

PN24/2023

Date: October 2023

Companies Acts 1931-2004

A Guide to Incorporating a Company

Introduction

Copies of Acts of Tynwald dealt with by the Companies Registry can be found on the following website administered by the Attorney General:

<http://www.legislation.gov.im/cms/index.php>

This practice note sets out the procedure for incorporating a company in accordance with Part I of the Act. It addresses the document registration procedures only. You should seek professional advice on the legal, financial or taxation implications or consequences of incorporating a company if you are uncertain or unclear if this method of conducting business is relevant to your needs. The Department will **NOT** give advice on such matters.

This practice note is intended as a general guide only and must be read in conjunction with the relevant legislation. It has no legal status and should not be relied upon as a substitute for legal advice.

Contents:

1. Types of Company
2. Choosing the Company Name
3. Company Registration
4. Verifying Information
5. What Fees are Payable
6. Further Information

1. Types of Company

1.1 The types of company which can be incorporated under the Act are as follows:-

- (a) a company limited by shares;
- (b) a company limited by guarantee;
- (c) a company limited by shares and by guarantee;
- (d) an unlimited company with shares;
- (e) an unlimited company without shares; or
- (f) a company limited by shares incorporated as a protected cell company.

1.2 There is a distinction in the Act between a “private” and “public” company. A “private” company must make reference to section 26 of Act in its Articles of Association and they are not permitted to offer their shares or other securities to the general public. A public company is not required to file their annual accounts at the Companies Registry with their Annual Return. Any company incorporated under the Act can carry out any action permitted by the Act, subject to the terms of its memorandum and articles.

2. Choosing the company name

- 2.1 There are restrictions on your ability to choose the name you want to use. The Company and Business Names Act 2012 (“the Act”) creates a central point of reference for all matters pertaining to the naming of companies and other bodies corporate and un-incorporate that are incorporated or established in the Isle of Man. Some limited matters remain within the scope other legislation such as the requirement for limited companies to utilise the suffix of limited or ltd under the Companies Acts 1931 and Companies Act 2006.

In addition, the Department has published a list of restricted words and phrases where prior permission will need to be sought before submitting the memorandum and articles for registration, and where the Department considers a name to be offensive or objectionable.

- 2.2 There is no legal requirement to seek approval from the Department prior to submitting the form one, memorandum and articles. We would however recommend that applicants do not incur unnecessary expenditure before ensuring that a proposed name is acceptable for registration.
- 2.3 If you wish to confirm a name’s acceptability, the Department will consider applications via our website of www.gov.im/categories/business-and-industries/companies-registry, via general email to companies@gov.im, or by letter. Name reservations last for up to 12 weeks from the date of the Department’s approval. If no prior approval has been sought, applicants are advised that there will be a delay in incorporating the company whilst a decision is made on the acceptability of the name, and it is possible that registration could be refused.

3. Company Registration

3.1 Contents of the memorandum

The memorandum must by law must contain the following matters:-

- (a) The company name
- (b) The company type (including whether Private or Public)
- (c) That all the requirements of the Companies Acts in relation to the registration procedures have been complied with.
- (d) That, in respect of a company limited by shares or by guarantee, the members has limited liability.
- (e) 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.
- (f) If the company has a share capital, the agreement of each shareholder subscriber to take one or more shares.
- (g) If the company is limited by guarantee, with or without a share capital, or an unlimited company without shares, the agreement of each guarantee subscriber to become a member.
- (h) If the company is limited by guarantee, with or without a share capital, the amount for which every guarantee member is liable.
- (i) That the company is a protected cell company - if appropriate.
- (j) If the company has a share capital, the number of shares taken and the amount agreed to be paid by each subscriber.

- 3.2 Since 1988, there is a prohibition against a 1931 Act company setting out its ‘objects’ as there is a presumption that a company can do anything that an individual can legally do. The exception to this rule is in the case of a registered charity.

3.3 Contents of the articles

There are no Model Articles available under the Act, however a general guide to its contents can be found in the First Schedule of the 1931 Act. These may be adopted in full or in part, but if any provision in the articles is not provided for in the proposed articles, or is not expressly

excluded, it shall be deemed to be included. The Act requires that the Articles be printed in their entirety with no handmade corrections permitted.

3.4 Contents of the Form 1

The template Form 1 can be found on our website

https://www.gov.im/media/1347907/form_1-oct-2023-290923.pdf

The Form 1 must contain the following;

- a) Registered Office The registered office address of a company must be a physical address in the Island to which all communications and notices may be addressed. However, it is more than just a postal address.

