

Business Forms in the Isle of Man: Part 1

A Guide to
Isle of Man **Companies**

Acts 1931 - 2004

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BUSINESS FORMS IN THE ISLE OF MAN

Introduction

The Isle of Man is an island of 221 square miles located in the Irish Sea, equidistant between the northeast of Ireland, the southwest of Scotland, and the northwest of England. It has been a separate self-governing jurisdiction for over a thousand years, and is not and has never been a part of the United Kingdom.

Every country and jurisdiction has its distinct forms of business. The Isle of Man is no exception. The Isle of Man has been legally and politically distinct for over a thousand years, and in modern times has become one of the world's leading international financial services centres.

The Isle of Man is a 'Common Law' jurisdiction. The basis of Manx law is Manx customary law, derived from a combination of Gaelic Brehon law and Norse Udall law, both systems being influenced by English Common Law over the centuries. The Isle of Man closely follows English legal precedents and legislation.

Part of the success of the Isle of Man in this area is its professional services industry. The Judiciary of the Isle of Man enjoys the highest international reputation and its judgements carry great weight internationally. The accountancy profession is well established with major international firms represented.

The Institute of Chartered Secretaries and Administrators is represented, as are the Society of Trust and Estate Practitioners, the Institute of Directors and the Institute of Financial Services.

The Financial Services Industry is well regulated with the Financial Supervision Commission ("FSC") as regulator for deposit taking, investment business, services to collective investment schemes, corporate services, trust services and money transmission services. The Insurance & Pensions Authority regulates pensions and insurance business and the Gambling Supervision Commission regulates the gaming industry.

The Isle of Man is committed to fulfilling its international obligations in relation to combating criminal activity. As such it has implemented statutory measures, which are compliant with internationally accepted standards, in relation to the active combating of money laundering and other criminal activity and countering the financing of terrorism.

The Companies Registry is part of the Financial Supervision Commission and has responsibility for the registration of companies (and other business entities) and for the recording of information and maintenance of company registers. This information is made available to the public.

Guidance on a number of topics is made available by the Companies Registry at <http://www.fsc.gov.im/companies/1931companypracticenotes.xml>

THE GENERAL STRATEGY FOR LICENSING AND REGULATING CORPORATE AND TRUST SERVICES

Under the Financial Services Act 2008, "a person must not carry on, nor hold themselves out as carrying on, in or from the Island, a regulated activity in respect of which no licence is in force" unless that person falls within an exemption from the requirement to hold a licence.

Regulated activities and financial services licences

Financial services licences are designated by the class of regulated activity to which they refer. A summary of all the regulated activities can be found on the FSC's website at www.fsc.gov.im

A fiduciary business may hold a licence to carry on –

- Class 4 regulated activities – corporate services; and/or
- Class 5 regulated activities – trust services.

The FSC's licensing policy

The FSC's General Licensing Policy sets out the criteria that applicants must satisfy to be successful in securing and retaining a financial services licence. The FSC requires that all licenceholders and key staff are fit and proper persons. The test of fitness and propriety is based on the key elements of integrity, competence and solvency.

Once licensed, Corporate and Trust Service Providers are required to conduct their business in accordance with the Financial Services Rule Book 2008.

COMPANIES – IN GENERAL

Legislation

There are two main forms of Isle of Man company, each governed by a separate body of company law. Companies registered under the Companies Act 1931 are referred to in this brochure as "1931 Act companies". The Companies Act 2006 introduced a new form of company based on the International Business Company Act model. These are referred to as "2006 Act companies" and are dealt with in a separate brochure that can be found using the following link:

<http://www.gov.im/lib/docs/iomfinance/brochures/2006companiesactbrochure.pdf>

The first Companies Act in the Isle of Man was enacted in 1865, following the United Kingdom companies' legislation in 1862. However, current legislation is based on the Companies Act 1931, which was in turn based on the United Kingdom Companies Act 1928. Subsequent amending legislation has modified the original act considerably.

