

● REDOMICILIATION OF COMPANIES INTO AND OUT OF GUERNSEY

Like many jurisdictions favoured for locating companies, Guernsey law allows for the redomiciliation (or migration) of:

- foreign companies to Guernsey (migration in); and
- Guernsey companies to a foreign jurisdiction (migration out).

The relevant procedures are set out in Part VII of The Companies (Guernsey) Law, 2008 and generally allow such movement to be a straightforward process. The requirements will vary depending on the circumstances, in particular whether the company is regulated in Guernsey or elsewhere.

The first step is to ensure the laws in the relevant foreign jurisdiction allow for a migration. It will be necessary to appoint legal advisers in both Guernsey and the foreign jurisdiction. A brief overview of the main Guernsey requirements for both a migration in and out is set out below.

MIGRATION IN

The timing of a migration into Guernsey will largely depend on the procedures of the foreign jurisdiction. Key requirements from a Guernsey perspective are:

- **Members' Approval:** where the foreign law does not require the members (or a proportion of them) to approve the migration, it must be approved by the members by such action as is equivalent to a special resolution.
- **Solvency Test:** the directors must confirm that the company will, immediately after the migration, satisfy the solvency test (able to pay its debts as they fall due, assets greater than liabilities and satisfies any regulatory capital requirements).

- **Legal Opinion:** a legal opinion must be obtained from a law firm in the foreign jurisdiction confirming certain matters of law, including that the migration is permitted and has been correctly authorised.

An application for a migration in to Guernsey may only be made by a corporate services provider regulated by the Guernsey Financial Services Commission (GFSC).

If approved, the company is registered as a Guernsey company on the register of Guernsey companies (Register). If the company will be subject to supervision in Guernsey, prior notification to and approval from the GFSC will be required.

MIGRATION OUT

A migration out will generally take approximately 2 months, although this will vary on a case-by-case basis. Key requirements from a Guernsey perspective are:

- **Members' Approval:** the members of the company must approve the migration by way of special resolution.
- **Creditor Notice:** notice of the intended migration must be given to all creditors in writing.
- **Solvency Test:** the directors must confirm that the company will, immediately before the migration, satisfy the solvency test (able to pay its debts as they fall due, assets greater than liabilities and satisfies any regulatory capital requirements).
- **Official Confirmations:** both Her Majesty's Procureur and the Director of Income Tax must confirm that they have no objection to the removal of the company from the Register.

- **Legal Opinion:** a legal opinion must be obtained from a law firm in the foreign jurisdiction confirming certain matters of law, including that the migration is permitted.

An application for a migration out of Guernsey may only be made by a corporate services provider regulated by the GFSC.

Upon receipt of an application, the Registrar of Companies (Registrar) will publish notice of the proposed migration. Not less than 28 days after such notice, the migration may be completed and the Registrar will publish a notice to this effect. The company then ceases to be a company registered in Guernsey.

CROSS-BORDER MERGER

As an alternative to a company migrating into or out of Guernsey, it is possible under Guernsey law for a Guernsey company to merge with a foreign company and continue as a company either in Guernsey or in the relevant foreign jurisdiction. It is necessary to ensure that the foreign jurisdiction allows such a cross-border merger. However, assuming that it does, this procedure streamlines what was previously a two-step process involving the migration of the relevant company and subsequent merger.

FOR MORE INFORMATION,
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