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TITLE

**Adoption of Re-domiciliation Institution in Republic of Armenia.
Legal Regulations under Armenian Law.**

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Introduction

Re-domiciliation is the process by which a company moves its ‘domicile’ (or place of incorporation) from one jurisdiction to another by changing the country under whose laws it is registered or incorporated, while maintaining the same legal identity.

Re-domiciliation consists of series of steps after which the company should cease to be registered in its domicile and become incorporated in the new country. Different countries in the world have their model of re-domiciliation complies with their jurisdiction.

The question of redomicile of the company registered in one country to another jurisdiction becomes relevant if the current country changes the conditions of company operation such as its tax rate, or if the presence of the company in the original country of domicile is unsustainable for other reasons.¹

In November 6, 2016 law of Re-domiciliation was adopted. By the adoption there were made changes in Civil code of the Republic of Armenia (articles 59.1-59.3), in the Law of the Republic of Armenia on State Registration of legal entities, branches of legal entities, institutions and private entrepreneurs (articles 26, 35, 36, 36.1-36.4) and in law of the Republic of Armenia on State Fees (articles 16(1.10, 1.11)). Legal regulation of Re-domiciliation institution is not over in sub-legislative regulatory field and the Government of the Republic of Armenia is still working on it.

Article 59.1 of civil code of the Republic of Armenia defines the re-domiciliation according to which re-domiciliation of legal entity is process of moving legal entity form one jurisdiction to another as a result changing the personal law of legal entity.

The main purpose of Re-domiciliation institution is engaging investments in the Republic of Armenia, making good conditions and place for business development. The law gives good chance for business companies to come and register in the Republic of Armenia. During the process of re-domiciliation company migrates form the country where he is registered to another

¹Re-domiciliation (relocation) of a company to another jurisdiction.
<http://ioserv.com/en/services/re-domiciliation/>

country as new place of incorporation which includes change of jurisdiction, address, possible change of the name of the company, getting new obligations, changing organizational-legal form of company, getting guarantees and so on. According to the law foreign companies can move to the Republic Armenia changing their place of registration, and Armenian companies can move from the Republic of Armenia to another country. Its implies process for re-domiciliation of corporation.

According to article 59.2 of civil code of the Republic of Armenia there are some steps for re-domiciliation of foreign legal entity. It consists of 3 steps. According to law first step is when foreign legal entity applies for pre-registration. If the foreign legal entity submits all necessary documents for re-domiciliation then the Registration body making pre-registration of foreign legal entity gives it a continuation certificate. Second step is when foreign company brings document about termination of the registration in its country or about re-domiciliation of its country with proper certified translation. So the State registry finally registers the company as an Armenian entity.

According to law re-domiciliation can do commercial organizations, non-commercial organizations with the exception of political parties, religious organizations and NGOs, state and community non-profit organizations, communities, and organizations that do not choose organizational-legal form provided by the Civil Code, or it is not possible to change their organizational form with the organizational and legal form provided by the Code.

Re-domiciliation of legal entities of the Republic of Armenia also implies series of steps but it is more complex process than re-domiciliation of foreign company. Under civil code of the Republic of Armenia the Executive body of legal entity after the decision by the General Meeting must notify the creditors in writing form about re-domiciliation of legal entity, carry out public notice as prescribed by law for at least three months before re-domiciliation registration, unless a longer period is established by the decision of re-domiciliation.

After, legal entity submit application of re-domiciliation and other necessary documents mentioned in law to the authorized person or authorized body of Government and if there are no exclusive basis for re-domiciliation of legal entity then Registering body gives document about re-domiciliation process of legal entity. After that when the continuity certificate is submitted to

the Registering body of the Republic of Armenia the body registering the legal entity of the Republic of Armenia registers the re-domiciliation of the legal entity.

Re-domiciliation of legal entity registered in the Republic of Armenia is prohibited if

1. liabilities exceed assets
2. the legal person has liabilities towards the Republic of Armenia
3. the legal person has obligations towards community
4. if a legal person is considered to have monopoly or a dominant position
5. if company is participant of regulated public services sector.

Re-domiciliation is new institution in jurisdiction of the Republic of Armenia and will open new chances for development of investment in Armenia.

The institution of re-domiciliation is a new phenomenon in the Armenian legislation. For the moment no single foreign entity has re-domiciled in Armenia and no Armenian company has left for abroad. We lack experience and data on the effectiveness of the institution and the empirical evidence has not revealed whether it has loops or works perfect. Secondly, it is important to understand how it differs from foreign models of re-domiciliation and what makes the Armenian model unique, what are the advantages and disadvantages.

In my paper I want to analyze foreign models of re-domiciliation and the Armenian law compare them and present the advantages and disadvantages of Armenian law.

In research paper we will sum up the advantages and disadvantages of the Armenian model in comparison to foreign ones.

Chapter 1. Concept and models of the re-domiciliation institution in the world

1. Concept of re-domiciliation institution.

Concept of the re-domiciliation derives from the word "domicile" which means home, country, place where the corporation is registered. Concept of re-domiciliation does not have common usage by most people but it is important to know in legal sphere what it means.

Re-domiciliation mean that the company simply applies to be reregistered from the country where it has its natural home, where it registered in a particular time and it is reregistered in another country. Re-domiciliation do not mean that the company is liquidated when it stopped operating in his domicile, it mean that the company move from one territory to another one, from one jurisdiction to another jurisdiction maintaining its integrity as a company and continuing its operation in other country. During re-domiciliation companies move their books, records, its' place of management and everything else from the country of incorporation to somewhere else.²

Corporate re-domiciliation, also referred to as 'Continuation', is the process by which a company moves its 'domicile' (or place of incorporation) from one jurisdiction to another by changing the country under whose laws it is registered or incorporated, whilst maintaining the same legal identity.³

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 current "domicile" (place of incorporation) of the company no longer fit the company's purpose, or the prevailing rules and regulations of its current jurisdiction of domiciliation 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 preferred option. To satisfy this demand legislation enacted expressly for this purpose has been the response of many jurisdictions. This means essentially that the company

² Redomiciliation: Richard Murphy

<http://www.taxresearch.org.uk/Blog/2007/07/03/redomiciliation/>

³Re-domiciliation.

<http://conspectus.com.cy/re-domiciliation/>

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.

Re-domiciliation can be done either by liquidating the existing company and transferring its portfolio of assets to an entity incorporated in a new jurisdiction, or by transferring the company’s “seat of incorporation” into a new jurisdiction, a process widely known as corporate re-domiciliation and which allows the entity to preserve its existing legal identity, goodwill and operational history thus continuing its business without any interruption. The question of re-domicile of the company registered in one country to another jurisdiction becomes relevant if the current country changes the conditions of company operation such as its tax rate, or if the presence of the company in the original country of domicile is unsustainable for other reasons.

