment limited partnership, the general partner must have minimum paid up share capital of 125,000 euros or three months expenditure, whichever is the greater. A partnership may not be a general partner.

## Recent and proposed developments

The most significant changes are those that come from the EU, principally related to the regulatory environment as a result of the Saving Directive, the Prospectus Directive and the new UCITS III Legislation. In addition, there is the proposed introduction of protected cell legislation, which will benefit hedge funds structured in a corporate umbrella form.

## Advantages of Dublin

Dublin offers a highly skilled workforce with experience in all fund categories. It is a most competitive market for service providers, and most key international funds' service providers have established operations in Ireland. Another advantage is the state of the art technology and infrastructure. In addition, it is fiscally advantageous to operate out of Dublin.

## 30% growth in 15 months

The Irish fund industry has grown by more than 30 percent over the past 15 months and Irish domiciled net assets now exceed US\$500 billion. Taking into account all funds serviced through Dublin, including non-Irish domiciled funds, this figure rises to US\$768.7 billion. From a regulatory point of view Ireland has been proactive in its legal and fiscal evolution, anticipating industry changes and any potential impact on its leading position. However, although carefully regulated, Ireland has shown itself to be flexible in adapting to requirements of the industry, both domestic and international.

IFSRA regulation covers the authorisation and supervision of Irish domiciled funds, the approval of the fund promoter and service providers, ongoing supervision of Irish based service providers, approval of non-Irish domiciled funds wishing to market into Ireland and the enforcement of anti-money laundering regulations. A distinct legislative framework has been established in Ireland for each of the principal fund structures available. The main distinction is between the two categories of funds.

## UCITS

A UCITS is an open-ended vehicle having as its sole objective the investment in transferable securities. In 1989 Ireland introduced into its legislation the European Directive 85/611/EEC relating to UCITS. These regulations have now been replaced by the European Communities (UCITS) Regulations, 2003. A UCITS is intended to be a "single passport" for the sale of units/shares in member states of the EU. UCITS must comply with specific investment and borrowing restrictions set out in the UCITS notices.

## Non-UCITS

All other types of funds not established as a UCITS but which are authorised by IFSRA are referred to as non-UCITS. Although non-UCITS do not benefit from the same marketing advantage within the EU as a UCITS fund, they are subject to more flexible investment and borrowing restrictions and may be set up as a special category fund, such as, professional investor fund, with a minimum initial subscription of 125,000 euros, or qualifying investor fund, with a minimum initial subscription of 250,000 euros by an institutional or high net worth investor.

## Authorisation of Irish Domiciled Funds

The application procedure for establishing an Irish domiciled fund is a two-stage process and involves the approval of the fund's promoter and investment manager and the approval of the fund itself, including details of its service providers. The length of this process depends on the complexity of the product, whether the promoter is already authorised and how near final the documentation is on submission. When all is in order, authorisation generally takes about eight weeks. The essential documentation includes the prospectus for the fund, the constitutional documents, service providers contracts, business plan and detailed application form.

## Ongoing Compliance

Authorised Irish domiciled funds face ongoing supervision by IFSRA, which requires the filing of specific documents (including interim and final financial statements and monthly reports including net asset value (NAV), number of shares in issue) and notification by the fund in advance of any amendments to the fund structure, memorandum and articles of association or changes to the service providers or directors of the fund. IFSRA may object to any such changes.

In addition, for Irish domiciled funds, IFSRA requires certain minimum activities to be carried out in Ireland, including the calculation of NAV, maintaining books and records of the fund, preparation of financial statements. All backup documentation may be inspected by IFSRA.

## IFSR charges

IFSR charges for collective investment schemes are a minimum of 2,050 euros per annum. Umbrella funds also pay a per sub-fund contribution of 550 euros on the first five sub-funds resulting in a maximum for umbrella funds of 4,800 euros.

## Taxation

UCITS and non-UCITS funds are not liable to direct tax on income or gains. They are however, liable to tax on gains arising from “chargeable events”. A “chargeable event” includes: a distribution of income or gains; any other payment (including a cancellation, redemption or repurchase of units); a transfer of units; or an appropriation or cancellation of units to meet any tax liability arising on a transfer of units. The main exception to a fund being liable to tax on a chargeable event is where the units of a fund are either held by non-Irish residents or certain qualifying Irish residents, i.e. a pension scheme, a company carrying on a life insurance business, a charity, to name a few.

The issue of shares by an Irish fund is exempt from capital duty. Transfers or switching of shares is also exempt. Irish funds are generally not obliged to charge value added tax. Withholding tax must be deducted by a fund on payments to Irish residents.

## Listing procedure

Whether for Irish or non-Irish domiciled funds, the Irish Stock Exchange (ISE) is recognised worldwide as a leading centre for listing investment funds. The ISE has existed for more than 200 years. Until 1995, it was a branch of the London Stock Exchange, but then separated from London and is now a fully independent limited company. The ISE is now acknowledged as the stock exchange of choice for the listing of offshore investment funds, recognised by all the marketing authorities in all the main jurisdictions, including the United States, Taiwan and Japan.

The main reason for obtaining a listing is to facilitate the marketing of the security to specific categories of investors. Institutional investors, in particular, are often restricted or prohibited from investing in unlisted securities or securities which are not listed on a regulated or recognised stock exchange. In addition, a listing provides publicly available information for investors and allows them to refer to a publicly quoted price for their investments.

An application for listing must be made through an Irish based sponsoring broker, a specific entity approved as such by the ISE. The sponsoring broker is responsible for a variety of matters including: assessing the suitability of the fund for listing; advising on all strategic issues relating to the establishment of the fund and liaising with other service providers to draft the listing particulars in compliance with ISE requirements; submitting the formal application to the ISE for review, including the listing particulars and ancillary documentation; liaising between the client and the ISE throughout the listing process; and ensuring that the fund complies with ISE obligations throughout the period the fund is listed.

The ISE has published a rulebook entitled “Investment Funds – Listing requirements and Procedures” setting out the listing rules. A copy is available on the ISE’s website ([www.ise.ie](http://www.ise.ie)). These listing requirements cover specific conditions which must be met by a fund seeking a listing including investment restrictions, experience of the investment manager, initial subscription minimums, criteria on board members, detail on the units/shares for which application is being made and certain disclosure of provisions from the memorandum and articles of association, and so on. Where a fund is already operating before being listed there are certain financial information requirements which must be met. From the time of submission of the application to admission to listing is usually between four to six weeks.

Because there is a close working relationship between the ISE and IFSRA, the stock exchange will automatically accept the suitability of the investment manager and custodian in a fund authorised by IFSRA. In addition, certain investment restrictions and requirements can be disapplied for IFSRA regulated funds seeking a listing on the ISE.

Once listed, a fund must adhere to a number of ongoing obligations of the ISE. The principal ones include:

- Audited annual reports must be sent to the ISE and shareholders within six months of the end of the period to which they relate. Unaudited interim reports must be sent to the ISE and shareholders within four months.

- Immediate notification of the NAV per share once calculated. NAV must be calculated at least quarterly.
- Notification of any change of service provider to the fund or director of the fund. Certain replacements would require prior approval by the ISE.
- Notification of any major new developments in its activities which are not public knowledge and which may lead to substantial movement in the price of the shares of the fund.

### Initial listing fee

The ISE charges an initial listing fee of 1,900 euros per fund (1,980 per non-EU applicant) and an annual fee of 1,900 euros per fund (1,980 per non-EU applicant). In addition, a formal notice fee of 520 euros and an administration fee of 250 euros also apply. In the case of umbrella funds, the annual fee applies to each sub-fund.

### Marketing

Investment funds that wish to sell their shares publicly or sell units to or from Ireland may only do so after authorisation from IFSRA. UCITS regulations permit the marketing of UCITS in other member states of the EU once the UCITS have been authorised in Ireland. Formal notification must be given to the regulator in the foreign member state at least two months before the UCITS intends to market its units. UCITS must ensure that facilities are available in the other member state for making payments, repurchasing or redeeming units and for making available information. Non-UCITS established in Ireland may be marketed in foreign jurisdictions even without an “EU passport” of a UCITS. The level of restriction and procedure for approval depends on the jurisdiction, the fund and the potential target investors.

### Outlook

In order for Ireland to remain in its prime position in the European league table for financial centres, new products such as pension pooling vehicles, private equity funds, property funds and the introduction of the common contractual fund need to be introduced. In addition, a fast proactive response to new developments in the wider industry is vital to the continued success of the Irish centre. Other hot topics facing Ireland include amendments to accounting standards, the EU taxation of Savings Directive and the EU Prospectus Directive. On top of this, Ireland has to face up to challenges posed from established competitors as well as from states there have newly joined the EU.

## Offshore door closed, but 12.5% onshore tax looks lucrative

*The Editors*

### Offshore Financial Services Guide

Ireland made a bold but carefully calculated decision when it recently decided effectively to scrap its “offshore” operations. After all, the country had begun to emerge from the shadow of its big neighbour and once colonial master the UK and had proved itself as a centre of choice for multinational companies looking for an attractive base for their treasury and other corporate financial services, as well as for funds management. However, in shutting the door marked “offshore”, Dublin was trying to open a more lucrative one by substituting a universal 12.5 percent corporate tax rate, the lowest rate in western Europe. The new regime started in 2003 and will be completely effective by the end of the decade when previously promised concessional tax rates of 10 percent on manufacturing and international services operations will finally be phased out.

The country has used its membership of the EU to great advantage and shown economic growth rates averaging 8 percent for the years 1995 to 2003, when the average of all other countries in the Organisation for Economic Cooperation and Development was just 2.5 percent. Its labour costs, at about US\$15 an hour in 2004, are the lowest in the western world with the exception of Spain. In Germany labour costs about US\$24 an hour and in the US almost US\$22, according to the US Department of Labor. Ireland has a young population compared with the rest of Europe, with 36.7 percent of the four million people under the age of 25, whereas in Europe as a whole only 29 percent are under 25.

In terms of the business climate, Ireland ranked as the tenth most competitive of 59 states surveyed by the International Institute for Management Development. *Foreign Policy* magazine has

also ranked Ireland for three years in succession as the “most global nation”, ahead of Singapore and Switzerland. Since Ireland is also the only English-speaking member of the 12-nation euro zone, the new low tax rate is clearly part of a plan to establish Ireland as the location of choice for modern industry and finance and entry point to a market of more than 455 million people in the European Union. Ireland’s overall tax burden as a percentage of gross domestic product in 2002 was below 30 percent, the lowest among all EU members and compared with an EU average of slightly more than 40 percent.

