

CM SKYE

CM Notes

ISLE OF MAN COMPANY LAW - AN INTRODUCTION

Note. In this brochure, the word 'Company' is given the meaning found in English Company law, and equates to the American word 'Corporation'.

The concept of the *Limited Liability Company* as found in the USA, is described here as an LLC.

Legislation

The first Companies Act in the Isle of Man was enacted in 1865. However, current legislation is based on the Companies Consolidation Act 1931, as amended by subsequent legislation.

The Companies Consolidation Act, 1931 was based on the United Kingdom Companies Act 1929, which it follows virtually word for word, although it is now much amended.

Subsequent amending acts have been passed as follows:

- a. Companies Act, 1960;
- b. Companies Act, 1961;
- c. Companies Act, 1968;
- d. Companies Act, 1974;
- e. Companies Act, 1982;
- f. Companies Act, 1986;
- g. Companies Act, 1992;
- h. Single Member Companies Act, 1993;
- i. Companies etc. (Amendment) Act 2003;
- j. Protected Cell Companies Act 2004.

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

- a. Prevention of Fraud (Investments) Act 1968;
- b. Stock Exchange (Completion of Bargains) (Isle of Man) Act 1979;
- c. Non-Resident Company Duty Act 1986;
- d. Company Securities (Insider Dealing) Act 1987;
- e. International Business Act 1993;
- f. Financial Supervision Act, 1988;
- g. Investment Business Act 1991;
- h. Insurance Act 1986 as amended by Insurance (Amendment) Act 1995);
- i. Companies (Transfer of Domicile) Act 1998.

Types of Companies

The Companies Acts in the Isle of Man provide for a variety of forms of company.

Companies may be:

- a. Limited by Shares;
- b. Limited by Guarantee;
- c. Limited by Guarantee and having a Share Capital;
- d. Having a Share Capital with Unlimited Liability.

Private and Public

All 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 and are not required to file their Annual Audited Accounts at the Public Registry with their Annual Return. There are no restrictions on the number of members of, or on the transferability of Shares, in a private company. However, companies incorporated prior to 1986 may have such restrictions until and unless they adopt new Articles of Association.

Under the provisions of the Companies Act, 1992, Public Companies must have the suffix 'Public Limited Company', or the abbreviation 'P.L.C.' after their name. Other Companies must bear the suffix 'Limited' or 'Ltd' after their name. Private Companies being registered charities may be permitted, by licence, to dispense with the suffix.

Incorporation

A Company is formed by not less than two subscribers who sign the Memorandum of Association and the Articles of Association, and in the case of a Company Limited by Shares, indicate in the Memorandum of Association, the number of shares which each subscriber is subscribing for. In the case of a private company limited by shares or by guarantee, the minimum required number of subscribers is one.

Upon Incorporation, the Registrar issues a Certificate of Incorporation, and the company is in existence from the date thereof.

The Memorandum of Association must state:

- (i) the name of the company, with the word 'Limited', or 'Ltd', if the company members have limited liability. If the Company is a Public company, it must state 'Public Limited Company' or 'P.L.C.';
- (ii) that the registered office is situated in the Isle of Man;
- (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;
- (vii) any restriction, if any, of the powers and privileges of the company.

There is no need for "objects" to be stated. There is a presumption that a company can do anything that an individual can legally do, unless specifically restricted. The Articles of Association contain internal regulations of the company, and are registered together with the Memorandum of Association prior to Incorporation.

The Articles may be amended by Special Resolution.

Incorporation Procedure

Companies Incorporated in the Isle of Man are incorporated by a procedure of Registration. The incorporation is evidenced by a Certificate of Incorporation issued by the Companies Registry.

The procedure for incorporating a Private Company is as follows:

- a. prior approval for the proposed name of the company must be obtained;
- b. the duly executed Memorandum and Articles of Association is lodged with the Registrar;
- c. Form 1, which notifies the first Directors and Secretary, and the intended first Registered Office, is filed at the same time;
- d. in due course, the Registrar will issue the Certificate of Incorporation.

