SENTIENT

ISLE OF MAN 2006 ACT COMPANIES

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INTRODUCTION

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- a company limited by shares;
- a company limited by guarantee;
- a company limited by shares and by guarantee;
- an unlimited company with shares; or
- an unlimited company without shares.

Every company incorporated under the Companies Act 2006 is a legal entity in its own right separate from its members and continues in existence until it is dissolved. In addition, every type of company must at all times have at least one member.

Distinction between Public & Private Companies

The Companies Act 2006 does not distinguish between public and private companies. Under the Companies Acts 1931-2004 private companies are prohibited from offering their shares or debentures to the public. If such a company does offer its shares or debentures to the public it will be deemed to be a public company and it is obliged to comply with prescriptive prospectus requirements and file a copy of its prospectus or statement in lieu of prospectus with the Isle of Man Companies Registry within a prescribed time period. In addition, the name of a public company must end with the words "plc" or "public limited company".

No such restrictions apply under the Companies Act 2006. All types of company can offer their shares or securities to the public, whether the names of such companies end with the words "Limited" or "public limited company" or otherwise.

THE REGISTERED AGENT

The Role of the Registered Agent

The idea of the registered agent is a new concept introduced into Isle of Man law by the Companies Act 2006.

It is a fundamental principle of the Companies Act 2006 that every company incorporated under the Act has, at all times, a registered agent in the Isle of Man. In fact, the failure by a company to have a registered agent is one of the grounds upon which a company can be struck off the register by the Registrar of Companies. In addition it is a criminal offence under the Act for a company not to have a registered agent. The registered agent has an important role to play throughout the whole of the Companies Act 2006.

The registered agent is one of the key people responsible for ensuring that a company is properly administered and various statutory registers and documents have to be maintained at the office of a company's registered agent. In addition, only the registered agent of a company is permitted to make certain filings with, and submit certain applications to, the Registrar of Companies.

In addition, a registered agent could find itself liable for any offence committed by a company under the Companies Act 2006 if the offence is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, the registered agent.

To reflect the responsibility placed on the registered agent and the importance of the role played by the registered agent, only persons holding the appropriate licence granted by the Isle of Man Financial Services Authority under the Isle of Man Fiduciary Services Acts 2000 and 2005 can act as registered agents.

Change of Registered Agent

A company can change its registered agent by resolution passed either by its members or (unless the company's memorandum or articles of association provide otherwise) by its directors. Notice of change of a company's registered agent must be filed with the Registrar of Companies and the change will only take effect on the registration of the notice by the Registrar of Companies.

Resignation by the Registered Agent

A person can only resign as the registered agent of a company by:

- giving at least 8 weeks' written notice of its intention to resign to the company at its registered office address and to a director of the company at his last known address; and
- filing a copy of that notice with the Registrar of Companies within one week of giving notice to the company.

If a company does not change its registered agent within the notice period, at the end of the notice period the registered agent can file notice of its resignation with the Registrar of Companies. At this point, the Registrar of Companies will be alert to the fact that the company does not have a registered agent and may begin proceedings to strike the company off the register of companies.

INCORPORATION OF COMPANIES UNDER THE 2006 ACT

A company is incorporated under the Companies Act 2006 by one or more subscribers who sign the proposed memorandum and articles of association of the company as evidence of their agreement to take one or more shares in the company and/or to become members of the company on the terms set out in the articles of association. On incorporation of the company, the subscriber(s) become the first member(s) of the company.

Only Registered Agents are authorised to file an application for the incorporation of a company. The Registrar of Companies will not accept an application for the incorporation of a company from any other person.

In order to incorporate a company the following documents have to be filed with the Registrar of Companies:

- the proposed memorandum of association of the company complying with the requirements of the Companies Act 2006; and
- the proposed articles of association of the company if they are to differ from any relevant model articles of association prescribed by regulations made by the Registrar of Companies.

Upon receipt of these documents, the Registrar of Companies will register them, allot a unique company number to the company and issue a certificate of incorporation to the company. The memorandum and articles of association of a company will be a matter of public record.

The certificate of incorporation is conclusive evidence that all of the requirements of the Companies Act 2006 as to incorporation have been complied with and that the company was incorporated on the date specified in the certificate of incorporation.

MEMORANDUM & ARTICLES OF ASSOCIATION

The memorandum and articles of association are the constitutional documents of the company and are binding as between the company and each member and as between each member. To the extent that a company's memorandum or articles of association contravene or are inconsistent with the Companies Act 2006, they have no effect.

Memorandum of Association

The Companies Act 2006 requires the memorandum of association of a company to state:

- the name of the company;
- whether the company is a company limited by shares, a company limited by guarantee, a company limited by shares and by guarantee, an unlimited company with shares or an unlimited company without shares;
- the address of the first registered office of the company;
- the name of the first registered agent of the company;
- the full name and residential or business address of each subscriber;
- the agreement of each subscriber to take one or more shares on the incorporation of the company and/or to become a member on the incorporation of the company;
- in the case of a company limited by guarantee or limited by shares and by guarantee, the amount which every member is liable to contribute to the company's assets in the event that the company is wound up;
- in the case of any subscriber agreeing to take one or more shares on the incorporation of the company, the number of shares which the subscriber agrees to take and the amount that the subscriber agrees to pay for each share; and
- in the case of a company limited by shares that is a protected cell company, the fact that the company is a protected cell company.

