



Guide to the Migration of Companies to and from Guernsey

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PREFACE

This Guide is intended as a brief summary of the procedures for a company to move its place of registration (known as “migration”) into or out of Guernsey. We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have. The Guide is intended to provide a sketch of the subject matter covered and is, therefore, designed as a starting-point for a more detailed and comprehensive discussion of the issues.

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April 2010

INTRODUCTION

The rules relating to the migration of companies into and out of Guernsey are found in Part VII of the Companies (Guernsey) Law, 2008 (the "**Companies Law**").

Companies may migrate for a number of reasons, for example to take advantage of a more flexible regulatory regime or because of lower costs in a particular jurisdiction or business opportunities associated with certain types of regulated activity (such as investment funds).

Migration to Guernsey, in particular, can allow companies to take advantage of the provisions of Guernsey legislation which may not be available in other jurisdictions (for example the ability to convert a non-cellular company into a protected cell company or an incorporated cell company), to amalgamate with another company or to save costs in mergers and acquisitions by virtue of simpler and more flexible rules on issues such as distribution of capital and financial assistance.

1. MIGRATION INTO GUERNSEY

An overseas company may apply to the Registrar of Companies in Guernsey to be registered as a Guernsey company provided that following criteria are met:

Registration authorised by foreign law

- (a) The company must be able to be registered as a Guernsey company under the law of jurisdiction in which it is incorporated;
- (b) The company must have complied with the requirements of that foreign law in relation to its registration as a Guernsey company;
- (c) The members must have passed a special resolution in connection with the migration into Guernsey or if that foreign law does not require the company's members, or a specified proportion of them, to consent to its registration as a Guernsey company then the transfer must be consented to by such resolution of the company or such other action on the part of the company or its members as the Guernsey Financial Services Commission ("**GFSC**") shall certify in writing as being equivalent to a special resolution.

Company cannot be in liquidation or other insolvency process

The company must not be undergoing or be involved in any insolvency procedure including:

- (i) being placed into liquidation;
- (ii) having been declared insolvent;
- (iii) having a receiver or administrator having been appointed; or
- (iv) having entered into a compromise or arrangement with a creditor.

Solvency Test

The company must satisfy the statutory 'solvency test' immediately after its registration in Guernsey as explained in more detail below.

Supervised companies cannot be registered without consent of the GFSC

If the company is a supervised company then the consent of the GFSC is required before it migrates into Guernsey. A 'supervised company' is one which engages in activities which require it to be supervised by the GFSC.

The process for obtaining consent of the GFSC is set out below.

Memorandum and Articles

The company must not be able to issue bearer shares. If the memorandum and articles of the company effective upon its registration as a Guernsey company differ from those immediately before it became a Guernsey company then those changes to the memorandum and articles must be approved by a resolution of the company (or such other action) as the GFSC certifies in writing as being equivalent to a special resolution under Guernsey law.

Application to the Registrar of Companies in Guernsey

An application for registration of the overseas company as a Guernsey company is made to the Registrar. The following will be provided to the Registrar:

- (i) the 'migration details' comprising:
 - (a) a copy of the certificate of incorporation in the current domicile;
 - (b) a copy of the proposed memorandum and articles in Guernsey;
 - (c) the names and details of the company's current directors;
 - (d) a statement of the directors of the company immediately after registration in Guernsey;
 - (e) details of the registered office in the current domicile and the proposed registered office in Guernsey;
 - (f) in the case of a company with a share capital, a statement of share capital comprising the number of issued shares, their aggregate value, the number of treasury shares and the amount paid up, and the amount (if any) unpaid in respect of each class of shares;
 - (g) in the case of a company with guarantee members, the aggregate guaranteed amount of all its members;
 - (h) in the case of a cell company, a copy of the consent of the GFSC to its registration in Guernsey;
 - (i) evidence that the company is not prohibited from being registered in Guernsey (usually in the form of a legal opinion);
 - (j) evidence that is acceptable to the Guernsey Registrar or the GFSC (as the case may be) that the company will cease to be incorporated and registered under the law of any place outside Guernsey;
- (ii) a copy of the GFSC's consent (in the case of a supervised company);
- (iii) such other information and documents, verified in such manner, as the Registrar may require; and
- (iv) a declaration of compliance (a declaration signed by a director that all the relevant requirements of the Companies Law in respect of the registration as a Guernsey company have been fulfilled); and
- (v) the appropriate fee.

