



VOISIN LAW

The Companies (Jersey) Law 1991 (the “**Companies Law**”) includes provisions enabling:

1. A company incorporated in a foreign jurisdiction to move its place of incorporation to Jersey; or
2. A Jersey incorporated company to continue as a foreign incorporated company in that foreign jurisdiction.

The terms ‘continuance’, ‘migration’ and ‘re-domiciliation’ are used interchangeably but the Companies Law refers to the term ‘continuance’. However, for the purposes of this note we shall use the commonly used term ‘migration’.

Consent for either inward or outward migration is required from the [Jersey Financial Services Commission](#) (the “**JFSC**”), which provides regulatory oversight for financial services conducted in Jersey.

The key feature of a migration is that the migrating company can move its business (together with its place of incorporation) from one jurisdiction to another (assuming each place recognises the ability to migrate) and retain legal liability for all of its existing obligations without the need for complex and expensive business transfer assignments or novations of obligations. Furthermore, where migrations are recognised, there is no need to convey property into the name of the company that is seeking “continuance” because it continues to benefit from all ownership rights relating to its assets.

Companies may choose to migrate between jurisdictions for a variety of reasons e.g. to benefit from changing business opportunities, to achieve a more efficient cost base or to take advantage of more flexible regulation.

Migration into Jersey

The application process for a foreign company to migrate to Jersey is, so far as the Jersey side of the migration is concerned, a three-stage process and one that requires consent from the JFSC.

Pre Application

The first stage of the process principally involves the creation and approval of the “articles of continuance.”

As the constitutional documents of the foreign company will generally not conform with the requirements of the Companies Law, the company’s members must adopt amended constitutional documents known as the “articles of continuance”. These articles will take effect upon the company becoming incorporated as a Jersey company.

Other ancillary matters should be dealt with at this stage to avoid delay at a later stage, namely the administration arrangements for the company including arranging a registered office address in Jersey, reserving a company name, satisfaction of anti-money laundering issues and taxation advice which should be taken to ensure that all relevant fiscal consequences are understood.



Application

The second stage of the process involves the application itself to the JFSC.

The relevant application form (form C100) can be downloaded from the Registry Section of the [JFSC website](#). This form must be completed and submitted on behalf of the company to the JFSC with the requisite information and documentation including, *inter alia*:

- the articles of continuance;
- a certified copy of the constitutional documents of the body corporate: such certification to be made by an Advocate of the Royal Court. However, the JFSC has indicated that it will accept a copy that has been certified by a regulated administrator of the body corporate;
- a statement of solvency signed by each director and each proposed director;
- particulars of the directors and secretary must be filed (but are not made public);
- confirmation from a lawyer qualified in the foreign jurisdiction on various issues regarding the foreign company;
- evidence that creditors will not be unfairly prejudiced must be provided (this may be confirmed by a director of the applicant company); and
- application fee payable to the JFSC (currently £500).

Post-Application

The JFSC will advise the Registrar of Jersey Companies (the “**Registrar**”) that the application has been granted. The Registrar will then issue the company with a Certificate of Continuance.

The potential of other regulatory requirements should also be considered, including the obtaining of a licence under the Control of Housing and Work (Jersey) Law 2012, if the company is intending to occupy floor space and employ staff in Jersey. Alternatively, a licence may be required under the Financial Services (Jersey) Law 1998 or the Collective Investment Funds (Jersey) Law 1988.

Migration out of Jersey

As with a migration into Jersey, the process for a Jersey company to seek continuance overseas is also a staged process.

Shareholder Approval

The company must first obtain shareholder approval for the migration. The members and each separate class of members of the Jersey company must pass a special resolution (as defined in the Companies Law) approving the migration. The written resolution or the notice of meeting (as the case may be) must include a summary of the proposed application and inform members that any of them may object within 21 days



of passing the special resolution. An objection may be made by application to the Jersey courts on the grounds that the migration would unfairly prejudice the shareholder's.

Board of Directors Approval

The board of directors of the company must then hold a meeting at which it must approve:

- the proposal to migrate;
- the issuing of all notices to creditors (see below); and
- the circulation of the special resolution.

Notice to Creditors

Before a company makes an application to the Registrar of Companies in Jersey (unless all its known creditors otherwise agree in writing) a notice must be sent to all creditors (including the Comptroller of Taxes and the Department of Social Security) as well as the publication of a Notice to Creditors in the Jersey Evening Post informing them of the company's intention to migrate and their right to object within 21 days. Only after 21 days following the sending of the last of the Notices to Creditors (assuming no objections are received from any creditors) can the application be made to the Registrar.

A second board meeting must then take place:

- Noting that a period of 21 days has passed following the passing of the special resolution and no members have objected to the migration;
- Noting that a period of 21 days has passed since last notification to creditors and no creditor objection has been received (unless all its known creditors have agreed to the migration in writing);
- Noting that all local government consents have been obtained; and
- Approving the final application to the Registrar for the migration from Jersey, including;
 1. a completed Form C101 (similar to the C100 Form); and
 2. the Directors' Declarations (see below).

Directors' Declarations

Directors' Declarations are required pursuant to the Companies Law confirming, *inter alia*, the solvency of the company and that no member objection has been received.

The Application

The company must then write to the JFSC enclosing all relevant application documentation including, *inter alia*:

- Completed C101 Form with Minutes of the directors authorising the same;



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- A certified copy of the members' special resolution;
- Confirmation from the Department of Comptroller of Taxes and the Department of Social Security in Jersey that they have no objections to the migration;
- Either evidence that notice to creditors has been given and no creditor has applied to the Royal Court for a restraining order or such application has been determined or copies of the prior written consent of the creditors that no notice need be given;
- A certified copy of the financial statements of the company for the period ending 12 months within the date of the application;
- Originals of the Directors' Declarations; and
- Affidavit of a lawyer authorised to practice in the foreign jurisdiction as to the ability of the company to seek continuance in that jurisdiction.

A co-ordinated approach to the migration to the foreign jurisdiction is required and therefore the company will need to liaise with its foreign advisers to ensure that all relevant formalities are dealt with in the foreign jurisdiction.

Upon processing the application, the JFSC will issue a conditional consent pending notification by the company to the Registrar of the date of issuance of the certificate of continuance from the relevant registrar in the foreign jurisdiction along with the delivery of a copy of the same to the Registrar. Upon receipt by the Registrar of such certificate of incorporation the company shall cease to be incorporated under the Companies Law and the Registrar shall record that it has ceased to be so incorporated as of that date.

For further information or specific advice on the use of Jersey Companies, please contact [Nigel Pearmain](#) or [Daniel Walker](#) of Voisin.

This note is intended to provide a brief rather than a comprehensive guide to the subject under consideration. It does not purport to give legal or financial advice that may be acted or relied upon. Specific professional advice should always be taken in respect of any individual matter.