In addition, the memorandum of association of a company can include a statement specifying:

- the purposes for which the company is established; or
- the business, activities or transactions which the company is permitted to undertake; or
- any restrictions upon such purposes, business, activities or transactions for which the company is established.

As the Companies Act 2006 does not recognise the concept of authorised share capital and replaces the traditional capital maintenance requirements with a new solvency test, there is no requirement for details of a company's share capital to be included in its memorandum of association.

Articles of Association

The Companies Act 2006 enables the Registrar of Companies to prescribe model articles of association for each type of company available under the Act (except for companies limited by shares which are formed as protected cell companies in respect of which there will be no model articles).

If model articles of association have been prescribed a company can either adopt such model articles or use its own bespoke articles of association. If no model articles have been prescribed for a particular type of company, the company will have to use its own articles of association. If model articles have been prescribed, the company will be deemed to adopt these if it does not specifically adopt its own.

Amendment to Memorandum & Articles of Association

Subject to contrary provision in the company's memorandum of association, the members of a company can amend the company's memorandum and articles of association by resolution.

If preferred, the memorandum of association of a company can restrict the rights of members to amend the memorandum and articles of association by including one or more of the following provisions:

- that the memorandum or articles, or specified provisions of the memorandum or articles, can only be amended by a members resolution passed by a member or members holding a specified majority of the voting rights; and/or
- that the memorandum or articles, or specified provisions of the memorandum or articles, can only be amended if certain specified conditions are met.

In addition, the directors of a company may amend a company's memorandum and articles of association if they are expressly authorised to do so by the company's memorandum of association. However, the Companies Act 2006 prohibits the directors from exercising any such power to amend the memorandum or articles:

- to restrict the rights or powers of the members to amend the memorandum or articles;
- to change the majority of the voting rights of members required to be exercised in order to pass a resolution to amend the memorandum or articles; or
- in circumstances where the memorandum or articles cannot be amended by the members of the company.

So, in this way, members rights are protected.

Notice of any amendment to the memorandum or articles of association of a company must be filed with the Registrar of Companies within one month of the amending resolution, together with a restated copy of the memorandum or articles incorporating the amendments made. These documents will be registered by the Registrar of Companies and will be a matter of public record.

POWER AND CAPACITY

The doctrine of ultra vires does not apply to companies incorporated, registered or continued under the Companies Act 2006.

The Companies Act 2006 expressly states that, notwithstanding any provision to the contrary in its memorandum or articles of association, a company has unlimited capacity to carry on or undertake any business or activity, to do or to be subject to any act, or to enter into any transaction irrespective of corporate benefit and whether or not it is in the best interests of the company to do so.

In addition, in favour of any person dealing with a company in good faith, the power of the directors to bind thecompany or to authorise others to do so, is deemed to be free of any limitations (including limitations deriving from any provision in the company's memorandum or articles of association, any resolution of the members, or any agreement between the members).

COMPANY NAMES

Requirements

The name of a company incorporated, registered or continued under the Companies Act 2006 must be approved by the Registrar of Companies. A company will not be permitted to have a name:

- the use of which would contravene any other enactment or regulations;
- that is identical to the name of a company incorporated under the Companies Act 2006 or the Companies Acts 1931-2004 or is so similar to such a name that the use of that name would be likely to confuse or mislead;
- that is identical to a name which has been reserved by a company or is so similar to such a name that the use of that name would be likely to confuse or mislead;
- that contains a restricted word or phrase (unless the Registrar of Companies has given its prior written consent to the use of that word or phrase);
- that is offensive or, for any other reason, objectionable.

The name of every company limited by shares, limited by guarantee or limited by shares and by guarantee must end with one of the following words:

- "Limited", "Corporation" or Incorporated"; or
- "Public Limited Company" or "public limited company"; or
- "Ltd", "Corp", "Inc", "PLC" or "plc".

The name of an unlimited company with or without shares may (but need not) end with the word "Unlimited" or the abbreviation "Unltd".

The name of a protected cell company must include the phrases "Protected Cell Company", "protected cell company", "PCC" or "pcc".

A company may also have an additional foreign character name approved by the Registrar of Companies.

Change of Name

In order to change its name or its foreign character name, a company must make an application to the Registrar of Companies. Any such application can be authorised by a resolution of the company's members or (unless the articles of association provide otherwise) by a resolution of the company's directors.

If the Registrar of Companies approves the company's proposed new name it will register the change of name and issue a certificate of change of name to the company. The change of name will be effective from the date of the certificate of change of name issued by the Registrar.

The Registrar of Companies has power to direct a company to change its name if it does not comply with the requirements of the Companies Act 2006.