The procedure for incorporating a Public Company is more laborious. In addition to the procedure for incorporating a Private Company, the following additional requirements are imposed:

- a. after actual Incorporation, the Registrar issues the Certificate of Incorporation, but the Company is still not permitted to commence business;
- b. there is filed with the Registrar either a Prospectus, or a Statement in lieu of Prospectus;
- c. there is filed with the Registrar a Statutory Declaration that shares have been paid up either in accordance with the Prospectus or the Statement in lieu of Prospectus;
- d. the Registrar will then issue a Certificate to commence business;
- e. a Statutory Report must be filed with the Registrar.

The simplest way to incorporate a Public Company is to incorporate it first as a Private Company, and then to convert it into a Public Company subsequently.

Post Incorporation Structuring

After Incorporation, the directors will convene a first meeting of the Board of Directors to confirm the appointment of the Secretary and the situation of the Registered Office. A Seal also may be adopted, although there is no obligation for a company to have a Seal.

The day to day management powers of the company are vested in the Directors to the extent that such powers are not reserved by the Articles of Association or the Companies Acts to General Meetings of the Members. The Companies Acts specify that the following matters must be done by the Company in General Meeting:

- a. election of Directors;
- b. appointment of Auditors (unless exempted from the requirement in the Articles of Association - Private Companies only);
- c. approve the Annual Audited Accounts;
- d. declaration of Dividends;
- e. remuneration of Auditors;
- f. amendment to Memorandum and Articles of Association;
- g. amendment to Capital Structure;
- h. liquidation or Winding-up of company.

Name of Company

Every name for a Company must be approved by the Registrar. There are certain words which are considered as unacceptable. The Registrar can reject unsuitable names. Other names do not receive approval until and unless the activities signified by the name are duly authorised, or the proposed capital structure is adequate to support the pretensions of the name.

Where a name has been approved, having a specialist character, and the Registrar subsequently considers that the specialist character of the name is inappropriate, the registrar can require the company to change its name.

Every company name must end with the word *Limited*, if it is a private company, and *Public Limited Company* or *P.L.C.* if it is a public company. Charities may be exempted from this by special permission, but they must also state that they are registered charities on their letterheads..

A company may, by Special Resolution, change its name.

A company may trade under a name other than its registered name. However, in such a case the 'business' name must be registered under the Registration of Business Names Act, 1918, as amended by the Registration of Business Names Act, 1954. All literature, circulars and advertising, however, must also indicate the registered name and such other particulars of the company as are prescribed. A company registered as a charity must so state in all its literature.

Letterheads

On all letterheads and other literature issued by a company, there must, unless special exemption has been obtained, be stated the following details of each director of the company:

- a. forename, or initials, and surname;
- b. former forenames or surnames, if different;
- c. nationality, if not British;
- d. nationality of origin, if different from present nationality

In addition there must be stated on all letterheads and other literature of the company:

- i. the full registered name of the company;
- ii. the place of registration of the company and the number with which it is registered;
- iii. the address of its registered office;

- iv. if the company has been exempted from the requirement to include the word 'limited' in its name, the fact that it is a limited company;
- v. if there is a reference to the capital of the company, the reference must be to the paid up capital.

Shares and Distributions

A Company limited by Guarantee by definition has no shares, and in consequence, this section does not apply to such companies. Similarly, a Company Limited by Guarantee and having Shares may have members who hold no shares. In respect of these latter companies, therefore, this section relates only to the expressed share capital and to the shareholding members of such companies.

Authorised Capital

Every company upon Incorporation must state in its Memorandum of Association the amount of share capital with which it is to be registered and how such share capital is to be divided into shares of a fixed amount.

