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PRACTICE NOTE

NMVPN12/2014

Date: 7th Jan 2014

The Companies Act 2006

Documents to be filed when a Company is put into Liquidation

This Practice Note replaces NMVPN12/2011 "Documents to be filed when a Company is put into Liquidation" issued on 1st April 2011.

Introduction

NOTE:- This Practice Note is issued by the Department for 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 summarises the requirements for filing documents with the Department for Enterprise - Companies Registry when a company incorporated under the Companies Act 2006 is put into liquidation.

It is intended as a general guide only and must be read in conjunction with the relevant legislation. It should not be relied upon and should not be used as a substitute for legal advice. The full statutory requirements are set out in sections 155 to 272 (inclusive) and 277 to 282 (inclusive) of the Companies Act 1931.

This practice note does **NOT** address any other duties or obligations of a company, its directors or a liquidator when liquidation is being contemplated or is in effect. Advice should be sought from a competent person if you are unsure what legal requirements and obligations are imposed on you in whichever capacity you are acting.

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It is important that any liquidation document be filed as soon as possible. The Companies Registry carries out certain duties based upon the documents filed in its possession and may take action to strike a company off the register for failure to file its annual return if documents indicating that it has gone into liquidation have not been filed.

1. Members' Voluntary Liquidation

1.1 A Declaration of Solvency (Form IM39B) must be made by all the directors of the company, or, if there are more than two directors, a majority of the directors, and filed at the Companies Registry before the winding up begins.

1.2 **The Declaration must be made and filed before notices are sent out for the meeting at which it is intended to pass a resolution to wind up the company but also not more than six weeks before the passing of that resolution. The declaration is invalid if it does not comply with both of these conditions and if this happens the liquidation will be treated as a creditors winding up.**

1.3 The company must pass a resolution for voluntary winding up. An original or a copy of that resolution signed, or certified a true copy by either the chairman of the meeting or an officer of the company must be filed at the Companies Registry. There is a filing period of one month after its passing. Failure to submit the resolution within that period will result in late filing fees being levied.

1.4 The liquidator is required to give notice of his appointment (Form IM39C) to the Companies Registry within twenty-one days. Failure to submit the notice within that period will result in late filing fees being levied.

1.5 The late filing fee is calculated as follows:-

Length of delay, measured from when the document is due

1 month and one day to 3 months	<u>£100</u>
More than 3 months and one day	<u>£250</u>

2. Creditors' Voluntary Liquidation

2.1 The company must pass a resolution for voluntary winding up. An original or a copy of that resolution signed, or certified a true copy by either the chairman of the meeting or an officer of the company must be filed at the Companies Registry. There is a filing period of one month after its passing. Failure to submit the resolution within that period will result in late filing fees being levied.

2.2 The liquidator is required to give notice of his appointment (Form IM39D) to the Companies Registry within twenty-one days. Failure to submit the notice within that period will result in late filing fees being levied.

2.3 The late filing fee is calculated as follows:-

Length of delay, measured from when the document is due

1 month and one day to 3 months	<u>£100</u>
More than 3 months and one day	<u>£250</u>

3. Compulsory Liquidation

3.1 When the Court appoints a liquidator provisionally, a provisional liquidator or a liquidator, a certified copy of the relevant Order must be filed with the Companies Registry.

3.2 Where a person other than the Official Receiver is appointed as **Liquidator**, notice of his appointment (Form IM39) must be given to the Companies Registry. There is no prescribed filing period for this form, but the liquidator cannot act until he has notified Companies Registry of his appointment.

4. Filing of Liquidator's Accounts

4.1 If the company is in liquidation for more than twelve months, the liquidator must complete and file an affidavit and statement of account (Forms IM93 and IM92) for that period. If more than one liquidator has been appointed, then EACH liquidator must complete the affidavit form and have the account marked by the person taking the oath as an exhibit.

4.2 Forms IM93 and IM92 are required thereafter for each complete six-month period following the first twelve months of the liquidation.

4.3 **Forms IM93 and IM92 are NOT required to be filed when either (a) the liquidation is completed within twelve months or (b) the final winding up meeting is held less than six months after the last complete period.**

5. Dissolution

5.1 When a voluntary liquidation has been completed, and the final winding-up meeting has been held, the liquidator must complete a return of that meeting and attach to it a copy of the liquidator's accounts approved at that meeting. If it is a members' voluntary liquidation, the return is made on Form IM15A. If it is a creditors' voluntary liquidation, the return is made on Form IM15B. Again, if there are two or more liquidators, each must sign the return.

5.2 **The filing period for Form IM15A or IM15B is SEVEN DAYS after the date of the final meeting. Failure to submit the return within that period will result in late filing fees being levied.**

5.3 The late filing fee is calculated as follows:-

Length of delay, measured from when the document is due

1 month and one day to 3 months	<u>£100</u>
More than 3 months and one day	<u>£250</u>

5.4 The company is not formally dissolved until three months after the registration of the Form IM15A or IM15B. The Companies Registry does not automatically give notice to anyone of the fact of dissolution. However, we will confirm the date of dissolution by letter if requested.

5.5 If the company is in compulsory liquidation, it is necessary to obtain a Court Order to release the liquidator and have the company formally dissolved. A copy of this Court Order must be filed as soon as possible after it is made so that the public record can be updated.

5.6 If it is found necessary to re-appoint the liquidator after the company has been dissolved, an application for the company to be restored must be made to Court within **TWO YEARS** after the dissolution date. A copy of such an Order must be filed within seven days of its making.

5.7 **NOTE – The administrative procedure for restoration under Sections 187 and 192 of the Companies Act 2006 does NOT apply to a company in liquidation unless it has been struck off the register under section 183. This happens when the Department believes that the liquidator is not acting or that the liquidation has been completed and the proper returns have not been made.**

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 and the e-mail address is: companies@gov.im

Statutory forms and practice notes are available free of charge from the website: www.companiesregistry.gov.im.

Forms can also be obtained from legal stationers, accountants, advocates and Corporate Service Providers whose addresses can be found in the business section of the telephone book or at: www.manx-ads.com

A list of Licenceholders is available on the Isle of Man Financial Supervision Authority website at www.iomfsa.gov.im / Licenceholders.

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

<http://www.iomlawsociety.co.im/index.htm>

Documents may be submitted at any time during office hours (9.00am to 4.30pm Monday to Thursday and 9.15am 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.

The Companies Registry will remain closed on the first Wednesday of each month until 11.00 hrs for staff training. Documents can still be left in the letterbox.

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.

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.

<p>Please note: The Department does not currently accept statutory documents by fax or E-Mail.</p>