The country has carefully targeted high-growth, high value-added modern industry, and has been successful in attracting companies in areas such as pharmaceuticals and biopharmaceuticals, information and communications software, e-commerce, medical devices and internationally traded services, including financial services, call centres and shared services centres. Ireland is the world’s biggest exporter of software. In addition, 13 of the top 15 global pharmaceutical companies manufacture in the country and account for 36 percent of Ireland’s total exports.

The move to an onshore but low tax regime was an attempt to retain the best of the offshore assets, counting on the pressures against offshore centres from the OECD and EU that are determined to establish a level playing field between taxation authorities. The UK treasury was unhappy at Dublin’s low tax rate, but the 12.5 percent rate has been accepted by the EU as the “normal” Irish rate. It is enhanced by the large number of agreements that Ireland has against double taxation and by access to EU directives that, for example, eliminate withholding tax on dividends received in Ireland and enable mergers and corporate reorganisations to be undertaken on a tax efficient basis.

For these reasons too Dublin also saw a low taxation onshore regime as a way of winning new business, particularly of companies wanting a friendly regional or global headquarters or holding company regime inside the EU. Ireland has had some success in attracting corporate financial and treasury operations of big companies. But in addition the corporate tax rate has proved a popular inducement to holding intellectual property rights in Ireland. IP often has a high value in a group and can influence the worldwide tax burden of a group. In addition, Ireland offers tax credits for such activities as research and development.

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# ISLE OF MAN

Population:	76,315 (2001 census)
Currency:	Pound sterling (GBP); £1 = US\$1.78 (mid-2005)
Language:	English
Time zone:	GMT in winter; GMT plus 1 in summer
Centre's expertise:	Wide financial range, including banks, insurance, funds, corporate and trust services, ship register

## General requirements

Type of entity	<b>Companies limited by shares, guarantee or both. LLC's, PCC's for insurance and collective investment funds. Plc designation available for certain companies.</b>
Type of law	<b>Common Law</b>
Shelf company available	<b>Yes</b>
Time to establish a new company	<b>24 hours</b>
Minimum cost	<b>Registration fee £180; corporate services provider costs upwards of £750</b>
Annual fees	<b>Annual duty of £475 for tax exempt company</b>
Taxation	<b>Zero corporate tax from 06 April 2006 (except banking, 10%); top personal tax, 18%</b>
Double taxation agreements	<b>None</b>
Forex restrictions	<b>None</b>
Language & name restrictions on companies	<b>Words that imply financial activities or royal connections or may be confusing are subject to restriction</b>

## Share capital

Permitted currencies	<b>Any</b>
Minimum paid up	<b>£1</b>
Usual authorised capital	<b>£2,000</b>

## Directors and personnel

Minimum number	<b>2</b>
Local required	<b>No (Yes, if tax exempt)</b>
Company secretary & qualifications	<b>Yes, (local and qualified if tax exempt)</b>

## Shareholders and AGM

Minimum number	<b>1</b>
Disclosure requirements	<b>Yes</b>
Publicly accessible records	<b>Yes</b>
Obligations for annual meetings	<b>Yes</b>
Location of AGM	<b>Anywhere</b>

## Accounts

Requirement to prepare	<b>Yes</b>
Audit requirements	<b>Yes, but exempt, non-resident and small companies may elect for exemption</b>
Account filing obligations	<b>Yes for resident companies; No for others, but must be available for inspection in IoM</b>
Publicly accessible accounts	<b>No (unless public company)</b>

## Other

Requirements to file annual return	<b>Yes</b>
Change in domicile permitted	<b>Yes</b>
Need for registered office	<b>Yes; offshore companies need a licensed corporate services provider since only residents may incorporate</b>
Number of companies set up in last year	<b>2,611 (in year to 30 June 2005)</b>
Total number of companies on register	<b>30,553 (as at 30 June 2005)</b>

**\*New - Companies Bill proposed for 2005 will introduce IBC style companies alongside the existing companies legislation and the zero tax strategy will replace exempt companies during 2006**

*Data supplied by Financial Services Division, Isle of Man Government*

# “Where can I find an international wealth manager supported by a high quality professional infrastructure?”

Many international wealth managers have established a presence in the Isle of Man to service private clients. The Isle of Man benefits from a strong reputation based on quality and security and is supported by professional advisers both locally and from around the world. The Isle of Man is the natural choice for private clients.



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**Isle of Man  
Government**

Seillge Ellen Yennin

# THE ISLE OF MAN

*Andrew Smith, Business Development Manager*

**Financial Services Division, Isle of Man Government**

**THE ISLE OF MAN** is located in the centre of the British Isles, and is an internally self-governing dependent territory of the Crown and is not part of the United Kingdom. The island is 33 miles long (52 km) and 13 miles wide (22 km) at the widest point and has an area of 227 square miles (572 sq km). More than two thirds of the land mass is cultivated, principally the fertile northern and southern plains.

With its resident population of circa 76,000, the island continues to develop and diversify its economy in response to testing times in the global economy and various pressures of a rapidly changing international offshore financial world.

The Isle of Man has an historical as well as an economic claim to fame, as it boasts the world's oldest continuous Parliament – the Tynwald, which is more than 1,000 years old. It makes its own laws and is fully autonomous on all matters of internal administration, fiscal and social policies. As a UK Crown Dependency the island's external issues – foreign representation and defence – are the only matters administered by the UK Government on the island's behalf.

The Isle of Man (IoM) benefits from its own AAA sovereign credit rating from Standard and Poor's and Aaa from Moody's. These ratings have been periodically reviewed and have been renewed each time.

## Taxation

The island has always valued its autonomy over its internal taxation affairs. But the IoM cooperated with the European Union and the Organisation for Economic Cooperation and Development (OECD) in looking at taxation issues in Europe as a whole and the part played by offshore centres. The evaluation was part of the initiative to remove harmful tax competition. In consequence of the study, the IoM has committed itself to remove all corporate tax differentials and introduce zero rate corporate tax from 6 April 2006. The standard zero rate of tax will apply to all companies except banks, which have had their tax cut to 10 per cent, achieved a year ahead of plans. This taxation strategy has been accepted by the UK, EU and OECD, and the IoM will achieve its targets at or before the scheduled date. The government is also currently considering a plan to cap the personal tax liabilities of wealthy individuals to encourage entrepreneurs to settle in the IoM. By constructively engaging with international initiatives on various taxation issues the island has demonstrated its willingness to be a responsible member of the international business community.

## Fund industry

The IoM's thriving fund industry has been given a significant boost through a range of tax incentives for fund managers. A zero tax rate is now applicable to all third party fund administrators and managers of experienced investor funds (EIF) and professional investor funds (PIF). This zero tax rate is an extension of the existing tax benefits already enjoyed on profits by both fund administrators and fund managers of such funds. A value added tax (VAT) exemption has also been extended to the management fees on the EIF and PIF. An overseas fund exemption in the context of Isle of Man regulation allows an overseas fund to be administered without "dual regulation". The overseas fund would be based in, and incorporated into, a jurisdiction with recognised and appropriate regulatory systems. Examples of funds available to investors range from hedge funds to property and private equity funds. The world's largest AIM listed fund for emission assets has recently been incorporated in the Isle of Man. The example is but part of the rapidly growing investment sector, and has arisen from the need to develop innovative products for hedging against carbon emission liabilities under the EU Emissions Trading Scheme and other similar schemes deriving from the Kyoto Protocol on climate change. Another, very different, example of the rapid growth potential of funds comes from the entertainment industry, where the Bollywood Media and Entertainment Fund Plc has been set up to attract further investment in one of the largest and fastest growing business sectors in the world.

## Banking

Holding an offshore bank account can be both practical and tax efficient, offering customers a wealth

of expertise built up over many years and tailored to private wealth management. Offshore bankers offer niche advice about foreign currency, foreign exchange commission and switching between currencies. Non-resident bank accounts in the Isle of Man have the added advantage of having interest paid free of income tax. All banking licenses in the Isle of Man are supervised to strict criteria by the island's Financial Supervision Commission (FSC). Licences are only issued to subsidiaries, or branches, of existing banks. These have to have been registered and licensed in jurisdictions that have recognised supervision and licensing themselves and comply with international standards on banking supervision. As far as holding an offshore bank account is concerned, it is obviously important that the account holder has confidence in both the institution and the jurisdiction in which the money is held. Investor and depositor protection is strong on the Isle of Man and comparable with the UK. Depositors are protected up to 75 percent of the first £20,000 per depositor up to a maximum of £15,000 or currency equivalent.

### Insurance

Insurance is one of the main specialist areas on the Isle of Man and falls into the two categories of life assurance and captive insurance. Captive insurance companies are generally subsidiaries of major corporate entities offering insurance to the parent company at significant cost savings combined with the ability to generate profits in a benign tax jurisdiction. There are also a number of life assurance companies with international headquarters on the IoM. These offer a myriad of international tax efficient insurance planning opportunities. The Isle of Man Government has introduced a bill to enable the formation of protected cell companies (PCCs) in the Isle of Man. This is particularly relevant to captive insurance business but can also offer opportunities to other types of business such as funds, where for instance segregation within an umbrella structure would be desirable.

### International pensions

The island introduced the Retirement Benefits Schemes Act in 2000 and the retirement benefit international regulations came into force in 2002. The act aims at providing tax neutral international pensions in a regulated environment for individuals or corporations resident in any jurisdiction outside the IoM. Using this legislation, which is probably unique in the world, pension funds have an opportunity to provide tax efficient functions for selected individuals from the UK and elsewhere employed by companies with interests around the world.

The new rules on international corporate pensions are designed to ensure that members' benefits are adequately secured and properly administered by appropriately skilled and qualified individuals with an additional emphasis on scheme flexibility to enable an employer to tailor schemes to suit diverse market situations in a tax neutral environment. Such pension schemes are available for multinational companies that wish to operate one scheme for all or specific countries in which they operate and also for individuals who wish to establish their own pension in a well regulated and secure environment.

### Ship and yacht registration

The IoM's shipping register forms part of the British register and consequently its ships fly the Red Ensign common to the British merchant fleet. But the island has shown its innovation in developing a commercial yacht register within the shipping register. This makes the IoM an attractive location for the registration of "super yachts," those yachts more than 24 metres long. One of the main advantages of Isle of Man registration is in mitigating VAT. Following the success of the commercial yacht register the island will shortly be introducing an aircraft register.

The IoM has just been placed second in the world by the Paris MOU, the internationally recognised grouping of states that assesses the quality of a register's administration and fleet. It has overtaken the UK and is now second only to Germany. Shipping is continuing to experience strong growth of around 10 percent per annum, with almost 400 merchant vessels and 23 super-yachts currently sailing under the Isle of Man flag. Most of the world's leading ship groupings are now represented on the island and have extensive operations that manage their global freight and tanker fleets.

