

# Company migration out of Guernsey

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## Migration out of 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 That Ordinance has however since been repealed and replaced by the enactment of the Companies (Guernsey) Law, 2008 (the **Law**) which effectively modernised Guernsey company law as of 1 July 2008.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 a Guernsey company to be registered as a company outside of Guernsey. To view our guide on the migration of an overseas company in to 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 out of Guernsey, in legal terms, its removal from the Register of Companies in Guernsey (the **Register**) does not prejudice the continuity of its existence. In particular:

- all property and rights to which the company was entitled immediately before its removal from the Register 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 removal from the Register, remain binding on it;
- all actions and other legal proceedings which immediately before its removal from the Register 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 its removal from the Register may be enforced by or against it.

## What is a migration not?

Removal of a company from the Register 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 out of Guernsey?

Any Guernsey company can apply to be removed from the Register for the purposes of becoming registered as a company outside of Guernsey provided that the proposed migration has been approved by special resolution of the company, ie a majority of not less than 75 per cent.

A Guernsey company cannot, however, be removed from the Register if it is subject to any insolvency event. It must also, immediately before removal from the Register, satisfy the solvency test which is set out

in 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 incorporated cell cannot be removed from the Register unless its incorporated cell company is also migrated out and similarly, an incorporated cell company cannot be removed from the Register unless all of its incorporated cells are also migrated out.

A 'supervised company', ie a company which is regulated by the Guernsey Financial Services Commission (the **Commission**), requires the prior written consent of the Commission in addition to that of the Registrar of Companies (the **Registrar**) and its migration must be in accordance with the terms and conditions of that consent.

### **The migration process**

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

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 removal from the Register for the purpose of becoming registered as a company outside of Guernsey. The company is also required to give written notice to all of its creditors stating that it intends to apply to the Registrar to be so removed and seek confirmation from each of the Director of Income Tax and Her Majesty's Procureur that they do not have any objection to the proposal.

Application for removal of the company from the Register can then be made to 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 and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000.

As part of the application, the company must provide evidence, usually in the form of a legal opinion from overseas counsel that, on the date of its proposed removal from the Register, the company will be registered under the law of the place to which it is to be migrated 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 before removal, satisfy the solvency test (noted above).

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 transfer of registration have been fulfilled.

Upon satisfactory receipt of the application documents, the Registrar will publish notice of the proposed migration on the Guernsey Registry website and not less than 28 days after the day on which the notice was published, will give effect to the migration by removing the company's name from the Register and deleting the statement in the company's memorandum that its registered office is situated in Guernsey. After that the company shall cease to be a company within the meaning of (and incorporated and existing under) the Law.

### **Fees**

The Guernsey Registry charges a fee for the removal of the company from the Register together with a filing fee for the special resolution approving the migration. The Commission also charges a fee for its consent to the migration in respect of a Guernsey supervised company.

### **Powers of the court**

A migration out of Guernsey may be prevented or even, having already become effective, reversed by the court. If the court is satisfied that the removal of a company from the Register would unfairly prejudice a member or creditor of the company, or any other person to whom the company is under any obligation or liability, the court may make such order as it thinks fit in relation to the removal, including an order directing that the removal of the company shall not take place.

If the court is satisfied that a company's name has been removed from the Register but that it has not become incorporated under the law of any place outside Guernsey, the court may, on the application of the company, any of its members, directors or creditors, the Commission or the Registrar, make such order

as it thinks fit for the restoration of the company's name to the Register. If such an order is made, the removal of the company's name from the Register will, unless the court otherwise orders, 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