Upon receipt of the application for registration as a Guernsey company, the Guernsey Registrar enters the company in the Register of Companies, issues a certificate of registration and allocates a registration number.

The company should also file any certificate or other document from the jurisdiction from which it has migrated evidencing the fact that it has ceased to be incorporated and registered under the law thereof.

2. MIGRATION OUT OF GUERNSEY

Under Section 87 of the Companies Law, a company may apply to the Guernsey Registrar to be removed from the Register. This means removed for the purposes of becoming registered as a company under the law of a district, territory or place outside Guernsey. In order to migrate from Guernsey the following steps must be taken:

Special Resolution

The shareholders must pass a special resolution resolving that it be removed from the Register;

Company cannot be in liquidation or other insolvency process and

The company must not be undergoing or be involved in any insolvency procedure including:

- (i) being placed into liquidation;
- (ii) having been declared insolvent;
- (iii) having a receiver or administrator having been appointed; or
- (iv) having entered into a compromise or arrangement with a creditor.

Solvency Test

Immediately before removal, the company must satisfy the solvency test as defined under Section 527 of the Law, which is described in more detail below.

Supervised companies cannot migrate without consent of the GFSC

If the company is a supervised company it will need obtain the written consent of the GFSC in order to migrate. Further details on this process are set out below.

Consents

Confirmation of no objection to the migration from HM Procureur and from the Guernsey Administrator of Income Tax must be obtained.

Application to the Registrar of Companies in Guernsey

An application for a migration of a Guernsey company to another jurisdiction is made to the Registrar. The following will be provided to the Registrar:

The application to the Guernsey Registrar must include or be accompanied by:

- (i) evidence acceptable to the Guernsey Registrar that the company has passed the relevant special resolution, has given the appropriate notice to its creditors or alternatively obtained their consent, is not in liquidation/administration/en désastre and satisfies the solvency test;
- (ii) the confirmation that HM Procureur and the Administrator of Income Tax have no objection to the removal;

- (iii) evidence acceptable to the Guernsey Registrar that on the date of removal from the Register, the company will be incorporated under the law of the district, territory or place in question (a legal opinion for the relevant jurisdiction is usually regarded as appropriate evidence);
- (iv) such other information and documents as the Guernsey Registrar may require;
- (v) a declaration of compliance signed by a director confirming that all of the requirements in respect of the removal of a company from the Register have been fulfilled; and
- (vi) such fee as may be prescribed by the Guernsey Registry.

On receipt of the application, the Guernsey Registrar must give notice of the proposed migration in such manner and for such time as it thinks fit. In practice this is being done by way of publication on the Guernsey Registry website (www.guernseyregistry.com) for a period of 28 days.

Not less than 28 days after the day on which the Guernsey Registrar gave notice:

- (i) the statement in the company's memorandum and articles that its registered office is in Guernsey is removed;
- (ii) the company's name is removed from the Register;
- (iii) the company ceases to be a company within the meaning of the Law;
- (iv) the Guernsey Registrar files in the Register a notice that the company's name has been removed from the Register for the purpose of incorporation under the law of the district, territory or place specified in the notice; and
- (v) the Guernsey Registrar gives notice of the fact that the company has been removed from the Register in such manner and for such period as he sees fit.

3. GFSC CONSENT

An overseas company which intends to become a supervised company in Guernsey or is the equivalent of a supervised company in that overseas jurisdiction must obtain the consent of the GFSC before it can be registered as a Guernsey company. Similarly, prior to being removed from the Registry a supervised company must obtain GFSC consent.