Acts amending the Companies Act 1931 have been passed as follows:

- a. Companies Act, 1961
- b. Companies Act, 1968
- c. Companies Act, 1974
- d. Companies Act, 1982

- e. Companies Act, 1986
- f. Companies Act, 1992
- g. Single Member Companies Act, 1993
- h. Companies etc. (Amendment) Act 2003
- i. Protected Cell Companies Act 2004

Other legislation which is material to the law on companies is:

- a. Stock Exchange (Completion of Bargains) (Isle of Man) Act 1979
- b. Company Securities (Insider Dealing) Act 1987
- c. Insurance (Amendment) Act 1995
- d. Companies (Transfer of Domicile) Act 1998
- e. Companies (Transfer of Functions) Act 2000
- f. Financial Services Act 2008

Types of Companies

Companies may be:

- a. Limited by shares
- b. Limited by guarantee
- c. Limited by guarantee and having a share capital ("hybrid companies")
- d. Having a share capital with unlimited liability

1931 Act companies limited by shares are formed with an authorised share capital. The standard authorised capital on formation is usually £2,000 divided into 2,000 shares of £1 each. This attracts the minimum capital duty, payable on formation. Under the Single Member Companies Act 1996, a 1931 Act private company may have one member.

Companies limited by guarantee do not have a share capital. Members are elected and can resign. Membership is not transferable. Members are usually required to pay a subscription which constitutes the basic capital of the company.

Companies limited by guarantee and having shares may have members who hold shares, and members who do not.

Companies having a share capital with unlimited liability have a share capital in exactly the same way as a company limited by shares, but there is no limit to the liability of members.

Aspects of each type of company will be examined in more detail below.

Private and Public Companies

All 1931 Act companies are designated as either public companies or private companies. Private companies are not permitted to offer their shares or other securities to the general public. They are also not required to file their annual accounts at the Companies' Registry with their annual return.

There are no restrictions on the number of members of a private company.

Under the provisions of the Companies Act 1992, companies must have the appropriate suffix after their names to facilitate identification of their structure e.g. if they are private limited, public limited or unlimited. In certain limited circumstances, e.g. in the case of registered charities, companies may be expressly authorised to dispense with the suffix.

Isle of Man public companies have for many years been quoted on recognised stock exchanges around the world.

COMPANIES - INCORPORATION

Registration

A company is formed by one or more subscribers who sign the memorandum and articles of association, and, in the case of a company limited by shares, indicate, the number of shares which each subscriber agrees to take. In the case of a 1931 Act public company, or one which is unlimited, the minimum required number of subscribers is two.

Upon incorporation, a certificate of incorporation is issued by the Companies Registry, and the company is in existence from that date.

A rough guide to the steps involved in incorporating a private company follows:

- a. It is advisable to obtain confirmation of the availability of the proposed name of the company from the Companies Registry.
- b. The duly executed memorandum and articles of association must be lodged with the Companies Registry.
- c. A 1931 Act company must at the same time file a form setting out the details of the first directors and secretary, and the location of the first registered office;
- d. In due course, the Companies Registry will issue the certificate of incorporation.

The procedure for incorporating a 1931 Act public company is more onerous. In addition to the procedure for incorporating a 1931 Act private company, the following additional requirements are imposed.

- a. After incorporation, the Companies Registry issues the Certificate of Incorporation, but the company is still not permitted to offer its shares to the public unless and until,
- b. A prospectus has been filed with the Companies Registry.

Memorandum and Articles of Association

The Memorandum of Association of all 1931 Act companies must state:

- (i) The name of the company;
- (ii) Whether the company is a public or private company;
- (iii) That all the requirements of the Companies Acts in relation to the registration procedures have been complied with;
- (iv) That, in respect of a company limited by shares or by guarantee, the members have limited liability;
- (v) That, in the case of a company limited by guarantee, each member undertakes to contribute a prescribed sum to the company in the event of its being insolvent upon liquidation;
- (vi) In the case of a company having a share capital, the amount and division of such share capital.