Use of Company Names

A company's name and (if it has one) its foreign character name must be clearly stated in every document that evidences or creates a legal obligation of the company. In addition all written communications by or on behalf of a company must state:

- the company's full name and (if it has one) its foreign character name;
- the company's company number in figures;
- the company's place of incorporation; and
- the company's registered office address.

There is no requirement for directors' details to be included on written communications issued by or on behalf of a company.

COMPANY ADMINISTRATION

Registered Office Address

A company must at all times have a registered office at a physical address in the Isle of Man. A resolution to change the location of a company's registered office may be passed either by the members of the company or (unless the memorandum or articles provide otherwise) by the directors of the company. A notice of change of registered office must be filed with the Registrar of Companies and the change will only take effect on the registration of the notice by the Registrar of Companies.

Maintenance of Statutory Records

A company is required to keep the following documents at the office of its registered agent:

- copies of the company's memorandum and articles of association signed by each subscriber;
- the company's register of members;
- the company's register of directors;
- the company's register of charges ;
- copies of all notices and other documents filed by the company pursuant to the Companies Act 2006 in the previous 6 years;
- any accounting records it is required to keep under the Companies Act 2006; and
- an imprint of the company's common seal.

To the extent that a company's register of members and/or register of directors do not contain details of the residential addresses of all past and present members and/or directors, the registered agent is required to maintain a separate record of such residential addresses.

Every company is also required to maintain records of minutes of meetings and resolutions of members and directors. These records are not required to be kept at the office of the company's registered agent and may be kept at any place within or outside the Isle of Man as the directors decide. If the records are not kept at the office of the registered agent the company must provide the registered agent with a written record of the physical address of the place or places where the records are kept.

Accounting Records

The accounting requirements imposed on companies incorporated, registered or continued under the Companies Act 2006 are less prescriptive (but not necessarily less stringent) than the accounting requirements imposed upon companies incorporated under the Isle of Man Companies Acts 1931-2004.

The Companies Act 2006 requires companies to keep reliable accounting records which:

- correctly explain the transactions of the company; and
- enable the financial position of the company to be determined with reasonable accuracy at any time; and
- allow financial statements to be prepared.

Companies are also required to retain such invoices, contracts and other information as are necessary to allow the company to document:

- all sums of money received and expended and the matters in respect of which the receipt and expenditure took place;
- all sales and purchases; and
- the assets and liabilities of the company.

Without prejudice to the requirements of any other enactment, the accounting records must be maintained by or on behalf of the company for at least six years from the end of the financial period of the company to which they relate.

There is no statutory requirement under the Companies Act 2006 for a company to have its accounts audited if it chooses not to do so.

Electronic Records

All records required to be kept by a company under the Companies Act 2006 can be kept either in written form or wholly or partly as electronic records, provided that any electronic records comply with the requirements of the Isle of Man Electronic Transactions Act 2000 which is concerned with the integrity of electronic data.

Rights of Inspection of Statutory Books and Records

A director of a company, on giving reasonable notice, is entitled to inspect all the documents and records of the company without charge and to make copies of, or take extracts from, such documents and records.

Members of a company have slightly more restricted rights of inspection. On giving written notice to the company, a member is entitled to inspect and to make copies of, or take extracts from:

- the company's memorandum and articles of association;
- the company's register of members;
- the company's register of directors;
- the company's register of charges; and
- the company's accounting records.

The Isle of Man Financial Services Authority and the Attorney General have the same rights of inspection as the directors of the company and, in addition, have the right to inspect any separate record of the residential addresses of past and present members and directors of the company required to be maintained by the company's registered agent.

Annual Return

Companies incorporated, registered or continued under the Companies Act 2006 are required to file annual returns made up to the company's return date. The annual return must be filed with the Registrar of Companies by the registered agent within one month of the company's return date.

In order to ease the administrative burden on registered agents, the annual return takes the form of a "shuttle return". The Registrar of Companies extracts the information relevant to the annual return from a company's file and asks the registered agent to confirm, add to and/or correct the information and return it to the Registrar of Companies so that the company's up to date and correct details as at the due date can be placed on the company's public record.

Filing Requirements

In comparison with companies incorporated under the Isle of Man Companies Acts 1931-2004, companies subject to the Companies Act 2006 are subject to reduced compulsory registry filings.

However, a company is still required to file the following documents with the Registrar of Companies, all of which will be a matter of public record:

- its memorandum and articles of association and any subsequent amendments;
- any change in its name;
- any change of its registered office address;
- any change of its registered agent;
- details of any charges which it creates (including any subsequent variation or release)[not a legal requirement –but the charge will be ineffective if not done];
- its annual return;
- any applications and filings in connection with its dissolution, restoration or winding up;
- any applications and filings in connection with any re-registration, scheme of merger, consolidation or arrangement or transfer of domicile.

A company can voluntarily elect to file a copy of its register of members and/or register of directors with the Registrar of Companies. If a company makes such an election the registers will be a matter of public record and the company must notify the Registrar of Companies of any change in those details within one month of any change being made. If a company has elected to file a copy of its register of members and/or register of directors with the Registrar of Companies it may rescind that election at any time by filing a notice to that effect with the Registrar of Companies.