Such capital is termed the Authorised Capital of the company. The Authorised Capital may be increased, or re-organised by Resolution of the Company in General Meeting. The Authorised Capital of a Company may be reduced by a Special Resolution but, except where the company has Unlimited liability, the Special Resolution must be confirmed by the Court before it can take effect. Similarly, the rights of the shareholders conferred by the structure of the Authorised Capital can be varied by Special Resolution.

A company may have different classes of shares. Such classes may have different rights attached thereto, may be denominated in different amounts, and may be denominated in different currencies. However it should be noted that it is not possible for a company to issue shares 'of no par value', as by definition such shares cannot form part of the Authorised Capital, and therefore cannot exist.

Issued Capital

A private company must have a minimum of one registered shareholder. Thus there must be a minimum of one share in issue, subscribed upon Incorporation.

Further shares can be issued up to the amount of the Authorised Capital, usually by resolution of the Directors. A Public Company before issuing any further shares must file a Prospectus, or a Statement in Lieu of Prospectus. Upon the issuance of any shares, a Return of Allotments must be filed at the Registry. A company may issue redeemable shares, and may, in terms of the legislation, purchase its own shares. However, the assets of a company may not, generally, be used in any way to assist directly or indirectly a person to acquire any shares in that company.

Where a company wishes to redeem Redeemable Shares, this must be effected:

- a. out of the profits of the company which would otherwise have been available for a dividend, or, from share premium account; or
- c. from the proceeds of a fresh issue of shares made for the purpose of raising the funds for the redemption.

A company may issue its shares in fractional denominations and deal with such fractions to the same extent as its whole shares.

Shares may be issued part-paid.

Shares may be issued to Bearer.

Dividends may be capitalised, and shares issued from capitalised profits to existing shareholders *pari passu* with existing shareholdings. No notice of any Trust, expressed, implied or constructive, may be entered upon the Register, or be receivable by the Registrar of the company.

No-Par Value Shares

There is no specific provision for no-par value shares. However, by providing in a Company Limited by Guarantee for the interests of members in the profits or assets of the company to be divisible in specific proportions, no-par value shares can be created.

Guarantee Companies

Companies which are Limited by Guarantee have no share capital, and thus cannot issue shares in any share capital.

Under normal circumstance, therefore, members do not hold any shares. Members guarantee a nominal sum (typically £10) which is only payable in the event of the company going into liquidation when insolvent. This liability continues for a period of twelve months after the date on which a member has ceased to be a member.

A Company Limited by Guarantee may have different classes of members with different rights appertaining thereto. However, care needs to be taken that the interests of the members are not expressed so as to create *de facto* no-par value shares.

In the case of a Company Limited by Guarantee, a founding member must sign the Memorandum and Articles of Association prior to Incorporation. Thereafter new members will be elected into membership as provided in the Articles of Association.

Such Articles may provide for the payment by such new members of an 'Entry Subscription'.

Please see our booklet - '*Isle of Man Guarantee and Hybrid Companies*'

Hybrid Companies (Companies Limited by Guarantee and Having Shares)

Companies which are Limited by Guarantee and having Shares (often known as Hybrid companies) can be formed.

As in a Company Limited by Guarantee, all Members in such a company guarantee a nominal sum (typically £10) which is only payable in the event of the company going into liquidation when

insolvent. However some or all members may also hold shares in the company as provided in the company's Memorandum and Articles of Association.

Such a Company may have different classes of members with different rights appertaining thereto. In addition, such a company can provide for non-members to have an interest in the distributable profits of the company.

In the case of a Hybrid Company, a founding member must sign the Memorandum and Articles of Association prior to Incorporation. Thereafter new members will acquire or be elected into membership as provided in the Articles of Association.

Please see our booklet - '*Isle of Man Guarantee and Hybrid Companies*'.

Limited Partnerships

Limited Partnerships can be formed under Manx law, both resident and exempt for tax purposes. Please see our brochure on '*Isle of Man Partnership Law - an introduction*'.

