

# Entity migration into Guernsey

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## Migration into Guernsey

It has been possible to transfer the registration of (or 'continue' or 'migrate' as it is more often referred to) companies to and from Guernsey since 1997 and, since 2020, limited partnerships.

### What is a migration?

The concept of a migration is that, on a given day, the entity relinquishes its registration in its jurisdiction of incorporation (or registration) and registers as an entity in another jurisdiction.

In the context of a migration into Guernsey, in legal terms, following the overseas entity's registration as a Guernsey entity, it shall be treated in all respects as an entity within the meaning of the Companies (Guernsey) Law, 2008 (the **Companies Law**) or the Limited Partnerships (Guernsey) Law, 1995 (the **LP Law**), as the case may be. In particular:

- all property and rights to which the entity was entitled immediately before its registration in Guernsey remain its property and rights
- all criminal and civil liabilities and all contracts, debts and other obligations, to which the entity was subject immediately before its registration in Guernsey, remain binding on it
- all actions and other legal proceedings which immediately before its registration in Guernsey could have been instituted or continued by or against the entity, may be instituted or continued by or against it, and
- any conviction, ruling, order or judgment in favour of or against the entity before registration in Guernsey may be enforced by or against it.

### What is a migration not?

Registration as a Guernsey entity does not create a new (legal) person or prejudice or affect the entity's identity or continuity of its existence as a (legal) person.

### Can any entity be migrated into Guernsey?

Any overseas **company** can be registered as a Guernsey company provided that it is able to do so under the law of the place in which it is incorporated or registered (and it has complied with the requirements of that law in relation to its registration as a Guernsey company) **and** the proposed migration has been approved by resolution of the company equivalent to a special resolution under the Companies Law, ie a majority of not less than 75 per cent.

An overseas **limited partnership** is also eligible to be registered as a Guernsey limited partnership provided it is able to do so under the law of its current registration (and has complied with any requirements of that relevant foreign law in relation to its registration as a Guernsey limited partnership) **and** it has complied with the provisions of its limited partnership agreement (**LPA**), including any limited partner consents.

In each case, the entity cannot be registered as a Guernsey entity if it is subject to any insolvency event or, in the case of a company, if it is empowered by its constitutive documents to issue bearer shares. The entity must also, immediately after registration as a Guernsey entity, satisfy the solvency test (essentially it must be able to pay its debts as they become due and the value of its assets must be greater than the value of its liabilities (see our Guide – The Solvency Test [here](#))).

An overseas entity which intends to become a 'supervised company' in Guernsey or which is the equivalent of a supervised company in the jurisdiction from which it is migrating, cannot be registered as a Guernsey company without the prior written consent of the Guernsey Financial Services Commission (the **Commission**) and its migration must be in accordance with the terms and conditions of that consent. A 'supervised company' is a company which is regulated by the Commission.

### **The migration process**

Legal advice should be sought at the outset both from counsel in the jurisdiction in which the entity wishes to migrate from, and in Guernsey.

Generally, the procedure in Guernsey is as follows:

In the case of a company, a majority of not less than 75 per cent of the members of the overseas company must consent to the proposed migration. A limited partnership must comply with the provisions of its LPA (or equivalent constitutive documents) and meet any requirement for limited partners consent or other action as may be specified in the LPA.

Application for registration as a Guernsey entity is to the Registrar of Companies at the Guernsey Registry (the **Registrar**) and which can only be made by a corporate services provider (**CSP**), ie a licensee under the Regulation of Fiduciaries, Administration Businesses & Company Directors etc. (Bailiwick of Guernsey) Law, 2020, as amended.

The application, which is submitted online using the Registrar's online services portal, should include, among other things:

- details of the overseas entity's existing registration in its jurisdiction of incorporation or registration, together with details similar to those provided on the incorporation or registration of a new company or limited partnership respectively
- written confirmation from the overseas registry that, on the date of proposed registration in Guernsey, the entity will cease to be incorporated and registered under the law of the place outside of Guernsey
- evidence, in the form of a legal opinion from overseas counsel, that the laws of the overseas jurisdiction permit the transfer and de-registration of the entity from its jurisdiction of incorporation or registration (as the case may be) and that there are not any legal impediments in doing so, including liquidation etc, and
- a solvency letter from the entity itself confirming that it will, immediately after registration as a Guernsey entity, satisfy the solvency test set out in the Companies Law or the Limited Partnerships (Guernsey) Migration Regulations, 2020 (the **LP Migration Regulations**), as the case may be.

The application may propose the date on which registration as a Guernsey entity is to take effect, provided that that date is not later than three months after the date of the application.

The Registrar will rely on a declaration of compliance signed by a director of the company, or, in the case of a limited partnership, a general partner and the CSP, that all the requirements of the Companies Law, or the LP Migration Regulations, as the case may be, in respect of the entity's proposed registration in Guernsey have been fulfilled.

On the date of migration, the Registrar will allocate a registration number and issue a certificate of registration which will be conclusive evidence that the entity is duly registered in Guernsey. In the case of a company, the Registrar will also register its memorandum and articles of incorporation in the Register of Companies. After that, the entity will be treated in all respects as a company or limited partnership (as the case maybe), within the meaning of the Companies Law or LP Law, as applicable.

### **Fees**

The Guernsey Registry charges a fee for the registration of an overseas entity as a Guernsey entity.

While the Commission does not currently charge anything for its consent in respect of a supervised entity, an overseas entity which intends to be supervised in Guernsey will need to pay the appropriate application fee depending on the type of licence or authorisation that it requires.

### **Powers of the court**

A migration into Guernsey may be reversed by the court. If the court is satisfied that an overseas entity has been registered as a Guernsey entity but also continues to be incorporated under the law of any place outside Guernsey, it may make such order as it thinks fit for the removal of the entity's name from the Register. If such an order is made, the entity's registration in Guernsey will (unless the court orders otherwise) be invalid from the outset.

### **Contacts**

For further information, please get in touch with your usual Mourant contact or, alternatively, a list of contacts can be found [here](#).