

## 1931 Act Companies

Setting up and operating a limited company carries many obligations and understanding the different types of company which are available and the responsibilities which inevitably go hand in hand when forming and operating a company are important first steps towards company incorporation.

### Limited Liability

Limited liability status is designed to assist economic development by encouraging business and promoting investment by providing the owners of a company with protection against loss of personal assets if the business being undertaken through it should fail.

There are four types of company available.

- **Limited by Shares:**

A Company limited by shares is probably the most popular type of trading company formed today with the liability of its members limited to the amount unpaid on shares they hold. The standard authorised capital on formation is usually £2,000 divided into 2,000 shares of £1 each. This attracts the minimum amount of Capital Duty payable on formation.

- **Limited by Guarantee:**

Companies limited by guarantee have no predetermined capital and thus no shares. Members' liability is limited to the amount they have agreed to contribute to the company's assets if it is wound up. Essentially used as a mutual company for charitable, quasi-charitable, non profit or social purposes, this form of company can be utilised to great effect for tax planning purposes by means of pledged payment to the collateral of the company

- **Limited by Guarantee and having a Share Capital:**

This type of company is commonly known as a "Hybrid company", combining the features of both companies limited by shares and companies limited by guarantee. Members consist of those whose liability is limited to the amount unpaid on shares which they hold, and those whose liability is limited to the amount they have agreed to contribute to the company's assets if it is wound up. The flexibility provided by this form of company structure has led to its increasing use as a 'Foundation', a popular alternative to the discretionary trust and for proprietary purposes.

- **Having a Share Capital with Unlimited Liability:**

This form of company has a share capital in exactly the same way as a company limited by shares, but there is no limit to the liability of members. Such companies are not dissimilar to civil law partnerships and their use is now usually limited to complex situations where extreme flexibility of capital structuring is required or where corporate personality only is needed.

## Public and Private Companies

All companies are designated as either **public** companies or **private** companies. A public limited company (PLC) may offer its shares or debentures for sale to the general public and must on an annual basis, deliver audited accounts to the Companies Registry. A private company on the other hand, may not issue shares or debentures to the public and is not required to deliver accounts to the Companies Registry.

## Incorporating a Company

The law provides that one or more persons can form a company for any lawful purpose by completing a number of simple forms and subscribing their names to the memorandum of association. In the case of a Public Company or one that is unlimited, a minimum of two subscribers is required.

**Individuals who are disqualified from acting as directors or are undischarged bankrupts cannot take part in the formation, operation or management of companies in the Isle of Man, unless given leave to act by the court.**

**There are additional restrictions relating to Public Limited Companies and, certain restrictions imposed upon individuals and companies who provide services with respect to the formation, sale, transfer, disposal and operation of companies under the Corporate Service Providers Act 2000.**

Forming a limited company is not a decision that should be taken lightly and choosing the type of company that is right for your circumstances requires very careful consideration. Getting it right from the start could save you a lot of trouble and inconvenience.

## Forming a company

The most common method of forming a company is to engage the services of a licensed CSP such as HCW Fiduciaire Limited.

**Form 1:** Provides full particulars of the companies first directors and secretary and the intended address of the companies first registered office, which must be situated in the Isle of Man. The company must have a minimum of two Directors, one of whom may also be the Company Secretary. Corporate Directors are not permitted under Manx Law. Corporate Secretaries are permitted subject to other restrictions.

**Memorandum of association:** This document must set out:

- the company name;
- whether the company is a private or a public company;
- confirmation that all the requirements of the Companies Acts in relation to the registration have been complied with;
- where a company is to be limited by shares or by guarantee, the memorandum must state that members have limited liability;
- where a company is to be limited by guarantee, the memorandum must state that each member undertakes to contribute such amount as may be required to the assets of the company in the event of it being wound up;
- any permitted restrictions on the company to exercise any rights, powers or privileges set out in the provisions of the Companies Acts.

Where the company has a share capital, the memorandum must also set out:

- a. the amount and division of such share capital;
- b. the number of shares which each subscriber takes;

**Articles of association:** This document is effectively a contract between the company and its members and sets out the rules for the operation of a company's internal affairs.

The Companies (Memorandum and Articles of Association) Regulations 1988, as amended, provide draft specimens of Memorandum and Articles of Association appropriate for different types of company. They are not mandatory, but are usually adopted in part or in full. Many companies specifically exclude the Tables, and opt instead to have full form Memorandum and Articles of Association which incorporate clauses from the Tables. This avoids the necessity of having to refer to the Tables in addition to the Memorandum and Articles of Association.

The Tables are:

Table A: Articles of Association of a company limited by shares

Table B: Memorandum of Association of a company limited by shares

Table C: Memorandum and Articles of Association of a company limited by guarantee

Table D: Memorandum and Articles of Association of a company limited by guarantee and having a share capital

Table E: Memorandum and Articles of Association of an unlimited company having a share capital

## Public Company Requirements

Incorporation of a public company is broadly similar to the incorporation of any other type of company. The principal differences are as follows:

- The company name must end in either the words "Public Limited Company" or the abbreviated forms of PLC or P.L.C.
- The Memorandum must state that it is a public company.
- The company secretary must be qualified in one of the ways specified in section 19(4)(a) to (e) of the Companies Act 1982.
- The Single Member Companies Act 1993 does not apply to public companies – they must have a minimum of two members at all times.

The Memorandum and Articles of Association must comply with the Companies (Memorandum and Articles of Association) Regulations 1988 and the requirements of the Companies Act.

The Form 1 should be completed in the same way as for any other Manx incorporated company.

While there is no minimum share capital required to incorporate a public company, this will be affected by the proposed name of the company. As with all company names, some words or phrases may be deemed to require a higher than normal share capital or to imply a licensable activity. In such cases, conditions may be set which the company will be expected to fulfil before the name is approved.

Once incorporated, the company will also need to lodge a Prospectus or Statement in Lieu of Prospectus if it intends to offer shares or debentures to the public. The prospectus must state the matters specified in Part I of the Fourth Schedule of the Companies Act and set out the reports specified in Part II of that Schedule. If a Statement in Lieu of Prospectus is to be presented, the document must be in the form set out in the Third Schedule of the Companies Act. For full details of the matters relating to the prospectus, readers are advised to consult either the relevant sections of the Companies Acts or a qualified professional. All fees due will be payable in accordance with the current Companies (Fees) Order.