

Financial Supervision Commission

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Practice Note

Practice Note NMVPN8/2008

6th April 2008

The Companies Act 2006

Transferring the Domicile of a Company to the Isle of Man

This Practice Note replaces NMVPN8a/2006 “Transferring the Domicile of a Company to the Isle of Man” issued on 16th 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 to the Isle of Man from another country in accordance with Part XI Chapter I of the Act. The procedure is also called redomiciliation, or continuation or continuing a company in the Isle of Man. When a company’s domicile is transferred to the Isle of Man, it must cease to be registered in its current jurisdiction. This process is called discontinuation or discontinuing 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 discontinuation 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 discontinued there and/or continued in the Isle of Man. The applicant must ensure that the jurisdiction from which the company is intending to move has reciprocal legislation before the application is submitted, as the application fee will not be refunded if discontinuation proves not to be possible.

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1. What you should do before submitting the Application

- 1.1 Any company incorporated outside the Isle of Man can apply to be continued **UNLESS:-**
 - (a) it is in liquidation or subject to insolvency or analogous proceedings in any jurisdiction;
 - (b) a receiver or manager has been appointed in relation to any of its assets;
 - (c) it has entered into an arrangement with its creditors that has not been concluded;
 - (d) the laws of the jurisdiction in which it is incorporated for the time being do not permit it to be continued in the Isle of Man;
 - (e) 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
 - (f) the company fails to satisfy the solvency test as defined in section 49 of the Act.
- 1.2 Your attention is drawn to Section 166 of the Act, which sets out the consequences of continuing a company. Briefly, these are:
 1. The property of the company continues to be the property of the continued company.
 2. The continued company continues to be liable for its existing obligations.
 3. Any existing cause of action, claim or liability to prosecution in respect of the company is unaffected.
 4. Any civil, criminal or administrative action or proceeding pending by or against the company is unaffected.
 5. 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.
 6. The registration of the continued company does not create a new legal entity or prejudice or affect the continuity of the company.

7. There are also provisions relating to the laws of evidence and rules of procedure in pursuing a claim against the continued company and for the reciprocal enforcement of judgments.

1.3 Before applying to the Commission for continuation, 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. Continuation of the company under Part XI does not permit the company to carry on any licensable business without obtaining the appropriate licence or consent from the relevant Government Department or Authority. If you need guidance on any aspect of the regulatory functions of the Commission, please contact a member of the Authorisations Team on 689300 or send an e-mail to fsc@gov.im.
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 application for continuation, and where the Commission considers a name to be offensive or objectionable.
3. There is no legal requirement to seek approval for the company name from the Commission prior to submitting the application. We would however recommend that applicants do not incur unnecessary expenditure before ensuring that a proposed name is acceptable for registration.
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.
5. You will need to obtain proof from the appropriate authorities in the country of incorporation that the company has obtained all the necessary authorisations to enable it to make the application. If this proof is not in English, then a certified translation will be required.
6. You must prepare a Memorandum complying with section 162(4) of the Act. The Memorandum may also contain a statement under section 162(5). You will also need to prepare Articles if the company is not going to adopt the relevant model articles, or is a protected cell company.
7. If appropriate, you will need to complete a Form IM16 giving details of all the outstanding charges to which section 137 of the Act would apply had the company been incorporated in the Isle of Man. Also, you will need to obtain the written consent of the chargeholders to the making of the application (see 2.2 below).
8. A Statutory Declaration has to be made by the proposed first registered agent of the company stating that the company complies with the requirements listed in 1.2 above.

9. The proposed first registered agent of the company must complete the Application Form (see 2.1 below).

1.4 **PLEASE NOTE** – The items listed above relate **ONLY** to the procedure for applying to the Commission for continuation. This paragraph does **NOT** cover 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 to the Isle of Man.

2. Documents to be filed with the Application

2.1 There is an Application Form IM27 to be completed by the person named in the Memorandum as the first registered agent of the company. The form (and any other prescribed form) can be downloaded from the Commission's website.

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. The Statutory Declaration Form IM27A
2. The Memorandum and Articles
3. Authorisation to discontinue in country of incorporation
4. Form IM16 in respect of outstanding charges and the written consent of the chargeholders

A Practice Note which sets out the procedure for registering a charge, is available from our web site at:

www.fsc.gov.im > Companies Registry > Practice Notes > 2006 Company Practice Notes

2.3 If the proposed name of the company is acceptable for registration, the Commission will grant its written consent to the application.

2.4 If the application is approved, the consent issued by the Commission will, subject to there being no material change in the information provided, be valid for 12 weeks from its date. During that 12 week period you must complete the registration procedure as set out on section 3 of this Practice Note.

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 Isle of Man within that 12 week period, then a fresh application, together with the accompanying documents and fees payable, will need to be made if the continuation of the company is to proceed.

3. Registering the Memorandum and Articles

3.1 When you have received the written consent of the Commission to the transfer, there is a time limit of **12 weeks** for you to complete the procedures for the continuation of the company in the Isle of Man. As the Commission's consent expires by law 12 weeks after its date, failure to have the company continued within the prescribed time period means that the company cannot be continued 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 continued in the Isle of Man.

- 3.2 The following documents must be delivered to the Commission within the 12 week period after the consent has been given (see 3.1 above):
 1. A Statutory Declaration Form IM28 made by the first registered agent stating that there has been no material change in the information supplied. This declaration must be made not earlier than 7 days before its delivery to the Commission. If there has been any material change, the Commission will reconsider the application in the light of such changes.
 2. The Form IM16 containing details of the outstanding charges (if any).
- 3.3 On delivery of these documents, the Commission will take the Memorandum and Articles originally submitted with the application and register them along with the documents submitted under 3.2. The Commission will then issue a certificate of continuation to the company, as well as a certificate of registration for each outstanding charge. On the date of the certificate of continuation, the company becomes a company to which the Act applies as if it were incorporated under the Act.
- 3.4 If the Commission refuse 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.
- 3.5 Once the company has been continued in the Isle of Man, it must forward within **fourteen** days a copy of the certificate of continuation to the competent authorities in its former country of incorporation.

4. Annual Return

The company's annual return date under Section 85 of the Act will be the anniversary of its date of incorporation in its original place of incorporation and **NOT** its date of continuation under the 2006 Act.

5. Fees payable

- 5.1 A fee of £360 is payable on submission of the application. This fee is non-refundable should the application be withdrawn or refused. There is no filing fee payable on registration of the Memorandum and Articles.
- 5.2 A duplicate copy of the certificate of registration costs £7.50.
- 5.3 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.

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

6.2 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>

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.

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