



The New Manx Corporate Vehicle

The Isle of Man Government's press release of 2nd August 2005 promised the creation of a new type of business friendly company that would be simple and inexpensive to administer. That company has now arrived with the Companies Act 2006 the Regulations which became law on 1st November 2006. It is a little early to gauge the reaction to this new type of company a - "2006 Act Company" to distinguish it from a company incorporated under the Companies Acts 1931-2004 - a "1931 Act Company", - but we are sure it will be positive. The old and the new will co-exist but once the financial sector is convinced of the simplicity and lack of expense of the 2006 Act Companies, the days of the 1931 Act Companies are likely to be numbered.

- At a glance there seems little to distinguish them. Both forms of company have a legal personality separate from their members and can be incorporated as companies limited by shares or by guarantee or as unlimited companies. However, there they part company and the notable differences between them are set out below.
- There is no distinction between public and private companies.
 - A 2006 Act Company need only have one director and that director can be a company. It must also have a registered agent but there is no reason the registered agent cannot be the sole director.
 - Particulars of directors do not need to be filed with the Registrar of these companies.
 - There is no need for a company secretary.
 - There is no need to file allotments of shares. Shares can now be issued without a par value and a 2006 Act Company need not state its share capital in its Memorandum of Association.
 - Prospectus requirements are reduced to ensuring that the prospectus or other offering document provides as much information as is necessary to enable an intending investor make an informed decision.
 - Redemption, purchase of shares and financial assistance in connection with the acquisition of a company's own shares now depends on a solvency test by reference to the ability of the company to pay its debts and the value of its assets exceeding its liabilities. The solvency test will permit a reduction of share capital which would generally in

the case of a 1931 Act Company require court approval.

- Accounting records should be such as to enable the financial position of the company to be determined reasonably accurately at any time.
- Of comfort to the directors will be a power of a 2006 Act Company to indemnify and purchase professional indemnity insurance for its directors.
- There can be late registration of company charges without having to go to court for leave to register out of time.
- The distinction between members' special, extraordinary or ordinary resolutions do not apply and there are no filing requirements. Unless the Act or the Articles of Association of the company say otherwise resolutions are passed with the agreement of members holding more than 50% of the voting rights. Members' written resolutions will be also binding by a majority if the Articles of Association so provide.
- Any doubt lingering as to the effectiveness of telephone meetings and such like is resolved as the 2006 Act provides for such.

The upside of the above is that it will make the job of company administrators easier and thereby less expensive. However this is not to be at the expense of any reputation loss to the Island as 2006 Act Companies are still subject to the scrutiny of the *Financial Supervision Commission* which appoints their Registrar. The Commission also retains the right of investigation of these

Companies and although administration will be that much easier no concession is made with respect to the powers and duties of directors whose duties are the same of those of 1931 Act Companies.

To a degree we regard the 2006 Act as a move in the direction of self regulation as opposed to regulation by the Court. This is very much illustrated by the solvency test applying to the reduction of capital and this test also applies in the case of mergers and consolidations. However, the Court is still there for dissenting shareholders and the move to self regulation, if indeed it be that, is not intended nor should it be interpreted as signifying any drop in the professional standards the *Financial Supervision Commission* expects of corporate users and providers.

The Act also contains interesting provisions as to protected cell companies and the continuation in the Isle of Man of foreign companies and the relocation of Isle of Man companies abroad. It also provides for the conversion of 1931 Act Companies to 2006 Act Companies. We see a future for 2006 Act Companies not

only for private client use but also in wider commercial areas including insurance and fund work. We believe they are here to stay.

Contact Us

This document is not intended to provide legal advice. It is intended to be a discussion paper, and, if it interests you, we should be pleased to discuss with you how a 2006 Act Company may be of use to you and your clients

If you would like further information or legal advice on any of the matters referred to in this document, please contact Irini Newby on +44 (0)1624 690300 or by email at inewby@simcocks.com

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