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REINCORPORATIONS: A COMPARISON BETWEEN GREEK AND CYPRUS LAW*Thomas PAPADOPOULOS**University of Cyprus*

This paper will analyse the legal framework of reincorporations in Greek and Cyprus law. A reincorporation entails change of the law applicable to a company through a seat transfer. Reincorporations and subsequent change of applicable law in Greece and Cyprus will be scrutinized. A comparison between Greek Law and Cyprus Law will be drawn. Cyprus has a quite detailed legal framework of voluntary inbound and outbound reincorporations. While Greece has certain provisions on outbound reincorporations, it does not have any provisions on inbound reincorporations. The compatibility of these national provisions with internal market rules, as interpreted by the case law of the Court of Justice of the EU (CJEU), will be discussed.

Keywords: *reincorporation, case law, outbound incorporation, inbound incorporation, applicable law, legal framework, Greek law, Cyprus Law.*

REÎNCORPORĂRILE: ANALIZĂ COMPARATIVĂ A LEGII DIN GRECIA ȘI CIPRU

Scopul acestui studiu constă în analiza bazei normative a reîncorporării în legea Greciei și în cea a Ciprului. Reîncorporarea presupune schimbarea legii aplicabile în cazul în care compania își schimbă administrarea. În cadrul acestui mesaj științific vor fi examinate, în plan comparat, legea Greciei și legea Ciprului. Ciprul are o bază normativă foarte clară și detaliată cu privire la reîncorporările de ieșire și de intrare. În timp ce Grecia are anumite dispoziții privind reîncorporarea de ieșire, neavând însă nicio dispoziție de intrare. Anume problemele privind compatibilitatea acestor prevederi naționale, pe de o parte, cu cele internaționale interpretate prin practica judiciară a Uniunii Europene, pe de altă parte, vor fi discutate.

Cuvinte-cheie: *reîncorporare, practică judiciară, reîncorporare de ieșire, reîncorporare de intrare, bază normativă, legea greacă, legea cipriotă.*

Introduction

This paper will analyse the legal framework of reincorporations in Greek and Cyprus law. A reincorporation entails change of the law applicable to a company through a seat transfer. In a reincorporation, a company transfers its registered office or statutory seat from the jurisdiction, where it was registered to a new jurisdiction. The company must be deregistered from the old jurisdiction and must be reregistered to the new jurisdiction, which will constitute the applicable law from now on. Thus, reincorporation results in a seat transfer and subsequent change of the applicable law without liquidation of the company, which is a very costly and time-consuming process. There is no harmonization at EU level on reincorporations, yet the case law of the Court of Justice of the EU (CJEU) provides some directions.

The issue of reincorporations is very topical for both Greece and Cyprus. Greece is suffering the last years from a severe financial crisis, which constitutes part of the Eurocrisis. Many companies registered in Greece decide to transfer their registered office abroad in order to avoid high taxes, high social security contributions, bureaucracy, an unfriendly environment for investments, economic uncertainty and various structural deficiencies of the Greek economy. Most popular destinations for these reincorporations are Cyprus and Bulgaria. Hence, many reincorporations are taking place between Greece and Cyprus.

Reincorporations between Greece and Cyprus are not based only on the very close and strong national, ethnic, linguistic, historic and religious bonds between the two countries. Generally, Cyprus is a popular destination for establishing a company and, as a matter of fact, also for reincorporations. Main reasons to establish a company in Cyprus are its tax system, its legal framework, its investors-friendly environment, its strategic location and its high-level corporate, finance and shipping services.

This paper will shed light on the legal framework of reincorporations of Greece and Cyprus. Voluntary and involuntary reincorporations, as well as inbound and outbound reincorporations will be analysed. Our analysis will take place in the context of both company law and private international law. Both countries are Member States of the EU. Hence, their incorporation regimes will be examined in the light of EU law. Apart from the national provisions on reincorporations, both Greece and Cyprus implemented the Cross-border Mergers Directive [1]. Moreover, European Companies (SE) having their registered office and head office in

Greece or in Cyprus can transfer their seat to another Member State, according to Art. 8 of the European Company Regulation [2].

1. Private international law of companies in Greece and Cyprus: general observations

Greece is a real seat jurisdiction. It is worth mentioning that Greece is a civil law country. In Greek private international law, the law applicable to companies is based on Art.10 of the Greek Civil Code which states that the legal capacity (capacity to be the subject of rights and duties [3]) of a legal person is determined by the law of its seat. Case law and theory interpreted Art. 10 of the Greek Civil Code as adopting the real seat theory. Towards this interpretation contributes Art. 64 of the Greek Civil Code; this states that the seat of a legal person is considered to be the place where its administration operates, if the incorporating act or the articles of association do not specify anything on this matter. While the prevailing interpretation in theory and in case law is clearly in favour of the real seat theory, there are a few dissenting opinions in case law and in theory [4]. According to Art.10 and 64 of the Greek Civil Code, 'seat' means the *situs* of company's management, namely the place where its management is really operating (sedes of the legal person) [5]. Hence, the seat is defined as the place where the administration of the legal person operates [6].

Cyprus adopts the incorporation theory. Cyprus is a mixed legal system [7], where company law and private international are based on common law. In Cyprus private international law, the law of domicile (the law of the place of incorporation) is the law applicable to companies. The *lex domicilii* of the company is the law of the place of incorporation of the company and determines the legal capacity of a company [8]. According to Cyprus case law, the legal status of a company, as a substantive issue, is governed by the law of country of incorporation, i.e. the law of the country where the company is registered (*lex domicilii*) [9]. Moreover, according to Cyprus case law, the existence or dissolution of a company are governed by the law of country of incorporation and, in case of a foreign company, are recognised by Cyprus law [10]. Hence, the domicile of a company is found in the country whose law was followed for its incorporation. According to the incorporation theory, the domicile of a company is independent and not connected with the domicile of its shareholders or its directors [11].

