

ISLE OF MAN COMPANIES

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Why the Isle of Man?

There are a number of excellent reasons for choosing the Isle of Man as the jurisdiction of incorporation for a special purpose vehicle.

- Tailored vehicles, including private companies limited by shares, guarantee, share and guarantee (also known as hybrid companies), limited liability companies (LLCs), purpose trusts, limited liability partnerships and partnerships.
- Taxation – the Isle of Man is committed to being a low tax jurisdiction; in line with its commitment to non-discrimination and to end harmful tax practices, non-residents will be treated in the same way as residents.
- Reputation – the Island is conscious of maintaining its excellent reputation and has received powerful endorsements from the United Kingdom Government’s Edwards Report on financial regulation in the Crown Dependencies and more recently its independent Review of British offshore financial centres, the OECD which includes the Island on its “white list” of companies complying with the global standard for tax co-operation and exchange of information and the Financial Stability Forum set up by the G8 Group.
- Stability and regulation; the Isle of Man has a long history of self government. The Island’s government recognises the value of maintaining the Island’s high reputation in the provision of financial services through regulation within the Isle of Man and through cooperation with other regulators and international bodies such as the OECD.
- Settled company law which is presently largely based on the laws of England and Wales.
- Provisions have been introduced to establish a new corporate vehicle providing the advantages and flexibility of the International Business Company.
- Established base for aircraft finance and leasing.
- An Aircraft Register which provides a customer focused service for the registration of high quality private and corporate jets and high quality turbine-engine helicopters (a British register with international registration suffix “M”).
- Proven securitisation record.
- Established base for ship management and fast track shipping registry.
- A facilitative approach to new business areas which has led to the Island becoming a major player in on-line gambling, e-business and the space industry.
- Established base for structured finance, “orphan companies” and defeasance arrangements.

- Availability of the highest quality corporate service providers, backed by associated professions, for example accountants and advocates.
- Straight forward public registry system operated by the Financial Supervision Commission Companies Registry.
- Position of the Isle of Man within the same time zone as England.
- Excellent communication links, including advanced telecommunications technology.

This brochure aims to give a general description of matters affecting Isle of Man companies. Since the majority of companies incorporated in the Isle of Man are private companies limited by shares, the following paragraphs relate mainly to such entities. If you require details on other types of entities, or more specific details on any aspect of special purpose vehicle formation or administration, please contact us.

Tax Status

With effect from 6 April 2006 the standard rate of taxation for companies in the Isle of Man was reduced to 0%, except for those companies deriving an income from banking business or from land and property within the Isle of Man to which the rate of 10% applies.

A special regime (“the Attribution Regime”) applies to individuals resident in the Isle of Man who have an interest in a company which pays tax at 0% in the Isle of Man. Those individuals will be charged to income tax on their share of the attributed profits from the company, that is they will be taxed directly as if they had received the income attributable to their share of the annual profits even if those profits were not distributed.

In respect of payments to non-residents an Isle of Man company is required to deduct the correct amount of withholding tax when making a taxable payment to a non-resident. The appropriate amount will be dependent upon the type of payment being made, the tax rate applicable to the company making the payment and the recipient of the payment.

There is no inheritance tax, capital gains tax, stamp duty or SDRT in the Isle of Man.

Annual Fee

An annual return fee (presently £320, increasing on default) applies to companies incorporated on the Isle of Man.

Type of Company

Until 2006 the vast majority of companies incorporated in the Isle of Man were private limited companies formed under the Companies Act 1931-2004 (“the 1931-

2004 Acts”). Companies incorporated under that Act (“1931 companies”) were largely very similar to companies incorporated in England.

The Companies Act 2006 (“the 2006 Act”) came into force in 2006 and introduced a new type of Manx company, referred to as a 2006 company (sometimes referred to as a New Manx Vehicle or NMV), similar in many respects to the International Business Company under the law of the British Virgin Islands.

Both the 2006 company and 1931 company continue to be incorporated in the Isle of Man and each offer a range of benefits. Where a 1931 company wishes to benefit from the flexibility of the 2006 Act it is able to re-register under that Act.

