

RE-DOMICILIATION OF FOREIGN COMPANIES INTO CYPRUS

Transfer of a company's "seat of incorporation"

Many jurisdictions allow foreign companies to change their jurisdiction of incorporation. The legislation usually permits the transfer of a company's "seat of incorporation" into or out of the jurisdiction - a process known as "re-domiciliation". The alternative to re-domiciliation is to liquidate the existing company and transfer its portfolio of assets to an entity incorporated for the purpose in the new jurisdiction.

Cyprus is included amongst the jurisdictions which allow re-domiciliation in and out of Cyprus and has achieved it by enacting an amended Companies law and a set of regulations explaining its practical application.

In accordance with the Companies Law Cap. 113, by which:

- foreign companies can be re-domiciled in Cyprus, and
- Cyprus registered companies can be re-domiciled abroad

A summary of the provisions of this law and the issued regulations in respect to foreign companies being re-domiciled in Cyprus is provided below.

This enactment and subsequent regulations create new opportunities to international investors and traders as foreign companies can now become tax resident of Cyprus and take advantage of the favourable features of the Cypriot tax jurisdiction being:

- The lowest corporate tax rate in Europe – 10%
- Tax-exempt dividend income (subject to non-stringent conditions)
- No withholding taxes on payments of dividends, interest and royalties irrespective of recipient
- No taxation on profits from the sale of securities (no minimum holding period, percentage etc)
- No taxation on profits of foreign permanent establishments
- No taxation on the liquidation of a Cypriot company
- Wide tax treaty network
- Unilateral tax credit relief irrespective of the existence of a tax treaty
- No substance, debt-equity and thin capitalization rules
- Full adoption of the EC Directives and many more

The successful Cypriot tax regime can now be utilised by foreign companies without the need to fully restructure e.g. transfer their assets and liabilities to a newly incorporated Cyprus company and liquidate the former, thus avoiding possible tax and other implications in the country of origin. An additional and equally important advantage is that the business of the company can continue without interruption and hence there will be a significant saving in administration and other costs.

Application for re-domiciliation

A foreign company registered in a country which allows re-domiciliation and whose Memorandum and Articles of Association provide for the possibility of re-domiciliation, may apply to the Registrar of Companies in Cyprus to be registered in Cyprus as a continuing company pursuant to the provisions of the Companies Law Cap 113.

The process from a practical perspective is really simple and expedient and is summarised as follows:

- The company needs to appoint a local approved representative to deal with the re-domiciliation process in Cyprus.
- The approved representative will prepare an application for re-domiciliation (form “ME 1”) and shall list the accompanying documents to be filed with the application as described below.
- The approved representative or a duly appointed director of the company will also file an affidavit confirming the following:
 - (a) the current company name of the foreign company and the name under which it will continue its existence in Cyprus
 - (b) the country or jurisdiction where the foreign company is registered
 - (c) date of registration of the foreign company

- (d) the resolution, or other similar document, authorising the registration and continuation of the existence of the foreign company in Cyprus

- (e) that the foreign company gave an official notice to the authority of the country of its incorporation of its decision to be re -domiciled in Cyprus. Proof of such official notice should be provided with the affidavit.

- (f) that no criminal or administrative proceedings have been initiated against the foreign company with respect to the infringement of the laws of the country where it was incorporated

This document is named “ME A” and should be filed together with ME 1 in order to commence the procedure of re-domiciliation.

- There is a minimal government fee of €187,95 (€102,52 for ME 1 and €17,09 for ME A) and an additional €85,43 for the accelerated procedure payable with the application form.

- Once the application and its accompanying documents are approved by the Registrar of Companies, the foreign company will obtain a temporary certificate of continuity and will be able to continue its business activities subject to the Cypriot Companies Law and Tax legislations.