### Corporate and professional structures

The Isle of Man offers a comprehensive and modern range of corporate and professional structures for private client and business planning, including: companies limited by shares; companies limited by guarantee; companies limited by guarantee and having a share capital (including hybrid companies and

a derivative, the Manx 'Foundation'); companies having a share capital with unlimited liability; general partnerships; limited partnerships; international limited partnerships; trusts; purpose trusts; trading trusts; unit trusts; and limited liability companies (American style LLCs).

The Isle of Man Financial Supervision Commission oversees and regulates the island's licensed corporate service providers (CSPs). With the introduction of zero rate corporate income tax in April 2006 the island is very attractive for establishing structures for international tax and estate planning and it is further intended that this position will be enhanced by a new "best of breed" international business company law to be introduced early in 2006.

### Diversification

The island derives more than 36 percent of its gross domestic product from financial services. Its constant quest to develop and improve its sophisticated financial services has led to successful diversification in two specific areas, space and technology and film and TV.

The IoM has a world-class telecommunications infrastructure based on two fibre optic cable self-healing ring circuits, which are operated by global telecoms operators, BT and Cable and Wireless. Manx Telecom is a subsidiary of O2, which is a pan-European telecoms company listed on the London Stock Exchange. Manx Telecom operates fixed and mobile networks across the island and will be the first in Europe to roll out high-speed downlink packet access (HSDPA) mobile broadband technology during 2005. The island is also able to offer island-wide fixed wireless broadband via Domicilium, the island's longest established internet service provider (ISP). The island is able to offer 100 percent broadband coverage by way of either asymmetric digital subscriber line (ADSL) wireless line of sight or satellite.

This exceptional telecommunications infrastructure has been instrumental in attracting space and technology industries. The IoM has acquired satellite slots and has become a leader in the financing and leasing of satellites. It has also benefited from the rapidly expanding e-business sector, especially in business continuity, IT hosting, security management services, online payment solutions providers, software developers and e-gaming. The film industry has also become an IoM success story. The Isle of Man is now firmly established as a leading co-financier and co-producer of quality British film and television drama. To date the island has been the chosen location for more than 70 feature films and TV programmes. Films include *The Libertine* starring Johnny Depp and *Chromo-phobia* starring Penelope Cruz, which was chosen as the closing film at the Cannes Film Festival recently. Also, *On a Clear Day* starring Brenda Blethyn and Peter Mullen, opened the US Sundance Film Festival. Through the government's Media Development Fund, which provides up to 25 percent of a film's equity investment, the island continues to attract universal film making opportunities.

### International regulatory standards

The island has developed a reputation for being a premier jurisdiction in terms of regulation, achieving a balance of providing a business friendly environment while meeting international standards of financial supervision. Recognition of the IoM's status is important in ensuring that it attracts quality institutions and enjoys reciprocal access to overseas markets.

A number of independent assessments of the island's regulatory framework confirm its superb reputation. The most recent and comprehensive was the IMF November 2003 "clean bill of health" assessment. But the Financial Stability Forum of May 2000 identified the IoM as a "category 1" jurisdiction, and the FATF in 1999 and 2000 confirmed that the island is regarded as cooperative for anti-money laundering purposes.

Legislation to regulate providers of corporate services has been in place for a number of years and similar legislation will be introduced this year to regulate the providers of trustee services. The Financial Supervision Commission has the regulatory authority and it has been a challenging process to align the balance between the "fit and proper" test for licence-holders and the business models. However, it is believed that this has now been considerably achieved.

### International acclaim

The IoM has again won international honours as the leading international business centre in providing blue chip financial products and services. For the fifth year running it was proclaimed "Best International Financial Services Centre" at the influential International Investment Awards in London in May 2005. These awards are run in association with Standard and Poor's, the international credit rating agency.

They recognise groups which distribute financial products on an international basis, as well as acknowledging the achievements of the global offshore financial services industry. When choosing the best centre, the judges said they were looking to reward a proactive, forward-thinking approach to both regulation and legislative initiatives, commenting, "Over the past twelve months the Isle of Man has once again shown itself to be at the forefront of international financial services". They highlighted the island's, "progressive policy on tax reform and fund legislation while maintaining careful oversight under the watchful eye of the Financial Supervision Commission regulator John Aspden".

### Future outlook

The IoM is currently reviewing its company law and intends to announce a revised structure within the next 12 months. This law will include the International Business Company (IBC) model, a corporate vehicle that will be up to date, easy to use and accommodating towards international business.

The Isle of Man continues to operate a strict regulatory regime which aims to ensure that business conducted through the island is legitimate and that those who invest in the island's institutions are protected. The Isle of Man wishes to demonstrate that it is only open to genuine and serious investment and not to the proceeds of criminal activity.

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# JERSEY

Population:	87,700
Currency:	Pound sterling; £1 = US\$1.77 (mid-2005)
Language:	English
Time zone:	GMT
Centre's expertise:	Private client wealth management, alternative investment funds, private equity, structured finance. Jersey has a +40 year track record and is regulated to international standards (IMF Report 2003).

## General requirements

Type of entity	<b>Private exempt</b>
Type of law	<b>Common Law</b>
Shelf company available	<b>No</b>
Time to establish a new company	<b>2 days (2 hour "fast track" service also available)</b>
Minimum cost	<b>£200</b>
Annual fees	<b>£750</b>
Taxation	<b>Exempt</b>
Double taxation agreements	<b>Double taxation agreement with UK</b>
Forex restrictions	<b>None</b>
Language & name restrictions on companies	<b>Names must be approved by Registrar. Restriction on sensitive or misleading names</b>

## Share capital

Permitted currencies	<b>Any</b>
Minimum paid up	<b>£2</b>
Usual authorised capital	<b>£10,000</b>

## Directors and personnel

Minimum number	<b>1</b>
Local required	<b>No</b>
Company secretary & qualifications	<b>Yes</b>

## Shareholders and AGM

Minimum number	<b>1</b>
Disclosure requirements	<b>Confidential disclosure of beneficial owner (to Registry only)</b>
Publicly accessible records	<b>Yes - basic company information (not beneficial ownership)</b>
Obligations for annual meetings	<b>Yes, but may be dispensed with by shareholder resolution</b>
Location of AGM	<b>No restriction</b>

## Accounts

Requirement to prepare	<b>Yes</b>
Audit requirements	<b>Public companies and regulated financial services companies only</b>
Account filing obligations	<b>Public companies and regulated financial services companies only</b>
Publicly accessible accounts	<b>Public companies only</b>

## Other

Requirements to file annual return	<b>Yes</b>
Change in domicile permitted	<b>Yes</b>
Need for registered office	<b>Yes</b>
Number of companies set up in last year	<b>Approximately 2,500</b>
Total number of companies on register	<b>Approximately 33,000</b>

# JERSEY

*Phil Austin, Chief Executive*  
**Jersey Finance Limited**

**THE ISLAND OF JERSEY** has developed into one of the world's leading offshore finance jurisdictions in the last four decades. Jersey has relied on its political and economic stability, product innovation, and the quality of its regulation and legal system to support the successful development of its finance industry. In so doing, it has attracted many of the world's leading financial organisations to its shores and its workforce has the experience required to meet the diverse needs of international investors. Today, Jersey has thriving banking, funds and trust sectors and whilst it remains a leading centre for private clients seeking a safe, well-regulated home for their assets, it has also diversified significantly in recent years to become the preferred jurisdiction for world-wide corporate and institutional business.

With an area of 45 square miles, Jersey is the largest and most southerly of the Channel Islands, a group that also includes Guernsey, Sark, Alderney and Herm. Just 14 miles from the coast of France and 100 miles south of mainland Britain, the island is conveniently located for reaching the City of London and the finance centres on the European mainland. The island's geographic position has served it well, too, in attracting new international business. Jersey's finance professionals start work before Hong Kong closes and are still at their desks when the New York Stock Exchange opens for the day, making the servicing of European and Far Eastern clients far easier here, than it would be in the Caribbean, for example.

## Home to world's leading financial names

Jersey is home to some of the world's leading names in financial services. The island's regulator, the Jersey Financial Services Commission has a long standing policy of authorising only banks in the global top 500 to establish a presence here. Jersey currently has more than 50 such banks from across Europe, the United States and Canada, South Africa and the Gulf region. It has also approximately 200 licensed trust companies and company administrators, more than 100 investment managers, stockbrokers, advisers, custodians and fund administrators. The "Big Four" accountancy firms are well represented and there are a number of highly regarded Jersey law firms with close links to major international firms.

## Banking roots

Jersey's emergence as a leading finance centre has developed naturally from its historical status in relation to the United Kingdom. The island's unique allegiance to the English Crown has given Jersey long term political and economic stability, attributes that are vital for the successful development of a finance industry. Its independence from the UK government has also enabled the island to manage its own domestic affairs, including fiscal policy. These were the important building blocks that were necessary when the island began to recognise that finance was an industry in which, although hugely competitive, Jersey could carve a successful niche for itself.

Banking had been a local industry from the 18th century and some of the British clearing banks have a long association with the island. But it was at the beginning of the 1960s that the modern finance industry truly emerged. The post-war era had seen dramatic changes in the world, not least in British foreign affairs. The granting of independence to many former British colonies led many UK expatriates to seek a safer refuge for their funds.

The island offered the fiscal and political stability for which expatriates were looking. Furthermore, Jersey is English-speaking, close to the United Kingdom and home to many familiar banking names. Bank deposits and investments placed in island banks began to grow and financial institutions themselves responded to this trend by opening offices in St Helier. By 1972, 25 banks and other deposit-taking institutions had established a presence in the Island and total deposits had increased to £500m. Jersey had developed a new and thriving industry to sit alongside its traditional industries of agriculture and tourism.

## Investors from more than 200 centres

The finance industry has evolved substantially since those days, and just as one indication, bank deposits currently stand at more than £173 billion. But the qualities that were important in the beginning

remain so to this day. However, whilst many of Jersey's expatriate customers are still British, the island's appeal has broadened over the years to attract a wide range of other nationality expatriates and international investors from more than 200 countries. The island offers them legitimate fiscal benefits and provides investment and wealth management solutions which are truly portable, an important consideration for career professionals who regularly move around the world.