LLCs - (US Style Limited Liability Companies)

Such companies can be established in the Isle of Man pursuant to the Limited Liability Companies Act 1996. They can be both resident and exempt for tax purposes.

Please see our brochure on '*Isle of Man Limited Liability Companies (LLCs)*'.

Members' Meetings

Meetings of Members of a Company are styled General Meetings.

There are two types of such meetings:-

- Ordinary (or Annual) General Meetings
- Extraordinary General Meetings

There are three types of Resolution that can be put to Meetings, and the length of notice period and the voting requirements vary depending upon which type of resolution is to be put.

- (i) A Special Resolution is a Resolution passed by a majority of not less than 75 per cent of such members as vote in person or by proxy, and for which a notice period of not less than 21 days has been given. Such notice period can be waived if all the members entitled to be present and to vote at such a meeting unanimously agree.
- (ii) An Extraordinary General Meeting has the same voting requirements as a Special Resolution but the notice period is only seven days.
- (iii) An Ordinary Resolution must be passed by a simple majority of those members voting in person or by proxy, and requires a notice period of seven days.

A printed copy of Special and Extraordinary Resolutions and any class resolutions relating thereto must be filed with the Registrar within one month of being passed.

Ordinary (or Annual) General Meeting

The Company must hold its first Annual General Meeting within eighteen months of Incorporation. Thereafter, an Annual General Meeting must be held in each calendar year, not later than fifteen months after the preceding Annual General Meeting.

Extraordinary General Meeting

The directors or the shareholders of a company may convene an Extraordinary General Meeting.

Where the directors receive a requisition to convene a General Meeting for the purpose of considering a Resolution, the directors shall convene such a meeting provided that the requisition is signed by the holders of not less than 10 per cent of the issued share capital of the company, or in the case of a company without share capital, 10 per cent of the voting rights. Subject to the company's Articles of Association, two or more members holding not less than 10 per cent of the issued share capital, or if the company has no share capital, five per cent in number of the members of the company may call a meeting.

Where all the members entitled to be present at a General Meeting and to vote thereat so resolve, the notice requirement may be waived. Such waiver should be in writing.

Voting at Meetings

The voting rights of members are as determined by the Articles of Association of the company.

A Company may, on giving appropriate notice, close the register of members for a period not exceeding 30 days in the year. During such period, a shareholder on the register shall continue to exercise the voting right of that share, notwithstanding the fact that he may have in the meantime transferred the share to another person. A corporate member may appoint a representative to vote for it. A member may vote by proxy.

Register of Members

Every company must maintain a Register of Members.

Any member or other person may, under certain conditions, inspect the Register of Members.

Directors and Secretary

Every company must have at least two directors who must be individuals.

In certain circumstances at least one director must be resident in the Isle of Man. Any appointment of a director must have his written consent, and a Return containing such consent must be submitted to the Registrar. A director must be an individual.

Corporate Directors are not permitted.

In general, a director has no liability in respect of the debts of the company. However, where, in a liquidation, it appears to the Court upon application by a the liquidator, a creditor, or a member of the company that any of the directors have carried on the business of the company with intent to defraud or for any fraudulent purpose, and the Court makes a declaration to such effect, the directors named by the Court shall have unlimited liability for the debts of the company.

Every company must have a Secretary. The Registrar must be notified of appointments of the Secretary in exactly the same manner as appointments of Directors. In the case of a Public Company, or in the case of a Private Company exempted from Income Tax under the provision of the Income Tax (Exempt Companies) Act 1984, there is a requirement that the Secretary shall be a suitably qualified person.

Winding up a Company

A Company can end its days either by way of Liquidation or by way of Administrative removal from the Register. It can also apply to be struck off the register on an administrative basis.

