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Introduction

Paul Beckett [1]

Constitution

IOM-01 The Isle of Man, together with the UK, the Channel Islands and the Republic of Ireland form the geographical area known as the British Isles. Although the Isle of Man acknowledges the sovereign of the UK to be its head of state, the island is politically and constitutionally not part of the UK. It is a Crown Dependency. As such, it is independent in all matters except foreign affairs and defence, which are the responsibility of the UK government. In particular, no legislation on taxation or other revenue matters of the UK Parliament applies in the Isle of Man.

The Isle of Man legislature, the Tynwald (http://www.tynwald.org), dates from the time of the Viking councils of the ninth century, the earliest recorded session being in the year 979 AD. The Isle of Man therefore has the longest unbroken history of parliamentary government in the world. Scandinavian rule over the island ended in 1333 with defeat by the Scots, and the island later passed under the general suzerainty of the English Crown.

The Isle of Man remained, however, outside the English (and later British) political system, and the English monarch continued to fulfil only the role originally played by the ancient Scandinavian kings. Later, the Lordship of Man was granted to a succession of ruling families by the English kings, until the British Crown itself acquired the Lordship from the Earls of Derby in 1765. The present Lord of Man is the British Queen Elizabeth II, who is represented in the island by her Lieutenant Governor. The Lieutenant Governor, who is appointed for a five-year term, now has only a limited role in executive government, the political head of which is the Chief Minister (formally appointed by the Lieutenant Governor after being elected by the Tynwald).

The Tynwald has two branches; a directly elected House of Keys with 24 members and the Legislative Council with 10 members, eight elected by the House of Keys together with the island's Bishop and Attorney-General.

The Tynwald is not a subordinate legislature and does not derive its authority from the UK Parliament. It is unlikely that there would be a conflict between an Act of Parliament and an Act of Tynwald, each legislature being closely aware of the other's activities and sensitive to the needs of its neighbour, but, were such a conflict to occur (assuming each Act to have received the Royal Assent), then in the Isle of Man the Act of Tynwald would prevail.

With the passage of the Isle of Man Customs, Harbours and Public Purposes Act 1866 (now repealed), the Isle of Man gained the separation of its finances from those of the UK. This enabled the Tynwald to develop the island's complete financial independence. The Isle of Man has a Customs and Excise Agreement with the UK dating from 1979, and the two countries therefore constitute a common customs area.

In recent years, the suggestion has been made, in light of publications from the International Consortium of Investigative Journalists (https://www.icij.org) through its disclosure of the "Panama Papers", the "Paradise Papers" and the "Pandora Papers" that the Isle of Man is a tax haven. The Isle of Man was a prototypical, small-scale tax haven 50 or more years ago, but has evolved through a combination of internal regulation and the adoption of international obligations into an international finance centre. Low taxation and a lack of transparency are two of the markers of a tax haven, but equally important are the often bizarre corporate and trust structures which are promoted, the lack of accountability, beneficial ownership avoidance, fraudulent transfers made with impunity, and a withering away of the powers of the judiciary to rule on any of these. As this chapter demonstrates, the Isle of Man has almost none of the characteristics which define a modern tax haven. [2]

On 1 May 2007 the following framework for developing the international identity of the Isle of Man was signed, something which is likely to be revised post-Brexit:

> "Following the statement of intent agreed on 11 January 2006, the Chief Minister of the Isle of Man and the UK Secretary of State for Constitutional Affairs have agreed the following principles. They establish a framework for the development of the international identity of the Isle of Man. The framework is intended to clarify the constitutional relationship between the UK and the Isle of Man, which works well and within which methods are evolving to help achieve the mutual interests of both the UK and the Isle of Man.
>
> 1.The UK has no democratic accountability in and for the Isle of Man which is governed by its own democratically elected assembly. In the context of the UK's responsibility for the Isle of Man's international relations it is understood that:

o The UK will not act internationally on behalf of the Isle of Man without prior consultation.

o The UK recognises that the interests of the Isle of Man may differ from those of the UK, and the UK will seek to represent any differing interests when acting in an international capacity. This is particularly evident in respect of the relationship with the European Union where the UK interests can be expected to be those of an EU member state and the interests of the Isle of Man can be expected to reflect the fact that the UK's membership of the EU only extends to the Isle of Man in certain circumstances as set out in Protocol 3 of the UK's Treaty of Accession.

2.The Isle of Man has an international identity which is different from that of the UK.

3.The UK recognises that the Isle of Man is a long-standing, small democracy and supports the principle of the Isle of Man further developing its international identity.

4.The UK has a role to play in assisting the development of the Isle of Man's international identity. The role is one of support not interference.

5.The Isle of Man and the UK commit themselves to open, effective and meaningful dialogue with each other on any issue that may come to affect the constitutional relationship.

6.International identity is developed effectively through meeting international standards and obligations which are important components of the Isle of Man's international identity.

7.The UK will clearly identify its priorities for delivery of its international obligations and agreements so that these are understood, and can be taken into account, by the Isle of Man in developing its own position.

8.The activities of the UK in the international arena need to have regard to the Isle of Man's international relations, policies and responsibilities.

9.The UK and the Isle of Man will work together to resolve or clarify any differences which may arise between their respective interests.

10.The Isle of Man and the UK will work jointly to promote the legitimate status of the Isle of Man as a responsible, stable and mature democracy with its own broad policy interests and which is willing to engage positively with the international community across a wide range of issues." [3]

Footnotes

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2 For a fuller analysis of the characteristics of tax havens and the position of the Isle of Man, reference may be made to P. Beckett's books Tax Havens and International Human Rights (Routledge, London and New York, October 2017), and Ownership, Financial Accountability and the Law: Transparency Strategies and Counter-Initiatives (Routledge, London and New York, May 2019) and An Anatomy of Tax Havens: Europe, the Caribbean and the United States of America (De Gruyter, Berlin, November 2023).

3 https://www.gov.im/media/622895/iominternationalidentityframework.pdf.

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Relationship with the EU

Pre-Brexit status

IOM-02 It is important to record the status of the Isle of Man in relation to the EU and to EU jurisprudence, legislation and institutions prior to the withdrawal of the UK from the EU (Brexit) because upon Brexit what had been integrated into Isle of Man law throughout the period from 1972 is to be retained in that form in Isle of Man law (see para.IOM-2A).

The Isle of Man had a special relationship with the EU. The Treaty of Rome provided for its application to all European territories for whom a member state is responsible. In the case of the UK, however, a Third Protocol was added to the United Kingdom Treaty of Accession of 1972. This provided that the Treaty of Rome does not apply to the Isle of Man save that the Isle of Man was included within the customs territory of the EU and was subject to the rules on the free movement of goods (see art.227(5)(c) of the Treaty of Rome—this interpretation was reaffirmed in a written reply by the President of the Commission of the European Union in 1991 (Question 2103/91, OJC 103/33)). The Isle of Man therefore formed part of the European Union Single European Market. European Union taxation and competition rules did not apply to the Isle of Man. In *Department of Health and Social Security (Isle of Man) v Barr (C355/89) [1991] E.C.R. I-3479* the Court of Justice of the EC ruled that all courts and tribunals of the Isle of Man were courts empowered to refer questions to the European Court of Justice under art.177 of the Treaty of Rome, even though such courts do not form part of the court system of the UK. President Mancini delivering the judgment of the Court stated:

> "… the jurisdiction conferred on the court by art.177 of the Treaty [of Rome] extends to Protocol No.3. Furthermore, it would be impossible to ensure the uniform application of Protocol No. 3 in the Isle of Man if its courts and tribunals were unable to refer questions to the court concerning the interpretation of the Protocol, the interpretation and validity of the Community legislation to which the Protocol refers, and the interpretation and validity of measures adopted by the Community institutions on the basis of Protocol No. 3."

The decision thus delivered by the Court of Justice of the EC was subsequently held by the Isle of Man appeal court to bind the Isle of Man court which referred the question (namely that of the Deputy High Bailiff). Although in theory the Deputy High Bailiff was entitled to make a finding of law contrary to the ruling of the European Court, which was expressed to be for guidance only, "it is inconceivable that he will not now regard the ruling as binding" (per Hytner JA delivering the judgment of the Staff of Government Division in *Re Barr and Anglo International Holdings Ltd 1990–1992 M.L.R. 398*).

The Treaty on EU (the "Maastricht" Treaty) and the Agreement on the European Economic Area (1992) applied as part of the law of the Isle of Man (with effect from 21 June 1994—European Communities (Amendment) Act 1994) but only to the limited extent set out in the Third Protocol.

Article 1

1. The Community rules on customs matters and quantitative restrictions, in particular those of the Act of Accession, shall apply to the Channel Islands and the Isle of Man under the same conditions as they apply to the UK. In particular, customs duties and charges having equivalent effect between those territories and the Community, as originally constituted and between those territories and the new Member States, shall be progressively reduced in accordance with the timetable laid down in arts 32 and 36 of the Act of Accession. The Common Customs Tariff and the ECSC unified tariff shall be progressively applied in accordance with the timetable laid down in arts 39 and 59 of the Act of Accession, and account being taken of Arts 109, 110 and 119 of that Act.

2. In respect of agricultural products and products processed therefrom which are the subject of a special trade regime, the levies and other import measures laid down in Community rules and applicable by the United Kingdom shall be applied to third countries.

Such provisions of Community rules, in particular those of the Act of Accession, as are necessary to allow free movement and observance of normal conditions of competition in trade in these products shall also be applicable.

The Council, acting by a qualified majority on a proposal from the Commission, shall determine the conditions under which the provisions referred to in the preceding sub-paragraphs shall be applicable to these territories.

Article 2

The rights enjoyed by Channel Islanders or Manxmen in the UK shall not be affected by the Act of Accession. However, such persons shall not benefit from the Community provisions relating to the free movement of persons and services.

Article 3

The provision of the Euratom Treaty applicable to persons or undertakings within the meaning of art.196 of that Treaty shall apply to those persons or undertakings when they are established in the aforementioned territories.

Article 4

The authorities of these territories shall apply the same treatment to all natural and legal persons of the Community.

Article 5

If, during the application of the arrangements defined in this Protocol, difficulties appear on either side in relations between the Community and these territories, the Commission shall without delay propose to the Council such safeguard measures as it believes necessary, specifying their terms and conditions of application.

The Council shall act by qualified majority within one month.

Article 6

In this protocol, Channel Islander or Manxman shall mean any citizen of the UK and Colonies who holds that citizenship by virtue of the fact that he, a parent or grandparent was born, adopted, naturalised or registered in the Island in question; but such a person shall not for this purpose be regarded as a Channel Islander or Manxman if he, a parent or grandparent was born, adopted, or naturalised or registered in the UK. Nor shall he be so regarded if he has at any time been ordinarily resident in the UK for five years.

The administrative arrangements necessary to identify those persons will be notified to the Commission.

Post-Brexit status

IOM-02A The European Union and Trade Act 2019 repeals the European Communities (Isle of Man) Act 1973. "Exit day" is defined in s.4(1) as 23.00 on 31 January 2020.

The European Union and Trade Act 2019 (Withdrawal Agreement) Regulations 2020 were made under the 2019 Act and implement both the withdrawal agreement and the EEA EFTA separation Agreement into Manx law (so far as these two agreements extend to the Island).

The Regulations amend the 2019 Act to reflect the terms of these two agreements.

The Regulations also insert into the 2019 Act powers to make secondary legislation to further enable the agreements to be implemented domestically.

The UK and the EU agreed that the UK's exit from the EU would be followed by a time-limited implementation period, which lasted until 11.00 on 31 December 2020 ("IP completion day"). During the implementation period EU law continued to apply to the UK and (so far as it falls within the scope of Protocol 3) the Island under the terms set out in Pt 4 of the withdrawal agreement. As a result, the retention of EU law as Manx law took place at the end of the implementation period on IP completion day rather than on exit day.