There are a number of requirements throughout the Companies Acts that require the statutory records of the company to be maintained at the registered office address, for example:

- A copy of the memorandum and the articles of association of the company - Section 12 of the Companies Act 1931
 - A copy of every instrument creating any charge requiring registration - Section 87 of the Companies Act 1931
 - The company's register of charges - Section 88 of the Companies Act 1931
 - The name of company is prominently displayed at the registered office address - Section 94 of the Companies Act 1931
 - Register of Members - Section 96 of the Companies Act 1931
 - Minute Books, where they are available for inspection by any member - Section 120 of the Companies Act 1931
 - Register of Directors - Section 143 of the Companies Act 1931
 - Service of Documents - Section 335 of the Companies Act 1931
 - Accounting Records - Section 1 of the Companies Act 1982
- b) Nominated Officer who is resident in the Island, to comply with the requirements of the Beneficial Ownership Act 2017.
- c) Minimum of Two Directors (Individuals) shown with their usual residential addresses (No restriction on where they reside, however if more than 50% reside outside the Island, you should contact the Isle of Man Tax Division to confirm if this may have Tax implications for the company (tel. 0044 1624 685400) or via the website of:
<https://www.gov.im/categories/tax-vat-and-your-money/income-tax-and-national-insurance>
- d) Secretary - This can be an individual or corporate body. In the case of a public company, the secretary must be, in the opinion of the directors, in possession of adequate knowledge and experience of the duties of a company secretary or in possession of an appropriate qualification as set out in the Act.
- e) Signatures - All officers must sign their consent on the form one together with the signature of the subscriber(s) or an agent on behalf of the subscriber(s) if applicable.
- f) Presenter - The Form 1 must be presented by a person who is resident in the Island (s20(1A) of the 1982 Act)

- 3.5 If the company name is acceptable for registration, the Department will register the documents, allot a unique number to the company and issue it with a certificate of incorporation (sent to the registered office). A copy of the certificate will be put onto the public file of the company.

- 3.6 The items listed above relate **ONLY** to the procedure for applying to the Department for incorporation. This paragraph does **NOT** cover any other legal and/or financial enquiries that you ought reasonably to make depending on why you wish to incorporate the company.
- 3.7 If the Department refuses to accept the Form 1, Memorandum and Articles for registration, you have, under section 283C of the Act, the right of appeal to the Isle of Man High Court of Justice against such refusal within 21 days.

4. Verification Checks

From October 2023, the Registry introduced verification checks for 1931 Act incorporations, where the application is not submitted by a licensed Corporate Service Provider.

It is becoming more common place for individuals to verify their identity ahead of engaging in business transactions. Incorporating a limited company should not be treated any differently. There are statutory obligations associated across the different roles within a company and failure to understand and meet them can be an offence under the Act, lead to late filing fees being incurred for Registry filings, and the company being struck off.

These checks are to ensure that the registered office address is valid, that the company has authority to use the stated address, and to verify the details of the company officers & presenter of the incorporation application prior to reviewing the application.

4.1 For identify verification the Registry will accept the following documents (or certified copies), which must include your photograph and signature:

- Current Passport
- Driving Licence issued by the Isle of Man, Channel Islands, UK, Gibraltar, an EU member state, USA or Canada.
- National Identity Card

For address verification the Registry will accept the following documents (or certified copies), which must include your full name (or all initials and surname):

- Utility bill less than 6 months old (electricity, water, gas, telephone or rates bills)
- Bank/Building Society, Credit Card or Mortgage statement less than 6 months old.

4.2 Where the registered office address has no direct association with the individuals listed in the incorporation application, we require confirmation in writing from the owner of the stated registered office address that the company has permission to use, and will be at the address immediately upon the incorporation of the company.

5. Fees payable

The following fees are payable on applying for registration of the memorandum, articles and Form 1, which includes the issue of a certificate of incorporation.

‘Standard incorporation’ within 48 hours **£100.00**

‘2 hour incorporation’ of a company **£250.00**

‘While you wait incorporation’ of a company **£500.00**

A duplicate certificate of incorporation costs **£9.00**.

Details about all fees payable in the Companies Registry are obtainable from the website www.gov.im/categories/business-and-industries/companies-registry . Payment of fees can be made in cash or by cheque made payable to “Isle of Man Government”. We regret that we cannot accept cheques drawn on an account outside the U.K.

6. Further information

Our staff will willingly answer general queries by telephone or e-mail but cannot give legal advice. If you require such advice you should consult an Advocate. The telephone number for the Companies Registry is: 01624 689389 and the e-mail address is: companies@gov.im

Statutory forms and practice notes are available free of charge from the website: www.gov.im/categories/business-and-industries/companies-registry .

A list of Licenceholders is available on the Isle of Man Financial Supervision Authority’s website at www.iomfsa.im/register-search

Details of Isle of Man Advocates are available from the Isle of Man Law Society at:

Tel: +44 (0)1624 662910

E-mail: enquiries@iomlawsociety.co.im

Website: www.iomlawsociety.co.im _

It is the responsibility of presenters to ensure that documents arrive in the Companies Registry within the filing periods prescribed.

We are aware that post can on occasion be delayed. However presenters should be aware of that and post documents in plenty of time. The Companies Registry cannot operate a system which allows for such delays as to do so would simply amount to an extension to the filing periods set down by law.

COMPANIES REGISTRY

Registries Building
Deemsters Walk, Bucks Road
Douglas, Isle of Man
IM1 3AH

Telephone: +44 (0)1624 689389

Enquiries Email: companies@gov.im

Website: www.gov.im/categories/business-and-industries/companies-registry