2. Reincorporations and subsequent change of applicable law in Greece

2.1. Voluntary reincorporations

When the corporate seat is transferred to another country, *lex societatis* also changes. Partly the law of the country of the old seat and partly the law of the country of the new seat applies to seat transfer from one country to another. The law of the country of the old seat applies to the legality of the decision to transfer the seat and to whether this decision results in the dissolution and liquidation of the company. The law of the country of the new seat determines the conditions of re-incorporation (if the company was dissolved and liquidated), or the conditions for the operation of the company under the new *lex societatis* (especially, amendments of the articles of association). Hence, a lawful seat transfer requires seat transfer to be permitted under the laws of both the country of the old seat and the country of the new seat [12].

Greek law permits, under certain conditions, the transfer of the seat of a Greek company limited by shares abroad (outbound reincorporations). Art. 29 para. 3 of Law 2190/1920 requires an increased quorum, among others, for the general meeting deciding the change of company's nationality. More specifically, in this general meeting, the quorum is at least two thirds (2/3) of the paid up share capital (if quorum of 2/3 is not achieved, the subsequent repeat meetings require lower quorums of 1/2 and 1/3). Increased majority of two thirds (2/3) of the votes represented in the general meeting is also required (Art. 31 para. 2 of Law 2190/1920). Moreover, minority shareholders have the right to request the repurchase of their shares by the company, if the general meeting decides on the transfer of the registered seat of the company to another country (Art. 49a para. 2 of Law 2190/1920). It could be inferred from these articles that Greek law permits transfer abroad of the seat of a Greek company limited by shares. There was an ambiguity about whether seat transfer of a Greek company entails its dissolution and liquidation. After the adoption of Art. 49a para. 2 of Law 2190/1920, it is argued that seat transfer of a Greek company does not entail its dissolution and liquidation. Otherwise, the provision of Art. 49a of Law 2190/1920 would be meaningless [13].

Regarding a company with limited liability, Law 3190/1955 allows seat transfer abroad. The relevant decision is taken unanimously. Art. 38 para. 3(a) refers to amendments of the incorporating contract/articles of association and states: "Unless otherwise stipulated in the present Law, a decision taken with the consent of all partners is required for: a) the amendment of the company's nationality (...)"

Private capital company (I.K.E.)/private company (P.C.) adopts the incorporation theory and allows its real seat to be located outside Greece. Art. 45 para. 2 of Law 4072/12 stipulates the conditions for the transfer abroad of the seat of the private capital company (I.K.E.)/private company (P.C.) [14].

In all these corporate types, after transfer abroad of the registered seat, the company does not remain subjected to particular rules of Greek company law. After seat transfer, the company is subjected to the new law of the country where the seat is transferred. These companies are not considered to have 'dual nationality' for certain purposes. Moreover, there are no company law requirements that potentially impede 'corporate mobility', inwards or outwards (e.g. requirement to liquidate, no recognition of continued existence/legal succession of the re-incorporating entity).

There is no special provision with regard to the transfer of the seat of a foreign company to Greece (inbound reincorporation). It was argued that, as long as the law of the seat of the foreign company allows this seat transfer, Greek law should also accept this transfer. In this case, articles of association should be amended in compliance with Greek company law and a company should follow the registration rules and the formalities of Greek company law [15]. Compliance with all substantive company law rules and establishment of the connecting factors of Greek private international law is required.

Law 2190/1920 on companies limited by shares has special provisions on domestic conversions of companies. Art. 66 regulates conversion of a company limited by shares to a company with limited liability, Art 66a regulates the conversion of a company limited by shares to a general partnership or a limited partnership and Art. 67 regulates the conversion of a company with limited liability to a company limited by shares. There are no special provisions for cross-border conversions. This absence of special provisions for cross-border conversions should be examined in the light of *Cartesio* and VALE.

Law 3777/2009 on cross-border mergers of limited liability companies [16] implemented the Cross-border Mergers Directive (Tenth Company Law Directive) into Greek law. This Law regulates cross-border mergers, which may result indirectly in seat transfers (while requirements detailed above refer to 'direct' seat transfers). Law 3777/2009 is an autonomous and independent piece of legislation regulating this corporate restructuring technique. The merging procedure follows the pattern of domestic mergers harmonised by the Third Company Law Directive [17].

There is no case law or any other opinion stating that this procedure for cross-border mergers could apply by way of analogy to reincorporations – though it is conceivable that an analogy may be applied by the judiciary in the future. With regard to creditor protection in cross-border mergers, Article 8(2) of Law 3777/2009 refers to protection of minority and creditors: "2. For the protection of the rights of creditors of a national merging societate anonime or limited liability company, the provisions of articles 70 of Codified Law 2190/1920 and 54 of Law 3190/1955 (Government Gazette 91 A) are applied respectively". These are references to the relevant provisions on creditor protection of domestic mergers [18].

2.2. Involuntary change of law / duty to re-incorporate

Transfer of the 'real seat' into Greece of a company incorporated abroad leads to the application of Greek company law, even where the company did not explicitly decide to reincorporate under Greek law. This company incorporated abroad should also transfer its registered office to Greece and not only its real seat. Otherwise, there is a danger of non-recognition. If a foreign company registered abroad and having followed the formal requirements of incorporation of this foreign jurisdiction has its real seat in Greece, there is a danger of non-recognition of such a company in Greece, because it would not have been incorporated in compliance with the formal requirements of Greek law (*lex societatis*). In order to protect third parties having contracted with such a company in Greece, it was proposed to treat this foreign company as a de facto general partnership, regardless of the corporate type of this foreign company [19]. Although this characterisation of a foreign company as a Greek de facto general partnership is not satisfactory, it does not question the mere existence of the company as a legal person. The company continues to have legal personality under Greek law, in the shell of a partnership.

3. Reincorporations and subsequent change of applicable law in Cyprus

3.1. Introductory remarks

The possibility of reincorporations was introduced by Law 124(I) of 2006 on 28/7/2006, which amended Cyprus Companies Law (Chapter 113). Cyprus Companies Law (Chapter 113) has detailed provisions for both inbound and outbound seat transfers (Arts 354A-354R), which may result in transfer of registered office

of companies to and outside Cyprus [20]. This process is applicable to both EU and non-EU countries. As mentioned above, Cyprus adopts the incorporation theory and all changes of applicable law are voluntary. It is not possible to have an involuntary change of law in Cyprus. It should be noted that sometimes the term redomiciliation is also used, instead of reincorporations. Apart from the reincorporation procedure described by Arts 354A-354R [21], a seat transfer could take place through a cross-border merger. Law 186(I)/2007 implemented the Cross-border Merger Directive in Cyprus by adding a new section to the Cyprus Companies Law (Chapter 113) (Arts. 201I–201X) [22].

