



# **A Practical Comparison of the 1931 and 2006 Isle of Man Companies Acts**

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## **A Practical Comparison of the 1931 and 2006 Isle of Man Companies Acts**

An Isle of Man Government press release of August 2 2005 promised the creation of a new type of business friendly company that would be simple and inexpensive to administer. The Companies Act 2006 came into effect on November 1 2006 creating the 2006 Act Company. The 2006 Act operates in parallel to the Companies Acts 1931 - 2004 which govern the traditional type of company (a “1931 Act Company”).

Several years into the existence of the 2006 Act Simcocks Advocates sees the two different types of company as “horses for courses”. Which is more suitable for a particular client’s needs depends on the situation. A characteristic of one type of company which might be an advantage in one situation may be a disadvantage in a different situation.

In our November 2006 paper\* we set out some notable characteristics of 2006 Act Companies as follows:-

- 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 per cent 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.

Following enquiries from clients, Simcocks considered it would be helpful to have a more detailed comparison of the characteristics of each type of company. A comparison table in summary form is set out below. This table is not exhaustive; it is intended as a

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practical guide and should not be taken as a statement of the law on any matter. References in the table to the Registry are to the Isle of Man Department of Economic Development whose functions will typically be carried out by the Companies Registry, and references to the FSC are to the Isle of Man Financial Supervision Commission.

While the generally more relaxed characteristics of a 2006 Act Company may be advantageous depending on the situation, the 2006 Act introduces new provisions and it remains to be seen how these will operate and develop in practice. Two examples are (i) the registration of security and (ii) the Attorney General and FSC's right to inspect the documents and records of a 2006 Act company.

In relation to the registration of security, the 2006 Act (like the 1931 Act) provides that unless a charge created by the company is registered, it will be void against the liquidator and any creditor of the company. The 1931 Act lists the charges which are registrable, however the 2006 Act provides that any form of security interest (other than an interest arising by operation of law) is registrable.

The expression "security interest" is quite wide and will include interests not registrable under the 1931 Act, for example a pledge. A company may create a pledge by delivering possession of goods, or documents of title to goods. A pledge may in certain circumstances be created over intangibles, for example bearer bonds. Unlike in the case of a 1931 Act Company, if a pledge created by a 2006 Act Company is not registered it will be void against the liquidator and any creditor of the company.

In relation to the second example, the Companies Act 2006 provides that the Attorney General (and the FSC) is entitled to inspect the documents and records of a 2006 Act Company in written or electronic form at any reasonable time, which has no equivalent in the 1931 Act. However the 2006 Act does not specify the purposes for which that right may be exercised by the Attorney General, or specify any particular procedures which must be followed by the Attorney General to invoke that right. It may be that the right may only be exercised if it is in the public interest to do so, and it is likely that the courts would require that fair procedures be adopted. It remains to be seen how both practice and the law will develop in this regard.

We hope that this paper is of assistance both to clients deciding which type of company to use, and in working with each type of company.

**November 2010**

# **2006 Act Company v 1931 Act Company**

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**2006 Act Company**

**1931 Act Company**

**Incorporation and initial matters**

May be incorporated as limited (by shares, by guarantee, or hybrid) or unlimited (with or without shares)	Same
Memorandum and articles of association required	Same
Only licensed CSP may apply to incorporate a 2006 company	No similar restriction
Company has separate legal personality	Same
Subscriber shares required	Same

**Constitutional documents**

The memorandum may specify the majority or conditions required to amend it or the articles	75% voting majority required to amend articles
The memorandum may authorise the directors to amend the memorandum or the articles	No equivalent
The memorandum may restrict the company's activities in any way (but without limiting its capacity)	Only specified restrictions permitted (but without limiting the company's capacity)
Memorandum and articles and changes thereto must be filed with Registry	Same

**Name of company**

No distinction between designations; can be "Limited", "Ltd", "Incorporated", "Inc" etc	Private company designation is "Limited" or "Ltd" and public company is "public limited company" or "PLC"
No distinction between private and public companies	A company which may offer its securities to the public is a public company and has additional requirements as to filings etc