In such situations, the easiest option is to incorporate a new company in another country and to forget the “old” company. However, this is not always possible. The “old” company may have its own experience, contracts or a familiar name to be retained. It is in such cases that the issue of re-domicile of the company to another jurisdiction as the same legal entity is appropriate thus maintaining its existing business history.

It is important to note that re-domicile may only be performed between two countries where both of them recognize re-domicile between jurisdictions. This aspect is laid down in the company law of each country.

Re-domiciliation is the process by which a company moves its ‘domicile’ (or place of incorporation) from one jurisdiction to another by changing the country under whose laws it is registered or incorporated, while maintaining the same legal identity.

Companies re-domicile for a variety of reasons including:

- to benefit from a favorable tax environment

Many companies want to have good tax environment and get tax benefit which is an allowable deduction on a tax return intended to reduce a taxpayer's burden while typically supporting certain types of commercial activity. A tax benefit allows some type of adjustment benefiting a taxpayer's tax liability. Re-domiciliation is one of the ways for

companies to have favorable tax environment and give opportunity to transfer their company to another country with low tax rate.

- to take advantage of less stringent regulation and scrutiny

Some countries have legal stringent regulations which make some difficulties for corporations registered in that country to operate and according to stringent regulations and scrutiny corporations sometimes have problems with law which hurt to the operation of company. Re-domiciliation is the way for companies to get rid of this difficult regulations and problems which they cause and move to the new jurisdiction which have a lot of advantages for operation and regulation of the company.

- to align their place of registration with their shareholder base

As companies grows and changes over time they need to plan for shifts in the composition of the shareholder base. The objective is to ensure that the company's register comprises a supportive, stable shareholder base with an appropriate mix of institutional and retail investors, both domestic and offshore. This facilitates access to capital and reduces volatility in the share price.⁴ Re-domiciliation can be used to move to another country where company can find new initiatives for growth of the company and find new investors in the new place.

- to move to an international financial centre

In the world there are countries which have a heavy concentration of financial institutions that offers a highly developed commercial and communications infrastructure, and where a great number of domestic and international trading transactions are conducted. London, New York, and Tokyo are the world's premier financial centers.

Re-domiciliation is a good way for transferring your company from its domicile to international financial center and take all advantages offered in that country which will be beneficial for the growth and development of the company.

- to access specialist capital markets⁵

Many developed countries in the world have access specialist capital markets. Many companies all over the world want to access specialist capital markets and for doing so they should register in the country which has access specialist capital market.

⁴Why aligning your corporate and IR strategies matters.

<http://www.firstadvisers.com.au/why-aligning-your-corporate-and-ir-strategies-matters/>

⁵Re-domiciliation.

<http://conspectus.com.cy/re-domiciliation/>

Re-domiciliation institution gives chance to companies to be incorporated in the developed countries and have access to specialist capital market.

Re-domiciliation institution is adopted by different countries in the world and one of them is Armenia. Re-domiciliation consists of series of steps which are different in various countries. The process of re-domiciliation is defined by the law of the country. Re-domiciliation may only be performed between countries which recognize re-domicile between jurisdictions. After re-domiciliation the company begins to operate according to the laws of new domicile.

2. The process of re-domiciliation in different countries.

Many jurisdictions allow foreign companies to change their jurisdiction of incorporation. The legislations of different countries permits the transfer of a company's "seat of incorporation" into or out of the jurisdiction - a process known as "re-domiciliation". The alternative to re-domiciliation is to liquidate the existing company and transfer its portfolio of assets to an entity incorporated for the purpose in the new jurisdiction but this method is used rarely.

There are different countries in the world that adopt re-domiciliation institution. In this subtitle I will introduce some countries that adopted re-domiciliation institution and have developed structure of re-domiciliation process which regulates by jurisdictions of these countries.

One of the countries is Cyprus. Many jurisdictions allow foreign companies to change their country of incorporation, this process is known as "re-domiciliation". Usually the transfer of a company's domicile in or out of its Jurisdiction, is permitted by the legal regime and the Memorandum.

Cyprus is included amongst the jurisdictions which allow re-domiciliation of companies in and out of Cyprus. The Cyprus Companies Law Cap. 113 has been amended to allow the transfer of a company's domicile both in and out of Cyprus. Under Law 124(I) 2006 which has been enacted on 28th July 2006, a foreign company may transfer its domicile to Cyprus and continue its operations under the laws of the Republic of Cyprus.⁶ The respective enactment and subsequent regulations give significant opportunities to international investors and traders since foreign companies can now become tax resident of Cyprus and take advantage of the favorable features of the Cypriot tax jurisdiction. The successful Cypriot tax regime can now be utilised by foreign companies without the need of restructuring the company e.g. transfer its assets and liabilities to a newly incorporated Cyprus company and liquidate the former, thus avoiding possible tax and other implications in the country of origin.

⁶ RE-DOMICILIATION OF FOREIGN COMPANIES TO CYPRUS.

A foreign company whose the Memorandum and Articles of Association allows same to be re-domiciled, can apply to the Registrar of Companies in Cyprus in order to be registered in Cyprus as a continuing company, pursuant to the Article 354 of the Companies Law Cap 113.

The company needs to appoint a local approved representative to deal with the re-domiciliation process in Cyprus. The approved representative will prepare an application for the re-domiciliation and must be attached the relevant documents in order to be filed with the Registrar of Companies in Cyprus. For applying to the Registrar of Companies in Cyprus the overseas company provide list of documents stipulated in Article 354C of the Companies Law Cap 113. Some of the documents are a certificate of Good Standing or other similar document as the case may be, issued by the appropriate authority in the country of incorporation in original form duly certified and apostilled, an affidavit, made by the approved representative, an affidavit concerning the solvency of the foreign company, Register of current Directors and members, the Memorandum and Articles of Association of the foreign country and any other documents which the Registrar of Companies in Cyprus may request to confirm that such an application is allowed by the laws of the country whereby the foreign company is incorporated and that the consent of the appropriate number of shareholders has been obtained as provided by the laws of the country whereby the foreign company is incorporated.⁷

Once the application along with the relevant documents are submitted, examined and approved by the Registrar of Companies, then the foreign company will obtain a Temporary Certificate of Continuation confirming that the foreign company is temporarily registered as continuing in Cyprus as from that date. The company therefore will be able to continue its business activities subject to the Cypriot Companies Law and legislations.

From the date of the issuance of the Temporary Certificate of Continuation, the foreign company is considered as a legal entity duly incorporated in accordance with the laws of Cyprus and is temporarily registered in the Republic for the purposes of the Companies Law Cap 113, Has the same liabilities and is eligible to exercise all powers as the registered companies have according to the laws of Cyprus.