The Companies Act 1931-2004

Company Formation

Historically most companies incorporated in the Isle of Man were incorporated under the 1931-2004 Acts, which permit the creation of public and private companies, which may be limited by shares, limited by guarantee (with or without share capital) or unlimited. Additionally, limited liability companies are available pursuant to the Limited Liability Companies Act 1996. The most usual corporate vehicle for estate or tax planning purposes in the Isle of Man is the private company limited by shares.

Isle of Man company law applicable to a 1931 company is principally found in the 1931-2004 Acts. The Companies Act 1931 (“the 1931 Act”) was largely based on the Companies Act 1929 of Parliament and accordingly reflects the position in England prior to the Companies Act 1985, with subsequent amendments and additions.

Private companies may have a single member, pursuant to the Single Member Companies Act 1993. In order to incorporate a company it is necessary to deliver a statement of the persons who are to be the first directors and secretary of the company and the intended situation of the company’s registered office in the Isle of Man together with the company’s memorandum of association signed by the subscriber(s) and articles of association and the relevant fee to the Financial Supervision Commission. The person delivering the statement of first directors, secretary and registered office must be resident in the Island. Upon the registration of the memorandum the Financial Supervision Commission certifies that the company is incorporated, the certificate of incorporation being conclusive evidence of compliance with the 1931 Act.

Name

The 1931 Act provides that no company shall be registered with a name which, in the opinion of the Financial Supervision Commission is undesirable. The use of certain words in a company’s name is subject to certain restrictions, for example “International” and “Holding”. It is generally the practice to obtain the prior approval of the Financial Supervision Commission in respect of a required name before incorporation documents are delivered. A guidance note on name approval has been

issued by the Financial Supervision Commission, please contact us if you wish to receive a copy.

Memorandum and Articles of Association

All 1931 companies formed since the commencement of the Companies Act 1986 (“the 1986 Act”) have, pursuant to Part I of the 1986 Act, the capacity and (subject to the 1986 Act) the rights, powers and privileges of an individual. This removes any difficulty concerning corporate capacity. The need for commercial benefit remains for 1931 companies.

Standard articles of association for a private 1931 company limited by shares are set out in Table A of the Companies (Memorandum and Articles of Association) Regulations 1988, and if no articles are registered or if they do not exclude or modify Table A, Table A will apply as if registered. However, the use of specially drafted articles that allow for greater flexibility in the operation of the company than those contained in Table A is common.

The memorandum of association of a 1931 company incorporated after the commencement of the 1986 Act must state the name of the company, ending in “limited” if the company is limited by shares or guarantee, whether the company is private or public and that all the requirements of the 1986 Act have been complied with. Additionally, certain details as to the division of share capital and the number of shares taken by each subscriber, and/or certain provisions as to the contributions of guarantee members must be included in the memorandum of association. There are special provisions to allow charitable and certain other companies to dispense with the word “limited” in their names upon the approval of the Attorney General.

Share Capital

The share capital of a 1931 company may be denominated in any currency. The issue of share warrants to bearer by a 1931 company is not permitted. Subject to the 1931-2004 Acts, redeemable preference share and redeemable shares may be issued and a 1931 company may purchase its own shares.

Company Administration

In addition to complying with the provisions contained in the 1931 company’s articles of association, a 1931 company must comply with the 1931-2004 Acts, which require (inter alia) that 1931 companies:

- maintain a registered office situated in the Isle of Man, outside which the company’s name must be displayed;
- have at least two individual directors and a secretary, which may be corporate;
- make certain returns to the Financial Supervision Commission, including annual returns and returns as to allotted shares, changes in directors, secretary or situation of registered office;

- publish certain particulars including its full name, registered office, company number and directors (together with their nationality if not British) on all communications issued by the Company.

An annual general meeting of the 1931 company must be held at least once in every calendar year. Every 1931 company is required to keep accounting records and, although exemption from the requirement lay accounts and reports before the company in general meeting is possible, shareholders have the right to require the laying of accounts. Unless a 1931 company qualifies for exemption, most commonly by having a turnover of less than £5.6 million and its balance sheet total is less than £2.8 million throughout the year or it employs less than 50 persons (although other exemptions exist), its accounts are required to be audited. Private 1931 companies are not required to file accounts at the Isle of Man Companies Registry, unless they are a subsidiary of a public company or holder of certain licences issued by the Financial Supervision Commission or the Insurance and Pensions Authority.

