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Migrating a company out of Guernsey

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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 Guernsey company to continue its existence as a company incorporated in a **foreign jurisdiction**. This guide assumes that the Guernsey company is an unregulated, non-cellular company limited by shares.

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

Eligibility

The Companies (Guernsey) Law, 2008 (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;
- no interim vesting order has been made against it in respect of any of its real property in the Bailiwick of Guernsey;
- 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 before its removal from the **Register of Companies** it is able to satisfy the solvency test under the **Law**.

Procedure

Foreign jurisdiction

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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:

- migrating to that **foreign jurisdiction**;
- adopting a constitution that complies with the laws of that **foreign jurisdiction**;
- appointing a corporate services provider and approving a registered office address in that **foreign jurisdiction**; and
- changing its name if necessary.

Guernsey

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

- The directors will approve the proposal to migrate the company to the **foreign jurisdiction** and taking all actions related to it.
- The proposal to migrate to the **foreign jurisdiction** must also be approved by a **special resolution** passed by the shareholders.
- The company must give written notice of its intention to migrate to the **foreign jurisdiction** to all of its creditors.
- The company must receive confirmation from His Majesty's Procureur and the Director of the Revenue Service that they have no objection to the removal of the company from the **Register of Companies**.
- The following documents must be filed:
  - the company is entitled to migrate there;
  - the company will continue to own all of its property and rights;
  - 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.
  - an application form;
  - the Guernsey Registry application fee (currently £2,500);
  - a copy of the **special resolution** of shareholders approving the migration;
  - evidence that neither His Majesty's Procureur nor the Director of the Revenue Service objects to the migration;
  - a declaration of compliance signed by a director of the company confirming that all the requirements of the relevant part of the **Law** in respect of the migration have been fulfilled;
  - a legal opinion from lawyers in the **foreign jurisdiction** confirming that under the laws of that **foreign jurisdiction:**

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- All applications to the Guernsey Registry must be made by a Guernsey corporate service provider.
- If the company is regulated by the Guernsey Financial Services Commission (**GFSC)** then it must also obtain written consent from the **GFSC** to the removal of the company from the **Register of Companies** and provide a copy of this to the Guernsey Registry. The migration must then proceed in accordance with the terms and conditions of such consent.
- Upon satisfactory receipt of the application documents, the Guernsey Registry will publish notice of the proposed migration on the Guernsey Registry website for a period of not less than 28 days.
- If the Guernsey Registry is satisfied that the application complies with the **Law**, then following the 28-day notice period, it will:
- approve the application;
  - register the application documents; and
  - issue a certificate of migration confirming that the company has migrated from Guernsey and its name has been removed from the **Register of Companies**.

Once the Guernsey Registry issues a certificate of migration, the company ceases to be a company within the meaning of (and incorporated and existing under) the **Law**.

Objections

A member or creditor of the company, or any other person to whom the company is under any obligation or liability, may apply to the court to prevent or, if already effective, reverse the migration of a company out of Guernsey.

If the court is satisfied that the removal of a company from the **Register of Companies** would unfairly prejudice a member, creditor or any other person with whom the company is under any obligation or liability, then the court may make such order as it thinks fit in relation to the removal of the company from the **Register of Companies**. This could be an order directing that the migration of the company shall not take place or that the migration shall only take place subject to such terms and conditions as the court thinks fit.

Solvency test

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

Having regard to the most recent accounts of the company and made full inquiry into its affairs, each director reasonably believes that the company is and, if the application to migrate to Guernsey is granted, will immediately before its removal from the Register of Companies:

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

Offence

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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 jurisdiction – a jurisdiction outside Guernsey

GFSC – the Guernsey Financial Services Commission

Law – The Companies (Guernsey) Law, 2008

Register of Companies - the register of companies in Guernsey

special resolution – a resolution passed by a majority of not less than 75% of shareholders entitled to vote

About Collas Crill

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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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