



Guide to the
Isle of Man Companies Acts
1931 to 2004

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PREFACE

As a result of the introduction of the Isle of Man Companies Act 2006 on 1st November 2006 there are now two separate company law regimes in the Isle of Man: one governed by the Isle of Man Companies Acts 1931-2004 and one governed by the Isle of Man Companies Act 2006.

The English Companies Act 1929 was the foundation for the existing Isle of Man Companies Acts 1931-2004 and many (but certainly not all) provisions in our legislation mirrored the equivalent English statutes. Companies incorporated under the Companies Acts 1931-2004 (“1931 Act Companies”) are subject to a traditional English company law regime. For example:

- a 1931 Act Company with a share capital must have an authorised share capital;
- 1931 Act Companies are required to hold Annual General Meetings;
- 1931 Act Companies must prepare accounts;
- 1931 Act companies are not allowed to have corporate directors;
- 1931 Act Companies with a share capital are required to comply with strict capital maintenance rules.

Many common law jurisdictions have company legislation which is very similar to the Isle of Man Companies Acts 1931-2004.

The Companies Act 2006 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 Companies Act 2006 is largely a stand alone piece of legislation and companies incorporated under the Companies Act 2006 co-exist with present and future companies incorporated under the existing Isle of Man Companies Acts 1931-2004

This Guide is intended to provide an overview of the Isle of Man Companies Acts 1931-2004. We recognise that the Guide will not completely answer detailed questions which clients and their advisers may have and the Guide is designed as a starting point for a more detailed and comprehensive discussion of the issues.

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INTRODUCTION

The English Companies Act 1929 was the foundation for the Isle of Man Companies Acts 1931–2004. Accordingly, companies incorporated under the Companies Act 1931–2004 (“1931 Act Companies”) are subject to a traditional and familiar English company law regime.

1. Types of Company Available

The types of company available under the Companies Acts 1931–2004 include:

- a company limited by shares;
- a company limited by guarantee and not having a share capital;
- a company limited by guarantee and having a share capital; and
- an unlimited company having a share capital.

In addition, a company limited by shares that is an Isle of Man authorised insurer or an Isle of Man fund of a specified category can also be incorporated as, or converted into, a protected cell company.

As by far the most popular type of company used is a company limited by shares, this briefing note will primarily concentrate upon 1931 Act Companies limited by shares.

2. Incorporation

In order to incorporate a 1931 Act Company, the following documents must be submitted to the Isle of Man Financial Supervision Commission Companies Registry (the “Companies Registry”):

- Form 1 – this form contains details of the name of the company, the intended situation of its registered office address and the names and relevant particulars of the company’s first directors and secretary. The Form 1 must be signed by the subscribers to the company’s memorandum of association and by each director and secretary as evidence of their consent to act in such capacity;
- Memorandum of Association – the memorandum must be signed by each subscriber in the presence of at least one witness; and
- Articles of Association – again, the articles must be signed by each subscriber in the presence of at least one witness.

The fees payable upon the incorporation of a company will depend upon the amount of authorised share capital with which the company is to be incorporated. For a company with an authorised share capital of £2,000 or less, capital duty of £130 will be payable. Companies having a higher authorised share capital will pay an additional £16 duty per £1,000 of authorised share capital up to a maximum company duty payment of £5,000. A £60 incorporation fee will also be payable.

Upon receipt of the incorporation papers the Companies Registry will allot a unique company number to the company and issue a certificate of incorporation. In addition, the Form 1 and the memorandum and articles of association will be registered at the Companies Registry and will be a matter of public record.

There is no requirement to disclose the beneficial ownership of the company to the Companies Registry.

The names of 1931 Act Companies are subject to the approval of the Companies Registry. Accordingly before submitting an application for the incorporation of a 1931 Act Company it is advisable to seek the prior approval of the Companies Registry to the chosen name. The Companies Registry can refuse to register a name which is, in its opinion, undesirable. In addition, certain words are considered sensitive by the Companies Registry, e.g. words which imply that the company is undertaking licensable activity or which

imply business pre-eminence or a particular status, and the use of such words is subject to additional restrictions.

3. Consequences of Incorporation

Once incorporated, a 1931 Act Company will have separate legal personality and may continue in existence indefinitely.

Generally, save in the case of unlimited companies, a member of a 1931 Act Company will have no liability as a member for the liabilities of the company itself. In the case of a company limited by shares, members will only be liable to pay to the company the amount (if any) unpaid on their shares (which will consist of the nominal value of the share together with any share premium which may have been agreed between the company and the member).

4. Memorandum of Association

Every 1931 Act Company must have a memorandum of association. The Isle of Man Companies Act 1986 simplified the law relating to the memorandum of association of a 1931 Act Company.