Statutory documents made under that Act continue to have effect on and after IP completion day. Under s.7 EU direct legislation is retained as follows:

> (1)Any EU regulation, EU decision or EU tertiary legislation, as it has effect in EU law immediately before IP completion day, which—

(a)has legal effect in Manx law by virtue of s.2(1) of the European Communities (Isle of Man) Act 1973 immediately before IP completion day; and

(b)is prescribed by regulations made by the Council of Ministers for the purposes of this subsection, forms part of Manx law on and after IP completion day. […]

(2)The power to prescribe under subs.(1)(b) includes the power to prescribe—

(a)specific EU regulations, EU decisions or EU tertiary legislation either in their entirety or in part;

(b)a generic description or class of EU regulations, EU decisions or EU tertiary legislation;

(c)all EU regulations, EU decisions or EU tertiary legislation which have legal effect in Manx law by virtue of s.2(1) of the European Communities (Isle of Man) Act 1973 this this immediately before IP completion day; and

(d)any exemptions, exceptions or exclusions (whether specific or generic) from any prescribed EU regulations, EU decisions or EU tertiary legislation.

(3)Despite subss.(1) and (2), if only part of an EU regulation, EU decision or piece of EU tertiary legislation prescribed under subs.(1)(b) has legal effect in Manx law by virtue of s.2(1) of the European Communities (Isle of Man) Act 1973 immediately before IP completion day, the whole of that EU regulation, EU decision or piece of EU tertiary legislation forms part of Manx law on and after IP completion day unless regulations made under subs.(1)(b) expressly provide otherwise.

(4)Only EU regulations, EU decisions or EU tertiary legislation which are operative immediately before IP completion day can form part of Manx law on and after IP completion day under subs.(1).

(5)For the purposes of this Act, any EU regulation, EU decision or EU tertiary legislation is operative immediately before IP completion day if—

(a)in the case of anything which comes into operation at a particular time and is stated to apply from a later time, it is in operation and applies immediately before IP completion day;

(b)in the case of a decision which specifies to whom it is addressed, it has been notified to that person before IP completion day; and

(c)in any other case, it is in operation immediately before IP completion day.

(6)Any EU regulation, EU decision or EU tertiary legislation which has legal effect in Manx law by virtue of s.2(1) of the European Communities (Isle of Man) Act 1973 immediately before IP completion day, but which does not fall within subs.(1), ceases to have effect in Manx law on and after IP completion day.

[...]

(9)A certificate issued by or under the authority of the Attorney General stating that any EU regulation, EU decision or EU tertiary legislation did or did not have legal effect in

Manx law (either in its entirety or in part) by virtue of s.2(1) of the European Communities (Isle of Man) Act 1973 immediately before IP completion day is evidence of that fact. [1]

Relationship with the OECD

IOM-02B The Isle of Man is a member of the Organisation for Economic Co-operation and Development (OECD), the UK Government at the request of the Isle of Man Government having declared in 1990 that the OECD Convention applies to the Isle of Man. Isle of Man financial products and financial services therefore have access to markets where membership of the OECD is a requirement. The Isle of Man became a member of the World Trade Organisation in January 1998.

OECD Global Forum on Transparency 2017

As a result of entering into various TIEAs and related agreements, the Isle of Man was included on the OECD "White List" of 40 jurisdictions that had substantially implemented internationally agreed tax standards, published following the G20 meeting in London on 2 April 2009.

On 17 November 2017, the OECD reported:

> "The Global Forum concluded that the Isle of Man continues to be Compliant with the international standard on transparency and exchange of information upon request. The Isle of Man's legal framework for the availability of ownership, accounting, and banking information is in place and legal obligations are subject to proper oversight. The new obligation of availability of beneficial ownership information was previously primarily addressed under the anti-money laundering rules. To address the gap relating to entities that are not required to engage an anti-money laundering obliged service provider, the Isle of Man passed the Beneficial Ownership Act 2012 [now replaced by the Beneficial Ownership Act 2017, as further amended by the Beneficial Ownership (Amendment) Act 2021], which now extends obligations to identify the beneficial owner(s) to all relevant entities except for general partnerships. Provisions requiring entities to hold and register information on their beneficial owners. Isle of Man has successfully exchanged both legal and beneficial ownership information in practice. The Isle of Man also addressed a weakness identified in its practice during the last round of reviews, namely the sharing information received under an EOI request with the financial intelligence authority. In terms of exchange of information, the Isle of Man has been commended by peers for its highly efficient and cooperative EOIR practice."" [2]

Footnotes

1 The full text of the European Union and Trade Act 2019 (as amended) is available online at: https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2019/2019-0002/EuropeanUnionandTradeAct2019_7.pdf.

2 http://www.oecd.org/countries/isleofman/global-forum-on-transparency-and- exchange-of-information-for-tax-purposes-isle-of-man-2017-second-round- 9789264283770-en.htm [no longer available online].

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Sources of law

IOM-03 The Isle of Man has its own legal system. The High Court of Justice in the island is presided over by three "Deemsters". These are the island's senior judges, and the office derives from the time of the Scandinavian kings when a Deemster was the guardian of the island's traditional, unwritten law (still known today, as "Breast Law").

The sources of law in the island are various. They comprise:

(a)"Breast Law" (a non-precedent forming system of equitable relief, infrequently applied and largely confined to matters of real property);

(b)Acts of Tynwald and (where extended to the Isle of Man or adopted by Order in Council) of the UK Parliament;

(c)secondary legislation in the form of Isle of Man government circulars, orders, regulations and extra-statutory concessions;

(d)Rules of Court [1] ;

(e)practice notes issued by the Isle of Man revenue authority, the Assessor of Income Tax;

(f)the rules of English and Commonwealth common law and equity (insofar as there is no local rule or custom to the contrary, as to which see below);

(g)international treaty obligations extended to the Isle of Man by the UK Parliament; and

(h)EU law retained under the provisions of the European Union and Trade Act 2019.

The relationship between the Isle of Man courts and the Privy Council and the House of Lords (now, the Supreme Court of the UK) was restated by Acting Deemster Hytner, delivering the judgment of the Staff of Government Division in *T v R 1995 (unreported)*:

> "First it must be appreciated that in those independent Commonwealth countries which accept the jurisdiction of the Privy Council, some loss of independence is accepted. Decisions of the Staff of Government Division are subject to appeal to the Privy Council and decisions of the Privy Council are binding on Manx courts—as they are in all countries however independent who accept its jurisdiction. Furthermore, by convention, decisions of the House of Lords whilst not constitutionally and legally binding on the [Isle of Man] are regarded as of high persuasive authority by the Manx courts. Indeed all common law jurisdictions feed off each other."

There have been developments in the Isle of Man, in recent years, on the degree of persuasive authority, in Isle of Man courts, of decisions of the English appellate courts. The current state of this area of law does not yet appear to be definitively settled.

The traditional position was as set out by Lord Ackner, on behalf of the Privy Council, in *Frankland and Moore v R 1987–1989 MLR 65*:

> "Decisions of England courts, particularly decisions of the House of Lords and the Court of Appeal in England, are not binding on Manx courts, but they are of high persuasive authority, as was correctly pointed out by Glidewell JA in giving the judgment of the Staff of Government Division (Criminal Jurisdiction). Such decisions should generally be followed unless either there is some provision to the contrary in Manx statute or there is some clear decision of a Manx court to the contrary, or, exceptionally, there is some local condition which would give good reason for not following the particular English decision. The persuasive effect of a judgment of the House of Lords, which has largely the same composition as the Judicial Committee of the Privy Council, the final Court of Appeal from a Manx court, is bound to be very high."

A further gloss was added by the decision of the Isle of Man Appeal Court in *Re Barr and Anglo International Holdings Ltd 1992*:

> "In the absence of a corpus of Manx law, English common law applies but without slavishly applying English judicial decisions where these have been overturned by [British] Parliamentary Statute. Therefore such part of the English common law as has been preserved by Parliament represents the Manx common law."

(Per Hytner, JA, delivering the judgment of the Staff of Government Division.)

However, in *In re Impex Services Worldwide Ltd 2003-2005 MLR 115 (judgment 26 January 2004)*, Deemster Doyle (then Second Deemster) referred to *Frankland* as (only) the *"starting point"*, adding:

> "49.… The Manx courts have also been assisted by consideration of authorities from Commonwealth… and other common law jurisdictions.
>
> 50.There is no doubt that Manx law has, and will continue to be, heavily influenced by English law. There is also no doubt that Manx common law will continue to develop to meet the needs of the local and international community.
>
> 51.We have not always followed English decisions…
>
> 54.Deemsters have not been slow to develop Manx common law where necessary…
>
> 57.The Deemsters… have never been slow to develop Manx common law where such development has been necessary in the interests of justice…"

In *Bitel v Kyrgyz Mobil & others (judgment 30 November 2007)*, Deemster Doyle referred to Lord Ackner's comments in *Frankland*, and stated:

> *"533. Manx law has developed significantly since Lord Ackner uttered those words over twenty years ago now"."*

He concluded:

> "541. In addition to applying our own local precedents Manx courts will also continue to benefit from the learning and reasoning of judgments of the English courts and "other great common law courts" including the High Court of Australia"."

Bitel was ultimately appealed to the Privy Council (the final court of appeal for the Isle of Man). Interestingly, the Staff of Government Division had held in the same case — on the issue of whether courts ought not to be bound to enforce judgments obtained by fraud — that:

> "… it would [be] inappropriate that Manx law should differ from English law on a point so long-standing, especially in circumstances in which the House of Lords has had the opportunity, relatively recently, to consider whether or not to overrule a decision, and has declined to do so"."

The Staff of Government Division referred, in *Gilberson & others v Dominator (judgment 1 May 2009)*, to Lord Ackner's comments in *Frankland*, and stated:

> "92.For the purposes of this appeal it is unnecessary for this court to express any view as to whether or not such dicta have the same force today as they had over 20 years ago. However, even without the benefit of full argument on such issue, we are bound to express some doubt whether they do so in the context of a jurisdiction which is becoming increasingly independent of English statutes and procedure and

> is frequently choosing to be informed by or to adopt the common law and practices found in jurisdictions other than England.
>
> 93.Similarly it may be that this court's decision in In the Matter of the Petition of Cussons [2001–03] MLR 539, at 548, where this court stated :
>
> > 'The correct approach seems to us to be to establish the English precedent …and to follow that precedent unless there is any justification to depart from it in line with *Frankland v R*.'
>
> will need at some stage to be reconsidered."

In *Hamblett v HMAG (judgment September 2013)*, a criminal appeal, the Staff of Government Division (including Deemster Doyle) referred to *Gilberson*, and stated:

> "40.In the past this court had frequently emphasised that local conditions may justify a different approach to that adopted in England and Wales… Moreover in *Invercargill City Council v Hamlin [1996] 1 All ER 756* the Privy Council expressly held that the New Zealand Court of Appeal was entitled to develop the common law of New Zealand in areas of the common law which were developing and not settled.
>
> 41.We are now satisfied that we should go further… Whether or not the local conditions on the Island justify that the Island should no longer base sentencing policy for offences involving Class A drugs on the guidelines established by the courts in England and Wales, we are satisfied that it is open to Manx courts to adopt different sentencing guidelines from those adopted in courts in England and Wales whenever it believes that the circumstances justify such an approach. The Isle of Man is a separate jurisdiction and in our judgment this court is entitled to set out its own sentencing guidelines for particular offences. In determining such local guidelines this court may have regard to guidelines in other jurisdictions such as England and Wales if it so wishes but remains free to set down whatever guidelines it sees fit in the best interests of the Isle of Man."

In *Lombard Manx Ltd v The Spirit of Montpelier Limited (in Liquidation) (judgment 1 December 2014)* Deemster Doyle again called into question the narrow view in *Frankland* and reviewed not only English authorities but also those of New Zealand. On appeal, the Staff of Government Division, in *Sprit of Montpelier & other v Lombard Manx Ltd (judgment 18 June 2015)*, applied *Frankland*, albeit expressly recognising the ability of Manx courts to formulate Manx law in a way considered most appropriate for the needs, requirements and interests of the Island and wider international community.

Whilst the above represents the view of Deemster Doyle, the First Deemster, the current state of this area of law does not yet appear to be definitively settled: there are differing views within the Manx judiciary on this issue.

