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## PRACTICE NOTE

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NMVPN11/2019

Date: Nov 19

### Transferring the Domicile of a Company from the Isle of Man

This Practice Note replaces Practice Note NMVPN11/2014 “Transferring the Domicile of a Company from the Isle of Man” issued on 07 Jan 2014.

#### 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:

<http://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 apply to 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 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 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 judgment 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 IM 29A) - 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).

**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.). This form (and any other form) can be downloaded from the Department's website at [www.companiesregistry.gov.im](http://www.companiesregistry.gov.im) .

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 Declarations Form IM29A made by all the 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 of appeal to the Isle of Man High Court 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 discontinued. 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 costs **£9.00**.

4.5 Details about all fees payable in the Companies Registry are obtainable from our website [www.companiesregistry.gov.im](http://www.companiesregistry.gov.im) . 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**

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:

<https://www.gov.im/categories/business-and-industries/companies-registry>

A list of entities regulated by, or registered with, the Isle of Man Financial Services Authority is available on the Authority’s website at:

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

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

Isle of Man Law Society

27 Hope Street

Douglas Isle of Man

IM1 1AR

Tel: (01624) 662910 Fax: (01624) 679232 E-mail: [iomlawsoc@advsys.co.uk](mailto:iomlawsoc@advsys.co.uk)

Documents may be submitted at any time during office hours (9.00am to 4.30pm Monday to Thursday and 9am to 4.00pm on Friday) 'over the counter' in the Companies Registry.

Submission may also be effected by post or after office hours by way of the letterbox located in the main door of the registries building on Deemsters Walk, Bucks Road, Douglas. Presenters requiring acknowledgement of receipt of a document should provide a stamped self-addressed envelope.

For the purpose of determining the date of submission of a document, documents submitted after 4.30 p.m. on any working day (Day 1) but before 9.00 a.m. on the following working day (Day 2), will be treated as having been submitted on Day 1. For the avoidance of doubt, documents submitted before 9.00 a.m. on the day immediately following a weekend or Bank Holiday will be treated as having been submitted on the last working day prior to the weekend or Bank Holiday.

However, section 208(3) of the Companies Act 2006 states that a document which is not accepted for registration and has been rejected under the provisions of section 208(1), will not be considered to have been submitted at all.

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**It is the responsibility of presenters to ensure that documents arrive in the Companies Registry within the filing periods prescribed.**

We are aware that post can on occasion be delayed. However presenters should be aware of that and post documents in plenty of time. The Companies Registry cannot operate a system which allows for such delays as to do so would simply amount to an extension to the filing periods set down by law.

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**Please note: The Department does not currently accept statutory documents by fax or E-Mail.**