

Collas Crill explains... Continuing a company to Jersey

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This guide is one in a series of 'Collas Crill explains...' in which we examine areas of Jersey law that frequently arise in practice. To view other guides in the series, click [here](#).

Just like a person, a company can change its nationality.

In Jersey, the process by which a company changes its nationality or place of incorporation is called a continuance. It is also commonly referred to as a migration or redomiciliation.

This guide looks at the key things you need to know about the process for a **foreign company** to continue its existence as a Jersey company.

Words in bold text are defined at the end of this guide.

Why choose Jersey?

Jersey is a popular place to establish an asset holding company because:

the continuance process is straightforward;

- the **Law** is flexible;
- Jersey has a modern legal system based on English legal principles;
- Jersey is internationally recognised and respected as a well regulated jurisdiction; and
- a Jersey company is not subject to Jersey income or capital gains tax or required to withhold tax on interest or distribution payments.

Eligibility

The **Law** allows a **foreign company** to continue as a Jersey company if:

- the laws of its **original jurisdiction** allow it to do so;
- it is not being wound up or in liquidation and its assets have not been declared *en désastre*;
- it is not insolvent;

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- no receiver, manager or administrator has been appointed in relation to any of its assets;
- there is no compromise or arrangement in force between it and any creditor; and
- there is no application before a court for its winding up or liquidation, to have it declared insolvent or its assets declared *en désastre*, to appoint any receiver, manager or administrator or to approve any compromise or arrangement.

Procedure

Original jurisdiction

The **foreign company** must take any steps necessary for it to continue to Jersey under the laws of its **original jurisdiction**. These steps commonly include:

- the **foreign company** passing director and/or shareholder resolutions to approve it:
 - continuing to Jersey;
 - adopting **M&A** that comply with the **Law**;
 - appointing a Jersey corporate services provider and approving a registered office address in Jersey; and
 - changing its name if necessary.
- the **foreign company** notifying its creditors of the proposed continuance; and
- providing a legal opinion or director's certificate to the regulator in the **original jurisdiction** confirming things like:
- Jersey law allows the continuance; and
- after the continuance takes place, the **foreign company** will continue to own its assets and be subject to its liabilities.

Jersey

For the purposes of the **Law**, the procedure for a **foreign company** to continue to Jersey is as follows.

- Reserve a name which must end in:
 - Limited, Ltd, *avec responsabilité limitée* or arl; or
 - (if it is a public company) public limited company or plc.
- File with the **JFSC**:
 - an application form which includes the **foreign company's** Jersey registered office address and information about the **foreign company's** directors, secretary and beneficial owners;
 - a certified copy of the **foreign company's** foreign constitution (translated into English if necessary);
 - a copy of the **foreign company's** Jersey **M&A**;

- a solvency statement in the statutory form signed by the **foreign company's** directors and any proposed new directors (see *Solvency statement* below);
- a legal opinion from lawyers in the **foreign company's original jurisdiction** confirming that:
 - it is authorised by the laws of its **original jurisdiction** to continue to Jersey;
 - any necessary corporate authorisation for its continuance to Jersey have been given; and
 - once registered in Jersey it will cease to be incorporated in its **original jurisdiction**;
- a certificate from a director of the **foreign company** certifying that:
 - the interests of its shareholders and creditors will not be unfairly prejudiced by its continuance to Jersey; and
 - it satisfies the solvency conditions mentioned in *Eligibility* above; and
- the application fee (currently £500).
- If the **JFSC** is satisfied that the application complies with the **Law**, it will approve the application and deliver the application documents to the registrar of companies who will:
 - register the application documents;
 - issue a certificate of continuance; and
 - send a copy of the certificate of continuance to the regulator in the **foreign company's original jurisdiction**.

Once the registrar of companies issues a certificate of continuance, the **foreign company** becomes a company incorporated under the **Law**.

Timing

Once the application is filed with the **JFSC**, if it is in order, it is normally approved by the **JFSC** within five working days.

The overall timing of the continuance process is driven by the requirements of the **foreign company's original jurisdiction**. As a general guide, it typically takes between four and six weeks to complete a continuance to Jersey.

Effect of continuance

The **foreign company's** continuance, as a company incorporated under the **Law**, does not affect its continuity as a body corporate or its assets, rights, obligations or liabilities.

Accordingly, once a **foreign company** is incorporated under the **Law**, it continues to:

- own all property and rights which it owned;
- be subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which it was subject; and

- be subject to, or entitled to pursue, all actions and other legal proceedings in which it was involved, immediately before it was incorporated under the **Law**.

Solvency statement

The solvency statement mentioned under *Procedure* is as follows.

Having made full inquiry into the affairs of the **foreign company**, each director and proposed new director reasonably believes that:

- the **foreign company** is and, if the application to continue is granted, will upon the issue to it of a certificate of continuance be, able to discharge its liabilities as they fall due; and
- having regard to the:
 - prospects of the **foreign company**;
 - intentions of the directors with respect to the management of the **foreign company's** business; and
 - amount and character of the financial resources that will in the director's view be available to the **foreign company**,

the **foreign company** will be able to:

- continue to carry on business; and
- discharge its liabilities as they fall due, until the expiry of the period of 12 months immediately following the date on which the solvency statement is signed.

Offences

Under the **Law**, it is an offence for a person to:

- make a solvency statement without having reasonable grounds for the opinion expressed in it; or
- knowingly or recklessly provide the **JFSC** with any information or document in connection with a continuance which is false, misleading or deceptive in a material respect.

If a person commits either offence, on conviction, the person is liable to a fine, imprisonment or both.

Terms used

foreign company means a body corporate incorporated in a jurisdiction outside Jersey.

JFSC means the Jersey Financial Services Commission.

Law means the Companies (Jersey) Law 1991.

M&A means memorandum and articles of association.

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original jurisdiction means the foreign jurisdiction in which a **foreign company** is incorporated before its continues to Jersey.

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About this guide

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