



# GUIDANCE NOTE 20

## Re-domiciliation of Companies into and out of Gibraltar

### Difference Between a Foreign Company Doing Business in Gibraltar and a Re-domiciled Company

- A Foreign Company doing business in Gibraltar and registered under Part XII of the Companies Act, will always remain a foreign company.
- A re-domiciled Company under Part XIII, once it is registered in Gibraltar, becomes a Gibraltar Company.

### The meaning of a company's Domicile

The concept of domicile under Gibraltar law is not described in statute, but comes from case law, and is analogous to how the domicile of an individual is decided. Whereas a corporation cannot eat or sleep, it can keep house and do real business. A company's domicile is where it keeps house and does real business. In *De Beers Consolidated Mines Limited v Howe* [1906] AC455, Lord Lorebon said: '*A company resides ... where its real business is carried on ... and the real business is carried on where the central management and control actually abides*'. The place of formation and domicile usually coincide but do not always do so as shown by the cases referred to above, and see also *Daimler Co. Limited v Continental Tyre and Rubber Co. (Great Britain) Limited* [1916] 2 AC 307.

### How a Foreign Company may establish a domicile in Gibraltar

Its important to note that there is reciprocity in the law when establishing a domicile into Gibraltar as there is when establishing a domicile abroad

### List of countries from where a company re-domicile into Gibraltar:

- (1) European Economic Area States

- (2) Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Islands, Cayman Islands, Falklands Islands, Guernsey, Isle of Man, Jersey, Monserrat, Pitcairn, St. Helena, Turks and Caicos Islands, British Virgin Islands;
- (3) States which are members of the British Commonwealth;
- 4) Liberia;
- (5) Panama;
- (6) Singapore;
- (7) Switzerland;
- (8) Cyprus;
- (9) Hong Kong;
- (10) Malta;
- (11) The United States of America.

### **Application to establish a domicile in Gibraltar**

An application by a company to establish a domicile in Gibraltar shall be made to the Registrar in the form prescribed by him (**Form 442 A**), shall comply with the Companies (Re-Domiciliation) Regulations 1996 (the "Regulations") and shall be accompanied by:-

- (a) the resolution of the company in respect of the establishment of that domicile:
  - (i) approved in the manner prescribed by the constitution of that company; and
  - (ii) containing:-
    - (aa) the name of the company and the name, if different, under which registration as a re-domiciled company is sought;
    - (bb) the jurisdiction of incorporation of the company and the name and address of the competent authority in that jurisdiction in respect of that incorporation;
    - (cc) the date of incorporation;
    - (dd) the address of the registered office in Gibraltar;
    - (ee) the information required by sub-sections (1) (b), (2) and (3) of regulation 4 of the Regulations;
    - (ff) any amendments to the memorandum and articles of association (or other instrument constituting or defining the constitution of the company) that are to take effect on the registration of the Company as a re-domiciled company;

- (b) a certificate of good standing in respect of the company issued by the competent authority, or authorities, as the case may be, referred to in paragraph (a) (ii) (bb), or other evidence to the satisfaction of the Registrar that the company is in compliance with registration requirements of that authority;
- (c) where the company carries on in or from the jurisdiction of its incorporation a business which, in accordance with a community requirement, is licensed by a competent authority in that jurisdiction, evidence of the consent of that competent authority to the re-domiciliation;
- (d) evidence to the satisfaction of the Registrar that no proceedings for insolvency have been commenced against the company in the jurisdiction in which it is incorporated;
- (e) in the case of a public company, (i) the most recent prospectus or statement in lieu of prospectus or equivalent; (ii) if it is a listed company, evidence to the satisfaction of the Registrar of the consent of the relevant regulatory body to the re-domiciliation; and (iii) evidence of the current membership of the company, authenticated in such manner as the Registrar requires;
- (f) the prescribed fee: £100.

#### Translation of Documents

The information and evidence listed above must be in the English language, and if not, it must be accompanied by a certified translation into the English language.

#### Name of Company

The name of the re-domiciled company must comply with the requirements of the Companies Act. The provisions of section 27 of the Companies Act shall apply in respect of the name in which a company may be registered under the Regulations.

#### Requirement for registered Office

A company applying to re-domicile into Gibraltar must have in Gibraltar a registered office in accordance with the Companies Act.

#### **Certificate of domicile granted by the Registrar**

Once the Registrar is satisfied that all of the requirements of regulations 2 and 3 of the Regulations have been met and that the company has given notice of its intention to establish a domicile in Gibraltar to the authority of its origin, the Registrar will retain all the filed documents and certify that the company has established its domicile in Gibraltar.