Art. 354A of Cyprus Companies Law (Chapter 113) distinguishes between two different process: inbound and outbound reincorporations. Art 354A (1) states that these provisions on inbound reincorporations (Arts 354B-354I) should "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". With regard to outbound reincorporation, Art 354A (2) states that: relevant provisions (Arts. 354J-354O) "apply to all companies incorporated under this Law and wish to continue to exist as legal entities, under the legal regime or jurisdiction of a country other than the Republic".

3.2. Inbound reincorporations

There are certain very specific requirements for reincorporations. The first one concerns the suitability of a foreign company [23] for registration as a company continuing in Cyprus and being governed by Cyprus law. Hence, the starting point of an inbound reincorporation is the permissibility of this reincorporation by the memorandum of this company [24]. Without this provision in the memorandum, a reincorporation in Cyprus is not possible. Art. 354B requires the memorandum of the foreign company to permit its reincorporation under another jurisdiction and, as a matter of fact, the change of the applicable law. It states that "an overseas company, the memorandum of which enables it to continue under the legal regime of another approved country or jurisdiction [25], may ask from the Registrar to be registered as a company continuing in the Republic pursuant to the provisions of this Law".

Cyprus Companies Law (Chapter 113) stipulates certain procedural details for an inbound reincorporation. An application should be submitted to the Cyprus Registrar of Companies for the reincorporation and the registration as continuing under Cyprus law. Art. 354C of the Cyprus Companies Law (Chapter 113) specifies certain documents which must accompany this application.

The most important documents required by Art. 354C (1)(a)-(c) are the following:

“(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 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 [...]

(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[...];

(g) a list of the current 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" [26].

These documents serve certain safeguards. A special resolution by the foreign company proves that the relevant decision on this crucial issue of reincorporation is taken. This issue of reincorporation is quite serious for the existence of the company and requires a special resolution. The memorandum of the overseas company should be amended in order to comply both with the incorporation requirements of Cyprus Companies Law (Chapter 113) and with the law of the previous jurisdiction, where the company was initially incorporated. This secures a smooth transition of applicable law from one jurisdiction to the other. Moreover, a certificate of good standing proves that the foreign company complies with the conditions of registration of the foreign jurisdiction. This certificate also ensures that the foreign company is not null and does not suffer from other substantive or procedural deficiencies. Additionally, a sworn affidavit by a director of the foreign company duly authorised by the board of directors makes sure that the company, which submits this application for reincorporation, is solvent. This sworn affidavit also makes sure that the solvency of the foreign company is not threatened by any foreseeable events or that the insolvency is imminent. Hence, insolvent foreign companies or foreign companies in financial distress, but not yet in insolvency, are inhibited from being reincorporated in Cyprus.

As described above, one of the most important and fundamental conditions for the reincorporation is that the application for incorporation must be permissible under the laws of the country in which the foreign company has been incorporated. If the law of the country, where the foreign company is incorporated does not allow reincorporations, then this process cannot be completed. Cyprus legislature ensures that the process of reincorporation is recognised by both jurisdictions. It does not endanger the success of this complex corporate restructuring technique. Otherwise, an anomalous situation might occur. In such an abnormal situation, Cyprus law would consider that a company transferred its registered office from a foreign jurisdiction to Cyprus, while foreign jurisdiction would not recognise this seat transfer and the subsequent change of applicable law. Additionally, this provision guarantees that the consent of shareholders, employees, debenture holders and/or creditors for this reincorporation would be secured, in accordance with foreign law. This requirement ensures that all stakeholders approved this reincorporation. It could also be argued that this diminishes significantly the possibility of lawsuits from objecting shareholders, employees, debenture holders and/or creditors for this reincorporation. Furthermore, Art. 354D (1) prescribed specific requirements for companies which carry out activities for which licence is required (such as banking, financial and insurance services).

Regarding public companies, there are additional requirements for their reincorporation. Art. 354D (2) demands registration of the public offer document(if any), the consent of the foreign authorities of the stock exchange in case of a listed foreign company and a list of the current members of the foreign company. These further requirements serve investor protection and guarantee that Cyprus, as the new country of registration, could exercise effective supervision over these listed public companies.

When the application and these accompanying documents which were submitted to the Cyprus Registrar of Companies are approved, the Cyprus Registrar of Companies certifies that the company is temporarily registered as continuing in Cyprus from the date of the registration. The date in question must appear on the temporary certificate of continuation (Art. 354E(1)) [27]. It could be deduced that the reincorporation takes place in two stages. First, the company is temporarily (re-)registered. Secondly, the registration is completed and a certificate of continuation confirming that the company is registered as continuing in Cyprus is issued. This temporary registration facilitates the company to complete all procedures from its removal (deregistration) from the register of the country of origin. Thus, simultaneous (dual) registration to registers of both countries is actually avoided. The company is registered only temporarily to the country of reincorporation. The final registration is conditional upon removal from the register of the country of origin. This simultaneous registration to two different countries would cause numerous problems as it would result in two different laws applicable to this company. Only if this condition of removal from the register of the country of origin is fulfilled, the Cyprus Registrar of Companies issues the certificate of continuation confirming that the company is registered as continuing in Cyprus.

