

## Redomiciliation of Companies to and from Malta

### Making the complex simple



#### Introduction

A company formed, incorporated or registered outside Malta may, subject to certain conditions, request to be registered in Malta under the Companies Act, as a company continued to Malta (hereinafter "continuation to Malta"). Conversely, a company registered and incorporated under the Companies Act, may seek to continue to an approved country or jurisdiction outside Malta (hereinafter "continuation from Malta"), subject to certain provisions.

#### Procedure

Both continuations to and from Malta require that a request for such a re-domiciliation be made by the company to the Malta Registrar of Companies. This request is to be accompanied by various required documents which would be dependent upon whether the company is to continue to or from Malta.

#### Prescribed Fees

Prescribed fees are payable to the Malta Registrar of Companies by companies seeking to continue both to and from Malta. In the case of continuations from Malta, these fees amount to €1,000, whilst in the case of continuations to Malta the prescribed

fees are correlated to the extent of the authorised share capital of the company as at the date of its provisional registration as a company continued to Malta and such fees would vary accordingly between a minimum of €210 and a maximum of €2,250.

#### Continuation from Malta

##### Creditor protection

Once the Malta Registrar of Companies is satisfied with all the required documentation submitted with a view to obtaining the Registrar's consent to the company being continued as a company outside Malta (as referred to earlier), the Registrar will procure the publication on his website and in a daily newspaper, of a notice describing the proposed continuation. Any creditors of the company whose debt existed prior to the publication of the said notice may formally object, by application filed in the Maltese Courts, to the continuation of the company within three months from the date of publication of the notice. The relevant court may then choose to uphold the objection or allow the continuation of the company on sufficient security being given by the company in favour of its creditors.

### **Striking off of the company's name from the Malta Register of Companies**

Once the company obtains consent from the Malta Registrar of Companies to apply to the proper authorities in a country or jurisdiction outside Malta in order to procure its registration therein as a continued company, the company may proceed to comply and satisfy all the formal and procedural requirements prescribed by that country or jurisdiction for the purposes.

Subsequently, once the company is registered as a company continued outside Malta by the proper authorities of the country or jurisdiction to which the company continued, the company will be required to submit evidence of such registration to the Malta Registrar of Companies. At this point the company would be deemed to have ceased to be a company incorporated in Malta as from the date on which its continuation in that country or jurisdiction outside Malta takes effect and the name of the company will be struck off the Maltese Register of Companies.

### **Effects of registration continued outside Malta**

The registration of a company in a country or jurisdiction outside Malta and the striking off of its name from the Malta Register of Companies would not operate so as to:

- i. affect the property of the company;
- ii. remove or affect the jurisdiction of any court in Malta to hear and determine any proceedings initiated by or against the company before it ceased to be a company registered in Malta;
- iii. render defective any legal or other proceedings which have been initiated or which are to be initiated by or against the company;
- iv. release or impair any conviction, judgement, ruling, order, debt, liability or obligation due or to become due or any cause existing against the company or any other person.

### **Malta tax treatment applicable in respect of a company continued from Malta**

Malta does not impose any exit taxes on the continuance of a company outside Malta

### **Continuation to Malta**

#### **Provisional registration as a company continued to Malta**

Once the Malta Registrar of Companies is satisfied with all required documentation submitted with a view to requesting that the company be continued to Malta (as referred to earlier), a Provisional Certificate of Continuation would be issued in favour of the company.

#### **Final registration as a company continued to Malta**

Within a period of 6 months from the date of issue by the Malta Registrar of Companies of a Provisional Certificate of Continuation in favour of the company, the said company is required to submit documentary evidence to the Malta Registrar of companies confirming that it has ceased to be a company registered in the country or jurisdiction where it had been initially formed and incorporated or registered whereupon the Malta Registrar of Companies would, upon return of the original Provisional Certificate of Continuation, issue a Final Certificate of Continuation in favour of the company verifying that the company has been registered as continuing to Malta with effect from the date on which the company was provisionally registered as continuing to Malta.

#### **Effects under the Companies Act of registration as a company continued to Malta**

As a result and with effect from the date of the issuance by the Malta Registrar of Companies of a Provisional Certificate of Continuation in favour of the company provided that this is followed by the issuance of a Certificate of Final Registration in terms of the above, the company would continue to be a body corporate incorporated in Malta under the Companies Act, and would be subject to all the obligations and capable of exercising all the powers of a company registered under the Companies Act. The registration of the company as a company continued to Malta would not in terms of Maltese law operate so as to:

- i. create a new legal entity; or
- ii. prejudice or affect the continuity of the company; or
- iii. affect the property of the company (such that the company would retain all its assets, rights, liabilities and obligations); or
- iv. render defective any legal or other proceedings instituted, or to be instituted, by or against the company; or
- v. release or impair any conviction, judgement, ruling, order, debt, liability or obligation due or to become 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.

### Malta tax treatment applicable in respect of a company continued to Malta

The continuation of a company to Malta would have no consequences for local tax/duty purposes under the laws of Malta. Accordingly, the continuation of the company to Malta would not trigger any Maltese entry tax or other similar taxes.

Additionally, with effect from the date of issuance by the Malta Registrar of Companies of a Provisional Certificate of Continuation in favour of the company, the company would be, provided that a Final Certificate of Continuation is issued in its favour by the Malta Registrar of Companies, characterised and treated as a company ordinarily resident and domiciled in Malta in terms of the Income Tax Act.

### For more information please contact:

#### Malcolm Booker

Leader Global Business Tax Services  
mbooker@deloitte.com.mt

#### Conrad Cassar Torregiani

Leader International Tax  
ctorregiani@deloitte.com.mt

Deloitte Services Limited  
Deloitte Place  
Mriehel Bypass  
Mriehel BKR 3000  
Malta

Tel: +356 2343 2000  
Fax: +356 2131 8196  
www.deloitte.com/mt

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