Since 1988, there is a prohibition against a 1931 Act company setting out its 'objects' as there is a presumption that a company can do anything that an individual can legally do. The exception to this rule is in the case of a registered charity.

The articles of association contain the internal regulations of the company. These may be amended by a special resolution of the members which must be approved by three quarters of the members entitled to attend and vote on the resolution.

The Companies (Memorandum and Articles of Association) Regulations 1988, as amended, provides specimen memoranda and articles of association appropriate for different types of 1931 Act companies. They are not mandatory, but are usually adopted in part or in full but it is possible to exclude the tables, and to tailor articles to suit the particular needs company.

The tables are:-

Table A: Articles of Association of a Company Limited by Shares

Table B: Memorandum of Association of a Company Limited by Shares

Table C: Memorandum and Articles of Association of a Company Limited by Guarantee

Table D: Memorandum and Articles of Association of a Company Limited by Guarantee and Having Shares

Table E: Memorandum and Articles of Association of an Unlimited Company having a Share Capital

Post Incorporation Structuring

After incorporation, it is usual for the directors of a company to convene a first meeting of the board of to confirm the appointment of the officers, members and the situation of the registered office. A seal also may be adopted, although there is no longer any obligation for a company to have a seal.

Subject always to the provisions of the Companies Acts, the articles of association determine how the directors manage and control the business and are likely to set out the details of the mechanisms governing issues such as the election and powers of the Chairman of the Board, committees of directors, electronic communications, conflicts of interest, etc.

COMPANIES – THE PUBLIC PRESENTATION

Name of Company

The following applies to company names, registered business names and limited partnerships. For ease of reference, the term "company" in this section should be taken to include business names and limited partnerships.

Every company name must be approved by the Companies Registry. The use of certain names is prohibited or subject to restrictions, for example where the name is too like that of an existing company, the name implies that a licensable activity is undertaken or there is a suggestion of pre-eminence. Guidance on choosing a company or business name is available from the Companies Registry at www.fsc.gov.im/companies/companynames.

In those circumstances where the activity undertaken justifies it, the Companies Registry may approve the use of a restricted name.

The Companies Registry has the power, in certain circumstances, to direct a company to change its name.

As noted above, companies, unless exempted from the requirement, must append a suffix to their name, reflecting their legal structure.

A company may change its name by special resolution of the members. It is also possible for a company to trade under a business name. In both cases the names are subject to the full name approval restrictions and provisions.

All literature, circulars and advertising must also indicate the registered name and such other particulars of the company as are required under the companies acts.

Records and Reports

Every company must maintain certain records and make certain returns to the Companies Registry. These returns and details are a matter of public record, accessible to members of the public either from at the Companies Registry or online at www.fsc.gov.im/pvi/pvifr, on payment of a nominal prescribed fee.

The records to be maintained by a 1931 Act company are:

- (i) Register of members
- (ii) Register of directors* and secretaries
- (iii) Register of charges and copies of every instrument creating a charge that require registration with the Financial Supervision Commission
- (iv) Annual return

- (v) Special and extraordinary resolutions of members
- (vi) Minutes of meetings of members, and of directors
- (vii) Accounts

A 1931 Act company must submit returns as required by the Act to the Companies Registry and these include:

- The location or changes in location of the registered office address;
- The identity of directors* and secretary;
- The allotment and issuing of shares;
- The creation of classes of shares or the reorganisation of the share capital;
- Change of name;
- Liquidation and winding up;
- Debentures, mortgages and charges;
- Prospectus of a public company;
- An annual return to be made on the anniversary of the date of incorporation;
- In the case of a public company, the audited financial statements must be submitted with the annual return.

Letterheads

All official documents issued by a 1931 Act company must contain certain prescribed details. This provision applies irrespective of where the company is carrying on its operations.

