

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

FEB 2010

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Part 18C of the Companies (Jersey) Law 1991, as amended (the "1991 Law") makes it possible for a company incorporated in Jersey to migrate overseas and be "continued" as a foreign company (also commonly called a "migration" or "redomiciliation").

This briefing summarises the process by which such a migration is effected.

### Approval by members

The proposal by a company to migrate overseas must be approved by a special resolution of the company and, if applicable, of the members of each of its classes of shares.

Notice of the meeting(s) to consider the special resolution(s) must contain a copy of the proposal and a statement of the right of an objecting member to apply to the Jersey court.

### Objections by members

A member who votes against the special resolution can apply to the Jersey court within 30 days of the passing of the resolution if they think the migration would unfairly prejudice their interests.

### Notice to creditors

Creditors must be notified of the passing of the special resolution at least 31 days before an application for the approval of the migration is made to the Jersey Financial Services Commission ("JFSC"). The notice must be sent in writing to each creditor and must also be published in the Jersey Evening Post, stating the country to which the company intends to migrate and the right of an objecting creditor to give notice of their objection to the company within 30 days of the notice. Where the sums due to an objecting creditor are not repaid, the creditor may seek a court order preventing the migration.

### Application to the Commission

The application to the JFSC should

be accompanied by the following documentation:

1. a copy of the special resolution(s) certified by a Jersey Advocate;
2. a statement of solvency in the form required by the 1991 Law signed by all directors of the company and anyone who will become a director on the migration becoming effective;
3. a completed Form C101 (the application form for continuance outside Jersey) providing specified additional information; and
4. any other documents and information which the JFSC may request in respect of the application.

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

1. the laws of the proposed overseas jurisdiction allow the company to continue there as a body corporate;
2. the laws of the new jurisdiction provide that on migration:
  - all property and rights of the company will become that of the body corporate;
  - all criminal and civil liabilities, contracts, debts and other obligations of the company will become those of the body corporate; and
  - all actions and other legal proceedings which are pending by or against the company may be continued by or against the body corporate;
3. adequate notice has been given to the creditors and members of the company and either:
  - no creditor or member has applied to the Jersey court; or

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- any application by a creditor, or a member, has been determined in favour of the migration; and
- 4. the company:
  - 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 and 2 above are typically confirmed by the company's legal advisors in the new jurisdiction and items 3 and 4 above are normally confirmed by a director of the company.

### Timing

Whilst the 1991 Law legislates for a 30 day objection period for members and a 31 day creditor notice period, no timescales are provided in the 1991 Law so far as the processing of the application by the JFSC is concerned. Typically, however, the JFSC will take two or three days from receipt of the necessary documentation to make its decision on the application.

Timing issues can arise if the company will carry on regulated activities in the new jurisdiction upon the migration becoming effective. Such issues are usually readily resolved by identifying the regulated activities and the advisers in the new jurisdiction liaising with the relevant regulators before commencing the migration. In addition, if the company will cease to be carrying on any regulated activities in Jersey as result of the migration, the relevant Jersey regulators will have to be advised of this and any necessary steps taken to terminate the relevant regulatory licences.

However, if an application is time critical, the JFSC will often assist in agreeing to coordinate matters so that the continuance is made

'effective' on an agreed date.

### Liaising with the new jurisdiction

As well as dealing with the Jersey law aspects, it is important to liaise with the lawyers and the companies' registrar in the new jurisdiction to ensure that all legal and procedural requirements in the new jurisdiction are satisfied.

This is important as the two registrars must co-ordinate their activities to ensure that the certificate of discontinuance in Jersey and the certificate of continuance (or analogous certificate) in the new jurisdiction are deemed issued at the same time.

### Effect of continuance overseas

Under the 1991 Law when a company is continued as a body corporate under the laws of another jurisdiction it ceases to be a company incorporated in Jersey, and the register of companies in Jersey will be amended to show the date the company ceased to be so incorporated.

### Offences in relation to continuance

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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