The certificate of registration issued by the Registrar in accordance with regulation 4 (1) of the Regulations shall be conclusive evidence that all of the requirements of the Act and the Regulations in respect of that registration have been complied with and that the company is a company authorised to be so registered and has been duly registered.

The Registrar shall publish in the 7th Supplement of the Gibraltar Gazette a notice that he has issued the certificate referred to in regulation 4 (1), stating the name and registered address of the company and the state from which it has re-domiciled.

### **Effect of establishing a domicile in Gibraltar**

With effect from the date of the issue of a certificate of registration, the company is a body corporate registered and deemed to be incorporated in Gibraltar under the Companies Act, and is a company incorporated in Gibraltar for purposes of any other Act.

Its memorandum and articles of association (or other instrument constituting or defining the constitution of the company), as amended by the articles establishing domicile in Gibraltar, are deemed to be the memorandum and articles of the company.

The company's property and its business continues to be vested in the company. The company also continues to be liable for all of its claims, debts, liabilities and obligations. No previous proceedings, order, liability or obligation against the company or any of its officers or members are in any way diminished or released because of the company's re-domiciliation.

### **Mortgages or other liabilities of Companies that re-domicile to Gibraltar**

Regulation 5 (2) (a) states that where a company is issued with a certificate of registration under regulation 4-

*no conviction, judgment, ruling, order, debt, liability or obligation due or to become due and no cause existing against the company or against any member, director, officer or agent thereof is thereby released or impaired.*

Under section 168 (8) of the Companies Act, a company that has a charge that was created before the company was re-domiciled to Gibraltar has a period of 30 days from the day following its registration in Gibraltar to register the charge.

### **Effect in the jurisdiction of the original domicile**

It is important to note that the Regulations require the company to satisfy the Registrar that it has ceased to be a company domiciled in the country of its incorporation or in which it was previously domiciled. It may continue to exist under the jurisdiction of its incorporation, but must give up its previous domicile. **A company can only have one domicile.**

## Cessation of original domicile

Once the Registrar has issued a certificate of registration in accordance with regulation 4, the company has 6 months to notify the Registrar that it has ceased to be a company domiciled in the jurisdiction under which it was incorporated by filing a notice of cessation (please refer to **Form 442D**). If the company fails to do so, the Registrar will strike off the company pursuant to Regulation 5(3)(a) of the Regulations, and inform the authority where the company was originally incorporated that the company is not registered in Gibraltar.

## ESTABLISHMENT OF A DOMICILE ABROAD BY A GIBRALTAR COMPANY

A Gibraltar company can establish a domicile in the following countries:-

- (1) European Economic Area States
- (2) Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Islands, Cayman Islands, Falklands Islands, Guernsey, Isle of Man, Jersey, Monserrat, Pitcairn, St. Helena, Turks and Caicos Islands, British Virgin Islands;
- (3) States which are members of the British Commonwealth;
- (4) Liberia;
- (5) Panama;
- (6) Singapore;
- (7) Switzerland;
- (8) Cyprus;
- (9) Hong Kong;
- (10) Malta;
- (11) The United States of America.

## Application to the Registrar to establish a domicile abroad

It is important to note that consent of the Registrar is needed to establish a domicile abroad. The reason for this is to protect investors and creditors as well as the public at large.

An application by a company to establish domicile outside Gibraltar in a relevant State shall be made to the Registrar in the form prescribed by him (**Form 442 B**) and, in accordance with regulation 7 (1) of the Regulations shall be accompanied by:

- (a) the resolution of the company in respect of the establishment of that domicile
- (i) approved in the manner prescribed by the constitution of that company; and

- (ii) containing:-
  - (aa) the name of the company and the name, if different, under which registration in the relevant State as a company domiciled in that State is to be sought;
  - (bb) the place of proposed domicile of the company and the name and address of the competent authority in that place;
  - (cc) the date on which it is proposed to establish domicile in the relevant State;
  - (dd) the address of the registered office in Gibraltar to be retained during the period that the company is not domiciled in Gibraltar;
  - (ee) any amendments to the memorandum and articles of association (or other instrument constituting or defining the constitution of the company) that are to take effect in the company establishing domicile in the relevant State;
- (b) a certificate of good standing in respect of the company issued by the Registrar;
- (c) where the company carries on in or from Gibraltar a business which, in accordance with a Community requirement, is licensed by a competent authority in Gibraltar, evidence of the consent of that competent authority to the company establishing domicile in the relevant State;
- (d) evidence to the satisfaction of the Registrar that no proceedings for insolvency have been commenced against the company in Gibraltar;
- (e) evidence to the satisfaction of the Registrar that any mortgagee or other charge recorded in respect of that company has been discharged in accordance with the Act or the consent in writing to the re-domiciliation of every registered mortgagee or chargee has been obtained.
- (f) the address of the registered office in Gibraltar for the period during which the company is not domiciled in Gibraltar;
- (g) the prescribed fee: £585.

