

**TO THE CHAIRMAN AND MEMBERS OF THE FINANCIAL SUPERVISION  
COMMISSION FOR THE MEETING TO BE HELD ON 24<sup>th</sup> JANUARY 2008**

**New Practice Note**

**The Issue**

To note for information the attached Practice Note:

“Practice Note 1/2008 - Information for new officers - Document Filing Obligations in the Companies Registry as required by the Companies Acts 1931 – 2004”

The Commission is currently taking action in terms of section 273 of the Companies Act 1931 to strike off approximately 2,000 defaulting companies. The most noticeable aspect of this strike off has been the large number of enquiries from non professional directors who appear to be ‘managing’ their own companies without the assistance of a CSP and have limited knowledge of their duties and obligations under the Acts.

During the last 6 weeks there have been numerous enquiries from company directors enquiring why the Commission is taking action against their company. Many have claimed they were unaware an annual return was required and as a result of discussing what needs to be done to rectify the situation it has become clear numerous other changes have not been reported. This includes the appointment or resignation of directors as well as changes in their particulars.

One of the key features of these discussions has been unwillingness on the part of the directors to pay for legal advice or ongoing professional support. Far from taking responsibility for the consequences of their inaction, a number of directors have attempted to blame the Commission for not ensuring they were made aware of their responsibilities.

There is considerable material available on our web site outlining the duties and responsibilities of a director and what needs to be done to maintain a company. However, in order to be effective they need to read it. In order to minimise the scope for criticising the Commission the attached ‘slim’ practice note has been prepared and will in future be sent out with every certificate of incorporation.

**Recommendation**

It is recommended, subject to the comments of the Chairman and Members, that the attached Practice Note is noted.

John Wilkinson  
Senior Manager – Companies Registry  
10<sup>th</sup> January 2008

# Companies Registry

## Financial Supervision Commission

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### **Practice Note 1/2008 - Information for new officers - Document Filing Obligations in the Companies Registry as required by the Companies Acts 1931 – 2004**

This practice note sets out the requirements for filing in the Companies Registry the more common statutory documents prescribed under the Companies Acts 1931 - 2004. Such duties are mainly, but not exclusively, the responsibility of the directors of a company.

**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 its officers and may leave a company open to removal from the register. In certain cases, the Companies Registry is unable to accept a document for registration outside its filing period and this could have serious consequences for a company. This handout 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.**

This practice note does **NOT** cover every prescribed document under the Companies Acts. If you are in any doubt as to your wider duties and obligations under the Acts, or whether you should be filing a form. You should seek advice from your lawyer, accountant or other professional adviser.

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#### **Annual Return**

**WARNING – Do not confuse this Annual Return with any other form of annual or periodic return or statement, such as a tax or VAT return, which you are obliged to submit to any other Government Department.**

Every company, whether trading or not, is required to file an annual return each year with the Companies Registry. For most companies, the annual return is dated on the anniversary of its incorporation. For companies incorporated before 1993 the return date is different but still remains on the same date each year. The return also includes a declaration as to whether or not the company has prepared accounts and/or kept accounting records. You do **NOT** need to submit the accounts themselves unless the company is (a) a public company, (b) a subsidiary of a Manx public company or (c) liable to file accounts under the Timeshare Act. There is an annual return fee payable each year when you submit the annual return. The annual return fee, which is set by Tynwald, is currently £320, unless the company claims exception from the fee. It has a filing period of one month and late fees are payable in excess of this period.

**NOTE – Failure to file the annual return can result in the company being struck off the register. This can have serious financial and legal implications.**

#### **Change in Details of Directors and/or Secretaries – Form 9N**

Whenever a director or secretary is appointed or resigns, and whenever a change such as the name, address, or nationality occurs in the details of an existing director or secretary, you must submit Form 9N within one month from the date of the change. The form requires you to list the change(s) and the date(s) and requires any new person appointed to consent in writing to his appointment. Late fees are payable if the form is not submitted in time.

## Change of Registered Office – Form 4

If your company changes its registered office, you must file Form 4 within one month of the change. Late fees are payable if the form is not submitted in time.

**NOTE – Notices and other official documents are liable to be sent to the registered office as stated on our records. If you do not notify the Companies Registry about a change, you may not become aware of important information regarding your company. This may result in your company being struck off the register or you may suffer serious financial or legal consequences.**

## Increasing the Capital or Allotting Shares – Forms 10 & 45

If you increase the nominal share capital of your company or issue new shares, then you are required to file a Form 10 in the first case and a Form 45 in the latter. Capital duty of £16 per £1000 or part £1000 of increased capital is payable on the Form 10. There is no standard registration fee payable on either form. Both these documents have a one month filing period and late fees are payable if not submitted in time.

## Resolutions

Certified copies of certain types of resolutions passed by the company (shareholders) are required to be filed. There is a filing period of one month for all resolutions and no standard filing fee is payable. Late fees are payable if not submitted in time.

**NOTE – You are not required to file any resolutions passed at a meeting of the company's directors. Care should be exercised to ensure that when you wish to pass a resolution, you are aware whether such a resolution ought to be passed at a directors' meeting or a shareholders' meeting. The Companies Acts and your Articles of Association will specify the type of meeting at which a particular type of resolution may be passed.**

## Mortgages and Charges

In general terms, if your company creates a document which secures any of its assets to another party, then details of that document must be filed within one month. 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 the Companies Registry.

**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 void against the liquidator and any creditor of the company.**

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## Further information

Details about all the 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 Isle of Man or the U.K. Statutory forms and practice notes are also available free of charge from our website. 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)

If you are a CSP, Advocate or other professional incorporating a company on behalf of a client who intends managing the company themselves, please ensure they are provided with a copy of this practice note.