In addition, if a company issues an offering document in respect of its securities, the company can voluntarily elect to file that offering document with the Registrar of Companies and that offering document will then be a matter of pubic record. However, there is no requirement for a company to do so.

Company Secretary

There is no requirement for companies governed by the Companies Act 2006 to have a company secretary.

REGISTRATION OF CHARGES

Company's Register of Charges

A company must keep a register of all charges created by the company over any company property showing:

- (if the charge is a charge created by the company) the date of its creation, or (if the charge is a charge existing on property acquired by the company) the date on which the property was acquired;
- a description of the liability secured by the charge;
- a description of the property charged;
- the name and address of the chargee; and
- whether or not there is any prohibition or restriction contained in the instrument creating the charge on the company creating any future charge ranking in priority to or equally with the charge.

Registration of Charges with the Registrar of Companies

A company may register any charge which it creates (including any charge existing on property acquired by a company) with the Registrar of Companies within one month after the date of its creation (or the date of acquisition of the property). Registration is not a legal requirement but failure to register a charge will result in the charge being void against the liquidator and any creditor of the company.

If a company neglects to file a charge with the Registrar of Companies within the specified one month period, the company may submit the charge to the Registrar of Companies for late registration at any time prior to the commencement of the winding up of the company. There is no need to make an application to the Isle of Man Court for an order for late registration. However, any late registration of a charge will be subject to the rights of any person acquired during the period between the date of creation of the charge and the date of its registration.

DIRECTORS

General Powers of Directors

Subject to any modifications or limitations in the memorandum or articles of association of a company, the business and affairs of a company are generally managed by or under the direction or supervision of the directors of the company.

The term "director" includes not only a person who has been formally appointed as a director, but also any person occupying or acting in the position of director by whatever named called. Such a person is sometimes referred to as a "shadow director" and will be treated as a director both under the Companies Act 2006 and at common law.

Proceedings of Directors

Unless restricted by the memorandum and articles of association, the directors are free to regulate their proceedings as they see fit and can meet at such times and in such manner and places within or outside the Isle of Man as they choose.

Electronic and telephonic board meetings are permitted provided that all directors participating in the meeting are able to communicate with each other simultaneously.

How do Directors make Decisions?

Directors generally exercise their powers by resolution passed at a board meeting or passed as a written resolution.

Subject to any contrary provision in a company's memorandum or articles of association, a resolution is passed at a meeting of directors if it is approved by the majority of the directors present at the meeting. A resolution is passed as a written resolution if it is consented to in writing or by email, telex, fax or other electronic communication by all directors (or such specified majority, greater than 50%, as the memorandum or articles may provide).

Eligibility to Act as a Director

Unlike companies incorporated and registered under the Isle of Man Companies Acts 1931-2004, companies subject to the Companies Act 2006 are entitled to have a single director which can be an individual or a body corporate.

In order for a body corporate to be eligible to act as a corporate director, it, or another body corporate of which it is a subsidiary, must:

- hold the appropriate licence granted by the Isle of Man Financial Services Authority under the Isle of Man Fiduciary Services Acts 2000 and 2005; or
- be permitted to do so by regulations made by the Registrar of Companies. The following persons are prohibited from acting as a director of a company under the Companies Act 2006:
- an individual who is under 18 years of age;
- a person who is disqualified from acting as a director;
- an undischarged bankrupt;
- a person who, in respect of a particular company, is disqualified by the memorandum or articles of association from being a director of the company;
- a person who ceases to exist.

Appointment, Removal and Resignation of Directors

Subject to contrary provision in a company's memorandum or articles of association, a person may be appointed as a director (either to fill any casual vacancy or as an additional director) by a resolution of the directors or by resolution of the members.

Notwithstanding anything in a company's memorandum or articles or in any agreement between a company and any of its directors, a director may be removed from office by resolution of the members. Such a resolution may only be passed:

- at a meeting of the members called for the purpose of removing the director or for purposes including the removal of the director; or
- by a written resolution consented to by a member or members holding at least 75% of the voting rights.

A director may only be removed from office by a resolution of the directors if the directors are expressly given such authority in the memorandum or articles.

A director can resign from office by giving written notice to the company. Such resignation is effective from the date the notice is received by the company or from such later date as may be specified in the notice.

Directors' Interests

As soon as a director becomes aware of the fact that he is interested in a transaction entered into or to be entered into by the company, the director must disclose the interest to the board of directors. Subject to contrary provision in the company's memorandum or articles, a director who has disclosed an interest in a transaction in accordance with the provisions of the Companies Act 2006 can be counted in the quorum and may vote in relation to any resolution of the directors concerning such transaction.

Register of Directors

A company is required to maintain a register of directors containing the following details:

- the names and (business or residential) addresses of the persons who are directors of the company;
- the date on which each person was appointed as a director; and
- the date on which each person ceased to be a director of the company.