⁷The Companies Law, Cap 113.

[http://www.olc.gov.cy/olc/olc.nsf/all/E1EAEB38A6DB4505C2257A70002A0BB9/\\$file/The%20Companies%20Law,%20Cap%20113.pdf?openelement](http://www.olc.gov.cy/olc/olc.nsf/all/E1EAEB38A6DB4505C2257A70002A0BB9/$file/The%20Companies%20Law,%20Cap%20113.pdf?openelement)

Within a period of **six months** from the date of the issuance of the Temporary Certificate of Continuation, the foreign company must submit to the Registrar of Companies in Cyprus evidence from the appropriate authorities of its country that it has ceased being a company registered in that country, the so called Certificate of Discontinuation. If no such evidence is submitted, the Registrar of Companies in Cyprus may remove the name of the foreign company from its registry and inform the foreign authorities accordingly or to grant an extension of further three months for the submission of the evidence.⁸

Upon the presentation of the aforementioned evidence to the Registrar of Companies in Cyprus, the approved representative files the Temporary Certificate of Continuation along with the respective evidence the Registrar of Companies in Cyprus issues the Final Certificate of Continuation. This is the whole process of re-domiciliation due to Cyprus Companies Law Cap 113.

Next country that has re-domiciliation institution in his jurisdiction is Malta. Malta's and Cyprus's steps of re-domiciliation are similar, except some differences.

The continuation of companies regulations (Legal Notice 344 of 2002) allow a body corporate formed and incorporated or registered under the laws of an approved country or jurisdiction other than Malta which is similar in nature to a company as known under the laws of Malta, to request the Registrar of Companies in Malta to be registered as being continued in Malta under the Companies Act. Continuation of companies in Malta is conditional upon law of that country or jurisdiction authorizing it to be continued under the laws of another jurisdiction, and provided it is also authorized to do so by its charter, statutes or memorandum and articles or other instrument constituting or defining the company. Continuation is an effective method of transferring the ownership of assets and liabilities to another jurisdiction without transferring the assets and liabilities themselves to another legal entity which may potentially create adverse tax consequences.

Continuation commences by the foreign company filing of a request to be registered with the Registrar of Companies in Malta as being continued in Malta. The foreign company should

⁸RE-DOMICILIATION OF FOREIGN COMPANIES TO CYPRUS

submit the documents listed in Legal Notice 344 of 2002 for registration. The documents are a copy of the revised constitutive document of the foreign company, a certificate of good standing in respect of the foreign company issued by the foreign competent authority, a declaration signed by at least two directors of the foreign company confirming the name of the foreign company and the name under which it proposes to be continued, the jurisdiction under which it is incorporated, the date of incorporation and so on, a declaration signed by at least two directors of the company confirming the solvency of the foreign company and any other evidence or information which the Registrar may require.⁹

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

Within a period of six months from the date of the issue by the Registrar of the Provisional Certificate of Continuation, the company shall submit documentary evidence to the Registrar that it has ceased to be a company registered in the country or jurisdiction where it had been initially formed and incorporated or registered.

Failure by the foreign company to provide such documentary evidence shall grant the Registrar the discretion to either strike the name of the company off the register and inform the relevant authority of the country or jurisdiction concerned that the company is not registered in Malta or upon reasonable cause being shown allow a further period of three months prior to striking the name of the company off the register.¹⁰

Upon presentation to the Registrar of proof of the company having ceased to be a company registered in the country or jurisdiction where it had been initially formed and incorporated or registered and upon the surrender to the Registrar of the Provisional Certificate of Continuation, the Registrar shall issue a Certificate of Continuation confirming that the company has been registered as continuing in Malta. Also Malta has low tax rate that's why many companies re-domicile there.

⁹Subsidiary Legislation 386.05 Continuation of Companies Regulations, Legal Notice 344 of 2002

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10494>

¹⁰Re-domiciliation of Foreign Companies to Malta

<http://www.3amalta.com/en/articles/item/117-re-domiciliation-of-foreign-companies-to-malta.html>

Other place for re-domiciliation is British Virgin Islands. Under the Business Companies Act, 2004 (the "Act") a company may re-domicile (or 'continue' as it is referred to in the Act) from another jurisdiction into the British Virgin Islands ,provided it is permitted to do so under the laws of its existing jurisdiction. The continuation of a company can be particularly useful where the company owns assets or carries on a business and it is impracticable, disadvantageous or costly to transfer the assets and liabilities of that company to a new entity.

The company must adopt memorandum and articles of association that are compliant with the Act. These can either be in a standard format for BVI companies or can be tailored to remain as similar as possible to those in existence prior to its continuation. The memorandum of association must also state the name of the company on the date of the application and the name under which it proposes to continue, the jurisdiction under which it was originally incorporated, registered or formed and the date on which it was originally incorporated, registered or formed. The Registrar requires a certified copy of the certificate of incorporation of the company or such other document as evidences of its incorporation, registration or formation in its current jurisdiction.

In order for a company to continue to the BVI, it must provide evidence that it is permitted to do so under the laws of the jurisdiction in which it was incorporated and that it is not disqualified from continuing to the BVI for any of the reasons set out in the Act.

The Registrar will accept a legal opinion from an attorney, practicing in the jurisdiction from which the company is continuing, confirming these matters. In addition to the opinion, if foreign counsel is unable to confirm that the company has not entered into any arrangement with its creditors, this can be done by way of affidavit from a director of the company confirming the same.¹¹

The relevant documents will be filed, by the Registered Agent of the company, with the Registrar. Once the Registrar has examined the documents and is satisfied that all requirements of the Act have been complied with, they will confirm that the continuation has been approved and will issue a certificate of continuation. It is the certificate of continuation that constitutes evidence of the fact that the company has been continued to the BVI. This is whole process of re-domiciliation in British Virgin Island.

¹¹Re-domiciling a Company into the British Virgin Islands

Armenia is also one of the countries that adopted re-domiciliation institution in its jurisdiction. Compare with mentioned above countries its steps of re-domiciliation are more simple. We will discuss it in the next chapter.

Chapter 2. Adoption of re-domiciliation institution in the Republic of Armenia

1. Main purpose of re-domiciliation institution in the Republic of Armenia.

Re-domiciliation is new institution in Armenian jurisdiction. It was adopted In November 6, 2016. The main purpose of Re-domiciliation institution is engaging investments in the Republic of Armenia, making Armenia new place of business. The law gives good chance for business companies to come and register in the Republic of Armenia.

Current days there are many developed countries for investment as they provide favorable condition for business and because of it many companies want to invest money in that countries. Investment is the commitment of money or capital to purchase financial instruments or other assets in order to gain profitable returns in the form of interest, income, or appreciation of the value of the instrument. We are living in the fast growing and developing world and the main force of development is money. Investment is one of the best ways to get money.