### Funds and trusts are vibrant

In addition to banking, the solid backbone of the island's finance industry, the funds and trust sectors are also vibrant, contributing substantially to the current growth of the industry. Much of the current momentum in the funds industry is the result of the successful implementation of a revised regulatory framework to accommodate alternative investment funds, which was introduced at the start of 2004. The "Expert Fund" regime, as it is known, sent a clear signal to the global funds industry that the island was willing to adapt its regulatory environment to accommodate the changing needs of lawyers, fund promoters, administrators and, indeed the marketplace.

It delivers a streamlined regulatory approach whilst maintaining the high standards associated with Jersey. It has encouraged a number of new promoters with strong track records to look afresh at Jersey and has enabled practitioners on Jersey to provide innovative solutions for new types of fund vehicles. It has proved to be an ideal combination in meeting the world-wide growth in alternative investment funds business and the island's funds industry now has both a platform and a momentum for further significant growth.

### Further boost planned

To boost the funds sector still further, the industry, supported by the authorities, has recently launched a campaign designed to encourage specialist fund managers and wealth managers to consider physically re-locating to Jersey, bringing their funds business with them. Two London based hedge fund managers with funds valued at nearly US\$900 million, have already announced their intention to do so, and others have plans in the pipeline.

### Jersey Foundation for clients from civil law countries

Many private clients with diverse global financial interests, and professionals who advise individuals on their estates and how to manage their wealth effectively, look to the expertise in the island for their international financial planning. Trusts remain a vital component in financial planning, and in 2005 the island authorities are on track to implement an amended trust law which will include the introduction of settlor-reserved powers and a new provision permitting the delegation of powers by a trustee. Proposals for a new foundations law in the island have also been warmly received by practitioners. It is anticipated that the Jersey Foundation will appeal to potential clients in civil law jurisdictions, where the trust concept may be less well understood.

### Competition and cooperation among financial centres

Financial services providers in all the leading global jurisdictions are competing to provide an increasingly diverse and sophisticated range of products and services to cater for the needs of private clients. Whilst Jersey is competing effectively with other jurisdictions for this business, there is also a greater degree of co-operation between centres. This is partly driven by the needs of clients where often one jurisdiction is not sufficient to meet their complex requirements. The island is therefore developing relationships with different regions around the world to explore mutually beneficial commercial links.

For example, Jersey has been developing closer ties with some of the Gulf states. The finance industries in Jersey and the Gulf region see opportunities in working together to deliver financial services, including Shari'a compliant products, which benefit from the respective skills and areas of expertise of each jurisdiction. There are firms in Jersey incorporating Islamic investment vehicles such as Sukuks, Islamic asset backed investment certificates that have been certified as complying with the requirement of Shari'a principles. More of this style of business is evolving. Many organisations and firms in Jersey believe that there may be similar mutual opportunities to explore with Asia, a region from which island companies have been successful in attracting business for many years and where the industry believes there is considerable potential for further links and mutual business development opportunities.

## Services for corporate and institutional clients

Such opportunities may well derive from the increasing levels of corporate and institutional business that is now undertaken between leading finance centres such as London, New York and Hong Kong and jurisdictions such as Jersey. The breadth and depth of services provided from a location like Jersey come as a surprise to some professionals who are not currently aware of the opportunities that exist. For example, many prominent companies establish share ownership schemes on behalf of their employees and use Jersey trusts to help overcome fiscal and administrative obstacles to setting up such schemes efficiently. The vast majority of companies that make up the benchmark FTSE 100 index in the UK have such companies and use Jersey trust structures to administer them. Jersey is also often the preferred offshore partner to centres such as London or to New York, for the establishment of securitisation programmes, capital market transactions and other complex corporate financial planning. These specialist areas of business are just a few examples of a broad and diverse range of services provided to corporate and institutional customers.

## Channel Islands Stock Exchange

The Channel Islands Stock Exchange (CISX) was established in 1998 to service the finance industries in both Jersey and Guernsey. It is a successful addition to the finance sector and a further reflection of the increasing levels of corporate business. The CISX has been recognised by such bodies as the Financial Services Authority in the UK and the Securities and Exchange Commission in the US. In 2005, it has witnessed a four-fold increase in the number of listings to date and is playing an increasingly valuable role in support of the finance industry.

## Complete overhaul of laws going back to 1771

Jersey is moving forward in a number of ways. As a further illustration, a complete revision of Jersey laws dating back to 1771 has recently been completed. This will give the island a significant advantage over competing offshore jurisdictions. Law revision experts have been working for two years removing outdated legislation, incorporating all amendments into the relevant laws and generally tidying up the statute book to make it more accessible. To make it more user friendly for professionals and investors, the complete revised version of Jersey's laws is available on the website [www.jerseylegalinfo.je](http://www.jerseylegalinfo.je) so that anyone interested in doing business in the island can access the information at the click of a button.

## Independent endorsements for quality

Sometimes unfairly described in the media as a tax haven, Jersey has in fact a highly regarded reputation within the financial services industry world-wide. The island has received independent endorsement both for the quality of its financial regulations and its co-operative approach to fighting money laundering and fiscal crime. In an era of greater scrutiny and transparency in financial services, Jersey is well placed, having the endorsement of the Organisation for Economic Cooperation and Development, the International Monetary Fund and the Financial Action Task Force, a body set up by the G7 countries to seek improved standards in the global financial system.

The IMF, for example, in a recent assessment reported that "the financial regulatory and supervisory system of Jersey complies well with international standards. The (Jersey Financial Services) Commission is to be commended for the excellent progress it has made since its inception in upgrading the financial regulatory and supervisory system to meet international standards for banking, insurance, securities and anti money laundering and combating the financing of terrorism." The island authorities and the independent regulator have given a whole-hearted commitment to enhancing regulation, and to co-operating with other countries in the fight against money laundering and international crime.

## Cooperation with Brussels

Jersey has signed a multilateral Memorandum of Understanding with the International Organisation of Securities Commissions (IOSCO). IOSCO promotes market integrity through rigorous application of agreed standards and effective enforcement against offences. Jersey was among the first financial centres, including the G7, to be a signatory to the agreement, which commits the island to sharing a wide range of information about illegal use of the securities and derivatives markets with securities regulators in other countries. Accords have also been signed with the US and many European countries making it easier to

share information between regulators – which helps in the international effort to catch the perpetrators of financial crimes. Although not a part of the European Union, Jersey has willingly co-operated with financial service initiatives that have been driven from Brussels. In the summer of 2003, Jersey, along with the other British Crown dependencies of Guernsey and the Isle of Man, reached agreement with the European Union over the future direction of its taxation policy. This agreement was an important milestone and helps to secure the long-term future of the island as a leading finance centre, able to provide a tax neutral environment for most investors. Jersey's new tax structure has the support of the UK Government and this was reaffirmed only recently when it was announced in the House of Commons that the new structure has been designed to comply with international standards.

### Ambitions to remain a leading force

The industry, the government and the regulatory bodies in Jersey, have recognised that the island cannot stand still if it is to remain a leading force in international financial services. The developments outlined above are an illustration of how the island intends to maintain its prominent role within a hugely competitive arena. A tax neutral environment, a favourable time zone, appropriate regulations that meet international standards, a range of top level names in financial services, and innovative services—all these attributes, supported by the twin pillars of political and economic stability, will help to keep Jersey at the forefront of international financial services in the years to come.

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# LUXEMBOURG

Population:	451,600 (2004)
Currency:	Euro; 1 euro worth US\$1.22 (mid-2005)
Language:	Luxembourgish is official language along with French and German
Time zone:	GMT plus 1 in winter, plus 2 in summer
Centre's expertise:	Full financial centre at the heart of Europe with tax efficient regime

## General requirements

Type of entity	<b>Holding company *(SA or SaRL) or Soparfi</b>
Type of law	<b>Civil Law plus 1929 law as amended; 1990 law for Soparfi</b>
Shelf company available	<b>Very rare</b>
Time to establish a new company	<b>Within 24 hours of capital being deposited in a bank account; articles in agreed form; and proxies received from shareholders to be represented at incorporation meeting</b>
Minimum cost	<b>Approx 3,000 euros for legal and notary fees plus 1% capital duty to government plus cost of printing articles in official gazette</b>
Annual fees	<b>125 euros to the Chamber of Commerce, variable on profits realised</b>
Taxation	<b>30.38%, but exemptions and exceptions, no withholding tax on dividends; a 1929 holding company pays 0.2% subscription tax on value of company</b>
Double taxation agreements	<b>None for 1929-style holding company; yes for others</b>
Forex restrictions	<b>None</b>
Language & name restrictions on companies	<b>Roman characters, restrictions on sensitive names; articles may be in English provided French or German translation supplied</b>

## Share capital

Permitted currencies	<b>Any, but euros usual</b>
Minimum paid up	<b>SA, 31,000 euros of which 25% paid-up; SaRL, 12,5000 euros fully paid</b>
Usual authorised capital	<b>US\$50,000</b>

## Directors and personnel

Minimum number	<b>3</b>
Local required	<b>No, but recommended for substance purposes</b>
Company secretary & qualifications	<b>No</b>

## Shareholders and AGM

Minimum number	<b>2 for SA; 1 for SaRL</b>
Disclosure requirements	<b>No</b>
Publicly accessible records	<b>No</b>
Obligations for annual meetings	<b>Yes, SAs must hold AGM in the municipality of their registered office at the day and hour indicated in their articles; for SaRLs with fewer than 25 shareholders, AGM may be held by resolution in writing of shareholders</b>
Location of AGM	<b>Anywhere</b>

## Accounts

Requirement to prepare	<b>Yes</b>
Audit requirements	<b>Yes</b>
Account filing obligations	<b>Yes</b>
Publicly accessible accounts	<b>Filed with companies register</b>

## Other

Requirements to file annual return	<b>Yes</b>
Change in domicile permitted	<b>Yes</b>
Need for registered office	<b>Yes</b>
Number of companies set up in last year	<b>n.a.</b>
Total number of companies on register	<b>26,243 (2003, according to government briefing, but 105,100 according to law firm)</b>

- \* SA : societe anonyme, public limited company  
 SaRL : societe a responsabilite limitee, limited liability company  
 Soparfi : societes commerciales de participations financiers

# LUXEMBOURG

The Editors

## Offshore Financial Services Guide

**THE GRAND DUCHY** of Luxembourg is a tiny country with fewer than half a million people in the heart of western Europe surrounded by Belgium to the west and north, Germany to the east and France to the south, that has become one of the most important financial centres of the world thanks largely to the coming of the Euromarkets and to its favourable tax framework. It was a founder-member of the European Coal and Steel Community and then of the European Economic Community that developed into the European Union. Today Luxembourg City is the home of the European Court of Justice, the secretariat of the European Parliament, the European Investment Bank and European Court of Auditors. The legal system follows Civil Law. The local language Luxembourgish is the official language along with French and German, but people take great pride in being multilingual and English is generally understood. About 39 percent of the 451,600 inhabitants are not Luxembourg nationals. In addition about 100,000 people commute into the grand duchy to work every weekday.