Deemster Corlett, the Second Deemster, has recently and without qualification applied *Frankland*, in *Henderson & another v LCL International (judgment 30 April 2015)*. Specifically as to the applicability, in the Isle of Man, of English case-law decided under the CPR in England and Wales, Deemster Corlett also stated in *Hudson v Department of Health (judgment 1 May 2013)*:

> "… one of the main reasons for the introduction of the 2009 Rules of Court [the Rules of the High Court of Justice of the Isle of Man 2009] was so that the Manx Courts could benefit from the tried and tested English Civil Procedure Rules and benefit from the decisions of the English Courts on those rules. It was becoming increasingly difficult for this Court to reliably deal with applications under the old 1952 Rules. As I say one of the main reasons for the introduction was so that we could rely on English authority, bearing in mind always that the Court has an overriding ability in certain cases, where there is good reason, not to follow those decisions….”."

All references in this chapter to statutes are to those of Tynwald, unless otherwise stated.

Copies of Isle of Man primary and secondary legislation and related materials can be obtained directly from the Legislation Online website, maintained by the Isle of Man Government (http://www.legislation.gov.im).

Footnotes

1 https://www.courts.im/rules-of-court/.

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International Human Rights

IOM-03A Until the late 20th century the UK took direct responsibility for the negotiation and ratification of international instruments which extended to the Isle of Man. There is now a developing convention that Tynwald no longer merely consents to the extension to the Isle of Man of such instruments, but itself negotiates ratification.

The following international human rights instruments apply in the Isle of Man:

- Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (generally referred to as the European Convention on Human Rights), as applied by the Human Rights Act 2001.
- International Covenant on Civil and Political Rights 1966 (effective 1976)
- International Covenant on Economic, Social and Cultural Rights 1966 (effective 1976).
- Convention on the Elimination of All Forms of Discrimination against Women 1979 (effective 1986).
- United Nations Convention on the Rights of the Child 1989 (effective 1994).

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IOM-04 Individuals

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Individuals

IOM-04 The age of majority is 18 (Family Law Reform (Isle of Man) Act 1971 s.1) and any individual over that age has full legal capacity to enter into legal transactions save insofar as that capacity may be limited by mental incapacity. In the case of anticipated mental impairment it is possible for an individual to grant to a third party a power of attorney to manage his or her affairs from that point in time at which the incapacity manifests itself (the activation of the power being subject to the approval of the High Court) (Powers of Attorney Act 1987).

The Capacity Act 2023 [1] (not yet in force) makes provision for lasting Powers of Attorney, defined in s.12(1) as: (1) A lasting power of attorney is a power of attorney under which an individual donor confers on one or more donees authority to make decisions about either or both of the following,— (a) the donor's health and welfare or specified matters concerning the donor's health and welfare; (b) the donor's property and financial affairs or specified matters concerning the donor's property and financial affairs, and which includes authority to make such decisions in circumstances where the donor no longer has capacity.

An English enduring power of attorney which has been registered at the Court of Protection in England (and if created before 1 October 2007, the Enduring Powers of Attorney (Prescribed Form) (Amendment) Regulations 2007 (SD 857/07, effective 23 November 2007)) must, if it is to be relied upon in the Isle of Man, be registered with the High Court of Justice of the Isle of Man in accordance with the procedures laid down for Isle of Man enduring powers of attorney in the Powers of Attorney Act 1987.A certified copy of the English original is acceptable. No corresponding enabling legislation has been introduced with regard to English lasting powers of attorney (which superseded the form of enduring power with effect from 2 October 2007).

The Powers of Attorney Act 1983 s.8A (introduced with effect from 1 July 1996 under the Law Reform (Miscellaneous Provisions) Act 1996) makes provision for the Council of Ministers by order to provide that powers of attorney drawn under the laws of specified overseas countries will be effective in the Isle of Man as if made under Isle of Man law.

Footnotes

1 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2023/2023-0001/CapacityAct2023_1.pdf.

IOM-05 General and limited partnerships

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General and limited partnerships

IOM-05 Partnerships are governed by the Partnership Act 1909 (as amended), which is based on the Partnership Act 1890 and the Limited Partnerships Act 1907 (each of the United Kingdom Parliament and dealing with partnership law in England and Wales). However, Isle of Man partnerships are in some crucial respects very different from their source models.

A partnership is defined as "the relationship which subsists between persons carrying on a business in common with a view to profit" (Partnership Act 1909 s.4(1)). Partnerships are generally limited to a maximum of 20 members (Companies Act 1931 s.325) but there is no limit on the number of partners in a professional partnership (such as advocates, accountants or stockbrokers).

A partnership does not have legal personality separate from the individual legal personalities of its members. In the case of a *general* partnership, each partner is jointly and severally liable for the debts of the partnership, and each is required to account for his or her share of the profits to the Assessor of Income Tax in the Isle of Man.

The Partnership Act 1909, however, makes provision (in Pt II) for "limited partnerships". A general partner (or more than one, if required) is responsible for the day-to-day running of the partnership and has unlimited liability. The liability of the remaining, limited partners is restricted in money terms to the amount of capital each has paid in. The limited partners are not individually responsible for the debts of the partnership as a whole.

Limited liability is lost if the limited partner attempts to manage the partnership (which function is reserved to the general partner). However, there is some flexibility, and s.49(1A) of the Partnership Act 1909, introduced by the International Business Act 1994, provides that a limited partner is not to be treated as taking part in the management of the partnership business by merely:

(a)being a contractor for or an agent or employee of the limited partnership or of a general partner;

(b)consulting with and advising a general partner with respect to the business of the limited partnership;

(c)investigating, reviewing, approving or being advised as to the accounts or business affairs of the limited partnership;

(d)acting as surety or guarantor for the limited partnership either generally or in respect of specific obligations;

(e)approving or disapproving an amendment to the limited partnership agreement;

(f)voting as a limited partner in any matter relating to the affairs of the limited partnership.

Any activity of the limited partner not included in the list will be judged on its facts as to whether or not it has resulted in a loss by the partner concerned of his or her limited liability status.

The Limited Liability Companies Act 1996 s.52(2) contains provisions relating to limited partnerships (included within that Act as a matter of legislative expediency). It introduces, inter alia, the Partnership Act 1909 s.49(1C), under which a limited partner is not to be treated as taking part in the management of the partnership business in such cases as the Treasury shall prescribe by regulation. Where so prescribed, the limited partner will have the power to bind the firm in such a case. Regulations are awaited.

Until the passing of the International Business Act 1994, it was not possible for a limited partner to withdraw from the limited partnership the capital which he or she had contributed, unless the limited partnership itself were dissolved. This restriction has now been removed, in situations where the limited partnership is solvent and able to pay its debts. This does not result in a dissolution of the limited partnership. The limited partner can also be relieved of any obligation to the limited partnership, such as a promise to contribute future capital, in the same way.

From 1 January 1995 a limited partnership must maintain a place of business in the Isle of Man which will at the same time serve as an address for service of proceedings in the Isle of Man (Partnership Act 1909 s.48A).

The Limited Partnership (Legal Personality) Act 2011 was granted royal assent and came into force on 18 October 2011. The effect of the legislation is to afford any new limited partnership, registered under the Partnership Act 1909, the option of adopting a legal personality that is separate from that of its partners.

End of Document

IOM-06 Audit and accounts

European Cross-Border Estate Planning

Other European States

Isle of Man

Isle of Man

Part I General Law

Legal persons and organisations

Companies formed under the Companies Acts 1931–2004

Audit and accounts

IOM-06 Pursuant to the Companies Act 1982, every company is required to maintain accounts, and these have to be presented to a general meeting of the members of the company at least once a year. However, a private company can elect not to present its accounts at such meetings (but it is open to the members to require this notwithstanding) (Companies Act 1982 ss.2A and 2B, introduced by Companies Act 1992 Sch.4). This is an example of the current policy (on the part of the Isle of Man Government) to move towards the deregulation of private companies in the Isle of Man. This will be of significant benefit to small and medium-sized family companies and also to smaller private companies held by institutional investors.

A *private* company is not required to file its accounts on the company file held at the Companies Registry. A public company must do so (Companies Act 1931 s.109(3)).

Section 3A of the Companies Act 1982 (introduced by the Companies (Amendment) Act 2009 s.16) requires the directors of a company, in determining how amounts are presented within items within the profit and loss account (or income and expenditure account) and balance sheet, to have regard to the substance of the reported transaction or arrangement "in accordance with generally accepted accounting principles or practice". These standards are defined in s.3A(4) as those accounting standards and practices recommended by:

(a)the International Accounting Standards Board (International Financial Reporting Standards);

(b)the Accounting Standards Board (United Kingdom Accounting Standards ((UK GAAP); or

(c)the Financial Accounting Standards Board, the Government Accounting Standards Board or the Federal Accounting Standards Advisory Board (US GAAP).

Every company must appoint auditors. However, in the case of a private company which is dormant, the company may by special resolution elect not to appoint auditors (and a company is dormant if during the period in question there have been no significant accounting transactions) (Companies Act 1982 s.12A, introduced by the Companies Act 1992 Sch.4). This does not apply to a dormant company which is a public company, or which holds a banking or investment business licence or which is a financial adviser permitted to carry out its activities as a "permitted person" under the Financial Services Act 2008.

The Companies (Audit Exempt) Regulations 2007 (SD 107/07) (which apply to private companies formed under the Companies Acts 1931–2004) apply in respect of periods of account with an accounting date commencing on or after 6 April 2007 and subsequent years. [1]

A company is "audit exempt" in any financial year if:

(a)at least two of the following conditions are met:

(i)its turnover in that year in that year does not exceed £5.6 million;

(ii)its balance sheet total does not exceed £2.8 million at any time during that year;

(iii)it employs no more than 50 persons at any time during that year; or

(b)throughout that year, all its members are directors and it exists wholly for the purpose of holding shares, securities, other investments or land.

Turnover for these purposes means the amounts derived from the provision of goods and services falling within the company's ordinary activities, after deduction of trade discounts, value added tax and any other taxes based on the amount so derived.

A company which is a member of a group which is required to prepare consolidated group accounts under s.4 of the Companies Act 1982 may only elect to become an audit exempt company provided the group in aggregate satisfies the conditions set out above.

A resolution for the purpose of making an election does not take effect unless 100 per cent of the members of the company have voted in favour of the resolution. A member of the company may at any time give the company written notice that the member requires the rescission of an election, and the company then must within 21 days of such notice appoint an auditor. A subsequent 100 per cent vote of the members is sufficient to reinstate the audit exempt election.

Sections 17B and 17C of the Companies Act 1982 (introduced by the Companies (Amendment) Act 2009 s.19) empowers the Isle of Man Financial Services Authority to make public oversight regulations, subjecting auditors of companies to prescribed systems of public oversight, quality

assurance and investigations and penalties; and to make accounting regulations which may add to, modify or repeal provisions of the Companies Acts 1931–2004.

The Companies (Transfer of Domicile) Act 1998 [2]

IOM-07 It was perhaps an inevitable consequence of the development of the idea that a company has a legal personality separate from that of its members that it should be able to share some of the characteristics of natural legal persons. An individual is capable of changing his or her domicile as circumstances dictate. The principle of re-domiciliation of a company is already contained within Isle of Man law under the provisions of the Insurance Act 1986 Sch.3A. Under the Insurance Act 1986, it is possible for a limited category of insurance companies to transfer their operations to the Isle of Man, and, correspondingly, for Isle of Man incorporated insurers to transfer their operations abroad. The Act came into force on 1 June 1998 and applies to companies formed under the Companies Acts 1931–2004 (companies formed under the Companies Act 2006 are subject to a similar regime (ss.162–172).

The Companies (Transfer of Domicile) Act 1998 follows closely the pattern laid down in the earlier legislation. Previously restricted to listed companies (a restriction removed under the provisions of the Companies, Etc. (Amendment) Act 2003 with effect from 19 December 2003), the 1998 Act now applies to all companies other than those, whether incorporated outside the Island moving in, or inside the Island and moving out, which are engaged in banking, insurance, investment or corporate service provider business (or such other business as the Treasury may prescribe from time to time).

The principal control mechanism within the 1998 Act is that consent to the transfer of domicile is in the grant of the Isle of Man Financial Services Authority which has the power to require such information as it thinks fit before reaching its decision (s.2(2)(g)) in the case of companies seeking to come to the Isle of Man and s.9 in the case of companies seeking to leave the Isle of Man). Further, the Treasury may require proof to its satisfaction that the company has obtained all necessary authorisations required under the laws of the country *in which it was incorporated* to enable the company to make the application (s.2(2)(a)).