Re-domiciliation institution will help to engage investments in the Republic of Armenia which will be beneficial for the economy. Armenia wants to make favorable place for business and adoption of re-domiciliation is important step to it. Armenia is not tax heaven but re-domiciliation will help it to become investment center. Companies that want to re-domicile to Armenia will bring money and will help our country to build good economy and become from developing country to developed country.

Foreign companies' re-domiciliation and operation in Armenia will help to get new investors, vacancies, new type of businesses and many other things that will help Armenia to develop and become one of business investment centers.

The law of re-domiciliation was written for engaging many foreign companies to do investment in our country. The process of re-domiciliation is not difficult and according to law it consists of 3 steps. First step is when foreign legal entity applies for pre-registration. If the foreign legal entity submits all necessary documents for re-domiciliation then the Registration body making pre-registration of foreign legal entity gives it a continuation certificate.

Second step is when foreign company brings document about termination of the registration in its country or about re-domiciliation of its country with proper certified translation. So the State registry finally registers the company as an Armenian entity.

2. Features of legal regulations in the Republic of Armenia and in other countries.

In the Republic of Armenia the law of re-domiciliation was adopted in 6th November, 2016. By the adoption there were made changes in Civil code of the Republic of Armenia (articles 59.1-59.3 was added), in the Law of the Republic of Armenia on State Registration of legal entities, branches of legal entities, institutions and private entrepreneurs (articles 26, 35, 36, 36.1-36.4) and in law of the Republic of Armenia on State Fees (articles 16(1.10, 1.11)). Legal regulation of Re-domiciliation institution is not over in sub-legislative regulatory field and the Government of the Republic of Armenia is still working on it.

Article 59.1 of civil code of the Republic of Armenia defines the re-domiciliation according to which re-domiciliation of legal entity is process of moving legal entity form one jurisdiction to another as a result changing the personal law of legal entity.¹²

According to article 59.2 of civil code of the Republic of Armenia there are some steps for re-domiciliation of foreign legal entity. It consists of 2 steps. According to law first step is when foreign legal entity applies for pre-registration. If the foreign legal entity submits all necessary documents for re-domiciliation then the Registration body making pre-registration of foreign legal entity gives it a continuation certificate.

Second step is when foreign company brings document about termination of the registration in its country or about re-domiciliation of its country with proper certified translation. So the State registry finally registers the company as an Armenian entity.

In this paragraph I will compare steps of re-domiciliation process according to the law in Armenia, Malta and Cyprus.

Process of re-domiciliation of foreign entity from its country to the other country.

1. Request for registration.

¹² Civil Code of the Republic of Armenia.
<http://www.arlis.am/DocumentView.aspx?docid=111788>

Re-domiciliation of legal entity can only be possible if it is not prohibited by its charter and re-domiciliation of legal entity implemented according to the decision of competent body under law of legal entity (CC article 59.1(3,4)).

According to article 59.2 (4) of civil code of the Republic of Armenia foreign legal entity that want to re-domicile to the Republic of Armenia submit application, information and documents prescribed by law for initial registration to the authorized person or body and choose its organizational-legal form.

After submitting the registration data prescribed by law to the registration body, if there is no basis for excluding a legal entity from re-domiciliation in the Republic of Armenia, the registration body makes pre-registration of a legal entity and provide the relevant extract from the register. Applying for pre-registration simultaneously or after that according to the application of re-domiciled legal entity registration body gives initial continuation certificate to re-domiciled entity about re-domiciliation to the Republic of Armenia (CC article 59.2(6)).

According to the article 36.1 of law of the Republic of Armenia on State Registration of legal entities, branches of legal entities, institutions and private entrepreneurs pre-registration application shall include:

- a. The name of legal entity and note about preferred name of the firm
- b. The main type of activity, according to the rank of registers
- c. The jurisdiction under which foreign legal entity is registered
- d. The organizational-legal form that as a result of re-domiciliation matched to his previous organizational-legal form under its jurisdiction.

With pre-registration application also should be submitted documents mentioned in article 36.1 of the Law of the Republic of Armenia on State Registration of legal entities, branches of legal entities, institutions and private entrepreneurs. The documents are the following

1. The decision of re-domiciliation of legal entity by competent body prescribed by law or record or extract of it.

2. Extract from commercial register of that country or an equivalent document confirming legal status of foreign legal entity and its founding documents or their respective statements.
3. Information about chief of executive body or about its temporary acting chief passport information as well as telephone and e-mail address
4. A document confirming payment of state fee
5. Re-domiciled legal entity's charter adopted with the requirements of legislation of the Republic of Armenia
6. Copy of legal entity's acting charter before its re-domiciliation

After submitting all these documents register body check them and if all necessary documents are right make pre-registration of foreign legal entity.

The process of request for registration is different in Cyprus and Malta. I choose these countries to compare with Armenia as they are popular with their re-domiciliation institution.

Article 354 of the Companies Law Cap 113 of Cyprus regulates Re-domiciliation process.

According to article 354A sections 354B to 354I shall apply to all overseas companies, incorporated or registered pursuant to the laws of an approved country or jurisdiction, according to the laws of which these companies can still exist as legal entities under the legal regime of another approved country or jurisdiction and according to article 354B an overseas company, the memorandum of which enables it to continue under the legal regime of another approved country or jurisdiction, may ask from the registrar to be registered as a company continuing in the Republic pursuant to the provisions of Companies Law Cap 113.¹³

In Cyprus there are differences in process of registration request. According to article 354C of the Companies Law Cap 113 of Cyprus the application submitted to the Registrar by the overseas company for its registration as continuing in the Republic shall be accompanied by the following documents:

- a) the resolution or equivalent document of the overseas company which authorises it to be registered as continuing in the Republic. The resolution or the equivalent document must, as

¹³Companies Law Cap 113 of the Republic of Cyprus.

