



Isle of Man

Ellan Vannin

AT 6 of 1998

**COMPANIES (TRANSFER OF DOMICILE)
ACT 1998**



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**Isle of Man***Ellan Vannin*

COMPANIES (TRANSFER OF DOMICILE) ACT 1998

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|-------------------------------|----------------------|
| <i>Received Royal Assent:</i> | <i>28 April 1998</i> |
| <i>Passed:</i> | <i>28 April 1998</i> |
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AN ACT to permit the continuation and discontinuation of companies; and for connected purposes.

GENERAL NOTE: The Insurance Act 2008 Sch 4 modifies this Act insofar as it applies to bodies corporate. See Sch 4 of that Act for the effect of the modifications, particularly with regard to the disapplication of s 14 (para 6) and construction of various terms (paras 7-10).

PART 1 – CONTINUATION OF OFFSHORE COMPANIES

1 Application of Part 1

- (1) This Part shall apply in respect of a body corporate —
 - (a) which is incorporated outside the Island; and
 - (b) does not carry on —
 - (i) [Repealed]¹
 - (ii) insurance business within the meaning of section 54 of the *Insurance Act 2008*; or²
 - (iiA) [Repealed]³
 - (iii) [Repealed]⁴
 - (iv) such other business as may be prescribed.⁵
- (2) Subsection (1)(b)(iii) does not apply in respect of a body corporate which is regarded as constituting a collective investment scheme under the *Collective Investment Schemes Act 2008*.⁶
- (3) In this Act, a body corporate to which this Part applies is referred to as an “**offshore company**”.

2 Application for consent to be continued in the Island

- (1) An offshore company may apply to the Department for consent to be continued in the Island as a company to which the provisions of the Companies Acts and any other relevant laws of the Island shall apply.⁷
- (2) An application for consent shall be in such form as the Department may require and shall be accompanied by —
 - (a) a memorandum of continuance in such form and containing such particulars as may be required by regulations made by the Department;⁸
 - (b) proof to the satisfaction of the Department that the offshore company has obtained all necessary authorisations required under the laws of the country in which it was incorporated to enable it to make the application;⁹
 - (c) financial statements of the offshore company prepared for a period ending within 12 months of the date of the application and audited to the satisfaction of the Department;¹⁰
 - (d) details of all charges created by the offshore company to which section 79 of the 1931 Act would apply if the company had been incorporated in the Island indicating the order in which they will be registered under section 4(1)(d);
 - (e) the written consent to —
 - (i) the making of the application; and
 - (ii) the order of registration specified in accordance with paragraph (d),
by the holders of all charges created by the offshore company to which section 79 of the 1931 Act would apply if the company had been incorporated in the Island; and
 - (f) a certificate signed by an advocate to the effect he has made such enquiries as are reasonable in the circumstances and as a result of those enquiries believes —
 - (i) that the application complies with the requirements of this Part; and
 - (ii) that matters precedent and incidental thereto have been complied with; and
 - (g) such other information and documents as the Department may require.¹¹
- (3) Not more than 3 months prior to an application under subsection (1), the offshore company shall cause to be published in —
 - (a) 2 newspapers published and circulating in the Island; and
 - (b) one newspaper circulating throughout the country or territory in which the offshore company is incorporated,

an advertisement announcing its intention to continue the company in the Island in accordance with this Part and specifying its name and principal place of business.

- (4) The Department may waive the requirements of subsection (3) if it considers that the circumstances are such that it is reasonable to do so.¹²
- (5) In this Act, an offshore company which is continued in the Island in accordance with this Part is referred to as “**a continued company**”.

3 Consent

- (1) In relation to every application under section 2(1), the Department shall, after considering the application and after making such other enquiries as it thinks appropriate either grant its consent or refuse the application.¹³
- (2) A consent or refusal under subsection (1) shall be in writing.
- (3) A consent under subsection (1) shall, subject to there being no material change in the information contained in the documents submitted with the application, be valid for a period of 3 months from the date of the consent being granted.