Before the Companies Act 1986 came into force, a 1931 Act Company's memorandum of association was required to include a long list of "objects" which the company had been formed to pursue. It was by reference to these "objects" that you would determine whether or not a company had the power and capacity to carry on a particular activity or enter into a particular transaction.

All companies incorporated after the Companies Act 1986 came into force simply have the capacity and the rights, powers and privileges of an individual and there is no requirement to include a long list of "objects" in the company's memorandum of association. Those companies incorporated before the Companies Act 1986 came into force with objects clauses may adopt the modern regime by passing a members special resolution.

The persons who sign the memorandum of association of a 1931 Act company are known as the "subscribers" and, upon incorporation of the company, will become the first members of the company. There is no requirement for the subscribers to be resident in the Isle of Man.

5. Articles of Association

Every 1931 Act Company must have articles of association. The articles of association regulate the internal affairs and management of the company.

The Companies Acts 1931-2004 prescribe model sets of articles of association for adoption by companies. The model set of articles of association for a company limited by shares is known as "Table A". The most recent Table A is contained in the schedule to the Isle of Man Companies (Memorandum and Articles of Association) Regulations 1988.

A company limited by shares can either exclude Table A or, as is more common, adopt Table A subject to appropriate modifications.

6. Amendments to Memorandum and Articles of Association

Both the memorandum and articles of association of a 1931 Act Company can only be amended by a special resolution of the members of the company. Notice of any such amendment is required to be filed at the Companies Registry within one month of the special resolution having been passed and will therefore be a matter of public record.

7. Directors

Every 1931 Act Company must have at least two directors and corporate directors are not permitted. There is no requirement that the directors of a 1931 Act Company must be resident in the Isle of Man and often tax considerations will dictate where directors of the company are resident.

The first directors of a 1931 Act Company will be the persons named as such in the Form 1 which is required to be delivered to the Companies Registry upon the incorporation of the company. Thereafter the Companies Acts 1931–2004 do not prescribe who is responsible for appointing the directors of the company. Instead, provision for appointment of directors is usually made in the company's articles of association.

The management of the company is usually vested in the board of directors collectively. The proceedings at board meetings are governed by the company's articles of association which usually provide that the directors may conduct their proceedings as they think fit.

At board meetings directors will exercise their powers by resolutions which are passed in the manner set out in the company's articles of association. They decide usually by the majority of votes of those directors present. The chairman of the board of directors is usually given a casting vote by the articles of association. The articles of association normally also enable directors to pass resolutions as written resolutions without the need for a meeting. Such written resolutions must be in writing and signed by every director entitled to receive notice of a meeting of directors.

Within one month of any change in a company's directors or their particulars, details of the change must be sent to the Companies Registry for filing and will therefore be a matter of public record.

8. Secretary

Every 1931 Act Company is required to have a company secretary which, in the case of a private company, can be a corporate secretary.

The first secretary of a 1931 Act Company will be the person named as such in the Form 1 which is required to be delivered to the Companies Registry upon the incorporation of the company. Thereafter the appointment of a secretary is usually dealt with by the directors in accordance with the company's articles of association.

In the case of a public 1931 Act Company the secretary must be an individual who in the opinion of the directors has adequate knowledge and experience of the duties and responsibilities of a company secretary and who either:

- is a member of the Institute of Chartered Secretaries and Administrators; or
- is a member of the Chartered Institute of Management Accountants; or
- is a person qualified under the Isle of Man Companies Acts for appointment as auditor of a public company; or
- is an advocate or has been called or admitted in England and Wales or Scotland as a barrister, solicitor or advocate.

Within one month of any change in the details of a company's secretary, notice of the change must be sent to the Companies Registry for filing and will therefore be a matter of public record.

9. Members and Members' Meetings

Only private companies limited by shares and private companies limited by guarantee can have a single member. All other types of 1931 Act Company must have at least two members.

Every 1931 Act Company is required to hold an Annual General Meeting (“AGM”) at least once in every calendar year and there must be no more than 15 months between successive meetings. All meetings other than AGMs are known as extraordinary general meetings (“EGMs”). There is no requirement in the Companies Acts 1931–2004 that a company must hold its members meetings in the Isle of Man, although a company is free to include provisions in its articles of association specifying where members meetings are to be held.

The Companies Acts 1931–2004 provide that certain decisions can only be taken by the company’s members (as opposed to the directors) e.g. alteration of a company’s memorandum or articles of association, alteration of a company’s share capital.

The normal rule is that decisions of members will be made by resolutions of the members passed by a simple majority of the votes cast on the resolution. These types of resolution are known as “ordinary resolutions”. On a large number of matters the Companies Acts 1931–2004 require resolutions to be passed by three quarters of the votes cast on the resolution. These resolutions are known as “special resolutions” or “extraordinary resolutions” – the difference between the two types of resolution is the amount of notice which needs to be given of each resolution.

