

Financial Supervision Commission

Companies Registry
P O Box 345
Finch Hill House
Bucks Road
Douglas
Isle of Man
IM99 2QS
Telephone: +44 (0)1624 689389
Facsimile: +44 (0)1624 689397
Email: companies@fsc.gov.im

P O Box 58
Finch Hill House
Bucks Road
Douglas
Isle of Man
IM99 1DT

Practice Note

Practice Note 6/2005

6th April 2008

Companies (Transfer of Domicile) Act 1998

Transferring the Domicile of a Company from the Isle of Man

Introduction

This Practice Note replaces Practice Note 4/2005 “Transferring the Domicile of a Company from the Isle of Man” issued on 1st June 2005.

This practice note sets out the procedure for transferring the domicile of a company from the Isle of Man to another country in accordance with Part 2 of the Companies (Transfer of Domicile) Act 1998 (“the Act”). The procedure is also called “redomiciliation”; “discontinuation”; or “discontinuing a company in the Isle of Man”. The registration of the discontinued company in another country is called “continuation” or “continuing 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 continuation 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 continued there. The applicant must ensure that the jurisdiction in which the company is intending to continue has reciprocal legislation before the application is submitted, as the application fee will not be refunded if continuation proves not to be possible.

Contents

1. What should I do BEFORE submitting the Application?
2. Which documents need to be filed as part of the Application?
3. Discontinuing the Company

4. What Fees are Payable?

5. Further Information

1. What you should do before submitting the Application

- 1.1 Any company incorporated under the Isle of Man Companies Acts 1931-2004 can apply to be discontinued **except** a company which is authorised under Section 6 of the Insurance Act 1986 to carry on insurance business (but not one which is a collective investment scheme).
- 1.2 Your attention is drawn to Sections 12 and 13 of the Act, which place certain restrictions on the transfer of domicile of Manx companies. Briefly, the company will not be eligible for transfer unless the laws of the destination country or territory allow for the following:
 - 1.2.1. The property of the company continues to be the property of the body corporate;
 - 1.2.2. The body corporate continues to be liable for the obligations of the company;
 - 1.2.3. Any existing cause of action, claim or liability to prosecution in respect of the company is unaffected;
 - 1.2.4. Any conviction against, or any ruling, order or judgement in favour of or against the company may be enforced by or against such body corporate.
- 1.3 Section 13 of the Act makes provision that the transfer of domicile of a Manx company shall not be deemed to create a new legal entity or prejudice or affect the continuity of the body corporate that was formerly a Manx company subject to the Companies Acts.
- 1.4 **Before applying to the Commission for its consent, you must ensure that the following actions have taken place:**
 - 1.4.1. You must arrange for a resolution of the members to be passed by a majority vote of 75% of each class of members authorising the continuance in a named country or territory outside the Isle of Man. **NOTE** – If the resolution is passed as a Special or an Extraordinary Resolution or one that requires to be filed with the companies Registry, you must file that resolution in the usual way, as a separate exercise from the application process.
 - 1.4.2. All the directors of the company must make a Statutory Declaration that the company is solvent and can meet all its liabilities and obligations and that the discontinuance will not adversely affect the interests or rights of the company's creditors and shareholders;
 - 1.4.3. You must arrange for a notice to be published at least 14 days prior to the application in two newspapers published and circulating in the Isle of Man and one newspaper circulating in the country in which the company is to be continued. These notices must advertise the company's intention to cease to be registered in the Isle of Man and to continue business in the named country and must advise

that interested persons may make comments to the Financial Supervision Commission during the 10 days following the publication of the notice.

- 1.4.4. You must arrange for an irrevocable and legally binding undertaking to be executed by the company and all of its directors under which the company and each of its directors:
 - 1.4.4.1. agree to accept service of legal process in the Isle of Man in any legal proceeding arising out of actions or omissions occurring prior to the transfer of domicile and appoint a person within the Isle of Man to act as agent for the service of process for a period of not less than three years from the date of the discontinuance
 - 1.4.4.2. agree to accept service of documents on them at a specified address in the named country in which the company is to be continued.
 - 1.4.4.3. submit to the non-exclusive jurisdiction of the courts of that country.
- 1.4.5. You must deliver a notice to all the shareholders of the company at least fourteen days prior to the application, to the effect that the Financial Supervision Commission will take into consideration any written comments that it receives prior to the application.
- 1.4.6. You must obtain the written consent to the making of the application by the holders of all charges registered against the company under Section 79 of the Companies Act 1931.
- 1.4.7. You must arrange for an advocate to sign a certificate to the effect that he has made such enquiries as are reasonable and that the application complies with the requirements of the Act and that all matters precedent and incidental thereto have been complied with. In this context, "Advocate" includes a registered Legal Practitioner.
- 1.4.8. You must obtain the written consent to the transfer from the Income Tax and Customs & Excise Divisions of the Isle of Man Treasury and the Insurance and Pensions Authority. Please ensure that when you contact these offices, you make it clear that you are seeking consent to the transfer of the company and not to any other consent.
- 1.4.9. You must arrange for the company to make a written statement as to the nature of its current business.
- 1.4.10. You must arrange for the person who is to be appointed as agent for the service of process to accept that appointment in writing.
- 1.5. In order to assist you, specimen forms of the Statutory Declaration, the irrevocable undertaking and the acceptance of appointment can be downloaded from the Commission's website www.fsc.gov.im as part of the Application Form
- 1.6. **PLEASE NOTE – The items listed above relate ONLY to the procedure for applying to the Commission for its consent to the transfer. 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.**