[http://www.olc.gov.cy/olc/olc.nsf/all/E1EAEB38A6DB4505C2257A70002A0BB9/\\$file/The%20Companies%20Law,%20Cap%20113.pdf?openelement](http://www.olc.gov.cy/olc/olc.nsf/all/E1EAEB38A6DB4505C2257A70002A0BB9/$file/The%20Companies%20Law,%20Cap%20113.pdf?openelement)

practicable as possible, been adopted by such body of the overseas company and by such majority according to the laws of the country or jurisdiction under which the overseas company is incorporated and according to its memorandum, in the same way that a special resolution is adopted according to this Law,

b) a copy of the revised memorandum of the overseas company, which satisfies the requirements for the incorporation of the company according to this Law and which is in conformity with the laws of the country or jurisdiction of incorporation of the overseas company,

c) a certificate of good standing or an equivalent document of the overseas company issued by the relevant authority of the country or jurisdiction in which the overseas company is incorporated or other evidence which satisfies the Registrar that the overseas company complies with the conditions of registration of that authority,

d) a sworn affidavit by a director of the overseas company duly authorised by the board of directors or an equivalent administrative body or by a person to whom the management or the representation of the overseas company has been assigned, confirming:

1) the name of the overseas company and the name under which it will continue to exist

2) the jurisdiction under which the overseas company has been incorporated;

3) the date of incorporation of the overseas company;

4) the resolution or the equivalent document deciding that the overseas company will be incorporated as continuing in the Republic according to paragraph (a) of subsection (1);

5) that the overseas company has given official notice to the relevant authority in the country of incorporation of its intention to be registered as continuing in the Republic, according to the procedure laid down in this Law:

Provided that the sworn affidavit must be accompanied by a receipt of such official notification;

6) that no administrative or criminal proceedings have been commenced against the overseas company for the contravention of the laws of the country or the jurisdiction in which it has been incorporated

e) a sworn affidavit by a director of the overseas company duly authorised by the board of directors or an equivalent administrative body or by a person to whom the administration or the representation of the overseas company has been assigned, which confirms the solvency of the overseas company and by which the signatories will declare that they are not aware of any circumstances which could affect in a negative and substantial manner the solvency of the company in a period of twelve months from the date of submission of the relevant application according to paragraph (a) of subsection (1);

f) a list of the directors of the overseas company and of the secretary of the company if any, and of the persons to whom the administration and or the representation of the company has been assigned to when the overseas company has no directors or secretary;

g) a list of the current members of the overseas company certified in such a way that the Registrar may possibly demand and in such a way that will be acceptable to the Registrar as sufficient conformity with the requirements of this Law in relation to the list of the members of the overseas company;

h) such documents as the Registrar may determine depending on the circumstances and in order to be satisfied that:

i) such an application is permissible under the laws of the country or jurisdiction in which the overseas company has been incorporated and ,

ii) the consent has been received by such number or proportion of the shareholders, employees, debenture holders and/or creditors of the overseas company as required by the laws of the country or jurisdiction of incorporation.

According to law every director of an overseas company or the persons to whom the management or representation of the overseas company has been assigned to, whenever making a declaration of solvency according to paragraph (e) of subsection (1), without the facts which they have or should have been aware of to justify such declaration, shall be guilty of an offence, and on conviction thereof, be liable to imprisonment not exceeding one year and to a fine not exceeding thirty-four thousand, one hundred and seventy two euros.

The difference in Armenian and Cyprus jurisdiction is that under Armenian law we do not have that as required document about administrative or criminal proceedings against the foreign

company for the contravention of the laws of the country or the jurisdiction in which it has been incorporated. In our jurisdiction we only check condition of foreign company for doing re-domiciliation. Another significant difference is that according to our jurisdiction we do not have as required document a sworn affidavit by a director of the overseas company duly authorised by the board of directors or an equivalent administrative body or by a person to whom the administration or the representation of the overseas company has been assigned, which confirms the solvency of the overseas company and by which the signatories will declare that they are not aware of any circumstances which could affect in a negative and substantial manner the solvency of the company in a period of twelve months from the date of submission of the application. We do not check solvency of the company but check the condition and also we do not have twelve month period for testing the solvency of company. Moreover, according to Cyprus jurisdiction every director of an overseas company confirming about solvency of the company without the facts which they have or should have been aware about negative manner shall be guilty of an offence and on conviction thereof, be liable to imprisonment not exceeding one year and to a fine not exceeding thirty-four thousand, one hundred and seventy two euros. In Armenian jurisdiction we do not have any liabilities if company become insolvent after re-domiciliation or if something is wrong with documentary about company's condition. The only liability, if we can say so, is to stop re-domiciliation process if some documents are wrong.

According to article 36.1 of the Law of the Republic of Armenia on State Registration of legal entities, branches of legal entities, institutions and private entrepreneurs a list of the directors of the foreign company and of the secretary of the company if any, and of the persons to whom the administration and or the representation of the company has been assigned to when the overseas company has no directors or secretary are not required. Meanwhile in Cyprus it is required according to law.

What about the jurisdiction of Malta, according to which re-domiciliation is regulated under Legal notice 344 of 2002 of the Continuation of Companies Regulations. In Malta jurisdiction of regulation of re-domiciliation is similar to Cyprus.

A request by a foreign company for registration as being continued in Malta shall be made to the Registrar in the manner and form prescribed by him. According to legal notice 344 of 200 documents need for registration are the following:

- 1) the resolution or equivalent document of the foreign company authorising it to be registered as being continued in Malta, and, if the instrument is not written in the English language, a translation thereof in the English language, certified to be a correct translation in such manner as may be prescribed; the resolution or equivalent document has as far as practicably possible, to be in such manner, by such constituted body and with such majority as would be the equivalent, under the laws of the country or jurisdiction of formation and incorporation or registration, and according to its constitutive document, of an extraordinary resolution under the laws of Malta
- 2) a copy of the revised constitutive document of the foreign company including all the requirements necessary for the registration of a company in Malta in accordance with the provisions of the Act
- 3) a certificate of good standing or equivalent document in respect of the foreign company issued by the competent authority in which the foreign company was formed and incorporated or registered or other evidence to the satisfaction of the Registrar that the foreign company is in compliance with the registration requirements of that authority, and, if the instrument is not written in the English language, a translation thereof in the English language, certified to be a correct translation in such manner as may be prescribed
- 4) a declaration signed by at least two directors of the foreign company, unless the Board of Directors is composed of one, or, where that foreign company does not have directors, by at least two persons vested with the administration or the representation of the foreign company to be registered as continued in Malta, confirming:
 - (a) the name of the foreign company and the name under which it is being continued;
 - (b) the jurisdiction under which it is incorporated;
 - (c) the date of incorporation;
 - (d) the decision to have the foreign company registered as continuing in Malta;
 - (e) that the foreign company has given formal notice to the relevant authority of the country or jurisdiction where the foreign company was formed, incorporated or registered of its decision to be registered as continuing in Malta in accordance with the procedure laid down by law; and, together with the declaration, there shall be annexed evidence of such notification

(f) that no proceedings for breach of the laws of the country or jurisdiction of incorporation have been commenced against such foreign company, unless such proceedings arise out of an event which on the date of the occurrence thereof did not constitute such a breach;

5) (a) a declaration signed by at least two directors of the foreign company, unless the Board of Directors is composed of one, or, where that foreign company does not have directors, by at least two persons vested with the administration or the representation of the foreign company, confirming the solvency of the foreign company and that they are not aware of any circumstances which could negatively affect in a material manner, the solvency position of the company within a period of twelve months

b) any director of the foreign company, or the persons vested with the administration or representation of the foreign company, making a declaration of solvency under subparagraph (a) without having reasonable grounds on which to make this declaration shall be guilty of an offence and liable on conviction to a fine (multa) of not more than forty-six thousand and five hundred and eighty-seven euro and forty-seven cents (46,587.47);

