

Redomiciliation of Companies In and Out of Cyprus

The Cyprus Companies Law, Cap. 113 (the Law)

The Law was amended on 28th of July 2006 pursuant to a decision of the House of Representatives of the Republic of Cyprus (Law 124 (I)/2006) to facilitate the continuation of foreign companies in (transfer in) and the continuation of foreign companies out (transfer out) of Cyprus, provided the jurisdiction of incorporation permits the continuation of such company out of the jurisdiction (the “Redomiciliation”). Redomiciliation is an out of court process and means that the same company continues as a company in or outside of Cyprus and the process does not involve its dissolution. The company remains and is considered to be the same legal entity; albeit governed by the laws of a new jurisdiction.

A. Transfer In

Companies may redomicile in Cyprus for a number of reasons, including, inter alia to take advantage of the widespread double tax treaties currently in force and the Cypriot favorable tax regime.

In order to affect the continuation of a foreign company in Cyprus, certain preliminary matters must be considered:

- The laws of the country in which the foreign company is registered must permit redomiciliation.
- The documents of incorporation of the foreign jurisdiction company (memorandum (“MA”) or articles of association (“AA”)) must contain a continuation provision that

allows the company to continue in Cyprus. If not, the AA will have to be amended to include this provision.

- If the foreign jurisdiction company carries out a licensed activity in the foreign jurisdiction, it will need to satisfy local licensing criteria for the relevant activity in Cyprus.
- Importantly, Cyprus law does not recognise bearer shares, therefore the share capital of the company will have to be registered shares.
- The name of the company under which it will continue in Cyprus needs to end with the word “Limited”. Therefore, possible names will need to be chosen with which the foreign company will continue in Cyprus. An application will be made in advance to the Cyprus Registrar of Companies (the “**Registrar**”) to obtain approval of proposed names.

In accordance with section 354C of the Law, the following documents must be prepared:

- Board resolution authorizing and approving inter alia the redomiciliation of the foreign company in Cyprus;
- Declaration of solvency which needs to be signed and sworn before a Cyprus Court by a duly authorized director of the foreign company confirming inter alia that (i) a notification has been made to the foreign authorities; (ii) no administrative or criminal proceeding have been initiated against the foreign company for infringement of the laws of the foreign country in which it was incorporated; (iii) the company is solvent; and (iv) there are no circumstances that could

negatively affect, in a substantial manner, the solvency of the company within a 12-month period beginning from the date of submission of the application to the Registrar.

- A shareholders resolution (special resolution) approving the new MA and AA of the foreign company as the new corporate documents of the company when registering in Cyprus.

Application process:

- Once the above documents are obtained, their translation into the Greek language must be arranged. Thereafter, ME1, MEA and ME4 Form must be completed and filed at the Registrar together with all necessary documents. The Registrar will examine the application and will issue a temporary certificate of continuation (the “**Temporary Certificate of Continuation**”). It is from this moment that the company will be considered a legal person incorporated in Cyprus and will be provisionally registered as a company continuing in Cyprus, subject to all obligations under the Law and capable of exercising all the powers of a company duly registered in Cyprus.
- Following the issuance of the Temporary Certificate of Continuation, the foreign authorities will have a period of 6 months to submit proof to the Registrar that the company has been de-registered from the foreign jurisdiction. Thereafter, the Registrar will proceed to issue a **Permanent Certificate of Continuation**, evidencing the registration of the company as a continuous company in Cyprus.

B. Transfer Out

A Cyprus company may redomicile abroad upon obtaining the Registrar’s consent and provided the laws of the country in which the company wants to redomicile permit redomiciliation.

In order to affect the continuation of a Cyprus company abroad, certain preliminary matters must be considered:

- The MA and AA of the company must contain a provision allowing the company to change its seat. If no provision for redomiciliation exists, then the Cypriot company must amend its AA to include such provision.
- Where the company is carrying out in Cyprus or from Cyprus activities which require a specific permit, the Cypriot company must obtain consents from the relevant authorities for the continuation of the company abroad.
- The company must ensure that it does not owe any taxes or custom duties and that all annual fees payable under the Law have been paid. Further, no court cases or liquidation procedures should be pending against the company and the relevant applications should be filed for the purpose of obtaining Tax, VAT and Social Insurance clearance certificates.

In accordance with sections 354K – 354L of the Law, the following documents must be prepared:

- A shareholders resolution (special resolution) of the company approving the interim financial statements of the company and the redomiciliation.
- Board Resolution approving inter alia the redomiciliation conditional upon the special resolution passed by the shareholders.
- Declaration of solvency (ME3 Form) which must be signed and sworn by at least two duly authorized directors of the company, or if the board consists of one director, by the sole director of the company, confirming that the directors are not aware of any matters that may negatively affect the solvency of the company within a period of 3 years.

A notice stating the facts of the special resolution referred to above should be published in 2 daily newspapers of wide circulation in Cyprus and a copy of such publications must be submitted to the Registrar within 14 days from the date of the publications. The Registrar shall grant its consent to the continuation of the company in a foreign jurisdiction provided that 3 months have elapsed from the date of the publications and no creditor has filed an objection to the redomiciliation during this 3-month period.

Application process:

- An application (ME2 Form) must be submitted to the Registrar together with a number of documents as required by Law.
- When the above documents are submitted, the Registrar will examine the application and provided that (i) 3 months have elapsed from the date of the publications referred to above; (ii) no creditor has objected to the redomiciliation; and (iii) the company has no outstanding duties/fees/annual returns, the Registrar will proceed to issue a **certificate of approval** for the transfer out of the company.
- Thereafter, a certificate of continuation needs to be obtained from the registry in the foreign jurisdiction that the Cypriot company proposes to redomicile ("**Certificate of Continuation**").
- The Certificate of Continuation will need to be filed immediately with the Cyprus Registrar, which will in turn proceed to strike off/delete the company from the Cyprus register and issue a certificate of deletion ("**Striking off Certificate**"). At that point, the company ceases to be a registered company in Cyprus from the date on which the continuation in the other approved country comes into force.
- Lastly, the Striking Off Certificate will be sent to the foreign authority where the final

steps for the redomiciliation are put into force.

Disclaimer

The above is intended to provide a brief guide only and does not constitute legal advice.

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