

Financial Supervision Commission

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Practice Note

Practice Note 10/2008

6th April 2008

The Companies Acts 1931 - 2004

Filing Obligations of a Foreign Company Registered under Part XI

Introduction

This Practice Note replaces Practice Note 3/2007 “Filing Obligations of a Foreign Company Registered under Part XI” issued on 6th April 2007.

This Practice Note sets out the requirements for filing of statutory documents in the Companies Registry by a foreign company (“F Company”) under the Companies Act 1931 (“the Act”). Generally, the designated officer of the F Company is responsible for filing these documents. Failure to register a document within its prescribed filing period leads to the payment of a late filing fee, can lead to the prosecution of a company and/or any other person connected with the company and may leave a company open to removal from the register. In certain cases, the Companies Registry may be unable to accept a document for registration outside its filing period and this could have serious consequences for a company.

This Practice Note is intended as a general guide only and must be read in conjunction with the relevant legislation. It should not be relied upon and should not be used as a substitute for legal advice.

If you are in any doubt as to whether you should be filing a form, the Companies Registry staff can assist you or you should seek advice from your lawyer, accountant or other professional adviser.

NOTE – There is a separate Practice Note (PN10/2008) dealing with the requirements for registering a foreign company and a separate Practice Note (PN7/2004) dealing with registering a charge created by a foreign company.

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1. The Role of the Companies Registry

- 1.1 The Isle of Man Companies Registry has been in existence since 1865. Originally confined to the regulation of Manx companies, it is now also responsible for the administration of legislation relating to foreign companies, limited liability companies, business names, limited partnerships and societies incorporated under the Industrial and Building Societies Acts.
- 1.2 In undertaking its statutory obligations, the Companies Registry has four core functions:
1. The incorporation and registration of companies, business names, limited partnerships and societies;
 2. The registration of statutory documents filed pursuant to relevant legislation;
 3. Ensuring compliance with the appropriate requirements of the law and the striking off of defunct companies;
 4. The provision of accurate and timely information to the public.

2. Forms to be filed under Part XI of the Act.

2.1 Change in the Memorandum etc. (Form 4F)

- 2.1.1 This Form is used to inform Companies Registry of any Resolution passed by the company, or any other document, that changes the contents of the Memorandum or Articles of Association or other document constituting the company. A certified copy of the document which makes the change must accompany the Form. The copy must be certified a true copy by an official of the government to whose custody the original is committed; or duly certified as a true copy on oath by an officer of the company before someone having authority to administer an oath. (For full details of the correct methods of certification, see below for an extract from Section 2 of the Companies (Forms) Order 1932).

The Companies (Forms) Order, 1932,

2. (i) *A certified copy of the Charter, Statutes, or Memorandum and Articles of the Company, or other Instrument constituting or defining the constitution of the Company required to be delivered to the Commission under Section 313 of the Act, in the case of a Company incorporated outside the Isle of Man in any of His Majesty's dominions or in any place under His Majesty's protection or where His Majesty has jurisdiction unless incorporated under the laws of a foreign company shall be deemed to be certified as a true copy if in such dominion or place it is –*
- (a) duly certified as a true copy by an official of the Government to whose custody the original is committed; or*
- (b) duly certified as a true copy by a Notary Public of such dominion or place; or*
- (c) duly certified as a true copy on oath by some Officer of the Company before some person having authority to administer an oath.*
- (ii) *A certified copy of the Charter, Statutes or Memorandum and Articles of the Company or other Instrument constituting or defining the constitution of the Company required to be delivered to the Commission under Section 313 of the Act in the case of a Company incorporated outside the Isle of Man under the laws*

of a foreign country shall be deemed to be certified as a true copy if in such foreign country it is –

- (a) duly certified as a true copy by an official of the Government to whose custody the original is committed, the signature or seal of such official being authenticated by any of the British Officials mentioned in Section 40 of the Evidence Act, 1871; or*
- (b) duly certified as a true copy by a Notary of such Foreign Country the certificate of the Notary being authenticated by any of the British Officials mentioned in Section 40 of the Evidence Act, 1871; or*
- (c) duly certified as a true copy on oath by some officer of the Company before a person having authority to administer an oath, the status of the person administering the oath being authenticated by any of the British Officials mentioned in Section 40 of the Evidence Act, 1871.*

2.1.2 If the original changing document is not in English, a translation certified to be a true copy would need to be presented *in addition to* a copy of these documents in the original language. (See below for an extract from Section 5 of the Companies (Forms) Order 1932, which gives full details of the methods of certifying a translation).

The Companies (Forms) Order, 1932.

- 5. *(i) A translation of a Charter, Statutes or Memorandum and Articles of Association or other instrument constituting or defining the constitution of a Company or any Account or Document to be delivered to the Registrar of Companies under the Act shall be certified to be a correct translation*
 - (a) if made in a foreign country by:*
 - Any of the British Officials mentioned in Section 40 of the Evidence Act, 1871, or by any person whom any such official certifies is known to him as competent to translate it into the English language;*
 - (b) if made outside the United Kingdom in any of Her Majesty's dominions or in any place under His Majesty's protection or where Her Majesty has jurisdiction by:*
 - A person having authority to administer an oath as provided by Section 40 of the Evidence Act, 1871:*
 - (c) if made in Northern Ireland by:*
 - i. a Notary Public in Northern Ireland, or*
 - ii. a Solicitor of the Supreme Court of Judicature of Northern Ireland;*
 - (d) if made in Scotland by:*
 - i. a Notary Public in Scotland, or*
 - ii. an Enrolled Law Agent;*
 - (e) if made in England by:*
 - i. a Notary Public in England, or*
 - ii. a Solicitor of the Supreme Court of Judicature of England.*

2.1.3 There is a filing period of two months after the date of the change for this Form, and late filing fees are payable if the document is not submitted in time.