### From Holy Roman Empire to steel power and global financial leader

The origins of Luxembourg go back to 963 when the city grew under the protection of Count Sigefroi, given his fiefdom by Otto II, the Holy Roman Emperor. It flourished for almost 500 years, was raised to a duchy in 1354 and supplied some of the emperors. When the empire that had become neither holy nor Roman began to crumble, the fortified city was occupied in turn by the armies of Burgundy, Spain, France and Austria. After the defeat of Napoleon and the dissolution of his empire, Luxembourg became a duchy again under the Dutch, lost some of its territory to Belgium before regaining its independence under the First Treaty of London in 1839 with a tiny 2,586 square kilometers (999 square miles) of territory.

At that time, it was one of the most impoverished parts of Europe, but it was rescued by the discovery of rich iron ore deposits that laid the basis for industrialisation. For the next century and more, steel was the backbone of the country's industry and indeed its economy. The experience of German occupation during both world wars was an important factor leading Luxembourg to support Jean Monnet's initiative and join the fledgling European common market from the start. Being a small country sandwiched between the European giants also taught early pan-European skills. Radio Luxembourg achieved renown and revenues through popular music programmes broadcast in French, German and English in the period after the Second World War, by offering a mixture of upbeat modern music and cheerful advertising jingles that appealed to a generation of pre-Beatles teenagers whose national radio stations served worthy but stodgy diets.

But it was the Euromarkets that really put Luxembourg on the global financial map as well as offering the first reminder that national governments should be careful about overestimating their powers where freely flowing international funds are concerned. Critics have presented Luxembourg as a boring place waiting for something to happen, encouraged by the grand duchy's national motto "*Mir woelle bleiwen wat mir sin*" – "We want to remain what we are." But when the US government in 1958 imposed Regulation Q putting a limit on rates that American banks could pay on dollar deposits and then followed this with an interest equalization tax on bond interest to limit European countries' borrowings from the US, Luxembourg was on the launchpad for international financial fame.

Before 1960 when the first American bank established a subsidiary in Luxembourg, there were only 14 banks in the grand duchy, 12 from the Belgium-Luxembourg Economic Union and two from France, all basically serving domestic and regional needs. From the mid-1960s, waves of US, German, Swiss, Scandinavian and then more German banks set up to take advantage first of the growth of the Euromarkets, then of Luxembourg's banking secrecy and then of favourable tax treatment of savings. By the early 21st century Luxembourg was comfortably in the top ten financial centres – government figures put it in seventh position – with a heavy weight of money and a commanding presence in key areas such as pan-European holding companies, private banking, investment funds and reinsurance.

### Onshore, but holding companies have offshore appeal

In today's Luxembourg economy, industry, particularly steel and chemicals, is still important. The giant steelmaker Acelor (formerly called Arbed) has its headquarters in Luxembourg and the tyre maker

Goodyear has a research operation. Microsoft, FedEx, AOL, iTunes and Skype are among companies with global or European headquarters in Luxembourg. But financial services have come to be the biggest single part of the economy. Financial activities employ about 11 percent of the total workforce, and account for 30 percent of gross domestic product and generate about a third of government tax receipts.

The development of holding companies under a law of 1929 was the start of Luxembourg's appeal once the potential of international financial business was recognised in the duchy. Holding companies are limited to holding and financing operations and may not undertake commercial operations themselves, but are exempt from normal corporate taxes. A 1965 law extending their legal framework added to the attractions. The law allows the holding company to hold the stakes of a multinational in its international subsidiaries and to accumulate dividends from them in a tax-efficient way, and it is not subject to withholding tax when it pays out dividends to its parent. Similarly, a holding company can lend money to all members of a group in which it has invested at least 10 percent of its capital. It can receive interest or other types of payment and pass them on to its owners without taxation.

The classic holding company has its drawbacks: it is prevented from benefiting from the large number of dual tax agreements that Luxembourg has signed; nor can it benefit from the European directive establishing a common tax regime between parent companies and their EU subsidiaries.

In 1990 Luxembourg created a new entity, a Soparfi (Societes commerciales de participations financiers), which would be able to gain from double tax agreements. Such companies are within the normal corporate tax net, but can receive dividends free of tax, and in many circumstances are exempt from taxation on dividends received from or paid to resident and non-resident companies in which they have significant participation. In general, Soparfi benefits are more extensive than those under the EU parent-subsidiary directive.

This holding company regime faces a big challenges from new European Union rules aimed at tax harmonisation in quest of the holy grail of modern bureaucrats that is called the level laying field.

### Luxembourg's answer to the Anglo-Saxon limited partnership

In May 2004 Luxembourg further consolidated its reputation as an innovative financial centre with a new law on venture capital and private equity investment companies by creating a Sicar (Societe d'investissement en capital a risque). This promises to be an important alternative to the classic limited partnership for private equity and venture capital funds. The limited partnership has many advantages, particularly for UK and US based investors and private equity managers, but it is not always appropriate for continental European jurisdictions, such as France and Italy. The Sicar offers to meet the requirements of being an onshore vehicle, tax-paying but tax-efficient, that is able to take advantage of tax treaties and EU directives. It is lightly regulated and there is no need for the approval of the promoter and the investment manager, both of whom may be outside Luxembourg. It has the additional advantage of legal structures more familiar to continental European investors.

A Sicar can take various corporate forms, namely the Luxembourg equivalent of a limited partnership, a partnership limited by shares, a public limited company, a limited liability company, or a cooperative company that has adopted the form of a public limited company. The actual choice will often be guided by tax considerations. The registered office and administrative headquarters of a Sicar must be in Luxembourg, but the investment management may be done from outside and there is no Luxembourg residence requirement for directors or others. The minimum share capital must be a million euros or equivalent and that minimum must be reached within 12 months of the establishment of the Sicar. Regardless of its company form, any payment by a Sicar to its investors will be free from Luxembourg withholding tax.

### Europe's leading centre for mutual funds

In laws passed in March 1988 Luxembourg brought together and codified legislation concerning investment fund management dealing with undertakings for collective investment or UCIs. The legislation also allows for funds of funds and for UCITs, which are UCIs under EU legislation that invest in transferable securities. New laws in 1991 created dedicated funds to take advantage of UCI legislation but for institutional assets.

The measures were evidently successful since by 2004 the duchy was home for more than 8,000 funds collectively with assets of more than a trillion euros. Luxembourg has become the leading centre in Europe and is second only to the US, according to government figures. Luxembourg has also become a

leader in cross-border sales of investment funds, with almost all EU promoters that distribute their funds in more than one European country having a base in the grand duchy. In addition, Luxembourg has proved the location of choice for US mutual funds looking for a European base.

There are three types of vehicle:

- A mutual fund or fund commun de placement, which does not have a separate legal identity but has a set of defined relationships between the fund, its manager and custodian.
- A societe d'investissement a capital variable – or Sicav – an open-ended fund with variable capital always equal to the net asset value of the fund.
- A societe d'investissement a capital fixe – or Sicaf – a closed-end fund usually used for private placements.

Initially Luxembourg promised new legislation for hedge funds to try to tap the growing interest in these vehicles. Typically, European hedge funds that are aimed at European investors are based offshore in places like the Bermuda, the British Virgin Islands or the Cayman Islands but have been listed in Dublin because of easier authorisation rules. But instead of legislation, Luxembourg issued a new circular, which offered a more flexible attitude towards these funds.

Taxation of UCIs is low and no withholding tax is levied on distribution to investors. The Luxembourg Monetary Institute authorises and supervises the funds, as well as looking after investor protection. Funds will also be affected by the new EU savings tax directive – which applies to individual savings only at the moment – with a 15 percent withholding tax from mid-2005.

### Banking secrecy is part of the law

The number of banks rose in rapid waves from the 1960s onward and reached 220 by the late-1990s, but has begun to decline as a result of mergers and consolidation and by 2005 the grand duchy had 162 banks. Nevertheless, the banking balance sheet is strong, with total assets of 656 billion euros at the end of 2003, and Luxembourg is one of the top ten banking centres in the world. The wide range of commercial banking and capital markets services available from the international banks includes multi-currency lending and loan syndication, issuing and listing of securities, especially Eurobonds, custodial and depository services, issuing and trading of financial derivatives, forex trading and trade finance and gold trading.

Private banking is flourishing, not just because of the favourable tax environment and the wide range of financial products available, but also because of tight banking secrecy protected by the penal code. Luxembourg has made it plain that its stringent anti-money laundering laws mean that bank secrecy may be pierced for criminal investigation but not for tax collection.

### Bonds dominate stock exchange

The Luxembourg Stock Exchange dates back to 1928, but took 40 years and the arrival of the Euro-bond market to get off the ground. It is dominated by bonds. At the end of June 2005, there were 35,425 securities listed, of which bonds comprised 26,185, far outnumbering the small number of 264 domestic and foreign equities. In addition, there were 6,024 undertakings for collective investment and 2,772 warrants listed as of mid-year 2005. The euro has become the major listing currency, accounting for almost 60 percent of bonds issued in 2004, against 29 percent in US dollars. Trading is fully electronic and decentralized, and the stock exchange has modernised its technical infrastructure to offer investors a wide range of services.

In 2005 Luxembourg updated its laws on the issuing of prospectuses. Along with this, the stock exchange decided to create an alternative market to which the requirements of the EU prospectus and transparency directives will not apply. It will be operated independently of the EU market defined by the rules and regulations of the Luxembourg Stock Exchange and regulated by the Commission de Surveillance du Secteur Financier. The stock exchange is drawing up a code of corporate governance, which will be published at the end of 2005.

### Captive insurance market proves attractive

Luxembourg has only recently become an aspiring international player in the insurance market. Since the creation in 1984 of a legal framework for reinsurance companies, the duchy has been home to a growing number of captive reinsurers. Reinsurance is the practice whereby an insurance company pays a premium for transferring part of its risk to another company. Most Luxembourg reinsurers are captives,

that is, set up by a company to reinsure only the risks incurred by the company. The number of captives domiciled in Luxembourg has grown to more than 250, giving it fifth place in the global league, though this is a long way below the leader Bermuda, which has more than 1,400.

The duchy is also ambitious to win business in the cross border FPS (free provision of services) life insurance business, and is just ahead of Ireland with 47 percent of a market where the two countries account for 90 percent of the business. However, this market is still small. The European single market in insurance has yet to take off, partly because of language barriers and other national restrictions, and only 1.3 percent of premiums issued in the European Economic Area come from FPS.

