

Financial Supervision Commission

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Practice Note

Practice Note NMVPNI I/2008

6th April 2008

The Companies Act 2006

Transferring the Domicile of a Company from the Isle of Man

This Practice Note replaces NMVPNI I/2006 “Transferring the Domicile of a Company from the Isle of Man” issued on 1st November 2006.

Introduction

NOTE:- This Practice Note is issued by the Financial Supervision Commission in its capacity as Registrar of Companies under the Companies Act 2006 (“the Act”). All references, unless specifically stated, are to that Act only.

A copy of the Act is available on our website at:

www.fsc.gov.im > *Companies Registry* > *Companies Legislation*

This practice note sets out the procedure for transferring the domicile of a company from the Isle of Man to another country in accordance with Part XI Chapter 2 of the Act. The procedure is also called “redomiciliation”; “discontinuation”; or “discontinuing a company in the Isle of Man”. The registration of the discontinued company in another country is called “continuation” or “continuing the company”.

This practice note is intended as a general guide only and must be read in conjunction with the relevant legislation. It has no legal status and should not be relied upon as a substitute for legal advice.

The Commission cannot give advice on which countries have legislation that permits the continuation of companies, nor on the legal requirements of those countries. As a result, this practice note does **NOT** address any legal requirements that may be imposed in other countries before a company can be continued there. The applicant must ensure that the jurisdiction in which the company is intending to continue has reciprocal legislation before the application is submitted, as the application fee will not be refunded if continuation proves not to be possible.

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1. What you should do before submitting the Application

- 1.1 Any company incorporated in the Isle of Man can apply to be discontinued **UNLESS:-**
 1. It is in liquidation or subject to insolvency or analogous proceedings in any jurisdiction; or
 2. A receiver or manager has been appointed in relation to any of its assets; or
 3. It has entered into an arrangement with its creditors that has not been concluded; or
 4. An application made to a court in any jurisdiction for the liquidation of the company or for the company to be subject to insolvency or analogous proceedings has not yet been determined; or
 5. The company fails to satisfy the solvency test as defined in section 49 of the Act.
- 1.2 Your attention is drawn to Section 171 of the Act, which places certain restrictions on the transfer of domicile of Manx companies. Briefly, the company will not be eligible for transfer unless the laws of the destination country or territory allow for the following:
 1. The property of the company continues to be the property of the continued company;
 2. The continued company continues to be liable for the obligations of the company;
 3. Any existing cause of action, claim or liability to prosecution in respect of the company is unaffected;
 4. Any conviction against, or any ruling, order or judgment in favour of or against the company may be enforced by or against the continued company.
- 1.3 Section 172 of the Act makes provision that the transfer of domicile of a Manx company shall not be deemed to create a new legal entity or prejudice or affect the continuity of the body corporate that was formerly a Manx company subject to the Act.

1.4 Before applying to the Commission for its consent, you must ensure that the following actions have taken place:

1. You must arrange for a resolution of the members to be passed by a majority vote of 75% of each class of members authorising the continuance in a named country or territory outside the Isle of Man.
2. You must send a notice to every member of the company and arrange for the notice to be published at least 21 days prior to the application in two newspapers published and circulating in the Isle of Man. The notices must advertise the company's intention to cease to be registered in the Isle of Man and to continue in the named country or territory outside the Isle of Man. *
3. You must obtain the written consent to the making of the application by the holders of all charges registered against the company under Section 138 of the Act.
4. **All** the directors of the company must make a Statutory Declaration – Form IM 29A) - stating that the company complies with the requirements listed in 1.1 above.
5. The registered agent of the company must complete the Application Form (see 2.1 below).

*amended 23.03.09

1.5 PLEASE NOTE – The items listed above relate ONLY to the procedure for applying to the Commission for its consent to the transfer. The Commission cannot give legal advice as to compliance with paragraphs 1.1 and 1.2 above, nor in relation to any other legal and/or financial enquiries that you ought reasonably to make depending on why you wish to transfer the domicile of the company.

2. Documents to be filed as part of the Application

2.1 There is an Application Form IM29 to be completed by the company's registered agent (1.4.5.). This form (and any other form) can be downloaded from the Commission's website at:

www.fsc.gov.im >Companies Registry >Company Forms >2006 Companies

2.2 The following documents need to be submitted to the Commission along with the application form:

1. A certified copy of the resolution authorising the continuance (1.4.1.).
2. The original Statutory Declarations Form IM29A made by all the directors of the company (1.4.4.).
3. A copy of the notice sent to each member (1.4.2.).
4. The written consent by the holders of all charges (1.4.3.).

- 2.3 Provided that the documents are complete and correct, the Commission will grant its written consent to the transfer. That consent is valid for 12 weeks from its date. During that 12 week period, the company must be continued in the named country.