These details include:

- a. The full registered name of the company;
- b. The registration number of the company;
- c. The registered office address;
- d. The forename, or initials, and surname (including former forenames or surnames, if different) of the directors of the company.

Details of directors may be omitted only if specific exemption has been applied for and obtained from the Companies Registry.

COMPANIES – ACCOUNTING TO THE MEMBERS

Audited Accounts

Annual financial statements must be laid before the members in general meeting.

These financial statements include:

- a. Profit and Loss Account / Income and Expenditure Account;
- b. Balance Sheet;
- c. Auditors' Report (in the case of public companies and those private companies that do not meet the criteria for audit exemption);
- d. Directors' Report.

Auditors are required to meet the criteria set out in the relevant provisions of the Act and their Recognised Professional Bodies.

General Meetings of Members

Meetings of members are called general meetings. 1931 Act companies are required to convene a minimum of one general meeting in each calendar year – the annual general meeting. All general meetings other than the annual general meeting are extraordinary general meetings.

The type of business routinely conducted at the annual general meeting includes:

- a. If appropriate, re-election of directors;
- b. Appointment and remuneration of auditors (where appropriate);
- c. Approval of annual financial statements.

While general meetings are generally called by the directors, a mechanism exists under the Act for members to serve notice on the company. This is intended as a means of ensuring that the members of the company can take action against the directors should this prove necessary.

COMPANIES – DIRECTORS AND OFFICERS

Directors

Every 1931 Act company must have at least two directors who must be individuals. Corporate directors are not permitted.

A return containing the consent of a person to the appointment of the office of director should be signed and submitted to the Companies Registry.

Directors are charged with a duty to manage the company in accordance with the articles of association and the provisions of the companies acts.

While it should be noted that a director is not generally personally liable for the debts of the company, in circumstances where it appears that directors have carried on the business of the company with intent to defraud or for any fraudulent purpose, the Courts do have the power to identify and make certain directors liable without limit for the debts of the company.

It should be noted that a director of a company for these purposes is not only a person who has been formally elected as such, but also a person under whose directions or instructions the directors are accustomed to act. Such a person is termed a *'Shadow Director'*.

Secretary

Every 1931 Act company must have a Secretary.

The Companies Registry should be notified of an appointment to the office of secretary in the same manner as appointment to the office of director.

In the case of a public company, the secretary must be, in the opinion of the directors, in possession of adequate knowledge and experience of the duties of a company secretary or in possession of an appropriate qualification as set out in the companies acts.

An appropriately qualified person includes:

- A chartered secretary
- A qualified advocate or solicitor
- A qualified accountant
- An individual approved by the Financial Supervision Commission

COMPANIES – WINDING UP

There are several ways that the affairs of a solvent company can be wound up. The 1931 companies act makes provision for members' and creditors' voluntary liquidations as well as, under certain circumstances, for the company to be wound up by the court.

The voluntary liquidation provisions and the winding up of the company on the order of the court will have cost implications for the company.

An alternative, simplified dissolution procedure was introduced to permit a solvent private company to be dissolved. This procedure requires a statutory declaration to be made by an officer or member of the company to the effect that the affairs of the company are in order. The purpose of the statutory declaration is to ensure that the creditors of the company are protected.

It may be worth noting that the civil liability of company directors continues as if a company had never been dissolved.

The Companies Registry reserves the right to strike a company off the register for failure to comply with the obligations under the companies act. In this event, the property of the company becomes the property of the crown.

OVERSEAS COMPANIES TRADING IN THE ISLE OF MAN

Registration

A company incorporated outside the Isle of Man that has established a place of business in the Isle of Man, must within one month of establishing a place of business in the Isle of Man register in the Isle of Man as a "foreign" company under the Companies Act 1931.

It must lodge with the Companies Registry:

- a. A certified copy of the memorandum and articles of association (or the equivalent), with a certified translation if not written in English;
- b. Details of the directors and secretaries of the company as required for a 1931 Act company;
- c. The name and address of a person resident in the Isle of Man authorised to accept on any notices required to be served on the company.

