

Introduction

On 28th of July 2006 the Cyprus Companies Act, Cap 113 has been amended so as to allow for the redomiciliation of foreign companies into Cyprus and of Cyprus companies out of Cyprus.

In brief, the Law practically enables both for foreign companies to transfer their registered office from their home jurisdiction to Cyprus, as well as for Cypriot companies to transfer their registered office to foreign jurisdictions.

Unlike the liquidation of a company and the incorporation of a new one from scratch in another jurisdiction, a redomiciliation allows for a seamless and less complicated procedure, where the redomiciled company maintains its legal identity and continues its activities intact.

A redomiciliation of a company to another jurisdiction could be effected for a variety of reasons, including but not limited to:

- Relocation in an EU jurisdiction and obtaining access to all EU Directives
- Benefiting from a more attractive tax and legal environment
- Aligning the company's place of registration with its shareholder's base
- Move to a more practical and/or efficient international financial centre
- Access to specialist capital markets

Tax residency: Noting that the redomiciliation of a company does not automatically also move or change its tax residency. This needs to be checked and addressed separately and it is usually dependent on the place of management and control of the company.

Redomiciling of a company to/from Cyprus

Set out below are outline details for:

1. Redomiciliation of foreign companies to Cyprus
2. Redomiciliation of Cyprus companies to other countries

1. Redomiciliation of foreign companies to Cyprus

A foreign company can apply to the Registrar of Cyprus Companies to continue its existence under the jurisdiction of Cyprus, only if its Memorandum specifically provides for this.

Procedure

Private Company

An application must be submitted by the foreign company to the Registrar of Cyprus Companies together with the documents that are detailed in Appendix 1.

Public Company

If the foreign company is a public company, in addition to the documents listed in Appendix 1, it must also submit to the Registrar of Cyprus Companies the following documents:

- If the foreign company has offered its shares or bonds to the public, the most recent invitation.
- If the foreign company is a company which has its shares listed at a recognised stock exchange, it must provide the Registrar of Cyprus Companies with the consent of the relevant authorities of this stock exchange in continuing in Cyprus
- Register of the existing members of the foreign company duly certified as it may be requested by the Registrar of Cyprus Companies

Registration

Upon examining the above documents, the Registrar of Cyprus Companies will temporarily file these and issue a Temporary Certificate of Continuation confirming therefore that the foreign company is temporarily registered as continuing in Cyprus as from that date.

Within a period of six months from the date of issue of the Temporary Certificate of Continuation, the foreign company must submit to the Registrar of Cyprus Companies evidence from the appropriate authorities of its country that it has ceased being a company registered in that country.

If no such evidence is submitted, the Registrar of Cyprus Companies may delete the name of the foreign company from its registry and inform the foreign authorities accordingly, or may grant an extension of a further three months for submission of the evidence.

Upon presentation of the above evidence to the Registrar of Cyprus Companies that the Company has ceased to be registered in the foreign Registry and upon submitting the Temporary Certificate of Continuation, the Registrar of Cyprus Companies will issue the Certificate of Continuation.

2. Redomiciliation of Cyprus companies to other countries

A Cyprus company, after having obtained the consent of the Registrar of Cyprus Companies, can apply to a foreign country to continue its existence under the jurisdiction of that country, provided the laws of that country allow it.

Procedure

Private Company

To obtain the consent of the Registrar of Cyprus Companies, an application must be submitted accompanied by a statement signed by two directors of the company or in the event whereby the company has only one director, by one director, confirming the following:

