

Isle of Man Companies and Capital Markets



A growing number of new applicants to AIM, PLUS and the Main Market of the London Stock Exchange are Isle of Man companies. Clearly an increasing number of businesses are realising the significant advantages of using an Isle of Man vehicle to access capital markets in the UK.

Why the Isle of Man is the Place to Incorporate your Listing Vehicle?

- The Isle of Man is in the vanguard of moves towards transparency and regulation in international business and is recognised as one of the best regulated international financial centres. The Isle of Man has a high quality stable political, legal fiscal and regulatory environment and has an AAA credit rating from both Standard and Poor's and Moody's.
- The Isle of Man is an English-speaking jurisdiction in the same time zone as London. The City of London is only a one hour plane journey from the Isle of Man. Attendance at board meetings on the Island is therefore straightforward and convenient.
- The general rate of corporate income tax in the Isle of Man is 0% (with the exception of some regulated sectors and income derived from land and property in the Isle of Man). This tax regime obviates the "ring-fencing" associated with tax exempt regimes and thus meets the expectations of the international community as regards tax competition.
- There are no capital gains or stamp taxes in the Isle of Man.
- No regulatory approval is required to form a public company.
- Closed-ended investment companies are not classed as funds under Isle of Man law and are not therefore subject to the Isle of Man funds regulatory regime, saving time and costs.
- An Isle of Man public limited company whose shares are traded on a regulated market is not a regulated entity in the Isle of Man and the administration of such a company is not regulated as fund administration.
- Shares in an Isle of Man company can be traded through CREST without the need to use depositary receipts.
- The Isle of Man shares its company law heritage with England and other common law jurisdictions, in particular trust and security law closely follows English statute and precedent. City finance houses, lawyers and advisers are familiar with Isle of Man companies, so deal costs can be minimised.
- Isle of Man lawyers, accountants, banks and administrators are experienced in capital markets transactions, whilst also benefitting from the ability to price services competitively and with capacity to expand.
- The Isle of Man has a well-established and well-regulated infrastructure for the provision of corporate administration services. All providers of company administration service must be licensed by the Isle of Man Financial Supervision Commission (**FSC**).

- The Isle of Man government offers inward investment incentives to certain businesses looking to establish substantive operations in the Isle of Man.
- Since 1 March 2009 the Takeover Code applies, giving the Takeover Panel statutory powers to enforce the rules in respect of companies incorporated in the Isle of Man whose securities are admitted to trading on a regulated market in the UK.
- The Isle of Man Companies Act 2006 introduced a simpler and more flexible corporate structure which benefits from the removal of capital maintenance requirements and less prescriptive prospectus requirements.

Key Features of the Companies Act 2006

Companies incorporated under the Companies Act 2006 (the **Act**) are well suited to capital markets scenarios through their flexibility and ease of administration. Some key features include:

- 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 company under the Act can offer its securities to the public. If a company does issue an offering document the criteria with which the offering document must comply are less prescriptive than traditional prospectus requirements. The Act simply requires the directors to ensure that any offering document issued in relation to a company contains all material information that the intended recipients would reasonably expect to enable them make an informed investment decision and of which the directors were aware or would have been aware had they made reasonable enquiries.
- The Act sweeps away the traditional concept of capital maintenance. A company incorporated under the Act does not need to classify its assets as income or capital. Instead the Act allows a company to distribute its assets to its members (whether by way of dividend, buy back or redemption of shares or otherwise), provided that the directors of the company are satisfied that the company

will, immediately after the distribution, satisfy the solvency test. A company will satisfy 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.

- Similarly a company can reduce its share capital in any way, without the need for the sanction of the Court, provided that the directors are satisfied, on reasonable grounds, that the company will immediately after such reduction, satisfy the solvency test.
- There is no requirement for a company to file details of its members with the Registrar of Companies or to notify the Registrar of any changes in its directors (although details of a company's directors will need to be included on its annual return).

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. Exchange traded companies will of course provide for annual members' meetings in their articles of association.
- The Act provides an extensive range of member protection provisions. Under the Act, members have the right to apply to Court for a restraining compliance order, the right to bring derivative actions, remedies for oppressive or unfairly prejudicial conduct, the right to bring personal actions and the right to apply to Court for an order that an investigation be made of the company and any of its associated companies.
- Every company incorporated under the Act has to have a registered agent in the Isle of Man. Only corporate service providers who hold the appropriate licence issued by the FSC can act as registered agents. This requirement ensures that there is a licensed professional on the Isle of Man overseeing the administration of the company.

The Isle of Man's Track Record in Capital Markets

- The Isle of Man is the first choice non-UK jurisdiction for incorporation of vehicles for admission to AIM, with 67 Isle of Man companies admitted to AIM. – *Hemscott's report on AIM company registrations, June 2009*
- Isle of Man Companies make up the largest share of the non-UK AIM companies' market capitalisation. – *Hemscott's report on AIM company registrations, June 2009*

Our Track Record in Capital Markets

- We currently act for a significant number of companies, mainly trading on AIM, but also companies quoted in the Official List and, increasingly, PLUS-quoted.
- We have the largest number of AIM clients in the Isle of Man and are ranked 19th of all law firms by number of AIM clients in Hemscott's Advisers Rankings Guide of August 2009.
- We have excellent working relationships with a wide network of advisers, from magic circle to boutique law firms, accountants, auditors, corporate advisers, brokers, NOMADs, administrators and registrars.

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