

Migrating a Jersey company overseas – a practical guide

A Jersey company may apply to the Registrar of Companies (the **Registrar**), under Article 127T of the Companies (Jersey) Law 1991, for consent to migrate to another jurisdiction. This note outlines the procedure for migrating a Jersey company overseas as well as giving some practical pointers to make sure that the process runs smoothly.

Requirements of proposed new domicile

It is not possible to migrate into every jurisdiction and the law of proposed new domicile will have to allow for migrations into that jurisdiction.

Practical points: We co-ordinate with lawyers in the other jurisdiction from an early stage so that the requirements for a migration into the new jurisdiction can be looked after (adopting new constitutional documents for instance), and so that the copy or summary of the continuance application and the legal opinion (both mentioned below) can be prepared in good time. A new administrator in the new jurisdiction may have to be appointed and the terms of that appointment will have to be agreed by the migrating company.

Approval of directors

The directors of the migrating company will need to hold a board meeting to approve the migration proposal and the documents for the application. The directors, and any person who is to be a director following the migration, will need to sign a solvency statement. A director, or proposed director, who makes the solvency statement without reasonable grounds will be guilty of an offence.

Practical point: To get comfortable to give the solvency statement, the directors and (in particular) any proposed new directors may want financial accounts to be prepared and possibly audited. If so, preparing accounts should be factored into the timings.

Approval of shareholders

The migration proposal must be approved by a special resolution of the company. The special resolution may be passed in writing rather than at a meeting of the Company, for instance where there is only one shareholder.

The notice of the meeting to approve the migration proposal or the special resolution is accompanied by a copy or summary of the application in the other jurisdiction for continuance there and must state that any member of the company who objects to the application may, within 21 days, apply to the Royal Court for an order restraining the application.

Practical points: The application to the Registrar to migrate cannot be made until the 21 day shareholder objection period has passed. To avoid delays the shareholder meeting to approve the migration should be held, or the written resolution passed, as soon as possible.

Notice to creditors

The company must give notice in writing of the migration to its creditors and place an advertisement in the Jersey Gazette (part of the Jersey Evening Post) stating that any creditor who objects to the application may give notice of objection to the company within 21 days.

A creditor who gives notice and whose claim against the company has not been discharged may apply to the Royal Court for an order restraining the application within 21 days.

As an alternative to giving written notice and advertising in the Jersey Gazette, creditors may give their written consent to the redomiciliation.

Practical point: We find that it is often preferable to follow the notice route rather than the written consent route in case it proves difficult to obtain written consent from a creditor.

Application to the Registrar

The application to the Registrar to migrate is made using a standard form (Form C101) which is accompanied by:

- (a) a copy of the special resolution approving the migration (certified by a Jersey Advocate);
- (b) an original solvency statement signed by each director of the applicant;
- (c) an opinion from a lawyer authorised to practice in the jurisdiction of continuance stating that:
 - (i) the laws of the jurisdiction in which the company proposes to continue, allow its continuance there as a body corporate incorporated under those laws;
 - (ii) those laws provide that, upon the continuance of the company as a body corporate in that jurisdiction:
 - (A) all property and rights of the company will become the property and rights of the body corporate;
 - (B) 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
 - (C) all actions and other legal proceedings which are pending by or against the company may be continued by or against the body corporate;
- (d) the application fee of £500 (for more complex applications the Registrar may also require its further costs to be paid);
- (e) evidence that notice of the application has been given to the creditors of the company (and that no creditor has objected to the Royal Court) or copies of the letters of consent from all creditors;
- (f) a statement from the directors of the company confirming that no members object to the redomiciliation and that the company is not prevented from making the application because it is being wound up, insolvent etc.;
- (g) copies of letters to and from the Department of Employment and Social Security and the Income Tax Department confirming no objection to the application;
- (h) a copy of the financial statements of the company prepared for the period ending within 12 months of the date of the application and, where applicable, a copy of the accounts of the parent company made up to a date not more than 15 months before the date of the application;
- (i) a statement of the current business activity of the company and the name and address of a

process agent in Jersey if continuance overseas is granted (a local corporate administration services provider can fulfill this function);

(j) where applicable, evidence that the applicant is a listed body corporate.

Grant of application

The Registrar normally takes two to three days to consider a straightforward application once the paperwork has been lodged.

The grant of an application is always conditional on delivery to the Registrar of a certified copy of the instrument of continuance in the other jurisdiction. The company ceases to be a company incorporated in Jersey when it is continued as a body corporate in the other jurisdiction.

How can Dickinson Gleeson help?

Company migration applications are relatively straight-forward but experience and a practical approach ensure that they run smoothly. Dickinson Gleeson's partner-led approach gives applicants a responsive and professional service, as well as enabling the firm to quote competitively for company migration applications.

For more information, please contact **Edward Scott** (edward.scott@dgadvocates.com) or **Craig Swart** (craig.swart@dgadvocates.com).

This briefing is intended to give a summary of Jersey law and practice in this area. It should not be relied on as legal advice.