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Continuing a company out of Jersey

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Just like a person, a company can change its nationality.

In Jersey, the process by which a company changes its nationality or place of incorporation is called a continuance. It is also commonly referred to as a migration or redomiciliation.

This guide looks at the key things you need to know about the process for a company to continue its existence as a company incorporated in a **foreign jurisdiction**.

Words in bold are defined at the end of this guide.

Eligibility

The Companies (Jersey) Law 1991 (the **Law)** allows a company to continue as a body corporate incorporated in a **foreign jurisdiction** if:

- the laws of that **foreign jurisdiction** allow it to do so;
- it is not being wound up or in liquidation and its assets have not been declared *en désastre*;
- it is not insolvent;
- no receiver, manager or administrator has been appointed in relation to any of its assets;
- there is no compromise or arrangement in force between it and any creditor; and
- there is no application before a court for its winding up or liquidation, to have it declared insolvent or its assets declared *en désastre*, to appoint any receiver, manager or administrator or to approve any compromise or arrangement.

Procedure

Foreign jurisdiction

The company must take any steps necessary for it to continue to the **foreign jurisdiction** under the laws of that **foreign jurisdiction**. These steps commonly include passing director and/or shareholder resolutions to approve it:

- continuing to that **foreign jurisdiction**;
- adopting a constitution that comply with the laws of that **foreign jurisdiction**;

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- appointing a corporate services provider and approving a registered office address in that **foreign jurisdiction**; and
- changing its name if necessary.

Jersey

For the purposes of the **Law**, the procedure for a company to continue to a **foreign jurisdiction** is as follows.

- The directors will approve the proposal to continue the company to the **foreign jurisdiction** and taking all actions related to it.
- The proposal to continue to the **foreign jurisdiction** must also be approved by:
  - a **special resolution** passed by the shareholders; and
  - (if the company has more than one class of shares) a **special resolution** passed by the shareholders of each class at a separate meeting of that class.
  - The notice convening each meeting must:
  - include a summary of the proposed continuance application; and
  - state that any shareholder who objects to the continuance may apply to the Jersey court for relief on the grounds that it is unfairly prejudicial to the shareholder's interests.

- Unless all of its known creditors agree otherwise in writing, at least 21 days before the company files its continuance application, it must:
  - give notice to its creditors of its proposed continuance by:
    - publishing the notice at least once in a newspaper circulating in Jersey; and
    - sending a copy of the notice to them; and

  - state in the notice that:
    - it proposes to apply to the Jersey Financial Services Commission (**JFSC)** to continue to the relevant **foreign jurisdiction**; and
    - any creditor may notify the company that it objects to the continuance within 21 days of the date on which the notice is published.

- File with the **JFSC**:
  - an application form;
  - a certified copy of each **special resolution** of shareholders approving the continuance;
  - evidence that neither the Comptroller of Taxes nor the Department of Social Security objects to the continuance;
  - a solvency statement signed by the directors and any proposed new directors;

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- a legal opinion from lawyers in the **foreign jurisdiction** confirming that under the laws of that **foreign jurisdiction:**
  - the company is entitled to continue there;
  - the company will continue to own all of its property and rights; and
  - the company will continue to be subject to all:
    - criminal and civil liabilities and all contracts, debts and other obligations; and
    - actions and other legal proceedings pending against it;

- a certificate from a director of the company certifying that:
  - no creditor has applied to the Jersey court for an order preventing the continuance (or, if an application made, it has been determined in a way which does not prevent the continuance);
  - no shareholder has applied to the Jersey court for relief on the grounds that the continuance is unfairly prejudicial (or, if an application has been made, it has been determined in a way which does not prevent the continuance); and
  - it satisfies the solvency conditions mentioned in *Eligibility* above.

- the **JFSC** application fee (currently £1,010)

If the **JFSC** is satisfied that the application complies will the **Law**, it will approve the application on the condition that the company will ensure that the registrar of companies is:

- informed of the date on which the continuance will be or is approved in the **foreign jurisdiction**; and
- provided with a certified copy of the document evidencing the company's continuance to the **foreign jurisdiction**.

Once the company has continued to the **foreign jurisdiction**, the registrar of companies will record that it has ceased to be incorporated under the **Law**.

Objections

Shareholders

A shareholder who:

- objects to the continuance; and
- did not vote in favour of it,

may, within 21 days of the **special resolution(s)** approving the continuance being passed, apply to the Jersey court for relief on the grounds that it is unfairly prejudicial to the shareholder's interests.

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If the court is satisfied that the complaint is well founded, it may make any order it thinks fit.

Creditors

A creditor who has notified the company that it objects to the continuance, may within 21 days of the date on which notice of the continuance was published, apply to the Jersey court for an order preventing the continuance.

If the court is satisfied that the continuance would be unfairly prejudicial to the creditor's interests, it may make an order preventing the continuance.

Offences

Under the **Law**, it is an offence for a person to:

- make a solvency statement without having reasonable grounds for the opinion expressed in it; or
- knowingly or recklessly provide the **JFSC** with any information or document in connection with a continuance which is false, misleading or deceptive in a material respect.

If a person commits either offence, on conviction, the person is liable to a fine, imprisonment or both.

Terms used

foreign jurisdiction means a jurisdiction outside Jersey.

JFSC means the Jersey Financial Services Commission.

Law means the Companies (Jersey) Law 1991.

special resolution means a resolution that is required to be passed as a special resolution by a majority of two thirds (or any higher majority specified in the company's articles of association) of shareholders who (being entitled to do so) vote at a meeting of the company of which not less than 14 days' notice has been given.

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