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PRACTICE NOTE

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NMVPN2/2021

Date: 18 August 2021

Companies Act 2006

Incorporating a Company

Introduction

**NOTE:- This Practice Note is issued by the Department of Economic Development in its capacity as Registrar of Companies under the Companies Act 2006 ("the Act"). All references, unless specifically stated, are to that Act only.**

Copies of Acts of Tynwald dealt with by the Companies Registry can be found on the following website administered by the Attorney General:

<http://www.legislation.gov.im/cms/index.php>

This practice note sets out the procedure for incorporating a company in accordance with Part I and Part VII of the Act. It addresses the document registration procedures only. You should seek professional advice on the legal, financial or taxation implications or consequences of incorporating a company if you are uncertain or unclear if this method of conducting business is relevant to your needs. The Department will **NOT** give advice on such matters.

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.

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## 1. Types of Company

- 1.1 The types of company which can be incorporated under the Act are as follows:-
- (a) a company limited by shares;
  - (b) a company limited by guarantee;
  - (c) a company limited by shares and by guarantee;
  - (d) an unlimited company with shares;
  - (e) an unlimited company without shares; or
  - (f) a company limited by shares incorporated as a protected cell company.
- 1.2 There is no distinction in the Act between a “private” and a “public” company. Any company incorporated under the Act can carry out any action permitted by the Act, subject to the terms of its memorandum and articles.

## 2. Choosing the company name

- 2.1 **PLEASE NOTE: The Department can only accept an application to reserve a company name from a person qualified to act as a registered agent or an application for incorporation from the person named as the first registered agent. An application coming from any other person will not be accepted.**
- 2.2 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 Department has published a list of restricted words and phrases where prior permission will need to be sought before submitting the memorandum and articles for registration, and where the Department considers a name to be offensive or objectionable.
- 2.3 There is no legal requirement to seek approval from the Department prior to submitting the memorandum and articles. We would however recommend that applicants do not incur unnecessary expenditure before ensuring that a proposed name is acceptable for registration.
- 2.4 If you wish to confirm a name’s acceptability, the Department will only consider applications in writing 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.

## 3. Registering the memorandum and articles

### 3.1 Contents of the memorandum

- 3.1.1 The memorandum must by law must contain the following matters:-
- (a) the company name
  - (b) the company type
  - (c) the first registered office address (which must be in the Isle of Man)
  - (d) the name of the first registered agent
  - (e) the full name and address of each subscriber - minimum of one
  - (f) if the company has a share capital, the agreement of each shareholder subscriber to take one or more shares
  - (g) if the company is limited by guarantee, with or without a share capital, or an unlimited company without shares, the agreement of each guarantee subscriber to become a member
  - (h) if the company is limited by guarantee, with or without a share capital, the amount for which every guarantee member is liable
  - (i) that the company is a protected cell company - if appropriate
  - (j) if the company has a share capital, the number of shares taken and the amount agreed to be paid by each subscriber.

3.1.2 The memorandum may also contain a statement specifying the purposes for which the company is established, or the business, activities or transactions which the company is permitted to undertake or the restrictions (if any) on such purposes, business etc.

### 3.2 Contents of the articles

3.2.1 Model articles are available from our website [www.gov.im/categories/business-and-industries/companies-registry](http://www.gov.im/categories/business-and-industries/companies-registry) in respect of a company limited by shares and a company limited by guarantee. These may be adopted in full or in part, but if any provision in the model articles is not provided for in the proposed articles, or is not expressly excluded, it shall be deemed to be included.

3.2.2 Model articles are **NOT** currently available for a company limited by shares and by guarantee, or for an unlimited company with or without a share capital. The Act does not provide for model articles for a protected cell company. In these cases you should seek professional advice as to the articles' contents.

### 3.3 Documents to be submitted

3.3.1 The person named as the first registered agent needs to submit the memorandum and articles (if any). Please note that the registered agent must keep a signed copy of the memorandum and articles (if any) at his office.

3.3.2 If the company name is acceptable for registration, the Department will register the documents, allot a unique number to the company and issue it with a certificate of incorporation. A copy of the certificate will be put onto the public file of the company.

3.3.3 There is no requirement to file a list of the first directors of the company at the point of incorporation. The company must appoint one or more persons as directors within one month of incorporation. Corporate directors are permitted, but there are restrictions of the type of corporate director that may be appointed. After incorporation, the company may elect to file details of its directors. Failing such election, the company is not required to notify the Department of the appointment of its first directors or of any change in them until the first annual return is due for submission.

3.4 **The items listed above relate ONLY to the procedure for applying to the Department for incorporation. This paragraph does NOT cover any other legal and/or financial enquiries that you ought reasonably to make depending on why you wish to incorporate the company.**

3.5 If the Department refuses 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.

## 4. Fees payable

4.1 The following fees are payable on applying for registration of the memorandum and articles, which includes the issue of a certificate of incorporation.

'Standard incorporation' of a company under section 3 of the Act within 48 hours  
**£100.00**

'2 hour incorporation' of a company under section 3 of the Act  
**£250.00**

'While you wait incorporation' of a company under section 3 of the Act  
**£500.00**

- 4.2. A duplicate certificate of incorporation costs **£9.00**.
- 4.3 Details about all fees payable in the Companies Registry are obtainable from the website [www.gov.im/categories/business-and-industries/companies-registry](http://www.gov.im/categories/business-and-industries/companies-registry) . 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.

5. **Further information**

***Incorporations under the 2006 Act can only be accepted from licensed Registered Agents via online services.***

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@gov.im](mailto:companies@gov.im)

Statutory forms and practice notes are available free of charge from the website: [www.gov.im/categories/business-and-industries/companies-registry](http://www.gov.im/categories/business-and-industries/companies-registry) .

A list of licenced TCSP providers is available on the Isle of Man Financial Supervision Authority website at <https://www.iomfsa.im/register-search/>.

Details of Isle of Man Advocates are available from the Isle of Man Law Society at:

Tel: +44 (0)1624 662910

E-mail: [enquiries@iomlawsociety.co.im](mailto:enquiries@iomlawsociety.co.im)

Website: [www.iomlawsociety.co.im](http://www.iomlawsociety.co.im) \_

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