

Foreign Companies Act 2014

Companies incorporated outside the Isle of Man which establish a place of business in the Isle of Man are at present required to register with the Isle of Man Companies Registry as F-Companies under Part XI of the Isle of Man Companies Act 1931 (“**Part XI**”). The purpose and effect of F-registration is essentially to place a foreign registered company under a similar reporting and disclosure regime to an Isle of Man incorporated company.

Part XI of the 1931 Act is to be replaced with new stand alone legislation in the form of the Foreign Companies Act 2014 (the “**FCA 2014**”), which is expected to come into force on August 1 2014. This note highlights the key changes arising from this new legislation, which have practical implications for the administration of foreign companies in the Isle of Man.

The meaning of “foreign company”

At present Part XI requires registration of companies (including limited liability companies) incorporated outside the Isle of Man. Section 4 of the Foreign Companies Act 2014 will widen this requirement as it defines a foreign company as a person (by whatever name called) which has legal personality but is not an individual incorporated under the laws of a jurisdiction outside the Island, and goes on to provide that types of legal person such as a foundation, limited liability company, PCC, ICC and a limited partnership which has legal personality will each be a foreign company.

Foreign Companies to which the Foreign Companies Act 2014 applies

Section 5 of the FCA 2014 provides that a foreign company which (i) carries on, or is held out as carrying on, business from an established place of business in the Isle of Man or (ii) is the holder of land in the Island (other than by way of security) must register under the new Act. This is the same as Part XI at present.

A key change from Part XI however, is that a foreign company (that, for example, wishes to demonstrate a nexus with the Isle of Man) can elect to be registered. This is the case even if the company does not carry on business or hold land in the Island.

Another important change is that section 5(3) provides that a foreign company shall not be treated as carrying on business in the Island by reason only of, inter alia, being a party to, or settling, legal proceedings; holding meetings or carrying on activities which relate only to its internal affairs; maintaining a bank account; purchasing or investing in assets (except in land in the Island); charging its property; receiving services (which consist of corporate services) which are provided by a the holder of a licence under the Financial Services Act 2008 permitting that holder to carry on the regulated activity of providing corporate services.

The practical implication of section 5(3) is that Isle of Man corporate service providers who administer foreign companies here, such as those incorporated in the British Virgin Islands, now have greater clarity on whether such companies must register. It appears for example that merely holding board meetings in the Isle of Man will not subject the company to the foreign company regime.

When registration is required and which forms are to be used?

Section 7 of the new Act provides that where a foreign company meets the requirements for registration, an application for registration must be made within one month. Similarly, a foreign company that elects to apply for entry to the Register must do so within one month of the election.

In terms of applying for registration under the Act, failure to register when required to do so is an offence. The penalties for commission of an offence under the Act are the same as under Part XI, namely (i) on conviction on information a fine or (ii) on summary conviction, to a fine not exceeding £5,000. Section 9 of the FCA 2014 sets out the required information which should be included in an application to register. Under section 9(1)(b) of the FCA 2014 the name of the foreign company can be different from that under which it is incorporated in its original jurisdiction but only where the latter name is not legally permitted for use in the Isle of Man. The FCA 2014 provides that foreign companies already registered under Part XI when the FCA 2014 comes into operation are not required to re-register.

Acceptance of documents

A foreign company must have an address at which it can accept service of process and notices (section 11 Foreign Companies Act 2014). If the foreign company has an established place of business in the Island this will be the address of that place of business. However, in the case of a foreign company that owns land in the Isle of Man, the address for accepting service can be either an address in the Island or an address outside the Island. In either case the foreign company must appoint a person or persons to accept service of process and any notices required to be served on the company.

Under the FCA 2014 there is no longer a need to identify a “designated officer” (who under Part XI was authorised to deliver for registration the documents and particulars specified in Part XI).

Notification of certain events

Section 13(1) of the FCA 2014 provides that a foreign company must notify the Companies Registry on the occurrence of certain events relating to the foreign company for instance if there is a change in relation to service of process and notices, if a liquidator or receiver is appointed in respect of the foreign company, if the foreign company ceases to exist, or if the foreign company ceases to be a company to which the FCA 2014 applies. In each case the notification to the Companies Registry must be in the appropriate form, the forms required under the new legislation are in the process of being finalised and will be released by the Companies Registry in due course.

Annual returns will need to be filed under the FCA 2014 in respect of the foreign company. The current filing fee for making an annual declaration for F registered companies is £380.

Removal from the register

Under Section 17 of the FCA 2014, the Companies Registry may remove a foreign company from the register if the company demonstrates that it has ceased to be a foreign company to which the Act applies or the company fails to submit an annual return within four months after the company's return date. The removal of the company from the register must be published by the Companies Registry.

Contact Us:

For further information please contact Irini Newby at inewby@simcocks.com or Alex Spencer at aspencer@simcocks.com or Kevin O'Loughlin at koloughlin@simcocks.com by telephone +44 1624 690300.

Ridgeway House
Ridgeway Street
Douglas
Isle of Man
IM99 1PY
Tel: +44(0)1624 690300
Fax: +44(0)1624 690333

Web: www.simcocks.com

The above material is of a general nature only. It does not constitute legal advice nor does the distribution or receipt of this material create a client-advocate relationship. Readers should seek specific advice in relation to any decision or course of action.