In addition, in the case of a company seeking to transfer its domicile to or from the Isle of Man, the company must obtain a certificate signed by an advocate (or by a lawyer in the Isle of Man registered under the Legal Practitioners Registration Act 1986) to the effect that the advocate has made such enquiries as are reasonable in the circumstances and as a result of those enquiries believes that the application complies with the Act and that "matters precedent and incidental thereto have been complied with" (ss.2(2)(f)) and 8(2)(g)).

Transfer to the Isle of Man

IOM-08

The legislation provides that for companies transferring their domicile to the Isle of Man they will upon transfer become subject to the terms of the Companies Acts 1931–2004, and this includes the continuance of any charges upon the assets of the company which must be registered accordingly.

Section 6 of the Act provides that following the transfer of domicile of an offshore company into the Isle of Man:

(a)the property of the offshore company continues to be the property of the continued company;

(b)the continued company continues to be liable for the obligations of the offshore company;

(c)any existing course of action, claim or liability to prosecution in respect of the offshore company is unaffected;

(d)any civil, criminal or administrative action or proceeding pending by or against the offshore company is unaffected; and

(e)any conviction against, or any ruling, order or judgment in favour of or against the offshore company may be enforced by or against the continued company.

To avoid any mismatch between proceedings brought against the company prior to the transfer of its domicile and an attempt to continue those proceedings in the Isle of Man, s.6(3) of the Act provides that the Isle of Man courts are to apply the laws of evidence and the rules of procedure "with the intent that no claimant against the continued company shall be prejudiced in pursuing in or under the laws of the Island a claim that existed prior to the date of continuance and which could have been pursued under the laws then governing the offshore company".

To the extent that a judgment made against the company prior to its transfer of domicile to the Isle of Man is a final judgment and there is payable under the judgment a sum of money, the provisions of the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968 will not apply. The 1968 Act would otherwise operate to require any foreign judgment (other than those from a restricted list of countries) to be re-litigated in the Isle of Man on its merits.

A further extension of the principle that a company transferring its domicile to the Isle of Man cannot thereby escape its liabilities is contained in s.6(6) of the Act where it is expressly stated that a reference to a judgment includes "judgments for taxes or other charges of a like nature or in respect of a fine or other penalty".

Transfer from the Isle of Man

IOM-09 The provisions relating to the transfer of domicile by an Isle of Man company outside the Isle of Man closely follow those contained in respect of insurance companies under the Insurance Act 1986. In particular, there must be a majority vote of 75 per cent of each class of members

authorising the continuance of the company in a named country or territory outside the Isle of Man and the directors of the company must by statutory declaration confirm that the company is solvent and can meet all of its liabilities and obligations and that the discontinuance will not adversely affect the interests or rights of creditors and shareholders (s.8(2)). The directors of the Isle of Man company must agree to accept the jurisdiction of the Isle of Man courts in any action which is commenced prior to the discontinuance of the company in the Isle of Man and appoint a local agent who for a period of not less than three years from the date of discontinuance is authorised to accept service of proceedings (s.8(2)(d)).

Holders of all charges registered under the Companies Act 1931 s.79 must confirm that they consent to the discontinuance.

In order that the Isle of Man company does not attempt to transfer its domicile to another jurisdiction where reciprocal rights of transfer have not been brought into effect, s.12 provides that no Isle of Man company is eligible for continuation as a body corporate under the laws of any other country or territory unless at the time of application the laws of that country or territory provide, in effect, that when a company is continued as a body corporate in that country or territory:

(a)the property of the company continues to be the property of the body corporate;

(b)the body corporate continues to be liable for the obligations of the company;

(c)any existing course of action, claim or liability to prosecution in respect of the company is unaffected; and

(d)any conviction against or any ruling, order or judgment in favour of or against the company may be enforced by or against such body corporate.

General regulations

IOM-09A The Companies (Transfer of Domicile) (General) Regulations 1998 (Statutory Document 254/98) provide for the following matters:

(a)the form of Memorandum of Continuance for an offshore company under Pt 1 of the Act;

(b)the form of the Certificate of Registration of the Memorandum of Continuance for a company continued under Pt 1 of the Act;

(c)the form of the Certificate of Discontinuance under Pt 2 of the Act;

(d)the form of application and time limit for a review of a decision under the Act.

Fees

IOM-09B

The Companies (Transfer of Domicile) (Fees and Duties) Order 2013 (SD 0247/13) provides that the following fees are payable:

(a)for the registration of a Memorandum of Continuance under s.4(2) of the Act—£100;

(b)for each issue of any duplicate Certificate of Registration of the Memorandum of Continuance under s.4(2) of the Act—£15;

(c)for the filing of the Instrument of Continuance under s.10(2) of the Act—£56;

(d)for each issue of any duplicate Certificate of Registration of the Instrument of Continuance under s.10(2) of the Act—£15;

(e)for an application submitted under s.2(1) or s.8(1) of the Act—£3,000; and

(f)for each application where the Isle of Man Government Treasury is satisfied that the applicant is a member of a group of companies and another member of that group has made an application—£1,200.

Practice Notes have been issued by the Department of Economic Development in respect of transfers from and transfers to the Isle of Man under the Companies (Transfer of Domicile) Act 1998. [3]

General

IOM-10 All companies incorporated in the Isle of Man on or after 1 June 1988 under the Companies Acts 1931–2004 have all the powers of a natural legal person (Companies Act 1986 s.2(1)), as do companies incorporated in the island before that date electing to be governed by the new regime. The constitutional documents of such a company (the memorandum and articles of association) do not need to set out the details of why the company was formed or what its purpose is to be —these remain confidential. Any third party dealing with the company can, in the absence of actual knowledge to the contrary, assume that the company is fully empowered to enter into the transaction in question and is bound by it. The ultra vires rule has therefore been abolished with regard to bona fide third parties. This has not, however, deprived the members of a company from obtaining redress, and any such member is permitted to raise the matter with the company's directors.

The day-to-day management is in the hands of the directors, who must be at least two in number. Corporate directors are not permitted. There must also be a company secretary: corporate secretaries are permitted, except in the case of public companies (when a suitably qualified professional must be appointed). Specific matters may be put to the members either at an annual general meeting or at a meeting called especially for the purpose (an extraordinary general meeting). A private company (limited by shares or by guarantee) is permitted to have a single member if it so chooses (Single Member Companies Act 1993), otherwise a minimum of two members is usual.

Private companies (other than charitable companies) are permitted, where all members elect in writing, to dispense with the requirement to hold an annual general meeting (Companies Act 1931 (Dispensation for Private Companies) (Annual General Meetings) Regulations 2010 (SD 829/10, effective 1 November 2010)).

The names of the shareholders are filed at the Companies' Registry in Douglas and are available for public inspection. It is therefore commonly found that the shares are registered in the names of nominees. The names of guarantee members are not required to be filed for public inspection (existing s.108 of the Companies Act 1931) but under new provisions (not yet in force) the company's annual return will have to state the number of such members and the aggregate of the amount guaranteed (Companies Act 1931 ss.108 and 108A).

Form

IOM-11 Companies incorporated in the Isle of Man under the Companies Acts 1931 to 2004 are either public or private, limited or unlimited. They may have a share capital, or guarantee members, or a combination of the two.

A company is public unless its constitutional documents expressly prohibit any invitation to the public to subscribe for shares in or debentures of the company (Companies Act 1931 s.26). The majority of companies incorporated in the Isle of Man elect to have private status. A cosmetic change introduced by s.29 of the Companies Act 1992 is that all public companies incorporated on or after 1 October 1992 must end their names with "public limited company" or "Plc". Public companies incorporated before that date can resolve to adopt the new style. This does not amount to a formal change of name, being merely a changed designation, but the Isle of Man Financial Services Authority will issue a certificate confirming the changed designation.

The majority of companies have limited liability, which means that individual liability of the members is restricted to the amount of capital which each has subscribed or agreed to subscribe, or, in the case of a guarantee member, has agreed to pay in the event of a call on the guarantee. Unlimited liability would be chosen in the case of non-profit making companies, such as charities.

The most common form of ownership is as shareholders: the members contribute fixed amounts of capital to the company in exchange for shares, upon which dividend income may be earned or capital gains made. However, in certain cases an injection of capital is not required, and all that the member is called upon to do is to contribute at some future date a fixed amount. He or She gives the company a guarantee that such a contribution will be made (e.g. should the company prove to be insolvent).

Almost unique to the Isle of Man is the so-called "hybrid" company, which is a company limited by guarantee *and* having a share capital. Originally introduced by the Tynwald in 1865, this form

is now governed by the Companies Act 1931 and sample constitutional documents are found in Table D of the Companies (Memorandum and Articles of Association) Regulations 1988. Such companies can be structured to act analogously to trusts, yet avoid the problems which the recognition of trusts encounters in civil law countries. Essentially, the directors and shareholders act in a fiduciary capacity, with the guarantee members remaining as the "beneficiaries" of this "incorporated trust".

IOM-12 The Companies (Private Placement) (Prospectus Exemptions) Regulations 2000 came into force on 1 January 2001. These supplement the definition of an offer to the public made in Companies Act 1931 s.342. They apply only to companies formed under the Companies Acts 1931–2004.

The Regulations define a "private placement" as being the issue of a prospectus by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of a company to:

(a)persons whose ordinary activities involve them in acquiring, holding, managing or disposing of shares or debentures (as principal or agent) for the purposes of their businesses;

(b)persons who it is reasonable to expect will acquire, hold, manage or dispose of shares or debentures (as principal or agent) for the purposes of their businesses;

(c)a restricted circle of persons whom the issuer of the prospectus reasonably believes to be sufficiently knowledgeable to understand the risks involved in accepting the offer in the prospectus; or

(d)a restricted circle of persons numbering no more than fifty whom it is reasonable to believe will acquire any shares or debentures which are the subject of the offer in the prospectus for investment purposes and not with a view to their imminent resale.

The prospectus requirements contained in the Companies Act 1931 do not apply to a private placement.

IOM-12A Practice Notes have been issued in respect of companies formed under the Companies Acts 1931–2004, copies of which can be downloaded at https://gov.im/categories/business-and-industries/companies-registry/practice-notes/#accordion. Fee details are also available for download at https://gov.im/categories/business-and-industries/companies-registry/fees/.

Foreign Companies Act 2014 [4]

IOM-12B The Act inter alia repeals Pt XI Companies Act 1931 dealing with the registration of foreign companies operating in the Isle of Man, and in s.4 expands the concept considerably:

1. *In this Act, foreign company means a person (by whatever name called) which — (a) has legal personality but is not an individual; and (b) is incorporated under the laws of a jurisdiction outside the Island.*

2. *Without limiting subsection (1), each of the following persons would be a foreign company if the person were incorporated under the laws of a jurisdiction outside the Island — (a) a company within the meaning of the Companies Act 1931; (b) a company to which the Companies Act 2006 applies; (c) a protected cell company within the meaning of the Protected Cell Companies Act 2004 or the Companies Act 2006; (d) an incorporated cell company within the meaning of the Incorporated Cell Companies Act 2010; (e) an incorporated cell within the meaning of the Incorporated Cell Companies Act 2010; (f) a company continued in the Island under Part 1 of the Companies (Transfer of Domicile) Act 1998; (g) a limited liability company to which the Limited Liability Companies Act 1996 applies; (h) a foundation to which the Foundations Act 2011 applies; and (i) a limited partnership to which Part II of the Partnership Act 1909 applies which has legal personality by virtue of section 48B of that Act.*

Guidance notes have been issued (19 August 2014): PN25/2014 is available at https://gov.im/media/1348348/pn25-for-foreign-companies-01-07-2014.pdf.

Protected Cell Companies Act 2004 [5]

IOM-12C With effect from 31 March 2004 the Protected Cell Companies Act 2004 came into force. Such companies are deemed formed under the Companies Acts 1931–2004. (The Companies Act 2006 has its own regime for such companies—see para.IOM-12D.) Initially the use of Protected Cell Companies (PCCs) is restricted to carrying on insurance business, but provision has been made within the Act to extend allowable uses of PCCs to other types of business. Secondary legislation is found in the Insurance (Protected Cell Companies) Regulations 2004 (SD 149/04) (subsequently as amended by the Insurance (Protected Cell Companies and Limited Partnerships) Amendment Regulations 2020 SD 2020/0144) and the Protected Cell Companies (Forms) Regulations 2004 (SD 150/04).

