

This note is a brief guide to the migration of companies under Guernsey law and should be read in conjunction with the relevant statutory provision which is Part VII of The Companies (Guernsey) Law, 2008 (the "Law").

1. What is a 'migration'?

A company may move its place of registration (or 'migrate') from or to Guernsey. Migration is sometimes referred to as 'continuance' under the laws of other jurisdictions.

Migration does not create a new legal person nor does it prejudice or affect the identity or continuity of the company.

Upon migration all property and rights to which the company was entitled immediately before migration remain its property and rights. The company remains subject to all criminal and civil liabilities and all contracts, debts and other obligations to which it was subject immediately before migration. All actions and other legal proceedings which immediately before migration could have been instituted or continued by or against the company may be instituted or continued by or against it after migration. A conviction, ruling, order or judgment in favour of or against the company before migration may be enforced by or against it after migration.

2. Can an overseas company be registered as a Guernsey company?

Yes. An overseas company may apply to the Guernsey Registrar of Companies (the "Registrar") to be registered as a Guernsey company. This is also referred to as a company 'migrating in' to Guernsey.

Being 'registered in Guernsey' means that the company ceases to be registered in the place where it was incorporated or is now registered and is instead registered as a Guernsey company in the Guernsey Register of Companies.

2.1 How can an overseas company register as a Guernsey company?

2.1.1 Permitted by and complied with foreign law: An overseas company cannot be registered as a Guernsey company unless the company is able under the law of the district, territory or place in which it is incorporated to be registered as a Guernsey company.

The company must have complied with the requirements of that foreign law in relation to its registration as a Guernsey company.

2.1.2 Consent of members: Often the foreign law will require that members pass a resolution in connection with the migration into Guernsey. However where that foreign law does not require the company's members, or a specified proportion of them, to consent to its registration as a Guernsey company then the transfer must be consented to by such resolution of the company or such other action on the part of the company or its members as the Commission shall certify in writing as being equivalent to a special resolution.

2.1.3 Solvency: The company must not be undergoing or be involved in any insolvency procedure. This includes being in liquidation, having been declared insolvent, a receiver or administrator having been appointed or the company having entered into a compromise or arrangement with a creditor. Additionally the company must satisfy the statutory 'solvency test' immediately after its registration in Guernsey

2.1.4 Memorandum and Articles: The company must not be able to issue bearer shares. If the memorandum and articles of the company effective upon its registration as a Guernsey company differ from those immediately before it became a Guernsey company then those changes to the memorandum and articles must be consented to by a resolution of the company (or such other action) as the Guernsey Financial Services Commission (the "Commission") certifies in writing as being equivalent to a special resolution under Guernsey law.

2.1.5 Supervised companies: An overseas company which intends to become a supervised company in Guernsey or is the equivalent of a supervised company in that overseas jurisdiction must obtain the consent of the Commission before it can be registered as a Guernsey company.

A 'supervised company' is one which engages in activities which require it to be supervised by the Commission. Examples of such activities are companies which provide trustee and other fiduciary services or companies who are open-ended or closed-ended investment companies.

2.2 How do I make an application to the Commission for its consent to the migration in?

Application for the consent of the Commission to an overseas company being registered in Guernsey shall include or be accompanied by:

- the 'migration details' (see below);
- such other information and documents, verified in such manner as the Commission may require; and
- the fee.

In deciding whether to grant any application the Commission must have regard to the protection of the public interest, including the need to:

- protect the public, in Guernsey and elsewhere, against the effects of dishonesty, incompetence or malpractice;
- counter financial crimes and the financing of terrorism in Guernsey and elsewhere; and
- protect and enhance the reputation of the Bailiwick of Guernsey as a financial centre.

2.3 How do I make an application to the Registrar to register the company as a Guernsey company?

An application for registration of the overseas company as a Guernsey company may only be made by a corporate services provider (also known as a CSP) to the Registrar and shall include or be accompanied by:

- the 'migration details'(see below);
- a copy of the Commission's consent (in the case of a supervised company);
- such other information and documents, verified in such manner, as the Registrar may require; and
- a 'declaration of compliance (migration)' (see below).

2.4 What happens once an overseas company is registered as a Guernsey company?

On receipt of the application for registration of the overseas company as a Guernsey company:

- the Registrar shall register the memorandum and articles in the Register of Companies;
- the company shall be treated in all respects as a company within the meaning of the Law;
- the Registrar shall issue a certificate of registration in respect of the company which shall be conclusive evidence that the company is duly registered; and

- the Registrar shall allocate a registration number to the company.

2.5 What must be filed once the company has been registered in Guernsey?

Once registered as a Guernsey company, the company must as soon as possible file with the Registrar any certificate or other document issued under the foreign law evidencing the fact that the company has ceased to be incorporated and registered under that foreign law.

If the company has been registered as a Guernsey company and the Guernsey court is satisfied that the company continues to be registered as an overseas company then, upon an application made by certain people, the Court can make an order for the removal of the company from the Guernsey Register of Companies. The Court may also impose a penalty.

