

GUIDE TO THE ISLE OF MAN COMPANIES ACT 2006

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PREFACE

This Guide is intended to provide an overview of the Companies Act 2006

Traditionally, Isle of Man company legislation has been based on English company law statutes and the English Companies Act 1929 was the foundation for the existing Isle of Man Companies Acts 1931-2004.

This changed when the Isle of Man Companies Act 2006 (the **Act**) came into force on 1 November 2006 and introduced a simplified corporate vehicle into Isle of Man law. This corporate vehicle follows the international business company model which is available in a number of offshore jurisdictions. The Act is based on familiar concepts and, whilst it does not contain any novelties as such, it sweeps away a number of the traditional company law formalities. The Act was amended slightly in 2009 when the Companies (Amendment) Act 2009 came into force on 1 September 2009.

We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they may be addressed to any member of the team, using the [contact information](#) provided at the end of this Guide.

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1. INTRODUCTION

The Act is largely a standalone piece of legislation and companies incorporated under the Act (**2006 Act Companies**) co-exist with present and future companies incorporated under the existing Isle of Man Companies Acts 1931-2004 (**1931 Act Companies**).

Some of the key features of 2006 Act Companies include: no requirement for authorised share capital; no capital maintenance requirements (subject to satisfaction of a statutory solvency test); no prohibition of financial assistance; reduced compulsory registry filings; less prescriptive accountancy requirements; no distinction between public and private companies; simplified offering document requirements; ability to have single directors and (within certain limits) corporate directors; no requirement to hold an AGM and availability of transfer of domicile procedures, re-registration procedures and merger and consolidation procedures.

2. TYPES OF VEHICLES AVAILABLE

A 2006 Act Company is a legal entity in its own right separate from its members and will continue in existence until it is dissolved in the same way as 1931 Act Companies.

A 2006 Act Company can be incorporated, registered or continued under the Act as:

- a company limited by shares;
- a company limited by guarantee;
- a company limited by shares and by guarantee;
- an unlimited company without shares; or
- an unlimited company with shares.

3. INCORPORATION OF 2006 ACT COMPANIES

Every 2006 Act Company is required at all times to have:

- a registered agent in the Isle of Man who holds the appropriate licence granted by the Isle of Man Financial Supervision Commission pursuant to the Financial Services Acts 2008. This requirement ensures that there is a licensed professional on the Isle of Man overseeing the administration of the company; and
- a registered office address in the Isle of Man.

Only registered agents are permitted to incorporate 2006 Act Companies by submitting to the Registrar of Companies (the **Registrar**) the proposed memorandum and (if they are to differ from the prescribed model articles of association) articles of association of the company. Upon receipt the Registrar will register the documents, allot a company registration number to the company and issue a certificate of incorporation.

If a 2006 Act Company is formed as a company limited by shares, a company limited by guarantee or a company limited by shares and by guarantee, it can have "Incorporated", "Inc", "Corporation" or "Corp" as the last word of its name, in addition to the traditional "Limited", "Ltd", "Public Limited Company" or "PLC".

4. POWER AND CAPACITY

The doctrine of ultra vires does not apply to 2006 Act Companies. The Act expressly states that notwithstanding any provision to the contrary in a company's memorandum or articles of association and irrespective of corporate benefit and whether or not it is in the best interests of a company to do so, a company has unlimited capacity to carry on or undertake any business or activity, to do, or to be subject to, any act or to enter into any transaction.

In addition, in favour of any person dealing with a company in good faith, the power of the directors to bind the company or to authorise others to do so is deemed to be free of any limitations (including limitations deriving from any provision in the memorandum or articles of association of the company or any resolution of the members of the company or any agreement between the members of the company).

A person is not deemed to have notice or knowledge of any document (other than registered charges) relating to a company (including the company's memorandum and articles of association) by reason only of the fact that it is available for public inspection at the companies registry, at the registered office address of the company or at the office of its registered agent.

Notwithstanding these provisions, directors of 2006 Act Companies are still subject to the various duties imposed upon directors by common law and statute as well as fiduciary duties, including the duties to act bona fide in the best interests of the company and for proper purposes.

5. **DIRECTORS**

Unlike a 1931 Act Company, a 2006 Act Company is permitted to have a single director which may be an individual or a body corporate. A body corporate is only eligible to act as a corporate director if it, or another body corporate of which it is a subsidiary, is:

- the holder of an appropriate licence issued by the Isle of Man Financial Supervision Commission under the Financial Services Acts 2008; or
- permitted to act as a corporate director by regulations made pursuant to the Act.

Subject to any contrary provision in a company's memorandum or articles, the Act expressly provides that the business and affairs of a 2006 Act Company will be managed by or under the direction or supervision of the directors and that the directors have all the powers necessary for managing, directing and supervising the business and affairs of the company.