PLEASE BE AWARE - There is no provision for the Commission to extend the time period for its consent. If the company has not been continued in the named country within that 12 week period, then a fresh application, together with the accompanying documents and fees payable, will need to be made if the discontinuation of the company is to proceed.

- 2.4 If the Commission refuses to accept the application for registration, you have, under section 208(4) of the Act, the right of appeal to the Isle of Man High Court of Justice against such refusal.

3. Discontinuing the Company

- 3.1 When you have received the written consent of the Commission to the transfer, you should seek to have the company continued in the named country as soon as possible after the consent is given, as the Commission's consent expires by law after 12 weeks.

- 3.2 Once the company has been continued in the named country, you have **14 days** to file a certified copy of the certificate of continuation issued to it by the competent authorities in that country. For your convenience, the Commission has prepared a non-prescribed Form IM30 to accompany the certified copy.

- 3.3 On delivery of these documents, the Commission will issue a certificate of discontinuance to the company. This certificate will be deemed to provide conclusive proof that all the requirements of the Act have been complied with and that the company is duly discontinued. The Act will cease to apply to the company as from the date of continuation as stated in the instrument of continuance.

- 3.4 Failure to have the company continued or to submit the copy instrument of continuance within the prescribed time periods means that the company cannot be discontinued in the Isle of Man. In such circumstances, a fresh application would need to be made to the Commission. The Commission cannot comment on, and will accept no liability for, any legal implications of a failure to have a company discontinued in the Isle of Man.

4. Fees payable

- 4.1 A fee of £2,800 is payable on submission of the application. This fee is non-refundable should the application be withdrawn or refused.

- 4.2 If a number of companies, which are all members of the same group, are applying for discontinuation, the first pays £2,800 and the remainder each pay £1,130.

- 4.3 £50 is paid on delivery of a certified copy of the instrument of continuance under Section 169.*

- 4.4 A duplicate copy of the certificate of discontinuation costs £7.50.

- 4.5 Details about all fees payable in the Companies Registry are obtainable from our website www.fsc.gov.im >Companies Registry>Fees. Payment of fees can be made in cash or by

cheque made payable to “Isle of Man Government”. We regret that we cannot accept cheques drawn on an account outside the U.K.

*amended 23.03.09

5. Further information

5.1 Our staff will willingly answer general queries by telephone or e-mail but cannot give legal advice. If you require such advice you should consult an Advocate. The telephone number for the Companies Registry is: +44 (0) 1624 689389 and the e-mail address is: companies@fsc.gov.im

5.2 Statutory forms and practice notes are available free of charge from our website: www.fsc.gov.im

Forms can also be obtained from legal stationers, accountants, advocates and Corporate Service Providers whose addresses can be found in the business section of the telephone book or at: www.manx-ads.com

A list of Licenceholders is available on our website at www.fsc.gov.im/Licenceholders

Details of Isle of Man Advocates are available from the Isle of Man Law Society at:

Isle of Man Law Society
27 Hope Street
Douglas
Isle of Man
IMI IAR

Tel: (01624) 662910

Fax: (01624) 679232

E-mail: iomlawsoc@advsys.co.uk <http://www.iomlawsociety.co.im/index.htm>

5.3 Company documents may be submitted to the Financial Supervision Commission at any time.

During office hours (9.00am to 4.30pm), submission may be effected ‘over the counter’ in the Companies Registry or at the Commission’s main reception desk on the first floor.

Submission may also be effected by post or after office hours by way of the letterbox situated by the main entrance. Presenters requiring acknowledgement of receipt of a document should provide a stamped self-addressed envelope.

The Companies Registry will remain closed on the first Wednesday of each month until 11.00 hrs for staff training. Documents can still be delivered to the first floor or left in the letterbox.

For the purpose of determining the date of submission of a document, documents submitted after 4.30 p.m. on any working day (Day 1) but before 9.00 a.m. on the following working day (Day 2), will be treated as having been submitted on Day 1. For the avoidance of doubt, documents submitted before 9.00 a.m. on the day immediately following a weekend or Bank Holiday, will be treated as having been submitted on the last working day prior to the weekend or Bank Holiday.

However, section 208(3) of the Companies Act 2006 states that a document which is not accepted for registration and has been rejected under the provisions of section 208(1), will not be considered to have been submitted at all.

It is the responsibility of presenters to ensure that documents arrive in the Companies Registry within the filing periods prescribed.

We are aware that post can on occasion be delayed. However presenters should be aware of that and post documents in plenty of time. The Companies Registry cannot operate a system which allows for such delays as to do so would simply amount to an extension to the filing periods set down by law.

<p>Please note: The Financial Supervision Commission does not currently accept statutory documents by fax or E-Mail.</p>