Examples of supervised companies are companies which provide trustee and other fiduciary services, companies carrying on insurance or banking businesses and companies who are open-ended or closed-ended investment companies

Migration in

An application for the consent of the GFSC for a supervised overseas company to be registered in Guernsey shall include or be accompanied by:

- (i) the migration details (as described above);
- (ii) such other information and documents, verified in such manner as the GFSC may require; and
- (iii) the fee.

Migration out

An application for the consent of the GFSC for a supervised overseas company to be migrated from Guernsey shall include or be accompanied by:

- (i) evidence acceptable to the GFSC that the removal of the company is not prohibited by the relevant sections of the Companies Law, which can be shown by providing the GFSC with the following:
 - (a) the a special resolution of the members authorising the migration;
 - (b) confirmation from the directors that the company is not in any form of insolvency or undergoing any similar or connected procedure,
 - (c) evidence that the directors have considered and the company passes the statutory solvency test;
 - (d) copies of notices given to the creditors.
- (ii) a copy of the consent of Her Majesty's Procureur and the Guernsey Administrator of Income Tax confirming that they have no objection to the migration;
- (iii) evidence that the overseas law permits migration in to that jurisdiction (this is usually an opinion letter from a lawyer qualified to advise on the laws of that overseas jurisdiction);
- (iv) any other documents the GFSC requires; and
- (v) the fee.

In considering whether to grant an application the GFSC will have regard to the protection of the public interest including the need to:

- (a) protect the public in Guernsey and elsewhere against dishonesty, incompetence and malpractice;
- (b) counter financial crime and the financing of terrorism in Guernsey and elsewhere;
- (c) protect and enhance the reputation of the Bailiwick of Guernsey as a financial centre.

4. SOLVENCY

To protect creditors who may be affected if a company migrates, companies migrating into and out of Guernsey must satisfy a test of solvency. The test is set out in Section 527 of the Companies Law. A company satisfies the solvency test if:

- (i) the company is able to pay its debts as they become due;
- (ii) the value of the company's assets is greater than the value of its liabilities; and
- (iii) in the case of a supervised company, the company satisfies any other requirements as to solvency imposed by or under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, the Insurance Business (Bailiwick of Guernsey) Law, 2002, the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, the Banking Supervision (Bailiwick of Guernsey) Law, 1994, the Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey) Law, 2000 and any other enactment prescribed for these purposes by regulations of the GFSC.

In determining for the purposes of the Law whether the value of a company's assets is greater than its liabilities, regard shall be had to:

- (i) the most recent accounts of the company;

- (ii) all other circumstances that the directors know or ought to know affect, or may affect, the value of the company's assets and the value of the company's liabilities; and
- (iii) valuations of assets and estimates of liabilities which are reasonable in all the circumstances.

5. EFFECT OF MIGRATION INTO OR OUT OF GUERNSEY

Registration as a Guernsey company or removal from the Register of Companies does not:

- (a) create a new legal person; or
- (b) prejudice or affect the identity or continuity or the legal person constituted by the Company.

Upon registration as Guernsey company or removal from the Register of Companies:

- (a) all property and rights to which the company was entitled immediately before that registration or removal remain its property and rights;
- (b) the company remains subject to all criminal and civil liabilities, and all contracts, debts and other obligations to which it was subject immediately before that registration or removal;
- (c) all actions and other legal proceedings which, immediately before that registration or removal could have been instituted or continued by or against the company, may be instituted or continued by or against it after that registration or removal; and
- (d) a conviction, ruling, order or judgment in favour of or against the company before that registration or removal may be enforced by or against it after that registration or removal.

CONCLUSION

Migrations into and out of Guernsey of non-supervised companies can generally be carried out relatively quickly and simply.

For supervised companies the process will be more complex, particularly for supervised companies migrating into Guernsey as separate consents will also be required in addition to the consent for migration into Guernsey.

For more specific advice on the migration of companies to and from Guernsey, we invite you to contact one of the following:

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