Subject to contrary provision in the Act or in a company's memorandum or articles, the directors exercise their powers by resolutions:

- passed at a board meeting; or
- passed as written resolutions.

Resolutions passed at board meetings require the approval of the majority of the directors present (subject to any contrary provision in the company's memorandum or articles). There is express authority in the Act to enable telephonic or electronic board meetings to be held provided that all directors participating in the meeting can communicate with each other.

Directors written resolutions require the agreement of all of the directors or of such majority (greater than 50%) as is specified in the company's memorandum or articles. Written resolutions can be consented to in writing or by email, telex, fax or other electronic communication.

6. **MEMBERS**

The Act permits 2006 Act Companies to be single member companies.

The Act contains very few prescriptive rules relating to members meetings. Companies are not required to hold annual general meetings and the Act allows members meetings to be held at such time and in such places, within or outside the Isle of Man, as the convener of the meeting considers appropriate. However, if necessary, more prescriptive requirements relating to members meetings could be written into a company's articles of association.

Subject to contrary provision in the Act or in a company's memorandum or articles, members exercise their powers by resolutions:

- passed at a meeting of the members; or
- passed as a written resolution.

The concept of **ordinary**, **special** and **extraordinary** resolutions is not recognised under the Act and resolutions passed at a members meeting only require the approval of a member or members holding in excess of 50% of the voting rights exercised in relation thereto (subject to any contrary provision in the Act or in the company's memorandum or articles). As with board meetings, the Act enables telephonic or electronic members meetings to be held provided that all members present at the meeting are able to communicate with each other.

Members written resolutions require the agreement of all of the members entitled to vote or of a member or members holding such percentage of the voting rights as is specified in the memorandum or articles (subject to any requirement in the Act for any resolution to be passed by a particular majority). Written resolutions can be consented to in writing or by email, telex, fax or other electronic communication.

7. **SHARES**

The provisions relating to shares and share capital in the Act are more relaxed than the equivalent provisions applying to 1931 Act Companies.

The Act provides that shares in a company may (without limitation):

- be convertible, common or ordinary;
- be redeemable at the option of the shareholder or the company or either of them;
- confer preferential rights to distributions;
- confer special, limited or conditional rights, including voting rights;
- entitle participation only in certain assets.

In addition, subject to any contrary provisions in a company's memorandum or articles, a 2006 Act Company can:

- issue bonus shares and nil or partly paid shares;
- issue shares with or without a par value;
- issue shares in any currency (if the shares have a par value);
- issue shares numbered or unnumbered; and/or
- issue fractional shares.

8. **OFFERING DOCUMENTS**

The Act does not distinguish between public and private companies and (subject to any restrictions in a company's memorandum or articles of association) any type of 2006 Act Company can offer its securities to the public. However, if an offering document is issued in relation to a company, the criteria with which that offering document must comply are less prescriptive than the traditional prospectus requirements which apply to 1931 Act Companies.

The Act simply requires the directors or the proposed directors (in the case of a company yet to be incorporated) to ensure that any offering document issued in relation to a company:

- contains all material information relating to the offer or invitation contained therein (i) that the intended recipients would reasonably expect to be included therein in order to enable them

make an informed decision as to whether or not to accept the offer or make the application referred to therein; and (ii) of which the directors or proposed directors were aware at the time of issue of the offering document or of which they would have been aware had they made such enquiries as would have been reasonable in all the circumstances; and

- sets out such information fairly and accurately.

9. DISTRIBUTIONS AND THE SOLVENCY TEST

The Act introduces a new definition of **distribution** in relation to a distribution by a 2006 Act Company of its assets to its members. A **distribution** essentially means the direct or indirect transfer of company assets or the incurring of a debt by a company to or for the benefit of a member and includes the payment of dividends and the redemption, purchase or other acquisition by a company of its own shares.

The Act permits the directors of a company to authorise a distribution by the company to its members at such time and of such amount as they think fit if they are satisfied, on reasonable grounds, that the company will, immediately after the distribution, satisfy the solvency test.

A company satisfies the **solvency test** if:

- it is able to pay its debts as they become due in the normal course of its business; and
- the value of its assets exceeds the value of its liabilities.

The solvency test replaces the traditional capital maintenance requirements which apply to 1931 Act Companies. Provided that the solvency test has been satisfied, dividends may be paid and shares redeemed or purchased out of any capital or profits of the company.

10. ACCOUNTING RECORDS

The accounting requirements imposed on 2006 Act Companies under the Act are less prescriptive than those imposed on 1931 Act Companies. The Act simply requires a company to keep reliable accounting records which:

- correctly explain the transactions of the company;
- enable the financial position of the company to be determined with reasonable accuracy at any time; and
- allow financial statements to be prepared.