2.2 Change of Director or Secretary (Form 5F)

This Form is used to tell us about any change to the directors or the secretaries of an F Company. **A complete list of the directors and secretaries must be given together with a note of the change and its date alongside the relevant entry.**

There is a filing period of two months after the date of the change for this Form, and late filing fees are payable if the document is not submitted in time.

2.3 Change in (1) Person authorised to accept service, (2) Designated Officer, (3) Registered office or Place of Management and Control, or (4) Place of Business in the Isle of Man

This Form is used to tell us about any change in the registered details of the person(s) authorised to accept service on behalf of the F Company, the designated officer for filing documents, the registered office or place of management and control, or the place of business in the Isle of Man. If a new person is appointed in either of the first two categories listed, full details of that person's name, address and date of appointment must be given.

There is a filing period of two months after the date of the change for this Form, and late filing fees are payable if the document is not submitted in time.

NOTE – Only the particulars which are being changed need to be completed on the Form. The remaining categories can be left blank or marked “No Change”.

2.4 Mortgages and Charges (Forms 8F, 8AF, 9F, 10F, 11F and 12F)

In general terms, if your company creates a legal obligation which is secured over any of its assets in the Isle of Man, then details of the document creating the charge and the related security must be filed with us within one month of the date of creation of the charge. The type of prescribed form to be used will depend on the type of charge created. Any person interested in the charge has the right to file details of it with us.

A separate Practice Note (PN7/2004) has been issued by the Commission on the subject of registration of charges.

NOTE – We cannot accept registration of the charge if it is submitted outside the filing period. In those circumstances, you will need to obtain an Order from the Isle of Man High Court of Justice extending the time for registration.

Failure to register a charge altogether makes that charge ineffective to protect the interests of the holder of the charge against the liquidator and any other creditor of the company.

2.5 Using another name in the Isle of Man (Forms 313AAF & 313ABF)

These Forms are to tell us if your company is using a name other than its corporate name in the Isle of Man. Typically, they would be used if we had served notice that the registered name was “undesirable”.

PLEASE NOTE

- (1) If your company has changed its name in its place of incorporation, then that fact must be notified to us on Form 4F (see para 2.1).
- (2) The requirements of the Business Names Acts 1918 & 1954 apply to F companies. If you are carrying on business in a name other than your full corporate name, you are required to register that name as a separate exercise.

2.6 Annual Declaration (Form ADF)

Each calendar year, every F company is required to file an Annual Declaration, made on the anniversary of its date of registration in the Isle of Man. The Declaration must be made by the Designated Officer and confirms that the company continues to have a place of business in the Isle of Man and has complied with its obligations in respect of the Companies Acts.

There is a filing fee payable for the Declaration unless the company is an Isle of Man registered charity or is purely a property management company. No late filing fees will be levied as it has no prescribed filing period. **HOWEVER**, if the Declaration is not filed within six months of its due date, the Commission will put a notice on the public file that the company does not comply with the provisions of the Act.

2.7 De-registering a foreign company

A foreign company can de-register at any time by submitting a letter as notice to us under section 319(2) of the Act. The company will cease to be registered from the date the letter is received.

2.8 Full List of Prescribed Forms

Form	Description
4F	Return of alteration in the Memorandum and Articles of Association, Charter or other instrument.
5F	Return of alteration in list of directors and/or secretary.
6F	Return of alteration in names, etc., of persons authorised to accept service.
8F	Particulars of a charge.
8AF	Supplemental particulars of a charge.
9F	Particulars of mortgage on acquired property.
12F	Memorandum of Satisfaction.
313AAF	Statement of name, other than corporate name, under which an overseas company proposes to carry on business in the Isle of Man.
313ABF	Statement of name, other than corporate name, under which an overseas company proposes to carry on business in the Isle of Man in substitution for name previously registered.
ADF	Annual Declaration

3. Fees payable

3.1 The Annual Declaration has a filing fee payable of £320 unless the company is of a type that can claim exception from this fee, and there is no late filing fee.

3.2 There is no fee for submitting any other F company document to us within the prescribed filing period for the relevant document.

3.2 However, if you submit a document outside the filing period, a late registration fee will usually be payable. The amount of this late fee depends on how much time has passed after the filing period has expired.

3.3 The late fee effective from 6th April 2008 is calculated as follows:

Up to one month late	£65
Up to three months late	£110
Up to six months late	£170
Over six months late	£230

3.4 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.

4. Further information

4.1 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

4.2 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

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>

4.3 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 283B(1) the Act states that a document is not properly "submitted" until it has been accepted for registration. Accordingly, if a document is submitted to the Companies Registry and subsequently rejected under the provisions of Section 283B(2), the document shall 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>