### The challenges of European directives

Luxembourg's success as a financial centre was boosted mainly by its preferential tax and regulatory regimes, but many of these benefits have ceased to exist or are in the process of being whittled away, especially by European Union directives aimed at achieving pan-European harmony and by other moves to achieve a level playing field. At the same time other financial players are working hard to innovate, both in terms of the legal framework and new products.

One simple example where Luxembourg lost a beneficial niche was in its absence of compulsory reserves, something that was attractive to German and other banks in the 1960s. With the creation of the European Central Bank in June 1998, a single body took over responsibility for monetary policy and for questions of banks' reserves across all of the eurozone countries. But the most significant challenge facing Luxembourg as a financial centre is tax harmonisation. The Council of Ministers of the EU reached an agreement in January 2003 on taxation of savings. The council decided that the ultimate objective should be to share information on tax matters on as wide a basis as possible. But resistance from non-EU member Switzerland encouraged Luxembourg and Austria, as well as Belgium, to resist such exchange of information. Instead it was agreed that from mid-2005 Switzerland would impose a withholding tax and preserve banking secrecy. The same rules will apply to Luxembourg to keep the playing field level. So Luxembourg has introduced a 15 percent withholding tax on individual savings at source, a figure which will rise to 20 percent from January 2008 and 35 percent from 2011. Tax experts note that as far as sophisticated investors are concerned the EU directive contains as many holes as a Swiss cheese.

Also as part of the EU's harmful tax practices initiative a 1929 holding company will lose its tax exempt status if at least 5 percent of its dividends received relate to foreign participations not subject to tax at a rate comparable to Luxembourg's corporate tax rate. The equation is a complicated one and for existing 1929 holding companies the provision will not come into effect until 2011, but for newly incorporated ones it will apply from 2004.

### Magnetic appeal of financial expertise

In spite of these challenges, which are being driven by powerful domestic political pressures inside individual countries as well as by bodies like the OECD, Luxembourg is confident that its reputation for excellence, its ability to innovate and its cadre of established professionals right across the financial services field will allow it to remain a financial centre with a global attraction. The financial centre is backed by a large number of supporting experts in IT, accountancy, advertising, property and management consultancy, which will keep the grand duchy as a powerful magnet. Altogether, employment in ancillary activities probably accounts for 10 percent of employment. One of the most important support servers is Cedel, now Clearstream, which connects the world's securities clearing and settlement transactions and is based in Luxembourg carrying out hundreds of thousands of settlements a day in 40 markets.



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## MALAYSIA (LABUAN)

Population:	80,000
Currency:	Malaysian ringgit; US\$1 = 3.77 ringgit (mid-2005)
Language:	Bahasa Melayu and English
Time zone:	GMT plus 8
Centre's expertise:	Islamic financial products

### General requirements

Type of entity	Offshore company, foreign offshore company, offshore trust, limited partnership
Type of law	Common Law
Shelf company available	No
Time to establish a new company	Within 3 days
Minimum cost	US\$2,100
Annual fees	Approximately US\$750 (2,600 ringgit) for offshore company and US\$1,500 (5,300 ringgit) for foreign offshore company
Taxation	Approximately US\$5,500 (20,000 ringgit) or 3% of the audited profit for trading activities. No tax for pure 100% investment holding company
Double taxation agreements	Generally yes
Forex restrictions	None
Language & name restrictions on companies	Must be in Roman characters

### Share capital

Permitted currencies	In any currency except those of Malaysia or Israel
Minimum paid up	At least one share
Usual authorised capital	US\$12,000

### Directors and personnel

Minimum number	1
Local required	No, but a resident director is recommended to ensure tax resident status
Company secretary & qualifications	An approved officer or an approved corporation of a Labuan trust co.

### Shareholders and AGM

Minimum number	1
Disclosure requirements	Yes
Publicly accessible records	No
Obligations for annual meetings	Yes, to adopt financial statements
Location of AGM	No restriction and can be by circular resolution

### Accounts

Requirement to prepare	Yes and must sufficiently explain the transactions undertaken and the financial position of the company
Audit requirements	No, unless for licensed entity for payment of tax based on 3% of the audited profit.
Account filing obligations	Only audited accounts adopted by the members need to be filed. Notice of a resolution to adopt annual accounts by members together with an annual return is required to be filed annually.
Publicly accessible accounts	No

### Other

Requirements to file annual return	Yes and must be lodged no later than 30 days prior to the anniversary of the date of incorporation.
Change in domicile permitted	Yes
Need for registered office	Yes
Number of companies set up in last year	555 (2004)
Total number of companies on register	2,701 (end-2004)

Data supplied by Portcullis TrustNet

## MALAYSIA (LABUAN)

Portcullis TrustNet

**LABUAN**, a federal territory of Malaysia, is located off the northwest coast of the island of Borneo and faces the South China Sea. It comprises Pulau (a Malay expression for island) Labuan and six smaller islands, with a population of 80,000. More than 60 percent of the people are descendents of the Brunei Malays and Bahasa Brunei is still the major lingua franca of the Malays on the island, although Bahasa Melayu (Malay) is the national language. English is widely spoken and a number of people also speak various Chinese dialects and Tamil. Islam is the official religion, but freedom of worship is guaranteed. Labuan, like the rest of Malaysia, has a parliamentary system of government.

### Financial services boost economy

The island is mainly flat and undulating. More than 70 percent of the island is still under vegetation, but agriculture is declining as land is being used for property and industrial development. Most of the island's prime land, is being developed for residential use and tourism. The south western side of the island is used by shipbuilding, manufacturing and oil and gas industries. Labuan's deep water port has long been an asset, used today as a support base for offshore oil and gas exploration. Tourism is developing, based on the sandy beaches, deep sea fishing and the year-round tropical climate. The financial services industry is also growing rapidly thanks to the tax concessions and the opportunities that Labuan offers for foreign direct investment into South East Asia, including Malaysia itself.

### Confidentiality plus international standards of supervision

Labuan essentially follows the English Common Law tradition. The offshore financial centre is regulated by the Labuan Offshore Financial Services Authority (LOFSA), established in 1996. LOFSA is committed to ensuring that the regulatory framework in the offshore centre is compliant with international standards and best practices, and is continually improved and updated for a conducive and business-friendly environment. The offshore activities in Labuan are governed by a specific set of laws but other acts of general application currently in force in Malaysia that are consistent with the laws relating to offshore financial services also apply. This includes specifically the Anti-Money Laundering Act of 2001. The regulator maintains good rapport with other offshore regulators and international organisations in the continued vigilance to prevent money laundering, terrorist financing and other criminal activities. At the same time, strong confidentiality rules were enshrined in the original legislation setting up the offshore jurisdiction to give Labuan a competitive edge.

### Offshore business gathers strength

Labuan's offshore centre has been in existence since 1990, offering a range of services, including banking, insurance, trust business and fund management. For the first decade, growth was slow but it has gathered strength in the last few years, particularly after the launch of the Labuan Financial Exchange (LFX) in 2000 and some targeted roadshows in Hong Kong and mainland China. But the other advantage that lends Labuan a cutting edge is its leading role in developing as a centre for Islamic finance, which is being increasingly recognised. In 2002 alone, there was a 30 percent growth in company registrations in Labuan. Now, to quote the 2004 annual report of LOFSA, "The number of new offshore companies incorporated in Malaysian IOFC increased from 494 in 2003 to 555 in 2004, representing a growth of 12.3 percent. This brought the total number of offshore companies operating in the IOFC to 2,701 as at end 2004." All trust companies in Labuan have completed their conversion to offshore entities in accordance with the amended Labuan Trust Companies Act 1990. The conversion facilitated strategic affiliations of offshore trust companies with international institutions, making Labuan more accessible to potential offshore companies and investors.

### Banking, leasing, insurance and fund management

There has been steady growth in the number of offshore banks, to 57 by 2004 and in offshore investment banks, to 11. Eleven new leasing companies were established in 2004 with the new lease financing

amounting to US\$880.3 million, mainly for the leasing of aircraft and the oil and gas industry. Leasing facilities based on both conventional and Islamic principles are offered in the offshore centre.

The offshore insurance industry continued to attract more institutions to Malaysia and seven new licences were approved in 2004, mostly foreign-owned, taking the proportion of foreign shareholding to 34.8 percent in 2004. This is a positive development in line with the objective to attract international insurers. Three new private funds were registered in 2004, but the total registered private funds remained unchanged at 16 due to the closure of three private funds. One new public fund was registered, taking the number to three. The number of fund managers increased by one to 15 in 2004.

### Offshore businesses pay 3% tax

The Offshore Companies Act 1990 provides for the establishment of offshore companies and the registration of foreign offshore companies in Labuan. Entities may be limited by shares or by guarantee. Annual tax returns must be filed by all offshore companies, but they enjoy the attractive tax treatment provided under the Labuan Offshore Business Activity Tax Act 1990. Offshore businesses pay tax at a rate of 3 percent on their net audited profits from offshore activities, such as banking, insurance, trading, management, licensing and other businesses. Instead of paying tax at 3 percent, offshore trading companies may elect to pay a fixed annual tax of 20,000 ringgit. A tax rebate is available for zakat payments to the Labuan Islamic religious authority. Income derived from offshore non-trading companies such as dividends, interest are exempt from tax.

Income by a person or a company from the provision of qualifying professional services to an offshore company in Labuan is exempt from tax up to the equivalent of 65 percent of the adjusted income from that source. There is no withholding tax on royalties, interest, technical or management fees and dividends paid by a Labuan offshore company to a non-resident or another offshore company nor is there stamp duty on transfer of shares and on instruments executed by an offshore company in connection with offshore business. There are no sales taxes, import duties, excise duties or export duties except for petroleum and petroleum products.

### Benefits of double tax agreements

In spite of its offshore status, Labuan is able to benefit from access to the more than 50 DTAs concluded by Malaysia. Malaysian Kuih Lapis, a Malay expression for a layered cake, is an example of how these DTAs make Labuan attractive for offshore investment holding business. Briefly, the Malaysian Kuih Lapis is a Labuan offshore company, incorporated under the Offshore Companies Act 1990, having a wholly-owned subsidiary which is a Malaysian domestic company, incorporated under the (domestic) Malaysian Companies Act 1965. By interposing a Malaysian Kuih Lapis between two foreign companies and a Malaysian domestic company, withholding taxes dividends would be reduced or eliminated from any of the layers. At the same time income can be passed on without further attracting any local tax liability. Malaysia has signed investment guarantee agreements with more than 60 countries, providing additional protection against nationalisation of investment undertaken in Labuan.