The register of directors is prima facie evidence of any matters directed or authorised by the Companies Act 2006 to be contained in it.

Duties of Directors

The directors of companies under the Companies Act 2006, whether they be individual directors or corporate directors, are still subject to the various duties imposed upon directors such as their common law and fiduciary duties to act bona fide in the best interests of the company and for proper purposes.

MEMBERS

Liability of Members

The liability of a shareholder to the company, as shareholder, is limited to:

- any amount unpaid on a share held by the shareholder;
- any liability expressly provided for in the memorandum or articles of association of the company;
- any liability to repay a distribution which has been made to a shareholder in contravention of the Companies Act 2006; and
- any liability for calls made on the shareholder. The liability of a guarantee member to the company, as guarantee member, is limited to:
- the amount that the guarantee member is liable to contribute as specified in the memorandum of association;
- any other liability expressly provided for in the memorandum or articles of association of the company; and
- any liability to repay a distribution which has been made to a shareholder in contravention of the Companies Act 2006.

An unlimited member has unlimited liability for all of the liabilities of the company.

Members Meetings

The Companies Act 2006 does not require a company to hold an annual general meeting of its members. Instead, subject to anything to the contrary in the company's memorandum and articles of association, a meeting of members can be held at such time and in such place, within or outside the Isle of Man, as the convener of the meeting considers appropriate.

The directors of a company and any person authorised by the company's memorandum and articles of association may convene a meeting of the members. In addition, the members of a company can require the directors to call a meeting.

As a statutory minimum, not less than 14 days notice of a members meeting must be given. However, members meetings may be called by shorter notice if a member or members holding at least 90% (or such smaller percentage as is specified in the articles of association) of the voting rights have waived notice of the meeting.

Electronic and telephonic members meetings are permitted provided that all members participating in the meeting are able to communicate with each other.

How do Members make Decisions?

The members generally exercise any power given to them under the Companies Act 2006 or the company's memorandum or articles of association by resolution passed at a members meeting or passed as a written resolution.

A resolution of the members is passed at a members meeting if it is approved by a member or members holding a majority in excess of 50% of the voting rights exercised (subject to any requirement for a higher majority specified in the Companies Act 2006 or any contrary provision in the company's memorandum or articles of association).

A resolution is passed as a written resolution if it is consented to in writing or by email, telex, fax or other electronic communication by all members entitled to vote or by a member or members holding such percentage of the voting rights as is specified in the memorandum or articles of association (subject to any requirement for a resolution to be passed by a particular majority specified in the Companies Act 2006).

There is no concept of "special resolutions", "extraordinary resolutions" or "ordinary resolutions" in relation to companies subject to the Companies Act 2006.

Register of Members

A company is required to maintain a register of members containing:

- in the case of a company limited by shares, a company limited by shares and by guarantee and an unlimited company with shares: - the names and addresses of the persons who hold shares in the company; and - the number of each class of shares held by each shareholder;
- n the case of a company limited by guarantee and a company limited by shares and by guarantee, the names and addresses of the persons who are guarantee members of the company;
- in the case of an unlimited company, the names and addresses of the persons who are unlimited members;
- the date on which the name of each member was entered in the register of members; and
- the date on which any person ceased to be a member.

The register of members is prima facie evidence of any matters required or permitted by the Companies Act 2006 to be contained in it.

SHARES

Background

The Companies Act 2006 does not recognise the concept of capital maintenance. Instead, the traditional concept of capital maintenance has been replaced by a requirement for companies to satisfy a solvency test. In addition, the Companies Act 2006 does not require a company which issues shares to have an authorised share capital.

Generally, a share in a company will confer on its holder:

- the right to one vote at a meeting of the company or on any resolution of the members of the company;
- the right to an equal share in any dividend; and
- the right to an equal share in the distribution of the surplus assets of the company.

However, if the company's memorandum or articles of association allow, shares can be issued subject to terms that negate, modify or add to these rights.

Types of Shares Available

Shares in a company may (without limitation):

- be convertible, common or ordinary;
- be redeemable at the option of the shareholder or the company or either of them;
- confer preferential rights to distributions;
- confer special, limited or conditional rights, including voting rights;
- entitle participation only in certain rights;
- confer no voting rights.

In addition, unless a company's memorandum or articles of association provide otherwise, shares may be issued by a company with or without a par value. Bearer shares are not permitted.

Issue of Shares

The Companies Act 2006 gives the directors of a company the power to issue shares and grant options to acquire shares at such times, to such persons, for such consideration and on such terms as they decide. However, restrictions on the powers of directors to issue shares can be included in the company's memorandum or articles of association.

A share is only deemed to be issued when the name of the shareholder is entered on the company's register of members.

Consideration for Shares

Shares can be issued for consideration in any form including money, a promissory note or other written obligation to contribute money or property, real property, personal property (including goodwill and knowhow), services rendered, or a contract for future services.

