

GUIDE TO THE CONTINUANCE OF A COMPANY IN JERSEY

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PREFACE

Pursuant to the provisions of Jersey law, a company incorporated outside Jersey may apply to the Jersey Financial Services Commission for authorisation to continue as a body incorporated under the laws of Jersey. This Guide explains the process that should be followed and documents to be provided in support of such application.

It is important to note that the proposed activities of the continued company may result in a need for other consents, permits or registrations pursuant to, for example, the Financial Services (Jersey) Law 1998, the Collective Investment (Jersey) Law 1988, the Banking Business (Jersey) Law 1991 or the Insurance Business (Jersey) Law 1998.

It is recognised that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they should be addressed to any member of the team, using the [contact information](#) provided at the end of this Guide.

Appleby

Jersey

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1. INTRODUCTION

The provisions of Jersey law which are relevant to continuance are set out in Articles 127(H) through 127(Y) of the Companies (Jersey) Law 1991, as amended (the **Law**). The Law provides that a company which is incorporated outside Jersey may apply to the Jersey Financial Services Commission (**JFSC**) for authorisation to seek continuance as a body incorporated under the laws of Jersey, if it is authorised to make such application by the laws of the jurisdiction under which it is incorporated. However, application cannot be made in respect of an overseas company which is insolvent, *en désastre* or in the process of being wound up or liquidated, it has entered into a compromise or arrangement with a creditor which is in force or in respect of which a receiver or administrator has been appointed.

2. APPLICATION TO THE JFSC

An application to the JFSC for authorisation to seek continuance of an overseas company in Jersey must be accompanied by:

- a certified copy of the existing constitutive documents of the overseas company;
- articles of continuance setting out such amendments to the constitutive documents of the overseas company as are necessary to conform to the laws of Jersey. These will need to be drafted by legal advisers in Jersey and reviewed in the existing jurisdiction of incorporation;
- a statement of solvency in the required form (see below);
- the name under which it is proposed to continue the overseas company as a company incorporated under the Law;
- details of the directors and secretary (both at the time of the application and upon the company's continuance as a Jersey company);
- such other information as the Jersey Registrar of Companies (Registrar) would require on an application for incorporation of a Jersey company (this would extend to the proposed purpose of the continued company);
- an application to the JFSC by a body incorporated outside Jersey for consent to be continued as a company incorporated under the law of Jersey (Form C100);
- such other documents and information as may be prescribed or as the JFSC may require in respect of a particular application; and
- such application fee as may be prescribed, currently being £500.

The application to the JFSC must also be accompanied by evidence, satisfactory to the JFSC, of the following matters:

- (a) that the laws of the jurisdiction in which the company is currently incorporated allows its continuance in Jersey as a body corporate incorporated under the Law;
- (b) all approvals which are required to be given to the application under the constitution of the overseas company or in the existing jurisdiction of incorporation have been given;
- (c) if a certificate of continuance is issued, the overseas company will cease to be incorporated in the existing jurisdiction of incorporation;
- (d) if the certificate of continuance is issued, the interests of the members and the creditors will not be unfairly prejudiced. (This may require a comparative analysis of how the legal frameworks in Jersey and the existing jurisdiction of incorporation treat the rights of members and creditors, for example, under the respective insolvency and taxation legislation); and
- (e) that the company is not prevented from making the application on the basis that the company is being wound up, in liquidation, subject to a declaration under the Bankruptcy (*Désastre*) (Jersey) Law 1990 or insolvent, alternatively on the basis that a receiver, manager or

administrator has been appointed, or the company has entered into a compromise or arrangement with a creditor and that compromise or arrangement is in force.

Items (a) to (e) should be satisfied by an appropriate opinion from legal counsel in the foreign jurisdiction from which the company will be continued.

3. **STATEMENT OF SOLVENCY**

A statement of solvency must be signed by each person who is a director of the applicant stating that, having made full inquiry into the affairs of the overseas company, the director reasonably believes:

- that the applicant is and, if the application is granted, will upon the issue to it of a certificate of continuance be able to discharge its liabilities as they fall due; and
- that, having regard to:

the prospects of the company, the intentions of the directors with respect to the management of the company's business, and the amount and character of the financial resources that will in the directors' view be available to the company, the 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 statement is signed.

A statement of solvency should also be signed by each person who is to be a director upon continuance stating he has no reason to believe anything in the statement is untrue.

A director, or a person who is to be a director, is guilty of an offence if they make a statement without having reasonable grounds for the opinion expressed.

4. **CONTINUANCE**

Provided that the application complies with the Law that the proposed name is not objected to by the Registrar and that all other consents required under Jersey law have been given, the JFSC may, in its absolute and unfettered discretion, grant the application.

If it does grant the application, the JFSC will inform the Registrar that it has granted the application and will deliver the documents accompanying the application to the Registrar. The Registrar will then register the application and issue a certificate of continuance. A copy of the certificate of continuance will also be sent to the appropriate official or public body in the jurisdiction of the overseas company.

When an overseas company is issued with a certificate of continuance it becomes a body corporate under the Law. The constitutive documents of the overseas company, as amended by the articles of continuance, will become the memorandum and articles of association of the continued Jersey company. All property and rights of the overseas company shall be the property and rights of the continued Jersey company, the continued Jersey company shall continue to be subject to all liabilities, contracts, debts and obligations to which the overseas company was subject and all actions and other legal proceedings which, immediately before the issue of the certificate of continuance, were pending by or against the overseas company may be continued by or against the continued Jersey company.

5. **CERTIFICATE OF CONTINUANCE**

The certificate of continuance issued by the Registrar is evidence that the continued Jersey company is incorporated under the Law, has complied with the requirements of the Law relating to its continuance and states whether it is a private company or public company.

The continuance of a company incorporated in Jersey to an overseas jurisdiction follows a similar procedure whereby the continuance must be authorised by the JFSC. For more information, please refer to Appleby's "Guide to Continuance of a Jersey Company Overseas" which is available on the Appleby website.

For more specific advice on continuance of a company in Jersey, we invite you to contact one of the following:

Jersey

Wendy Benjamin

Partner, Group Head, Jersey

Corporate

+44 (0)1534 818 057

wbenjamin@applebyglobal.com

Andrew Weaver

Partner

Corporate

+44 (0)1534 818 230

aweaver@applebyglobal.com

James Gaudin

Partner

Corporate

+44 (0)1534 818 337

jgaudin@applebyglobal.com

For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).