



Migration of an overseas foundation into Guernsey

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Under the Foundations (Guernsey) Law, 2012 (the **Foundations Law**), an overseas registered foundation can apply to migrate to Guernsey and become a Guernsey foundation provided certain procedures and certain conditions are met. This briefing sets out the general requirements for a migration in to Guernsey of an overseas registered foundation.

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What form of foundation can migrate in to Guernsey

A foundation with legal personality currently established under the Foundations Law of any place (including any district or territory) outside of Guernsey may be able to register as a Guernsey foundation.

What does "register in Guernsey" mean?

If an overseas foundation chooses to register in Guernsey, it will cease to be registered as a foundation in the place in which it was established or where it is now registered, and become registered as a foundation in the Guernsey Foundations Register (the **Register**).

What conditions must be met in order to register an overseas foundation in Guernsey?

An overseas foundation can only register as a Guernsey foundation if it is able to migrate under the Foundations Law of the place in which it is currently established and complies with the requirements of the relevant foreign law in relation to its registration as a Guernsey foundation. The foundation must not be bankrupt, being wound up or in liquidation, under administration or under receivership or be subject to an application in any court for the same or for the approval of creditor arrangements. Pursuant to the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017

(as amended), a foundation must appoint a resident agent who is either (i) an individual resident in Guernsey who is a foundation official or (ii) a corporate service provider.

Application to register in Guernsey

Provided the conditions set out above are met, a Guernsey licensed fiduciary will make an on-line application to the Registrar of foundations in Guernsey (the **Registrar**) and such application must be accompanied by:

- a copy of the foundation's certificate of establishment (if any) in the place in which it is currently established
- the proposed name under which the foundation is to be registered in Guernsey which must comply with the requirements of the Foundations Law
- a copy of the Charter to be binding once registered in Guernsey and, if different, a copy of the foundation's current Charter or equivalent document
- a declaration signed by the founder or the resident agent that the details contained within the Charter are correct and an accurate reflection of the purposes of the foundation
- evidence that the foundation is not prohibited by the relevant foreign law from migrating and is not bankrupt or being wound up; on the date of registration, the foundation will cease to be established and registered under the Foundations Law of any place outside Guernsey; and the foundation has legal personality in the place in which it is established and registered
- a declaration of compliance signed by the licensed fiduciary making the application that all the requirements of Part 1 of Schedule 2 of the Foundations Law have been fulfilled
- the names and addresses of the foundation's current officials and the proposed registered office address, together with any evidence of such official's written consent to act
- a declaration confirming whether there are any disenfranchised beneficiaries
- ultimate beneficial ownership forms
- a statement by the resident agent (if any) comprising their name and address and confirming that the requirements of Schedule 1A of the Foundations Law have been fulfilled
- such fee as may be specified by the Registrar
- all other documents and information required to be filed under the Foundations Law; and the Registrar may request other documents and verification if so required.

From 15 December 2023, the corporate services provider who assists in registering any foundation must file particulars of governance in the form prescribed by the Registrar. Foundations are also required to notify the Registrar of any changes to this filing within 21 days of the date of change.

From said date, Guernsey registered foundations are also required to keep a record of certain details of beneficiaries' interests at their registered office, including whether each beneficiary is enfranchised or disenfranchised, any relevant benefits received by the beneficiary and whether the beneficiary has disclaimed or has any restrictions attaching to their interest.

When is registration in Guernsey effective?

The application may propose the date on which registration as a Guernsey foundation shall take effect provided that that date is not later than 3 months after the date of the application. When the Registrar has been made aware of the date for registration he will process the application, inscribe the name in the Register, allocate a registration number and issue a certificate of registration. Same day registration is possible conditional upon the Registrar being satisfied with the documents received.

What is the effect of registration

Upon registration, the foundation shall be treated in all respects as a foundation established under this Law.

Cancellation of registration overseas

Once the foundation is registered, the foundation shall, as soon as possible, file with the Registrar any certificate or other document issued under the Foundations Law of the place in which the foundation has ceased to be established and registered evidencing the fact that the foundation has ceased to be established and registered under that law.

If for some reason the foundation, once registered in Guernsey, continues to be established or registered under the Foundations Law of any place outside Guernsey, the foundation, any of its participants or creditors, or the Registrar may apply to the Royal Court of Guernsey which in its absolute discretion may make an order for the removal of the foundation's name from the Register. Such order may be made subject to such terms and conditions and such penalty as the Royal Court thinks fit. In this circumstance, the foundation's registration in Guernsey shall (unless the Royal Court orders otherwise) be void ab initio.

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