6) a list of directors of the foreign company as well of the company secretary, if any, or of the persons vested with the administration or the representation of the foreign company, where that foreign company does not have directors or a company secretary;

7) such material as the Registrar may require to satisfy himself that -

(a) such request is permitted by the laws of the country or jurisdiction in which the foreign company has been formed and incorporated or registered; and

(b) the consent of such number or proportion of the shareholders, debenture-holders and creditors of the foreign company as may be required by the laws of the country or jurisdiction of formation and incorporation or registration to such request has been obtained;

8) the registration fees set out in the Companies Act (Fees) Regulations, relating to the registration of commercial partnerships, which fees shall apply mutatis mutandis to foreign companies requesting to be registered as being continued in Malta.¹⁴

As we can see Malta jurisdiction is very similar to Cyprus jurisdiction. There are only few differences especially in fine about declaration of solvency during twelve months. Comparing it with Armenian jurisdiction it is the same differences as with Cyprus.

¹⁴ Subsidiary Legislation 386.05 Continuation of Companies Regulations, Legal Notice 344 of 2002. <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10494>

According to CC after applying for the pre-registration if all documents mentioned in the article 36.1 of law of the Republic of Armenia on State Registration of legal entities, branches of legal entities, institutions and private entrepreneurs are right than Registration body making pre-registration of foreign legal entity gives it a continuation certificate.

After pre-registration of foreign legal entity re-domiciled legal entity must submit duly certified document concerning the termination of registration in foreign country or certified translation of a document on information on registration of re-domiciliation of legal entity.

Based on a document concerning termination of registration or confirming re-domiciliation from foreign country Register body of the Republic of Armenia register re-domiciliation of foreign legal entity and gives it a continuation certificate, which is recognition of re-domiciliation of foreign legal entity to the Republic of Armenia. After recognition of re-domiciliation foreign legal entity recognized as registered in Armenia and is considered as legal entity of Armenia.

The government of Armenia can set the list of countries whose legal entities cannot be re-domiciled in the Republic of Armenia, as well as the list of countries where the legal entity of the Republic of Armenia cannot be re-domiciled.

According to article 59.2 (11) of Civil Code of Armenia re-domiciliation of legal foreign entity can be denied if the non-commercial organization has not complied its charter with jurisdiction of the Republic of Armenia and the choice of organizational-legal form of legal entity is inconsistent with its statutory goals or he failed to submit required by law.

Also one important point due to jurisdiction is that when foreign legal entity is re-domiciled except Armenia in another country the country of re-domiciled legal entity should be considered the Republic of Armenia. This point is important because re-domiciled legal entity cannot avoid its obligations towards Armenia when it is re-domiciled to another country except Armenia.

This is the whole process of re-domiciliation of legal entity form foreign country to the Republic of Armenia.

In Cyprus the process of re-domiciliation after registration continue in a different way.

The documents referred to in sections 354C and 354D of Companies Law Cap 113 must be delivered to the registrar for submission, who upon satisfied that they comply with the provisions of this Law, shall submit them temporarily and shall certify that the company is temporarily

registered as continuing in the Republic from the date of the registration. The date in question must appear on the temporary certificate of continuation.

From the date of the entry into force of the temporary certificate of continuation that is issued by the registrar the company referred to in the temporary certificate of continuation shall be considered to be a body corporate incorporated pursuant to the Companies Law Cap 113 and shall be considered as temporarily registered in the Cyprus for the purposes of this Law, shall be subject to all the duties and shall be capable to exercise all the powers of a company which is registered pursuant to that Law.

The registration of the overseas company shall be invalid and with no legally binding result, pursuant to this Law, if this is done with the aim:

(a) to create a new legal entity, (b) to cause loss or to affect the continuation of the company as a body corporate, (c) to affect the property of the company and the way in which this company will retain all its property, rights, debts and obligations, (d) to render ineffective any legal or other proceedings that were commenced or that are about to be commenced against it, (e) to acquit or prevent any conviction, decision, opinion, order, debt, or obligation which is pending or which will become pending or any reason that The Office of the Law Commissioner 204 exists against the overseas company and or against any shareholder, director, officer or persons to whom the management or representation of the company has been assigned to.

Within a period of six months from the date of the issuance by the Registrar of the temporary certificate of continuation, the overseas company shall submit evidence to the Registrar from the competent authority of the country or jurisdiction of its incorporation, that it has ceased to be a company registered in the country that it was originally incorporated. In case the overseas company does not submit such evidence, according to law the Registrar may remove the name of the overseas company from the register and inform the competent authority of the country or jurisdiction concerned that the company is not registered in Cyprus, or in case there is reasonable cause for not having submitted the above-mentioned documents, allow an extension of three months during which the said documents have to be submitted. Provided that in case the documents are not submitted within the prescribed period there is no further extension of time and the procedure of removing the name of legal entity from register shall be immediately followed.

With the presentation at the Registrar of the evidence that proves that the overseas company is no longer a company registered in the country or jurisdiction that it was originally incorporated

and with the delivery at the Registrar of the temporary certificate of continuation, the Registrar shall issue the certificate of continuation confirming that the company is registered as continuing in the Cyprus.

In Cyprus jurisdiction there are provisions concerning circumstances when an application for the registration of an overseas company as continuing in the Cyprus shall be rejected. According to article 354I of Companies Law Cap 113 the circumstances are the following:

- (a) the dissolution or liquidation of the overseas company has started or the proceedings of insolvency or an arrangement or composition or proceedings of execution of court orders or other analogous proceedings have been initiated from or against the overseas company,
- (b) a liquidator or special administrator of the overseas company or receiver of its property has been appointed,
- (c) there is any decision or order with which the creditors' rights are suspended or limited or
- (d) there are proceedings that have commenced against it for the contravention of the laws of the country or the jurisdiction of its incorporation.¹⁵

This is the whole process of re-domiciliation of foreign company to the Republic of Cyprus.

As we can see in Malta and Cyprus the process of re-domiciliation is more complex than in Armenia. There are more steps and more required documents that foreign company should have according to law of both countries and we can say that process of re-domiciliation is more easy in Armenia as it consist only from two steps and there are no penalties for not completing some steps.

Researching the Cyprus and Malta jurisdictions of re-domiciliation we can say that the main point of re-domiciliation of the legal entity is connected with its solvency. In both jurisdictions foreign companies should have money if they want to redomicile and this is good point which we do not have in Armenian jurisdiction. It gives guaranties that after re-domiciliation companies will have money to pay taxes and other expenses and also will bring money to that country which is beneficial for the economy of that country.

