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Re-domiciliation of Companies into Gibraltar 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 IX of the Companies Ordinance, will always remain a foreign company.

A Re-domiciled Company, once it is registered in Gibraltar, becomes a Gibraltar Company.

- **What is meant by Domiciliation**

In applying the concept of domicile to a company we ought to proceed on the analogy of an individual. A company cannot eat or sleep but it can keep house and do business. Where it keeps house and does business is its place of domicile. *De Beers Consolidated Mores Limited v Howe* 1906 AC455.

Daimler Co. Limited v Continental Tyre and Rubber Co. Limited.

A company's domicile is where it really keeps house and does real business, its real business is carried on where the central management and control actually abides.

Place of formation and domicile usually coincide but it does not always do so as shown by the cases above.

The Gibraltar legislation recognises this fact and has given legal force to the dicta that has been established by jurisprudence in cases such as those quoted above.

- **ESTABLISHING A DOMICILE IN GIBRALTAR BY A FOREIGN COMPANY**

- **From what countries can you re-domicile into Gibraltar**

- (1) European Economic Area States
- (2) Anguilla, Bermuda, British Antarctic Territory, British Indian Ocean Territory, British Islands, Caiman Islands, Falklands Islands, Guernsey, Isle of Man, Jersey, Monserrat, Pitcain, 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**

- 1 An application by a company to establish a domicile in Gibraltar shall be made to the Registrar in the form prescribed by him (**Form 295A**) 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), (3);
- (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;

(e) the prescribed fee. £100

- 2 The information and evidence required by sub-regulation (1) shall be in the English language or if not so written shall be accompanied by a certified translation into the English language.
- 3 The provisions of section 17 shall apply in respect of the name in which a company may be registered in accordance with regulation 4.
- 4 The Registrar shall not be required to consider an application falling within sub-regulation (1) unless the company by which or in respect of which the application is made has in Gibraltar a registered office in accordance with the Ordinance.
- 5 Where in this regulation there is reference to the jurisdiction in which the company is incorporated that reference shall, in respect of a company domiciled in a jurisdiction other than that in which it is incorporated, be read to include a reference to the jurisdiction of domicile as well as to the jurisdiction of incorporation.

The name of the re-domiciled company must comply with the requirements of the Companies Ordinance.

• **The certificate of domicile granted by the Registrar**

- 1 The Registrar shall, if he is satisfied that
 - (a) the requirements of regulations 2 and 3 have been met; and
 - (b) the company has given notice to the authority or authorities of origin, as the case may be, of the application by the company to establish domicile in Gibraltar.

retain all documents filed and certify that the company has established its domicile in Gibraltar.

- 2 A certificate of registration given by the Registrar in accordance with sub-regulation (1) in respect of any company, shall be conclusive evidence that all the requirements of the Ordinance and these regulations in respect of that registration and matters precedent and incidental thereto, have been complied with and that the company is a company authorised to be so registered and duly registered.
- 3 The Registrar shall publish in the 7th Supplement of the Gibraltar Gazette a notice that he has issued the certificate referred to in sub-regulation (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**

- 1 With effect from the date of the issue of a certificate of registration in accordance with regulation 4,
 - (a) the Company to which the certificate relates,
 - (i) is a body corporate registered and deemed to be incorporated in Gibraltar under the Ordinance, and
 - (ii) shall be a company incorporated in Gibraltar for the purpose of another Ordinance
 - (b) the memorandum and articles of association of the company (or other instrument constituting or defining the constitution of the company), as amended by the articles establishing domicile in Gibraltar, are the memorandum and articles of the company;
 - (c) the property of every description and the business of the company, continues to be vested in the company;
 - (d) the company continues to be liable for all of its claims, debts, liabilities and obligations.
- 2 Where a company is issued with a certificate of registration in accordance with regulation 4
 - (a) 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; and
 - (b) no proceedings whether civil or criminal pending at the time of the issue by the Registrar of the certificate of registration on re-domiciliation by or against the company or against any member, director, officer or agent thereof are thereby abated or discontinued, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof as the case may be.