Documents to accompany the application for re-domiciliation

The following documents should be submitted by the authorised representative together with the application form for the re-domiciliation of the foreign company into Cyprus:

- Resolution, or other similar document of the foreign company, authorising the foreign company to obtain registration in Cyprus as a continued legal body
- copy of the amended Memorandum and Articles of Association of the foreign company in accordance with the provisions of the Cypriot Companies law
- certificate of good standing, or other similar document as the case may be, issued by the appropriate authority in the country of incorporation in original form duly certified and apostilled. The document should be translated in Greek by filing an affidavit at the district court, which should then be submitted to the Registrar of Companies
- ME A as described above
- affidavit by a duly authorised director or representative of the foreign company confirming the financial good standing and solvency of the foreign company
- list of directors of the foreign company and/or the secretary and/or the managers of the foreign company (name and surname/ registered name and any previous names, profession/ business activity, passport or ID number/ incorporation number, DOB/

date of registration, citizenship/country of incorporation, address - depending on whether it is a legal entity or an individual)

- list of the current shareholders/members of the foreign company (same details as in the case of company officials as above), such list being certified in such a manner as the Registrar may require and may accept to be sufficient for the purposes of compliance with the requirements of this Law
- documents illustrating that re-domiciliation is possible in the country of origin and confirmation that the re-domiciliation has been approved by the minimum % of stakeholders (shareholders, employees, creditors etc) as prescribed for in the country of origin.
- any other document as may be requested by the Cypriot Registrar of Companies.

Companies carrying out licensed activities

Companies which carry out licensed activities regulated by legislation in the country of origin and for which similar licences are required in Cyprus, should provide the Registrar with an official permit from the relevant authority in the country of origin.

A foreign company undertaking an activity for which a licence is required in Cyprus, should obtain such a licence in accordance with the Cypriot laws before it commences carrying out its business activities. Such companies include Financial Services Companies, Insurance Companies and Banking Institutions.

Public companies

In case the foreign company is a public company, then the following must be produced in addition to the above:

- the prospectus of the foreign company, once the shares have been offered to the public
- if it is listed in a Stock Exchange, evidence of consent of the foreign Stock Exchange allowing re domiciliation in Cyprus
- list of present shareholders duly certified and apostilled.

Registration in Cyprus

The Registrar may instruct the foreign company to change its name with which it aims to continue its existence in Cyprus, in case of resemblance with a registered company or a trademark. The foreign company should then amend all the relevant documents accordingly before filing them with the Registrar. Upon examination of all the documentation, the Registrar provisionally registers the foreign company in the Cypriot companies' registry.

From the date of issuance of the temporary registration certificate, the foreign company:

- is considered as a legal entity duly incorporated in accordance with the laws of Cyprus and is temporarily registered in the Republic for the purpose of the Companies Law Cap 113
- has the same liabilities and is eligible to exercise all powers that registered companies have according to the laws of Cyprus
- the constituent document of amendment is considered as the Memorandum of the company and where applicable as its Articles of Association
- the registration of the foreign company is not lawful and is void if it is done:
 - (a) for the purpose of establishing a new legal entity
 - (b) to damage or affect the continuance of the foreign company as a legal body
 - (c) to affect the property of the foreign company and the way this company will maintain its assets, rights, debts and obligations
 - (d) to render ineffective any legal or other proceedings that were initiated or will be initiated against the foreign company
 - (e) to acquit or prohibit from any conviction, judgement, opinion, debt, order or liability against the foreign company or its officials or shareholders

Within six months from the issuing of the temporary registration certificate, the foreign company must present a Certificate or any other similar document from the relevant authority of the country of its incorporation and any other evidence as may be requested, to the Registrar of Companies showing that it has been removed from the companies' registry in the country of origin. This evidence is filed together with the form "ME 4", which is signed by the secretary of the company accompanied by the temporary registration certificate and the payment of €17,09 upon filing.

In the event that the foreign company does not present such proof, the Registrar may remove the foreign company's name from the companies registry and inform accordingly the relevant authority in the foreign company's country of origin or may allow a further period of three months for the foreign company to provide the evidence required provided that there is reasonable cause for the initial failure to do so.

Once all the above documentation is in order, the Registrar will issue the certificate of continuity confirming that the foreign company has been registered as a company continuing in the Republic.