

Application for redomiciliation into Jersey under the Companies (Jersey) Law, 1991 (as amended) (the "1991 Law")

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Part 18C of the Companies (Jersey) law 1991, as amended (the "1991 law") makes it possible for a body incorporated outside Jersey to migrate to Jersey if it is permitted to do so under the laws of the jurisdiction in which it is incorporated.

This guide summarises the process by which a foreign corporate body (ie the applicant) may be "continued" as a company in Jersey (also commonly called a "migration" or "redomiciliation").

Documentation

The application for continuance must be made to the Jersey Financial Services Commission ("JFSC") and should be accompanied by the following documentation or information:

1. a certified true copy of the applicant's current memorandum and articles or other constitutional documents;
2. "Articles of Continuance" stating amendments to be made to the memorandum or articles necessary to conform to Jersey Law. Often, the applicant will simply adopt new memorandum and articles which meet Jersey company law requirements;
3. a statement of solvency in the form required by the 1991 Law signed by all directors of the applicant and anyone who will become a director on its migration to Jersey;
4. the name under which the applicant proposes to continue as a Jersey company;
5. information about the directors of the applicant, including any new directors to be appointed on the migration becoming effective (if any):
 - present and former forenames and surname;

- business or usual residential address;
 - nationality;
 - business occupation (if any);
 - date of birth; and
 - date of appointment as a director;
6. information about the secretary at the date of the application and the secretary to be appointed on the migration becoming effective:
 - name and, if relevant, place of incorporation and registered/principal office;
 - date of appointment as secretary; and
 - any relevant qualifications;
 7. a completed Form CIOO (the application form for continuance into Jersey).
 8. Providing specified additional information; and any other documents and information which the JFSC may request in respect of the application.

In addition, the application must also be accompanied by evidence to satisfy the JFSC that:

1. the applicant is authorised under the laws of the jurisdiction in which it is incorporated to make the application;
2. any authorisation required by the constitution of the applicant or the laws of the jurisdiction in which the applicant was incorporated to the application being made to the JFSC has been given;
3. if a certificate of continuance is issued under the 1991 Law, the applicant will thereupon cease to be incorporated under the other jurisdiction;
4. if a certificate of continuance is issued under the 1991 Law, the interests of members and the creditors of the applicant will not be unfairly prejudiced; and

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5. the applicant:
 - is not being wound up or liquidated or subject to a declaration of bankruptcy;
 - is not insolvent;
 - has not had a receiver, manager or administrator appointed over any of its property;
 - has not entered into a compromise/arrangement with a creditor which is in force but has not been approved by the JFSC; and
 - does not have an application pending before the Court in respect of any of these matters.

Items 1-3 above are typically confirmed by the applicant's legal advisors in the other jurisdiction and items 4 and 5 above are normally confirmed by a director of the applicant.

Timing

Timing will largely be dependent on the requirements imposed on the applicant in its home jurisdiction.

So far as the Jersey aspects of a migration to Jersey are concerned, no timescales are provided for in the 1991 Law. It might typically take two or three days from receipt of the necessary documentation for the JFSC to make its decision on the application.

Timing issues can arise if, upon the migration becoming effective, the applicant will carry on regulated activities in Jersey or will constitute an undertaking requiring a licence under the Regulation of Undertakings and Development (Jersey) Law 1973. Such issues are readily resolved by liaising with the relevant regulators or the Population Office in Jersey before commencing the migration to ensure that any regulatory or administrative hurdles are overcome in a timely fashion and that any necessary approvals or licences are granted at the same time as the migration becomes effective.

However, if an application is time critical, the JFSC will often assist in agreeing to coordinate matters so that the continuance is effected on an agreed date.

Liaising with the home jurisdiction

As well as dealing with the Jersey law aspects, it is important to liaise with the lawyers and the companies' registrar in the home jurisdiction to ensure that all legal and procedural requirements in the home jurisdiction are satisfied. This is important as the two registrars must co-ordinate their activities to ensure that the certificate of discontinuance (or analogous certificate) in the home jurisdiction and the certificate of continuance in Jersey are deemed issued at the same time.

Effect of continuance

Under the 1991 Law, once the certificate of continuance has been issued the applicant becomes a company incorporated under the 1991 Law and the memorandum and articles (or the constitutional documents of the applicant) as amended in accordance with its articles of continuance are adopted as the memorandum and articles of the company.

All property and rights to which the applicant was entitled immediately before the certificate of continuance is issued are the property and rights of the company.

The company remains subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which the applicant was subject immediately before the certificate of continuance is issued. All actions and other legal proceedings which, immediately before the issue of the certificate of continuance, were pending by or against the applicant may be continued by or against the company.

Offences in relation to a redomiciliation

Any person who, in connection with an application, knowingly or recklessly provides to the JFSC any false, misleading or deceptive material or any document containing such information will be guilty of an offence.

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