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

It is important to note that the new regulations requires 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.

The previous regulations talked about ceasing to be a company of the jurisdiction under which it was originally incorporated. **This is no longer the case in the present regulations.** All the company need give up in its original country of incorporation is its domicile. **A company can only have one domicile.**

The Directors or Secretary have to satisfy the Registrar by completing (**Form 295D**) Notifying that the company has ceased to be a company domiciled in the jurisdiction from which it transferred to Gibraltar within six month of having come to Gibraltar and a certificate issued to this effect.

- **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, Caiman Islands, Falklands Islands, Guernsey, Isle of Man, Jersey, Monserrat, Pitcain, 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.

1 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 295B**) 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 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 Ordinance or the consent in writing to the re-domiciliation of ever 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. £100

- 2 The information and evidence required by sub-regulation (1), shall be in the English language, or if not so written, shall be accompanied by a certified translation thereof into the English language.
- 3 Notwithstanding that the provisions of section 17 shall apply during the period that the company is not domiciled in Gibraltar, the Registrar shall show in respect of a company domiciled in a relevant State the name under which the company is so domiciled in the index maintained for this purpose.

• **Publication in the Gibraltar Gazette**

The Registrar shall publish in the Gazette a notice that he has received the application provided for in sub-regulation (1), stating the name and registered address of the company and the State to which it is seeking to re-domicile. (Pursuant to rule 7 (4))

• **Consent of the Registrar to establish a domicile abroad**

- 1 The Registrar shall, if he is satisfied that the requirements of regulations 6 and 7 have been met and not earlier than 30 days after the publication in the Gazette under regulation 7 (4) was made certify under his hand that the company is permitted to establish domicile in the State specified in the documents supplied.
- 2 The Registrar shall enter in the index kept for this purpose in respect of a company to which a certificate has been issued under sub-regulation (1) the fact of the issue of the certificate and the documents supplied in compliance with regulation 7.

• **Timing**

A certificate issued under sub-regulation (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 the expiration of three months from the date of its issue whichever shall be the sooner.

• **Effect of establishing a domicile abroad**

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.

- 1 With effect from the date of the filing of the notice specified in regulation 8 (3)
 - (a) the memorandum and articles of association of the company, as amended by the articles establishing domicile in the relevant State, are the memorandum and articles of the company;

- (b) the property of every description and the business of the company, continues to be vested in the company;
 - (c) the company continues to be liable for all of its claims, debts, liabilities and obligations;
- 2 Where a company is issued with a certificate under regulation 8 (1)
- (a) 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; and
 - (b) no proceedings whether civil or criminal pending at the time of the issue by the Registrar of the certificate by or against the company or against any member, director, officer or agent thereof are thereby abated or discontinued, but the proceedings may be enforced, prosecuted, settled or compromised by or against the company or against the member, director, officer or agent thereof as the case may be.
- 3 A company to which this part applies other than a company which has ceased to be registered under the Ordinance shall during the period in which it is domiciled in a relevant State comply with the provisions of the Ordinance.

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

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

- **Application to cease registration**

A company registered under the Ordinance 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.

An application to cancel the registration made 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

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

Nothing in this Part shall operate to :-

- (a) create a new legal entity; or
 - (b) prejudice or affect the continuity of the company; or
 - (c) affect the property of the company
- **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 canceled.**
 - It must maintain a registered office in Gibraltar.
 - File an Annual Return.
 - Record share transfers, allotments, increase of share capitals, change of directors etc.
 - Record all mortgages and satisfaction of mortgages.

- **Forms**

- Form 295 A Application to Domicile in Gibraltar a Foreign Company
- Form 295 B Application for a Gibraltar Company to establish a Domicile Abroad
- Form 295 C Application to cease Registration under Sub Sec. 10(1)
- Form 295 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.