

Company Continuance/Migration/ Corporate Mobility

IACA - Lake Tahoe, Nevada - May 2006

ECRF - Amsterdam, Netherlands - June 2006

Background

Continuance, migration, transfer of seat, re-domiciliation, corporate mobility etc. these are terms which cover an area of corporate law which has until now been largely dealt with at a national level. Changes in European law, business borders, have focused not only international but global attention on how to deal with the different ways a body corporate may move from one jurisdiction to another.

At what forum could this subject be discussed or where can like projects be converged. In Europe there is the European Commerce Registry Forum ("ECRF") in Asia there is the CRF and in the USA there is the IACA. It is hoped that with these bodies working together a more standard approach could be achieved.

What has brought the issue to the forefront?

The launch of the Societas Europaea ("SE") a European company capable of moving from one European country to another has required jurisdictions to consider the effects of migration. A large number of European countries currently do not allow company migration.

Jurisdictions within Europe who do allow company migration have been concerned with the difference between each other and the possibility of companies moving to avoid creditors (Creditor arbitrage). There are also problems with duplicate naming, for example, what happens if a company wishes to migrate to a jurisdiction where a company with the same name already registered.

Some jurisdictions will not register a migrating company until proof has been given that the company has de-registered from the other jurisdiction. Other jurisdictions will only deregister a company once that company is registered in the new jurisdiction. There is the possibility that some companies may never migrate while jurisdictions maintain their policies. Some companies may fall into a void where they are no longer registered on one register nor re-register on another. Some jurisdictions allow provisional registration while others allow dual registration.

What is a standardised continuance certificate?

Those jurisdictions that currently allow company migration have started to look at a standard continuance certificate. This certificate will provide a clear audit trail for any search on a particular company. It will also provide a core section of common data. This data would be equivalent to that shown on an individual's passport. Each line would be numbered so that you will know what that line is irrespective of the language it is written in. There will always be a "Rosetta Stone" to translate the certificate.

Agreed processes between different jurisdictions

A number of Jurisdictions have set up formal agreements between their registries, however most communication between registries remains informal. The Maltese Registry has agreed to inform the Jersey Registry when a Jersey company is registered in Malta. This is achieved by faxing/emailing a copy of an incorporation certificate to Jersey. There is no legislation backing this process.

It has been suggested at a number of forums that formal agreements need to be set up between registries. Memorandums of understanding.

What is a Memorandum of understanding ("MOU")?

A number of bodies, such as financial regulators, globally agree MOUs with each other. The MOU is a formal agreement demonstrating how they will deal with each other

These documents are not legally binding; they demonstrate a jurisdiction's commitments to communication.

What would a typical MOU contain?

A typical MOU could contain:

- Who to contact, name and address etc;
- What information can be passed;
- Under what legislation this information can be passed under;
- Time scales for services;

Information, which, could be shared, could be contact details for corporate continuance, branches, director details, disqualified director details, registration details and other information agreed with each individual jurisdiction.

How can we progress this issue together?

Input towards a simple (passport style) certificate of continuance acceptable to the global community would be useful. Completing the questionnaires on jurisdictions migration laws would enable a library to be established which could then be used by all jurisdictions. It would also show jurisdictions where the differences between jurisdictions are and where we could all be more standard.

Joint contact

The continuance questionnaires can be sent to j.lamb@jerseyfsc.org. These will be posted on to the ECRF website under three headings:

- ECRF members
- CRF member
- IACA members

To gain access to the member's section of the ECRF you require a password and PIN. The password is MEMBER and the PIN is 500205.

If we were to pool our member details we would also be close to creating a Register of registers comprising all the corporate registries of the world, a global Registry. This could be made available through the ECRF website.

The ECRF website is www.ecrforum.org