This point in the jurisdiction is important but it makes difficult the process of re-domiciliation due to solvency position within 12 month period otherwise foreign companies will get penalty fees in amount mentioned in law, meanwhile in Armenia the process is easy and we do not have any mentioned periods for solvency. In my opinion it will be good to add this point in Armenian

¹⁵ Companies Law Cap 113 of The Republic of Cyprus.
[http://www.olc.gov.cy/olc/olc.nsf/all/E1EAEB38A6DB4505C2257A70002A0BB9/\\$file/The%20Companies%20Law,%20Cap%20113.pdf?openelement](http://www.olc.gov.cy/olc/olc.nsf/all/E1EAEB38A6DB4505C2257A70002A0BB9/$file/The%20Companies%20Law,%20Cap%20113.pdf?openelement)

jurisdiction because as we mentioned above it will be good investment for Armenia and also companies will have money for operating in Armenia for a long time enhancing our economy.

Re-domiciliation of legal entity to the foreign country.

Article 59.3 of Civil Code of RA regulates re-domiciliation of Armenian legal entity to the foreign country. Comparing it with the process of re-domiciliation of foreign entity to the Armenia it is more complex and consists of 4 steps, meanwhile re-domiciliation of foreign entity to the Armenia consist of 3 steps.

According to article 53.9(3) of civil code of RA the first step is when the Executive body of legal entity after the decision made by the General Meeting must notify the creditors in writing form about re-domiciliation of legal entity, carry out public notice as prescribed by law for at least three months before final re-domiciliation registration, unless a longer period is established by the decision of re-domiciliation.

The important point in re-domiciliation of Armenian legal entity to foreign country is that it should not have any obligations towards the Republic of Armenia, community and creditors before re-domiciliation. Creditors before final registration of re-domiciliation of the Armenian legal entity entitled to demand additional guarantees or terminate re-domiciliation or early performance of obligations and compensation of damages (CC article 59.3(4)).¹⁶ The legal entity of the Republic of Armenia before the end of mentioned 3 months period should do its obligations towards the Republic of Armenia and community and early claims of creditors.

As we can see legal entity of Armenia cannot re-domicile to foreign country until it has obligations towards the Republic of Armenia, community and creditors. It should give back all debts to creditors before re-domiciliation or should give additional guarantees for payments of debts if it will be re-domiciled to foreign country. The law was written in a way to protect creditors and the Republic of Armenia as legal entity cannot use re-domiciliation as instrument for debts and obligations evasion. The process of re-domiciliation can be canceled until legal entity does not do all its obligations.

¹⁶ Civil Code of the Republic of Armenia.
<http://www.arlis.am/DocumentView.aspx?docid=111788>

After the decision of General meeting of legal person of the Republic of Armenia, legal person before re-domiciliation submits application and other necessary documents to authorized body of the Government. Application shall include all documents mentioned in article 36.2 of law of the Republic of Armenia on State Registration of legal entities, branches of legal entities, institutions and private entrepreneurs, which are re-domiciliation intention request, the decision of competent body of legal entity about re-domiciliation and the foreign country where it should be re-domiciled, evidence about notification of creditors, proof of payment state fee and appropriate document about possibility of re-domiciliation to foreign jurisdiction.¹⁷ After checking documents and knowing that the legal entity has not any debts it applied for registration. For the registration the legal entity submit application which include the name and registration number of legal entity, information about country where it should re-domiciled, information about legal-organizational form of legal entity and address of legal entity in foreign country and email if available. After submission of application to register body if all documents mentioned in the law are correct and if there are no grounds for excluding the legal entity of the Republic of Armenia, the Register body gives document about being in process of re-domiciliation. After this step legal entity should get certificate of continuation from authorized body of foreign country and submit it to Register body after which Register body carried out record about re-domiciliation of legal entity of the Republic of Armenia.

This is the whole process of re-domiciliation according to Armenian jurisdiction. What about Cyprus and Malta.

In Cyprus process of re-domiciliation of legal entity registered in Cyprus also is complex process consisting of some steps. At first legal entity should submit application for the consent of the Registrar to continue to exist as a body corporate under the legal regime of the country or jurisdiction other than Cyprus, shall be accompanied by a statement signed by at least two directors of the company duly authorized from its board of directors or if the board of directors comprises of only one director, from him, and it must include the name of the company, under which it wishes to be registered in the approved country or jurisdiction, the place of the proposed registration of the company and the name and address of the competent authority in the approved country or jurisdiction, and the date on which it is proposed to establish the head office of the

¹⁷ Law of the Republic of Armenia on State Registration of legal entities, branches of legal entities, institutions and private entrepreneurs.
<http://www.arlis.am/DocumentView.aspx?docid=110864>

company in the particular approved country or jurisdiction.¹⁸ According to the Companies Law Cap 113 of Cyprus the consent of the Registrar to be granted in relation to the continuation of the company in another country or jurisdiction the legal entity should have requirements as an approved shareholders' special resolution of the company according to the memorandum and articles of the company authorizing the said application, the company shall deliver to the Registrar for submission a declaration which confirms the solvency of the company and which confirms that the directors are not aware of any circumstances that could negatively influence the solvency of the company within a period of three years, the company has submitted all the fees and has completed all the proceedings relating to the company's business, at the time of filing the application for the Registrar's consent, the company has not contravened its duties or obligations according to the law and the company must have submitted the total of the taxes and duties that are due or that will become due until the date of submission of the application should be done. If the company becomes insolvent and any director of a company making a declaration of solvency under without the facts he had or should have been aware of to justify such a declaration, shall be guilty of an offence and on conviction thereof be liable to imprisonment not exceeding one year and to a fine not exceeding €34.172.

The registrar shall refuse to give its consent for the continuation of the company in another approved country or jurisdiction until three months have passed from the publication of a notice in two daily newspapers of wide circulation in the Cyprus, which is related to the approved shareholders' special resolution of the company according to the memorandum and articles of the company authorizing the said application. A copy of the publication in the newspaper submitted to the Registrar within 14 days shall be evidence of such publication.

As in Armenian jurisdiction creditors have right to demand guarantees or object re-domiciliation process during 3 months before final registration of re-domiciliation. The legal entity cannot be re-domiciled if it has obligations or debts towards creditors.