The most important consequence of the temporary certificate of continuation is that the newly reincorporated company is equated completely with Cyprus companies governed by Cyprus Companies Law (Chapter 113). They become regular "Cyprus" companies. Therefore, they must comply with the requirements of Cyprus law. This equation is without prejudice to the temporary nature of this registration. In case of non-fulfilment of further requirements, this temporary registration would not be valid anymore. After the completion of the

reincorporation process (deregistration of the company from the foreign country and the issuance of the certificate of continuation), this equation becomes permanent. However, it is obvious that, during the period of temporary registration, the reincorporated company must comply with Cyprus law and not with foreign law. The company cannot escape their obligations under the new applicable law, Cyprus law, by invoking old applicable law, foreign law. There also some quite flexible transitory provisions on the recognition of the memorandum and the articles of association. Art. 354F refers to effects of registration and states that: "From the date of the entry into force of the temporary certificate of continuation that is issued by the Registrar pursuant to section 354E above:

(a) the company referred to in the temporary certificate of continuation: (i) shall be considered to be a body corporate incorporated pursuant to this Law and shall be considered as temporarily registered in the Republic for the purposes of this Law, (ii) shall be subject to all the duties and shall be capable to exercise all the powers of a company which is registered pursuant to this Law;

(b) the certificate of incorporation, as amended in accordance with paragraph (b) of section 354C of this Law shall be considered to be the memorandum and, where appropriate, the articles of the company".

There is also an exhaustive list enumerating the grounds of nullity of a reincorporation. A reincorporation using fraudulent means or aiming at abuse or evasion of foreign or domestic law is null. Any negative impact on the property rights of the company and on any pending or future legal proceedings or liabilities against the company or its members and officers could render this process null. This exhaustive list contributes towards legal certainty because interested parties know the specific conditions under which a reincorporation could be declared invalid. Art. 354F (c) states: "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:

(i) to create a new legal entity;

(ii) to cause loss or to affect the continuation of the company as a body corporate;

(iii) to affect the property of the company and the way in which this company will retain all its property, rights, debts and obligations;

(iv) to render ineffective any legal or other proceedings that were commenced or that are about to be commenced against it;

(v) to acquit or prevent any conviction, decision, opinion, order, debt, or obligation which is pending or which will become pending or any reason that 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"

According to Art. 354F(c)(i), reincorporation should not result in a new company. Additionally, according to Art. 354F(c)(ii), reincorporation should not cause loss or affect the continuation of the company as a legal person. The reincorporation process should not be used in order to evade the process of incorporating a new company under Cyprus law. If an entrepreneur is interested in establishing a new company, he should follow the specific provisions for incorporation of companies. The reincorporated company is not a new company. The foreign company retains its legal personality, during the reincorporation process. The legal personality is preserved during the reincorporation, when the company is deregistered from one jurisdiction and re-registered to Cyprus. The legal personality continues to exist and to be effective, when the applicable law changes during the reincorporation [28]. This is probably the most important advantage of the reincorporation process of Cyprus. The legal personality continues to exist; there is no need for liquidation of the foreign company and incorporation of a new company in Cyprus. This reduces the cost of corporate restructuring.

The company which has received a temporary certificate of continuation should be removed from the register of the country of origin. In case of non-removal from the register of the country of origin, Art. 354G states that: "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, the Registrar may:

(a) 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

(b) 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 provided for in paragraph (a) shall be immediately followed."

As it was mentioned in Art. 354E, reincorporation takes place in two stages. The first stage entails a temporary registration on the condition that the company will be deregistered from the country of origin. Registration to both registers is an irregular situation, where the company will be subjected to two applicable laws. This situation cannot be accepted from a private international law point of view. For a transitional period necessary for the completion of the reincorporation process, it is possible to allow the company to be registered to the register of both the foreign country and of Cyprus. However, this is provisional and the name of the company should be removed from the register of the foreign country.

If the name of the company is not removed from the foreign register within the prescribed times limits (with the possibility of an extension), then the reincorporation is not completed. Then, the name of the company should be removed from the register of Cyprus (Cyprus Registrar of Companies). The company will continue to be governed by foreign law, in which registers continue to exist. The effects of Cyprus law will be terminated by its removal from the register of Cyprus (Cyprus Registrar of Companies). Cyprus law is not anymore the law applicable to this company. The competent authority of the foreign country is notified that the company is not registered in Cyprus and that is governed by foreign law. This foreign competent authority should be informed that the reincorporation was never concluded and that this company is governed by its law. This notification is crucial for this foreign competent authority. The foreign competent authority issued a certificate of good standing for the purpose of reincorporation (in accordance with Art. 354C(1)(c)) and is aware that a reincorporation is still pending, but it does not know if this process is completed in order to remove the company from its register.

It is worth mentioning that a foreign company cannot deregistered from the foreign country before being reregistered temporarily in Cyprus. A deregistration from the foreign country without prior reregistration in Cyprus might result in an absence of applicable law. Neither foreign law nor Cyprus law could be applied, as the company would not be registered in any of these countries. This situation of deregistration without a prior temporary reregistration might also be prohibited under foreign law.

The second stage of the reincorporation is completed (and, as a result, obviously, the whole reincorporation process is completed), when the company deregisters from the register of the foreign country and the register of Cyprus (Cyprus Registrar of Companies) issues the certificate of continuation attesting that the company continues its existence under Cyprus law. The legal personality of the company was continued uninterrupted during the reincorporation process and is recognized by Cyprus law, which would be the law applicable to this company. Art. 354H states that: "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 Republic."

The circumstances where application for the registration of a foreign company as continuing in Cyprus shall be rejected are listed exhaustively in Art 354I. This exhaustive enumeration once more contributes to legal certainty. According to Art.354I, when the dissolution, liquidation, insolvency, arrangement, composition, proceedings of execution of Court orders and other analogous proceedings from or against the foreign company has been initiated, its application for the registration in Cyprus is rejected. This provision should be examined in the context of the EU Regulation on insolvency proceedings [29]. The appointment of a liquidator or a special administrator of the foreign company or a receiver of its property constitute grounds for rejection of the application for registration in Cyprus. Moreover, creditors' rights are respected and their deterioration constitutes a ground for rejection of an application for reincorporation. More specifically, any decision or order with which the creditors' rights are suspended or limited should result in rejection of the application for registration. Only the pending proceedings that have commenced against the foreign company for the contravention of the laws of the country of its incorporation are sufficient for the rejection of its application. It is not necessary to wait for the outcome of these proceedings. This approach assists the Cyprus Registrar of Companies in avoiding complicated situations.

