

Companies Act 1931

<p><u>The Registry</u> Basic information</p> <p><i>Application to incorporate</i></p>	<ol style="list-style-type: none">1. Presently, when applying to incorporate a 1931 Act company, an applicant is generally required to deliver, to the Registrar, the proposed company name, the memorandum, (which must comply, as to content, with the requirements of s.2 of CA31), the articles, the first directors and secretary and the proposed registered office address (which must be in the Island). 2. The Registry is proposing to update the requirements regarding the information that must be delivered as a part of the application to incorporate. <p><i>First directors/ first secretary (natural person)</i></p> <ol style="list-style-type: none">3. The Registry is proposing that the application must specify the ‘relevant particulars’ for the first directors and first secretary (which, given the current requirements of the Act, necessitates only minor changes). <p><i>Subscribers</i></p> <ol style="list-style-type: none">4. The Registry is proposing that, in respect of the subscribers, the following must be provided:<ol style="list-style-type: none">a) the ‘relevant particulars’b) where a subscriber will, upon incorporation, be acting as a nominee (other than pursuant to an FSA licence) the nominee must disclose that fact and provide the ‘relevant particulars’ in respect of the nominator. <p><i>Business activities and location</i></p> <ol style="list-style-type: none">5. Lastly, the Registry is proposing that detail on the principal business activities (by reference to prescribed classifications) and the geographic location(s) of those activities are specified.
<p><u>The Registry</u> Basic information</p> <p><i>Considering the application</i></p>	<p><i>Information gathering</i></p> <ol style="list-style-type: none">1. As stated, it is proposed that the Registrar in administering CA31, does so in a manner that promotes the Island’s reputation as an international financial centre. This would involve identifying and assessing risks to that reputation, including the accuracy of information submitted upon application.

2. For such purposes the Registrar may, in considering an application for registration, request further information/ documentation. In the event that a person fails to provide that additional information the Registrar may refuse the application (appealable).
3. Secondly, and again for the purposes specified above, the Registrar may refuse an application where it's considered to be in the public interest of the Island to do so.

The Registry
Basic information
adequacy

***Registering the
company***

1. The Registry is proposing to update s.13 which specifies the Registrar's duties upon incorporating the company. Whilst, as a matter of course, the Register in all instances issues a company with a unique identifier, we are proposing a minor amendment to make this a statutory requirement under the Act.

The Registry
Basic information
Adequacy

***Register of
companies***

1. As referenced, the Registry is proposing to standardise the wording across the Corporate Laws, so it's made clear on the face of each Act:
 - a) that the Registrar must establish and maintain a Register of [Companies],
 - b) specify the information on the Register that is to be publicly available, subject to any prescribed fee, for inspection,
 - c) specify what constitutes 'confidential information' and is thus not to be publicly available.
2. Whilst under section 38DA there is a reference to "*the public file of the company maintained at the Companies Registry*" and, under section 284A any person may inspect a copy of any document kept by DfE (pursuant to the Act) on payment of a prescribed fee, there is no explicit requirement under CA31 for DfE to maintain a Register of Companies and thus the information that should be on such a Register.

3. The Register will essentially consist of 2 parts, Part A would record the following, and be available for public inspection, subject to payment of any prescribed fee:
 - a) company name (including any previous names),
 - b) trading name (including any previous names),
 - c) certificate of incorporation (including any change of name certificate or certificate of continuation),
 - d) memorandum and articles,
 - e) company legal form and status (e.g. live, default),
 - f) registered office address,
 - g) relevant particulars of the directors and secretary,
 - h) relevant particulars of the members, including shareholdings,
 - i) any other information, but not confidential information, prescribed in regulations.

4. Part B of the Register would contain confidential information that would not be available for public inspection (notably a natural person's full date of birth and, where they have elected a service address for the public register, their residential address).

The Registry

Basic information

Up to date

Changes to information

1. The Registry is proposing some amendments to the circumstances in which the Registrar must be notified of a change, including the date of the change, to a 1931 Act company;
 - a) the principal business activities,
 - b) the geographic location of those activities,
 - c) the composition of the membership of a company or a change in the relevant particulars of an existing member,
 - d) amended Articles of Association (in addition to the current requirement of the filing of the relevant special resolution),

... within one month of its occurrence.

2. A company that fails to comply, commits an offence, liable on summary conviction to a fine. Further, in the alternative, the Registrar may accept late delivery of the document upon payment of a prescribed fee.

