

# Company migration in to Guernsey

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## Migration in to Guernsey

It has been possible to transfer the registration of, or 'migrate' as it is more often referred to, companies to and from Guernsey since the enactment of the Migration of Companies Ordinance, 1997. That Ordinance has however since been repealed and replaced by the enactment of the Companies (Guernsey) Law, 2008 (the **Law**) which has effectively modernised Guernsey company law as of 1 July 2008.

The Law continues to permit both the migration of an overseas company to be registered as a Guernsey company and the migration of a Guernsey company to be registered as a company outside of Guernsey.

This guide deals with the migration of an overseas company to be registered as a Guernsey company. To view our guide on the migration of a Guernsey company outside of Guernsey, click [here](#).

## What is a migration?

The concept of migration of a company is that, on a given day, the company relinquishes its registration in its jurisdiction of incorporation (or current registration) and registers as a company incorporated in another jurisdiction.

In the context of a migration in to Guernsey, in legal terms, following the overseas company's registration as a Guernsey company, it shall be treated in all respects as a company within the meaning of the Law. In particular:

- all property and rights to which the company was entitled immediately before its registration in Guernsey remain its property and rights;
- all criminal and civil liabilities and all contracts, debts and other obligations, to which the company was subject immediately before its registration in Guernsey, remain binding on it;
- all actions and other legal proceedings which immediately before its registration in Guernsey could have been instituted or continued by or against the company, may be instituted or continued by or against it; and
- any conviction, ruling, order or judgment in favour of or against the company before registration in Guernsey may be enforced by or against it.

## What is a migration not?

Registration as a Guernsey company does not create a new legal person or prejudice or affect the company's identity or continuity of its existence as a legal person.

## Can any company be migrated into Guernsey?

Any overseas company can be registered as a Guernsey company provided that it is able to do so under the law of the place in which it is incorporated (and has complied with the requirements of that law in relation to its registration as a Guernsey company) and the proposed migration has been approved by

resolution of the company equivalent to a special resolution under the Law, ie a majority of not less than 75 per cent.

An overseas company cannot, however, be registered as a Guernsey company if it is subject to any insolvency event or if it is empowered by its constitutive documents to issue bearer shares. It must also, immediately after registration as a Guernsey company, satisfy the solvency test which is set out in the Law. Basically, the company must be able to pay its debts as they become due and the value of its assets must be greater than the value of its liabilities.

An overseas company which intends to become a 'supervised company' in Guernsey or, which is the equivalent of a supervised company in the place outside Guernsey from which it is migrating, cannot be registered as a Guernsey company without the prior written consent of the Guernsey Financial Services Commission (the **Commission**) and its migration must be in accordance with the terms and conditions of that consent. A 'supervised company' is a company which is regulated by the Commission.

### **The migration process**

Legal advice should be sought at the outset both from counsel in the jurisdiction in which the company wishes to migrate from and in Guernsey.

Generally, the procedure in Guernsey is as follows:

A majority of not less than 75 per cent of the members of the overseas company must consent to the proposed migration.

Application for registration as a Guernsey company can then be made to the Registrar of Companies (the **Registrar**). Note that the application can only be made by a corporate services provider, ie a licensee under the Regulation of Fiduciaries, Administration Businesses & Company Directors etc. (Bailiwick of Guernsey) Law, 2000.

The application should include, among other things, details of the overseas company's existing registration in its jurisdiction of incorporation together with details similar to those provided on the incorporation of a new company. The company must also provide confirmation that, on the date of its proposed registration in Guernsey, it will cease to be incorporated and registered under the law of the place outside Guernsey together with evidence, usually in the form of board minutes, that the company is not prohibited by, among other things, an event of insolvency and that it will, immediately after registration, satisfy the solvency test (noted above).

The application may propose the date on which registration as a Guernsey company is to take effect, provided that that date is not later than three months after the date of the application.

The Registrar will rely on a declaration of compliance, signed by a director of the company and which forms part of the application, that all of the requirements of the Law in respect of the company's proposed registration in Guernsey have been fulfilled.

On the date of migration, the Registrar will register the memorandum and articles of incorporation in the Register of Companies, allocate a registration number and issue a certificate of registration which will be conclusive evidence that the company is duly registered in Guernsey. After that, the company will be treated in all respects as a company within the meaning of the Law.

### **Fees**

The Guernsey Registry charges a fee for the registration of an overseas company as a Guernsey company. The Commission does not currently charge anything for its consent in respect of a supervised company but an overseas company, which intends to be supervised in Guernsey, will need to pay the appropriate application fee depending on the type of licence or authorisation that it requires.

### **Powers of the court**

A migration in to Guernsey may be reversed by the court. If the court is satisfied that an overseas company has been registered as a Guernsey company but also continues to be incorporated under the law of any place outside Guernsey, it may, on the application of the company or any of its members, directors or creditors, the Commission or the Registrar, make such order as it thinks fit for the removal of the

company's name from the Register. If such an order is made, the company's registration in Guernsey will (unless the court orders otherwise) be invalid from the outset.

## Contacts

For further information, please get in touch with your usual Mourant contact or, alternatively, a list of contacts can be found [here](#).

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this guide, please get in touch with one of your usual contacts. © 2018 MOURANT OZANNES ALL RIGHTS RESERVED