

## Migrating a company into Guernsey

Service area / [Corporate](#)

Location / [Guernsey](#)

Date / [May 2017](#)

This briefing note provides an outline of the processes and requirements to migrate an overseas company into Guernsey. It does not cover migrations of companies out of Guernsey.

### The process

Migration is the process which allows an overseas company to be registered as a Guernsey company in accordance with the provisions of The Companies (Guernsey) Law, 2008 (as amended) (the "Law").

### Effect of migration

"Registered as a Guernsey company" means:

- the company ceases to be registered as a company in the district, territory or place in which the company was incorporated or where it is now registered; and
- the company becomes registered as a company at the Guernsey Registry (the "Registry").

For Guernsey law purposes, migration does not affect a company's identity, property or rights and it does not create a new legal entity. All rights enjoyed by the company prior to migration remain the same and any legal actions, proceedings or judgments made by or to the company will continue to be enforced after the migration has taken place.

### Eligibility to be registered in Guernsey

An overseas company can be registered as a Guernsey company if:

- the law of the district, territory or place in which the company was incorporated allows it to migrate and be registered as a Guernsey company;

- the company has complied with the requirements of the existing jurisdiction in relation to its registration as a Guernsey company;
- the company has obtained the necessary consents of members (by passing a resolution) or where the overseas law does not require the company's members, or a specified proportion of them, to consent to its registration as a Guernsey company under the Law, 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 Registrar of Companies (the "Registrar") shall certify in writing as being equivalent to a special resolution; and
- the company would satisfy the Law's solvency test immediately after registration in Guernsey.

A company satisfies the "solvency test" if:

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

In addition, an overseas company cannot be registered as a Guernsey company if:

- the company is being wound up, is in liquidation or has been declared insolvent;
- a receiver or administrator has been appointed, whether by a court or not, in relation to any property of the company;
- the company has entered into a compromise or arrangement with a creditor (other than a compromise or arrangement approved by the Guernsey Financial Services Commission (the "GFSC"), and the compromise or arrangement is in force; or

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- an application has been made to a court, whether in Guernsey or elsewhere, to do the above.

## Stages of migration

There are three key stages to migration:

### Pre-commencement

A company should carry out due diligence to identify the effects of migration to Guernsey on its business. How long the migration process can take is largely governed by the corporate authorisations required e.g. board and shareholder resolutions or third party consents.

### Applications for consent to de-register in home jurisdiction

The company must comply with the laws and regulations of its home jurisdiction in order to migrate into Guernsey. A legal confirmation (e.g. a legal opinion from a reputable law firm in the relevant overseas jurisdiction) that the company is allowed to migrate will also be needed by Carey Olsen's corporate services provider for the purpose of making the migration application to the Registry.

The timeframe for obtaining consent is dependent on the relevant overseas authority responsible for processing the consent.

Carey Olsen will liaise with lawyers in the company's home jurisdiction to determine the process for migrating the company and the likely timescales.

### Re-registration in Guernsey

After consent has been obtained from the home jurisdiction, the company may apply to the Registrar to migrate into Guernsey. Note that for regulated or supervised companies, written consent is also required from the GFSC before registration can occur (see below).

Once the company has been registered in Guernsey, a certificate of registration will be issued and a registration number for the company shall be allocated, providing conclusive proof that the company is registered in Guernsey.

### Companies supervised by the GFSC

If a company intends to become a "supervised company" or is the equivalent of a supervised company in the district, territory or place outside Guernsey from which it is migrating, it must seek the prior written consent of the GFSC before registration in Guernsey and must register in accordance with the terms and conditions of the consent.

"Supervised Companies" are widely construed under the Law and include companies which engage in activities which require them to be supervised by the GFSC. These activities include companies which are open or closed-ended investment companies, or for which a licence is required under any of Guernsey's regulatory laws (e.g. investment managers/advisers, insurance businesses and companies which offer fiduciary services).

## Timeframes

Whilst the Registry can register a company within 24 hours of receipt of all relevant documents, there is no guarantee due to busy periods. The best approach is to provide the Registry with as much notice as possible, if it is required that the company migrate on a specified date. For Supervised Companies, consent from the GFSC is required before the application is submitted to the Registry.

### Application process

Set out below is the detailed application process in Guernsey. This is subject to any additional requirement application under overseas law.

### Application to the GFSC for consent

If required, the application for the consent of the GFSC to migrate an overseas company must include or be accompanied by:

- the Migration Details (defined below);
- such other information and documents, verified in such manner as the GFSC may require; and
- the requisite fee (please contact Carey Olsen's corporate team for details of the current fee).

In considering the application generally and whether a person to be involved in the business is 'fit and proper,' the GFSC will have regard to the protection of the public interest, including (i) the need to protect the public, in Guernsey and elsewhere, against the effects of dishonesty, incompetence or malpractice, (ii) counter financial crime and the financing of terrorism in Guernsey and elsewhere and (iii) protect and enhance the reputation of the Bailiwick as a financial centre.

### Application to the Registrar

An application for registration as a Guernsey company may only be made by a GFSC licensed corporate services provider. Carey Olsen uses a dedicated Carey Olsen company to make such applications.