Before issuing shares for a consideration other than money, the directors of the company must pass a resolution stating:

- the amount to be credited for the issue of the shares;
- their determination of the reasonable present cash value of the non-money consideration for the issue; and
- that, in their opinion, the present cash value of the non-money consideration for the issue is not less than the amount to be credited for the issue of the shares.

Statutory Pre-emption Rights

Section 36 of the Companies Act 2006 sets out statutory pre-emption rights which apply on the issue of shares. Section 36 does not apply automatically to every company and a company must positively elect in its memorandum or articles of association if it wishes the statutory pre-emption rights set out in this section to apply to it.

Offering Document

The Companies Act 2006 does not distinguish between public and private companies and (subject to any restrictions in a company's memorandum or articles of association) any type of company under the Act can offer its securities to the public.

The prospectus/offering document requirements in the Companies Act 2006 are less prescriptive and much simpler (but not less stringent) than the traditional prospectus requirements contained in the Isle of Man Companies Acts 1931-2004. The directors of a company, or the proposed directors of a company which is yet to be incorporated, must ensure that any offering document issued in relation to that company contains all material information relating to the offer or invitation:

- that the intended recipients would reasonably expect to be included in order to enable them make an informed decision as to whether or not to accept the offer or make the application referred to in the offering document; and
- of which the directors or proposed directors were aware at the time of issue of the offering document, or of which they would have been aware had they made such enquiries as would have been reasonable in all the circumstances, and such information must be set out fairly and accurately.

A company may voluntarily file its offering document with the Registrar of Companies but it is not obliged to do so.

Transfer of Shares

A share in a company is personal property and, subject to any restrictions in the company's memorandum or articles of association or the Companies Act 2006, is transferable.

DISTRIBUTIONS

The previously complex traditional English law-type capital maintenance requirements of the Companies Acts 1931-2004 have been relaxed under the Companies Act 2006.

If a company can pass a statutory solvency test immediately after a distribution has been made, then the directors can make such a distribution without the need for a formal members resolution, unless a company's memorandum of association or articles of association specifically provide otherwise.

A distribution is considered by the Companies Act 2006 to be a transfer of any company asset to any member or the incurring of a debt by the company to or for the benefit of any member, which includes the payment of dividends, the redemption of shares or a purchase of own shares.

A company will pass the Companies Act 2006's solvency test if it can pay its debts as they become due in the normal course of its business and the value of its assets exceeds the value of its liabilities.

Should a company not pass the solvency test immediately after a distribution has been made to a member, such a distribution may be recovered from the member provided certain conditions are met. If the member received the distribution other than in good faith and the member's position has not been altered by relying on the distribution and it would not prejudice the member to recover the payment in full, then such distribution shall be recoverable.

When a director fails to take reasonable steps to ensure that the company can satisfy the solvency test prior to making a distribution, such director shall be personally liable to the company for any such distribution that cannot be recovered from the members.

If a court considers that a company would have satisfied the solvency test by making a lesser distribution, then the court can authorise such lesser distribution or relieve the director of the personal liability equivalent to such lesser distribution.

Unless a company's articles of association provide otherwise and provided that a company can satisfy the solvency test immediately after making a distribution or altering the company's share capital, then the directors of a company may pay dividends to members in money, shares or other property and reduce its share capital in any way.

MEMBERS' REMEDIES

If a company or a director of a company breaches or proposes to breach the Companies Act 2006 or its memorandum or articles of association, then, in response to a member's application, the Court can make an order requiring compliance with the Companies Act 2006 or the memorandum or articles of association; alternatively the Court can make an order restraining certain action to prevent such a breach occurring.

The Court can permit a member of the company to commence legal proceedings in the name of and at the cost of the company or to intervene in existing legal proceedings in which the company is a party again at the cost of the company.

If a member considers that the company has breached the duties that it owes to that member, then the member can bring a personal action against the company.

Similarly, if a member views that the affairs of the company have been or are being conducted in a manner that is unfair to such member or unfairly prejudicial or oppressive, then the member can seek a range of Court remedies including winding up the company or setting aside decisions in breach of the Companies Act 2006 or the company's memorandum and articles of association. T

he Companies Act 2006 also contains provisions which enable a member to apply to the Isle of Man Court for an order directing that an investigation be made of a company and any of its associated companies. The Court may make any order it thinks fit if it appears to the Court that:

- the business of a company or any of its associated companies is or has been carried on with intent to defraud any person;
- a company or any of its associated companies was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
- persons concerned with the incorporation, business or affairs of a company or any of its associated companies have acted fraudulently or dishonestly in connection with those companies.

RE-REGISTRATION PROCEDURE

A company created under the Companies Act 2006 can be re-registered as a company of another type permitted by the Companies Act 2006 by submitting an application along with a statutory declaration as to its solvency and a new memorandum of association and new articles of association (if necessary).

A company created under the Companies Acts 1931-2004 can be re-registered as a company under the Companies Act 2006 by submitting certified copies of a resolution passed by a member or members holding at least 75% of the voting rights exercised in relation thereto and a resolution of each class of members passed by a member or members holding at least 75% of the voting rights exercised in relation thereto, in each case authorising the re-registration of the company under the Act, the adoption of a new memorandum of association and the adoption of new articles of association (if necessary).

