

Financial Supervision Commission

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Practice Note

Practice Note NMVPN9/2008

6th April 2008

The Companies Act 2006

Dissolving a Solvent Company under Section 190 of the Act

This Practice Note replaces NMVPN9/2006 “Dissolving a Solvent Company Under Section 190 of the Act” 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 applying to the Commission for a Declaration of Dissolution under Section 190 of the Act.

It 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 used as a substitute for legal advice.

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1. The Application Form and associated actions

- 1.1 This procedure applies to any company incorporated under the Act **EXCEPT** a company which is in liquidation or where a receiver has been appointed over any of its assets.
- 1.2 An application can be made by the registered agent or a person authorised to act on its behalf, the company or a person authorised to act on its behalf or a member of the company and must be accompanied by a Statutory Declaration made by a director of the company, who need not be the same person as the applicant, that the company has ceased to operate, and, to the best of that person's knowledge and belief, that it has discharged all its debts and liabilities.
- 1.3 Before making an application, the applicant must have sent a notice to each director, the registered agent and each member of the company stating that the applicant proposes to apply for a Declaration of Dissolution, and that, unless written objection is made to us within one month of the date the notice was posted, we shall dissolve the company.
- 1.4 The application to dissolve the company must be made on the prescribed form IM31, which is downloadable from the Commission's website www.fsc.gov.im >Companies Registry >Company Forms >2006 Companies. The Commission has prepared a form of Statutory Declaration IM31A for the convenience of applicants.
- 1.5 We will not accept an application for dissolution where (a) an annual return is outstanding for filing or (b) any charge remains uncanceled on the public record.
- 1.6 There is a prescribed fee of £54 payable, which must be paid at the time the application is submitted to us.

2. Duties of the Commission on receipt of an application

- 2.1 When the application has been accepted, we will publish in one local newspaper, on our website and in an index available for inspection at our public counter, a notice to the effect that an application has been received. Any person wishing to lodge an objection to the dissolution has one month from the publication date to lodge such objection.
- 2.2 **Applicants are advised that, should any objection be received, no Declaration of Dissolution will be made until either the objection is withdrawn, or the Commission decides that the objection is without justification. There is a right of appeal to Court against the latter, and therefore the company will not be dissolved unless the objector has not appealed within the 21 day time limit or the Court upholds the Commission's decision.**
- 2.3 If no objection has been received by the end of the period for objections, we will send a letter to the company, at its registered office, stating that the company is entitled to distribute its surplus assets, and that it may do so.

3 Dissolving the Company

- 3.1 When the company receives the letter described in paragraph 2.4 above, it must take appropriate action (i.e. seek to distribute any surplus assets) and reply to us that it has either (a) distributed its surplus assets or (b) that it cannot do so and state why.

3.2 If no reply is received, the company will not be dissolved.

3.3 When the reply is received, we will publish in one local newspaper, on our website and in an index available for inspection at our public counter, a notice to the effect that the company is dissolved, and, on publication of that notice, the company is dissolved.

3.4 As a courtesy, we will advise the company, or the applicant if requested, by letter of the date of dissolution.

4 Further information

4.1 Our staff will willingly answer general queries by telephone or e-mail, but cannot give legal advice, which should be addressed to an Advocate. The telephone number for the Companies Registry is: 01624 689389 and the e-mail address is: companies@fsc.gov.im

4.2 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
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Tel: (01624) 662910

Fax: (01624) 679232

E-mail: iomlawsoc@advsys.co.uk

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

4.3 Company documents may be submitted to the Financial Supervision Commission 24 hours a day, 365 days a year.

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>
