



Migrating or redomiciling companies to and from Guernsey

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KEY TAKEAWAYS

- Companies can be redomiciled into and out of Guernsey using a statutory process known as migration
- Upon migration, the company retains all property, rights and liabilities
- This guide sets out the requirements from a Guernsey perspective to effect a migration

From a Guernsey legal perspective, a reference to the 'migration' of a company is a reference to the process of the transfer of the company's registration to another jurisdiction, whilst maintaining the legal personality of that company.

Migration provides an alternative mechanism for the transfer of a business from one jurisdiction to another, other than by using more traditional forms of transfer such as an asset sale. The business and/or commercial reasons behind a decision to migrate a company to another jurisdiction vary but include moves to take advantage of legislative, regulatory or financial benefits in the other jurisdiction. Ultimately, whether or not migration of the company is the most appropriate mechanism to transfer the business of the company depends on various factors, including the commercial timescales and costs involved.

Part VII of the Companies (Guernsey) Law, 2008 (the "**Law**") sets out the procedure applicable to, and the effect of, the migration of a company to or from Guernsey. Migration is effected by application to the Guernsey Registrar of Companies (the "**Registrar**") and therefore no court application is required.

However, the consent of the Guernsey Financial Services Commission (the "**Commission**") is required for the migration of a "supervised company" into or from Guernsey under Part VII of the Law. For the purposes of the Law, a "supervised company" is an overseas company which intends to be registered with the Commission following migration (or is the equivalent to a supervised company in the country from which it is migrating) or is a Guernsey company which, following migration from Guernsey, will no longer be registered with the Commission.

We set out the legal effect of, and procedure applicable to, migrations in and out of Guernsey below.

Effect of Migration

Pursuant to the Law, migration from or to Guernsey does not create a new legal person, nor does it prejudice or affect the identity or continuity of the legal person constituted by the company. In addition:

- All property and rights to which the company was entitled immediately before migration remain its property and rights after migration.
- 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 its migration could have been instituted or continued by or against the company may still 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.

Migration to Guernsey

Procedure

The overseas company must apply to the Registrar to be registered as a Guernsey company on the Guernsey Companies Register (the "**Register**"). Broadly, the application procedure entails the following steps:

1. The consent of the Commission must be obtained if the overseas company is a "supervised company" - see above.
2. The members of the overseas company must approve the migration by way of special resolution or the equivalent of a special resolution in the overseas jurisdiction.
3. A written application must be made to the Registrar which includes the migration details and documents listed in detail below.
4. The application may only be made by a Guernsey licensed corporate service provider ("**CSP**"). The application may propose the date on which registration as a Guernsey company shall take effect, provided that the date which is proposed is no later than three months following the date of the application. Upon receipt of an application which meets these requirements, the Registrar will register the company on the Register, issue a certificate of registration (in accordance with section 85 of the Law) and provide a registration number.

Migration details

The application must include the following:

- The certificate of incorporation of the company.
- The current memorandum and articles of the company (if still in effect) and a copy of the new memorandum and articles which are to be binding on the company following migration.
- A statement of the company's current directors.

- A statement of the company's directors following migration.
- A statement of the company's registered office address prior to and following migration.
- In the case of a company with a share capital, a statement of the share capital (including a statement of the number of issued shares, their aggregate value, the number of treasury shares and the amount paid up, and the amount (if any) unpaid in respect of each class of shares).
- In the case of a company with guarantee members, the aggregate guaranteed amount of all its members.
- In the case of a cell company, a copy of the consent of the Commission to its incorporation, as required by section 10 of the Law.
- Evidence acceptable to the Registrar that:
 - the law of the jurisdiction in which the overseas company is registered permits the overseas company to register as a Guernsey company;
 - the overseas company complies with the requirements of the law of its registration;
 - the company is not being wound up, is not in liquidation and has not been declared insolvent;
 - no receiver or administrator has been appointed in relation to any property of the company;
 - the company has not entered into a compromise or arrangement with a creditor (other than a compromise or arrangement approved by the Commission) which is still in force;
 - no application has been made to court, whether in Guernsey or elsewhere, and whether or not that application has been finally disposed of:
 - to put the company into liquidation, wind it up or have it declared insolvent;
 - for the approval of a compromise or arrangement between the company and a creditor (other than a compromise or arrangement approved by the Commission);
 - for the appointment of a receiver or administrator in relation to property of the company;
 - the company is not empowered by its guide and articles to issue bearer shares; and
 - the company will, immediately after the migration, be able to satisfy the statutory solvency test (ie that it can meet its debts as they fall due and that its consolidated assets will exceed its consolidated liabilities) (the "**Solvency Test**"). This is usually certified by the directors of the company.