Following such re-registration under the Act, the Companies Acts 1931-2004 will cease to apply to such company.

The re-registration of a company does not create a new legal entity or prejudice or affect the continuity of the company.

TRANSFER OF DOMICILE

The Companies Act 2006 enables a non-Isle of Man company to be continued in the Isle of Man as a form of company permitted under the Act if an application is submitted by the company's registered agent to the Registrar of Companies accompanied by:

- a memorandum of association containing specified information;
- articles of association;
- a statutory declaration regarding solvency-related matters;
- proof of compliance with all home-jurisdiction laws and requirements; and
- information regarding all charges registered against the company and the consent of all charge holders.

If an Isle of Man company wants to be continued in another jurisdiction and discontinued in the Isle of Man under the Companies Act 2006, then its registered agent should submit an application to the Registrar of Companies accompanied by:

- a resolution passed by member(s) holding at least 75% of the voting rights exercised in relation thereto and a resolution of each class of members passed by member(s) holding at least 75% of the voting rights exercised in relation thereto;
- a statutory declaration of solvency;
- a copy of a prescribed form of notice sent to each member 21 days before the application is made for the company to discontinue its incorporation in the Isle of Man; and
- the consent of all charge holders to the application to be made for the company to discontinue its incorporation in the Isle of Man.

STRIKING OFF AND RESTORATION

Striking off by the Registrar of Companies

A company incorporated under the Companies Act 2006 can be struck off the register of companies if the company:

- fails to have an Isle of Man registered agent; or
- fails to file any return, notice or document as is required by the Companies Act 2006;
- fails to pay its annual fee or late payment penalty by the due date; or
- appears to the Companies Registry to have ceased to carry on business.

If any party is aggrieved by the striking off of a company, then such party may (within 12 weeks of the publication of a notice regarding such striking off) lodge an appeal to the Court.

Where a company has been struck off the register of companies, the company or a director or a member or a liquidator or a receiver thereof may:

- make an application for the company to be restored; and
- continue to defend any proceedings against the company; and
- continue to carry on legal proceedings that were commenced prior to the date of striking off.

A struck off company can still incur liabilities or be the subject of a claim by its creditors, but if a company remains struck off for a continuous period of 6 years, then it shall be deemed to have been dissolved.

A company that has been struck off but not dissolved can be restored to the register of companies, provided that all outstanding fees are paid and the Registrar of Companies is satisfied that the company has an Isle of Man registered agent and that it would be fair and reasonable for the name of the company to be restored to the register of companies.

Once a company has been struck off and dissolved, an application can still be made to either the Court or the Registrar of Companies, within 12 years of the date of dissolution of the company, for the company to be restored to the register.

Alternative Procedure for Dissolving Solvent Companies & Restoration

An alternative procedure for dissolving solvent companies is also available under the Companies Act 2006. Under this procedure, a director is required to make an application with an accompanying statutory declaration confirming that the company has ceased to operate and all of its debts and liabilities have been discharged. On receiving such an application, a public notice is issued prior to dissolving the company. If any objections are received, then a court order may be needed prior to dissolving the company under this procedure. The same general rules apply regarding the restoration of the company dissolved under this procedure as is the case mentioned above for the striking off procedure.

LIQUIDATION & RECEIVERSHIP

The liquidation and receivership provisions of the Companies Acts 1931-2004 generally apply to companies incorporated under the Companies Act 2006.

SCHEMES OF MERGER, CONSOLIDATION & ARRAGEMENTS

The Companies Act 2006 permits two or more companies to be:

- merged into one of the constituent companies that participated in the merger; or
- consolidated into a new company in the form permitted under the Companies Act 2006.

The directors of each constituent company that wishes to participate in a merger or consolidation need to approve a written scheme of merger or consolidation that provides detailed terms and conditions thereof. A new memorandum and articles of association also need to be attached to a written scheme of consolidation.

After being provided with the opportunity to review the written scheme of merger or consolidation, the scheme of merger or consolidation must be authorised by a resolution passed by member(s) holding at least 75% of the voting rights exercised in relation thereto and by a resolution of each class of members passed by member(s) holding at least 75% of the voting rights exercised in relation thereto.

The Companies Act 2006 also permits "arrangements"; this term includes:

- a compromise;
- a reorganisation or reconstruction of a company;
- an amalgamation of two or more companies;
- a merger or consolidation of two or more companies;
- separation of businesses carried on by a company;
- a sale or transfer of any assets of a company;
- a dissolution of a company incorporated under the Companies Act 2006.

If an arrangement is proposed between two or more companies or between a company and any of its creditors or between a company and its members or any class of them, then the directors of each constituent company that proposes to participate in the arrangement need to approve a written scheme of arrangement that provides detailed terms and conditions thereof. A new memorandum and articles of association also need to be attached to a written scheme of arrangement that involves a merger or consolidation.