If all necessary documents are fulfilled and according to section 354M of Companies Law Cap 113 the three month period has expired without an objection to the continuation of the company, or in the case that an objection has been submitted provided that the Court approved the continuation of the company under the legal regime of another country or jurisdiction or

¹⁸ Companies Law Cap 113 of The Republic of Cyprus.
[http://www.olc.gov.cy/olc/olc.nsf/all/E1EAEB38A6DB4505C2257A70002A0BB9/\\$file/The%20Companies%20Law,%20Cap%20113.pdf?openelement](http://www.olc.gov.cy/olc/olc.nsf/all/E1EAEB38A6DB4505C2257A70002A0BB9/$file/The%20Companies%20Law,%20Cap%20113.pdf?openelement)

approves the said continuation of the company according to sufficient guarantees and such guarantees are provided, the Registrar consent to the continuation of the company under the legal regime of another country or jurisdiction.¹⁹ After getting the consent of Registrar the legal entity with the issue of the document of continuation according to which the company continues in another approved country or jurisdiction, the company shall immediately deliver to the Registrar a copy of the document of continuation and, with this act, the company shall cease to be a registered company in the Cyprus from the date that its continuation in the other approved country or jurisdiction is placed in force, the Registrar shall strike off the name of the company from the register and it shall issue a certificate of striking off.

The Registrar shall keep a register of all companies that received his consent to be registered as continuing in another approved country or jurisdiction.

The main difference comparing with Armenian jurisdiction is that in the application should be confirmed by the directors the solvency of the company during 3 years which we do not have in Armenian jurisdiction and also liabilities imprisonment not exceeding one year and to a fine not exceeding €34.172 if the company becomes insolvent after confirmation by directors.

Continuation outside Malta of companies incorporated in Malta regulated by Subsidiary Legislation 386.05 Continuation of Companies Regulations, Legal notice 344 of 2002.

As in Armenia and Cyprus in Malta legal a request by a company for the consent of the Registrar to be continued as a company outside Malta under the laws of an approved country or jurisdiction shall be made to the Registrar in the manner and form prescribed by him and shall be accompanied by a declaration signed by at least two directors of the company, unless the Board of Directors is composed of one, containing the name of the company and the name, if different, under which registration in the approved country or jurisdiction is being sought, the place of proposed registration of the company and the name and address of the competent authority in that approved country or jurisdiction, the date on which it is proposed to establish domicile in the relevant approved country or jurisdiction.²⁰ As in Cyprus in Malta for the request the Registrar

¹⁹ Companies Law Cap 113 of The Republic of Cyprus.

[http://www.olc.gov.cy/olc/olc.nsf/all/E1EAEB38A6DB4505C2257A70002A0BB9/\\$file/The%20Companies%20Law,%20Cap%20113.pdf?openelement](http://www.olc.gov.cy/olc/olc.nsf/all/E1EAEB38A6DB4505C2257A70002A0BB9/$file/The%20Companies%20Law,%20Cap%20113.pdf?openelement)

²⁰ Subsidiary Legislation 386.05 Continuation of Companies Regulations, Legal Notice 344 of 2002

for his consent the legal entity should have requirements as an extraordinary resolution of the shareholders of the company was approved in accordance with the memorandum or articles of association of the company request the Registrar for his consent authorizing such request, the company has delivered to the Registrar for registration a declaration signed by at least two directors of the company, unless the Board of Directors is composed of one, confirming the solvency of the company and confirming that the directors are not aware of any circumstances which could negatively affect in a material manner the solvency position of the company within a period of twelve months and any director of a company making a declaration of solvency under subparagraph without having reasonable grounds on which to make this declaration shall be guilty of an offence and liable on conviction to a fine of not more than €46,587.47, payment has been made of all fees and penalties, and the prescribed fee has been paid for. In addition to the requirements of regulation 14 of Legal Notice 344 of 2002, the Registrar shall not give his consent for the continuation of the company in another approved country or jurisdiction until the lapse of three months from the date of the publication, in the Gazette and in a daily newspaper circulating wholly or mainly in Malta, of a notice relating to the extraordinary resolution of shareholders.

Creditors have right to object or cancel re-domiciliation if legal entity do not do its obligations towards them.

When an instrument of continuation continuing the company in another country or jurisdiction being issued by the relevant authority of the said country or jurisdiction, the company shall forthwith deliver to the Registrar a copy of the instrument of continuation and the company shall be deemed to have ceased to be a company incorporated in Malta from the date when its continuation in that other country or jurisdiction takes effect, and the Registrar shall strike the name of the company off the register (regulation 16).²¹

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10494>

²¹ Subsidiary Legislation 386.05 Continuation of Companies Regulations, Legal Notice 344 of 2002

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=10494>

After registration of re-domiciliation fo legal entity the Registrar shall keep a register of all companies that obtained his consent to register as being continued in another approved country or jurisdiction. The register shall contain a record of the name in which the company is registered as being continued as well as all relevant details.

Here the main differences with Armenian jurisdiction is liabilities and solvency confirmation which we do not have and the time period for solvency of the company.

Conclusion

Re-domiciliation mean that the company simply applies to be reregistered from the country where it has its natural home, where it registered in a particular time and it is reregistered in

another country. Re-domiciliation do not mean that the company is liquidated when it stopped operating in his domicile, it mean that the company move from one territory to another one, from one jurisdiction to another for continuing its operation in other country.

Re-domiciliation is process by which company moves from its home country, form country where it is incorporated to another jurisdiction. After re-domiciliation company preserves its completeness and moved his all assets to another country continuing its business in foreign country. In other words we can say that re-domiciliation is process by which legal entity change its place of business and continue its business according to the new jurisdiction.

This is rather new institution in the world which is developed not in many countries. Cyprus and Malta are countries that are popular and have developed re-domiciliation institution and I choose these countries as developed in this sphere to compare it with the Armenian institution of re-domiciliation which is new phenomenon in Armenian jurisdiction. Doing research of re-domiciliation institution of different countries I can separate two models of re-domiciliation in the world re-domiciliation with liability and re-domiciliation without liability. Cyprus and Malta are countries which have liability in process of re-domiciliation. Armenia is country belonging to group of re-domiciliation without liabilities.

Cyprus and Malta are countries which have liabilities in form of penalty fees and also imprisonment not less than 1 year and have complex structure of re-domiciliation process with many steps. What about Armenia it has easier structure of re-domiciliation process than Cyprus and Malta and do not have any type of liability. We can say that Armenian model of re-domiciliation is better because it make easy for foreign companies to transfer their business to the Republic of Armenia and also easy for Armenian companies to be re-domiciled to foreign country. Re-domiciliation institution is new in the Republic of Armenia and the law is written very well but as we do not have practice or cases we cannot say how effective it is for our country and what gaps may appear during practice of this law.

The institution of re-domiciliation is a new phenomenon in the Armenian legislation. For the moment no single foreign entity has re-domiciled in Armenia and no Armenian company has left for abroad. We lack of experience and data on the effectiveness of the institution and the empirical evidence has not revealed whether it has loops or works perfect. It is important to

understand how it differs from foreign models of re-domiciliation and what makes the Armenian model unique, what are the advantages and disadvantages.

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