An application for registration of a Guernsey company is made to the Registrar and must be accompanied by the following:

- the Migration Details (defined below);
- a copy of the consent obtained from the GFSC (if applicable);
- such other information and documents, verified in such manner, as the Registrar may require;
- a declaration of compliance (i.e. a declaration signed by a director of the company that all requirements of the Law relating to migrations in respect of the registration of a Guernsey company have been complied with);
- evidence satisfactory to the Registrar or the GFSC (as the case may be) that, on the date of registration the company will cease to be incorporated and registered under the law of any district, territory or place outside Guernsey; and
- a fee for registration which is, as at the date of this briefing note, £100 per application.

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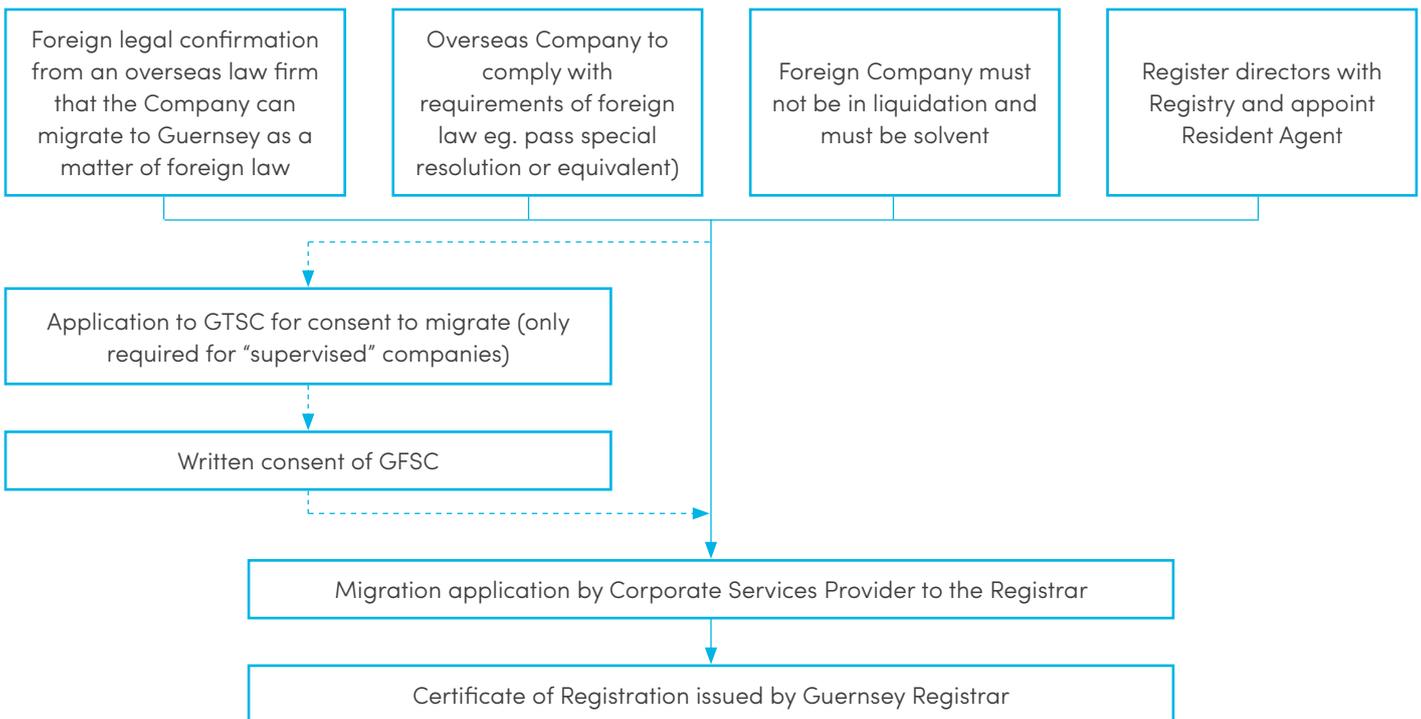
The Migration Details include:

- a copy of the company’s certificate of incorporation in the place in which it is incorporated or registered;
- a copy of the memorandum and articles which are to be binding on the company immediately after its registration in Guernsey, complying with the requirements of the Law as to memoranda and articles, together with, if different, a copy of the company’s current memorandum and articles;
- a statement of the company’s current directors;
- a statement of the company’s directors as proposed immediately after registration as a Guernsey company, together with consents to act and declarations of eligibility required under the Law for all those directors;
- a statement of the address of the company’s registered office in the place in which it is incorporated or registered and as proposed, in Guernsey;
- in the case of a company with a share capital a statement of share capital which must include for each class of share the number of issued shares, the aggregate value of those shares (whether on account of the nominal value or by way of premium and whether paid by cash or non-cash consideration), the number of shares held as treasury shares and the amount paid up and any unpaid sums on those shares;
- in the case of a company with guarantee members, the aggregate guaranteed amount of all its members;
- in the case of a cell company, a copy of the consent issued by the GFSC as required by the Law;
- evidence acceptable to the Registrar in the form of a declaration of compliance, or the GFSC (as the case may be) that the company is not prohibited from being registered in Guernsey.

Unless exempt under the Law, the company will have to appoint a resident agent.

Cancellation of the overseas registration

An overseas company successfully registered as a Guernsey company must, as soon as possible, file with the Registrar any certificate or other document issued in that overseas territory which proves that the company has ceased to be incorporated and registered in that jurisdiction.



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