

# Financial Supervision Commission

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## Practice Note

Practice Note NMVPN2/2008

6<sup>th</sup> April 2008

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### The Companies Act 2006

### Incorporating a Company

This Practice Note replaces NMVPN2/2006 “Incorporating a Company” issued on 1<sup>st</sup> 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](http://www.fsc.gov.im) > *Companies Registry* > *Companies Legislation*

This practice note sets out the procedure for incorporating a company in accordance with Part I and Part VII of the Act. It addresses the document registration procedures only. You should seek professional advice on the legal, financial or taxation implications or consequences of incorporating a company if you are uncertain or unclear if this method of conducting business is relevant to your needs. The Commission will **NOT** give advice on such matters.

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.

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## 1. Types of Company

- 1.1 The types of company which can be incorporated under the Act are as follows:-
  - (a) a company limited by shares;
  - (b) a company limited by guarantee;
  - (c) a company limited by shares and by guarantee;
  - (d) an unlimited company with shares;
  - (e) an unlimited company without shares; or
  - (f) a company limited by shares incorporated as a protected cell company.
- 1.2 There is no distinction in the Act between a “private” and a “public” company. Any company incorporated under the Act can carry out any action permitted by the Act, subject to the terms of its memorandum and articles.

## 2. Choosing the company name

- 2.1 **PLEASE NOTE: The Commission can only accept an application to reserve a company name from a person qualified to act as a registered agent or an application for incorporation from the person named as the first registered agent. An application coming from any other person will not be accepted.**
- 2.2 There are restrictions on your ability to choose the name you want to use. The statutory restrictions and compulsory requirements are set out in sections 11 and 12 of the Act. In addition, the Commission has published a list of restricted words and phrases where prior permission will need to be sought before submitting the memorandum and articles for registration, and where the Commission considers a name to be offensive or objectionable.
- 2.3 There is no legal requirement to seek approval from the Commission prior to submitting the memorandum and articles. We would however recommend that applicants do not incur unnecessary expenditure before ensuring that a proposed name is acceptable for registration.
- 2.4 If you wish to confirm a name’s acceptability, the Commission will consider applications on Form IMCNR to reserve a name for up to 12 weeks from persons qualified to act as registered agents **only**. If no prior approval has been sought, applicants are advised that there will be a delay in incorporating the company whilst a decision is made on the acceptability of the name, and it is possible that registration could be refused.

## 3. Registering the memorandum and articles

### 3.1 Contents of the memorandum

- 3.1.1 The memorandum must by law must contain the following matters:-
  - (a) the company name

- (b) the company type
- (c) the first registered office address (which must be in the Isle of Man)
- (d) the name of the first registered agent
- (e) the full name and address of each subscriber – minimum of one
- (f) if the company has a share capital, the agreement of each shareholder subscriber to take one or more shares
- (g) if the company is limited by guarantee, with or without a share capital, or an unlimited company without shares, the agreement of each guarantee subscriber to become a member
- (h) if the company is limited by guarantee, with or without a share capital, the amount for which every guarantee member is liable
- (i) that the company is a protected cell company – if appropriate
- (j) if the company has a share capital, the number of shares taken and the amount agreed to be paid by each subscriber.

3.2.2 The memorandum may also contain a statement specifying the purposes for which the company is established, or the business, activities or transactions which the company is permitted to undertake or the restrictions (if any) on such purposes, business etc.

### 3.3 Contents of the articles

3.3.1 Model articles are available from our website [www.fsc.gov.im](http://www.fsc.gov.im) >Companies Registry>Regulations in respect of a company limited by shares and a company limited by guarantee. These may be adopted in full or in part, but if any provision in the model articles is not provided for in the proposed articles, or is not expressly excluded, it shall be deemed to be included.

3.3.2 Model articles are **NOT** currently available for a company limited by shares and by guarantee, or for an unlimited company with or without a share capital. The Act does not provide for model articles for a protected cell company. In these cases you should seek professional advice as to the articles' contents.

### 3.4 Documents to be submitted

3.4.1 The person named as the first registered agent needs to submit the memorandum and articles (if any). Please note that the registered agent must keep a signed copy of the memorandum and articles (if any) at his office.

3.4.2 If the company name is acceptable for registration, the Commission will register the documents, allot a unique number to the company and issue it with a certificate of incorporation. A copy of the certificate will be put onto the public file of the company.

3.4.3 There is no requirement to file a list of the first directors of the company at the point of incorporation. The company must appoint one or more persons as directors within one month of incorporation. Corporate directors are permitted, but there are restrictions of the type of corporate director that may be appointed. After incorporation, the company may elect to file details of its directors. Failing such election, the company is not required to notify the Commission of the appointment of its first directors or of any change in them until the first annual return is due for submission.

3.5 The items listed above relate **ONLY** to the procedure for applying to the Commission for incorporation. This paragraph does **NOT** cover any other legal and/or financial enquiries that you ought reasonably to make depending on why you wish to incorporate the company.

3.6 If the Commission refuses to accept the Memorandum and Articles 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.

#### 4. Fees payable

4.1 A fee of £190 is payable on applying for registration of the memorandum and articles, which includes the issue of a certificate of incorporation.

4.2. A duplicate certificate of incorporation costs £7.50.

4.3 Details about all fees payable in the Companies Registry are obtainable from our website [www.fsc.gov.im](http://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.

#### 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: 01624 689389 and the e-mail address is: [companies@fsc.gov.im](mailto:companies@fsc.gov.im)

5.2 Statutory forms and practice notes are available free of charge from our website: [www.fsc.gov.im/Companies Registry](http://www.fsc.gov.im/Companies Registry).

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](http://www.manx-ads.com)

A list of Licenceholders is available on our website at [www.fsc.gov.im/Licenceholders](http://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](mailto: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.**

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