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PRACTICE NOTE

PN14/2014

Date: 7th Jan 2014

The Limited Liability Companies Act 1996

Documents to be filed when an LLC is put into Liquidation

Introduction

This Practice Note replaces Practice Note PN14/2011 "Documents to be filed when an LLC is put into Liquidation" issued on 1st April 2011.

This Practice Note sets out the procedure for filing documents with the Companies Registry when an LLC is put into liquidation, in accordance with Part 2 of the Limited Liability Companies Act 1996 ("the Act"). It is intended as a general guide only and must be read in conjunction with the relevant legislation. It should not be relied upon as a substitute for legal advice.

This practice note does **NOT** address any other duties or obligations of an LLC, its members, registered agent, manager or a liquidator when liquidation is being contemplated or 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.

NOTE – There are separate Practice Notes dealing with the following subjects: (1) general filing obligations; (2) applying for dissolution; (3) applying for restoration.

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It is important that any liquidation document be filed as soon as possible. The Companies Registry can only act on the basis of the documents filed and may, for example, take action to strike an LLC 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 Liquidation

1.1 An LLC **must** be wound up on the occurrence of any of the following:

1. If it reaches the end of the duration period (if any) stated in the Articles of Organisation;
2. If its members unanimously agree that it should be wound up;
3. On the death, retirement, resignation, expulsion, dissolution of a member (or anything else which terminates the continued membership of a member) unless the Articles make express provision for its continuance in such circumstances.

1.2 Whenever any of these events occur, the LLC automatically goes into provisional liquidation and the remaining members of the LLC are appointed its joint provisional liquidators. They then have to complete and forthwith deliver a form to state that this has happened. (Form L28/1)

1.3 If it is intended that the LLC should continue in business even though an event under 1.1.3. has occurred, a member, manager or the registered agent **MUST**, within 60 days of the occurrence of the event, file a notice to continue business (Form L28/2) to show that the remaining members have either:

1. Agreed to continue the business (if the Articles of Organisation allow make provision for this to happen); or
2. Entered into a legally binding agreement with either the former member(s), their agent or personal representative to buy the interest of the former member in the LLC.

1.4 If the Form L28/2 is filed within 60 days, the obligation to wind up the company ceases and the LLC returns to full live status.

1.5 **NOTE - If no Form L28/2 is filed within 60 days, the provisional liquidators are obliged to wind up the LLC and must announce this in two Manx newspapers using the format set out in the Form L28/3. We cannot accept the Form L28/2 for registration once the 60-day period has elapsed.**

The Department cannot give advice on the legal and/or financial implications of a failure to file a Form 28/2 within its 60-day filing period.

1.6 At any point during the course of liquidation, the provisional liquidators (i.e. former members) may, by unanimous written agreement, appoint a liquidator to act in their place. If they do so, they must forthwith file a notice of appointment containing the details of the new liquidator. (Form L28/4)

1.7 If at any point this liquidator ceases to act, then the original provisional liquidators must continue with the winding-up. They must forthwith file a notice of cessation for that liquidator. (Form L28/5) They can, of course, appoint a new liquidator at any time afterwards and inform us if they do.

1.8 There is no requirement for the provisional liquidators or a liquidator to file periodic statements of account with us.

2. Court Liquidation

The Court may order an LLC to be wound-up or dissolved on such terms as it thinks fit, and may appoint a provisional liquidator or a liquidator for this purpose. Whenever the High Court appoints a provisional liquidator or a liquidator, a certified copy of each Order must be filed with us.

3. Dissolution

3.1 When a members' liquidation is complete, the provisional liquidators, or the liquidator if one has been appointed, must file a notice of dissolution (Form L30/1). No accounts need be filed with this form. There is a filing fee of £55, payable on submission of this form.

- 3.2 On receipt of the Form L30/1, the Companies Registry will issue a Certificate of Dissolution, at which point the LLC is dissolved.
- 3.3 If the LLC is in court liquidation, it will be necessary to obtain a Court Order to release the liquidator and have the LLC 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.
- 3.4 If after dissolution, any property of the LLC is discovered, the registered agent, or, if there is no agent, the members, can act as trustee for the members and creditors. The trustee has the power to distribute any property and take any other action in the name of the LLC. If the members are acting as trustees, they may at any time appoint another person to act in their place. If they do, they must forthwith inform us of the appointment on Form 34.
- 3.5 If it is found necessary to re-appoint the liquidator after the LLC has been dissolved, an application for the LLC 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.
- 3.6 NOTE – The administrative procedure for restoration under Section 11B of the Act does NOT apply to a company in liquidation unless it has been struck off the register under Section 11. This happens when the Department believes that the liquidator is not acting or that the liquidation has been completed.**

4. List of Prescribed Forms

Form	Description
L28/1	Statement of provisional intent to wind up a company
L28/2	Notice to continue business
L28/3	Notice of winding-up
L28/4	Notice of appointment of liquidator
L28/5	Notice of cessation of liquidator
L30/1	Notice of dissolution
L30/2	Certificate of dissolution
L34	Notice of appointment of trustee

5. Fees payable

- 5.1 Most documents do not have a filing fee when submitted to us within their prescribed filing period. However, certain documents, e.g. the Notice of Dissolution, do have a registration fee.
- 5.2 Most documents submitted outside the filing period attract a late registration fee. The amount of this late fee depends on how much time has passed after the filing period has expired. The late fee is payable **in addition** to any other registration fee that may be due.
- 5.3 The late fee effective from 7th January 2014 is calculated as follows:
- | | |
|---------------------------------|------|
| 1 month and one day to 3 months | £100 |
| More than 3 months | £250 |
- 5.4 Details about all fees payable in the Companies Registry are obtainable from our website 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.

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 Licence holders is available on the web site of the Financial Supervision Authority at www.fsa.gov.im/Licenceholders.

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

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27 Hope Street
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Website: www.iomlawsociety.co.im

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.

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.

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