A Voluntary Liquidation can be a Members' Voluntary Liquidation, or a Creditors Voluntary Liquidation. It will be a Members' Voluntary Liquidation if, prior to the notices to convene the Extraordinary General Meeting being sent out, a majority, but not less than two of the Directors file a 'Declaration of Solvency' with the Registrar. This states that the company is solvent and can pay all its creditors within twelve months. If this is not filed, the liquidation will be a Creditors Voluntary Liquidation.

On the assumption that a declaration of Solvency is filed, the company will pass a Resolution to appoint a Liquidator. The Liquidator then takes full control of the affairs of the Company. On completion of the Liquidation, a General Meeting is called by the Liquidator, to present his report and accounts. If the liquidation takes more than twelve months, he must call an interim meeting at the end of the first and successive years.

The Liquidator then files his report and accounts with the Registrar. Three months thereafter the company is deemed dissolved. In the case of a Creditors Voluntary Liquidation, the procedure is similar, with the following differences:-

A meeting of the Creditors of the company is held immediately after the Extraordinary General Meeting of the members. If the creditors elect a person to be the liquidator other than the person elected by the company, the creditors' choice prevails.

The creditors may appoint a committee of inspection.

The Liquidator also convenes meetings of the creditors after the final meeting of members, or after the annual meeting of members.

A company which is in course of liquidation must state that it is in liquidation on its stationery. It may not carry on any business except that which is necessary in the context of the liquidation. After the liquidation is complete, the Court may, any time within two years after the date of

dissolution, on application, declare the dissolution as void, and the company is then reinstated. After two years the dissolution is permanent.

Where a company has ceased to carry on business and either has been effectively abandoned, or the members simply wish to have the company removed from the Register without going through the formality of a Liquidation, there are certain procedures for removing the company from the Register.

Where the Registrar of Companies believes that the company has ceased to carry on any business, and it not in operation, he may make enquiry, and if satisfied that the company has been abandoned may take certain steps, which will result in the company being dissolved and struck off the register. However, it should be noted that this does not remove the liability of any director or officer, if such exists. The dissolution is not final for twelve years, and during that time the company can be restored to the Register by the Court.

Where a company has ceased to operate, and the members do not wish to utilise the formal procedures of liquidation, they may, by following a prescribed procedure, apply for the company to be dissolved and struck off the register in a similar manner to that described above. Any assets of a company, not distributed to the members upon dissolution are 'bona vacantia', and belong to the Crown.

A Company may be wound up by the Court if:

- a. the company has by Special Resolution resolved that it be so wound up;
- b. in the case of a public company, default is made in delivering the statutory report to the registrar, or in holding the statutory meeting;
- c. the company does not commence business within one year of Incorporation, or suspends business for a whole year;
- d. the number of members is reduced below two;
- e. the company is unable to pay its debts;
- f. the court is of the opinion that it is just and equitable that the company should be wound up.

Foreign Companies

Any company, being incorporated outside 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.

It must lodge with the Registrar of Companies:

- a. a certified copy of the charter, statutes, or memorandum and articles of association, or other document comprising the constitution of the company, and, if such document is not in English, a certified translation thereof;
- b. a list of the directors and secretaries of the company containing the same information as would be required for a company incorporated in the Isle of Man;

- c. the name and address of a person resident in the Isle of Man authorised to accept on behalf of the company service of process and any other notices required to be served on the company.

A foreign company registered in the Isle of Man must state its full name, the country of its Incorporation, and, if it has limited liability, that fact:

- a. in every prospectus issued in the Isle of Man;
- b. on every place where it carries on business in the Isle of Man;
- c. on all letterheads, notices, advertisements, and other official publication.

Redomiciliation

The Insurance (Amendment Act 1995) added to the Insurance Act 1986 provisions which enable a licensed insurance company to relocate into and out of the Isle of Man. The Companies (Transfer of Domicile) Act 1998 as amended by the Companies etc. (Amendment) Act 2003 enables a company (other than a licensed insurance company) to relocate into and out of the Isle of Man.

Records and Reports

Every company must maintain certain records and make certain returns.