### Islamic financial services give Labuan special appeal

Total Islamic assets (including those of conventional offshore banks that offer Islamic financial windows) increased by 13.8 percent to US\$678.7 million. Total deposits continued to record an upward trend, increasing by 54.4 percent to US\$304.1 million in 2004. Total financing facilities outstanding increased from US\$338.4 million in 2003 to US\$409.4 million in 2004, of which 71.4 percent was extended to non-residents.

Labuan's big breakthrough came in 2002 when Malaysia's US\$600 million of Global Islamic Trust Certificates or Sukuk was listed on the LFX and in Luxembourg. In 2004 LFX signed a memorandum of understanding with Bahrain's Islamic International Financial Market allowing Labuan to tap into the Middle Eastern market with its big potential. Since then LFX has listed the first government Sukuk of Qatar and one from the kingdom of Bahrain, both suggesting that Labuan has an important future in helping to facilitate Islamic capital markets.

*Main reference: LOFSA 2004 Annual Report*

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# MARSHALL ISLANDS

Population:	60,000 (July 2005)
Currency:	US dollar
Language:	English
Time zone:	GMT plus 12
Centre's expertise:	Offshore centre whose law borrows from both the US (Delaware) and UK

## General requirements

Type of entity	<b>IBC</b>
Type of law	<b>Common Law</b>
Shelf company available	<b>Yes</b>
Time to establish a new company	<b>One working day</b>
Minimum cost	<b>US\$450</b>
Annual fees	<b>Annual licence fee of US\$450</b>
Taxation	<b>Nil</b>
Double taxation agreements	<b>None</b>
Forex restrictions	<b>None</b>
Language & name restrictions on companies	<b>Must be in Roman characters but any language</b>

## Share capital

Permitted currencies	<b>US dollar</b>
Minimum paid up	<b>One share of par value</b>
Usual authorised capital	<b>US\$50,000</b>

## Directors and personnel

Minimum number	<b>1</b>
Local required	<b>No</b>
Company secretary & qualifications	<b>Yes</b>

## Shareholders and AGM

Minimum number	<b>1</b>
Disclosure requirements	<b>No</b>
Publicly accessible records	<b>No</b>
Obligations for annual meetings	<b>Yes</b>
Location of AGM	<b>Anywhere</b>

## Accounts

Requirement to prepare	<b>No</b>
Audit requirements	<b>No</b>
Account filing obligations	<b>No</b>
Publicly accessible accounts	<b>No</b>

## Other

Requirements to file annual return	<b>No</b>
Change in domicile permitted	<b>Yes</b>
Need for registered office	<b>Yes</b>
Number of companies set up in last year	<b>unavailable</b>
Total number of companies on register	<b>unavailable</b>

# THE MARSHALL ISLANDS

Annie Ng, General Manager

International Registries (Far East) Limited

**THE MARSHALL ISLANDS**, an independent sovereign nation, consists of two parallel chains of atolls and islands that lie west of the International Date Line. Majuro Atoll, the capital, is 1,400 miles (2,300 km) west of Honolulu, 1,000 miles (1,600 km) east of Guam and 1,600 miles (2,600 km) southeast of Tokyo. The eastern Ratak (sunrise) Chain consists of 15 atolls and islands and the western Ralik (sunset) Chain consists of 16 atolls and islands. Together these two chains comprise 1,152 islands and islets dispersed over more than 500,000 square miles (1,300,000 sq. km) of the central Pacific.

A German possession until World War I, the Marshall Islands was administered by Japan between the World Wars. After World War II, the islands became a trust territory of the United Nations under United States administration until becoming an independent nation in 1986. In 1991, the Marshall Islands became a full member of the United Nations. The country maintains a politically stable, democratically elected parliamentary system of government. The constitution, signed in 1979, is a blend of American and British models of government and the official language is English. The Marshall Islands has enjoyed political stability since its independence as a nation.

## Government

The Marshall Islands' legislature known as the Nitijela elects a president from among its members. The president nominates a cabinet of between six and ten to run the government. The legal system consists of local courts whose judges are appointed by the cabinet, a Traditional Rights Court with jurisdiction over real property matters and a High Court with corporate and maritime jurisdiction. Appeals may be brought before the Supreme Court in all cases. The legal system is based on adapted trust territory laws, acts of legislature, municipal common and customary laws.

## Stable business environment

Agriculture and tourism are the mainstays of the economy. The most important commercial crops are coconuts, tomatoes, melons and breadfruit. The principal trading partners are the United States, Japan and Australia. The Marshall Islands also has a stable business environment. Air transportation is facilitated by two international airports, plus airstrips scattered throughout the larger islands. There are 12 deepwater docks for large ocean-going ships. Excellent international communications are provided by satellite links for telephone, fax and telex. The official currency is the US dollar.

## Modern corporate law mixes best UK and US practice

In a joint venture approved by the legislature, the Marshall Islands corporate and maritime programmes are administered by International Registries, Inc. and its group of affiliated companies, which have been administering maritime and corporate registries since 1948.

First enacted in 1990, the Marshall Islands corporate law is one of the most modern in the world. Although based on United States corporate law, the Marshall Islands law contains unique provisions enabling the use of British-style corporate management. In addition, there are no requirements to have corporate documentation authenticated by a consular official.

The Marshall Islands is a zero tax jurisdiction that statutorily exempts non-resident domestic corporations from taxation on their income and assets. Forming a company is simple and corporate documents can be issued in one day. The Marshall Islands also permits corporate redomiciliation both into and out of the jurisdiction. The non-resident corporate program offers many unique advantages for the investor, shipowner, and international business executive. In 1996, the Marshall Islands enacted a Limited Liability Company (LLC) Act modelled after the Delaware LLC law in the United States. LLCs formed under the act provide a cost efficient way to maximize profits while minimising liability in a completely confidential environment. In 2005, amendments were made to the Marshall Islands Associations Law and to the Business Corporations Act (BCA), Limited Partnership Act and LLC Act. The Partnership Act itself was repealed and a new act, the Marshall Islands Revised Partnership Act, which is based on the Delaware Revised Partnership Act, was adopted.

## Ship register is world's seventh largest

The Marshall Islands ship registry program was initiated by the government in 1988. With the adoption of a new Maritime Act in 1990, the maritime laws of the Republic were brought in line with the many changes in ship registration, financing and licensing which have occurred in the shipping industry. In addition, the Marshall Islands has adopted groundbreaking legislation that permits the registration of a vessel that is still subject to a recorded mortgage in its existing country of registry. This legislation provides for the continuation of the preferred status of the mortgage without interruption; thus, the foreign mortgage lien accompanies the vessel into the Marshall Islands registry.

The Marshall Islands ship registry is now the seventh largest open registry in the world reaching 28.7 million gross tons by June 2005. Vessel types include oil tankers, bulk carriers, mobile offshore drilling units, container ships and yachts. Vessels and yachts may be registered if owned by a Marshall Islands citizen, national, corporation, limited or general partnership, limited liability company or a foreign maritime entity qualified in the Marshall Islands.

## Simple incorporation can be done online

Incorporation of a company in the Marshall Islands is simple and flexible and takes only a single day. Applications may be submitted online or facilitated through a professional body. Documents provided upon incorporation include the certificate of incorporation, articles of incorporation, a certified copy of articles of incorporation, bylaws and consent of incorporator (for the appointment of first directors).

In addition, a foreign corporation may change its domicile and incorporate in the Marshall Islands without cost. The official legislation is in English and documentation must be expressed in English, but it may be accompanied by a certified translation in a foreign language at no extra charge. Bearer shares are allowed, as is the issue of no-par value shares. Apostille is issued free of charge at the time of public filing. Par value shares may be denominated in any currency. A standard formation is 500 registered and/or bearer shares without par value or up to US\$50,000 of authorized share capital. The total annual costs of US\$450 covers all government and registered agents' fees.

Other rules are also simple. There are no annual filings required in the Marshall Islands. Directors, officers and shareholders may be of any nationality and may reside anywhere. Directors' meetings and shareholders meetings are required. However, meetings may be held in any location and directors, shareholders and the secretary may be corporate entities. The corporation's headquarters, where its records are kept, may be located in any country.

## Sole registered agent

The Trust Company of the Marshall Islands, Inc. is the sole registered agent. The names of shareholders, directors, and officers need not be made part of the public record maintained by the Registrar of Corporations nor submitted to the registered agent. The names of the officers and directors may be voluntarily filed any time after incorporation. The major restriction on the business activities of a Marshall Islands IBC is that it does not offer banking, insurance or trust services. Otherwise, the IBC has general freedom to conduct the business activities of its choosing.

## NYSE and Nasdaq trading

The Marshall Islands offers a corporate programme in a politically stable environment. Marshall Islands business entities are recognised by the international banking community. Law firms, company formation specialists and business professionals in major financial centres of the world recognise the Marshall Islands for its modern and flexible legislation, ease of formation and high level of customer service. Many Marshall Islands companies are publicly traded on the New York Stock Exchange (NYSE) and National Association of Securities Dealers Automated Quotations (Nasdaq).

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Website [www.register-iri.com](http://www.register-iri.com); Address 2210 Harbour Centre, No. 25 Harbour Road, Wanchai, Hong Kong.

# MAURITIUS

*Jamuna Gopaul, Director of Mauritius Office  
Equity Trust*

**MAURITIUS** is an island of 1,865 square kilometres in the Indian Ocean about 2,000 kilometres off the south east coast of Africa. Its 1.2 million people are the descendants of Indian, African, European and Chinese immigrants. The country was successively ruled by the Dutch, the French and, from 1814, the British, and became independent on 12 March 1968. The country has a president elected by the national assembly for a five year term. The government is run by a prime minister under a British-style parliamentary system that guarantees the separation of the legislative, executive and judicial powers.

The legal system is a hybrid combining both civil and common law practices. Although Mauritius became a republic in 1992, it is a member of the Commonwealth and has preserved the right of appeal to the judicial committee of the Privy Council.

## Economy

The economy was formerly heavily reliant on sugar production but Mauritius now has a diversified structure with four main pillars, sugar, export-oriented manufacturing, tourism and financial services. Mauritius has a highly educated and versatile workforce, and Mauritians are equally fluent in French and English. English is the official language, but French and Creole are widely spoken along with other languages such as Hindi and Mandarin. The island is ideally located to conduct business with Asia and Europe, being half-way between the time zones. In addition, the hybrid legal system and ability to provide cost-competitive specialised services and efficient financial solutions make Mauritius appealing as a financial centre.

