

Migration of Companies into and out of Jersey

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| Migration in to Jersey

The Companies (Jersey) Law 1991 (the **Law**) allows a company registered in a foreign jurisdiction to migrate from its home jurisdiction to Jersey provided that the laws of the foreign jurisdiction allow it to do so. Upon a migration into Jersey becoming effective:

- the property and rights of the company immediately prior to the migration continue in the Jersey company;
- the company continues to be subject to all criminal and civil liabilities, contracts, debts and other obligations; and
- all legal proceedings pending maybe continued by or against the company.

The application for migrating a foreign company to Jersey involves the following key actions:

1. the company must adopt articles of association which conform to Jersey law which are filed with the Registrar of Companies;
2. a statement of solvency must be signed by each director and each proposed director;
3. the particulars of the directors and secretary must be filed (but are not made public);
4. confirmation is required from legal counsel in the foreign jurisdiction that the company may migrate, all necessary authorisations have been given in the foreign jurisdiction to enable the migration to take place and, on continuance in Jersey the company will cease to be incorporated in the foreign jurisdiction;
5. evidence that creditors will not be unfairly prejudiced must be provided (this may be confirmed by a director of the applicant company); and

6. any other information the Registrar of Companies in Jersey may require must be provided.

Potential applicants will also need to consider any other Jersey licensing or regulatory requirements such as the Control of Housing and Work (Jersey) Law 2012. This will typically be relevant only to those companies seeking to conduct a business and engage employees within 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

A Jersey company may also migrate to a foreign jurisdiction from Jersey and continue as a foreign incorporated company in that jurisdiction. The procedure to migrate out of Jersey can be more lengthy than that to migrate into Jersey as notice to creditors may need to be given.

The following is a summary of the key aspects of the process required under Jersey law to migrate from Jersey to a foreign jurisdiction.

Shareholder Approval

The members and each separate class of members of the Jersey company must pass a special resolution (a two thirds majority under Jersey law or such greater majority as the company's articles may provide) 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 interests.

Board of Directors Approval

A board meeting is required to be held in relation to the approval of the migration. This will approve:

1. the proposal to migrate and the issue of all notices (including an advertisement in the local newspaper in Jersey in certain circumstances) and the circulation of the members' special resolution;
2. the request for confirmations of no objection from the Comptroller of Revenue and the Department of Social Security in Jersey
3. various statements of confirmation from the directors including a solvency statement; and
4. the final application to be made to the Registrar of Companies in Jersey.

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) notice shall be published in the Jersey Evening Post newspaper and sent to each creditor informing them of the company's intention to migrate and the right of any creditor to object within 21 days after the date of the published advertisement.

The Application

The key documents forming part of the application to be made to the Registrar of Companies in Jersey include:

1. A certified copy of the members' special resolution.
2. A solvency statement.
3. Confirmation from the Comptroller of Revenue and the Department of Customer and Local Services in Jersey that they have no objections to the migration.
4. Confirmation from a lawyer in the jurisdiction to which the company seeks to migrate that all property and rights of the company will continue in the foreign jurisdiction, the foreign jurisdiction permits the migration, the company will remain subject to all civil and criminal liabilities, contracts, debts and other obligations and all legal proceedings and other actions pending may be continued.
5. 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 to the continuance.
6. Evidence that no member has applied to the Royal Court of Jersey on grounds of unfair prejudice or any application has been determined.
7. Copy of the latest financial statements of the company.

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. After processing the Jersey application the Registrar of Companies will issue a conditional consent which will become unconditional upon delivery to the Registrar of Companies of a certificate of incorporation from the relevant registrar or regulator in the foreign jurisdiction. When this is received a formal certificate will be issued by the Registrar of Companies in Jersey and the company will cease to be incorporated under the Law as of the date of its continuance in the new jurisdiction.

Ogier has acted on numerous migrations both in and out of Jersey for private companies, funds

and regulated entities and has all necessary expertise to advise on any migratory issues.

About Ogier

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Regulatory information can be found under [Legal Notice](#)

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