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## PRACTICE NOTE

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PN4/2019

Date: January 2020

### Companies (Transfer of Domicile) Act 1998

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

##### Introduction

This Practice Note replaces Practice Note PN4/2014 “Transferring the Domicile of a Company to the Isle of Man” issued on 07 Jan 2014.

This practice note sets out the procedure for transferring the domicile of a company to the Isle of Man from another country in accordance with Part 1 of the Companies (Transfer of Domicile) Act 1998 (“the Act”). The procedure is also called redomiciliation, or continuation or continuing a company in the Isle of Man. When a company’s domicile is transferred to the Isle of Man, it must cease to be registered in its current jurisdiction. This process is called discontinuation or discontinuing 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 discontinuation 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 discontinued there and/or continued in the Isle of Man. The applicant must ensure that the jurisdiction from which the company is intending to move has reciprocal legislation before the application is submitted, as the application fee will not be refunded if discontinuation 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 outside the Isle of Man can apply to be continued EXCEPT a company that carries on

- (1) Insurance business within the meaning of Section 34 of the Insurance Act 1986 or
- (2) such other business as may be prescribed.

### **1.2 Your attention is drawn to Section 6 of the Act, which sets out the consequences of continuing a company. Briefly, these are:**

1. The property of the company continues to be the property of the continued company.
2. The continued company continues to be liable for all its existing obligations.
3. Any existing cause of action, claim or liability to prosecution in respect of the company is unaffected.
4. Any civil, criminal or administrative action or proceeding pending by or against the company is unaffected.
5. Any conviction against, or any ruling, order or judgement in favour of or against the company may be enforced by or against the continued company.
6. The registration of the continued company does not create a new legal entity or prejudice or affect the continuity of the company.

7. There are also provisions relating to the laws of evidence and rules of procedure in pursuing a claim against the continued company and for the reciprocal enforcement of judgments.

### **1.3 Before applying to the Department for its consent, you must ensure that the following things have been done:**

1. You must complete the Application Form (see 2.1 below).
2. You must complete a Memorandum of Continuance. This is included in the Application Form referred to in 1.3.1. Part A of this document is the equivalent to the Memorandum of Association, and the type used will depend on whether the company is to be limited by shares, guarantee or is limited by guarantee and has a share capital. Part B is divided into two parts and must be completed in all cases. Section One contains details of the proposed directors, secretary, registered office and outstanding indebtedness in respect of any registerable charges. Section Two contains a breakdown of the nominal and issued share capital (if any).
3. You will need to obtain proof from the appropriate authorities in the country of incorporation that the company has obtained all the necessary authorisations to enable it to make the application. If this proof is not in English, then a certified translation will be required.
4. You will need to complete on a Form 47 (or other charge registration form, if appropriate) giving details of all the outstanding charges to which Section 79 of the Companies Act 1931 would apply had the company been incorporated in the Isle of Man. Also, you will need to obtain the written consent of the chargeholders to the making of the application and to the order of registration of the charges (see 2.1 below).
5. You must arrange for a notice to be published in two newspapers published and circulating in the Isle of Man and one newspaper circulating in the country in which the

company is incorporated **not more** than three months prior to the application. These notices must show the company's intention to be continued in the Isle of Man and to list its name and principal place of business.

6. 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.

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

8. You must obtain a certified copy of the Certificate of Incorporation or Registration of the company and of the Memorandum and Articles of Association (or the documents which constitute the company) from the competent authorities in country where the company is currently registered. If these documents are not in English, then a certified translation will be required.

9. You will need to prepare Articles of Association for use in the Isle of Man. If no articles are submitted, then the appropriate Table in the Companies (Memorandum and Articles of Association) Regulations 1988 will apply.