4 Registration

- (1) During the period mentioned in section 3(3) and subject to the provisions of that subsection, an offshore company may deliver to the Department —
 - (a) the consent under section 3(1); and
 - (b) the memorandum of continuance; and
 - (c) articles of association (if any) which conform to the requirements of the Companies Acts and to other applicable laws of the Island;
 - (d) particulars, in the form prescribed for the purposes of section 79 of the 1931 Act, of any existing charge of a description specified in subsection (2) of that section;
 - (e) a statutory declaration (dated not more than 7 days before such delivery) by a director of the offshore company that there has been no material change in the information contained in the documents submitted with the application.¹⁴
- (2) On delivery of the consent, memorandum, articles of association (if any), particulars (if any) and statutory declaration under subsection (1), the Department shall register the memorandum of continuance and —
 - (a) issue a certificate of registration of the memorandum of continuance in such form as may be required by regulations made by the Department; and¹⁵

- (b) enter in the register of charges under section 82 of the 1931 Act, in such order as the offshore company may instruct, the particulars of charges delivered under subsection (1) of this section, and issue a certificate under section 82(2) of the *Companies Act 1931* in respect of each such charge.¹⁶
- (3) The memorandum of continuance shall be deemed to be the memorandum of association of a continued company in lieu of its memorandum of association or other constituting document.
- (4) Without prejudice to section 5(1), where no articles of association have been delivered to the Department under subsection (2), the articles of a continued company shall be in the appropriate form prescribed under section 7 of the *Companies Act 1986* until it adopts articles of association which conform to the requirements of the Companies Acts and any other applicable laws of the Island.¹⁷
- (5) A continued company shall, within 14 days of the date of the certificate of registration under subsection (2)(a), forward a copy of it to the competent authority in the country or territory from which the body corporate has been continued.

5 Effect of continuance

- (1) On the date of the certificate of registration under section 4(2)(a) the offshore company will become a company to which the Companies Acts and all other laws of the Island apply as if it was incorporated under the Companies Acts as a company to which Part I of the *Companies Act 1986* applies.
- (2) The provisions of the Companies Acts relating to the memorandum of association of companies shall, with the necessary modifications, apply to a memorandum of continuance.
- (3) The provisions of the Companies Acts relating to a certificate of incorporation shall, with the necessary modifications, apply to a certificate of registration under section 4(2)(a).
- (4) Without prejudice to the generality of subsection (1), where particulars of an existing charge have been delivered to the Department under section 4(1)(d), that charge shall not be treated as void against a liquidator or any creditor of the company under section 79(1) of the 1931 Act.¹⁸

6 Consequences of continuance of offshore company

- (1) Upon continuance of an offshore company as a company under the Companies Acts —
 - (a) the property of the offshore company continues to be the property of the continued company;

- (b) the continued company continues to be liable for the obligations of the offshore company;
 - (c) any existing cause of action, claim or liability to prosecution in respect of the offshore company is unaffected;
 - (d) any civil, criminal or administrative action or proceeding pending by or against the offshore company is unaffected; and
 - (e) any conviction against, or any ruling, order or judgment in favour of or against the offshore company may be enforced by or against the continued company.
- (2) The registration of the continuance of an offshore company under this Part shall not be deemed to –
- (a) create a new legal entity, or
 - (b) prejudice or affect the continuity of the body corporate which was formerly an offshore company and becomes a continued company.
- (3) The courts shall apply the laws of evidence and the rules of procedure with the intent that no claimant against the continued company shall be prejudiced in pursuing in or under the laws of the Island a claim that existed prior to the date of continuance and which could have been pursued under the laws then governing the offshore company.
- (4) Notwithstanding section 1 of the *Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968*, Part I of that Act applies in respect of judgments of any court outside the Island if –
- (a) the judgment debtor is an offshore company which has become a continued company; and
 - (b) the judgment is given (whether before or after the commencement of this section) in proceedings in respect of a cause of action arising before the date of the certificate of registration issued in respect of the continued company under section 4(2)(a); and
 - (c) at the time when the cause of action arose, the company was incorporated in, or had its principal place of business in the country of the relevant court; and
 - (d) the judgment is final and conclusive as between the parties to it; and
 - (e) there is payable under the judgment a sum of money.
- (5) For the purposes of subsection (4)(d), a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.
- (6) Subsection (4) applies in respect of judgments for taxes or other charges of a like nature or in respect of a fine or other penalty as it applies in

respect of any other judgment under which there is payable a sum of money.

- (7) Except as provided by subsection (8), section 1 of the *Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968* shall not apply in respect of any judgment to which subsection (4) applies.
- (8) Where, apart from this section, Part I of the 1968 Act applies to a judgment of any court, this section shall be treated as additional to and not in derogation of such application of that Part.

PART 2 – DISCONTINUATION OF ISLE OF MAN COMPANIES

7 Application of Part 2

- (1) This Part shall apply in respect of a body corporate –
 - (a) which is incorporated under the Companies Acts; and
 - (b) is not –
 - (i) [Repealed]¹⁹
 - (ii) authorised under section 8 of the *Insurance Act 2008* to carry on insurance business; or²⁰
 - (iii) [Repealed]²¹
 - (iv) such other class of company as may be prescribed.²²
- (2) Subsection (1)(b)(iii) does not apply in respect of a body corporate which is regarded as constituting a collective investment scheme under the *Collective Investment Schemes Act 2008*.²³
- (3) In this Act, a company to which this Part applies is referred to as an “**Isle of Man company**”.

