

Financial Supervision Commission

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Practice Note

Practice Note NMVPN4/2008

6th April 2008

The Companies Act 2006

Re-registering a Company incorporated under the Companies Act 2006 as a Company of another type

This Practice note replaces NMVPN4/2006 “Re-registering a Company incorporated under the Companies Act 2006 as a Company of another type” 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 re-registering a company incorporated or continued under the Act as a company of another type in accordance with Part IX Chapter 1 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 re-registering a company. 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. Applying for Re-registration

- 1.1 Any company, **EXCEPT** a protected cell company, which is incorporated under the Act can apply to be re-registered as a company of another type, i.e. as a company limited by shares or guarantee or both, or as an unlimited company with or without shares. A company with a share capital, whether limited or unlimited, may only re-register as a company limited by guarantee or an unlimited company without shares if upon re-registration it has no shares in issue.
- 1.2 **Before applying to the Commission for re-registration, you must ensure that the following things have been done:**
 1. If the company is involved in any activity that is licensable in the Isle of Man, it should contact the appropriate regulator or licensing body at an early stage to ensure that there are no regulatory issues. If you need guidance on any aspect of the regulatory functions of the Commission, please contact a member of the Supervision Team on 689300 or send an e-mail to fsc@gov.im.
 2. If a limited company seeks to re-register as an unlimited company, or vice versa, you must ensure that the new name of the company complies with the requirements of section 11 of the Act with regard to its end word(s).
 3. You must prepare a Memorandum complying with section 144(2) of the Act. The Memorandum may also contain a statement under section 144(4). You will also need to prepare Articles if the company is not going to adopt the relevant model articles.
 4. The registered agent named in the new memorandum of the company must complete the Application Form IM20.
 5. A Statutory Declaration Form IM20A has to be made by **all** the directors of the company stating that the company satisfies the solvency test as set out in section 49 of the Act.
- 1.3 **PLEASE NOTE – The items listed above relate ONLY to the procedure for applying to the Commission for re-registration. This paragraph does NOT cover any other legal and/or financial enquiries that you ought reasonably to make depending on why you wish to re-register the company.**

2. Actions of the Commission

- 2.1 On delivery of the documents listed in paragraph 1.2, the Commission will take the Memorandum and Articles submitted with the application and register them, provided that the company name is acceptable for registration. We will then issue a certificate of re-registration to the company, and register a copy of that certificate. The certificate of re-registration is conclusive evidence that the requirements of re-registration have been complied with. Please note that the company number will remain the same.
- 2.2 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.

3. Consequences of Re-registration

3.1 Your attention is drawn to the consequences of re-registration, which are set out in section 147 of the Act and are summarised below.

3.2 These are:-

- The legal status of the company remains unchanged except that the company is now governed by its new memorandum and articles
- The existing rights or liabilities of the company continue.
- If the company re-registers as one which has a share capital, each person who agreed in the new memorandum to take one or more shares in the company –
 - (i) is deemed to have been issued with the number of shares that such person is specified in the new memorandum as having agreed to take: and
 - (ii) becomes liable to pay the amount that such person is specified in the new memorandum as having agreed to pay for those shares.

4. Fees payable

- 4.1 There is no fee payable on applying for re-registration, nor for registering the Memorandum and Articles.
- 4.2 A duplicate certificate of re-registration costs £7.50.

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
- 5.2 Statutory forms and practice notes are available free of charge from our website: 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

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>