10. If the company is involved in any activity that is regulated or licensable in the Isle of Man, it should contact the appropriate regulator or licensing body at an early stage to ensure that there are no regulatory issues. The Companies Registry cannot comment on the regulatory implications of the redomiciliation where the activity of the company is or may be regulated by the Isle of Man Financial Services Authority. If you need guidance on this aspect of the application, please contact a member of the Authority's Authorisations Team on 646000 or send an e-mail to [info@iomfsa.im](mailto:info@iomfsa.im)

**1.4 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 to the Isle of Man.**

## **2. Documents to be filed with the Application**

2.1 There is an Application Form (see 1.3.1) to be completed by the person applying for the Department's consent. The form can be downloaded from the Department's website [www.companiesregistry.gov.im](http://www.companiesregistry.gov.im) >Company Forms >Transfer of Domicile

Copies of the Act and a Practice Note (see 1.3.4), which sets out the procedure for registering a charge are also available on our website.

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

1. The Memorandum of Continuance (1.3.2).
2. Authorisation to discontinue in country of incorporation (1.3.3).
3. A copy of the audited financial statements of the company prepared up to a period less than one year before the application date. If the company is not required by law to have its accounts audited, evidence of that will need to be submitted with the unaudited accounts.
4. The Form 47 in respect of outstanding charges and the written consent of the chargeholders (1.3.4).
5. Copies of the notices published in the newspapers. The copies must show the name of the newspaper and the date of publication (1.3.5).
6. The Advocate's certificate (1.3.6).
7. Statement of nature of current business (1.3.7).
8. An organisation chart identifying the company and any subsidiary, parent or ultimate holding company (if applicable).
9. Certified copies of the Certificate of Incorporation and the Memorandum & Articles of Association (1.3.8).

10. A copy of the new Articles of Association (1.3.9).

11. Where the company is a subsidiary of another company, a copy of that company's accounts made up to a date not more than fifteen months before the application date.

**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 may be 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 original country and the second is to be returned to the Department when you file the Memorandum of Continuance (see section 3.2 below).

2.6 If the Department refuses the application, you have the right under Section 14 of the Act to apply to the Treasury for a review of that decision.

## **Registering the Memorandum of Continuance**

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 complete the procedures for the continuation of the company in the Isle of Man. As the Department's consent expires by law after three months, failure to have the company continued or to submit the Memorandum of Continuance within the prescribed time period means that the company cannot be continued 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 continued in the Isle of Man.

3.2 The following documents must be delivered to the Department within three months of the Department giving its consent (see 3.1 above):

1. The completed Memorandum of Continuance.
2. The consent of the Commission (see 2.5 above).
3. The Articles of Association (if any) that comply with the Isle of Man Companies Acts.
4. The Form 47 (or other prescribed form) containing details of the outstanding charges.
5. A statutory declaration dated not more than seven days before such delivery by a director of the company stating that there has been no material change in the information contained in the documents originally submitted with the application. If there has been any material change, the Department will reconsider the application in the light of such changes.

3.3 On delivery of these documents, the Department will issue a certificate of registration 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 continued. From the date shown on the certificate of registration, the Companies Acts 1931 to 2004

and all other laws of the Isle of Man shall apply to the company. The Department will enter in its Register of Charges, details of the outstanding charges and issue a Certificate of Registration for each one.

3.4 Once the company has been registered in the Isle of Man, it must forward within fourteen days a copy of the Certificate of Registration to the competent authorities in its former country of incorporation.

#### **4. Fees payable**

A fee of £100 is payable on submission of the application. This fee is non-refundable should the application be withdrawn or refused.

There is no filing fee payable on registration of the Memorandum of Continuance.

A duplicate copy of the certificate of registration 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](mailto: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](http://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 [www.iomfsa.im/register-search/](http://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

Telephone: +44 (0)1624 662910, Fax: +44 (0)1624 679232, E-mail:  
enquiries@iomlawsociety.co.im

Website: [www.iomlawsociety.co.im](http://www.iomlawsociety.co.im)

Documents may be submitted at any time during office hours (9am 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.

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 9am 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 E-Mail.