**2006 Act Company****1931 Act Company**

Name is subject to Registry approval	Same
No equivalent	Name must be displayed outside registered office
Name, number and registered office must be in all written communications	Same

**Shares**

Shares may be ordinary, convertible, redeemable, preference, non-voting etc	Same
Shares may be issued with or without a par value	Shares must have a par value
Bearer shares prohibited	Same
Treasury shares not permitted	Treasury shares permitted in the case of a company admitted to trading on an established market
Directors may consolidate or divide shares	Company in general meeting may consolidate or divide shares
Directors may redenominate shares in other currency	No statutory provision to redenominate shares, and in practice redenomination is complicated
Share certificates optional	Same
Commissions at the rate decided by the directors may be paid for subscriptions for shares	Commissions for share subscriptions limited to 10%
Statutory pre-emption rights may be applied by the articles to the issue of new shares by the company	No statutory pre-emption rights
No filing requirement in relation to share capital	Notice of consolidation or division of shares, or increase in authorised share capital, must be filed with the Registry

**2006 Act Company**

**1931 Act Company**

Class rights may be varied with the consent of the majority stated in the articles or 75% voting majority	Same, but 15% dissenters may apply to Court to disapply the variation
No share premium account is required	Share premium account (undistributable) required
No restriction on issuing shares at a discount	Issue of shares at a discount must be approved in general meeting and by the Court
A purchaser which has acquired at least 90% of shares may compulsorily acquire the shares of the dissenting minority	Same

**Offering documents**

Offering document is required to contain all material information	Same, at least in relation to a prospectus by which securities are offered to the public
Directors may be liable for misstatement or omission in offering document	Broadly the same
No equivalent	Registry may direct a company to amend an untrue or misleading statement in a prospectus by which securities are offered to the public
Filing of offering document optional	Prospectus by which securities are offered to the public must be filed unless private placement exemption applies

**Capital maintenance**

Distribution of share capital permitted provided a solvency test is satisfied	Reduction of share capital not permitted without specified shareholder and Court approval
Company may purchase or redeem its own shares subject to the solvency test and shareholder approval in certain cases	Purchase by a company of its own shares is permitted subject to shareholder approval and in some cases solvency and auditor requirements
Shares may be redeemed from any account provided the company passes the solvency test	Reserves from which redeemable shares may be redeemed are restricted

**2006 Act Company**

**1931 Act Company**

No equivalent prohibition (subject to the solvency test)	Financial assistance for the acquisition of its own shares by a public company prohibited
No equivalent restriction (subject to the solvency test)	Financial assistance for the acquisition of its own shares by a private company not permitted if it reduces share capital or share premium
No restriction on share capital being reduced provided the company satisfies the solvency test	Reduction of ordinary share capital and share premium account only with specified shareholder and Court approval
Company may make any distribution to members it wishes (subject to the solvency test)	No equivalent; common law capital maintenance rules apply
Wide statutory definition of “distribution”	No equivalent
Directors may be liable for distribution made when company did not satisfy the solvency test	Directors may be liable for dividend made when company did not have distributable profits
Solvency test is (i) able to pay debts in the normal course of business and (ii) value of assets exceeds liabilities	Concept of “solvency test” not applicable

**Members**

Must have at least one member	Same for private company (but a PLC must have at least two members)
Must keep register of members	Same
No notice of any trust may be entered on the register of members	Same
The directors may rectify the register of members if satisfied inaccurate, or rectification by the Court available if necessary	Rectification by the Court available if necessary to rectify the register of members
Members’ remedies are provided by statute	Members’ remedies are largely a matter of common law (e.g. exceptions to the rule in <i>Foss v Harbottle</i> )

**2006 Act Company**

**1931 Act Company**

Company may elect to file register of members; annual return does not contain details of members	No requirement to file register of members but annual return must contain identity of members and shareholding
No equivalent	Statement that company has only one member must be entered in register of members
No equivalent	Index of members required in certain circumstances
Register of members open to inspection by a member, the FSC and the Attorney General	Register of members open to public inspection
Register of members prima facie evidence of title to shares	Same