A PCC is a corporate body organised as to a core (the non-cellular assets) and cells. The total share capital of the PCC is divided into non-cellular (the assets of the PCC itself) and cellular (assets attributable to the cells) (Protected Cell Companies Act 2004 s.6). The PCC is nevertheless a single legal person and the creation by a PCC of a cell does not create, in respect of that cell, a legal person separate from the company (Protected Cell Companies Act 2004 s.2). Cellular and non-cellular assets must be separate from each other and separately identifiable (as must cellular assets be from other cellular assets) (Protected Cell Companies Act 2004 s.7).

Business transacted through a cell is therefore ring fenced from other business transacted by the PCC, at either a non-cellular or cellular level.

If any liability arises which is attributable to a particular cell of a PCC, then (in the absence of fraud or of any agreement to the contrary with the person in respect of whom the liability arises) the cellular assets attributable to that cell will be primarily liable. The non-cellular assets of the PCC will be secondarily liable, provided that the cellular assets attributable to the relevant cell have been exhausted. The liability will not be a liability of any cellular assets not attributable to the relevant cell. Any liability not attributable to a particular cell of a PCC will be the liability solely of the company's non-cellular assets (Protected Cell Companies Act 2004 s.17).

On any liquidation of the PCC the liquidator must deal with the company's assets in accordance with the requirements of s.7 and the general principles of the Act as generally found in s.17.

A company formed under the Companies Acts 1931–2004 may, regardless of its description or the business or class of business it carries on, be converted into a PCC (Protected Cell Companies (Eligibility) Regulations 2010 (SD 830/10, effective 1 November 2010)).

Incorporated Cell Companies Act 2010 [6]

IOM-12D The Incorporated Cell Companies Act 2010 received royal assent and came into force on 14 December 2010. It provides a framework for the operation of incorporated cell companies on the island. An Incorporated Cell Company (ICC) creates incorporated cells, each of which has its own separate legal identity. Each cell can hold assets and sue or be sued in its own name. This results in the assets and liabilities of any particular cell being protected from those of any other cell.

Protected Cell Companies, as described above, incorporated under the Protected Cell Companies Act 2004 (PCC) also create cells and the assets and liabilities of each cell are ring-fenced. However, the cells of a PCC do not have separate legal personality.

The use of incorporated cell companies is restricted to the carrying on of insurance business. However, provision exists within the Act such that, should it be considered desirable in the future, the use of incorporated cell companies can be extended to include other types of business.

With effect from 23 June 2011, the Incorporated Cells Regulations 2011 (SD 387/11) and the Insurance (Incorporated Cell Companies) Regulations 2011 (SD 374/11) came into effect.

The Incorporated Cells Regulations 2011 make additional corporate provisions in relation to incorporated cell companies. The Insurance (Incorporated Cell Companies) Regulations 2011 set out the requirements that must be observed by incorporated cell companies carrying on, or wishing to carry on, insurance business.

Copies of the relevant legislation and forms can be downloaded from the Companies Registry at https://www.gov.im/categories/business-and-industries/companies-registry/.

Footnotes

1 https://www.tynwald.org.im//links/tls/SD/2007/2007-SD-0107.pdf#search=%22Companies%20(Audit%20Exempt)%22.

2 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1998/1998-0006/CompaniesTransferofDomicileAct1998_2.pdf.

3 PN4/2020 (https://gov.im/media/1348346/pn4-2019-transfering-the-domicile-of-a-company-to-the-isle-of-man-021120.pdf) and PN5/2019. (https://gov.im/media/1348329/pn5-2019-transfering-the-domicile-of-a-company-from-the-isle-of-man-120320.pdf).

4 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2014/2014-0003/ForeignCompaniesAct2014_2.pdf.

5 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2004/2004-0001/ProtectedCellCompaniesAct2004_3.pdf.

6 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2010/2010-0013/IncorporatedCellCompaniesAct2010_2.pdf.

End of Document

IOM-12E Companies Act 2006

European Cross-Border Estate Planning

Other European States

Isle of Man

Isle of Man

Part I General Law

Legal persons and organisations

New Model Vehicle

Companies Act 2006 [1]

IOM-12E The Companies Act 2006 came into force with effect from 1 November 2006. The Act provides for a new Manx corporate vehicle to be known as the New Model Vehicle (the "NMV") to co-exist with companies under the Companies Acts 1931–2004, cellular companies under the Protected Cell Companies Act 2004 and LLCs under the Limited Liability Companies Act 1996; but entirely self-contained and separate from those Acts.

The 2006 Act provides for five different types of corporate vehicles:

1. companies limited by shares;
2. companies limited by guarantee;
3. companies limited by share and by guarantee;
4. unlimited companies authorised to issue shares; and
5. unlimited companies without shares.

A company limited by shares may be formed as or converted into a protected cell company.

There is no requirement for an authorised share capital. Shares may be issued with or without par value.

Subject to compliance with its memorandum and articles of association, the Act allows an NMV to declare and pay a dividend and to purchase, redeem or otherwise acquire its own shares subject only to meeting a statutory solvency test.

The NMV has separate legal personality and perpetual existence. In addition, notwithstanding any provision to the contrary contained in its memorandum or articles of association and irrespective of corporate benefit or whether it is in its best commercial interests, an NMV has unlimited capacity to carry on or undertake any business or activity. No corporate act is beyond an NMV's capacity by reason only of the fact that the relevant NMV has purported to restrict its capacity in any way in its memorandum or articles or otherwise. A person who deals in good faith with an NMV is entitled to assume that the directors of the NMV are acting without limitation.

It is, however, possible for the memorandum of an NMV to contain a statement specifying the purposes for which it is established or the business, activities or transactions for which it is established.

The Act provides that charges may be registered at the Companies Registry of the Isle of Man ("Companies Registry") within one month of the date of the creation of the charge. However, it is not mandatory to register charges with the Companies Registry, but failure to do so may affect the priority of the charges created by the NMV and, in addition, failure to register shall render the charge void against the liquidator and any creditor of the NMV. If a charge is not registered at the Companies Registry within one month of the date of the creation of the charge, an application to register the charge may be made to the Companies Registry at any time prior to the commencement of the winding up of the NMV.

Each NMV must have a registered agent in the Isle of Man, who must be a holder of a licence under the terms of the Financial Services Act 2008 permitting him or her so to act.

Corporate directors are permitted, but currently these are confined to companies holding a Corporate Service Providers licence under the Financial Services Act 2008.

An NMV has in addition the following characteristics:

- no financial assistance prohibitions;
- single members permissible;
- no distinction is made between public and private companies;
- simplified offering document requirements;
- ability to adopt pre-incorporation contracts;
- reduced compulsory registry filings;
- no annual general meeting requirement;

- specific transfer of domicile procedure.

The accounting requirements contained in the Companies Act 2006 as originally enacted were minimal; but these have now been augmented by ss.27–30 of the Companies (Amendment) Act 2009 (amending s.78 and s.80 of the Companies Act 2006 and introducing new ss.80A–80E). Included in the changes are provisions (parallel to those introduced in respect of companies formed under the Companies Acts 1931–2004) empowering the Isle of Man Financial Services Authority to make public oversight regulations, and subjecting auditors of companies to prescribed systems of public oversight, quality assurance and investigations and penalties.

Section 26 of the Companies (Amendment) Act 2009 empowers the Isle of Man Financial Services Authority to make regulations to permit an NMV to hold its own shares as treasury shares and to deal with those treasury shares in accordance with the provisions of those regulations (new s.58A of the Companies Act 2006).

IOM-13 Practice Notes have been issued which can be downloaded at https://www.gov.im/categories/business-and-industries/companies-registry/practice-notes/#accordion. Fee details are also available for download at https://www.gov.im/categories/business-and-industries/companies-registry/fees/.

Also available for download are the Companies (Model Articles) Regulations 2006—forms of model articles of association for companies under the Companies Act 2006 limited by shares or limited by guarantee (no models have yet been issued under the Companies Act 2006 in respect of a guarantee company having a share capital or of a protected cell company). See https://gov.im/media/1348289/companies-model-articles-regulations-2006.pdf.

Footnotes

1 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2006/2006-0013/CompaniesAct2006_11.pdf.

End of Document

IOM-14 Companies (Amendment) Act 2021

European Cross-Border Estate Planning

Other European States

Isle of Man

Isle of Man

Part I General Law

Legal persons and organisations

Companies (Amendment) Act 2021 [1]

IOM-14 Following the coming into force of the Companies Act 2006, a company formed under the Companies Act 1931–2004 was permitted to re-register under the Companies Act 2006. The reverse was however not the case, and as a consequence a company which had re-registered under the Companies Act 2006 (and a company formed under the Companies Act 2006) could not re-register under the Companies Acts 1931–2004.

This has now been amended. With effect from 1 September 2021, a company formed (or re-registered, as the case may be) under either sets of legislation is permitted to re-register under the other. [s.16B Companies Act 1931, and s.151A Companies Act 2006].

Footnotes

1 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2021/2021-0009/CompaniesAmendmentAct2021_1.pdf.

End of Document

IOM-14A Limited Liability Companies Act 1996

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Limited liability companies

Limited Liability Companies Act 1996 [1]

IOM-14A The Limited Liability Companies Act 1996 introduced a new form of legal entity in Manx law. This is based on the concepts contained in the Wyoming Liability Company Act (Laws 1977 C.T.158 s.1) (US).

The Limited Liability Companies (Amendment) Act 1999 has repealed the provisions of the 1996 Act which required a limited liability company to expire on a fixed period not exceeding 30 years. Except where the articles of organisation of a limited liability company fix a time for the dissolution of the company, the duration of the company is not limited to any fixed period of time (s.1 of the 1999 Act). This liberalisation applies to any limited liability company formed after the commencement of the 1999 Act and to any other limited liability company which elects to amend its articles of organisation to benefit from the new provisions.

A limited liability company has the following principal characteristics:

(a)it has legal personality and capacity for the exercise of its purposes and powers, hence it is a legal entity separate from its members;

(b)the company must be wound up and dissolved on the occurrence of certain events such as the death or resignation of a member (unless the surviving members agree otherwise and purchase the outgoing member's interest in the company)—the members may unanimously agree to a dissolution;

(c)the members of the company have their liability limited to the extent of the capital which they introduce;

(d)restrictions are imposed on the transfer of members' interests in the company (all other members must agree to a transfer);

(e)management rests with the members (in proportion to their respective contributions to the company's capital) although a manager can be appointed; and

(f)taxation of the company is similar to that of a partnership, the profits of the company being divided amongst the members and taxable in their hands.

An LLC may undertake any lawful activity, trade or business except such business as may be prescribed under the Act from time to time.

In contrast to the powers of companies formed under the Companies Acts 1931–2004, which have all the powers of a natural legal person (see para.IOM-10), or the unlimited capacity of companies formed under Companies Act 2006, LLCs have only those powers which are set out in Sch.1 to the Act. These may be summarised as the power to:

(a)sue and be sued;

(b)sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of its property and assets;

(c)lend money to and otherwise assist its members, manager and employees;

(d)deal in shares or obligations of other LLCs or other corporations or partnerships or government obligations or interests;

(e)contract and guarantee, borrow and issue securities;

(f)lend, invest and hold real and personal property;

(g)have and exercise all powers necessary or convenient to effect any activity, trade or business of the LLC;

(h)become a member of a general partnership, limited partnership, joint venture or other LLC;

(i)pay pensions and similar benefits to its current or former managers, officers, employees and agents; and

(j)make donations for the public welfare or for charitable, scientific or educational purposes.

The LLC must maintain in the Isle of Man both a registered office and a registered agent holding prescribed qualifications.

Section 12 of the Act provides that:

> "the contributions to capital of a member to a limited liability company may be in cash, property or services rendered, or by means of a promissory note or any form of binding obligation to contribute cash or property or to perform services".

The Act lays down in s.14 restrictions on the withdrawal of capital contributions (insofar as such withdrawal is not permitted under the articles of organisation of the company).

