

Briefing Note – The “New Manx Vehicle”

Background

Whilst the Isle of Man has remained a significant player in the offshore company formation market, the number of annual incorporations has nearly halved since 1998, at a time when some other jurisdictions have seen strong growth.

In 2004, Treasury Minister Allan Bell established a steering group to review Manx corporate law, in an attempt to address this situation and to bring the Island’s offerings into line with its competitors, having recognised in particular the success of the BVI company. One outcome from this review is a new corporate structure, which during its development was called the ‘New Manx Vehicle’, or NMV for short, and continues to bear that name amongst local professionals.

The progress of the NMV legislation has not been an entirely smooth process. Some members of the finance community voiced objections to the proposed new structure, partly on fears of loss of revenue, and partly on concerns that the lighter regulatory touch was in danger of running contrary to the Island’s strong stance in this area.

In order to assuage these concerns, Treasury engaged the services of two highly respected City firms to benchmark the draft legislation against current international standards and in particular to vet the proposals in the context of the Island’s commitments to bodies such as FATF, OECD and the IMF. After much debate, some compromises were reached, and the finance sector now generally supports this new initiative.

The Companies Act 2006

The NMV will be introduced through the Companies Act 2006. The legislation has now received Royal Assent and will be brought into effect on 1 November 2006. The NMV will coexist with present and future companies incorporated under existing legislation including the Companies Acts 1931 to 2004, or under the Limited Liabilities Companies Act 1996.

Although known colloquially as the NMV, limited liability companies incorporated under the Companies Act 2006 (the Act also provides for unlimited companies with shares and unlimited companies without shares, and for protected cell companies) will be able to terminate their names either with ‘Limited’, ‘Corporation’, ‘Incorporated’ or ‘Public Limited Company’, or abbreviations thereof. This is more flexible than the existing provisions but for public consumption, the NMV can use the same format as the traditional ‘1931 Act’ company. The NMV will also be permitted to use foreign characters in its name.

The NMV will however offer some material technical benefits to the professional market. The new structure has been designed to simplify offshore administration, to reduce costs, and to add significant flexibility to international planning.

The principal benefits include:

Capital arrangements

There is no requirement for an NMV to have an authorised share capital, and shares of no par value will be permissible although, given the Island's commitment to international anti money laundering standards, bearer shares will not be permitted. Shares of par value will be able to be issued in any currency, and the par value may be a fraction of the smallest denomination of that currency. The Companies Registry charge for incorporation of an NMV will be £180.

Shares will be able to be issued for consideration in any form, including money or a written obligation to contribute money or for "property, real property, personal property (including goodwill and know-how), services rendered, or a contract for future services."

Protected Cell Companies will be permitted, and in fact the relevant provisions have been lifted in their entirety from the Protected Cell Companies Act 2004.

There will be no capital maintenance requirement, and redemptions and buy-backs of shares will be permissible, with the proviso that the company must remain solvent after any such capital reductions. Essentially, the solvency test will ensure that, after the capital event, the company's assets must continue to exceed its liabilities, and that it must be able to pay its debts as they fall due.

The restrictions contained in the Companies Act 1992 will not extend to the NMV, and therefore there is no prohibition on financial assistance. This makes the NMV ideal for use as SPV's in complex financing structures, and should reduce the need for 'whitewashing' arrangements. Subject to the provisions of its memorandum and articles, the NMV will be able to easily alter its capital, including the consolidation of shares into shares of a larger amount, the redenomination of shares into shares of another currency, or the subdivision of shares into shares of a smaller amount.

Reductions of share capital will be permissible without Court order, subject to solvency, whilst distributions of income and capital equally will be allowed, again subject to the solvency test. Such distributions will be able to be made in cash, or in specie. The ability to easily distribute capital in specie will simplify many corporate restructuring exercises.

Proceedings of the company

An NMV company will be able to have unlimited capacity, and there will be no differentiation between public and private companies. Single directors will be permitted, and there will be the ability to have corporate directors, although only licensed Isle of Man corporate service providers ("CSPs") or subsidiaries thereof, or persons authorised in this capacity by the Financial Supervision Commission ("FSC") will be able to act as corporate directors. Directors' resolutions can be passed at board meeting or as written resolution. Single members will be permitted.

The doctrine of ultra vires will not apply to the NMV and, notwithstanding any restrictions in the memorandum and articles of association, the company will have unlimited capacity to undertake any

activity, or to enter into any transaction. Further, for anyone dealing in good faith with the company, the power of directors to bind the company will be deemed to be free of any limitation.

