



# BDO MALTA

## Relocation of Companies to / from Malta



## Introduction

The Continuation of Companies Regulations 2002 are a set of Rules designed to enable a company or a body corporate constituted outside Malta to be re-domiciled or continued in Malta. The Rules also allow for the re-domiciliation of companies incorporated in Malta to another country. Redomiciliation is allowed if it is made to or from a so-called *approved country or jurisdiction*, namely:

- A European Union member state;
- An EEA country which is not a European Union member state;
- An OECD member state;
- The British Virgin Islands;
- The Cayman Islands;
- Bermuda;
- Gibraltar;
- Isle of Man;
- Guernsey;
- The Bahamas;
- Jersey; and
- Mauritius.

Malta is largely considered as a favourable jurisdiction for companies to migrate to, particularly in view of its attractive tax legislation, warm climate and hard-working labour force. Moreover, a company which has been continued in Malta will be entitled to all the benefits available under Maltese legislation.

## Companies eligible to register

In order for a foreign company to establish its domicile in Malta, the law of the foreign jurisdiction under which the company is registered must allow for the company to be migrated. Furthermore, the company's charter, statutes, memorandum and articles or any such constitutive document must specifically state that the company is able to re-domicile to Malta.

## Registration procedure

A company wishing to re-domicile to Malta must submit a request to the Malta Registrar of Companies. This request is to be accompanied by the under-listed supporting documentation:

- A resolution, or an equivalent document authorising the foreign company to be registered as continuing in Malta;
- A copy of the revised constitutive document of the foreign company which should include all necessary amendments so as to comply with the requirements of Maltese Law;

- A certificate of good standing or equivalent in respect of the foreign company issued by the competent authority in which it was registered. This certificate should confirm that the company is in compliance with the registration requirements of the country of incorporation;
- A declaration that the foreign company is to be registered as continuing in Malta. This declaration is to be signed by at least two directors of the foreign company (unless the board consists of one director), or by at least two persons vested with the administration of the company;
- The declaration must confirm:
  - The name of the foreign company and the name under which it is being continued;
  - The jurisdiction under which it is incorporated;
  - The date of incorporation;
  - The decision to have the foreign company registered as continuing in Malta;
  - That the foreign company has given formal notice to the relevant authority of the foreign country of its decision to be registered as continuing in Malta, evidence of such notice should be annexed to this declaration; and
  - That no proceedings for breach of the laws of the country or jurisdiction of incorporation have been initiated against such foreign company;
- A declaration (also appropriately signed as mentioned above) confirming the solvency of the company. The directors/signatories must also confirm that they are not aware of any circumstances which could negatively affect the solvency position of the company within a period of twelve months;
- A list of directors of the foreign company as well as the company secretary, if any, or of the person/s vested with the administration or representation of the foreign company;
- Any other information that the Registrar of Companies may request in order to satisfy himself in confirming that:
  - The request is permissible under the laws of the foreign country; and
  - The consent of the shareholders, debenture-holders and creditors of the foreign company has been obtained. This consent must be given in terms of law of the foreign country and the constitutive document of the company;
- The appropriate registration fees. In the case of continuations to Malta these fees depend on the authorised share capital of the company as at the date of its provisional registration - these vary between €210 and €2,250.

## Additional requirements for companies carrying out a licensable activity and public companies

### Licensed companies

Companies carrying out licensable activities must obtain consent from the relevant competent authorities in the foreign country.

Furthermore, activities carried out in Malta under any of the following Acts require a specific licence issued by the Malta Financial Services Authority:

- Banking Act (Chap. 376);
- Financial Institutions Act (Chap. 376);
- Financial Markets Act (Chap. 345);
- Insurance Business Act (Chap.403);
- Insurance Business and Other Intermediaries Act (Chap. 404);
- Investment Services Act (Chap 370); and
- Malta Financial Services Authority Act (Chap 330).

### Public companies

Due to the more sensitive nature of public limited companies as opposed to private ones, an additional set of documentation is required when relocating a public company:

- If the company has offered its shares or debentures to the public, a copy of the most recent prospectus or equivalent document will be required;
- If the company is quoted on a recognised stock exchange, consent of the relevant authorities of that exchange will be required for the foreign company to be registered as continuing in Malta;
- The Registrar will also require evidence of the company's current membership (shareholders) or details of the method and form of recording of such membership.

The Regulations also stipulate for foreign companies registered as continued in Malta and the shares of which are held by a foreign nominee or trustee on behalf and in the interest of other persons entitled to the beneficial ownership thereof. In such cases further documentation and requirements apply.

### Provisional Certificate of Incorporation

Upon being satisfied that the documentation provided supporting the request for registration complies with the Regulations and the relevant provisions of the Companies Act, the Registrar of Companies in Malta will issue a Provisional Certificate of Continuation certifying that the foreign company is provisionally registered as continued in Malta.

The effects of such a registration are:

- The company shall continue to be a body corporate under the Companies Act and under the designated name;
- The company shall be provisionally registered for all purposes of law. This means that it will be subject to all obligations and it will be capable of exercising all the powers of a company registered under the Companies Act;
- The constitutive document is considered as the Memorandum and Articles of Association of the company;
- Registration of a foreign company does not create a new legal entity nor does it prejudice or affect the continuity of the company. There is no affect on the property of the company and (the company) shall retain all its rights, liabilities and obligations.

