

Companies Act 2006

<u>The Registry</u>	1. Presently, an application to incorporate a 2006 Act company is made by the first registered agent submitting a memorandum, stating the particulars detailed in s.5 and, in the circumstances specified in s.2(1)(b), the articles.
Basic information	
<i>Application to register</i>	2. Whilst s.5 is thorough, for the reasons specified at the outset, the Registry is proposing the following amendments. <i>Subscribers</i> 3. Firstly, in addition to the full name and residential or business address of each subscriber the Registry is proposing that the 'relevant particulars', of each subscriber, are stated in the application. <i>Directors</i> 4. Secondly, at the moment under s.95 of CA06 a company: a) has one month, from the date of incorporation to appoint its first director(s), and b) must, within a month from the date of appointment notify the Registrar. 5. Potentially therefore a 2006 Act company need not have a director(s) up until the last day of the first month and secondly, the Registrar may only hold basic information on the director(s) up to two months from the date the company incorporated. 6. The Registry is therefore proposing that the directors' relevant particulars are specified in the application to incorporate. <i>Nominee shareholders</i> 7. Thirdly, where a subscriber would, upon incorporation, be a) acting as a nominee shareholder; and b) does not hold a licence permitting it to act as a nominee shareholder, from the FSA (i.e. its doing so 'other than by way of business'), ... the nominee must disclose their nominee status and the identity/ relevant particulars of the nominator. 8. Fourthly, that the information accompanying the application must specify:

	a) the principal business activities (the classifications are to be prescribed in regulations), b) the geographic location(s) of those activities.
<u>The Registry</u> Basic information <i>Considering the application</i>	<i>Information gathering</i> 1. As stated, it is proposed that the Registrar in administering CA06, 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. It is proposed that: a) where the Registrar reasonably concludes that to incorporate the company would not be in the public interest of the Isle of Man, b) where a person fails to provide such information/ documentation that the Registrar has requested, in the exercise of its duties under CA06, ... the Registrar may refuse the application (appealable).
<u>The Registry</u> Basic information Adequacy <i>Register of companies</i>	1. As referenced, the Registry is proposing to make it clear on the face of each Corporate Law that the Registrar must establish and maintain a register, and specify what information is to be on that Register and available, subject to payment of any prescribed fee, to public inspection. 2. Largely, by virtue of sections 206 and 209, this is achieved. The amendment proposed is to s.206, is to insert a provision stating what information must be on the public Register and to specify what information held by the Registrar is not to be made publicly available. 3. As to what information should be on the public register the Registry is proposing that the Act specifies the following:

- a) company name (including any former names),
- b) trading name (including any previous names),
- c) certificate of incorporation (including any change of name certificate or certificate of continuation),
- d) date of incorporation,
- e) company number,
- f) memorandum and articles,
- g) company status (e.g. live, default),
- h) type of company (e.g. limited by guarantee),
- i) registered office address,
- j) relevant particulars of the directors (noting that a director may elect a service address and the register will only specify the month and year of birth),
- k) relevant particulars of the members, including nominee information (again noting that a member may elect a service address and the register will only specify the month and year of birth),
- l) name and address of the registered agent,
- m) such other information (but not confidential information) prescribed in regulations.

4. The information available for public inspection must not include 'confidential information' i.e. information which is personally sensitive information or commercially sensitive information.

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, notably:
 - a) the principal business activities,
 - b) the geographic location(s) of those activities,
 - c) the composition of the membership (which would include a change to the number of shares held) or a change in the relevant particulars of an existing member, or nominee arrangement.

... 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.
<u>The Registry</u> Basic information Up to date <i>Annual Return</i>	1. Presently, section 85 (annual return to be made by a company) requires the annual return for a 2006 Act company to contain such particulars as may be prescribed; which includes: a) company name, b) company number, c) registered office address, d) name and address of the registered agent, e) the names and addresses (which may be a service address) of the current directors. 2. The Registry is proposing the following amendments to the particulars that must be prescribed for the purposes of the annual return, to include: a) the names and addresses of the current members (together with confirmation that any changes to the composition of the members, or to the relevant particulars of an existing member, have been notified to the Registrar in accordance with the Act), b) the principal business activities and the geographic location(s) of those activities.
<u>The Company</u> Basic information held	<i>Proof of incorporation</i> 1. The Registry is proposing to insert a requirement for a 2006 Act company to keep at the office of its registered agent, the certificate of incorporation, or a copy of it (including any certificate of change of name issued). <i>Register of Directors</i> 1. Presently, a 2006 Act company is required to keep its register of directors at the office of the registered agent. That register must include the following particulars: a) names and business or residential addresses, b) date of appointment,

- c) date of cessation (if relevant).
- 2. Where the register does not record the residential address of a director that is a natural person, the registered agent must maintain a separate record of that address.
- 3. As is the case with the other Corporate Laws, the Registry is proposing to update the requirements as to the basic information contained in the Register of Directors, as follows.
- 4. Proposal:
 - a) the Register must also specify the relevant particulars of the Directors,
 - b) the Register is to be available for any person to inspect, at a reasonable time and upon payment of a reasonable fee (if any).
 - c) the company must also maintain a record of the full date of birth of each director (not to be available for public inspection).
- 5. 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).
- 6. 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

- 7. Presently, section 62 specifies the information that must be contained in the register of members. The Registry is proposing to update the wording of

section 62 so that the register specifies the 'relevant particulars' of each member (including any nominee arrangements). Regarding the address stated, members that are individuals may elect a service address and the date of birth showing, would only detail the month and year. The Register of Member is to be available for inspection by any person at a reasonable time and upon payment of a reasonable fee (if any)

8. Paragraphs 5 and 6 above, regarding the register of directors, would also apply here.

Up to date and accurate

9. The Registry is proposing the insertion of a provision into CA06 that companies have a duty to ensure that the statutory records and documents maintained by the company under sections 78 and 79, are accurate and up to date.

Offence

1. 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.