Profit distribution is to be made in proportion to the capital contribution of the members, unless the operating agreement of the company provides otherwise, but subject to the provision contained in s.15(2) of the Act that "no distribution shall be made if, after such distribution, the assets of the limited liability company would not be in excess of all liabilities of the limited liability company except liabilities to members on account of their contributions".

Practice Notes have been issued which can be downloaded at https://gov.im/categories/business-and-industries/companies-registry/practice-notes/#accordion. Fee details are also available for download at https://gov.im/categories/business-and-industries/companies-registry/fees/.

Company Officers (Disqualification) Act 2009 [2]

IOM-14B This legislation replaces provisions scattered between the Companies Acts 1931–2004, the Companies Act 2006 and the Limited Liability Companies Act 1996; and applies to companies formed under all three statutes. The new Act sets out what constitutes unfitness to act as a company officer, the procedures to obtain an Order of the High Court and the consequences of contravention of such an Order. The Act also invests the Isle of Man Financial Services Authority with wide powers of inspection and investigation.

Company officer for the purposes of the Act is defined in s. 1(2) as: (a) a director, secretary or registered agent; (b) a liquidator; (c) a receiver; (d) a person holding an office under any relevant foreign law analogous to (a), (b) or (c); and (e) a person who, in any way, whether directly or indirectly, is concerned or takes part in the promotion, formation or management of a company.

Business Names

IOM-14C Freedom to choose a business name is governed by the Registration of Business Names Acts 1918 and 1954 and the Company and Business Names etc Act 2012. [3] The regime applies to the Companies Acts 1931–2004; the Companies Act 2006; the Protected Cell Companies Act 2004; the Incorporated Cell Companies Act 2010; the Limited Liability Companies Act 1996; the Foundations Act 2011; to limited partnerships under Pt II of the Partnership Act 1909; to a society to which the Industrial and Building Societies Acts 1892–1955 apply; and to a firm or person required to be registered under the Registration of Business Names Acts 1918 and 1954.

See Practice Note PN16/2014 https://gov.im/media/1348337/pn16-2014-business-names-jan-20.pdf.

Beneficial ownership

IOM-14D The Companies (Beneficial Ownership) Act 2012 (in force 1 September 2013) required every company that is not a client company of a Corporate Service Provider or covered by an exception in the Act or in the Companies (Beneficial Ownership) (Exemptions) Order 2013 (SD 235/2013) to appoint a "nominated officer", who must be an individual who is resident in the Isle of Man. Members of a company (whose details are to be found in the company's register of members) are required to provide the nominated officer with details of the beneficial owner(s) of the company, if beneficial ownership is not theirs.

That Act and the Order have been replaced and greatly extended by the Beneficial Ownership Act 2017.[4] The Act, which entered into force on 1 July 2017, and which has been amended by the Beneficial Ownership (Amendment) Act 2021[5] with effect from 1 September 2021, places all Isle of Man corporate and legal entities under the same legislation regarding beneficial ownership.

In the Act, *beneficial owner* means the person who ultimately owns or controls a legal entity to which the Act applies, in whole or in part, through direct or indirect ownership or control of shares or voting rights or other ownership interest in that entity, or who exercises control via other means, and *beneficial ownership* is to be construed accordingly.

The Act defines any beneficial owner who owns or controls more than 25 per cent of the beneficial ownership of a legal entity to which this Act applies as a "registrable beneficial owner" and the required details of any registrable beneficial owner must be submitted electronically to the Isle of Man Database of Beneficial Ownership by the nominated officer/ Corporate Service Provider.

Full guidance is available from the Isle of Man Companies Registry at https://gov.im/categories/business-and-industries/companies-registry/beneficial-ownership/.

In addition, the Isle of Man Financial Services Authority has issued Guidance (GC 2017/0003 June 2017) which although not law in itself is persuasive. Where a person follows the FSA Guidance, this would tend to indicate compliance with the legislative provisions. The Guidance is available at https://iomfsa.im/media/1921/guidancebeneficial-ownershipact2017.pdf.

[For a discussion of the principles of beneficial ownership employed in the Isle of Man and generally in offshore finance centres see Paul Beckett *Ownership, Financial Accountability and*

the Law: Transparency Strategies and Counter-Initiatives (Routledge, London and New York, May 2019).]

Fees

IOM-14E Details of all fees payable are available at https://gov.im/categories/business-and-industries/companies-registry/fees/.

Footnotes

1 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1996/1996-0019/LimitedLiabilityCompaniesAct1996_11.pdf.

2 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2009/2009-0004/CompanyOfficersDisqualificationAct2009_4.pdf.

3 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1918/1918-0001/RegistrationofBusinessNamesAct1918_5.pdf.; https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2012/2012-0010/CompanyandBusinessNamesetcAct2012_6.pdf.

4 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2017/2017-0003/BeneficialOwnershipAct2017_6.pdf.

5 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2021/2021-0007/BeneficialOwnershipAmendmentAct2021_1.pdf.

End of Document

IOM-15 Legal sources

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Trusts

Legal sources

IOM-15 Isle of Man trust law has its origins in, and owes most of its continued development to, English trust law, to which it is virtually identical. The Isle of Man courts have a wealth of precedent upon which to call, not merely from England but from all Commonwealth jurisdictions where trusts are recognised, in addition to the substantial body of Isle of Man case law on the subject. This rich and varied legal history means that there is no single definition of a trust. The settlor transfers property to his trustees, the settlor then has parted with all rights of ownership in that property. The trustees are the legal owners of the property but cannot make use of it for their own benefit. Instead, they hold the property on trust for the beneficiaries who have been nominated by the settlor.

The one major difference is that restrictions on how long trust income can be accumulated before it must be distributed have never applied in the Isle of Man and it is therefore possible to accumulate income without limit as to time (Perpetuities and Accumulations Act 1968).

Another difference is that the presumption of advancement applies equally regardless of whether the donor is the father or the mother of the donee. It was earlier thought that only where the mother stood *in loco parentis* was there a presumption of gift or advancement in the case of the transfer of property form a mother to her child (e.g. in *Todd, Re 1972*, per Deemster Moore) but the current doctrine is that:

> "where a mother makes a purchase or investment in the name of her child, that does not of itself afford the presumption of advancement which would arise in the case of a father entering into a similar transaction. Nevertheless, where a mother does put property in the name of her child, very little evidence is required to show that there was an intention to advance, which would rebut the ordinary presumption of a resulting trust." (*Clucas v Clucas 1984*, per Deemster Luft.)

This is particularly relevant in planning relating to family companies incorporated in the Isle of Man.

IOM-16 Statutory regulation

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Statutory regulation

IOM-16 The statutory regulation by Tynwald of trusts is contained in the Trustee Act 1961, the Variation of Trusts Act 1961, the Perpetuities and Accumulations Act 1968, the Recognition of Trusts Act 1988, the Trusts Act 1995 the Purposes Trust Acts 1996 and the Trustees Act 2001. The application of the Hague Convention on the Recognition of Trusts is contained in the Recognition of Trusts Act 1988.

Trustee Act 1961 [1]

IOM-18 Part 1 of the Act, dealing with investment powers, has been repealed and replaced by provisions in the Trustee Act 2001. The Act sets out in Pt II the general powers of trustees and personal representatives, in Pt III the rules relating to the appointment and discharge of trustees and in Pt IV the powers of the Chancery Division of the Isle of Man High Court in relation to trust matters.

A detailed discussion of the statute in a work of this length is not possible, but in the context of capital tax and estate planning, the provisions of s.33 are of particular interest. The section provides for the creation of protective trusts, under which the principal beneficiary is to receive payments of income or advances of capital until such time as he is placed in a position (for whatever reason) where he would be deprived of his right to payment; At such point, the trust becomes discretionary in nature, and although the principal beneficiary remains a member of the class of beneficiaries, his entitlement thereafter ranks equally with that of his spouse and issue (including illegitimate issue) or, if none, the person who would be entitled to his estate on death.

Section 24 of the Act (substituted by the Law Reform (Miscellaneous Provisions) Act 1996 s.2(1)) provides in s.24(1) that "notwithstanding any rule of law or equity to the contrary, a trustee may, by power of attorney, delegate the execution or exercise of all or any of the trusts, powers and discretions vested in him as trustee either alone or jointly with any other person or persons". Such delegation may not exceed 12 months. The provision applies also to enduring powers of attorney (as to which see para.4) and to personal representatives, tenants for life and statutory owners (s.24(11)). A delegate may himself grant powers of attorney, but sub delegation is not permitted (s.24(9)).

Variation of Trusts Act 1961 [2]

IOM-19 This Act empowers the court to approve schemes varying or revoking all or any of the trusts contained within a settlement and permits the court to augment the powers of management and administration held by the trustees in defined circumstances. However, investment powers of the trustees are capable of being augmented only in special circumstances, such as to make provision for future taxation: *Crookall, Re 1976*, per Deemster Eason.

Perpetuities and Accumulations Act 1968 [3]

IOM-19A With effect from 16 June 2015 the rule against perpetuities has been abolished with regard (a) to a disposition made on or after that date or (b) a disposition in trust (whenever made), the governing law of which is changed to that of the Isle of Man in accordance with s.3 Trusts Act 1995.The possibility of the disposition being treated as void at a future date under the law governing the disposition immediately before the change of governing law to that of the Isle of Man is to be ignored. It remains however possible to create a trust for a specified or ascertainable period. (ibid. s.1A).

Recognition of Trusts Act 1988 [4]

IOM-20 This Act gives force to the Hague Convention on the Recognition of Trusts in the Isle of Man, and encompasses not only the trusts described in arts 2 and 3 of the Convention "but also in relation to any other trusts of property arising under the law of the Island or by virtue of a judicial decision whether in the Island or elsewhere" (s.1(2) of the Act). Article 22 of the Convention provides that the Convention "applies to trusts regardless of the date on which they were created". This is limited by s.1(5) of the Act, which provides that "Article 22 shall not be construed as affecting the law to be applied in relation to anything done or omitted before the commencement of this Act". The Act entered into force on 1 July 1989.

Trusts Act 1995 [5]

IOM-21 This Act, which came into force on 17 January 1996, has as its principal objects the clarification of the law of the Isle of Man as to the ability of a trust to change the law which is its governing law and the assurance that in relation to trusts which are governed by Manx law the courts will not have regard to foreign laws in determining certain matters. Specific amongst these is the question of forced heirship (as to which see para.38 *below*). The Act does *not* apply to:

> "(i)a testamentary trust or disposition unless the trust or disposition is valid under the law of the domicile of the testator at death; or
>
> (ii)a trust or disposition of immovable property unless the trust or disposition is valid under the law of the jurisdiction where the immovable property is situated"

(Section 1(b).)

Previously concerned only with the capacity of a settlor, the Act (with effect from 16 June 2015) now extends to the capacities of a settlor, trustee, protector and beneficiary (ibid. s.5(1)).

Trustee Act 2001 [6]

IOM-21A The Act, imposes a statutory duty of care on trustees and gives them additional powers of investment, etc. It is based on the Trustee Act 2000 of Parliament, which implements recommendations of the Law Commission in a report Trustees' Powers and Duties (1999, Law Com. No. 260).

Part 1 (ss.1 and 2 and Sch.1) imposes a statutory duty of care on trustees. Section 1 defines the new duty of care, and s.2 and Sch.1 prescribe the circumstances in which it will apply.

Part 2 (ss.3–7) creates a new power of investment for trustees who do not have alternative powers of investment under statute or the trust instrument. Section 3 gives trustees a general power to invest trust funds in any assets, subject to "standard investment criteria" in s.4 and a duty in s.5 to obtain proper advice where necessary. Section 6 provides that the power is additional to any express power, but subject to any limitations, in statute or the trust instrument. Section 7 applies the power to existing trusts.

Part 3 (ss.8–10) gives trustees a new power to acquire and deal with land. Section 8 gives them power to acquire land in the island or the UK for any purpose. Section 9 provides that

the power is additional to any express powers, but subject to any limitations, in statute or the trust instrument. Section 10 applies the power to existing trusts.