## Financial centre

The island has taken bold steps to ensure that it contributes to the international fight against money laundering and financing of terrorism. It has never been on any OECD or FATF blacklist. Laws are continually modernised so that the financial centre is up to date and competitive. Another factor in the island's success is its ever-expanding tax treaty network, which has encouraged substantial foreign investments to be channelled through Mauritius vehicles. Careful supervision by the Financial Services Commission (FSC) responsible for regulating all non-banking financial activities, has instilled confidence in the financial services sector and has been conducive to its development.

## Mauritius companies

The Companies Act 2001 abolished the distinction between onshore and offshore concerns and brought all companies under its umbrella. The act introduced innovative features and incorporates international best practices. Any non-resident wishing to set up a company under the laws of Mauritius, but not active within the country requires a global business licence company (GBL). A GBL faces certain restrictions and cannot carry on business with residents in Mauritius or deal in Mauritian rupees.

A GBL can be set up as a company limited by shares, limited by guarantee, limited by both shares and guarantee, or with unlimited liability. Also, a GBL may be set up as a limited liability company (LLC). LLCs are companies with limited liability but endowed with partnership characteristics such as limited duration, decentralised management, restrictions on the transferability of shares and the automatic dissolution of the company on the occurrence of a specified event or expiry of its duration. A LLC combines the tax transparent aspect of a partnership with the limited liability advantages of a company.

## Global business licence category 1 (GBL1)

A GBL1 is used for international tax planning and structuring and is appropriate for investment funds or collective investment schemes seeking relief under double taxation agreements. A GBL1 can be active in fields such as banking, insurance, fund management, or in any activity involving public money, provided it has obtained authorisation from the FSC and other authorities as may be required. It is also necessary to set up a GBL1 in order to take advantage of the island's expanding network of double taxation agreements. A GBL1 is suitable for investing in countries with which Mauritius has a tax treaty and

# MAURITIUS

Population:	1.2 million
Currency:	Mauritian Rupee (Rs.)
Language:	English & French
Time zone:	GMT plus 4
Centre's expertise:	All round centre with no distinction between onshore and offshore; many tax treaties

## General requirements

	Global business licence 1	Global business licence 2
Type of entity	<b>Companies Act 2001</b>	<b>Companies Act 2001</b>
Type of law	<b>Companies Act 2001</b>	<b>Companies Act 2001</b>
Shelf company available	<b>No</b>	<b>Yes</b>
Time to establish a new company	<b>14 days</b>	<b>3 days</b>
Minimum cost	<b>US\$2,470</b>	<b>US\$980</b>
Annual fees	<b>US\$4,220</b>	<b>US\$600</b>
Taxation	<b>3% effective tax rate</b>	<b>Exempt</b>
Double taxation agreements	<b>Yes</b>	<b>None</b>
Forex restrictions	<b>None</b>	<b>None</b>
Language & name restrictions on companies	<b>No (provided English translation confirmed by an approved translator)</b>	

## Share capital

Permitted currencies	<b>All major currencies</b>	<b>All major currencies</b>
Minimum paid up	<b>1 Share</b>	<b>1 Share</b>
Usual authorised capital	<b>Stated Capital concept - No Authorised Share Capital</b>	

## Directors and personnel

Minimum number	<b>2</b>	<b>1</b>
Local required	<b>Yes</b>	<b>No</b>
Company secretary & qualifications	<b>Yes</b>	<b>No</b>

## Shareholders and AGM

Minimum number	<b>1</b>	<b>1</b>
Disclosure requirements	<b>Yes</b>	<b>Yes</b>
Publicly accessible records	<b>No</b>	<b>No</b>
Obligations for annual meetings	<b>Yes</b>	<b>Yes</b>
Location of AGM	<b>No restriction</b>	<b>No restriction</b>

## Accounts

Requirement to prepare	<b>Yes</b>	<b>No</b>
Audit requirements	<b>Yes</b>	<b>No</b>
Account filing obligations	<b>Yes</b>	<b>No</b>
Publicly accessible accounts	<b>No</b>	<b>No</b>

## Other

Requirements to file annual return	<b>No</b>	<b>No</b>
Change in domicile permitted	<b>Yes</b>	<b>Yes</b>
Need for registered office	<b>Yes</b>	<b>Yes</b>
Number of companies set up in last year	<b>431 (2004)</b>	<b>1,728 (2004)</b>
Total number of companies on register	<b>7,791</b>	<b>18,340</b>

where these investments are likely to generate income in the form of dividends, interest, royalties or capital gains. The double tax treaty with India proved its worth for investments into India, and now Mauritius has 30 such treaties, including with the UK, France, China and several South East Asian countries, which may also prove advantageous for the development of GBL1 companies.

The main features of a GBL1 are:

- Registered office must be in Mauritius
- Does not have a minimum capital requirement except for specific activities
- Must have a resident secretary
- Cannot have corporate directors
- Must maintain accounts in Mauritius
- Must file audited accounts and tax return
- Can have work and residence permits for expatriate staff
- Can only deal with Mauritian residents with the prior approval of the FSC
- Documents filed with registry not open to inspection by the public
- Can access double tax treaty benefits

A nominal rate of tax of 15 percent applies to income received by a GBL1, but the company can claim an automatic “deemed tax credit” of 80 percent, which, after grossing up, leads to an effective tax rate of 3 percent. Alternatively, the GBL1 can claim credit for actual withholding taxes in the source country, and, where the income consists of dividends and the GBL1 has a holding of at least 5 percent, credit for underlying taxes on the corporate profits out of which the dividends have been paid. Often, the second option leads to no tax liability in Mauritius. Mauritius charges no withholding tax on dividends distributed by any company to its shareholders, no withholding tax on interest paid to non-residents, no capital gains tax and no inheritance tax.

To obtain a tax residence certificate, a GBL1 must ensure that:

- The company has at least two resident directors
- The company secretary is resident in Mauritius
- The registered office is in Mauritius
- Banking transactions are channelled through a bank holding a category 2 licence in Mauritius (an offshore bank)
- Accounting records are maintained in Mauritius in accordance with the Companies Act 2001
- Board meetings are held in or chaired from Mauritius
- All statutory records, such as minutes and registers, are kept at the registered office
- The auditors are Mauritian residents
- Investment funds must have a local custodian of Mauritian assets and the NAV must be calculated in Mauritius

A GBL1 may be registered as a protected cell company (PCC), a vehicle particularly suited for insurance activities and investment funds with a view to segregating risks within a single structure. Each cell can have a certain risk profile (from the least risky, like bonds, to the most risky, like derivatives), and can represent investments in a country, region, or category of markets (emerging or mature) or sectors (technology, communications, banks, commodities etc.). Investors can then invest into the cell that is most suitable to their profile. The range of services in which a PCC may engage has now been extended beyond insurance and investment funds, and PCCs can now carry out asset holding, collective investment schemes, insurance business, specialised collective investment schemes and structured finance businesses.

### Global business licence category 2 (GBL2)

A GBL2, unlike a GBL1, is not considered as resident in Mauritius. A GBL2 therefore is exempt from local taxation and cannot access the benefits of the network of double tax agreements. It is primarily used for activities such as non-financial consultancy, trading, logistics, marketing, or invoicing. A GBL2 cannot offer services of a fiduciary nature, and the FSC may refuse to license a company with a GBL 2 if it believes that the impact of the proposed company’s affairs on third parties is such that it needs to be subject to a higher degree of supervision. A GBL2 is in some ways similar to the IBC-type company. It can be incorporated quickly and its administration is relatively simple. A GBL2 can be converted to a GBL1.

The main features of a GBL2 are as follows:

- Registered agent and registered office must be in Mauritius
- No minimum capital requirement

- Appointment of secretary not compulsory
- Corporate directors allowed
- No annual returns and no audit requirements
- Register of directors, members and mortgages & charges must be kept
- Bilingual constitution (English and Chinese) available
- Cannot be a public company
- Documents filed with registry not open to inspection by the public
- Cannot access double tax benefits

## Trusts

The Trust Act 2001 governs all trusts set up in Mauritius. As local expertise grows, the island is showing its potential to become a successful trust and private wealth jurisdiction similar to that of the corporate business sector. The trust can opt to be either resident or non-resident in Mauritius for tax purposes. A resident trust is taxed at 15 percent on its net income, but is eligible for a deemed tax credit of 80 percent on its foreign-sourced income, which reduces the effective tax rate to 3 percent. A resident trust holding a tax residence certificate can enjoy the benefits of the network of tax treaties signed by Mauritius. The extent of the benefit will depend on the taxation regime of an individual country and in particular its anti-tax avoidance provisions. However, most of the benefits that a GBL1 can obtain can also be obtained by a trust. The trustees must apply for a tax residence certificate if the trust is to qualify as a resident trust, and be taxed accordingly. The conditions attached to the tax residence certificate are as follows:

- At least one trustee is resident in Mauritius
- A bank account is maintained in Mauritius through which funds are routed
- All accounting records are kept with the local trustee
- The local trustee is a party to all decisions pertaining to the trust

The GBL2 is the ideal entity to use as an underlying company in a trust structure where a simple corporate vehicle is required to segregate assets and thereby manage the overall risk of the structure. This allows Mauritius to provide a more comprehensive service than other trust jurisdictions in that there is no need to look for another jurisdiction to incorporate underlying companies. A trust can only be non-resident if its settlor and beneficiary are non-resident and the trust property does not include any immovable property in Mauritius. A non-resident trust is not taxable in Mauritius. The trustees have to file a declaration of non-residence with the income tax commissioner each year.

## Investment funds

Mauritius has been used extensively by investors worldwide for the establishment of funds investing in emerging markets. Contrary to many jurisdictions, the administration duties of collective investment schemes set up in Mauritius are performed from Mauritius by local professionals.

In the case of two-tiered funds, the parent company is typically located in jurisdictions such as Guernsey, Luxembourg, Cayman Islands, Ireland, Singapore, Jersey, United Kingdom and Switzerland. Some funds are listed on major international stock exchanges such as Dublin, London, New York, Zurich and Luxembourg. Recent trends have shown several private equity/venture capital funds are being set up as opposed to portfolio funds. Most of the new funds are being structured as one-tier and/or PCCs. This is a direct result of the availability of fully-fledged fund administration services and the recognition of Mauritius as a credible and reliable international financial services centre.

## The future

Mauritius has benefited by doing more than the minimum required by the Financial Action Task Force in strengthening its anti-money laundering legislation. This has given it an enviable balance in encouraging financial services to flourish while ensuring the reputation and integrity of the jurisdiction.

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