8 Application for consent for discontinuance

- (1) An Isle of Man company may apply to the Department for consent to be continued in a country or territory outside the Island as if it had been incorporated under the laws of that other country or territory and to be discontinued under the Companies Acts.²⁴
- (2) An application for consent shall be in such form as the Department may require, and shall be accompanied by –
 - (a) a certified copy of a resolution of the members passed by a majority vote of 75% of each class of members and authorising the continuance of the company in a named country or territory outside the Island;
 - (b) statutory declarations by all the directors of the company that –

- (i) the company is solvent and can meet all of its liabilities and obligations; and
- (ii) that the discontinuance will not adversely affect the interests or rights of, creditors and shareholders; and
- (c) a copy of a notice published at least 14 days prior to the application in —
 - (i) 2 newspapers published and circulating in the Island; and
 - (ii) one newspaper circulating throughout the country or territory in which the Isle of Man company is to be continued,to the effect that the company intends to cease to be registered in the Island, to continue in the named country or territory outside the Island and that interested persons may make comments to the Department during the 10 days following the publication of the notice;²⁵
- (d) an irrevocable and legally binding undertaking executed by the company and its directors under which —
 - (i) the company and each of its directors agree to accept service of legal process in the Island in any proceeding arising out of actions or omissions occurring prior to the discontinuance and provision is made for the appointment of a person within the Island as agent for the company for the service of process for a period of not less than 3 years from the date of discontinuance and for a signed acceptance of the appointment;
 - (ii) the company and each of its directors agree that all legal process will be accepted by them at a specified address in the named country or territory; and
 - (iii) the company and such directors submit to the non-exclusive jurisdiction of the courts of that country;
- (e) a copy of a notice delivered to all shareholders of the company at least 14 days prior to the application, to the effect that the Department will take into consideration any comments in writing which it receives from shareholders prior to the application;²⁶
- (f) the written consent to the making of the application by the holders of all charges registered under section 79 of the 1931 Act; and
- (g) a certificate signed by an advocate to the effect he has made such enquiries as are reasonable in the circumstances and as a result of those enquiries believes —
 - (i) that the application complies with the requirements of this Part; and

- (ii) that matters precedent and incidental thereto have been complied with.²⁷
- (3) The directors of a company may, if authorised by the members in general meeting, abandon an application for consent under this section and the provisions of subsection (2)(a) as to majority shall apply to such authorisation.

9 Grant of consent

- (1) In relation to every application under section 8(1) the Department shall, after considering such documents, information and copies, and after making such other enquiries as it thinks appropriate, either grant its written consent or refuse the application.²⁸
- (2) The Department shall not grant its consent under subsection (1) if the applicant has not satisfied it that appropriate arrangements have been made for the payment of all taxes, duties, rates and contributions which are payable or may become payable to the Government or any department, board or agent of the Government in respect of anything done by the applicant before the date of the certificate of discontinuance under section 10(2).²⁹
- (3) The consent of the Department shall be in such form as it may determine.³⁰
- (4) The consent of the Department shall expire 3 months after the date of the grant unless within that period the Isle of Man company is continued under the laws of the named country or territory outside the Island.³¹

10 Documents to be filed

- (1) The company shall deliver to the Department —
 - (a) the consent of the Department;³²
 - (b) a copy of the instrument of continuance issued to it by the competent authorities in the country or territory under the laws of which the Isle of Man company is to be continued; and
 - (c) a declaration of discontinuance containing or attaching the following information —
 - (i) a copy of the irrevocable undertaking required by section 8(2)(d);
 - (ii) the name of the country or territory under the laws of which the Isle of Man company has been continued; and
 - (iii) the address of the registered office or the principal business address of the company in that country or territory,

not later than 1 month after the date of issue of the instrument of continuance referred to in paragraph (b) in default of which the company shall be liable to a default fine.³³

- (2) The Department shall file the instrument of continuance and issue a certificate of discontinuance which shall be in such form as may be required by regulations made by the Department.³⁴
- (3) A certificate of discontinuance given by the Department in respect of any company shall be conclusive evidence that all the requirements of this Part in respect of discontinuance and of matters precedent and incidental thereto have been complied with, and that the company is duly discontinued under this Part.³⁵

11 Effect of discontinuance

- (1) On the date of the certificate of discontinuance the company shall cease to be registered as a company under the Companies Acts.
- (2) The Companies Acts shall cease to apply to the Isle of Man company on the date upon which it is continued under the laws of the other country or territory as stated in the instrument of continuance and in the declaration of discontinuance.

