



## COMPARISON BETWEEN COMPANIES UNDER THE 1931-2004 COMPANIES ACT AND THE 2006 COMPANIES ACT

In order to assist our clients, we have produced the following table showing the comparison between companies incorporated under the 1931-2004 Companies Acts and the 2006 Companies Act.

	<u>1931-2004</u>	<u>2006</u>
Types of company available	Limited by shares Limited by guarantee w/o shares Limited by guarantee with shares Unlimited with shares	Limited by shares Limited by guarantee Limited by guarantee w/o shares Limited by guarantee with shares Unlimited with shares
To incorporate	Statement of 1 <sup>st</sup> Officers & RO Signed Memorandum & Articles of Association  Minimum of 1 shareholder  Restriction of the use of certain words in the name and there is a restriction on the extensions to the name (ie Limited or Ltd).	Unsigned Memorandum & Articles of Association  Minimum of 1 shareholder  Restriction of the use of certain words in name. Relaxation of the extensions available (ie Inc, Corp etc)
Officers required	Minimum of 2 individual directors Company secretary	1 director (may be corporate*) Registered Agent  Corporate directors are restricted to companies under the direct control of a Licenceholder
Members and Members' Meetings	Only private companies limited by shares and private companies limited by guarantee can have a single member. All other types must have at least 2 members	The Act permits companies to be single member companies.  The Act contains very few prescriptive rules relating to members meetings.



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Shares

<p>AGM to be held every year and no more than 15 months after the previous AGM.</p> <p>All other meetings are known as EGMs</p> <p>Meetings do not have to be held in IOM but watch out for control &amp; management issues if held abroad.</p> <p>Certain decisions can only be taken by the shareholders.</p> <p>Written resolutions allowed.</p>	<p>Companies are not required to hold annual general meetings and the Act allows meetings to be held wherever and whenever deemed appropriate.</p> <p>Articles of Association may be tailored to provide a formal structure for meetings if required.</p> <p>Resolutions can be passed by a simple majority. There is no concept of ordinary, special or extraordinary resolutions.</p>
<p>Every company having a share capital must have and authorised share capital and every share issued must have a nominal value.</p> <p>Share capital may be increased by resolution of the members.</p> <p>Share capital may be consolidated, divided or cancelled.</p> <p>Shares transferable by written instrument of transfer.</p> <p>Maintenance of share capital principle applies.</p> <p>Private companies may give financial assistance for the acquisition of shares in itself or its private holding company.</p>	<p>The Act provides that shares in a company may (without limitation):</p> <ul style="list-style-type: none"> <li>Be convertible, common or ordinary</li> <li>Be redeemable</li> <li>Confer preferential rights to distributions</li> <li>Confer special, limited or conditional rights</li> <li>Entitle participation only in certain assets</li> </ul> <p>In addition, subject to any restrictions in the Articles, the company may:</p> <ul style="list-style-type: none"> <li>Issue bonus shares and nil/partly paid shares</li> <li>Issue shares with/without par value</li> <li>Issue shares in any currency</li> <li>Issue shares number or unnumbered</li> <li>Issue fractional shares</li> </ul> <p>Distributions and solvency test now introduced.</p>



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Public and Private companies

<p>Distinguishes between public and private companies.</p> <p>Only public companies are permitted to offer their shares or debentures to the public and as a result are required to comply with the prospectus requirements set out in Acts. The main requirement is that any prospectus issued in relation to a company:</p> <p>Contains all material information relating to the offer is set out fairly and accurately.</p> <p>Must be filed with Companies Registry and Forms part of the public file.</p>	<p>The Act does not distinguish between public and private companies and any type of 2006 Act company may offer its securities to the public. However, if an offering document is issued in relation to a company, the criteria with which that offering document must comply are less prescriptive than 1931 Act companies.</p>
<p>May be created.</p>	<p>May be created.</p>
<p>At the registered office unless otherwise advised to the Registrar:</p> <p>Register of Directors &amp; Secretaries          Register of Members          Register of Charges          Minute books          Annual returns          Accounting records</p> <p>Changes to officers, members, share capital or the company's permanent details must be notified to the Registrar</p>	<p>At the registered office unless otherwise advised to the Registrar:</p> <p>Register of Directors &amp; Registered Agent          Register of Members          Register of Charges          Minute books          Annual returns and all notices filed with Registrar          Accounting records</p> <p>Notification of changes to officers and members are not compulsory but the company may elect to notify</p>
<p>All are required to produce annual accounts.</p> <p>Unless audit exempt, accounts must be audited.</p>	<p>The Act simply requires a company to keep reliable accounting records which correctly explain the transactions of the company, enable the financial position to be determined and allow statements</p>

Charges

Maintenance of Statutory Books and Rights of Inspection.

Accounts and Audit



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		to be prepared.  Only companies whose securities are listed or admitted to trade are required to appoint an auditor. A company may elect to appoint an auditor if required.  Whilst the accounts requirement is less prescriptive caution needs to be employed. Many 3 <sup>rd</sup> party institutions such as banks will require full accounts in accordance with recognised accounting/auditing standards.
Registered Office	Must be in the Isle of Man	Must be in the Isle of Man
Re-registration	May reregister under the 2006 Act	May re-register under the 1931-2004 Acts
Procedures for ending a company	Dissolution Liquidation (either voluntary or not) Forced dissolution by the Registrar	Dissolution Liquidation (either voluntary or not) Forced dissolution by the Registrar

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This document does not constitute legal advice and is only provided to give you an overview. You should always seek independent legal advice before setting up a structure.

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