

Company migration - how Guernsey has refined the practicalities of the migration process

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The numbers speak for themselves - the net asset value of funds under management and administration in Guernsey grew by 12.5% in 2016, with growth in both open-ended (8.5%) and closed-ended (13.37%) funds categories as well as non-Guernsey schemes (12.92%).

This continued success of Guernsey's investment funds sector - against a backdrop that included some global financial and political instability as well as the Brexit vote and the unexpected result of the US Presidential election - shows why so many from the financial services sector outside Guernsey (both onshore and offshore) are increasingly attracted to the jurisdiction's offering.

Guernsey's success has been underpinned by its long-standing strategy of having a clear and unwavering focus on its regulatory regime - striking a pragmatic balance between requiring high standards consistent with modern international norms and expectations where justified and relevant while avoiding excessive and bureaucratic requirements which unnecessarily fetter genuine business opportunities and impose unnecessary time and cost. This is an approach that has seen endorsement from a host of international bodies including the IMF, OECD, Moneyval and ESMA.

In addition, the shadow of Brexit that hangs over so much of UK and EU political discourse could yet prove a positive opportunity for the island - as a jurisdiction with a long history and great experience as a recognised equivalent "third country" vis a vis the EU, Guernsey offers stability and certainty for fund managers.

The outcome of the negotiations on the UK's separation from the EU - which have formally begun now that Article 50 of the Lisbon Treaty has been triggered - is unclear, and many UK-based fund managers are left unsure whether their fund structures will continue to allow access to EU investors.

In contrast, Guernsey's ability to offer access to EU investors via existing National Private Placement Regimes and its endorsement by ESMA for an AIFMD passport, gives fund managers a

higher degree of certainty.

But it's not enough for Guernsey to be an attractive and sustainable option that can easily be marketed to investment funds managers - the technical and administrative process of relocation of existing structures to Guernsey has to be a practical and effective one as well.

The good news is that regulators and legislators in Guernsey have had the foresight to introduce and refine a streamlined company migration regime that makes the administrative process of shifting an existing corporate structure from another jurisdiction to or from Guernsey a simple, painless and easy undertaking - without the added complexity of winding up the original company, establishing a new one in Guernsey, and transferring the assets across.

Importantly, the Guernsey company migration process is not restricted by the nature, type or activity of the migrating company in question - regulated companies (including those which are subject to financial services regulation such as investment fund management companies and corporate investment fund structures themselves) are able to benefit from the migration regime.

In addition, law firms such as Ogier which specialise in this kind of relocation process have developed real experience and expertise in a simultaneous approach so as to facilitate concurrently both the migration process and the licensing process necessary for regulated businesses such as those in the investment funds sector, adding to the ease and simplicity of the journey.

The process of migrating a foreign-incorporated company to Guernsey is governed by the the Companies (Guernsey) Law, 2008 (as amended) (the **Companies Law**), and requires a formal application to the Registrar of Companies (the **Registrar**). In cases where the overseas company intends to be, or is already equivalent to, a “supervised company” (essentially a company which requires regulation by the Guernsey Financial Services Commission (the **Commission**)), written consent from the Commission must also be obtained.

The Companies Law requires an overseas company migrating into Guernsey to provide evidence as to certain basic, factual information about the company, including: a copy of the incorporation certificate in the original domicile; a copy of the proposed memorandum and articles of incorporation in Guernsey; the names and details of the current directors of the company; the names and details of the directors of the company once it has migrated to Guernsey; details of the registered office in the original jurisdiction and the registered office in Guernsey; a statement of (where relevant) share capital, the aggregate amount of guarantee members, or in the case of a cellular company a statement from the Commission that the company is not prohibited from being registered.

A migrating company must also obtain the consent of its members and provide a director's declaration of compliance - a migrating company cannot be in liquidation or any other insolvency process, must be able to satisfy solvency requirements and must not be able to issue bearer shares.

