



Guide to
Continuance of a Jersey
Company Overseas

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PREFACE

The provisions of Jersey law which are relevant to a continuance overseas are set out in Articles 127(H) through 127(Y) of the Companies (Jersey) Law 1991, as amended (the “**Law**”). The Law provides that a company may apply to the Jersey Financial Services Commission (the “**JFSC**”) for authorisation to seek continuance as a body incorporated under the laws of a foreign jurisdiction.

In order to apply to the JFSC, there are three main requirements which must first be satisfied in relation to a company seeking continuance abroad, as follows:

- (i) the continuance must be approved by the members of the company;
- (ii) the creditors of the company must be given notice of the continuance; and
- (iii) the directors of the company must make a statutory solvency declaration.

If a company carries out a business regulated in Jersey, the regulatory requirements of such business which may be relevant to its continuance abroad must be dealt with carefully in addition to the procedure set out in this Guide.

It is recognised that this Guide will not completely answer detailed questions which clients and their advisers may have. It is intended to provide a sketch of the subject matter covered. The Guide is, therefore, designed as a starting-point for a more detailed and comprehensive discussion of the issues.

Appleby
St Helier, Jersey
May 2010

1. APPROVAL OF MEMBERS

A proposal by a Jersey company to continue in a foreign jurisdiction must be approved by a special resolution of the company and, where there is more than one class of members, by a special resolution of the members of each class passed at a separate meeting of the members of that class.

Notice of the meeting must be accompanied by a copy or summary of the proposed application for continuance abroad. The notice must also state that any member of the company who objects to the application for continuance may, within a period of 30 days following the passing of the special resolution approving the continuance, apply to the court for an order on the ground that the proposed continuance would unfairly prejudice his interests.

Subject to any provision to the contrary in the memorandum or articles of the company, each member of a company is entitled to vote on a resolution to approve continuance to another jurisdiction. Further, subject to the memorandum and articles, on a show of hands, every member present in person at the meeting to approve the continuance shall have one vote. There are also provisions contained in the Law dealing with the right to demand and to vote on a poll.

A copy of the special resolution of members approving the continuance must be delivered to the JFSC within 21 days of it being passed.

2. NOTICE TO CREDITORS

At least 31 days before making an application to the JFSC for authorisation to seek continuance overseas, a company is required to give notice to its creditors.

The notice to creditors must comply with prescribed criteria and, among other things, state that the company intends to apply to the JFSC for continuance and specify the jurisdiction in which it proposes to continue.

The notice must be sent in writing to each creditor of the company, published once in a newspaper circulating in Jersey and/or in such other manner as the court may on application direct, and state that any creditor of the company who objects to the application may within 30 days of the date of the advertisement give notice of his objection to the company.

A creditor who gives notice of his objection to the application and whose claim against the company has not been discharged may, within 30 days after the date of the notice, apply to the court for an order restraining the application for continuance by the company.

On the creditor's application, the court, if satisfied that the interests of the creditor would be unfairly prejudiced by the proposed continuance, may make an order, subject to such terms, if any, as it may think fit, restraining the application for continuance by the company.

A copy of the published notice to creditors must be delivered to the JFSC.

3. STATEMENT OF SOLVENCY

A statement of solvency for the purposes of an application to seek continuance overseas must be signed by each person who is a director of the applicant.

The statement of solvency must state that, having made full inquiry into the affairs of the applicant, the director reasonably believes:

- (a)** that the applicant is and, if the application is granted, will upon its incorporation under the laws of the other jurisdiction be able to discharge its liabilities as they fall due; and
- (b)** that, having regard to:
 - (i)** the prospects of the applicant;
 - (ii)** the intentions of the directors with respect to the management of the applicant's business; and
 - (iii)** the applicant, if incorporated under the laws of the other jurisdiction, will be able to discharge its liabilities as they fall due.

A statement of solvency should also be signed by each person who is to be a director upon continuance stating he has no reason to believe anything in the statement is untrue.

4. APPLICATION TO THE JFSC

An application to the JFSC for authorisation to seek continuance in another jurisdiction must be accompanied by:

- a certified copy of the special resolution required for the continuance (see above);
- a statement of solvency in the required form (see above);
- an application to the JFSC for a Grant of Consent for the company to be continued in a foreign jurisdiction (Form C101);
- such other documents and information as may be prescribed or as the JFSC may require in respect of a particular application; and
- such application fee as may be prescribed, currently being £500.

The application to the JFSC must also be accompanied by evidence, satisfactory to the JFSC, of the following matters:

- (a)** that the laws of the jurisdiction in which the company proposes to continue allow its continuance there as a body corporate incorporated under those laws;
- (b)** that those laws provide that upon the continuance of the company as a body corporate in that jurisdiction:
 - (i)** all property and rights of the company will become the property and rights of the body corporate;
 - (ii)** the body corporate will become subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which the company is subject; and
 - (iii)** all actions and other legal proceedings which are pending by or against the company may be continued by or against the body corporate;
- (c)** that notice has been given to the creditors of the company (see above), and either that no creditor has applied to the court for an order restraining the application for continuance made to the JFSC, or that the application of every creditor who has so applied to the court has been determined by the court in a way which does not prevent the JFSC from granting the application;

- (d) that either no member of the company has applied to the court for an order on the ground that the continuance would unfairly prejudice his interests, or that the application of every member who has so applied to the court has been determined by the court in a way which does not prevent the JFSC from granting the application;
- (e) that the company is not prevented from making the application on the basis that the company is being wound up, in liquidation, subject to a declaration under the Bankruptcy (Désastre) (Jersey) Law 1990 or insolvent, alternatively on the basis that a receiver, manager or administrator has been appointed, or the company has entered into a compromise or arrangement with a creditor; and
- (f) that the company has complied with such other conditions as may be prescribed.

Items (a) and (b) should be satisfied by an appropriate opinion from legal counsel in the foreign jurisdiction to which the company will be continued. Items (c), (d) and (e) should be satisfied by an appropriate certification by the directors of the company, accompanied by a copy of the published notice to creditors.

5. CONTINUANCE

When a company is, in accordance with the terms of authorisation of the JFSC, continued as a body corporate under the laws of a foreign jurisdiction to which the authorisation relates, it thereupon ceases to be a company incorporated under the Law. Accordingly, it is not possible for a Jersey company continuing abroad to be incorporated both in Jersey and in the foreign jurisdiction at the same time.

The Registrar of Companies must be informed of and is required to record the continuance of a Jersey company overseas. To facilitate this, the notice stating the date on which continuance is or will be granted and a certified true copy of the instrument of continuance in the foreign jurisdiction must be delivered to the Registrar of Companies (as soon as reasonably possible) so as to enable the Registrar of Companies to record the cessation of incorporation referred to above.

The Jersey requirements for continuance must be considered in conjunction with the requirements of the foreign jurisdiction to which the company will be continued. Foreign counsel must therefore be appointed to advise on the law of the jurisdiction in which the company is to be continued.

The continuance in Jersey of a company incorporated abroad follows a similar procedure whereby the continuance must be authorised by the JFSC. For more information, please refer to Appleby's Guide to Continuance of a Company in Jersey.

For more specific advice on Continuance of a Jersey Company Overseas, we invite you to contact one of the following:

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