Directors' Duties

It is usual for the business of the 1931 company to be managed by its directors, subject to the memorandum and articles of association of the company. The Articles of association may specify the quorum for a meeting of the directors (usually the quorum is 2), however notice of meetings must be given to all directors. Telephonic attendance at board meetings and written resolutions may be permitted by the articles of association of the 1931 company.

In addition to a number of statutory duties contained largely in the Acts, directors have fiduciary duties and common law duties of skill and care towards the 1931 company. It should be noted that Isle of Man law does not recognise the concept of the nominee director.

The Companies Act 2006

The 2006 Act provides a framework governing the incorporation and operation of the 2006 company which is almost entirely independent of other statutory provision.

The 2006 company closely resembles the highly successful IBC incorporated in the British Virgin Islands, but offers all of the benefits of incorporation in the Isle of Man.

Administration of the 2006 company is undertaken by licensed corporate service providers, who are authorised to incorporate the 2006 company and to act as registered agent. With fewer public filing and administrative requirements (including dispensing with the need for annual general meetings or a company secretary), the possibility of corporate directors and sole directors and easy appointment of agents, the 2006 company is an exciting development which provides a high degree of flexibility within a well regulated and respected financial centre. The combination of these features and the zero rate of taxation applicable to the 2006 company make it a very popular structure.

Types of 2006 Company

The 2006 Company can take one of the following five forms:

- a company limited by shares
- a company limited by guarantee
- a company limited by shares and guarantee (a hybrid)
- an unlimited company with a share capital
- an unlimited company without a share capital

On incorporation a 2006 company is allocated a company number with a “V” suffix, distinguishing it from 1931 companies which end with “C”.

The distinction between private companies (unable to offer their shares to the public) and public companies under the 1931 Act does not apply to the 2006 company, which may offer its shares to the public.

Protected cell companies may be formed under the 2006 Act, and further details appear below.

Name

Alongside the previous designations of company (“limited” or “ltd.”, “public limited company” or “plc”) the name of a 2006 company is also permitted to end with the words “Incorporated” (or “Inc”) or “Corporation” (or “Corp”).

Names must not be so close to an already registered name as to be likely to cause confusion, contain restricted words or phrases without the consent of the Registrar appointed by the Financial Supervision Commission under the 2006 Act or be offensive or objectionable. It is however possible to reserve a name with the Registrar prior to incorporation.

Capacity

Irrespective of corporate benefit and whether or not it is in the best interest of the company, a 2006 company enjoys 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.

Share Capital

The 2006 company may issue shares which:

- are convertible, common or ordinary
- are redeemable at the option of the shareholder, 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 or
- confer no voting rights.

The 2006 Company may issue shares with or without par value. It may issue shares for consideration other than money.

A 2006 Company may not issue bearer shares.

Provision is made in the 2006 Act for the 2006 Company to redeem, purchase or otherwise acquire its own shares.

Offering documents must contain all material information relating to the offer that the intended recipients would reasonably expect to be included to enable them to make an informed decision on acceptance and which the directors were aware of at the time of issue (or would have been aware of if they had made reasonable enquiries). The information must be set out fairly and accurately. An offering document may be filed with the Registrar on a voluntary basis.

In line with the general relaxation of capital maintenance requirements, the prohibition on the giving of financial assistance which applies to certain 1931 companies does not apply to 2006 companies, however it should be noted that some capital maintenance considerations remain.

Distributions and Dividends

Provided that the directors of the 2006 Company are satisfied on reasonable grounds that the solvency test set out in the 2006 Act is satisfied by the company, distributions and dividends may be authorised by the directors. Distributions may be by transfer of any asset belonging to the company or by incurring debt to or for the benefit of a member.

Company and Public Records

The Registered Agent of the 2006 Company is required to maintain registers of members, directors and charges together with certain other documents including accounting records which the 2006 company is required to keep under the provisions of the 2006 Act.