Depending upon the company's original jurisdiction of incorporation, the Registrar may require a simple legal opinion from a foreign lawyer that demonstrates that the company in question will cease to be incorporated and registered in its original jurisdiction from the date of its Guernsey registration.

The formal application for a company's migration to Guernsey must be made to the Registrar via a regulated corporate services provider in Guernsey - when the necessary documentation is provided, the Registrar will register the memorandum and articles of incorporation in the Register of Companies (the **Register**), issue a certificate of registration and allocate a registration number to the company. At that point, the company is a Guernsey registered company, subject to all the provisions of the Companies Law and treated as if originally incorporated in Guernsey for all Guernsey legal purposes. Moreover, the Companies Law provides expressly that the migration does not create a new legal entity; the migration does not affect the continuity of the legal person constituted by the company; and following the migration the company remains entitled to all property, assets and rights of the company prior to the migration and subject to all liabilities and obligations of the company prior to the migration.

Underlying all of this is a pragmatic and effective approach from the Guernsey Registrar which strikes a balance between establishing effective checks and reducing complexity as far as possible. Alan Bougourd, the Registrar of Companies, highlights that approach.

He said: "Guernsey offers an efficient and effective process for the inward migration of companies and costly and time consuming administrative steps - such as legal opinions - are not generally required. We liaise closely with your corporate services provider to ensure applications are processed in a timely manner and at a date that suits the applicant."

In the case of a supervised company - such as an investment fund management company or a corporate investment fund - the above steps under the Companies Law are supplemented by the relevant regulatory application process with the Commission. While strictly speaking it is a separate process, as a matter of practice in Ogier's experience these two work streams can be combined and run in tandem to minimise the time and cost involved. Both the Registrar and the Commission are familiar with the migration of supervised companies and have proved very practical and supportive in ensuring that legal and regulatory requirements are fully satisfied, but in a manner which accommodates clients' needs.

By way of example, our firm is currently acting for a supervised company operating in the investment fund market which is migrating to Guernsey from another offshore jurisdiction, and is carrying out both the corporate migration process and the regulatory approval application process with the Commission simultaneously, which minimises cost and disruption and will ensure that the business is able to continue its operation on as seamless a basis as possible.

That point is one that is making a difference - as Stephanie Coxon from PwC sets out: "There's

significant interest, particularly in the investment funds sector, in Guernsey as a base from which to operate. The company migration regime is an important part of that overall offering in terms of the practical process of shifting an operation to the island.

"Our experience is that, in contrast to other places, the Guernsey regime is a straightforward one, and it's particularly important to be able to run the company migration and regulatory consent processes simultaneously. A recent example is VinaCapital Vietnam Opportunity Fund Limited which was one of the most high profile migration of a listed investment fund from the Cayman Islands to Guernsey in 2016."

Ultimately, the practical and administrative process of migrating a company to Guernsey is part of the overall package of presenting the island as an attractive home for investment funds businesses seeking a new home.

From a reputational point of view, Guernsey is exceptionally well-placed - a hard-earned and thoroughly-deserved international reputation for the quality and responsiveness of its legislative and regulatory framework is borne out by the positive ESMA and Moneyval evaluations of its anti-money laundering and combating the financing of terrorism apparatus, and by political endorsements from former UK Prime Minister David Cameron and EU Tax Commissioner Pierre Moscovici - who described Guernsey last January as an "important partner of the EU" in respect of the war against tax evasion, fraud and abusive tax avoidance.

From a commercial point of view, the growth of net asset value of funds under management and administration, and the security of Guernsey's position as a third-country trading into the EU at a time of uncertainty over Brexit, demonstrate that the island is a jurisdiction that breeds and nurtures success.

Finally, from a practical point of view, the smooth process of company migration - supported by the simultaneous regulatory process - means that the technical aspects of relocating to Guernsey are convenient and straight-forward.

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