Part 4 (ss.11–27) sets out new powers for trustees to delegate their powers and duties where they do not have alternative powers under statute or the trust instrument. Section 11 allows trustees to delegate specified functions to an agent. Section 12 defines the classes of persons who may be appointed as agents. Section 13 imposes on agents certain of the duties of trustees. Section 14 imposes duties on trustees in relation to appointments of agents, and s.15 imposes special restrictions in respect of asset management functions. Sections 16 and 17 give power to appoint nominees and custodians. Section 18 requires a custodian to be appointed for bearer securities. Section 19 prescribes the classes of person who may be appointed nominee or custodian. Section 20 imposes duties on trustees in relation to appointments of nominees and custodians.

Sections 21–23 require trustees to keep appointments of agents, nominees and custodians under review, and define when a trustee is liable for the defaults of an agent, nominee or custodian. Section 24 protects third parties in their dealings with agents for trustees. Section 25 applies Pt 4 to sole trustees. Section 26 provides that powers are additional to any express powers, but subject to any limitations, in statute or the trust instrument. Section 27 applies the powers to existing trusts.

Part 5 (ss.28–33) deals with the powers of trustees, etc. to charge for their services. Section 28 deals with the interpretation of charging clauses in trust instruments. Section 29 implies, in a trust instrument which does not contain a charging clause, a power for a professional trustee to charge for his services. Section 30 makes special provision for charities. Section 31 entitles trustees to reimbursement of their proper expenses. Section 32 deals with the charges and expenses of agents, nominees and custodians. Section 33 deals with the application of Pt 5 to existing trusts.

Part 6 (ss.34–42 and Schs.2–4) contains miscellaneous and supplementary provisions. Section 34 gives all trustees power to insure the trust property. Sections 35–37 modify the Act in its application to executors and administrators and to trustees of pension funds and unit trusts. Section 38 extends the maximum "perpetuity period" from 80 years to 150 years.

The Act came into force on 1 September 2001.

Footnotes

1 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1961/1961-0010/TrusteeAct1961_2.pdf.

2 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1961/1961-0011/VariationofTrustsAct1961_1.pdf.

3 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1968/1968-0008/PerpetuitiesandAccumulationsAct1968_2.pdf.
4 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1988/1988-0008/RecognitionofTrustsAct1988_1.pdf.
5 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1995/1995-0018/TrustsAct1995_2.pdf.
6 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2001/2001-0018/TrusteeAct2001_1.pdf.

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IOM-22 Purpose Trusts Act 1996

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Purpose Trusts Act 1996 [1]

IOM-22 At common law, a non-charitable purpose trust would be void for want of identifiable beneficiaries to enforce it and for breach of the rule against perpetuities (in so far as that rule continues to apply —see para.19A *above*). The Act provides for the creation of purpose trusts. The purpose must be certain, reasonable and possible; and must not be unlawful, contrary to public policy or immoral (s.1(1)a)).

The following are *not* capable of being regarded as purpose trusts, those made:

(a)for the benefit of a particular person (whether or not immediately ascertainable);

(b)for the benefit of some aggregate of persons identified by reference to some personal relationship; or

(c)for charitable purposes.

(s.9(1).)

The trust must be created by deed or by a will which is capable of being, and which is, admitted to probate in the Isle of Man (or in the alternative in respect of which letters of administration are capable of being and are granted) (s.1(1)(b)).

There must be two or more trustees, of whom at least one must be a person falling into one of the categories designated under the Act; an advocate, a foreign registered legal practitioner, a qualified auditor, a member of the Chartered Institute of Management Accountants, a member of the Institute of Chartered Secretaries and Administrators, a fellow or associate member of the Institute of Bankers, the holder of a fiduciary licence under the Financial Services Act 2008 in respect of trust services, or a trust corporation (ss.1(1)(c) and 9(1)).

To enforce the trust there must be an "enforcer". The trust instrument must provide for the enforcer to have an absolute right of access to any information or document which relates to the trust, the assets of the trust or to the administration of the trust (ss.1(1)(d)(i) and 1(1)(e)).

The trust instrument must specify the event upon the happening of which the trust terminates and must provide for the disposition of surplus assets of the trust upon its termination (s.1(1)(f)).

The designated person must keep a copy of the trust (including supplemental instruments), a register (specifying the creator of the trust, its purpose and the details of the enforcer) and trust accounts. These accounts are to be open to inspection by the Attorney General (or anyone authorised by the Attorney General). Public inspection is, however, not required (s.2).

Should the enforcer die or become incapable, the Attorney General must be informed, and he may apply to the High Court of Justice of the Isle of Man to appoint a successor (s.3).

No land or any interest in land in the Isle of Man may be held, directly or indirectly, in a purpose trust (s.5).

The Act came into force on 22 May 1996.

Footnotes

1 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1996/1996-0009/PurposeTrustsAct1996_1.pdf.

IOM-23 Trust structures

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Trust structures

IOM-23 Isle of Man trusts can take a variety of forms. They fall into two basic types:

(a)The *settlement* shows the name of the settlor and the settlor signs the document alongside the trustees.

(b)The *declaration* shows only the name of the trustees, and the document opens with the trustees declaring that they have received property (they do not say from whom) and are holding it on trust for the beneficiaries named in the document.

In the case of a declaration, the trustees will have received a letter or other instruction from the person transferring property to them indicating that he or she wishes them to declare a trust and setting out the terms upon which such a declaration is to be made.

Each of the two types can take two forms. A discretionary trust contains a list of beneficiaries which the trustees scan as frequently as they think is appropriate to determine which of the beneficiaries is to receive income payments or advances of capital, of which amounts and at what time. An interest in possession trust singles out certain beneficiaries for special treatment: normally, an individual is preferred for life, and on his or her death the spouse steps into this “life tenancy”. The residue can thereafter be divided between the remaining beneficiaries or held on discretionary trusts.

Although not regulated by statute, there exists in addition to the office of trustee the office of protector. Persons wishing to transfer property to trustees may be worried that they are parting with all control over their property, which is placed in the hands of professionally qualified and skilled individuals who may nevertheless lack a detailed knowledge of the day-to-day requirements of the beneficiaries. The protector is appointed to stand alongside the trustees, some of whose powers under the trust are only to be exercised with prior notice to the protector or with the protector’s consent. The protector is usually a close family friend or adviser.

In *Steele v Paz Ltd (In Liquidation) 1995* (a decision of the Isle of Man Appeal Court, the Staff of Government Division) a discretionary trust drawn under Isle of Man law was considered. This contained provision for a protector to participate in the running of the trust, but no protector had been appointed. It was held at first instance that the trust was therefore void for uncertainty, but on appeal this was reversed. The Court held that its overriding consideration should be to ensure that a trust which is otherwise completely constituted would not fail for want of machinery. The jurisdiction of a court of equity should in the Court's view be capable of extending to cases where trust machinery fails otherwise than for the want of a trustee. The powers of a protector were held to be fiduciary powers. The Court concluded:

> "The Court's inherent jurisdiction to appoint a new trustee extended so to enable it, in appropriate circumstances, to appoint a person to exercise fiduciary powers under a trust even though he may not be a trustee in the classical sense. The Court could, if necessary, in the last resort, itself exercise fiduciary powers under a trust, though it would not normally do so."

Accordingly, the Court held that where a fiduciary power is intended to be vested in a person other than a trustee, in the absence of any clear indication that the personal characteristics of that individual are an essential ingredient in the exercise of the power, the Court has power either to appoint a person to exercise that power or, perhaps exceptionally, to exercise the power itself.

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IOM-24 Purpose trusts

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Purpose trusts

IOM-24 Purpose trusts are not trusts in the classical sense of that term, and are designed to be used as adjuncts to taxation planning structures in various ways, including:

(a)holding shares in a company which can then be voted in accordance with the terms of the trust (of particular importance in circumstances where an individual may not wish beneficially to own such assets);

(b)protection of subsidiaries where a parent company borrows—the shares of the subsidiary are placed in trust until the loan is repaid, thereby protecting the subsidiary from creditors of its parent;

(c)protection of the lender where a parent company borrows—the shares of the subsidiary can be placed in trust until the loan is repaid, thereby preventing the ownership of the subsidiary from changing;

(d)capital financing and securitisation projects in which the trust assets are off the balance sheet of one or more parties to the transaction.

Position of creditors

IOM-25 The Statute of Elizabeth (13 Eliz, c 5) (an Act passed in the reign of the English Queen Elizabeth I for the protection of creditors against fraudulent deeds of their debtors, repealed by the Law of Property Act 1925; relevant provisions are contained in the Insolvency Act 1986) does not, itself, apply to the Isle of Man. However, in 1736 Tynwald enacted legislation which can be seen as broadly equivalent to the Statute of Elizabeth, the Fraudulent Assignments Act 1736. [1] Under

the Act, "all fraudulent assignments or transfers of the debtor's goods or effects shall be void and of no effect against his just creditors, any custom or practice to the contrary notwithstanding".

In the case of *Corlett v Radcliffe 1859*, a decision of the Judicial Committee of the Privy Council on appeal from the Court of Chancery of the Isle of Man, in which the Committee was asked to construe the relationship between the Statute of Elizabeth and the Act of 1736, Lord Chelmsford delivering the judgment of the Committee stated:

> "In the course of the argument many cases were cited which had been determined in the English Courts under [the Statute of Elizabeth], but decisions upon this subject are of no practical utility, except where they establish principles which are of general application. Each case must depend upon its own circumstances, and in all the question is one of fact whether the transaction was bona fide, or was a contrivance to defraud creditors. It may, however, be stated generally that a deed is void against creditors when the debtor is in a state of insolvency, or when the effect of the deed is to leave the debtor without means of paying his present debts. If this is the condition of the debtor, or the consequence of his act, it is not sufficient to render a deed valid that it should be made upon good consideration …"

The matter was later considered more narrowly in the case of *Re Corrin's Bankruptcy 1912*: "The common law of the Isle of Man is substantially the same as the law of England under the Statute of Elizabeth, and a settlement by a man who is hopelessly insolvent at the time is fraudulent and void" (per Kneen CR).

The decision in *Corlett v Radcliffe 1859* is not confined to the question of present creditors. Hence, if a settlement is made at a time when the settlor is insolvent, that settlement must be void, not only in respect of existing creditors but also of any subsequent creditors.

The position has been clarified in the recent case *In Re Heginbotham 1999 (Common Law Division, 15 February 1999)* where Deemster Cain ruled:

> "A state of insolvency implies an inability to pay existing, or present debts. A person is not in a 'state of insolvency' merely because he may not be able to pay contingent or future debts, which may never materialise. … I would construe the term 'present debts', however, to include known and ascertained debts which are to fall due on a date in the future. A transaction or contrivance designed to deprive known and ascertainable future creditors of timely recourse to property which would otherwise be applicable for their benefit … would not be honest in the context of the relationship of debtor and creditor and would not therefore be bona fide."

The Isle of Man Government has made it clear that it has no intention of introducing asset protection legislation. Indeed, it is not required. If a trust is properly constituted and does not offend the provisions of the Fraudulent Assignments Act 1736, the assets within it ought not to

be open to attack. Add to this the provisions of the Trusts Act 1995 (as to which, see paras.21 and 38) and there is a substantial body of law in favour of establishing strong family trusts in the Isle of Man.

In addition, the two and ten year rule in matters of bankruptcy must be observed, under which *voluntary* settlements may be avoided by the trustee in bankruptcy. The rule is contained in the Bankruptcy Code 1892 s.30(1):

> "Any settlement of property, not being a settlement made before and in consideration of, marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife and children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of property comprised in the settlement, and that the interest of the settlor in such property has passed to the trustee of such settlement on the execution thereof."

The position of creditors in relation to assets owned by a company that is itself wholly owned by a trust is subject to the *corporate-trust fusion principle* established on 19 September 2002 in *Re Poyiadjis 2001-03 MLR 316*. The facts of the case (which was the subject of several judgments over four years, concluding in 2005) were immensely complex, but relevant for present purposes is that Roys Poyiadjis and his father set up in late December 2000 two trusts for the benefit of themselves and their family (the Atlas Trust and the Trident Trust). Each trust solely owned a company, incorporated in the British Virgin Islands (Olympus Capital Investments Inc and Oracle Capital Inc. respectively) and the directors of the companies were also trustees. Each company had a bank account in the Isle of Man, and neither company had any significant creditors.