3.3. Outbound reincorporations

There are specific provisions for outbound reincorporations. A company registered in Cyprus has the right to be registered and to continue its legal personality outside Cyprus, under a different jurisdiction. Art. 354J states that: "a company registered pursuant to this Law may, provided that the laws of the country or jurisdiction so permit, and provided that the consent of the Registrar has been granted in advance, submit an application to the competent authority of the country or jurisdiction that it chose to be registered with the aim to continue

under the legal regime of that country or jurisdiction." Except for Cyprus law, foreign law should also permit this outbound reincorporation. Foreign law should allow the Cyprus company to be registered to its competent authority and to transfer its registered office to this country. If the foreign law, which allows reincorporations, adopts the incorporation theory, only the registered office must be transferred to this country. The place of the real seat, the head office, is irrelevant and might remain in Cyprus. If the foreign law, which allows reincorporations, adopts the real seat theory, both the registered office and the head office must coincide and must be located in the foreign country. Hence, regarding outbound reincorporations in real seat jurisdictions, the head office cannot continue to be located in Cyprus and must be transferred to this foreign country.

An application should be submitted to the Cyprus Registrar of Companies for its consent for the continuation of the company outside Cyprus. Art. 354K states that: "The application of the company 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 the Republic, shall be accompanied by a statement signed by at least two directors of the company duly authorised from its board of directors or if the board of directors comprises of only one director, from him, and it must include the following:

- (a) the name of the company, under which it wishes to be registered in the approved country or jurisdiction,
- (b) 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
- (c) the date on which it is proposed to establish the head office of the company in the particular approved country or jurisdiction."

There are specific detailed requirements for Cyprus Registrar's of Companies consent. The requirements for outbound reincorporations follow the same pattern with the requirements for inbound reincorporations. According to Art. 354L, the Cyprus Registrar of Companies gives its consent for the continuation of the company in another country after a fulfilment of the following requirements: approval of shareholders (approved shareholders' special resolution of the company), solvency of the company, consent for a license (if it is necessary), consent of the foreign stock exchange and of the Cyprus Stock Exchange Commission (in case of listed public companies), payment of fees and completion of all the proceedings relating to the company's business, no initiation of liquidation proceedings, no initiation of any insolvency proceedings, arrangements or compositions, or proceedings for execution of court orders or any other analogous proceedings by or against the company, in Cyprus or elsewhere, no contravention of duties or obligations according to Cyprus Companies Law (Chapter 113) and full payment of taxes and duties

An additional requirement concerns creditor protection. The creditors of the Cyprus company have the right to oppose to the reincorporation of the company abroad. A reincorporation is a corporate restructuring, which brings a fundamental change in the course of the company. A reincorporation results in a change of the applicable law of the company, which could treat creditors more adversely. Hence, the interests of creditors might be affected severely after a reincorporation. Consent of creditors should be secured before application for the Cyprus Registrar's of Companies consent for the continuation of the company outside Cyprus. A system of ex ante creditors' protection is chosen, where creditors might object a reincorporation abroad. Art. 354M states that: "[...] (2) During the aforementioned period of three months, any creditor of the company may object before a Court to the continuation of the company under the legal regime of another country or jurisdiction, indicating sufficient reason why the said continuation of the company must not be effected. The Court may approve the said continuation of the company with an order, or it may approve the said continuation of the company on the basis of sufficient guarantees or prohibit the said continuation of the company." In the process of judicial protection of creditors, the Court has three choices: a) to approve the reincorporation abroad, b) to approve the reincorporation abroad on the basis of sufficient guarantees that the company should provide to its creditors, or c) to prohibit the reincorporation. These guarantees must be provided, before the Cyprus Registrar of Companies grants its consent for the reincorporation.

When the requirements prescribed in Arts 354K, 354L and 354M are fulfilled, the Cyprus Registrar of Companies grants its consent for the reincorporation and the continuation of the company abroad [30]. When the document of continuation [31] is issued, the company must be removed from the register of Cyprus (Cyprus Registrar of Companies) and is not governed anymore by Cyprus law. With the deregistration from Cyprus, the company continues its existence under the foreign jurisdiction, as a foreign company [32].

Art.354O clarifies that this removal of the name of the company from the register of Cyprus (Cyprus Registrar of Companies), the deregistration, is not equated with liquidation. This is a process of outbound reincorporation, where the company continues its existence under a foreign law. The company does not cease to

exist and is not liquidated. Its legal personality is preserved under a new foreign jurisdiction. This continuance of legal personality entails also a continuance of the liabilities. More specifically, Art.354O also states that: "provided that pursuant to this section, striking off from the register shall not constitute liquidation and that, nothing in this section shall- (a) oust or prejudice the jurisdiction of any Court in the Republic in proceedings which were initiated by or against the company before it ceased to be a company registered in the Republic, (b) affect the property of the company, (c) exempt or prejudice any conviction, decision, opinion, order, debt, responsibility or obligation that is owed or that is about to be owed or for any reason that exists against the company or any other person." This provision ensures that the reincorporated company, its members and its officers will not avoid their liabilities under Cyprus law. Any judicial proceedings already initiated against the Cyprus company before its reincorporation will continue. The property (in Cyprus or abroad) which the reincorporated company possesses is not affected by this reincorporation [33].

4. A comparison between Greek Law and Cyprus Law

Cyprus has a quite detailed legal framework of voluntary inbound and outbound reincorporations. The Cyprus legal framework of reincorporations was designed very carefully to secure a smooth change of applicable law, the continuation of company's legal personality and the harmonious coordination of consents of the relevant registries and competent authorities. This contributes towards legal certainty. Detailed rules on reincorporations combat various obstacles to freedom of establishment: 1) psychological obstacles originating from unfamiliarity of entrepreneurs with the rules of another Member State due to legal diversity of company laws, 2) legal uncertainty about compliance with further company law requirements due to legal diversity of company laws, and 3) national provisions (whether or not they are different from Member State to Member State) which are intrinsically capable of obstructing corporate mobility [34]. Cyprus is an investor friendly destination [35]. A solid and detailed legal framework of reincorporations assists in attracting foreign companies.