Generally speaking, 21 clear days notice must be given of an AGM or any EGM called for the passing of a special resolution or a resolution appointing a person as a director and, in all other cases, 14 days notice must be given. Both AGMs and EGMs can be called at shorter notice if the requisite members consent is obtained.

In addition, it is usual for a company’s articles of association to permit members written resolutions to be passed without the need for a meeting. Such resolutions must be signed by all of the members of the company entitled to vote on the resolution.

10. Shares

Every 1931 Act Company having a share capital must have an authorised share capital and every share issued by a 1931 Act Company must have a nominal/par value. The authorised share capital of a company is the total nominal value of the shares which a company may allot and this figure must be stated in the company’s memorandum of association.

If permitted by its articles of association a company can increase its authorised share capital by new shares of such amount as it thinks expedient. Such an increase must be authorised by an ordinary resolution passed by the members of the company. Within one month of passing such an ordinary resolution, notice of the increase must be filed with the Companies Registry and will be a matter of public record.

Whenever a 1931 Act Company having a share capital allots shares, it must within one month after the allotment file a return of allotments at the Companies Registry.

In addition, a 1931 Act Company limited by shares, if authorised by its articles of association, can by way of ordinary resolution of its members, consolidate and divide all or any of its shares, subdivide its shares or cancel any of its un-issued shares. Again, any such alteration to a company’s share capital does give rise to a filing requirement at the Companies Registry.

If permitted by its articles of association, a 1931 Act Company can issue shares of different classes with different rights as to dividends, voting and capital. In particular it is possible for a 1931 Act Company to issue redeemable preference shares and redeemable shares. A 1931 Act Company may also buy back its own shares subject to compliance with certain statutory procedures. However, in keeping with accepted international standards, bearer shares are prohibited.

The Companies Acts 1931–2004 do not provide for any statutory pre-emption rights on the issue of shares. Accordingly if a 1931 Act company requires pre-emption rights to apply, such rights must be expressly written into the company's articles of association.

11. Transfer of Shares

Subject to any restrictions contained within a 1931 Act Company's articles of association, shares in a 1931 Act Company are transferable by a written instrument of transfer. There is no stamp duty on shares payable in the Isle of Man.

12. Maintenance of Share Capital

It is a fundamental principle applicable to 1931 Act Companies that they cannot generally reduce their share capital or effectively return capital to members, without complying with stringent statutory requirements. Generally speaking a company's share premium account and capital redemption reserve account must also be treated as if it were paid up share capital of the company.

A 1931 Act Company limited by shares is only able to reduce its share capital subject to the sanction of the Isle of Man Court being obtained.

13. Financial Assistance for Acquisition of Shares

Under the Companies Acts 1931–2004 it is unlawful for a public company or its subsidiaries to give financial assistance for the acquisition of shares in that public company. Equally it is unlawful for a public company to give financial assistance for the acquisition of shares in its private holding company. However there is no prohibition against a private company giving financial assistance for the acquisition of shares in itself or its private holding company.

14. Public and Private Companies

The Companies Acts 1931–2004 do distinguish between public and private companies.

Only public companies are permitted to offer their shares or debentures to the public and, as a result, are required to comply with the prospectus requirements set out in the Companies Acts 1931–2004. The main requirement is that any prospectus issued in relation to a company:

- contains all material information relating to the offer or invitation contained in it (i) that the intended recipients would reasonably expect to be included in it in order to enable them to make an informed decision as to whether or not to accept the offer or make the application referred to in it; and (ii) of which the directors were aware at the time of issue of the prospectus, 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.

Any prospectus to be issued by a 1931 Act Company must be filed with the Companies Registry and will therefore be a matter of public record.

15. Registration of Charges

Prescribed particulars of any charge created by a 1931 Act Company, together with the charging document (either the original or a certified copy), must be filed against the company at the Companies Registry within one month of the date of creation of the charge. Failure to register the charge will result in the charge being void as against the liquidator and any creditor of the company.

Details of the charge which need to be filed at the Companies Registry include the date of creation of the charge, the amount secured by the charge, the property subject to the charge and the name and address of the chargee.