- 1) The name of the company under which it wishes to be registered in the foreign country
- 2) The country of the proposed registration and the address of the appropriate authority
- 3) The date that it is proposed to establish the seat of the company at the foreign country
- 4) The Registrar of Cyprus Companies will only approve the continuation of the company at another country if the following conditions are met:
 - a) The application must be approved by a special resolution of the members
 - b) Before the general meeting of the members, the directors must have present interim Financial Statements showing market value of assets
 - c) The special resolution and the interim accounts must be submitted to the Registrar of Cyprus Companies to be filed at the company's file
 - d) The company must submit to the Registrar of Cyprus Companies a statement of solvency attesting that the directors are not aware of any matters that may negatively affect the solvency of the company within a period of three years. Such a statement must be signed by at least two directors or if there is only one director by one director. Each director of the company which will swear the affidavit without being aware of facts of which he should have been aware of in order to justify the affidavit, will be guilty of an offence punishable with one year's imprisonment or a fine not more than EUR35,000
- 5) If the company is carrying out in Cyprus or from Cyprus activities which requires specific permit, it must present to the Registrar of Cyprus Companies the consent of the relevant authority for the continuation of the company abroad
- 6) There are no pending court cases or liquidation procedures against the company
- 7) All taxes and duties must be paid by the company
- 8) The relevant fee must be paid

Public Company

If the company is a public company and its shares are listed in a recognised stock exchange, it must submit to the Registrar of Cyprus Companies the consent of the stock exchange of the Cyprus Council of Securities and Exchange Commission.

De-registration

The company must publish a notice of the special resolution in two daily newspapers and proof of the publication must be submitted to the Registrar of Cyprus Companies within fourteen days from the date of the publication.

The Registrar of Cyprus Companies allows for three months during which any creditor of the company may submit an objection to the court for the continuation of the company abroad. The court may approve the continuation of the company or prohibit it.

Provided there is no objection and provided that all the above mentioned conditions are met and all the above mentioned documents submitted, the Registrar of Cyprus Companies will consent to the continuation of the company in a foreign country.

The company must provide a copy of the Certificate of Continuation issued by the foreign Registry to the Registrar of Cyprus Companies and the Registrar deletes its name from its Registry and issues a Certificate of Deletion.

NOTES:

The above is intended to provide a brief guide only. It is essential that appropriate professional advice is obtained. Totalserve Management Ltd will be glad to assist you in this respect. Please do not hesitate to contact us.

APPENDIX 1: Documents needed to accompany application by foreign private company for redomiciliation to Cyprus

An application must be submitted by the foreign company to the Registrar of Cyprus Companies together with the following documents:

- 1) A resolution of the foreign company approving the continuation of the company in Cyprus
- 2) A copy of the memorandum of the foreign company
- 3) A certificate of good standing of the foreign company
- 4) A sworn affidavit by the director of the foreign company confirming the following:
 - The name of the company and the name it wishes to continue in Cyprus. The name must bear the word "limited" at the end. In the event that this name will be considered by the Registrar of Cyprus Companies that it conflicts with the name of an already registered company or with a trade mark, the Registrar may require the foreign company to change its name.
 - The jurisdiction under which it is registered.
 - The date of its registration.
 - That it duly notified the relevant authorities of its jurisdiction of its wish to continue as being registered in Cyprus (the notification should be attached to the affidavit).
 - That there are no civil or criminal proceedings pending against the company in the foreign country.
- 5) A sworn affidavit by the director of the foreign company, confirming the solvency of the company and that he is not aware of any matters which may negatively affect the solvency of the company within a period of twelve months as from the day of the application. The director of the foreign company which will swear the affidavit without being aware of facts of which he should have been aware of in order to justify the affidavit, will be guilty of an offence punishable with one year's imprisonment or a fine not more than EUR35,000
- 6) Certificate of directors and secretary
- 7) Certificate of shareholders
- 8) Any other documents which the Registrar of Cyprus Companies may request to confirm that such an application is allowed by the laws of the country whereby the foreign company is registered and that the consent of the appropriate number of shareholders has been obtained as provided by the laws of the country whereby the foreign company is registered
- 9) If the foreign company is carrying out a specific activity, for which activity a permit is needed by the laws of both the foreign country and Cyprus, then the foreign company must provide the Registrar of Cyprus Companies with an official consent to its continuation in Cyprus by the authorities entrusted with the issuing of the abovementioned permit. This permit should also be obtained by the Cyprus Authorities
- 10) The relevant fee must be paid