

Population Office guidance on exemptions from the duty to have a business licence

Control of Housing and Work (Jersey) Law 2012

Guidance on the interpretation of Articles 3(1)(a) to (d) of the Control of Housing and Work (Exemptions) (Jersey) Order 2013

1. Introduction

- 1.1 This guidance relates to the interpretation of the exemptions from the duty to have a business licence contained in Articles 3(1)(a) to (d) of the Control of Housing and Work (Exemptions) (Jersey) Order 2013 (the **Order**) made under Article 25(9) of the Control of Housing and Work (Jersey) Law 2012 (the **Law**). These exemptions replace the administered undertaking exemption formerly contained in Article 1(1)(b) of the Regulation of Undertakings and Development (Jersey) Regulations 1978.
- 1.2 Article 25(1) of the Law provides that a person must not carry on an undertaking in Jersey unless it has an appropriate licence.
- 1.3 Article 23(1) of the Law provides that an "undertaking" is any trade, business or activity involving work or services performed for, or offered to members of the public or a section of the public. Article 23(2) provides that a trade, business or activity is not an undertaking if no individual working for the undertaking is paid for work.
- 1.4 Under Article 23 of the Law, an undertaking is only carried on in Jersey if it has a "physical presence" in Jersey which includes:
 - (a) any person working in or for the undertaking in Jersey (including a director, secretary or other office holder); or
 - (b) any item being in the custody or control of the undertaking in Jersey.
- 1.5 For the purposes of the Law, every Jersey company has a physical presence in Jersey because its company books, which are required to be kept in Jersey, would constitute an item under its custody or control in Jersey. Accordingly, if a Jersey company qualifies as an undertaking, it will require a business licence under the Law unless:
 - (a) it already holds a licence under the Regulation of Undertakings and Development (Jersey) Law 1973 (**RUD law**) which is deemed to be a business licence under Article 50(1) of the Law; or
 - (b) it can rely on one of the exemptions set out in the Order.
- 1.6 These guidance notes aim to clarify how the four exemptions in Articles 3(1)(a) to (d) of the Order should be interpreted. They focus on how the exemptions will apply to Jersey companies because they can conduct more than one activity (eg by acting as partner, member of a council of a foundation, trustee or in another equivalent capacity).
- 1.7 The four exemptions apply to:
 - (a) non-resident undertakings carrying out a regulated activity;
 - (b) resident undertakings carrying out a regulated activity;

- (c) non-resident undertakings not carrying out a regulated activity; and
 - (d) resident undertakings not carrying out a regulated activity.
- 1.8 An undertaking is a resident undertaking if all or a majority of the person(s) who work for it are ordinarily resident in Jersey. An undertaking is a non-resident undertaking if all or a majority of the person(s) who work for it are not ordinarily resident in Jersey. If two people work for an undertaking and one is ordinarily resident in Jersey and the other is not, the undertaking is a non-resident undertaking.
- 1.9 The persons who work for an undertaking are its:
- (a) employees;
 - (b) directors and secretary (in the case of a company);
 - (c) partners (in the case of a partnership);
 - (d) council members (in the case of a foundation);
 - (e) trustees (in the case of an express trust); and
 - (f) persons with equivalent responsibility.
- The persons listed in paragraphs (b) to (f) are each an **office holder** and together **office holders**.
- 1.10 An undertaking is carrying out a regulated activity if:
- (i) is registered under the Banking Business (Jersey) Law 1991;
 - (ii) holds a permit or is a certificate holder under the Collective Investment Funds (Jersey) Law 1988;
 - (iii) is registered under the Financial Services (Jersey) Law 1998; or
 - (iv) is authorized by a permit under the Insurance Business (Jersey) Law 1996.

2. Non-resident undertaking carrying out a regulated activity

- 2.1 A non-resident undertaking that is carrying out a regulated activity is exempt from the duty to have a business licence under Article 3(1)(a) of the Order.
- 2.2 If a non-resident undertaking that is carrying out a regulated activity is also carrying out another activity that is not a regulated activity, if it qualifies for exemption under Article 3(1)(a) of the Order in respect of its regulated activity it does not also need to qualify for exemption under Article 3(1)(c) of the Order in respect of the activity that is not a regulated activity.

3. Resident undertaking carrying out a regulated activity

- 3.1 A resident undertaking that is carrying out a regulated activity is exempt from the duty to have a business licence under Article 3(1)(b) of the Order provided that:
- (a) no person works for the undertaking in Jersey other than an office holder;

- (b) no office holder who works for the undertaking in Jersey is an employee of the undertaking; and
- (c) each office holder working for the undertaking works for the undertaking for an aggregate period of 60 days or less in any 12 month period.

