

Companies - redomiciliation/continuation of a TCI company in an overseas jurisdiction

Redomiciliation or continuation of a TCI company outside the islands is dealt with in Section 223 of the Companies Ordinance.

A TCI company may be redomiciled to an overseas jurisdiction (the “**receiving jurisdiction**”) provided that that is not forbidden in its articles and subject to its compliance of section 223. The company must be in good standing. In that respect:-

1. It must be pass either a directors’ or shareholders’ resolution to redomicile.
2. If there is a charge registered in respect of the property of the company under section 164 of the Ordinance, the charge will need to be released or the chargee must give its consent or the company must file a declaration acknowledging that the chargee’s rights are not diminished or compromised by that redomiciliation overseas.
3. The redomiciling company does not cease to be a TCI company unless (i) the laws of the receiving jurisdiction permit its continuance there and the company has complied with those laws, (ii) the registered agent in TCI has filed with the Registrar the required notice of continuance and (iii) the Registrar has issued a certificate of discontinuance.
4. To establish compliance with the laws of the receiving jurisdiction, the company should file a declaration confirming that the laws of the receiving jurisdiction permit the continuation of the company and that the company has complied with the relevant laws of that jurisdiction.
5. If the redomiciliation/continuation of the company in the receiving jurisdiction is dependent upon the issue of a certificate of discontinuance in TCI, the TCI Registrar may rely upon a provisional certificate of continuance in the receiving jurisdiction as a basis on which to issue a TCI certificate of discontinuance.
6. When the TCI Registrar is satisfied that the requirements of the receiving jurisdiction have been complied with, he shall (a) issue a certificate of discontinuance; (b) strike the company off the TCI register of companies; and (c) publish the striking off in the TCI gazette.
7. Where a TCI company is redomiciled to another jurisdiction:-

- a. The TCI company continues to be liable for all of its debts and obligations that existed prior to its re-domiciliation;
- b. No judgment, order, claim, debt liability or obligation or cause of action existing against it or against any of its members, directors or officers, or agents is released, or impaired by virtue of the redomiciliation;
- c. No proceedings against it are abated or are discontinued by the redomiciliation; and
- d. Service of proceedings may continue to be effected on the registered agent of the company in TCI in respect of any claim, debt liability, or obligation of the company arising during its existence as a TCI company.

*This note is for guidance purposes only and should not be relied on as legal advice in any specific case. If you have specific questions about your circumstances under the new Ordinance, please contact your **Misick & Stanbrook** professional.*

Misick & Stanbrook

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