In practice, a legal opinion from counsel practising in the jurisdiction in which the overseas company is registered is submitted to the Registrar as evidence in confirmation of each of the matters above.

- Evidence satisfactory to the Registrar (or Commission) as the case may be that, on the date of migration, the company will cease to be incorporated and registered under the law of any district,

territory or place outside of Guernsey. This is usually satisfied by submitting the certificate of de-registration procured from the overseas authority in the jurisdiction of the company's incorporation.

The application must also include a signed Declaration of Compliance (Migration) which is a declaration, signed by a director of the company certifying that all the requirements of the law have been fulfilled.

Costs

The statutory fee payable to the Registrar is £100 per Guernsey company being migrated in. In the case of a supervised company, no fee is payable to the Commission by the applicant in order for the Commission to consider consent (although a separate licence application fee may be payable should the company require a licence to carry on its activities in Guernsey). As noted above, the application must be made by a CSP and the costs payable to the CSP will ultimately depend on what is negotiated with it and the scope of its role.

As far as legal fees are concerned, these are usually estimated on a case-by-case basis and will depend on the complexity of the matter, as well as the role which the CSP plays.

Migration from Guernsey

Procedure

Pursuant to section 87 of the Law, a Guernsey company may apply to the Registrar requesting to be removed from the Register and continued in another jurisdiction. Broadly, the application procedure entails the following steps:

1. The consent of the Commission must be obtained if the company is a "supervised company".
2. The members of the company must approve the migration by way of a special resolution (75% of members).
3. A written application must be made to the Registrar for the removal of the company from the Register. The application must include certain documents and evidence as to the matters listed below. The application may only be made by a CSP.
4. The company must provide notice to creditors of the application.
5. Upon receipt of the application, the Registrar must give notice of the application in such manner and for such period as it thinks fit, which period must be not less than 28 days. In practice, our experience is that, provided the application is in order, the Registrar will generally fix a 28 day time period.

Migration details

The application to the Registrar must include the following:

- A special resolution (75% of members) approving the migration.
- Evidence that the company will, prior to the migration, satisfy the Solvency Test. As noted above, this is usually certified by the directors.

- Evidence that:
- the company's affairs have not been declared to be in a state of désastre at a meeting of arresting creditors held before a commissioner;
- no interim vesting order has been made against the company in respect of any of its real property in Guernsey;
- no liquidator has been appointed nor has the company passed a resolution for winding up (otherwise than for a solvent amalgamation, reconstruction or winding-up);
- possession or control has not been taken of the company's property or affairs by or on behalf of creditors or the holders of debentures;
- no compulsory winding up application has been made;
- in the case of a protected cell company, no receivership order has been applied for or is in force in respect of any of its cells; and
- no administration order has been applied for in respect of the company.

A legal opinion is generally provided in respect of these matters by Guernsey legal counsel, based upon facts certified to counsel by the directors of the company.

- A Declaration of Compliance (Migration) signed by the directors confirming that the requirements of the Law have been complied with.
- A copy of the written notice provided by the company to all of the company's creditors of the application.
- Confirmation from Her Majesty's Procureur and the Director of Revenue Service that they have no objection to the removal of the company from the Register.
- 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 jurisdiction in question.

Costs

The statutory fee payable to the Registrar is £1,500 per Guernsey company being migrated. There is also a fee of £280 payable to HM Procureur and a fee of £25 payable to the Director of Revenue Service to consider the migration application. In the case of a "supervised company", an additional fee of £2,800 is payable to the Commission for each company being migrated. As noted above, the application must be made by a CSP, with the costs payable to the CSP determined by agreement with the CSP and the scope of the CSP's role. In practice, the existing administrator of the company often deals with these matters.

Again, as regards legal fees, these are estimated on a case-by-case basis and will depend on the complexity of the matter, as well as the role which the CSP plays.

The information contained in this guide is necessarily brief and general in nature and does not constitute legal or taxation advice. Appropriate legal or other professional advice should be sought for any specific matter.