**Meetings and resolutions of members**

Shareholders exercise powers by resolution of simple (50%) majority unless the articles specify a higher majority (this applies to matters such as amending the articles and winding up; if appropriate, provision for a 75% majority may be considered)	Special or extraordinary resolution requiring 75% majority required in certain cases (e.g. amending the articles, winding up)
14 days notice required for shareholder meetings, which may be waived by 90% or smaller percentage stated in articles	14 or 21 days notice required. Table A permits 95% of shareholders to consent to short notice
No equivalent	Notice of general meeting must be given to auditor (if any)
Resolutions not required to be filed unless altering memorandum or articles	Special, extraordinary and certain other resolutions must be filed
10% of members may require directors to convene meeting	Same
Requisitionists do not have statutory power to convene meeting in default of directors doing so	Requisitionists have statutory power to convene meeting in default of directors doing so

**2006 Act Company****1931 Act Company**

Telephone or electronic meetings permitted by statute	No equivalent but can be permitted by the articles
Written resolutions permitted by statute	Same, and it is also possible for the articles to permit written resolutions
Articles may specify the percentage of voting rights required to pass written resolution	Written resolutions using the statutory procedure must be passed by all members entitled to vote on the matter
No equivalent in relation to the statutory procedure	Written resolution using the statutory procedure must be given to the auditor who may refer it to general meeting (the procedure in the articles need not require this)
No requirement for AGM	AGM must be held; except that the members of a private company (not being a charity) may unanimously elect to dispense with AGMs
No equivalent	Any member may rescind or suspend such election
Court may order calling of general meeting if otherwise impracticable to do so	Same
Member has no statutory right to inspect minutes of general meetings and written resolutions	Member may inspect minutes of general meetings and written resolutions

**Minority protection**

Remedy available in the event of oppression or unfair prejudice	Remedy available in the event of oppression or disregard of member's proper interests as such
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**Registered office and registered agent**

Must have registered office in the Isle of Man	Same
Must have a registered agent in the Isle of Man which must be a licensed CSP	No equivalent requirement

**2006 Act Company**

**1931 Act Company**

Registered agent must give at least eight weeks notice of resignation	No equivalent requirement
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**Accounts and accounting records**

Company must keep accounting records and other documents at office of registered agent or send copies every 12 months	No equivalent requirement
Company must keep reliable accounting records	Same, with certain prescribed requirements
Not required to prepare financial statements, but a member or director may demand that they be prepared	Required to prepare financial statements
Member may inspect accounting records if company fails to comply with demand that financial statements be prepared	Member not generally entitled to inspect accounting records
FSC and Attorney General entitled to inspect documents and records	No equivalent
Not required to have financial statements audited unless securities listed	Required to have financial statements audited unless exemption applies
If financial statements audited, auditor must have the statutory qualifications	Auditor must have the statutory qualifications
If financial statements prepared must give a true and fair view and be in accordance with UK or US GAAP or IFRS	Financial statements must give a true and fair view, must be in accordance with UK or US GAAP or IFRS and contain prescribed details of loans to and remuneration of directors
No equivalent (but restrictions may apply to companies regulated by the FSC or IPA)	Restrictions on limitation of liability of auditors

**Annual return**

Must make annual return to the Registry of identity of registered agent, registered office and directors	Must make annual return to the Registry of share capital, secured debt, registered office, directors and members (with financial statements in the case of a PLC)
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**2006 Act Company**

**1931 Act Company**

**Directors and officers**

One director may execute a deed for the company	Two directors or director and company secretary required to execute a deed
No requirement for company secretary	Company secretary required, who must have a prescribed qualification in the case of a PLC
Must have at least one director	Must have at least two directors
Director may be a body corporate provided licensed as a CSP	Corporate director not permitted
Register of directors must be kept	Same
Register of directors open to inspection by members, FSC and Attorney General but not by the public	Register of directors open to inspection by the public
No equivalent	Company must state names of directors in all official documents
Directors must disclose interests in transactions	Same
Company may indemnify director who acts honestly, in good faith and in what he believed was in the best interests of the company	Company may indemnify director but not for negligence, default, breach of trust or breach of duty
Company may buy D&O cover	Same
Company may elect to file register of directors	Company must file particulars of directors with Registry
Director includes "shadow director" for certain purposes	Same
Director may be removed by the directors (if articles permit), by resolution (50%) in general meeting or written resolution by 75% of shareholders	By statute a special (75%) resolution is required to remove a director, but the articles often allow removal by ordinary (50%) resolution