Such accounting records can be kept either at the office of the company's registered agent or at such other place as the directors of the company think fit. If the records are not kept at the office of the company's registered agent, copies of the records must be provided to the registered agent at intervals not exceeding 12 months. The registered agent must be provided with a written record of the place at which the original records are kept.

11. FINANCIAL STATEMENTS AND AUDIT REQUIREMENTS

Whilst there is no requirement in the Act for a 2006 Act Company to prepare regular financial statements, the Act does give any member or director of a company the right to demand that financial statements be prepared for the period since the end of the financial period to which the preceding financial statements relate or, if none, since the incorporation of the company. Such right can only be exercised if the company has not prepared financial statements for a continuous period of 18 months or more. Originals of any financial statements prepared must be kept at the office of the company's registered agent.

Only a company whose securities are listed or admitted to trade on a securities market or exchange is required to appoint an auditor—although any 2006 Act Company is free to appoint an auditor if it wants to do so. Any auditor appointed by a 2006 Act Company (whether the auditor is appointed under a legal requirement or not) will need to be appropriately qualified in accordance with the Act.

12. STATUTORY BOOKS

Originals or copies (as appropriate) of the following statutory books and documents are required to be kept at the office of the registered agent of a 2006 Act Company:

- the memorandum and articles of association signed by each subscriber;
- the register of members;
- the register of directors;
- the register of charges;
- copies of all notices and other documents filed with the Registrar in the previous six years;
- the original accounting records or copies of such records (to be sent to the registered agent at intervals not exceeding 12 months);
- the originals of any financial statements prepared; and
- an imprint of the common seal (if any).

2006 Act Companies must also keep minute books of meetings and resolutions passed by its directors and members. Whilst these minute books do not have to be kept at the office of the company's registered agent, the registered agent must be provided with a written record of the physical address where such records are kept.

13. FILING REQUIREMENTS

In comparison with 1931 Act Companies, there are reduced compulsory registry filings under the Act. However 2006 Act Companies are still required to file the following with the Registrar:

- its memorandum and articles of association and any amendment made thereto;
- any change in its name;
- any change of its registered office address;
- any change of its registered agent;
- its annual return;
- any charges which it creates (including any subsequent variation or release of such charges);
- any late registration of a charge;
- any applications and filings in connection with its dissolution, restoration or winding up; and
- any applications and filings in connection with any re-registration, scheme of merger, consolidation or arrangement, transfer of domicile or conversion into a protected cell company.

In particular, there is no requirement for a 2006 Act Company to file with the Registrar details of any change in its directors as they occur (although these details are required to be disclosed on a company's annual return), any increase or reduction in its share capital, any alteration to its share capital, any allotment of shares or any members resolutions (other than as required by a particular section of the Act).

A 2006 Act Company can voluntarily elect to file a copy of its register of directors and/or register of members with the Registrar. If a company makes such an election it must notify the Registrar of any changes to those details. In addition, a 2006 Act Company can voluntarily file any offering document with the Registrar, but it is not required to do so.

14. RE-REGISTRATION OF A 1931 ACT COMPANY AS A 2006 ACT COMPANY

The Act contains provisions which enable a 1931 Act Company to re-register as a 2006 Act Company of such type as most closely corresponds to its type under the existing Companies Acts 1931-2004.

The re-registration procedure is relatively straightforward and simply requires an application to the Registrar by the person who will be the first registered agent of the company upon its re-registration as a 2006 Act Company. The application must be approved by the members of the 1931 Act Company and must be accompanied by the new memorandum and articles of association to be adopted by the company upon its re-registration as a 2006 Act Company. No consent of any other person (including charge holders) is required by the Act.

The Act expressly provides that the re-registration of a 1931 Act Company as a 2006 Act Company will not be deemed to operate:

- to create a new legal entity; or
- to prejudice or affect the continuity of the company.

15. RE-REGISTRATION PROCEDURES, TRANSFER OF DOMICILE, SCHEMES OF MERGER, CONSOLIDATION OR ARRANGEMENTS AND PROTECTED CELL COMPANIES

The Act also contains relatively simple procedures to enable:

- a 2006 Act Company to be re-registered as a different type of company permitted under the Act;
- a 2006 Act Company to be continued in a country or territory outside the Isle of Man and discontinued under the Act and to enable a foreign company to be continued in the Isle of Man as a 2006 Act Company;
- 2006 Act Companies to be merged or consolidated or to be subject to a scheme of arrangement; and
- a 2006 Act Company which has been constituted as a company limited by shares to be converted into a protected cell company.

For more specific advice on the 2006 Companies Act for the Isle of Man, we invite you to contact the following:

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For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).