If creditors representing 75% by value of the creditors or members that are present and voting at a meeting agree to an arrangement that has been sanctioned by a Court order, then such arrangement shall be binding on creditors or members (as the case may be).

PROTECTED CELL COMPANIES

A protected cell company ("PCC") is a single legal person that can create one or more cells to protect the company's assets by allocating them to separate cells. Each cell should have a unique name. The assets of a PCC shall be designated and managed by the directors of the PCC as cellular or non-cellular assets.

If a cell's liability exhausts the assets allocated to that cell, then the non-cellular assets shall be applied to settle such liability, but the assets of other cells shall not be applied to settle another cell's liabilities.

Creditors of one cell of a PCC shall not have recourse to the assets of other cells of the PCC and receivership orders can be made in relation to one cell of a PCC only.

Although the creation of a cell by a PCC does not create in respect of that cell a legal personality that is separate from the company, the Companies Act 2006 requires that directors of the PCC treat each cell in many ways as if it were a separate company.

Only companies limited by shares can be formed as a PCC. A company limited by shares that has been created under the Companies Act 2006 that is not a PCC can apply to be converted into a PCC.

TAXATION OF COMPANIES

With effect from 6 April 2006, the Isle of Man standard rate of income tax for companies was reduced to 0%, with a rate of 10% applying to income derived from banking business or from land and property within the Isle of Man.

The Isle of Man does not have any form of capital gains tax, inheritance tax or stamp duty land tax.

With effect from 6 April 2008, the Isle of Man introduced the Attribution Regime for Individuals, a charging provision that, in certain circumstances, attribute the profit of a company to its Isle of Man resident owners. This attributed profit will be taxed as the income of the owners.

For further information on the taxation of companies in the Isle of Man, visit the Division's website at www.gov.im/incometax.

SUMMARY

THE ISLE OF MAN - A JURISDICTION FOR CORPORATE SERVICES

The Isle of Man

The Isle of Man is an Island of 221 square miles located in the Irish Sea and thus centrally in the British Isles between Scotland, England, Ireland and Wales. It has been a separate self-governing jurisdiction for over a thousand years through which time its parliament - Tynwald has been in continuous existence and it is not, and has never been, part of the United Kingdom.

Basis of Manx Law

The Isle of Man is a 'Common Law' jurisdiction. Its basis of law is Manx customary law itself derived from a combination of Gaelic Breton law, Norse Udall law and both having been heavily influenced by English Common law over a number of centuries. The concept of Equity as it developed in the English courts, has been applied identically in the Isle of Man since the seventeenth century. Other than with a few notable exceptions such as Land Law and Constitutional Law, the Isle of Man closely follows English legal precedents. The Isle of Man is thus a pre-eminent jurisdiction for trusts as well as corporate services.

Regulation of Fiduciary Service Providers

The incorporation of companies and provision of services to companies and trusts in the Isle of Man generally, is regulated by the Isle of Man Financial Services Authority under the terms of the Fiduciary Services Acts 2000 and 2005. Reference should be made to the Financial Services Authority for further details of the scope and operation of this legislation.

Key Features of the Isle of Man as a Corporate Services & Business Centre

- Modern and flexible companies legislation
- Benign tax environment
- International standards of regulation and supervision
- Modern companies registry
- Cost competitive services and operating environment
- Highly developed e-business communications and capability
- Diversified international finance industry including banking, investment, insurance and pension sectors along with attendant legal and accounting expertise
- Political stability (over 1000 years of continuous Government)
- Economic stability (over 21 years of continuous growth)
- European time zone (GMT)
- Financial incentives available for qualifying businesses establishing certain operations in the Island

It can be seen that the Isle of Man is a suitable jurisdiction for the incorporation and administration of companies for a wide range of purposes and is especially favourable for investment funds, stock market listing/flotations, holding companies, trading companies and offers a welcoming environment for the establishment of new businesses employing both local and relocated staff.

SENTIENT

WHO IS SENTIENT?

Sentient International Limited is a modern corporate and trust service provider with a solid track record of over 35 years, providing bespoke international business solutions to a broad spectrum of international clients.

Offering a wide range of services that are efficient, flexible and cost effective, our experienced team of professionals offer complete in-house expertise as well as specialist knowledge and experience within a number of niche industry sectors, including Aviation, Fintech, Property, Shipping, and Yachting.

We are committed to providing the highest level of customer care to ensure that the services we provide are delivered professionally, reliably and with complete integrity.

Our highly experienced staff can assist with corporate structuring and choice of jurisdiction according to a particular transaction. We understand that implementation is integral to the success of any form of tax planning.

We work closely with the professionals providing the advice, to ensure that we dedicate our time to maintaining files, recording transactions correctly and providing timely and accurate information to our clients and their advisors.

This together with the relationships we have formed both locally and internationally with intermediaries and professional advisors alike means that we are able to stay at the forefront of any new developments or changes, affording us the ability to continually evolve our services to ensure that we offer the most competitive, individually tailored solutions.

SENTIENT INTERNATIONAL LIMITED

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