**2006 Act Company**

**1931 Act Company**

No equivalent	Director entitled to be heard in general meeting on resolution to remove him using the statutory power
No equivalent	Directors must disclose their audited remuneration over the past three years if required by 25% of members
No equivalent	Contract between company and sole member who is also a director must be recorded in writing or the directors minutes
No equivalent	Assignment of office by director must be permitted by the articles and approved by special resolution
Must keep minutes of meetings of directors and members	Same
Must inform registered agent where minutes of directors meetings are kept (if not kept by registered agent)	No equivalent

**Protected cell companies**

Protected cell company limited by shares permitted	Same
Existing company limited by shares may convert to PCC	Same
May reduce share capital subject to the solvency test	May reduce share capital with Court approval
No equivalent	Restrictions on transfer of cell assets (other than in the ordinary course of business) without a "cell transfer order" by the Court
Same	PCC must inform counterparty to a transaction that it is dealing with a PCC and of the identity of the relevant cell

**2006 Act Company**

**1931 Act Company**

Failure to so inform counterparty is an offence by the PCC (and by any director who consented or was negligent in relation thereto)	Failure to so inform counterparty results in personal liability for directors for that transaction, unless excused by the Court
No equivalent	Cell cannot (without written consent of all members of that cell) grant security in respect liabilities

**Charges/security**

Company may but is not obliged to file security interests with Registry	Company must file specified charges with Registry
Non-filing of a security interest means it will be void as against a liquidator/creditor of the company	Same, except that the charges which will be void as against a liquidator/creditor are of a narrower class than “security interests”
Registry may file a security interest late provided winding up has not commenced	Application to Court required to file a charge late
Company must keep a register of security interests, with a copy at the registered agent’s office	Company must keep a register of charges

**Conversion**

1931 Act Company may convert to a 2006 Act company with shareholder consent	2006 Act Company cannot convert to 1931 Act company
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**Statutory merger**

Statutory schemes of merger and consolidation permitted	No equivalent
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**Schemes of arrangement and takeovers**

Schemes of arrangement permitted with Court approval	Same

**2006 Act Company****1931 Act Company**

Scheme approved by 75% of members/creditors (and classes thereof) and sanctioned by the Court is binding on all	Same
Scheme must be filed within seven days of Court approval	No similar requirement
A purchaser which has acquired at least 90% of shares may compulsorily acquire the shares of the dissenting minority	Same
Takeover Code statutorily applied	Same

**Redomiciliation**

Foreign company may continue as a 2006 Act Company with Registry approval	Foreign company may continue as 1931 Act Company with Registry approval
Company may redomicile out of the Isle of Man with Registry approval	Company may redomicile out of the Isle of Man with Registry approval
No equivalent provisions (given IPA restrictions on authorisation of 2006 Act Company)	Redomicile of insurance company is possible under the Insurance Act 2008
Statutory declaration by registered agent (continuation) or directors (discontinuation) required	Advocate's certificate required
Registry approval is administrative and takes about two days (depending on workload)	Registry approval is discretionary and in a complicated case may take longer

**Liquidation**

The 1931 Act applies in relation to liquidation	Same
Company may be struck off the register by Registry in certain circumstances	Same

**2006 Act Company**

**1931 Act Company**

**Inspector**

Any member may apply to Court for the appointment of an inspector to investigate the affairs of the company	Members holding 33% (of a bank) or 10% (others) of issued shares or Registry may apply to Court for the appointment of an inspector
No equivalent	Members may by special resolution appoint an inspector to investigate the affairs of the company

