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PRACTICE NOTE

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PN27/2021

Date: 19 August 2021

**Companies Act 1931**

**Re-registering a 2006 Act Company as a company**

**incorporated under the Companies Act 1931-2004 with effect from 1 September 2021**

**Introduction**

**NOTE:- This Practice Note is issued by the Department for Enterprise under the Companies Act 1931-2004 (“the Act”). All references, unless specifically stated, are to that Act only.**

This practice note sets out the procedure for re-registering a 2006 Act company under the Companies Acts 1931 - 2004. This is introduced by the Companies (Amendment) Act 2021 which comes into effect on 1 September 2021.

It addresses the document registration procedures only. You should seek professional advice on the legal, financial or taxation implications or the consequences of re-registering a company. 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. Applying for Re-registration

1.1 Any 2006 Act company can apply to be re-registered as a company incorporated under section 16B of the Act. However, it may only apply to be re-registered as a company of the corresponding type as it was before, i.e. a company limited by shares or guarantee or both, or an unlimited company with or without shares.

1.2 As there is a distinction between a “private” and “public” company under the Act, a company that will not be a private company upon re-registration can only re-register as a public company if it meets the conditions specified in section 16C(4). *See 1.3e below.*

1.3 **Before applying to the Department for re-registration, you must ensure that the following has been completed:**

- a. 28 days’ prior notice is given to your registered agent of the intention to re-register as required by section 16B(2). The registered agent may agree, in writing, to a shorter notice period.
- b. Arrange for a resolution to be passed authorising the re-registration of the 2006 Act company as a company incorporated under this Act and adopting a new memorandum of association complying with 16C(2) and (if applicable) adopting new articles. The resolution must be passed by members (or classes of members) holding at least 75% of the voting rights. Certified copies of the resolutions passed must be filed with the application to re-register.
- c. You must prepare a Memorandum relevant to the company type and complying with section 16C(2) of the Act. Where the Articles are to differ from the articles of whichever of Tables A to E is appropriate, or if the company is to be re-registered as a protected cell company or an incorporated cell company, new articles will need to be prepared. A copy of Memorandum and Articles of Association (if appropriate) must be filed with the application.
- d. Ensure that there are no outstanding filings or fees due under the *Companies Act 2006* as at the date of the application. *This also applies to any annual return that may still be within its permitted one month filing period as at the date of the application.*
- e. Additional requirements where the 2006 Act company is to be re-registered under the Act as a public company -
  - i. Prepare a statement of compliance under section 16C(4) which confirms that conditions A to C (16C(5) to 16C(7)) are satisfied;
  - ii. Arrange for the resolution to be passed, that complies with 16C(5) approving the re-registration of the company as a public company;
  - iii. Review the company’s balance sheet, and ensure that it is dated within 6 months prior to the date on which the application to re-register is to be made, as per 16C(6); and
  - iv. Ensure that the proposed secretary or joint secretaries of the company are appropriately qualified in accordance with section 19(4) of the *Companies Act 1982*.

1.4 Documents to be completed & presented:

- i. The application form (Form 101);
- ii. Certified copies of the appropriate resolutions;
- iii. New Memorandum of Association;
- iv. New Articles of Association (if applicable);
- v. Statement of Compliance and supporting documentation, where the company is to be re-registered as a public company.

### PLEASE NOTE

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

## 2. Actions of the Department

- 2.1 On delivery of the documents listed in paragraph 1.4 and payment of the application fee, the Department will register the Memorandum and Articles submitted with the application, provided that the company name has not changed or, if a change is proposed, approval has been obtained for the new name. We will allot a unique number to the company and issue a certificate of re-registration, a copy of the certificate or re-registration will be recorded on the register. The certificate is conclusive evidence that the requirements of re-registration have been complied with.
- 2.2 A certificate of de-registration will be issued by the Department as the Registrar, under Section 151A of the Companies Act 2006. A copy of the certificate of de-registration will be recorded on the register. The certificate is conclusive evidence that the company ceases to be registered under the 2006 Act and that the Companies Acts 1931 to 2004 shall apply from the date of issue.
- 2.3 If the Department refuses to accept the Application, Memorandum and Articles for registration, you have, under section 283C of the Act, the right of appeal to the Isle of Man High Court of Justice against such refusal.

## 3. Consequences of Re-registration

- 3.1 Your attention is drawn to the consequences of re-registration, which are set out in section 16E of the Act and are summarised below.
- 3.2 These are:-
- The re-registration of a 2006 Act company under section 16D of the Act shall not be deemed to operate - (a) to create a new legal entity; or (b) to prejudice or affect the continuity of the company.
  - The legal status of the company remains unchanged except that it is now governed by its new memorandum and articles and the provisions of the Act.
  - The Companies Act 2006 no longer applies to the company.
  - The existing rights and liabilities of the company continue.
  - Any charges granted by the company under the Companies Act 2006 remain in force and do not need to be re-registered. Our public search facility will indicate on the new file that charges exist but their details will be held on the old file reference. A Register of Charges under section 82 of the Act will be created and detail any charges registered since the incorporation of the company.

## 4. Annual Return

The company's annual return date under Section 109 of the Act will remain as the anniversary of its date of incorporation and **NOT** its date of re-registration under the Act.

## 5. Fees payable and Document Filing

- 5.1 A fee of **£100** is payable on applying for re-registration. There is no fee payable for registering the memorandum and articles. A duplicate certificate of re-registration costs **£9.00**.
- 5.2 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>
- 5.3 Company documents can be presented for registration in paper form by delivery to our public counter, by post or by email providing they are submitted in accordance with the Companies Registry Electronic Transmission of Information guidance <https://www.gov.im/media/1371077/electronic-transmission-of-information-guidance.pdf> to [companyfilings@gov.im](mailto:companyfilings@gov.im).

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

Statutory forms and practice notes are available free of charge from the website:

[www.companiesregistry.gov.im](http://www.companiesregistry.gov.im).

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)

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

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