12 Restrictions on continuance of Isle of Man company

An Isle of Man company shall not be eligible for continuation as a body corporate under the laws of any other country or territory unless at the time of the application under section 8(1), the laws of that country or territory provide, in effect, that when a company is continued as a body corporate in that country or territory —

- (a) the property of the company continues to be the property of the body corporate;
- (b) the body corporate continues to be liable for the obligations of the company;
- (c) any existing cause of action, claim or liability to prosecution in respect of the company is unaffected; and
- (d) any conviction against, or any ruling, order or judgment in favour of or against the company may be enforced by or against such body corporate.

13 Consequence of discontinuance of Isle of Man company

The discontinuance of an Isle of Man company under this Part and its continuation in a country or territory outside the Island shall not be deemed to operate to —

- (a) create a new legal entity; or

- (b) prejudice or affect the continuity of the body corporate which was formerly an Isle of Man company subject to the Companies Acts.

PART 3 – MISCELLANEOUS AND GENERAL

14 Review of decisions

- (1) An applicant for consent under section 3 or 9 who is aggrieved by a decision of the Department to refuse the application may apply to the Treasury for a review of that decision.³⁶
- (2) An application under subsection (1) shall be in such form, within such period, and subject to such conditions as may be prescribed.
- (3) On the receipt of an application under subsection (1), the Treasury shall appoint a committee of the Treasury (in this section referred to as the “Review Committee”) consisting of 3 members, at least 2 of whom shall be independent persons of appropriate experience.
- (4) The Review Committee shall conduct reviews under this section.
- (5) On the determination of a review under this section the Review Committee may confirm, vary or revoke the decision appealed against, but any such variation or revocation shall not affect the previous operation of the decision or anything duly done or suffered thereunder.
- (6) A decision of the Review Committee on a review under this section shall be final.

15 Indemnity for Treasury and for Department

The Treasury and the Department shall not be liable in damages for, or in respect of, any act or matter done or omitted to be done in the exercise, or purported exercise, of the functions conferred by or under this Act unless the act or matter done or omitted to be done is shown to have been in bad faith.³⁷

16 Regulations

- (1) The Treasury may make such regulations as are necessary to give effect to this Act.
- (2) Regulations under this Act shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the regulations are laid or at the next following sitting resolves that they shall be annulled, they shall cease to have effect.

17 Interpretation

In this Act —

“**advocate**” includes a person who is registered under the *Legal Practitioners Registration Act 1986*;

“**the 1931 Act**” means the *Companies Act 1931*;

“**the Companies Acts**” means the Companies Acts 1931 to 1993;

“**a continued company**” has the meaning given by section 2(5);

“**Department**” means the Department for Enterprise;³⁸

“**Isle of Man company**” has the meaning given by section 7(3);

“**offshore company**” has the meaning given by section 1(3);

“**prescribed**” means prescribed in regulations made by the Treasury;

“**listed body corporate**” [Repealed]³⁹

“**securities**” means shares, stock, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the *Collective Investment Schemes Act 2008* and other securities of any description;⁴⁰

“**subsidiary**” shall be construed in accordance with section 1 of the *Companies Act 1974*.

18 Financial provision

There shall be paid out of monies provided by Tynwald any increase in the expenses of the Treasury and the General Registry which are attributable to this Act.

19 Short title and commencement

- (1) This Act may be cited as the Companies (Transfer of Domicile) Act 1998.
- (2) This Act shall come into force on such day as the Treasury may by order appoint and different days may be so appointed for different provisions and for different purposes.⁴¹

ENDNOTES**Table of Legislation History**

| Legislation | Year and No | Commencement |
|-------------|-------------|--------------|
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Table of Renumbered Provisions

| Original | Current |
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Table of Endnote References

¹ Subpara (i) repealed by Companies, etc. (Amendment) Act 2003 Sch 2.

² Subpara (ii) amended by Insurance Act 2008 Sch 8.

³ Subpara (iiA) repealed by Fiduciary Services Act 2005 Sch 3.

⁴ Subpara (iii) repealed by Companies, etc. (Amendment) Act 2003 Sch 2.

⁵ Subs (1) amended by Companies, etc. (Amendment) Act 2003 Sch 2.

⁶ Subs (2) amended by Companies, etc. (Amendment) Act 2003 Sch 2 and by Collective Investment Schemes Act 2008 Sch 6.

⁷ Subs (1) amended by Companies (Transfer of Functions) Act 2000 Sch 2 and by SD155/10 Sch 2.