There will be no requirement for a company secretary, but the company must appoint a 'Registered Agent' who must be authorised by the FSC to carry out this function, typically as a CSP. The Registered Agent will be responsible for ensuring that certain records are held by that agent in the Isle of Man, either in original form or as copies, including basis statutory information such as the registers of directors and members, copies of the memo and arts, copies of registry filings including charge documents, directors' minutes and the requisite accounting records.

This information must be made available on demand to directors, to the FSC or to the Isle of Man Attorney General whilst all the above information except board resolutions will be available for inspection to members on request.

There will be a simplified offering document requirement with the ability to adopt pre-incorporation contracts.

There will be no requirement for annual general meetings to be held.

Accounting and Annual Returns

There will be a simplified financial reporting requirement wherein companies must maintain "reliable accounting records which correctly explain the transactions of the company and which enable the financial position of the company to be determined with reasonable accuracy at any time and which allow financial statements to be prepared".

Accordingly, whilst financial records must be kept, there will be no requirement to maintain them to international standards such as UK GAAP or IFRS, and there will be no statutory requirement actually to prepare annual financial statements or to have them audited. However, there is a requirement to retain supporting documentation such as invoices and contracts.

Annual Return requirements are being finalised, will be significantly less onerous than for '1931 Act' companies, simply identifying matters such as the Registered Agent and registered office of the company, and details of its directors. Directors will henceforth only need to disclose in the Annual Return their business addresses, although in such circumstances the Registered Agent must hold details of personal addresses. The Registered Agent will also be required to confirm that appropriate accounting records have been maintained.

The Annual Return filing fee will be £70 and the annual corporate charge will be £250, accordingly total annual government fees are expected to be £320. The corporate charge was introduced to all companies, other than those presently 'exempt', upon introduction of the zero tax regime in April 2006. The Exempt Company regime falls away from April 2007, and at that point such companies will become resident for tax purposes, at zero percent, and will likewise be subject to the corporate charge, thus representing a saving over the existing £475 Exempt fee.

Re-registrations, re-domiciliations and restructuring

The new legislation will permit a '1931 Act' company to re-register under the new Act, subject to approval of its members. Registry filing fees relating to such re-registration will be £90, and the Registered Agent's costs should not be much more than £250 for a simple case. Given the significant benefits available under the new regime, it might be expected that a large number of re-registrations will be effected during 2007. Re-registration of a 1931 Act company will not create a new legal entity neither will it prejudice or affect the continuity of the company.

Foreign companies will also be able to apply to continue as a company incorporated under the Act; similarly companies under the Act will be able to apply to be continued in a territory outside the Island. The Act will also offer the ability to merge or consolidate NMV companies in a simple manner.

2007 Costs and Charges

Cost of incorporation

Cayman National incorporation charge *	£1,000
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**this includes registry filing fees of £180, and assumes an NMV with Limited Liability and with either par or no par value shares, adopting Cayman National's standard memorandum and articles of association. Additional charges may be payable for different arrangements.*

Annual charges for basic services

Cayman National basic annual administration fee *	£1,000
Annual return filing fee	£70
Corporate charge (replaces Exempt Company Duty previously £475)	£250

** this fee covers the provision of registered office and Registered Agent, corporate director, company secretary, maintenance of statutory registers, meeting the statutory responsibilities of the Registered Agent, and dealing with regulatory filing requirements. Any additional work is charged on a time-incurred basis. VAT is payable where appropriate. All reasonable out of pocket expenses are recovered from the client.*

Conclusion

The Isle of Man has been working hard to reposition itself in the international community. In April 2006, the island introduced its zero company income tax regime, at which rate (subject to some local special cases) both domestic and international business will be undertaken. At a stroke, this dealt with the 'ring-fencing' concerns of the EU Code of Conduct/Harmful Tax Practices Group.

The NMV is an integral part of this development initiative. It is an exciting piece of legislation which, although it does nothing to take forward corporate administration, does at least offer the professional market a flexible and competitive alternative to BVI structures from a European time zone. The

expectation is that the new structure will be used extensively as an SPV, will reinvigorate the Island's product offering, and will result in a resurgence of interest in Isle of Man corporate structures.

Cayman National Bank and Trust Company (Isle of Man) Limited will offer a full incorporation and administration service for NMVs, to complement our existing fiduciary services.

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The information contained in this briefing note is intended for general guidance only, and must not be relied on for individual planning arrangements. This information is believed to be correct at the date of publication.

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