

## The Isle of Man Companies (Amendment) Act 2009



The Isle of Man Companies (Amendment) Act 2009 (the “**Act**”) came into force on 1st September 2009. The Act amends the Isle of Man Companies Acts 1931-2004, the Limited Liability Companies Act 1996 and the Isle of Man Companies Act 2006. This briefing note concentrates upon the amendments made to the Isle of Man Companies Act 2006 (the “**2006 Act**”) in relation to the requirements to maintain accounting records, to prepare financial statements and to appoint auditors. The amendments described in this note are intended primarily to clarify and simplify the obligations imposed upon 2006 Act companies relating to accounting records.

### Location of Accounting Records

Section 78 of the 2006 Act originally required accounting records to be kept at the office of the company’s registered agent. Now a company will instead be required to keep only the following documents at its registered agent’s office:

- either the originals of the accounting records it is required to keep under the 2006 Act or, if the directors think fit to keep the accounting records elsewhere, copies of such records (to be sent to the registered agent at intervals not exceeding 12 months); and
- originals of any “financial statements” prepared (if any).

If the original accounting records are not kept at the office of the company’s registered agent, the company must provide the registered agent with a

written record of the physical address at which the records are kept. If this address changes, the company must notify its registered agent within 14 days of the change of location.

In addition, the registered agent must be able to access the accounting records. The 2006 Act has been amended to allow a company’s registered agent to:

- inspect the accounting records of the company without charge and make copies of, or take extracts from, the records; and
- require the company to provide it with originals or copies of the accounting records within 14 days.

### What constitutes “Accounting Records”?

A 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.

The copies of any “accounting records” provided to a company’s registered agent must themselves be sufficient to satisfy these three requirements, without requiring sight of the original records.

The original requirement imposed upon companies to retain all such invoices, contracts and other information as are necessary to allow the company to

document its income and expenditure, sales and purchases, and assets and liabilities has been repealed.

### **What does “Financial Statements” mean?**

This expression means formally prepared accounts. “Financial statements” are defined as the written accounts of the company which have been approved by the directors as financial statements for the purposes of the 2006 Act and which include:

- a written statement recording the assets and liabilities of the company on a specific date (i.e. a balance sheet);
- a written statement recording the receipts, payments and other financial transactions undertaken by the company in respect of the period ending on the date of the statement referred to above (i.e. a profit and loss account); and
- such notes as are necessary for a reasonable understanding of these statements.

A new requirement imposed by the Act is that the financial statements must give a true and fair view. In addition, in determining how amounts are presented within the financial statements the directors are required to have regard to IFRS, UK GAAP or US GAAP.

### **Right to Require Financial Statements to be Prepared**

A new provision inserted by the Act gives 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 may only be exercised if the company has not prepared financial statements for a continuous period of 18 months or more. Any such demand must be deposited at the company’s registered office and the financial statements must be prepared within 6 months of the demand.

### **Requirement to Appoint an Auditor**

The 2006 Act originally did not impose any requirement upon a company to appoint an auditor—although any 2006 Act company is free to choose to do so. However, the 2006 Act now

expressly requires a company to appoint an auditor where its securities are listed or admitted to trade on a securities market or exchange. This will apply, for example, to 2006 Act companies listed on AIM.

### **Requirement for Auditor to be Appropriately Qualified**

Originally, if a 2006 Act company chose to appoint an auditor there was no requirement that such auditor be qualified. This position has now changed. Any auditor appointed by a 2006 Act company (whether the auditor is appointed under a legal requirement or because the company chooses to do so) will need to satisfy certain criteria. A person or body will only be qualified for appointment as auditor of a 2006 Act company if it is qualified for appointment as auditor of a company incorporated under the Companies Acts 1931–2004 under the new sections 14 to 14H which have been inserted into the Companies Act 1982 by the Act. If you require further information on auditor qualification then please do not hesitate to contact us.

### **Inspection of Accounting Records**

Originally, the 2006 Act gave every member of a company the right to inspect the company’s “accounting records”. A member is now only entitled to inspect a company’s accounting records in the following circumstances:

- a demand that financial statements be prepared has been made and the company has failed to comply with the demand; or
- the articles of the company expressly provide for the inspection of the accounting records by the member and for the making of copies or taking of extracts from such documents and records; or
- the member has requested the permission of the directors to inspect the accounting records and the directors have agreed.

Should you have any questions or requests for further information please contact:

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