

## Transferring the Domicile of a Company to the Isle of Man Pursuant to the Isle of Man Companies Act 2006



A body corporate incorporated, registered or formed outside the Isle of Man (a “**foreign company**”) can apply to the Isle of Man Registrar of Companies for consent to be continued in the Isle of Man as a company incorporated under the Isle of Man Companies Act 2006 (the “**2006 Act**”).

### **Eligibility of Foreign Companies to be Continued in the Isle of Man**

A foreign company cannot apply to be continued in the Isle of Man if:

- i. the laws of the jurisdiction in which it is incorporated for the time being do not permit it to be continued in the Isle of Man i.e. there needs to be reciprocal legislation in place allowing the foreign company to be discontinued in the jurisdiction of its incorporation and continued in the Isle of Man;
- ii. it is in liquidation or is subject to insolvency or analogous proceedings in any jurisdiction;
- iii. a receiver or manager has been appointed in relation to any of its assets;
- iv. it has entered into an arrangement with its creditors that has not been concluded;
- v. an application made to a court in any jurisdiction for the liquidation of the foreign company or for the foreign company to be subject to insolvency or analogous proceedings has not yet been determined; or
- vi. the foreign company fails to satisfy the solvency test set out in section 49 of the 2006 Act.

A foreign company will satisfy the solvency test if the foreign company is able to pay its debts as they become due in the normal course of the company’s business and if the value of the foreign company’s assets exceeds the value of its liabilities.

### **Requirement for a Registered Agent**

All companies incorporated under the 2006 Act are required to have a registered agent in the Isle of Man. The registered agent must be the holder of an appropriate licence issued by the Isle of Man Financial Supervision Commission.

As only a registered agent can make an application to the Registrar of Companies for a foreign company to be continued in the Isle of Man, the foreign company will need to appoint an Isle of Man registered agent to act on its behalf.

### **Steps to be Taken Before Application for Continuance in the Isle of Man is made to the Isle of Man Registrar of Companies**

- A legal opinion will need to be obtained from lawyers qualified in the jurisdiction of incorporation of the foreign company confirming the points set out in paragraphs (i) to (v) above. Such legal opinion will also need to set out the procedures to be followed under the laws of the foreign jurisdiction to enable the foreign company to be continued in the Isle of Man, including details of all necessary authorisations required in that jurisdiction.

In addition, an accountancy opinion will be required, confirming that the foreign company satisfies the solvency test.

- If the company is involved in any activity which is licensable in the Isle of Man, contact will need to be made with the relevant regulatory body in the Isle of Man to identify and resolve any regulatory issues which may arise upon continuation of the company in the Isle of Man.
- The name of any company incorporated in the Isle of Man is subject to the approval of the Registrar of Companies. Accordingly, an application should be made to the Registrar of Companies for prior approval of the proposed name of the foreign company upon its continuation in the Isle of Man. An application for name approval can only be made by a registered agent and, if granted, the name will be reserved for 12 weeks for future adoption by the foreign company upon its continuation in the Isle of Man.
- The Memorandum of Association to be adopted by the foreign company upon its continuation in the Isle of Man will need to be prepared.
- The Articles of Association to be adopted by the foreign company upon its continuation in the Isle of Man will need to be prepared.
- Proof will need to be obtained from the appropriate authorities in the jurisdiction of incorporation of the foreign company that the foreign company has obtained all the necessary authorisations to enable it to be continued in the Isle of Man.
- Details of all charges created by the foreign company or to which any property of the foreign company is subject will need to be provided. These details will be recorded against the foreign company upon its continuance in the Isle of Man.
- The holders of all the charges referred to above will need to provide their written consent to the making of the application for continuance in the Isle of Man by the foreign company.
- A statutory declaration to be sworn by the proposed first registered agent of the foreign company upon its continuance in the Isle of Man will need to be prepared. This statutory

declaration must state that:

- a) the foreign company is not in liquidation nor subject to insolvency or analogous proceedings in any jurisdiction;
- b) neither a receiver nor manager has been appointed in relation to any of the foreign company's assets;
- c) the foreign company has not entered into an arrangement with its creditors that has not been concluded;
- d) the laws of the jurisdiction in which the foreign company is incorporated for the time being permit the foreign company to be continued in the Isle of Man;
- e) no application has been made to a court in any jurisdiction for the liquidation of the foreign company or for the foreign company to be subject to insolvency or analogous proceedings which has not yet been determined; and
- f) the foreign company satisfies the solvency test.

The registered agent will need to rely on the foreign law legal opinion and accountancy opinion referred to above in order to be able to make this statutory declaration.

### **Making the Application for Continuance in the Isle of Man**

The application for continuance in the Isle of Man must be made in the prescribed form by the proposed first registered agent of the foreign company. The application must be accompanied by:

- the Memorandum of Association of the company to be adopted upon continuance in the Isle of Man;
- the Articles of Association of the company to be adopted upon its continuance in the Isle of Man;
- proof that the foreign company has obtained all necessary authorisations required in the jurisdiction under which it is incorporated to enable it to make the application for continuance in the Isle of Man;

- details of all charges created by the foreign company or to which the foreign company's property is subject, together with written consent from the holders of such charges to the making of the application for continuance in the Isle of Man;
- the registered agent's statutory declaration; and
- a non-refundable application fee of £360.

Upon receipt of the completed application, the Registrar of Companies will grant written consent to the foreign company being continued in the Isle of Man. The Registrar's consent will only be valid for a period of 12 weeks during which time the foreign company must complete the procedures for continuation in the Isle of Man. If the foreign company wishes to be continued in the Isle of Man, the registered agent must deliver a second statutory declaration to the Registrar of Companies (dated no more than 7 days before delivery) confirming that there has been no material change in the information contained in the documents submitted with the initial application for continuance.

Upon receipt of the second statutory declaration from the registered agent, the Registrar of Companies will:

- register the memorandum and articles of association;
- allot a company number to the company;
- issue a certificate of continuation; and
- record particulars of all charges created by the company or to which the property of the company is subject and issue a certificate of registration in respect of each such charge.

The company must forward a copy of the certificate of continuation to the competent authority in the jurisdiction from which the company has been continued within 14 days of the date of the certificate of continuation.

### **Effect of Continuation in the Isle of Man**

- On the date of the certificate of continuation issued by the Registrar of Companies, the foreign company will become a company to which the 2006 Act and all other laws of the

Isle of Man apply as if it was incorporated under the 2006 Act.

- The certificate of continuation will be the equivalent of a certificate of incorporation for the continued company.
- Upon continuance of the foreign company as a company under the 2006 Act:
  - a) the property of the foreign company continues to be the property of the continued company;
  - b) the continued company continues to be liable for the obligations of the foreign company;
  - c) any existing cause of action, claim or liability to prosecution in respect of the foreign company is unaffected;
  - d) any civil, criminal or administrative action or proceeding pending by or against the foreign company is unaffected; and
  - e) any conviction against, or any ruling, order or judgment in favour of or against the foreign company may be enforced by or against the continued company.
- The continuance of the foreign company will not be deemed to:
  - a) create a new legal entity, or
  - b) prejudice or affect the continuity of the body corporate which was formerly a foreign company and becomes a continued company.

Should you have any questions or requests for further information please contact:

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