#### Translation of Documents

The information and evidence listed above must be in the English language, and if not, it must be accompanied by a certified translation into the English language.

#### Name of Company

Although the provisions of section 27 of the Companies Act in relation to company names applies to a company during the period that it is not domiciled in Gibraltar, the Registrar's records shall show the name under which such company is domiciled in a relevant State.

## Publication in the Gibraltar Gazette

Upon receiving an application by a company to re-domicile out of Gibraltar, the Registrar shall publish a notice of the application including details of the company and the state to which it is seeking to re-domicile in the Gazette.

## Consent of the Registrar to establish a domicile abroad

Once a minimum of 30 days have passed from publication in the Gazette of the details of a company's application to re-domicile, the Registrar shall, if he is satisfied that all requirements have been met, issue a certificate stating that the company is permitted to establish domicile in the State specified in the application.

The Registrar keeps a record of the companies to which certificates have been issued under the Regulations.

## Timing

A certificate issued under sub-regulation 8 (1) shall be valid until such time as the Registrar shall have been served with notice to his satisfaction of the registration of the domicile of the company in the relevant State, or, upon the expiration of **three months** from the date of its issue, whichever is the earliest date.

## Notification of the Registration of the domicile of the company in the relevant State

A company registered under the Companies Act to which a certificate has been issued in accordance with regulation 8(1) must within **three months** from the date of issue of the certificate of consent notify the Registrar of the Registration of the domicile of the company in the relevant State (**Form 442 E**).

Notification of the Registration of the domicile of the company in the relevant State under sub-regulation 10 (1) shall be accompanied by:-

- (1) an instrument of continuation certified by the proper officer of the jurisdiction of re-domiciliation that the company is continued under the laws of that jurisdiction, and
- (2) the prescribed fee of £15.00

## Application to cease registration

A company registered under the Companies Act to which a certificate has been issued in accordance with regulation 8(1) may at any time thereafter apply to the Registrar for consent that that the company cease to be so Registered in Gibraltar (**Form 442 C**).

An application to cancel the registration made under regulation 10 (1) shall be accompanied by:-

- 1) an instrument of continuation certified by the proper officer of the jurisdiction of re-domiciliation that the company is continued under the laws of that jurisdiction, and
- (2) the prescribed fee of £30.00.

Where the Registrar is satisfied that the relevant provisions of this Part are satisfied he shall issue a certificate of cessation pursuant to regulation 10 (1) of the Companies (Re-domiciliation) Regulations 1996 (as amended). With effect from the date of the issue of the Certificate the company will no longer be registered under the Act.

### **Continuance of re-domiciled Company**

The re-domiciliation of a company does not create a new legal entity. The company continues in existence and its property is unaffected. It also continues to be liable for all of its claims, debts, liabilities and obligations. Existing convictions, judgments or orders against the company are unaffected as are any legal proceedings. Once the Registrar has issued a certificate that the company is permitted to establish a domicile in a relevant state, the company's memorandum and articles of association, as amended by the resolution that establishes domicile in the relevant State, are the memorandum and articles of the company.

### **Name of the company at the new domicile**

The Registrar keeps an index of Gibraltar companies domiciled abroad and records in the index the name under which the company is known in the relevant state in which it has established a domicile.

### **Duty of the company in Gibraltar during the period it maintains a domicile abroad if it has NOT requested that its registration in Gibraltar be cancelled**

It must:

- Maintain a registered office in Gibraltar.
- File Annual Returns.
- Record share transfers, allotments, increase of share capitals, change of directors etc.
- Record all mortgages and satisfaction of mortgages.

#### **▪ Forms**

Form 442 A Application to Domicile in Gibraltar a Foreign Company [£100]

Form 442 B Application for a Gibraltar Company to establish a Domicile



Abroad [£585]

Form 442 C Application to cease in Gibraltar the Registration under regulation 10 (1) [£30.00]

Form 442 D Notification that the Company has ceased to be a company domiciled in the country of its incorporation or in which it was previously domiciled [£15.00]

Form 442 E Notification of the Registration of the domicile of the Company abroad [£15.00]

- **Payment Method**

UK clearing cheques should be crossed and made payable to Companies House Gibraltar.

- **Guidance Only**

This Circular is intended for general guidance only. Companies House Gibraltar does not assume legal responsibility for the accuracy of any particular statement. In the case of a specific problem, we recommend that you seek professional advice.

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