

Business Update:

The New Isle of Man Corporate Vehicle

The desire of the Isle of Man Government to maintain the Island's position as one of the world's most respected and competitive international business centres has focused attention on the need to reform Isle of Man company law.

The Isle of Man Government therefore, having considered the views of the Island's financial services industry, promoted and implemented a new companies regime which came into force on 1 November 2006 (the "Act").

The Act provides for a new Manx corporate vehicle (the "NMV") to co-exist with present and future companies incorporated under the Companies Acts 1931 to 2004 and those formed under the Limited Liability Companies Act 1996. It has been reviewed by off-Island experts from a

practical company law perspective and in the context of the Island's current and likely future obligations in terms of international standards; it has also been benchmarked against the company law regimes in certain other jurisdictions.

It is considered that NMVs are legally robust, yet flexible and easy to administer. Combined with the Island's zero rate corporate tax regime for substantially all resident companies, the Isle of Man should prove increasingly attractive to international businesses and their advisers.

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The following are some of the key features which apply to the NMV:

Types of Companies

The Act specifically allows for five different types of corporate vehicles:

- companies limited by shares;
- companies limited by guarantee;
- companies limited by share and by guarantee;
- unlimited companies authorised to issue shares; and
- unlimited companies without shares.

A company limited by shares may be formed as or converted into a protected cell company.

Share Capital

Under the Act, there is no longer the concept of authorised share capital. Therefore, shares may be issued with or without par value.

Dividends, Redemptions and Buy-backs of Shares

Subject to compliance with its memorandum and articles of association, the Act allows an NMV to declare and pay a dividend and to purchase, redeem or otherwise acquire its own shares subject only to meeting a statutory solvency test. The ability to provide for the acquisition of shares in this way may be of benefit to open-ended investment companies in particular.

Capacity and Powers

A company incorporated under the Act has separate legal personality and perpetual existence. In addition, an NMV has unlimited capacity to carry on or undertake any business or activity; this is so notwithstanding the matter of corporate benefit. The Act specifically states that no corporate act is beyond an NMV's capacity by reason only of the fact that the relevant NMV has purported to restrict its capacity in any way in its memorandum or articles or otherwise. A person who deals in good faith with an NMV is entitled to assume that the directors of the NMV are acting without limitation.

It is possible for the memorandum of an NMV to contain a statement specifying the purposes for which it is established or the business, activities or transactions for which it is established. However, any such restrictions are subject to the provisions explained in the foregoing paragraph.

Charges

The Act provides that charges may be registered at the Companies Registry of the Isle of Man Financial Supervision Commission (the "Companies Registry") within one month of the date of the creation of the charge. However, it is not mandatory to register charges with the Companies Registry but failure to do so may affect the priority of the charges created by the NMV and in addition, failure to register shall render the charge void against the liquidator and any creditor of the NMV. If a charge is not registered at Companies Registry within one month of the date of the creation of the charge, an application to register the charge may be made to Companies Registry at any time prior to the commencement of the winding up of the NMV.

Other Points

In addition to the foregoing, the following other points should be noted in relation to NMV's:

- no financial assistance prohibitions
- corporate directors permissible within certain limits
- single members permissible
- requirement for a registered agent appropriately licensed in the Isle of Man
- no differentiation between public and private companies
- simplified offering document requirements
- ability to adopt pre-incorporation contracts
- reduced compulsory registry filings
- no annual general meeting requirement
- accounting requirements less prescriptive
- relatively simple transfer of domicile procedure
- relatively simple merger and consolidation procedures

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LISTINGS

Over the past few years, there has been an unprecedented growth in Isle of Man companies listing on AIM and other key capital markets (including the Main Market of the London Stock Exchange).

The Benefits of Using an Isle of Man Corporate Vehicle

The reasons why the Isle of Man has become one of the favourite offshore jurisdictions from which to list on the world's major capital markets include:

- The Island's first-class reputation as a well regulated international finance centre (reinforced by Moody's and Standard & Poor's "AAA" rating).
- The ability to list an Isle of Man company without the need for prior regulatory approval. (This is in sharp contrast to some other offshore jurisdictions).
- The Island's company law is derived from English company law; as such, investment banks, institutional investors and their advisers are comfortable dealing with Isle of Man companies.
- In the few instances where the Island's company law differs from English company law, it is usually possible to tailor a company's Articles of Association to give the company a more "English" feel and, thus, meet the expectations of institutional investors.
- An Isle of Man company can be formed within 5 working days and there is no requirement to specify a company's objects in its Memorandum of Association.
- Most Isle of Man companies are able to take advantage of prospectus exemptions which facilitate the preparation and despatch of the admission document or listing particulars.
- Shares in Isle of Man companies are capable of being held in dematerialised form through CREST without the need to put in place complex depository arrangements.
- An Isle of Man company can have shares denominated, and can prepare accounts, in any currency.

Our Experience

Cains has extensive experience in advising Isle of Man companies seeking access to capital markets. Over the past few years, the firm has acted on over 20 listing transactions including:

- Close High Income Properties plc (London Stock Exchange)
- Genting International plc (Singapore Exchange Main Board)
- Hirco plc (AIM)
- Lamprell plc (AIM)
- Nikanor plc (AIM)
- Unitech Corporate Parks plc (AIM)

According to a recent report by Hemscott, 15 of the top AIM 100 companies are incorporated in the Isle of Man – which is twice the number of any other offshore jurisdiction. Their combined market capitalisation is in excess of £5 billion.

The firm has developed a comprehensive set of Isle of Man specific listing documents and riders for use in such transactions which, coupled with our experience, enable us to provide an unparalleled service that is both efficient and cost-effective.

TAX

The Isle of Man offers a tax neutral base to facilitate efficient international tax planning.

- A general zero per cent. tax rate for companies (with the exception of certain banking income and income from Isle of Man land and property which is taxed at 10 per cent.).
- There is no capital gains tax, inheritance tax, stamp duty or SDRT.

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