16. Maintenance of Statutory Books and Rights of Inspection

1931 Act Companies are required to maintain the following statutory books:

- Register of Directors and Secretaries – this register must be kept at the company’s registered office and may be inspected by any member of the company and by any member of the public;
- Register of Members – generally this register must be kept at the company’s registered office. However, if the work of making up the register is done at another office of the company or by someone else on behalf of the company, it may be kept at that other place. However, in all circumstances the register must be kept somewhere in the Isle of Man. The register of members may be inspected by any member of the company and by any member of the public;
- Register of Charges – a copy of all charge documents and a register of charges must be kept at the company’s registered office. Any creditor or any member of the company is entitled to inspect copies of the charge documents and the register of charges. In addition, any member of the public may inspect a copy of a company’s register of charges;
- Minute Books – a company must cause minutes of all proceedings of members meetings and directors meetings and all members written resolutions and directors written resolutions to be entered in minute books. Such minute books must be kept at the company’s registered office. Minutes of any members meeting and any members written resolutions are open to inspection by any member of the company;
- Annual Returns – copies of a company’s annual return must be kept in a separate part of the company’s register of members and are open to inspection by any member of the company and by any member of the public;
- Accounting Records – a company’s accounting records must be kept at the registered office of the company or at such other place as the directors of the company think fit. If accounting records are kept outside the Isle of Man, accounts and returns with respect to the business dealt with in the accounting records must be sent to and kept in the Isle of Man and must at all times be open to inspection by the officers of the company.

17. Accounts and Audit

Every 1931 Act Company is required to produce annual accounts (including a balance sheet, profit and loss account and directors report) in accordance with the requirements set out in the Companies Acts 1931–2004. Unless a company is audit exempt, such accounts must also be audited by a qualifying auditor.

Only a private company can elect to be audit exempt and a private company will only qualify as an “audit exempt company” in any financial year if:

- (a) at least two of the following conditions are met:

- (i) its turnover in that year does not exceed £5.6 million;
- (ii) its balance sheet total does not exceed £2.8 million at any time during that year;
- (iii) it employs no more than 50 persons at any time during that year; OR

(b) throughout that year, all its members are directors and it exists wholly for the purpose of holding shares, securities other investments or land.

Where a company is a member of a group, additional criteria apply.

In order to elect to be audit exempt a resolution passed by 100% of the members of the company is required.

Public companies and subsidiaries of Isle of Man public companies are required to file their accounts at the Companies Registry. No such filing requirement is imposed upon private companies.

18. Registered Office

Every 1931 Act Company must at all times have a registered office in the Isle of Man. A company is able to change its registered office at any time by means of a directors resolution. Within one month of any such change, notice of the change must be delivered to the Companies Registry and will therefore be a matter of public record.

19. Annual Return

Every 1931 Act Company is required to file an annual return at the Companies Registry. The annual return must be made up to the company's return date (generally being the anniversary of the company's incorporation) and must be filed within one month after the return date.

The annual return will generally include details of the company's share capital, the company's registered office address, the company's directors and secretary, the company's members and the company's indebtedness.

20. Transfer of Domicile

Legislation is in place which enables a foreign company to be continued in the Isle of Man as a 1931 Act Company and which enables a 1931 Act Company to transfer its domicile and be continued as a company in a country or territory outside the Isle of Man. The legislation is dependent upon there being appropriate reciprocal legislation in place in the foreign country or territory and the consent of the Isle of Man Financial Supervision Commission being obtained.

21. Winding Up

A 1931 Act Company may be wound up either:

- by the court;
- voluntarily (either by means of a members voluntary winding up or a creditors voluntary winding up); or
- subject to the supervision of the court.

A members voluntary winding up is by far the most common method of winding up a company. In order to wind up a company by means of a members voluntary winding up, the majority of directors of the company are required to swear a statutory declaration as to the solvency of the company and a members spe

cial resolution is required. In addition, a liquidator must be appointed to attend to the winding up of the company.

On a winding up of a company, subject to any preferential payments and the proprietary interests of secured creditors, the property of the company will be applied in satisfaction of its liabilities *pari passu* and any remaining property will, unless the company's articles of association provide otherwise, then be distributed among the members of the company according to their rights and interests in the company.

22. Administrative Dissolution

A procedure exists under the Companies Acts 1931-2004 which enables any officer or member of a private 1931 Act Company to apply to the Companies Registry for the dissolution of the company. This procedure is only available to a company which has ceased to operate and which has discharged all of its debts and liabilities (other than those owed to its shareholders in respect of their shares). Various statutory notices of the dissolution are required to be given to the members and officers of the company and published in local newspapers and persons are given the opportunity to object to the proposed dissolution.

Where a company has been dissolved administratively, any officer, member or creditor of the company can within 12 years of the dissolution apply to court for an order that the dissolution of the company be revoked. In addition, a statutory procedure is available whereby a company or any director, member or creditor may, at any time within 12 years of the dissolution of the company, apply to the Companies Registry for a direction that the company be restored to the register.

For more specific advice on Companies Acts 1931 to 2004 in the Isle of Man, we invite you to contact one of the following:

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