

The new era of redomiciliations

Cross Border Conversions under the new Mobility Directive

As from the 15th of March 2024, new legal provisions apply when a Cyprus Company is converted to a company of a Member State of the European Union and vice versa.

This change was the result of the long-awaited Companies Law (Amendment) (No. 3) of 2024 (L. 26(I)/2024) which was voted into law by the Cyprus Parliament transposing into domestic law the provisions of Directive (EU) 2019/2121, the known Mobility Directive amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions by amending the Cyprus Companies Law, Cap. 113 (the Companies Law).

What used to be called “redomiciliation” is now referred to as conversion. Sections 201HA – 201HK of the Companies Law apply to cross-border conversions of limited liability companies, which were incorporated according to the laws of an EU member state and have their registered office, central management or main establishment within the European Union, to limited liability companies governed by the laws of another EU member state.

It is important to note that the redomiciliation provisions will remain available alongside the cross-border conversion provisions, in cases where a Cyprus company wishes to redomicile to a jurisdiction outside of the European Union and where a company from a non-European Union jurisdiction wishes to redomicile into Cyprus.

Companies’ freedom of establishment within the European Union is enhanced.

‘Cross-border conversion’ is defined as an operation whereby a company, without being dissolved or wound up or going into liquidation, converts the legal form under which it is registered in a departure Member State into a legal form of the destination Member State, and transfers at least its registered office to the destination Member State, while retaining its legal personality.

In compliance with EU law, the law of the departure Member State shall govern the initial procedures to obtain the pre-conversion certificate and the law of the destination Member State shall govern the parts of the procedures and formalities to be complied with following receipt of the pre-conversion certificate.

It is notable that the Amendment Law now requires both the involvement of the Department of Registrar of Cyprus Companies and Intellectual Property and the Cyprus Courts which ensure that employees and members' interests are protected during the conversion process.

The directors of the converting company must draft the detailed terms of the cross-border conversion, including the new legal form, name, registered office location, and a proposed timeline. With these terms they must also address the rights and protection of members with special rights, securities holders, creditors and employees, along with any special benefits for company officials as well as compensation details.

Moreover, the directors must prepare a report explaining to the employees and members, the legal and financial aspects and implications of the cross-border conversion and under the Amendment Law an independent expert must

review the draft terms and provide a report on the adequacy of cash compensation for members.

The most important consideration with cross border conversions is the protection of the rights of creditors, minority shareholders and employees. Member States have the right to scrutinise whether or not the relevant procedure is being carried out for abusive or fraudulent purposes and to extend the period under which it has to take a decision to allow or not the conversion to take place.

Concluding, the new procedure for cross border conversions pursuant to the Amendment Law aims to harmonise the processes for cross-border company reorganisations and to enhance cooperation between the Member States, whilst bringing a new sense of certainty and protection for the shareholders, creditors and employees of the companies in such transactions. With this new development, companies' freedom of establishment within the European Union is enhanced whilst at the same time there is a smoother transition across borders.

Totalserve group (www.totalserve.eu) has succeeded throughout its 50 years of operations to be an award-winning professional services provider. Headquartered in Limassol, Cyprus, the group maintains 3 more offices - in Athens, London and the BVI. Totalserve specialises in the fields of corporate, trusts, fiduciary services and tax. Further, there is a specialised Intellectual Property department, assisting with all IP related aspects. Legal and audit services are offered through other group affiliated companies.

TOTALSERVE MANAGEMENT LIMITED

Melina Dionysiou, LL.B., Dipl., TEP
Director / Head of Corporate
melina.dionysiou@totalserve.eu

