

A Guide to 2006 Act Companies

The 2006 Act Company (also known as NMV, or New Manx Vehicle) is a type of entity which was introduced to Isle of Man Corporate law in the latter part of 2006. This note is intended to provide a brief overview to its uses and benefits.

The NMV is a type of company that is regulated by entirely different legislation compared to traditional Isle of Man companies (which are now frequently referred to as 1931 companies).

The purpose behind the NMV is to limit the administrative burden on a company and provide greater degrees of flexibility in its operation. This is of particular use when the NMV is not trading but merely holds other assets, such as shares or property interests, or is acting as a single purpose vehicle.

A specific procedure exists to make it straightforward to re-register a 1931 company as an NMV.

The NMV is required to have a registered office and registered agent in the Isle of Man. The agent must hold a licence granted to them by the Isle of Man Financial Supervision Commission.

NMVs have unlimited capacity to undertake any business or activity, irrespective of corporate benefit or the interests of the company. Third parties acting in good faith are entitled to assume the powers of directors to act for the NMV irrespective of documentation publicly filed. Directors of an NMV remain, however, subject to the duties imposed on them at common law.

Directors are authorised to act for the NMV and act by resolution at a meeting or in writing. The legislation provides specific rules in respect of telephone and electronic meetings and resolutions.

As with Directors, the Members also act by resolution. For most decisions a simple majority is required.

Shares and share capital provisions are extremely relaxed, and a wide variety of options are available to structure the NMV with different levels of participation. Bearer shares, however, remain prohibited.

Prospectus/offering documents for publicly traded NMVs are only required to contain all material information relating to the offer or invitation contained therein (i) that the intended recipients would reasonably expect to be included therein in order to enable them make an informed decision as to whether or not to accept the offer or make the application referred to therein; and (ii) of which the directors or proposed directors were aware at the time of issue of the offering document or of which they would have been aware had they made such enquiries as would have been reasonable in all the circumstances; and sets out such information fairly and accurately.

The directors of an NMV may authorise any distribution (which is defined much more widely than simply dividends and includes financial assistance) by the NMV to its members if they are satisfied, on reasonable grounds, that the company will immediately after the distribution be able to pay its debts as they become due in the normal course of its business; and that the value of the NMV's assets exceeds the value of its liabilities. In addition (subject to any contrary provision in the company's memorandum or articles of association) the consent of the members is not required for distributions.

An NMV is required to keep simply reliable accounting records, which correctly explain the transactions of the NMV; enable the financial position of the NMV to be determined with reasonable accuracy at any time; and allow financial statements to be prepared.

The NMV must also retain such invoices, contracts and other information as are necessary to allow the NMV to document all sums of money received and expended and the matters in respect of which the receipt and expenditure took place; all sales and purchases; and the assets and liabilities of the NMV.

The Registered Agent must keep the following at its office at all times:

- its memorandum and articles of association signed by each subscriber;
- the register of members;
- the register of directors;
- the register of charges;
- copies of all notices and other documents filed with the Registrar in the previous 6 years;
- its accounting records.

An NMV must also keep minute books of meetings and resolutions passed by its directors, members and classes of members. Whilst these minute books do not need to be kept at the office of the registered agent, the registered agent must be provided with a written record of the physical address where such records are kept.

In comparison with 1931 Act Companies, there are reduced compulsory registry filings, however an NMV is still required to file the following, which are then available for public inspection:

- its memorandum and articles of association and any subsequent amendments;
- any change in its name;
- any change of its registered office address;
- any change of its registered agent;
- its annual return;
- any charges which it creates (including any subsequent variation or release of such charges);
- any late registration of a charge;
- any applications and filings in connection with its dissolution, restoration or winding up; and

- any applications and filings in connection with any re-registration, scheme of merger, consolidation or arrangement, transfer of domicile or conversion into a protected cell company.

Particularly worth noting is that there is no requirement for NMVs to file any change of directors, any increase or reduction in share capital, or any allotment of shares.

A NMV can voluntarily elect to file a copy of its register of directors and/or register of members with the Registrar. If a NMV makes such an election it must notify the Registrar of any changes to those details. In addition, a NMV can voluntarily file any offering document with the Registrar, but it is not required to do so.

The Key Benefits of the NMV:

No requirement for authorised share capital;

No capital maintenance requirements;

Reduced accounting requirements;

Reduced public registry filing requirements;

No AGM required;

Financial Assistance permitted;

Can be public or private without distinction;

Less formal offering documents;

Single directors possible (including authorised corporate directors);

Simplified procedures for transfer of domicile, merger and consolidation

Callin Wild can provide expert legal advice on the provisions of the NMV legislation and other corporate law issues relating to the Isle of Man.

This note does not constitute advice and should not be relied upon as no warranty is made in respect of the commentary contained herein. Specific advice should be sought for any specific query that may arise. Details given are correct as at the date of issue.

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Date of issue: 27th April 2009