⁸ Para (a) amended by Companies (Transfer of Functions) Act 2000 Sch 2 and by SD155/10 Sch 2.

⁹ Para (b) amended by Companies (Transfer of Functions) Act 2000 Sch 2 and by SD155/10 Sch 2.

¹⁰ Para (c) amended by Companies (Transfer of Functions) Act 2000 Sch 2 and by SD155/10 Sch 2.

¹¹ Subs (2) amended by Companies (Transfer of Functions) Act 2000 Sch 2 and by SD155/10 Sch 2. Para (g) amended by Companies (Transfer of Functions) Act 2000 Sch 2 and by SD155/10 Sch 2.

¹² Subs (4) amended by Companies (Transfer of Functions) Act 2000 Sch 2 and by SD155/10 Sch 2.

¹³ Subs (1) amended by Companies (Transfer of Functions) Act 2000 Sch 2 and by SD155/10 Sch 2.

¹⁴ Subs (1) amended by Companies (Transfer of Functions) Act 2000 Sch 1 and by SD155/10 Sch 2.

¹⁵ Para (a) amended by Companies (Transfer of Functions) Act 2000 Sch 2 and by SD155/10 Sch 2.

¹⁶ Subs (2) amended by Companies (Transfer of Functions) Act 2000 Sch 1 and by SD155/10 Sch 2.

¹⁷ Subs (4) amended by Companies (Transfer of Functions) Act 2000 Sch 1 and by SD155/10 Sch 2.

¹⁸ Subs (4) amended by Companies (Transfer of Functions) Act 2000 Sch 1 and by SD155/10 Sch 2.

¹⁹ Subpara (i) repealed by Companies, etc. (Amendment) Act 2003 Sch 2.

²⁰ Subpara (ii) amended by Insurance Act 2008 Sch 8.

²¹ Subpara (iii) repealed by Companies, etc. (Amendment) Act 2003 Sch 2.

²² Subs (1) amended by Companies, etc. (Amendment) Act 2003 Sch 2.

²³ Subs (2) amended by Companies, etc. (Amendment) Act 2003 Sch 2 and by Collective Investment Schemes Act 2008 Sch 6.

²⁴ Subs (1) amended by Companies (Transfer of Functions) Act 2000 Sch 2 and by SD155/10 Sch 2.

²⁵ Para (c) amended by Companies (Transfer of Functions) Act 2000 Sch 2 and by SD155/10 Sch 2.

²⁶ Para (e) amended by Companies (Transfer of Functions) Act 2000 Sch 2 and by SD155/10 Sch 2.

²⁷ Subs (2) amended by Companies (Transfer of Functions) Act 2000 Sch 2 and by SD155/10 Sch 2.

²⁸ Subs (1) amended by Companies (Transfer of Functions) Act 2000 Sch 2 and by SD155/10 Sch 2.

²⁹ Subs (2) amended by Companies (Transfer of Functions) Act 2000 Sch 2 and by SD155/10 Sch 2.

³⁰ Subs (3) amended by Companies (Transfer of Functions) Act 2000 Sch 2, by SD155/10 Sch 2 and by Interpretation Act 1976 s 16A.

³¹ Subs (4) amended by Companies (Transfer of Functions) Act 2000 Sch 2 and by SD155/10 Sch 2.

³² Para (a) amended by Companies (Transfer of Functions) Act 2000 Sch 2 and by SD155/10 Sch 2.

³³ Subs (1) amended by Companies (Transfer of Functions) Act 2000 Sch 1, by Fiduciary Services Act 2005 Sch 3 and by SD155/10 Sch 2.

³⁴ Subs (2) amended by Companies (Transfer of Functions) Act 2000 Schs 1 and 2 and by SD155/10 Sch 2.

³⁵ Subs (3) amended by Companies (Transfer of Functions) Act 2000 Sch 1 and by SD155/10 Sch 2.

³⁶ Subs (1) amended by Companies (Transfer of Functions) Act 2000 Sch 2 and by SD155/10 Sch 2.

³⁷ S 15 amended by Companies (Transfer of Functions) Act 2000 Sch 2, by Corporate Service Providers Act 2000 Sch 3 and by SD155/10 Sch 2.

³⁸ Definition of “Department” inserted by SD155/10 Sch 2 and amended by SD2017/0325.

³⁹ Definition of “listed body corporate” repealed by Companies, etc. (Amendment) Act 2003 Sch 2.

⁴⁰ Definition of “securities” amended by Collective Investment Schemes Act 2008 Sch 6.

⁴¹ ADO (whole Act) 1/6/1998 (SD253/98).