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Continuing a company to 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 **foreign company** to continue its existence as a Jersey company.

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

Why choose Jersey?

Jersey is a popular place to establish an asset holding company because:

the continuance process is straightforward;

- the Companies (Jersey) Law 1991 (the **Law)** is flexible;
- Jersey has a modern legal system based on English legal principles;
- Jersey is internationally recognised and respected as a well regulated jurisdiction; and
- a Jersey company is not subject to Jersey income or capital gains tax or required to withhold tax on interest or distribution payments.

Eligibility

The **Law** allows a **foreign company** to continue as a Jersey company if:

- the laws of its **original 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.

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Procedure

Original jurisdiction

The **foreign company** must take any steps necessary for it to continue to Jersey under the laws of its **original jurisdiction**. These steps commonly include:

- the **foreign company** passing director and/or shareholder resolutions to approve it:
  - continuing to Jersey;
  - adopting **M&A** that comply with the **Law**;
  - appointing a Jersey corporate services provider and approving a registered office address in Jersey; and
  - changing its name if necessary.
- the **foreign company** notifying its creditors of the proposed continuance; and
- providing a legal opinion or director's certificate to the regulator in the **original jurisdiction** confirming things like:
- Jersey law allows the continuance; and
- after the continuance takes place, the **foreign company** will continue to own its assets and be subject to its liabilities.

Jersey

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

- Reserve a name which must end in:
  - Limited, Ltd, *avec responsabilité limitée* or arl; or
  - (if it is a public company) public limited company or plc.
- File with the Jersey Financial Services Commission (**JFSC**):
  - an application form which includes the **foreign company's** Jersey registered office address and information about the **foreign company's** directors, secretary and beneficial owners;
  - a certified copy of the **foreign company's** foreign constitution (translated into English if necessary);
  - a copy of the **foreign company's** Jersey **M&A**;
  - a solvency statement in the statutory form signed by the **foreign company's** directors and any proposed new directors (see *Solvency statement* below);
  - a legal opinion from lawyers in the **foreign company's original jurisdiction** confirming that:
    - it is authorised by the laws of its **original jurisdiction** to continue to Jersey;
    - any necessary corporate authorisation for its continuance to Jersey have been given; and
    - once registered in Jersey it will cease to be incorporated in its **original jurisdiction**;

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  - a certificate from a director of the **foreign company** certifying that:
    - the interests of its shareholders and creditors will not be unfairly prejudiced by its continuance to Jersey; and
    - it satisfies the solvency conditions mentioned in *Eligibility* above; and

- the **JFSC** application fee (currently £1,010).
- If the **JFSC** is satisfied that the application complies will the **Law**, it will approve the application and deliver the application documents to the registrar of companies who will:
  - register the application documents;
  - issue a certificate of continuance; and
  - send a copy of the certificate of continuance to the regulator in the **foreign company's original jurisdiction**.

Once the registrar of companies issues a certificate of continuance, the **foreign company** becomes a company incorporated under the **Law**.

Timing

Once the application is filed with the **JFSC**, if it is in order, it is normally approved by the **JFSC** within five working days.

The overall timing of the continuance process is driven by the requirements of the **foreign company's original jurisdiction**. As a general guide, it typically takes between four and six weeks to complete a continuance to Jersey.

Effect of continuance

The **foreign company's** continuance, as a company incorporated under the **Law,** does not affect its continuity as a body corporate or its assets, rights, obligations or liabilities.

Accordingly, once a **foreign company** is incorporated under the **Law**, it continues to:

- own all property and rights which it owned;
- be subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which it was subject; and
- be subject to, or entitled to pursue, all actions and other legal proceedings in which it was involved, immediately before it was incorporated under the **Law.**

Solvency statement

The solvency statement mentioned under *Procedure* is as follows.

Having made full inquiry into the affairs of the **foreign company**, each director and proposed new director reasonably believes that:

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- the **foreign company** is and, if the application to continue is granted, will upon the issue to it of a certificate of continuance be, able to discharge its liabilities as they fall due; and
- having regard to the:
  - prospects of the **foreign company**;
  - intentions of the directors with respect to the management of the **foreign company's** business; and
  - amount and character of the financial resources that will in the director's view be available to the **foreign company**,

the **foreign company** will be able to:

  - continue to carry on business; and
  - discharge its liabilities as they fall due, until the expiry of the period of 12 months immediately following the date on which the solvency statement is signed.

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 company means a body corporate incorporated in a jurisdiction outside Jersey.

JFSC means the Jersey Financial Services Commission.

Law means the Companies (Jersey) Law 1991.

M&A means memorandum and articles of association.

original jurisdiction means the foreign jurisdiction in which a **foreign company** is incorporated before its continues to Jersey.

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About this guide

This guide gives a general overview of this topic. It is not legal advice and you may not rely on it. If you would like legal advice on this topic, please get in touch with one of the authors or your usual Collas Crill contacts.

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