COLLAS CRILL

# Migrating a company to Guernsey

AUGUST 2020

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

In Guernsey, the process by which a company changes its nationality or place of incorporation is called a migration. It is also commonly referred to as a continuation 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 Guernsey company. This guide assumes that the foreign company is an unregulated, non-cellular company limited by shares.

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

## Eligibility

The Companies (Guernsey) Law, 2008 (the **Law**) allows a **foreign company** to continue as a Guernsey 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;
- 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; and
- immediately after registration as a Guernsey company it will be able to satisfy the solvency test under the **Law**.

## Procedure

### Original jurisdiction

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

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

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

## Guernsey

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

- Reserve a name which must end in:
  - Limited, with limited liability, Ltd, *Avec responsabilité limitée* or ARL.
- File with the Guernsey Registry:
  - an application form which includes (among other things) the **foreign company's** Guernsey registered office address and information about the **foreign company's** current directors and proposed new directors, proposed resident agent and the purpose of the foreign company;
  - a certified copy of the **foreign company's** foreign constitution (translated into English if necessary);
  - a copy of the **foreign company's** Guernsey **M&A**;
  - 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 migrate to Guernsey;
    - any necessary corporate authorisation for its migration to Guernsey has been given; and
    - once registered in Guernsey it will cease to be incorporated in its **original jurisdiction**.
  - a declaration of compliance signed by a director of the **foreign company** confirming that all the requirements of the relevant part of the Law in respect of the migration have been fulfilled;
  - a declaration of the **foreign company's** beneficial ownership;
  - various confirmations in respect of the **foreign company** (including confirmation that the foreign company will satisfy the solvency test under the Law upon its migration to Guernsey); and
  - the Guernsey Registry application fee (currently £100).
- All applications to the Guernsey Registry must be made by a Guernsey corporate service provider.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

- If the **foreign company** is to be regulated by the Guernsey Financial Services Commission (**GFSC**) upon its migration into Guernsey then it must also obtain written consent from the **GFSC** and provide a copy of this to the Guernsey Registry.
- If the Guernsey Registry is satisfied that the application complies will the **Law**, it will:
  - approve the application;
  - register the application documents; and
  - issue a certificate of registration and allocate a registration number.

Once the Guernsey Registry issues a certificate of registration, the **foreign company** becomes a company registered under the **Law**.

## Timing

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

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

## 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 registered under the **Law**.

## Solvency test

The solvency test mentioned under *Eligibility* and *Procedure* is as follows.

Having regard to the most recent accounts of the **foreign company** and made full inquiry into its affairs, each director and proposed new director reasonably believes:

- that the **foreign company** is able to pay its debts as they become due; and
- that the value of the **foreign company's** assets is greater than the value of its liabilities; and

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

- if the application to migrate to Guernsey is granted, that the **foreign company** will satisfy the above two points upon the issue of its certificate of registration.

## Offence

Under the **Law**, it is an offence for a person to make a declaration of compliance to the Guernsey Registry containing any information in connection with a migration which is false, misleading or deceptive in a material respect.

If a person commits such offence, on conviction, the person is liable to a fine.

### Terms used

**foreign company** – a body corporate incorporated in a jurisdiction outside Guernsey

**GFSC** – the Guernsey Financial Services Commission

**Law** – The Companies (Guernsey) Law, 2008

**M&A** – memorandum and articles of incorporation

**original jurisdiction** – the foreign jurisdiction in which a **foreign company** is incorporated before its migration to Guernsey

**About Collas Crill**

We are a leading offshore law firm. We are easy to do business with and give practical advice to overcome tough challenges. Through our network of offices, we practise Bermuda, British Virgin Islands, Cayman Islands, Guernsey and Jersey law.

**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.*

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

COLLAS CRILL

**For more information please contact:**




### Wayne Atkinson

Partner (Advocate) | Guernsey

**t:** +44 (0) 1481 734225 | **e:** wayne.atkinson@collascrill.com



### Simon Heggs

Group Partner* | Guernsey

**t:** +44 (0) 1481 734825 | **e:** simon.heggs@collascrill.com



### Ben Le Page

Partner (Advocate)^ | Guernsey

**t:** +44 (0) 1481 734244 | **e:** ben.lepage@collascrill.com



This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.