Any legal or other proceedings instituted or to be instituted by or against the company are not rendered defective. Furthermore, registration does not release or impair any conviction, judgement, ruling, order, debt, liability or obligation due or any cause existing against the company or against any member, director, officer or persons vested with the administration or representation of the company.

The company must deregister itself in the foreign jurisdiction within six months from the issue of a Provisional Certificate of Continuation. It must submit documentary evidence to this effect to the Registrar of Companies in Malta.

Failure by the foreign company to provide such documentary evidence shall give the Registrar the discretion to:

- Either strike the name of the company off the register and inform the relevant authorities in the foreign country;
- Or grant a further three month period before proceeding to have the company struck off, upon reasonable cause being shown by foreign company.

### Certificate of Continuation

On the other hand, when documentary evidence that the company has ceased to be registered in the foreign jurisdiction is produced, the company is to surrender the Provisional Certificate of Continuation. The Registrar will then issue a Certificate of Continuation confirming that the company has been registered as continuing in Malta.

Registration in Malta is not permissible when:

- The dissolution or winding up of the foreign company has commenced;
- Insolvency proceedings, arrangements, compositions, recovery proceedings or any other similar proceedings have been commenced by or against the company;

- A liquidator or special administrator of the foreign company or a receiver of its property has been appointed;
- There is a scheme or order under which the rights of the creditors are suspended or restricted; and
- Proceedings have been commenced against the company for breach of the laws of the foreign country.

### Tax Implications of redomiciliation.

A foreign company that redomiciles to Malta is treated as domiciled and ordinarily resident for Maltese tax purposes and becomes subject to tax on its worldwide income, including foreign capital gains. It also acquires access to Malta's extensive double taxation treaty network, thus becoming entitled to certain exemptions. Such exemptions would include the Participation Exemption on certain foreign dividends and capital gains.

The shareholders of the Maltese company will become entitled to refunds on tax suffered by the Maltese company and certain other benefits.

The continuation of a foreign company to Malta does not incur any Maltese tax nor does it become subject to any duty or entry tax.

Maltese companies that transfer their domicile to other countries will no longer be treated as taxable in Malta on their worldwide income. Such companies may opt to remain taxable in Malta if the management and control of the company remain in Malta. This will render the company taxable in Malta on a remittance basis only. In this case, foreign income that is not remitted to Malta and foreign capital gains will not be taxable in Malta.

### Continuation from Malta

Companies which re-domicile from Malta do not attract any form of Maltese tax, exit tax or duty. In the same way that Malta accepts the registration of foreign companies wishing to relocate to Malta, it also allows Maltese companies to relocate to a foreign jurisdiction.

Such companies must first obtain consent from the Registrar of Companies. Once this is obtained, the company may apply for registration with any foreign jurisdiction. Once accepted by the foreign jurisdiction the company shall become a company registered under the laws of that foreign country.

Consent from the Registrar of Companies is obtainable in the manner prescribed by the Registrar. The request for such consent is to be accompanied a declaration signed by at least two directors of the company (unless the Board of Directors is composed of one director) and it must include the following:

- The name of the company and the proposed name (if different) under which registration is being sought in the foreign country;
- The place of proposed registration and the name and address of the competent authority in that country; and
- The date on which it is proposed to establish domicile in the foreign country.

A company cannot apply for consent unless:

- There is an extraordinary resolution of the shareholders to that effect;
- The directors have confirmed in writing that the company is solvent and that they are not aware of any circumstances which could negatively affect its solvency position within 12 months;
- If the company carries out a licensable activity in Malta, it must have consent from the competent authority in the foreign country; and
- If the company is a public company quoted on a recognised stock exchange it must produce evidence of consent issued by both the Malta Stock Exchange and the foreign stock exchange.

Consent will not be forthcoming if the shares of the company have been pledged unless the pledgee also approves the proposed relocation of the company. Furthermore consent will not be given if the company is in breach of any of its duties or obligations under the Companies Act.

The creditors of the company have a right to oppose the proposed continuation of the company in another jurisdiction. In this respect the Registrar will not give his consent until after the lapse of three months from the publication of a notice (of proposed relocation) in the Government Gazette and in at least one daily newspaper. During this three month period, any creditor may, by writ of summons, object to the proposed continuation of a company in a foreign jurisdiction. The Court shall either uphold the objection or allow the continuation of the company as long as sufficient security is given.

A copy of the instrument of continuance in a foreign jurisdiction is to be filed with the Registrar of Companies. The company shall cease to be a company registered in Malta from the date when the continuation in the other country takes effect.

The company could be struck off from the register provided that such action shall not:

- Take away or affect the jurisdiction of any court in Malta to hear and determine any proceedings commenced by or against the company before it ceased to be a company registered in Malta;
- Affect the property of the company;
- Render defective any legal proceedings instituted or to be instituted, by or against the company; or

- Release or impair any conviction, judgement, ruling, order, debt, liability or obligation due to or to become due or any cause existing against the company or any other person.

A register of all companies that have obtained consent to relocate to another jurisdiction is kept by the Registrar of Companies.

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