These are:

- a. Register of Members;
- b. Register of Charges and copies of every instrument creating a charge that require registration with the Registrar;
- c. Annual Return as part of the Register of Members;
- d. Special and Extraordinary Resolutions of Members;
- e. Minutes of Meetings of Members, and of Directors;
- f. Accounts;
- g. Register of Directors and Secretaries.

Each year, in respect of public companies, and private companies which are not specifically exempted in their Articles of Association from these provisions, the directors shall lay before the Members in General Meeting audited accounts, consisting of:

- a. Profit and Loss account, or Income and Expenditure account, as appropriate.
- b. Balance Sheet.
- c. Auditors' Report.
- d. Directors' Report.

In respect of public companies, and companies resident in the Isle of Man for the purposes of taxation, the Auditors are required to be professionally qualified, as:-

- a. A member of the Institutes of:-
 - (i) Chartered Accountants in England and Wales
 - (ii) Chartered Accountants of Scotland
 - (iii) Chartered Accountants in Ireland
 - (iv) Public Finance and Accountancy

- b. A member of the:-
Chartered Association of Certified Accountants
- c. A person duly authorised by the Financial Supervision Commission.

The Government Incorporation costs of a simple standard company include

- Government Fees £180;
- Capital Duty. This is calculated on the par value of the share capital. The duty for capital in excess of £2000 is charged at a rate of 1.4% to a maximum of £5000

Annual Government fees include;

- Resident Company - Annual Return £70;
- Non-Resident Company - Annual Return £1,000;
- Exempt Company - Annual return £70 plus Fee £475.

Taxation

Although, in theory, every Company incorporated in the Isle of Man can have one of four possible options for tax status in the Isle of Man, in practice for new companies there are only two options, being resident or exempt. A company can be:

Resident (liable to Income Tax at 10% on the first £100,000,000 of trading profits and thereafter at 18% on world wide profits).

OR

Non-Resident (not liable to Income Tax, but liable to an Annual Duty of £830 per annum). Such companies be managed and controlled outside the Isle of Man. **Since 1999, no new companies are permitted to take this status, while the future of this status is under review.**

OR

Resident but EXEMPT from all Manx Income Tax. It is liable to a special Government charge of £430 per annum. Such companies MUST have not less than one director in the Isle of Man, who vouches for the good conduct of the company, and must also have an appropriately qualified individual resident in the Isle of Man as the Company Secretary.

OR

Under the International Business Act 1994, a company can opt for a status intermediate between a Resident company and an Exempt company, whereby the rate of income tax imposed can be varied to suit the requirements of the company in meeting criteria set by the tax regulations of other countries. **In 2000, it was announced that this status is to be abolished.**

Value Added Tax

By virtue of a Customs Union agreement between the United Kingdom and the Isle of Man, the Isle of Man has a regime of Value Added Taxation which is identical to and inter-linked with that of the United Kingdom, although entirely separate in its administration.

Residence for Value Added Tax is not a function of 'management and control', but is a function of carrying on business. Any company carrying on business in the Isle of Man is subject to the VAT rules. However, a simple asset holding company is outside VAT, as is a non-Manx company which, although controlled from the Isle of Man, is not carrying on business in the Isle of Man. A Manx company controlled outside the Isle of Man or the United Kingdom, and not carrying on business in the Isle of Man is also outside the scope of VAT.

The Isle of Man is the only jurisdiction in Europe which provides a full European Union Value Added Tax regime, while also providing for complete exemption of trading profits from income or corporate taxation.

This gives rise to substantial international tax planning opportunities, since a Manx registered exporting company will have no VAT Outputs on the exports, but may have substantial recoverable VAT Inputs derived from United Kingdom suppliers.

Please keep in mind:

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*Additional information is available upon request from CM Skye at 2 Water Street, Ramsey, Isle of Man IM8 1JP.
Email: office@cm-worldwide.com*