

Guernsey Companies Law - Migrations Into and Out of Guernsey

This memorandum has been prepared for the assistance of our clients in connection with the provisions relevant to migration of companies into and out of Guernsey under the Companies (Guernsey) Law, 2008 (as amended) (the "**Companies Law**"). It is intended to provide only a summary of the main legal and general principles and it is not intended to be comprehensive in scope. It is strongly recommended that you seek specific legal advice on such matters and we would be pleased to assist in this respect. A series of briefings on other specific aspects of Guernsey companies has been produced by Ogier and is available on our website www.ogier.com. Transitional provisions have also been made (a separate briefing addresses the operation of these).

This memorandum has been prepared on the basis of the law and practice in Guernsey as at 1 April 2010.

Introduction

The Companies Law came into full force on 1 July 2008.

Migrations into Guernsey

Under the Companies Law a formal application to migrate is made to the Registrar of Companies (the "**Registrar**"). However, where the overseas company intends to be, or is already equivalent to, a "supervised company", (essentially a company which requires regulation by the Guernsey Financial Services Commission (the "**Commission**") a protected cell company or an incorporated cell company written consent from the Commission must be obtained.

Procedure for migrations into Guernsey

Under the Companies Law an overseas company migrating into Guernsey will be required to, among other matters, provide evidence as to certain factual information about the company, obtain the consent of its members, obtain a foreign law legal opinion and provide a director's declaration of compliance.

Evidence satisfactory to the Registrar, (usually in the form of a foreign law legal opinion) is required to demonstrate that on the date of registration in Guernsey the company will cease to be incorporated and registered under the law of the foreign jurisdiction from where it is migrating. A company cannot migrate into Guernsey if it does not pass a statutory solvency test or if it is in any insolvent process (e.g. administration).

All formal applications to migrate into Guernsey must be made to the Registrar via a corporate service provider. Ogier Fiduciary Services can provide this service. Upon receipt of the requisite application the Registrar shall register the memorandum and articles of incorporation in the Register of Companies (the "**Register**"), issue a certificate of registration and allocate a registration number to the company.

Migrations out of Guernsey

Under the Companies Law a formal application to migrate is made to the Registrar. However, where the Guernsey company is a "supervised company" written consent from the Commission must be obtained.

The Companies Law provides that where the Guernsey company is an incorporated cell company it cannot be removed from the Register unless all of its incorporated cells are also removed. Similarly, an incorporated cell cannot be removed from the Register unless its incorporated cell company is also removed.

Procedure for migrations out of Guernsey

Under the Companies Law a migrating company will be required to, among other matters, pass a special resolution, notify its creditors, obtain approval of HM Procureur and the Administrator of Income Tax, obtain a foreign law legal opinion and provide a director's declaration of compliance.

Evidence satisfactory to the Registrar, (usually in the form of a foreign law legal opinion) is required to demonstrate that on the date on which the company's name is removed from the Register it will be incorporated under the law of the foreign jurisdiction to which it is migrating. A company cannot migrate if it does not pass a statutory solvency test or if it is in any insolvent process (e.g. administration).

All formal applications to migrate out of Guernsey must be made directly to the Registrar via a corporate service provider. Ogier Fiduciary Services can provide this service. Upon receipt of the requisite application by the Registrar notice of the proposal will be given in such manner and for such period as the Registrar thinks fit. Not less than 28 days after such notice the company's name shall be removed from the Register.



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About Ogier

Ogier is an award winning offshore legal and fiduciary services provider. The Group advises on all aspects of BVI, Cayman, Guernsey and Jersey law and associated fiduciary services through a global network of offices covering all time zones and key financial markets.

Ogier continues to be recognised as a leading law firm by the principal legal directories, including Legal 500 and Chambers.



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Client briefing

This client briefing has been prepared for clients and professional associates of the firm. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

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