

REDOMICILE A COMPANY OR CLOSE IT DOWN?

What does “redomicile a company” mean?

A company, like a person has a home somewhere, but a company unlike a person is *obliged* to have a home. The company’s home is the jurisdiction (place) in which it is registered. It’s “home”, may not be the place in which it “spends most of its time”. Indeed, many companies in off shore jurisdictions are not intended from the date of their incorporation to do much business in that jurisdiction, and in certain circumstances have expressly undertaken to the local Regulator that they will *not* be doing significant business in that jurisdiction. Nevertheless, they wish to be domiciled and create a home there for reasons ranging from convenience or tax efficiency, to estate planning and investment.

When and why would a company be redomiciled?

During the course of the life and affairs of the company circumstances may change. Directors are sometimes faced with a situation where the rules and regulations then prevailing in the “ home” of the company no longer fit the company’s purpose, or the prevailing rules and regulations of its “home” jurisdiction are in some way inhibiting future business or prospects. For these reasons, and a multitude of others, the possibility of transferring the domicile of a company by way of continuation from one place to another, may be the option preferred. To satisfy this demand legislation enacted expressly for this purpose has been the response of many jurisdictions. This means essentially that the company ceases to “live” in one jurisdiction, and is deregistered there, but via a transfer by way of the continuation process, is alive and well in another. The transfer process should be as seamless as moving from one house to another. In many cases even the company name can stay the same.

Can one redomicile a company to or from the Isle of Man?

The Isle of Man has ideal legislation. The law of transfer of the domicile of a company into the Island, or out of it, is embodied in the Companies (Transfer of Domicile) Act 1998. This Act provides the necessary requirements. Procedure is well supported by the Government website as to forms, regulations and required fees. We can assist you with details on enquiry.

Should one redomicile a company?

Essentially in order to establish whether such a process may be suitable for your company, fellow members and directors should ask at least the following:

1. Is the position of the company such as to make it impractical and undesirable to simply wind the company up, perhaps to incorporate a new company in another jurisdiction?
2. Does the jurisdiction from which the company is proposing transferring from or to, have legislation similar to the Isle of Man permitting/facilitating such a process?
3. Are there any reasons either the company or its directors would not be welcome in the new jurisdiction?
4. Does the benefit of transferring the company outweigh the cost of doing so?
5. Do the shareholders support this proposal?

How do you do it?

Unsurprisingly fees paid to the Financial Supervision Commission (Isle of Man) are higher transferring out of the Isle of Man, than coming in. Suitable companies transferring to the Isle of Man are welcomed, and to this end the Commission has reduced its rates substantially to encourage this. Transferring in and out however involves significant charges nevertheless. Corporate service providers will necessarily be engaged in both jurisdictions at once, at least until the move is completed. Legal advice will be required in both jurisdictions to effect the transfer. In some instances new company foundation documents may be required, as company requirements differ in some respects from place to place; for example authorised share capital requirements. Alternatively the company may have been

incorporated so long ago as to render the Memorandum and Articles unsuitable for a modern business environment.

Procedures and permissions may be further complicated if the company is engaged in a regulated activity such as Insurance or Pensions or Collective Investments. Understandably these activities will be subjected to closer scrutiny in both jurisdictions prior to regulatory assent.

How long does it take?

This is the question every service provider dreads most, but realistically you should allow anywhere from three to six months, with some leeway either side! As a necessarily rough guide (not intended to replace specific legal advice on your matter) expect along the lines of the following:

- The process is initiated by:
 - a directors meeting to explore the possibilities and merits of the transfer,
 - a subsequent meeting of members seeking their approval and consent to the proposed transfer.
- The company's founding documents will be examined by its lawyers for suitability in both jurisdictions, and amended as and where necessary.
- Advertisements are placed in both jurisdictions to alert all interested parties, and for the protection of shareholders and creditors.
- Consent to the transfer where necessary will be sought from secured creditors.
- Permission will be required from all interested governmental authorities. This will at least include the company's home Companies Regulating Authorities, and Fiscal (Income Tax or VAT) or similar bodies having an interest. Similarly, consent from the Regulators receiving the company will be required.
- Assuming assent, application is then made in the home jurisdiction in the required form.
- Satisfactory undertakings by the company and its directors to accept service of legal process at an address of their choosing in the respective jurisdictions for a given period are required. This is intended to protect the interests of outstanding claimants against a company fleeing its own jurisdiction to the prejudice of its creditors.
- Against satisfaction of all authorities requirements in both jurisdictions the transfer of domicile by way of continuation into a new jurisdiction should be almost complete.
- Certification of registration in the new domicile, and discontinuance in the old domicile will be filed to the satisfaction of both Registrars, who will act accordingly.
- Failure to complete the transfer in every respect will not render the company homeless. In the Isle of Man an incomplete transfer of domicile will cause the company to remain where it is. This measure is designed to protect claimants from a company left (deliberately or negligently) homeless, thereby defeating the service of court process against it.
- Certification granted.

Thereafter your company will be conducting its affairs in its new home as if it had always lived there.

Who to Contact

Mary Colman has extensive experience in redomiciling companies to and from the Isle of Man. For further assistance on any aspect of redomiciliation please contact Mary Colman at Corlett Bolton on +44 (0)1624 676868 and email mary.colman@corlettbolton.com

Health warning

This article has necessarily been abbreviated in the interests of webspace. It is not intended to replace legal advice and is for guidance purposes only.