
PRACTICE NOTE

NMVPN11/2022

Date: 26 April 2022

Transferring the Domicile of a company from the Isle of Man

This practice note replaces practice note NMVPN11/2019 “Transferring the Domicile of a company from the Isle of Man” issued November 2019.

Introduction

NOTE:- This practice note is issued by the Department of Enterprise 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:

www.legislation.gov.im/cms/index.php

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 XI Chapter 2 of 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 Department 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.

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1. **What you should do before submitting the application**

1.1 Any company incorporated in the Isle of Man can be discontinued UNLESS:-

1. It is in liquidation or subject to insolvency or analogous proceedings in any jurisdiction; or
2. A receiver or manager has been appointed in relation to any of its assets; or
3. It has entered into an arrangement with its creditors that has not been concluded; or
4. An application made to a court in any jurisdiction for the liquidation of the company or for the company to be subject to insolvency or analogous proceedings has not yet been determined; or
5. The company fails to satisfy the solvency test as defined in section 49 of the Act

1.2 Your attention is drawn to Section 171 of the Act, which places certain restriction 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. The property of the company continues to be the property of the continued company;
2. The continued company continues to be liable for the obligations of the company;
3. Any existing cause of action, claim or liability to prosecution in respect of the company is unaffected;
4. Any conviction against, or any ruling, order or judgement in favour of or against the company may be enforced by or against the continued company.

1.3 Section 172 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 Act.

1.4 **Before applying to the Department for its consent, you must ensure that the following actions have taken place;**

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
2. You must send a notice to every member of the company and arrange for the notice to be published at least 21 days prior to the application in two newspapers published and circulating in the Isle of Man (as per Companies (Publication of Notice) Regulations 2006). These notices must advertise the company's intention to cease to be registered in the Isle of Man and to continue in the named country or territory outside the Isle of Man.
3. You must obtain the written consent to the making of the application by the holders of all charges registered against the company under Section 138 of the Act.
4. All the directors of the company must make a Statutory Declaration - Form IM29A stating that the company complies with the requirements listed in 1.1 above.
5. The registered Agent of the company must complete the Application Form (see 2.1 below).
6. The obligations of the Beneficial Ownership Act 2017 have been met. The appointed Nominated Officer/Corporate Services Provider will be required to make a declaration to the Beneficial Ownership database confirming that the beneficial ownership information is accurate and up to date.

1.5 **PLEASE NOTE - The items listed above relate ONLY to the procedure for applying to the Department for its consent to the transfer. The Department cannot give legal advice as to compliance with paragraphs 1.1 and 1.2 above, nor in relation to 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 IM29 to be completed by the company's registered agent (1.4.5.3). This form (and any other form) can be downloaded from the Department's website at <https://www.gov.im/categories/business-and-industries/companies-registry/>

2.2 The following documents need to be submitted to the Department along with the application form:

1. A certified copy of the resolution authorising the continuance (1.4.1.)
2. The original Statutory Declaration Form IM29A made by all directors of the company (1.4.4.)
3. A copy of the notice sent to each member (1.4.2.)
4. The written consent by the holders of all charges (1.4.3.)

2.3 Provided that the documents are complete and correct, the Department will grant its written consent to the transfer. That consent is valid for 12 weeks from its date. During that 12 week period, the company must be continued in the named country.

PLEASE BE AWARE - There is no provision for the Department to extend the time period for its consent. If the company has not been continued in the named country within that 12 week period, then a fresh application, together with the accompanying documents and fees payable, will need to be made if the discontinuation of the company is to proceed.

2.4 If the Department refuses to accept the application for registration, you have, under Section 208(4) of the Act, the right to appeal to the Isle of Man High Courts of Justice against such refusal.

3. **Discontinuing the Company**

3.1 When you have received the written consent of the Department to the transfer, you should seek to have the company continued in the named country as soon as possible after the consent is given, as the Department's consent expires by law after 12 weeks.

3.2 Once the company has been continued in the named country, you have 14 days to file a certified copy of the Certificate of Continuation issued to it by the competent authorities in that country. For your convenience, the Department has prepared a non-prescribed Form IM30 to accompany the certified copy.

3.3 On delivery of these documents, the Department will issue a Certificate of Discontinuance to 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 continued. The Act will cease to apply to the company as from the date of continuation as stated in the instrument of continuance.

3.4 Failure to have the company continued or to submit the copy instrument of continuance 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 Department. The Department 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.

4. **Fees payable**

- 4.1 A fee of £3,000 is payable on submission of the application. This fee is non-refundable should the application be withdrawn or refused.
- 4.2 If a number of companies, which are all members of the same group, are applying for discontinuation, the first pays **£3,000** and the remainder each pay **£1,200**.
- 4.3 On delivery of a certified copy of the instrument of continuance under Section 169 of the Act a **£56.00** fee is payable.
- 4.4 A duplicate copy of the certificate of discontinuation cost **£9.00**
- 4.5 Payment of fees can be made in cash or by cheque made payable to “Isle of Man Government”, or by BACS/Bank transfer in accordance with the following <https://www.gov.im/media/1368638/2020-01-02-companies-registry-bacs.pdf>

5. **Further information**

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

The e-mail address is: 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 .

A list of licenced TCSP providers is available on the Isle of Man Financial Supervision Authority website at 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

Website: www.iomlawsociety.co.im _

Copies of Acts of Tynwald dealt with by the Companies Registry can be found on the following website administered by H.M. Attorney General: www.legislation.gov.im/cms/index.php

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