

# Financial Supervision Commission

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## Practice Note

Practice Note NMVPN5/2008

6<sup>th</sup> April 2008

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### The Companies Act 2006

### Re-registering a Company incorporated under the Companies Act 1931

This Practice Note replaces NMVPN5a/2006 “Re-registering a Company incorporated under the Companies Act 1931 issued on 16<sup>th</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 re-registering a company incorporated under the Companies Acts 1931 – 2004 or continued and subject to those Acts as a company incorporated under the Act in accordance with Part IX Chapter 2 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 which is incorporated under the Companies Acts 1931 - 2004 or has been continued and is subject to those Acts can apply to be re-registered as a company incorporated under the Act. However, it may only apply to be re-registered as a company of the same type as it was before, i.e. a company limited by shares or guarantee or both, or an unlimited company with or without shares.
- 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](mailto:fsc@gov.im).
  2. Arrange for the existing company to pass a resolution authorising its re-registration and adopting new memorandum and articles. This resolution must be passed by members (or classes of members) holding at least 75% of the voting rights. A copy of this resolution must be filed along with the application.
  3. You must prepare a Memorandum complying with section 149(2) of the Act. The Memorandum may also contain a statement under section 149(3). You will also need to prepare Articles if the company is not going to adopt the relevant model articles. A copy of each of these documents must be filed with the application.  
  
**PLEASE NOTE:** There are no model articles prescribed for a protected cell company, and you will need to adopt a complete set.
  4. The registered agent named in the new memorandum of the company must complete the Application Form IM21.
- 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 register the Memorandum and Articles submitted with the application, provided that the company name has not changed or, if a change is proposed, approval has been obtained for the

new name. We will allot a unique number to the company and issue it with a certificate of re-registration, and register a copy of that certificate. The certificate is conclusive evidence that the requirements of re-registration have been complied with.

- 2.2 As the Commission is the Registrar, we will treat the issue of the certificate of re-registration as deemed delivery of the certificate under section 16A(2) of the Companies Act 1931 and the certificate of de-registration under section 16A(4) will be issued automatically.
- 2.3 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 151 of the Act and are summarised below.
- 3.2 These are:-
  - the legal status of the company remains unchanged except that it is now governed by its new memorandum and articles and the provisions of the Act.
  - the Companies Acts 1931-2004 no longer apply to the company.
  - the existing rights and liabilities of the company continue.
  - any charges granted by the company under the 1931 Act remain in force and do not need to be re-registered. Our public search facility will indicate on the new file that charges exist but their details will be held on the old file reference.

### **4. Annual Return**

The company's annual return date under Section 85 of the Act will be the anniversary of its date of incorporation under the 1931 Act and **NOT** its date of re-registration under the 2006 Act.

### **5. Fees payable**

- 5.1 A fee of £93 is payable on applying for re-registration. There is no fee payable for registering the memorandum and articles. A duplicate certificate of re-registration costs £7.50.
- 5.2 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.

### **6. Further information**

- 6.1 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)

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

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

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27 Hope Street  
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Isle of Man  
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Tel: (01624) 662910

Fax: (01624) 679232

E-mail: [iomlawsoc@advsys.co.uk](mailto:iomlawsoc@advsys.co.uk)

<http://www.iomlawsociety.co.im/index.htm>

- 6.3 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.**

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