Disclosure

A foreign company registered in the Isle of Man must disclose all details relating to its incorporation and structure.

COMPANIES – TAXATION

Corporate Income Tax

The Isle of Man standard rate of corporate income tax is currently 0%, with a higher rate of 10% applied to income derived from banking business or income from land and property in the Isle of Man.

The Isle of Man does not charge stamp duty on the transfer of shares, although capital duty is payable on registration.

Taxation is a dynamic area and the latest information can be obtained from the Income Tax Division on +44 (0)1624 685400, or by visiting the Division's website at www.gov.im/treasury/incometax

Value Added Tax

By virtue of the Customs and Excise Agreement between the United Kingdom and the Isle of Man, the Island has a value added tax (VAT) regime which is essentially identical to, and interlinked with, that of the UK. The effect of this is that the two jurisdictions are treated as one for VAT purposes.

Businesses trading in the UK/Isle of Man, or in both jurisdictions, may apply to register for VAT in the Island providing that they can show that day to day management and control is effected from the Island. Once VAT-registered any Isle of Man business is subject to the normal VAT rules.

COMPANIES – LIMITED BY SHARES

General

This section applies only to 1931 Act companies limited by shares.

Authorised Capital

Every company must state in its memorandum of association the amount of authorised share capital with which it is to be registered and how such share capital is to be divided into shares of a fixed amount.

The authorised capital may be increased, or re-organised by resolution of the company in general meeting. The authorised capital of a company may also be reduced by the company in general meeting.

The issued share capital of a company may, under certain circumstances, be reduced. The capital maintenance rules are in place to ensure that creditors of the company are protected. In circumstances where shares are issued as redeemable, the reduction of capital only needs to take place in accordance with the rights attached to the shares, subject to the company having sufficient distributable funds to redeem the shares.

A company may have different classes of shares each of which may have different rights attached to the shares. The authorised share capital of a company can be registered in any valid currency and the shares can be denominated in any amounts. Unusually, the IOM does allow for the issuing of fractions of shares however, the practicality of maintenance of share registers, in practice precludes the use of fractional shares.

Issued Capital

A private company must have a minimum of one share in issue while a public company must have a minimum of two shares in issue.

Further shares can be issued up to the amount of the authorised capital, and shares cannot generally be issued at a discount.

A public company that wishes to make an offer of shares to the public must first register a prospectus with the Companies Registry. The prospectus must contain information that would be material to a potential investor.

There is a prohibition against the creation of bearer shares in the Island.

COMPANIES - LIMITED BY GUARANTEE

General

A company limited by guarantee has no share capital, and thus no shareholders. It is essentially a mutual company.

Although a member can be elected into membership without being required to contribute any capital, the election to membership is nonetheless acknowledgement that a guarantee of an agreed amount exists. The company can call on the member to pay this amount. The prescribed amount is set out in the memorandum of association.

While membership in a guarantee company is not transferable, members can resign (in which case his guarantee last for a further twelve months) and new members can be elected.

COMPANIES - LIMITED BY GUARANTEE AND HAVING SHARES ('HYBRID COMPANIES')

General

As the name 'Hybrid' company implies, these are companies which combine the features of both companies limited by shares and companies limited by guarantee.

This type of company is rarely used and no longer exists in many jurisdictions.

UNLIMITED COMPANIES HAVING A SHARE CAPITAL

General

This form of company is rarely used. When the Companies Acts were originally enacted in the nineteenth century, it was intended that partnerships would be limited to twenty members or less, and that this form of company would be used for larger 'partnerships'.

The Isle of Man is a land of possibility where people and business will find the right environment in which to reach their full potential

Isle of Man Finance

The Treasury

Douglas

Isle of Man IM1 1PG

British Isles

Telephone: +44 (0) 1624 686400

Facsimile: +44 (0) 1624 686454

Email: enquiries@isleofmanfinance.gov.im

www.isleofmanfinance.gov.im