While Greece has certain provisions on outbound reincorporations, it does not have any provisions on inbound reincorporations. This lack is a significant disadvantage, in the context of the Greek financial crisis. Although the transfer of the seat of a foreign company to Greece is allowed, this absence of specific and detailed provisions is against clarity and legal certainty. The current financial conditions and the regulatory and economic competition between countries require clear and precise conditions for cross-border mobility and corporate restructuring. Detailed rules on both inbound and outbound reincorporations contribute towards this direction. An important factor for the recovery of the Greek economy is foreign investments [36]. Foreign investments entail also inbound reincorporations of foreign companies in Greece. Absence of a specific legal framework of inbound reincorporations might deter these companies from transferring their seat to Greece. Additionally, as mentioned above, many Greek companies were reincorporated abroad due to the financial crisis. Most of these foreign companies are owned and controlled by Greek nationals and most of their business is conducted in Greece. They are not only large corporations, but also small and medium-sized companies. These companies might decide, in the short run or in the long run, to reincorporate back in Greece. If Greece would have a detailed legal framework of inbound reincorporations, this "return" of foreign companies back to Greece would have been facilitated. By all odds, detailed rules on inbound and outbound reincorporation would make it easier for a company to plan its reincorporation under Greek law.

There are certain lessons to be learned from Cyprus provisions on reincorporations. Greek legislature could possibly follow the approach of Cyprus in the regulation of reincorporations. The Greek legal framework of reincorporations needs to be modernized. Greece needs a more detailed and sophisticated legal framework of reincorporations. A more detailed and sophisticated legal framework will contribute to legal certainty and to flexibility. Greece could follow the successful example of Cyprus in reincorporations. If Greek legislature decides to proceed to any amendments of the relevant provisions on reincorporations, the example of Cyprus could be followed. Greece needs a detailed legal framework, especially for inbound reincorporations, which would attract new companies to Greece. These inbound reincorporations could contribute to the recovery of the Greek economy by reinvigorating the business environment. Greece could not only structure its inbound reincorporation provisions according to Cyprus law, but also its supervisory and administrative system responsible for reincorporations.

5. Compatibility of Greek and Cyprus provisions on seat transfers with EU law

It is worth examining Greek and Cyprus law on reincorporations in the light of the internal market rules, as reincorporations constitute an exercise of the EU fundamental freedom of establishment (Arts 49-54 TFEU) [37]. Greek approaches to voluntary and involuntary seat transfers seem to be compatible with the findings of the

CJEU in *Cartesio* [38] and *VALE* [39]. Greek provisions for outbound reincorporations seem to be compatible with freedom of establishment. The interpretation and the practice followed for inbound reincorporations in Greece seems also to be compatible with freedom of establishment. However, Greek case law did not have the chance until now to examine the compatibility of these approaches with the findings of the CJEU in *Cartesio* and *VALE*. Although Greek company law has special provisions for domestic conversions of companies, there are no provisions for cross-border conversions. Lack of special provisions for cross-border conversions might be problematic in the context of *Cartesio* and *VALE*. Cyprus adopts the incorporation theory and has a sophisticated legal framework of reincorporations. This approach seems to be compatible with the CJEU's case law on seat transfers. These arguments on the compatibility of Greek and Cyprus law are without prejudice to the fact that these national provisions were not scrutinized yet by the CJEU.

Conclusion

This paper presented and discussed an underexplored but very important area of Greek and Cyprus law concerning reincorporations. Reincorporations in a jurisdiction adopting the real seat theory, like Greece, and in a jurisdiction adopting the incorporation theory, like Cyprus, present some differences. Cyprus has a detailed, sophisticated and flexible legal framework of reincorporations. While Greece has some special provisions for outbound reincorporations, there are no specific provisions for inbound reincorporations, Inbound reincorporations are possible under Greek law, but the absence of detailed provisions is against legal certainty. Cyprus law on reincorporations could be used as an example for Greek legislature. Possible introduction of detailed provisions on inbound reincorporations could follow the same pattern with Cyprus law. However, EU harmonization of seat transfers is expected to have an immense impact on national provisions for reincorporations. If the 14th Company Law Directive on the cross-border transfer of a company's registered office is finally adopted, all Member States of the EU will acquire a solid legal framework of reincorporations. Hence, corporate mobility will be significantly enhanced with large-scale and material benefits for the internal market.

References:

1. Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005 on cross-border mergers of limited liability companies [2005] OJ L 310/1.
2. Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) [2001] OJ L 294/1.
3. Legal persons are equated with natural persons. P. Agallopoulou, *Basic Concepts of Greek Civil Law* (Ant. N. Sakkoulas/Staempfli/Bruylant 2005) 59.
4. AGALLOPOULOU, P. (n 3) 60. Some authors adopt dissenting opinions supporting other theories: Λ. Γεωργακόπουλος *Εγχειρίδιο Εμπορικού Δικαίου, Τόμος 1 και Τόμος 2* (Εκδόσεις Σάκκουλα 2^η έκδοση 1996) 621/[L. Georgakopoulos *Handbook of commercial law*, vol.1 and vol. 2 (Sakkoulas 2nd ed. 1996) 621], Κ. Παμπούκης "Η αμοιβαία αναγνώριση των Κοινοτικών εταιριών στη νομολογία του ΔΕΚ: συμπεράσματα για το ελληνικό διεθνές εταιρικό δίκαιο" [2003] *ΕπισκευμΔ* 283-300/[K. Pamboukis "Mutual recognition of Community companies in ECJ's case law-Conclusions for the Greek international company law" [2003] *Episkopisi Emporikou Dikeou* (EpiskED) (in Greek) 283-300] and Φ. Κοζύρης "Δικαιοδοσία και εφαρμοστέο δίκαιο στις εσωτερικές εταιρικές σχέσεις-προτάσεις για την Ελλάδα μετά τις αποφάσεις Centros και Uberseering" [2003] *ΕπισκευμΔ* 618-638/[F. Koziris "Jurisdiction and applicable law in internal corporate affairs-proposals for Greece after the decisions of Centros and Uberseering" [2003] *Episkopisi Emporikou Dikeou* (EpiskED) (in Greek) 618-638].
5. L. Kotsiris *Greek Law on Partnerships and Corporations* (4th edition, Sakkoulas Publications 2013) 214.
6. L. Kotsiris (n. 5) 89.
7. HATZIMIHAL, N. Cyprus as a Mixed Legal System. 2013. *JCivLS* 37-96; Symeon S. Symeonides. The Mixed Legal System of the Republic of Cyprus", 78 *Tul.L.Rev.* 441 (2003).
8. A. Emilianides and others, *Private International Law in Cyprus, International Encyclopaedia for Private International Law* (Kluwer 2015) 55.
9. *Ceska Konsolidanci Agentura v. Sampratrans Shipping Ltd*, (2009) 1 Supreme Court of Cyprus 615, *Fredericou Schools Co Ltd K.A. N. Acuac Inc*, (2000) Civil Appeal No. 8266, A. Emilianides and others, *Private International Law in Cyprus*, International Encyclopaedia for Private International Law (Kluwer 2015) 55.
10. *Letco Co Ltd v. Eliades and others* (1991) 1 Supreme Court of Cyprus 435. A. Neocleous (ed) *Introduction to Cyprus Law* (Yorkhill Law Publishing 2000) 895. Cyprus case law also cites Dicey & Morris for the definition of domicile as the place of incorporation of the legal person: "...a corporation incorporated in a single country may only have one domicile, which will be in that country" and "...a corporation duly created in a foreign country is to be recognised as a corporation in England, and accordingly foreign corporations can both sue and be sued in their corporate capacity

