

The differences between Isle of Man Companies Act 1931 and Isle of Man Companies Act 2006

– “Move with the times or cling to traditions?”

When the Isle of Man introduced an innovative and adaptable Companies Act in 2006, many people questioned the need. What was wrong with the good old Companies Act 1931? True, it had been patched and repaired like a favourite rocking chair but was still a comfortable seat for the corporate sector on the Island.

In fact the answer is not a simple one. The respective pieces of legislation must be considered in context of the changes that have occurred globally during that era. What was happening in 1931? One key event was the completion of the Empire State Building in New York. We can all recognise its familiar profile and appreciate the design and craftsmanship with which it was constructed. Staying in New York, by comparison, it was in 2006 that work commenced on building the Freedom Tower on the site where the twin towers of the World Trade Centre had once stood. Setting aside personal opinions about the respective aesthetics of each structure; it is unavoidable but to recognise and acknowledge that the world has changed significantly between those two dates.

Any decision about which type of company to choose should not, in my opinion, be driven by fashionable trends but on the sound basis of the type of business that it will be transacting, and the capabilities of the people who will be running and owning it. There is now a choice available in the Isle of Man so it would be remiss not to consider the respective pieces of legislation to find the best solution in any given set of circumstances.

Perhaps it may help to illustrate a couple of commonplace events and how they would be treated differently under the 1931 and 2006 Acts.

Example 1: One of the Company Directors moves house.

- For a 1931 Act company; a Form 9N needs to be completed, signed by a Director or the Company Secretary and submitted to Companies Registry within 1 month. Late filing penalties would be charged if this was not done within the prescribed timescale.
- For a 2006 Act company; the new address would be advised to the Companies Registry only at the next Annual Return filing date.

Example 2: The Company has issued all its original shares but now needs to issue more to raise additional capital.

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- For a 1931 Act company; all the Shareholders need to be contacted a General Meeting convened to pass a Special Resolution *(min 75% agreement) to increase the authorised share capital and adopt amendments to the Memorandum and Articles of Association of the company to reflect these changes.
- Because of the increase in the authorised share capital of the company, additional duty (calculated on an ad valorem basis – details are published on the Companies Registry website) needs to be paid when these documents are filed.
- Applications would be received for the newly created shares, and those approved by the Directors would be recorded in the company's register of members. A Return of Allotments Form 45 would then need to be submitted to Companies Registry within one month of the issue date or else incur late filing penalties. (There are provisions for the Special Resolution to be passed by way of a Written Resolution but that would only be effective when the final shareholder had signed in acceptance of the changes, so 100% agreement is then necessary).
- For a 2006 Act company; typical Articles such as the Model Articles prescribed in the 2006 Act vest the power to create, and also to cancel or redeem existing shares (provided always that the Company meets the Solvency Test detailed in the 2006 Act) in the Directors. A Board Resolution would suffice to create or cancel shares; there would be no forms to be filed at Companies Registry.
- As for the 1931 Act company, the names and holdings of the new shareholders will still be recorded in the company's own register of members but, with few exceptions, this information would not need to be placed on public record at the Companies Registry.

There are some people who derive satisfaction, if not even pleasure, from filling in forms but I would strongly suspect that they comprise a small minority of the population.

On the face of it a 2006 Act company would seem to be easier to administrate, and as such cheaper to run, so why hasn't the Isle of Man Companies Registry been besieged with requests to form new 2006 Act companies or, as is perfectly permissible, convert existing 1931 Act companies to adopt the provisions of the newer legislation?

In many instances, it is simply not necessary; the 1931 Act company may be a locally family owned and run business with few changes so wouldn't gain substantial benefit from the relaxation of some procedures. Other times, it may be a combination of resistance to change and an incomplete understanding of the scope of the new legislation which prevents the Directors from considering the modernisation of their company structure.

Are there any other factors? Under the 2006 Act, there is a mandatory requirement for every company to appoint a Registered Agent. The qualification for acting as a Registered Agent is the holding of a current licence from the Financial Supervision Commission of the Isle of Man to provide Corporate Services. This provision allows the Isle of Man to demonstrate to regulatory or supervisory

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bodies, such as the IMF or the OECD that there is rigorous and effective regulation of these flexible corporate entities.

It is inescapable that Corporate Service Providers will charge for undertaking these responsibilities and duties but those fees should be balanced against the costs to the business entity from time taken in compiling and submitting those additional notifications under the 1931 Act together with the escalating penalties should filing period windows be inadvertently missed.

So, if a potential client comes into our office today enquiring about forming a new company, would I always steer them towards a 2006 Act company?

The surprising answer is “No, I wouldn’t”!

What I would do, is sit down with them and have a chat about what they want to do with the company, who would be involved, what type of business they would be running, their hopes for expansion and even succession planning. Armed with this knowledge and understanding, between us we would then be able to identify whether the 1931 Act or the 2006 Act is the starting point for tailoring a company that meets the needs of them and their business in today’s challenging environment, as well as providing room for growth in a brighter tomorrow.

For further information on Isle of Man companies or any other Isle of Man company and trust administration services, please contact Julie Ronan on (01624) 676868

This publication is intended only to provide a brief guide. It does not purport to be comprehensive or to provide legal advice.

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