3.2 For the purposes of paragraph 3.1(c) above, in the case of an undertaking carried on by a company, partnership, foundation or in the case of an express trust:

- (a) "work" means preparing for and attending board meetings, partners' meetings, council meetings and trustee meetings as applicable (in the case of a body corporate, by an authorised representative) in Jersey. For the purposes of any such meeting:
 - (i) the preparation for a meeting is deemed to take place on the same day as the meeting itself;
 - (ii) holding a meeting for part of a day is counted as a whole day;
 - (iii) holding a series of meetings on the same day is counted as holding one meeting;
 - (iv) signing a written resolution is not deemed to be the holding of a meeting; and
 - (v) holding a meeting of a committee of a board of directors, partners or council members is deemed to be the holding of a meeting; and
 - (vi) if a director, secretary, partner, council member, trustee or person with equivalent responsibility attends a meeting by telephone or video conference while being physically located outside Jersey he or she is deemed not to be attending the meeting; and
- (b) if:
 - (i) an undertaking (the **first undertaking**) is a client or customer of, and is administered or managed by, another undertaking which is carrying out a regulated activity (the **administering undertaking**); and
 - (ii) any of the first undertaking's office holders are individuals who are directors or employees of the administering undertaking or another company within the same group of companies as the administering undertaking (**TCB staff**),

then such TCB staff are deemed not to work for the first undertaking but for the administering undertaking. Accordingly, a quorate meeting at which only TCB staff is present does not count as the holding of a meeting for the purposes of paragraph (a).

3.3 If a Jersey company is also an office holder of another undertaking, each activity conducted by the company, whether such activity is its own undertaking or acting as office holder, will be treated as a separate activity in respect of which the exemption in Article 3(1)(b) of the Order is capable of applying. So, for example, if a Jersey company is:

- (a) a general partner of a partnership, its directors and secretary could work:
 - (i) for up to 60 days in any 12 month period for the company in the conduct of its own undertaking; and

- (ii) for up to a further 60 days in any 12 month period for the company in the discharge of its responsibilities as general partner (including preparing for and attending meetings of the partnership); or
- (b) a trustee of two trusts, its directors and secretary could work:
 - (i) for up to 60 days in any 12 month period for the company in the conduct of its own undertaking;
 - (ii) for up to a further 60 days in any 12 month period for the company in the discharge of its responsibilities as trustee of one trust (including preparing for and attending trustee meetings); and
 - (iii) for up to a further 60 days in any 12 month period for the company in the discharge of its responsibilities as trustee of the other trust (including preparing for and attending trustee meetings).

A company can hold board meetings on 60 days to conduct its own undertaking and, for each other office that it holds, it can also hold board meetings on 60 days to discharge its responsibilities in relation to each such other office. This is referred to in the rest of this guidance as the "principle of disaggregation of meetings".

- 3.4 The principle of disaggregation of meetings also applies not only where an undertaking is an office holder of another undertaking (the **second undertaking**) but also where the second undertaking is also an office holder of a further underlying undertaking. For example, where a company acts as general partner of a limited partnership and that limited partnership acts as general partner of another limited partnership, the company can hold board meetings on 60 days to conduct its own undertaking and it can also hold board meetings on 60 days to discharge its responsibilities in relation to each limited partnership.
- 3.5 The principle of disaggregation of meetings also applies to other types entities. Partnerships, foundations and trustees of express trusts may also hold 60 partners' meetings, council meetings or trustee meetings, as the case may be, to conduct their own undertaking and, for each other office that they hold, they can also hold partners' meetings, council meetings and trustee meetings, as the case may be, on 60 days to discharge their responsibilities in relation to each such other office.
- 3.6 If a resident undertaking that is carrying out a regulated activity is also carrying out another activity that is not a regulated activity, if it qualifies for exemption under Article 3(1)(b) of the Order in respect of its regulated activity it does not also need qualify for exemption under Article 3(1)(d) of the Order in respect of the activity that is not a regulated activity.

4. Non-resident undertaking not carrying out a regulated activity

- 4.1 A non-resident undertaking that is not carrying out a regulated activity is exempt from the duty to have a business licence under Article 3(1)(c) of the Order provided that the undertaking is administered or managed by a person or body or persons carrying out regulated activities.

5. Resident undertaking not carrying out a regulated activity

- 5.1 A resident undertaking that is not carrying out a regulated activity is exempt from the duty to have a business licence under Article 3(1)(d) of the Order provided that:
 - (a) no person works for the undertaking in Jersey other than an office holder;

- (b) no office holder who works for the undertaking in Jersey is an employee of the undertaking;
 - (c) each office holder working for the undertaking works for the undertaking for an aggregate period of 60 days or less in any 12 month period; and
 - (d) the undertaking is administered or managed by a person or body or persons carrying out regulated activities.
- 5.2 For the purposes of paragraph 5.1(c) above, the provisions of paragraphs 3.2 to 3.5 above also apply.