3. Can a Guernsey company transfer its registration overseas?

Yes, a Guernsey company can transfer its place of registration from Guernsey. This is referred to as a company 'migrating out'.

A company may apply to the Registrar to be removed from the Register of Companies for the purposes of becoming registered as a company under the law of a district, territory or place outside Guernsey provided that:

- it has passed a special resolution that it be so removed;
- it is not in liquidation or undergoing any other insolvency procedure;
- immediately following removal from the Guernsey register the company would satisfy the statutory solvency test;
- it has given written notice to all its creditors stating that it intends so to apply; and
- if it is a supervised company, it has the written consent of the Commission.

3.1 How can a Guernsey company remove its name from the Guernsey register of companies?

An application must be made to the Registrar.

If the company is a supervised company then the consent of the Commission must be obtained to the migration before it makes any application to the Registrar for the removal of the company's name from the Guernsey register.

3.2 How do I make an application for the Commission's consent to the migration?

An application to the Commission is made with the following:

- Evidence acceptable to the Commission that the removal of the company is not prohibited by sections 88, 89, 90, 91 and 92. This means that the Commission should be given a certified copy of the a special resolution of the members authorising the migration, confirmation from the directors that the company is not in any form of insolvency or undergoing any similar or connected procedure, a copy of certain accounts showing the company passes the statutory solvency test and copies of notices given to the creditors.
- A copy of the consent of Her Majesty's Procureur and the Guernsey Administrator of Income Tax confirming that they have no objection to the migration;
- Evidence that the overseas law permits migration in to that jurisdiction. This is usually an opinion letter from a lawyer qualified to advise on the laws of that overseas jurisdiction;
- Any other documents the Commission requires; and
- The fee.

3.3 How do I make an application for the Registrar's consent to the migration?

Application for removal from the Register of Companies may only be made by a CSP to the Registrar accompanied by:

- a copy of the Commission's consent (in relation to a supervised company);
- confirmation from Her Majesty's Procureur and the Guernsey Administrator of Income Tax that they have no objection to the removal of the company from the Register;
- evidence acceptable to the Registrar that the removal from the register is not prohibited by the Law;
- evidence acceptable to the Registrar that on the date of the removal of the company's name from the Register the company will be incorporated under the law of the district, territory or place in question;
- such other information and documents, verified in such manner, as the Registrar may require; and
- a declaration of compliance (migration).

The Registrar shall then give notice of the proposed transfer in such manner and for such period as he thinks fit and not less than 28 days after the date of such notice, the company's name shall be removed from the Register and the company shall cease to be a Guernsey company.

3.4 What must the company do once it has been removed from the Guernsey Register of Companies?

In addition to any requirements of the overseas jurisdiction, the company must file with the Registrar any certificate or other document issued under the law of the district, territory or place to which the company has migrated evidencing the fact that the company has become incorporated under that law.

If the company has been removed from the Guernsey register and the Guernsey court is satisfied that the company has not been incorporated under the laws of any other place then, upon an application made by certain people, the Court can make an order for the restoration of the company to the Guernsey Register of Companies. The Court may also impose a penalty.

4. Migration Details and Declaration of Compliance (Migration)

4.1 What are the 'migration details'?

When a company applies to migrate into Guernsey the migration details which must be provided to the Registrar and, if applicable, the Commission are the following details:

- A copy of the company's certificate of incorporation in the overseas place in which it is registered;
- A copy of the memorandum and articles which are to be binding on the company immediately after its registration in Guernsey together with, if different, a copy of the company's current memorandum and articles;
- A statement of the company's current directors which sets out the particulars required by section 143 of the Law and, where such details include only a service address for a director, his usual residential address;
- A statement of the company's directors as proposed immediately after registration as a Guernsey company giving the consents and declarations required by section 138 of the Law along with the particulars required by section 143 of the Law and, where such details include only a service address for a director, his usual residential address;
- A statement of the company's registered office both in the overseas place it is registered and as proposed in Guernsey;
- In the case of a company with a share capital, a statement of share capital. This statement must set

out the number of issued shares, the aggregate value of those shares, the number of shares held as treasury shares and the amount paid up (and any amount unpaid) on those shares;

- In the case of a cell company, any consent of the Commission required under section 10 of the Law;
- Evidence that the company is not prohibited from being registered in Guernsey by sections 76 (registration must be authorised by foreign law), 77 (company cannot be in liquidation etc.) or 78 (company must satisfy the statutory solvency test); and
- Evidence that, on the day it is registered as a Guernsey company, the company will cease to be registered or incorporated outside Guernsey.

4.2 What is the 'Declaration of Compliance (Migration)'?

A declaration of compliance (migration) is a declaration, signed by a director, that all the requirements of Part VII of the Law in respect of registration of a Guernsey company, or the removal of a company from the Guernsey register of companies (as the case may be), have been fulfilled.

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