Under the 2006 Act a 2006 Company is required 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 (although it should be noted that there is no actual requirement to prepare such financial statements). The 2006 Company is required to retain invoices, contracts and other information necessary to document all sums of money received and expended and the matters in respect of which the receipt and expenditure took place, all sales and purchases and the assets and liabilities of the company. Such records are required to be maintained for not less than 6 years from the end of the financial period to which they relate.

2006 companies are also required to keep minutes of the meetings of directors (or committees of directors) and members (or classes of members) and resolutions consented to by directors (or committees of directors) and members (or classes of members) within or outside of the Isle of Man as the directors determine.

On incorporation the Registered Agent must file an application together with the memorandum and articles of association of the 2006 company with the Registrar appointed under the 2006 Act at the Isle of Man Financial Supervision Commission

Companies Registry. These documents will set out the details of the first Registered Agent, the first registered office and the subscribers of the 2006 company. Save for filings relating to the initial shareholders, there are no filing requirements relating to the members of the 2006.

Changes in the name of the 2006 company, its memorandum or articles of association, registered agent and registered office address must be filed with the Registrar.

Annual returns are required to be filed with the Registrar by the 2006 company within one month of the anniversary of its incorporation. The annual return will be raised by the Registrar and sent to the Registered Agent for correction and return following the “shuttle” format used in several jurisdictions. Accordingly, the annual return will not include any additional information not already on the public record.

Management

The business and affairs of a 2006 company are managed by its directors. A 2006 company may have one or more directors. Corporate directorships are possible provided that certain qualifications are met.

The directors of the 2006 company may appoint one or more agents, to whom they are able to delegate certain powers.

Re-Registration

Company law relating to companies incorporated under the 1931 Act remains unchanged following the 2006 Act coming into force. However such companies may apply to be re-registered under the 2006 Act.

A company incorporated under the Companies Act 2006 can apply to re-register under that Act as a company of a different type, including a protected cell company.

Transfer of Domicile

2006 companies may redomicile to discontinue in the Isle of Man and be continued elsewhere. Similarly, companies incorporated in other jurisdictions may be continued in the Isle of Man under the 2006 Act.

Protected Cell Companies

A protected cell company (“PCC”) is a single legal entity which can comprise a number of cells for the purpose of segregating and protecting cellular assets.

Each cell has a distinct name, and assets of the PCC may be attributed to a cell of the PCC by the directors of the company, or otherwise will be non-cellular assets.

Creditors of one cell of the PCC have no legal recourse to assets attributed to other cells. The assets of the cell in respect of which the liability exists will be primary liable, with the non-cellular assets secondarily liable.

Regulation of Corporate Service Providers

The Isle of Man has a long standing regulatory regime which applies to corporate service providers. The regulatory regime requires those offering certain company administration services by way of business in or from the Isle of Man to hold a licence. Regulated activities include the provision of services by way of business with respect to the formation of companies, the provision of premises for use as a registered office, acting as a director, alternate director or secretary of companies, acting as or arranging nominee shareholders and the provision of company administration services. Certain exemptions exist, including exemptions for those providing directorship services to less than 10 companies.

Corporate Service Provider licences will be issued by the Financial Supervision Commission upon it being satisfied that the applicant and its officers and key staff are fit and proper persons.

Turnbull

Turnbull is an established legal practice specializing in company and commercial law in the Isle of Man.

We offer a fast direct service backed by the best in modern communication.

Turnbull is not a licensed corporate service provider, nor does it offer tax advice, but will be pleased to put you in touch with suitable advisers on request or work with your own chosen specialists.

For more information about the services offered by Turnbull, visit our website at www.turnbulladvocate.com.

Contact us

If you have any queries or would like further information on the Isle of Man companies and company law, contact Janice Turnbull on +44 (0) 1624 614516 or jt@turnbulladvocate.com.

December 2009

PLEASE NOTE:

Whilst every effort has been made to ensure that the details contained herein are accurate; the contents of this brochure are intended to provide a brief summary only. This brochure does not constitute legal advice and should not be considered a substitute for proper legal advice specific to the particular circumstances and matters in question, which should be sought in all cases.