- in the courts."". *China Wandaog Engin. Corporation v. The Republic of Cyprus*, (1997) 4 Supreme Court of Cyprus 2084. Dicey & Morris *The Conflict of Laws* (12th ed., Sweet & Maxwell, 1993) 1103.
11. NEOCLEOUS, A. (n 10) 895.
 12. Μεταλληνός Α.Α. "Τα νομικά πρόσωπα (ιδιωτικά πρόσωπα)-εφαρμοστέο δίκαιο" σε Χ. Παμπούκης (Ε-πιμ.) *Δίκαιο Διεθνών Συναλλαγών* (Νομική Βιβλιοθήκη 2010) 94/[Α. Metallinos "Legal persons (legal persons of private law)-Applicable law" in Ch. Pamboukis (ed) *Law of International Transactions* (Nomiki Vivliothiki 2010) (in Greek) 94]. See also Χ. Παμπούκης *Νομικά πρόσωπα και ιδίως εταιρίες στις συγκρούσεις νόμων* (2η έκδοση, Εκδόσεις Αντ. Ν. Σάκκουλα 2004) 147-150/[Ch. Pamboukis *Legal Persons and Especially Companies in Conflict of Laws* (2nd edition, Ant. N. Sakkoulas publications 2004)(in Greek) 147-150].
 13. Metallinos Α. (n. 12) 94-95. For a discussion of the conditions of seat transfer of companies limited by shares and of companies with limited liability (Art. 29 para. 3 and Art. 31 para. 2 of Law 2190/1920 and Art. 38 para. 3 of Law 3190/1955), see: Β. Κιάντος *Ιδιωτικό δίκαιο του διεθνούς εμπορίου* (4η Έκδοση, Εκδόσεις Σάκκουλα 2005) 161-168/[V. Kiantos *Private Law of International Commerce* (4th edition, Sakkoulas 2005)(in Greek) 161-168]. For an analysis of seat transfers of Greek Sea Trading Companies of Law 959/1979, see: Α. Καραγκουνίδης "Αναγνώριση και εγκατάσταση κεφαλαιουχικών εταιριών στον κοινοτικό χώρο υπό το πρίσμα της κοινοτικής και της ελληνικής έννομης τάξης-Ο έλεγχος της εφαρμογής εθνικών κανόνων συγκρούσεως από το ΔΕΚ" [2005] ΕΛΛΔΙΚ 1315, 1337-1347/[Α. Karagounidis "Recognition and establishment of capital companies in Community area in the light of Community and Greek legal order-control of application of national conflict of laws rules by the ECJ" [2005] *Elliniki Dikeosini* (EIIDik) (in Greek) 1315, 1337-1347]. An interesting article on the relationship between EU Company Law and Greek Sea Trading Companies of Law 959/1979: Ν. Tellis "Expansion of the Applicability of EU Company Law Directives via Analogy?— A Study Based on the Example of Greek Sea Trading Companies" [2008] ECFR 353.
 14. Art. 45 para. 2 of Law 4072/12 states: "Transfer of the registered office of the company to another country of the European Economic Area (EEA) does not result in the dissolution of the company, under the term that this receiving country recognises the transfer and the continuation of the legal personality. The manager drafts a report which explains the consequences of the seat transfer to members, creditors and employees. This report together with a financial report on this seat transfer are registered to General Commercial Registry (G.E.MI.) and remain at the disposal of members, creditors and employees. The decision for this transfer is not taken, unless two months have passed since this publication. Seat transfer is decided unanimously by members. The competent authority of General Commercial Registry (G.E.MI.) could reject the application for seat transfer on grounds of public interest."
 15. Metallinos Α. (n. 12) 95.
 16. This refers to the English translation of Law 3777/2009 of Ι. Madarou: Ι. Madarou "Law 3777/2009 on cross-border mergers of limited liability companies and other provisions" [2010] *Revue hellénique de droit international-RHDI* 887-898. See, also: Ε. Perakis "Cross-border Mergers and the new Greek Law 3777/2009" [2010] *Revue hellénique de droit international-RHDI* 839-844.
 17. For a discussion of the implementation of the Cross-border Mergers Directive in Greece, see: "Transposition of the Cross-Border Mergers Directive into Greek Law" in Bech-Bruun and Lexidale *Study on the application of the Cross-border Mergers Directive* 471-489 and Τ. Kyriakopoulos "Greece" in D. Van Gerven (ed) *Cross-Border Mergers in Europe-Volume 2* (Law Practitioner Series, CUP 2011).
 18. While Law 3777/2009 on cross-border mergers of limited liability companies applies to mergers between Greek companies and EU companies (see, Art 1 para.2 mentioned in the previous paragraph), there is no special provision regulating the cross-border merger between a Greek company and a non-EU company. Although there is no special provision on such cross-border mergers, it was argued that they are also permitted under Greek law. The argument in favour of a cross-border merger between a Greek company and a non-EU company is that Greek law allows transfer of the seat of a Greek company to a non-EU country without dissolution and liquidation. It is possible to achieve a cross-border merger in two separate stages; a Greek company could first transfer its seat to a non-EU country and then could proceed to a domestic merger with the non-EU company under the law of the non-EU country. Hence, it would be a meaningless and unnecessary complication not to allow this cross-border merger in a single stage. Nevertheless, in a cross-border merger between a Greek company limited by shares and a non-EU company, Art.49a of Law 2190/1920 on minority shareholders protection (minority shareholders have the right to request the repurchase of their shares by the company, if the general meeting decides the transfer of the registered seat of the company to another country (Art. 49a para. 2 of Law 2190/1920)) should also be applied, by analogy. Α. Metallinos (n. 12) 97.
 19. Ε. Μαστρομανώλης "Το δίκαιο της καταστατικής έδρας: σύγχρονες εξελίξεις" στο Σύνδεσμος Ελλήνων Εμπορικολόγων (Επιμ.) *Το ιδιωτικό διεθνές δίκαιο του εμπορίου* (Νομική Βιβλιοθήκη 2008) 72-73/[Ε. Mastromanolis "The Law of the Real Seat: Recent Developments" in Association of Greek Commercialists(ed) *Private International Law of Commerce* (Nomiki Vivliothiki 2008) (in Greek) 72-73]. This solution seeks to avoid the problematic situation of non-recognition. Non-recognition is avoided by recognizing and characterizing this company as a de facto general partnership. There is a significant amount of case law: Supreme Court (Arios Pagos)-Full Court 975/1997, PPPir.-ΠΠΠειρ. 1903/1979, Athens Court of Appeal 10146/1979, PPPir.-ΠΠΠειρ 2075/1974, etc.