2. Documents to be filed as part of the Application

- 2.1 There is an Application Form to be completed by the person applying for the Commission's consent. The form can be downloaded from the Commission's website at:

www.fsc.gov.im >Companies Registry >Company Forms >Transfer of Domicile

Copies of the Act are also available from our web site at:

www.fsc.gov.im >Companies Registry >Companies Legislation >Companies (Transfer of Domicile) Act 1998

- 2.2 The following documents need to be submitted to the Commission with the Application form:

2.2.1. A certified copy of the resolution authorising the continuance (1.4.1).

2.2.2. The original Statutory Declarations by the directors of the company (1.4.2);

2.2.3. Copies of the notices published in the newspapers. The copies must show the name of the newspaper and the date of publication (1.4.3)

2.2.4. The original irrevocable and legally binding undertakings executed by the company and its directors (1.4.4)

2.2.5. A copy of the notice delivered to all the shareholders of the company (1.4.5).

2.2.6. The written consent by the holders of all charges (1.4.6).

2.2.7. The Advocate's certificate (1.4.7).

2.2.8. The written consent of the Income Tax and Customs & Excise Divisions and the Insurance & Pensions Authority (1.4.8).

2.2.9. The statement of the company's nature of its current business (1.4.9).

2.2.10. The signed acceptance by the person appointed as agent (1.4.10)

It would greatly assist us, and significant time will be saved if the application is compiled and submitted in a file with dividers (numbered as above) separating each of the above documents. If a divider is empty, something is missing. Preparing the application in this form will not only ensure you have prepared, gathered and submitted all of the required documents, it will hasten its processing when we receive it as time will not have to be spent identifying the various documents and ordering them.

- 2.3 A checklist of the documents to be submitted is included in the Application Form downloadable from the Commission's website.

- 2.4 The Commission will consider the application and either grant its written consent or refuse the application.

- 2.5 If the Commission approves the application you will be provided with 2 original letters of consent. One is for the authorities in the named country and the second is to be

returned to the Commission when you file the Declaration of Discontinuance (see section 3.2 below).

- 2.5 If you are aggrieved by a decision of the Commission in relation to the redomiciliation of a company, you have the right under Section 14 of the Act to apply to the Treasury for a review of that decision.

3. Discontinuing the Company

- 3.1 When you have received the written consent of the Commission to the transfer, there is a time limit of **three months** for you to have the company continued in the named country. There is then a period of **1 month*** after the company has been continued for you to file the Declaration of Discontinuance and accompanying documents (see 3.2 below) with the Commission. As the Commission's consent expires by law after three months, failure to have the company continued or to submit the Declaration of Discontinuance within the prescribed time periods means that the company cannot be discontinued 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 discontinued in the Isle of Man.

[*S.10 (1) Companies (Transfer of Domicile) Act 1998 amended by Sch3 Fiduciary Services Act 2005]

- 3.2 The following documents require to be delivered to the Commission within fourteen days of the continuation of the company in the new jurisdiction:
- 3.2.1. A declaration of discontinuance containing details of the name of the country or territory in which the Isle of Man company has been continued and the address of the registered office or principal business address of the company in that country or territory;
 - 3.2.2. The consent of the Commission (see 2.5 above);
 - 3.2.3. A copy of the instrument of continuance issued to the company by the competent authorities in the named country;
 - 3.2.4. Copies of the irrevocable undertakings given by the company and its directors (see 1.4 para. 4 above).
- 3.3 On delivery of these documents, the Commission will issue a certificate of discontinuance for the company. This certificate will be deemed to provide conclusive proof that all the requirements of the Act have been complied with and that the company is duly discontinued. From the date shown on the declaration of discontinuance, the Isle of Man Companies Acts shall cease to apply to the company.

4. Fees payable

A fee of £2,900 is payable on submission of the application. This fee is non-refundable should the application be withdrawn or refused.

If a number of companies, which are all members of the same group, are applying for discontinuation, the first pays £2,900 and the remainder each pay £1,130.

A further fee of £50 is payable on delivery to the Commission of the declaration of discontinuance.

A duplicate copy of the certificate of discontinuation costs £13.

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: +44 (0) 1624 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

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>

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 283B(1) of the Companies Act 1931 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>
