



PRACTICE NOTE

PN5/2021

Date: 18 August 2021

Companies (Transfer of Domicile) Act 1998

Transferring the Domicile of a Company from the Isle of Man

Introduction

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 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.

Any person requiring further information on this Practice Note should contact the Companies Registry at the above address.

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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. The property of the company continues to be the property of the body corporate;
2. The body corporate 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 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 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. 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.

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;

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 Department for Enterprise during the 10 days following the publication of the notice.

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:

- 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.

- agree to accept service of documents on them at a specified address in the named country in which the company is to be continued.
- submit to the non-exclusive jurisdiction of the courts of that country.

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 Department for Enterprise will take into consideration any written comments that it receives prior to the application.

Please note: If a share transfer has taken place since the date of last Annual Return, then copies of the relevant stock transfer forms will also be required to evidence this.

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.

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.

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 Isle of Man Financial Services Authority (**only if the activity is regulated by the 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.

9. You must arrange for the company to make a written statement as to the nature of its current business.

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 following website www.companiesregistry.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 Department 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 Department's consent. The form can be downloaded from the following website at www.companiesregistry.gov.im . Copies of the Act are also available from our website.

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

1. A certified copy of the resolution authorising the continuance (1.4.1).
2. The original Statutory Declarations by the directors of the company (1.4.2);
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)
4. The original irrevocable and legally binding undertakings executed by the company and its directors (1.4.4)
5. A copy of the notice delivered to all the shareholders of the company (1.4.5).
6. The written consent by the holders of all charges (1.4.6).

7. The Advocate's certificate (1.4.7).
8. The written consent of the Income Tax and Customs & Excise Divisions and the Isle of Man Financial Services Authority if the activity is regulated (1.4.8).
9. The statement of the company's nature of its current business (1.4.9).
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 Department's website.

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

2.5 If the Department 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 Department when you file the Declaration of Discontinuance (see section 3.2 below).

2.6 If you are aggrieved by a decision of the Department 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 Department 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 Department. As the Department'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 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.

[*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 Department within one month of the continuation of the company in the new jurisdiction:

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;
2. The consent of the Department (see 2.5 above);
3. A copy of the instrument of continuance issued to the company by the competent authorities in the named country;
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 Department 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 **£3,000** 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 **£3,000** and the remainder each pay **£1,200**.

A further fee of £56 is payable on delivery to the Department of the declaration of discontinuance.

A duplicate copy of the certificate of discontinuation costs £15.00.

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 and 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 <https://www.iomfsa.im/register-search/>.

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

Tel: (01624) 662910

E-mail: enquiries@iomlawsociety.co.im

Website: www.iomlawsociety.co.uk

COMPANIES REGISTRY

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