20. The provisions of the Cyprus Companies Law (Chapter 113), which are cited in this paper, are based on an English translation of this Law available in the website of the Office of the Law Commissioner 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)>
- Although UK law adopts also the incorporation theory, a company with its registered office in UK cannot transfer its registered office to any other foreign country. There is no legal framework which allows the change of the registered office from the jurisdiction of incorporation to another foreign jurisdiction. P. Davies and S. Worthington *Gower and Davies Principles of Modern Company Law* (9th ed. Sweet & Maxwell) 148.
21. For an overview of the Cyprus mechanism for reincorporations, see: P. Tramontanelli "Cyprus Company Redomiciliation" in *Cyprus Law Digest* (Nomiki Vivliothiki 2012) 119-121.
22. Tsadiras A. "Cyprus" in D. Van Gerven (ed) *Cross-Border Mergers in Europe-Volume 1* (Law Practitioner Series, CUP 2010) 133-146.
23. Cyprus Companies Law (Chapter 113) refers to foreign companies as "overseas companies". "Overseas companies" means a company incorporated outside the Republic of Cyprus (Art. 354R)
24. Art.354R defines the document of incorporation: "document of incorporation" includes the memorandum and the articles as well as any other document serving the same purpose.
25. Art.354R defines the approved country or jurisdiction: "'approved country or jurisdiction" means a country or jurisdiction having equivalent legislative provisions as this Law".
26. There is a requirement for submission of documents concerning reincorporation in Greek. Art. 354Q states: "Where, pursuant to the provisions of this Part, it is required to deliver documents to the Registrar, these documents have to be submitted in the Greek language or in certified translation in the Greek language".
27. According to 354E (2), the name of the company is also checked by the Cyprus Registrar of Companies: "If, according to the opinion of the Registrar, the name declared under section 354C as the name under which the overseas company will continue creates the danger of confusion or it is misleading with the name of a registered company or a trade mark, the registrar shall give directions to the overseas company in order to amend its name and shall not temporarily register the said company according to subsection (1), until he is satisfied that the name under which the overseas company will continue its activities has been amended in such a way that it does not create the danger of confusion or of becoming misleading."
28. Art.354R defines the continuing company: "'continuing company" means the company that continues to exist as a body corporate under the legal regime of another approved country or jurisdiction: Provided that the rights and obligations of the continuing company shall not be affected by the registration of the company as one continuing within and outside the Republic according to this Law."
29. Regulation 848/2015/EU of 20 May 2015 on insolvency proceedings (replacing as of June 2017 Regulation 1346/2000 on insolvency) [2015] L 141/19.
30. Art. 354N states that "provided that the requirements of section 354L are fulfilled and the three month period referred to in section 354M 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 approves the said continuation of the company according to sufficient guarantees and such guarantees are provided, the Registrar shall consent to the continuation of the company under the legal regime of another country or jurisdiction."
31. Article 354R defines the document of continuation: "'document of continuation" includes every document or certificate confirming that the company has been registered as a company continuing in an approved country or jurisdiction outside the Republic".
32. Art.354O states that: "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 Republic 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:..." Art 354R defines the continuing company: "'continuing company" means the company that continues to exist as a body corporate under the legal regime of another approved country or jurisdiction: Provided that the rights and obligations of the continuing company shall not be affected by the registration of the company as one continuing within and outside the Republic according to this Law."
33. Moreover, Art. 354P introduces a special register for companies which continue outside Cyprus: "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 register shall include the name of the company as continuing as well as all relevant details."
34. WYATT, D. A. and DASHWOOD, A. and others. *European Union Law* (6th edn, Hart Publishing,, 2011) 679.
35. See, the website of the Cyprus Investment Promotion Agency (CIPA): <<http://www.investcyprus.org.cy/>> accessed 5-11-2016

36. See, the website of Enterprise Greece, the official agency of the Greek State, under the supervision of the Ministry of Economy, Development and Tourism, to promote investment in Greece, exports from Greece, and make Greece more attractive as an international business partner. < <http://www.enterprisegreece.gov.gr/en/about-us/profile> > accessed 5-11-2016.
37. For an analysis freedom of establishment of companies in EU law, see: P.Paschalidis, *Freedom of Establishment and Private International Law for Corporations* (OUP 2012), S.Rammeloo *Corporations in Private International Law* (OUP 2001), Justin Borg-Barthet *The Governing Law of Companies in EU Law* (Hart 2012).
38. Case C-210/06 *Cartesio Oktató és Szolgáltató bt* [2008] ECR I-09641.
39. Case C-378/10 *VALE* ECLI:EU:C:2012:440.

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