**Regulatory and capital markets**

FSC licensing policy July 2008 states that the FSC will not grant a deposit taking licence to a 2006 Act Company	Not applicable
The FSC will grant other licences to a 2006 Act Company subject to the company adopting the same level of public disclosure as applies to a 1931 Act	Not applicable
Have been listed on AIM	Listed on LSE main market, AIM and on other markets
Pursuant to FSC guidance note, may be an international collective investment scheme if certain 1931 Act characteristics adopted	No equivalent FSC guidance note
The IPA restricts granting insurance authorisation to a 2006 Act Company	Not applicable

**Registry filings**

Memorandum and articles of association and changes to each	Same
Filing of offering document optional	Prospectus by which securities are offered to the public must be filed
No equivalent	Return of allotments of shares must be filed except by an open ended investment company

**2006 Act Company****1931 Act Company**

No equivalent	Notice of consolidation, division or cancellation of shares, or redemption of preference shares, must be filed except by an open ended investment company
No equivalent	Notice of increase in authorised share capital must be filed
No equivalent	Court order reducing share capital must be filed
No equivalent	Register of debentures open to inspection by debentureholder
Registration of security interests optional (see above)	Specified charges must be registered
Order for appointment of receiver of the property of the company must be filed	Order for appointment of receiver or manager of the property of the company must be filed
Annual return required of registered agent, registered office and directors	Annual return required of share capital, secured debt, registered office, directors and members (with financial statements in the case of a PLC)
Resolutions amending the memorandum or articles must be filed	Special, extraordinary and certain other resolutions must be filed
Register of directors may be filed	Register of directors must be filed
Register of members may be filed	No equivalent
Registered office must be filed	Same
Registered agent must be filed	No equivalent
Certain documents in relation to statutory procedures such as merger, consolidation, redomiciliation etc	Similar
No equivalent	Various filings in relation to share buy-backs

**2006 Act Company**

**1931 Act Company**

**Functions of registered agent (2006 Act Company only)**

Making application for incorporation	
Reserving a name	
Filing an offering document which the company elects to file	
Receiving and registering stock transfer forms unless another person has been appointed	
Give not less than eight weeks notice if it wishes to resign as such	
May file notice of change of registered office or registered agent	
Keep the constitutional documents, registers and accounting records of the company at its office (or copies of those documents)	
Either keep the directors' and members' minutes and resolutions, or be notified where they are kept	
Service of documents on the company may be effected by being sent to the registered agent	
Keep an imprint of the common seal (if any)	
Filing annual return	
Filing notice of release of a charge	
Applying to re-register a 1931 Act Company as a 2006 Act Company	
Filing a scheme of merger or consolidation and making it available for inspection	

**2006 Act Company**

**1931 Act Company**

Applying for consent to a foreign company being continued in the Isle of Man	
Applying for consent to a 2006 Act Company being discontinued in the Isle of Man	
Service of proceedings on a discontinued company or a director may be effected on the registered agent	

**Miscellaneous**

Registrar may issue certificate of good standing	No power to issue certificate of good standing but the Registry will issue a certificate confirming the details held on the register
Definition of group similar	Definition of group similar
No "F" company provisions	Foreign company establishing a place of business in the Isle of Man must register as an "F" company
No equivalent	Insurance company to prepare and post an annual statement in prescribed form

**Registry fees**

No equivalent	Company duty on authorised share capital more than £2,000 applies at a rate of 1.7% up to maximum duty of £5,000
Registry fees for 2006 Act Company otherwise the same as for 1931 Act Company	

**Isle of Man tax**

Provided the company does not derive income from a banking business or land in the Isle of Man, it is currently taxed at 0%	Same

**2006 Act Company**

**1931 Act Company**

The profits of the company may be attributed to and taxed on Isle of Man residents	Same
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This comparison has been prepared by Kevin O'Loughlin, Advocate, who practises in company law, trust law, funds and pension law. Kevin is based in Simcocks' Corporate and Commercial department, which is led by Iriini Newby. If you would like to discuss this document or any other related matter please telephone 01624 690300 or email [inewby@simcocks.com](mailto:inewby@simcocks.com) or [koloughlin@simcocks.com](mailto:koloughlin@simcocks.com)