The Registry
Basic information
Up to date
Annual Return

1. Presently, sections 107 to 109 make provision regarding annual returns, to which, the Registry is proposing the following updates:
 - a) the annual return must state the principal business activities of the company and the geographic location(s),
 - b) The return would simply state the name, address and number of shares held by each existing member together with confirmation that:
 - i. changes to the composition of the membership (including shareholdings),
 - ii. changes to the relevant particulars of a member,... have been notified to the Registrar in accordance with CA31.
 - c) The return would only state the name and address (which may be a service address) of the directors and secretary together with confirmation that any changes to the composition or the relevant particulars of an officer have been notified to the Registrar in accordance with the Act.

The Registry
Obstacles to
transparency

1. Under FATF r.24, acceptable measures to mitigate the risk of nominee shareholdings can, in essence, be applied by adopting one of three mechanisms:
 - a) disclosure (i.e. disclose the nominee status to Companies Registry),
 - b) licence (i.e. require anyone wanting to act as a nominee shareholder to be regulated), or
 - c) prohibit nominee activities.
2. Presently, in the Isle of Man the provision of nominee shareholder services by way of business is an activity that requires a licence from the FSA. Pursuant to Schedule 1, Class 4 – Corporate Services, paragraph 9 states *“acting or arranging for another person to act as a nominee shareholder or nominee member of a company or a limited partner of a limited partnership which has elected to have legal personality.”*

3. Licence holders providing such a service are required, under the Financial Services Rule Book 2016, to have a written nominee agreement (other trust instrument) and to retain a copy of the agreement/instrument in its records.
4. The provision of nominee shareholder services by way of business is an activity that requires a licence from the FSA. Pursuant to Schedule 1, Class 4 – Corporate Services, paragraph 9 states *“acting or arranging for another person to act as a nominee shareholder or nominee member of a company or a limited partner of a limited partnership which has elected to have legal personality.”*
5. Licence holders providing such a service are required, under the Financial Services Rule Book 2016, to have a written nominee agreement (other trust instrument) and to retain a copy of the agreement/instrument in its records.
6. Whilst it is assumed that the majority of nominee shareholder arrangements are undertaken as a business service, to the extent that any such an arrangement is not, it would therefore fall outside the scope of being an activity licenced by the FSA.
7. The issue for the Island is where a person acts as a nominee shareholder but does so ‘other than by way of business’. In such circumstances there is potential for such arrangements to be misused given currently neither of the alternative measures recommended under the interpretive note to r.24 to mitigate the risk of the misuse of nominee shareholding arrangements are being applied (namely requisite information being held by the entity and the Registry and being made publicly available or the activity being prohibited).
8. The Registry is therefore proposing that where a person:
 - a) acts as a nominee shareholder,
 - b) does not hold the requisite FSA licence,
 - c) does so other than by way of business,... the Registry is proposing that the nominee must disclose their status and the identity of the nominator to the Registry and of any subsequent change to the arrangement.

Basic information held

1. In addition to the existing requirements under CA31, the Registrar is proposing to require 1931 Act companies to keep the certificate of incorporation, or a copy of it, at their registered office address (this would include any new certificate issued under s.19 (change of name).

Register of directors and secretaries

2. Firstly, the Registry is proposing to update the wording of s.143(1)(a) in line with the definition of “relevant particulars”. As such both directors and secretaries (where it’s an individual) may elect for the register of directors to contain a service address (as opposed to their residential address) and the register would detail the month and year of birth.
3. Similar to existing provisions of the *Companies Act 2006*, where the register contains a service address, the company would be required to keep a separate record of the individual’s residential address and full date of birth.
4. The separate records specifying residential addresses and dates of birth would not be available for public inspection, rather a person would have to make a written request to the company for that information to be disclosed, stating in the request:
 - a) their name and address,
 - b) the reason why the information is being requested and what the information will be used for,
 - c) whether the information will be disclosed to any other person (and if so that person’s details and the reason why they require that information and the purpose for which they will use it).
5. Should the company decline to disclose the information, ultimately the person who has made the request may make an application to Court.

Register of members

6. Firstly, as with the register of directors, the Registry is proposing to update the wording of s.96 so that the register of members specifies the ‘relevant particulars’ of each member together with details of any nominee

arrangement. Regarding the address stated, members that are individuals, may elect a service address and the date of birth will only detail the month and year.

7. Paragraphs 3 to 5 above, regarding the register of directors, would also apply here, to the register of members.

Up to date and accurate

8. The Registry is proposing the insertion of a provision into CA31 that companies have a duty to ensure that the statutory records and documents maintained, are accurate and up to date.

Offence

9. Lastly, the Registry is proposing to make it an offence should a company be in breach of such requirements, and thus liable to a fine.

End.