In his judgment, Deemster Kerruish cited *Macaura v Northern Assurs Co Ltd [1925] A.C. 619* at 626-627 in which Lord Buckmaster stated:

> "Turning now to his position as shareholder, this must be independent of the extent of his share interest. If he were entitled to insure holding all the shares in the company, each shareholder would be equally entitled, if the shares were all in separate hands. Now, no shareholder has any right to any item of property owned by the company, for he has no legal or equitable interest therein. He is entitled to a share in the profits while the company continues to carry on business and a share in the distribution of the surplus assets when the company is wound up."

Deemster Kerruish concluded:

> "Oracle and Olympus are each wholly owned by a trust, and there is no other shareholder. […] The trustees, who are also the directors of both companies, have the wherewithal to control each company totally. For example, without being required to give reasons, the relevant trust may require the company it controls to be wound up at any time. In those circumstances, having paid all creditors, which on the evidence to date are limited and not significant, the shareholder would then receive the balance of all moneys standing to the credit of the relevant bank account. Also, I have no doubt that the directors would be ever mindful in exercising their powers to manage the companies and their assets to ensure that they did not expose themselves to an allegation of breach of trust.
>
> Whilst I accept that in law the bank accounts are corporate and not strictly trust assets, in the circumstances of this case, I find that the interposition of a limited company does not in any material way qualify the trustees' interest in the relevant bank accounts. It does not make a difference to the duties and responsibilities of the trustees, including responsibilities to persons, who have or may have an interest in the trust assets, whether held directly by the trustees or through a company.
>
> Further in the circumstances of this case, the directors, when exercising their powers … cannot divest themselves of the knowledge and information obtained in their capacities as trustees, and therefore must act at all times mindful of their duties and responsibilities to persons, who have or may have an interest in the trust assets. I therefore consider that to treat the companies as bodies independent of the trustees qua trustees, and to treat the latter as shareholders, would be to ignore the reality of the situation. I further consider that, bearing in mind the terms of the order, and the circumstances which gave rise to it, the bank accounts ought to be considered not only as corporate assets, but also as trust assets."

Foundations

IOM-25A The Foundations Act 2011 [2] received royal assent and came into force on 15 November 2011.

An Isle of Man foundation will be a separate legal person in its own right (s.35(a)). Assets held by the foundation will be held in its own name (s.35(c)). The foundation can trade and arrange for finance in its own right. The Isle of Man foundation is similar to a company in that it carries limited liability. A foundation can run in perpetuity. The creation of a foundation will be on public record and details, such as the foundation's name and the council members' names and addresses, will be available for public scrutiny. However, the foundation rules, which govern how the foundation is run, are not a public document.

An Isle of Man foundation will be required to have a licensed registered agent on the Isle of Man. Only a class 4 licence holder is permitted to apply for the establishment of a foundation (s.4), i.e. a person who holds a licence issued under the Financial Services Act 2008 that permits that person to undertake the sub-class of regulated activity of acting as registered agent of a foundation.

The constitutional documents of a foundation comprise: (1) the foundation instrument (in English) specifying the name, objects (in the sense of purposes), Council members and registered agent (ss.5–9); and (2) the foundation rules (in any language) specifying, inter alia, the objects (in the sense of persons who are to benefit), the constitution of the Council, which will administer the foundation's assets, an optional enforcer (mandatory if the foundation is to carry out a specified non-charitable purpose), winding up provisions, and term (if any limit is to be adopted) (ss.10–21). In due course, the Isle of Man Treasury will issue model rules.

A foundation is capable of suing and being sued and prosecuted in its own name (s.35(b)) and notwithstanding anything in its rules, a foundation, acting through its Council, is capable of exercising all the rights, powers and privileges of an individual (s.36(1)) save that it may not engage directly in commercial trading that is not incidental to the attainment of its objects (s.36(3)). The Treasury has power to make regulations generally concerning the activities and constitution of a foundation (s.61).

A foundation is not precluded from being registered as a charity under the Charities Registration Act 1989 (s.64).

Isle of Man law applies, to the exclusion of foreign laws (s.37) and neither the establishment of a foundation or the dedication of assets to it will be void, voidable, liable to be set aside or subject to an implied condition for reason only that a foreign law does not recognise the establishment or dedication or because the foreign law contains forced heirship provisions which would in that foreign jurisdiction override the concept (s.38).

Foundations are subject to the jurisdiction of the Isle of Man High Court, which has under Pt 5 of the Act, powers to order compliance, to order amendment of the foundation instrument or rules, to give directions, to protect interests under a foundation, to appoint or dismiss the registered agent and to take action on the part of a person who has failed to comply with a duty under the foundation.

Taxation

IOM-25B The general company tax regulations will apply to foundations, so they will incur no income tax on profits other than those generated by the exploitation of Isle of Man land, which is taxed at 10%.

Footnotes

1 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1736/1736-0002/FraudulentAssignmentsAct1736_1.pdf.

2 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2011/2011-0017/FoundationsAct2011_8.pdf.

End of Document

IOM-26 Charities

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Part I General Law

Legal persons and organisations

Other entities

Charities [1]

IOM-26 These are regulated under the Charities Acts 1962 and 1986 and the Charities Registration and Regulation Act 2019.

The Charities Registration and Regulation Act 2019 which came into force on 1 April 2020 creates in s.6(1) a statutory definition of charitable purposes, and in doing so closely follows the Charities Act 2011 of the UK:

> (1)A purpose falls within this subsection if it falls within any of the following descriptions of purposes—
>
> (a)the prevention or relief of poverty;
>
> (b)the advancement of education;
>
> (c)the advancement of religion;
>
> (d)the advancement of health or the saving of lives;
>
> (e)the advancement of citizenship or community development;
>
> (f)the advancement of the arts, culture, heritage or science;
>
> (g)the advancement of amateur sport;
>
> (h)the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;

(i)the advancement of environmental protection or improvement;

(j)the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage;

(k)the advancement of animal welfare;

(l)the promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire and rescue services or ambulance services;

(m)any other purposes—

(i)that are not within paras (a) to (l) but are recognised as charitable purposes by virtue of s.1 of the Recreational Charities (Isle of Man) Act 1960 (recreational and similar trusts, etc) or s.2 of the Charities Act 1962 (trusts for the purpose of benevolence philanthropy or social welfare and gifts, devises, bequests or trusts for the proper repair, etc of private graves and monuments) or under existing charity law; and

(ii)that may reasonably be regarded as analogous to, or within the spirit of, any purposes falling within any of paragraphs (a) to (l) or subpara.(i); or (iii) that may reasonably be regarded as analogous to, or within the spirit of, any purposes which have been recognised, under the law relating to charities in the Island, as falling within subpara.(ii) or this sub-paragraph.

Under the Charities Act 1962 s.2(1) "charitable purpose" is defined as "benevolence, philanthropy or social welfare" which must be "for the public benefit".

The requirement for there to be a purpose "for the public benefit" is also found independently of the Charities Act 1962, in s.7 Charities Registration and Regulation Act 2019 and is broadly defined as being "understood for the purposes of the law relating to charities in the Island."

Under s.15 Charities Registration and Regulation Act 2019 the Attorney General has power to remove a from the register of charities maintained by the Attorney General under s.9 of the Act:

(a)any charity which has ceased to exist;

(b)any charity which, after reasonable inquiry, he or she considers to have ceased to operate;

(c)any charity which he or she considers no longer has a genuine and substantial connection with the Island;

(d)any charity or other institution which is exempt from registration; and

(e)any institution which he or she no longer considers is a charity.

An appeal from any decision of the Attorney General under the Act lies to the Charities Tribunal (established under s.42 of the Act).

Where the charity is a company formed under the Companies Acts 1931–2004, an exception to the principle laid down in the Companies Act 1986 that a company need not state its objects in its memorandum applies: the memorandum must "state the charitable objects of the company and accordingly the capacity, rights, powers and privileges of the company shall be exercised

only for the purpose of giving effect to those objects" (Companies Act 1986 s.5(7), introduced by Companies Act 1992 Sch.5). In the case of a company formed under the Companies Act 2006, which under s.21 has unlimited capacity notwithstanding any expressed restrictions in its Memorandum of Association, the practical control mechanism will be the power of the Attorney General to refuse or revoke registration if not satisfied that the company's objects and activities are exclusively charitable.

For the purpose of Isle of Man income tax exemption, charities are in addition to the definitions above deemed to include the Manx Museum and National Trust, the Manx Heritage Foundation and any other corporation or society of persons or any trust specified in an order made by the Isle of Man Treasury (Income Tax Act 1970 s.6 as amended by Income Tax Act 1995 s.11).

Footnotes

1 Charities Act 1962 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1962/1962-0001/CharitiesAct1962_2.pdf ; Charities Act 1986. https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1986/1986-0027/CharitiesAct1986_5.pdf ; Charities Registration and Regulation Act 2019 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2019/2019-0007/CharitiesRegistrationandRegulationAct2019_2.pdf.

End of Document

IOM-27 Clubs

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Part I General Law

Legal persons and organisations

Clubs

IOM-27 These and other unincorporated organisations which do not constitute partnerships are regarded as contractual inter se, and fall to be governed under the common law of the Isle of Man.

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Part I General Law

Forms of ownership

IOM-28 Under Manx law, property falls to be considered either as real (immovable) or as personal (movable). A description of the Manx system of land tenure, dating from the original Celtic settlements, founded in the non-feudal system introduced by the Norse kings in the 10th century and subject to statutory regulation since the first quarter of the 15th century is outside the scope of this work. However, mention must be made of two 18th century developments which marked a break with the purely customary legal position concerning the classification of property in the island.

The Act of Settlement 1704 [1] provided that the tenants of the lands of the Lord of Mann (constituting the bulk of the lands of the island) were invested with "good and perfect estates of inheritance descendible from ancestor to heir according to the law and custom of the … Isle" (s.14). The tenants' holdings, now expressly enlarged into estates of inheritance with a statutory title, were at the same time rendered alienable by acts inter vivos at the absolute discretion of the tenant, free from interference on the part of the Lord. This power of disposition, the Act provided, might be made "by gift, grant, assignment, or any other deed or contract whatsoever" (s.5).

An untitled Act of Tynwald passed in 1777 (c.13) conferred the quality of heritability upon all bought lands and stated (by way of clarification) "that no houses, lands or premises … shall be construed, deemed or taken to be personal effects or chattels". Though the Act has been repealed, the principle continues to be embodied in later legislation and in the common law.

In accordance with the Conveyancing Act 1963 [2] s.1 , mortgages of land situated in the Isle of Man are classed as real property. Real property may be held either as freehold or as leasehold, the latter regulated by the Landlord and Tenant Acts 1954 to 1976. [3] The tenancy of farmland is governed by the Agricultural Holdings Acts 1969. [4] and the Agricultural Tenancies Act 2008. [5]

Both real and personal property may be held in trust without restriction.

Where real property is owned jointly by two or more persons, the presumption is that each holds as a tenant in common: i.e. each has the right to dispose of (or to pass on death) his or her share of the property, which does not (unless the contrary intention is shown by the parties concerned) become the property of the survivor or survivors. In personal estate, the reverse is the case and there the presumption is for a joint tenancy: i.e. the survivor or survivors take the share of the deceased (In *Re Shield Investments Ltd 1990–1992 MLR 275*, per Deemster Corrin).

This point is most commonly of relevance in situations where shares in Isle of Man limited liability companies are held in joint names: the condition usually to be found in the articles of association of such companies is that the company is entitled to treat the surviving joint shareholder as having sole title to the share (e.g. article 29 Table A, Companies (Memorandum and Articles of Association) Regulations 1988). Until clarification by the Court in *Shield Investments Ltd 1991*, the argument was put that this was merely for the administrative convenience of the company and did not affect the rights of the deceased joint shareholder's estate. It is now clear that the presumption in such a case is to be that the joint shareholders hold as joint tenants.

The question of joint tenancy versus tenancy in common is also considered below (see para.IOM-37, "Administration of Estates, Survivorship").

There are no matrimonial or community property laws as such in the Isle of Man. During the years 1577–1777, however, there was a doctrine of community of goods, which was discontinued by an untitled Act of Tynwald in 1777 (c.13), since repealed and replaced by modern legislation governing the property of married women, together with divorce and judicial separation (all outside the scope of this work) and the estates of deceased individuals (as to which, see paras IOM-31 and following).

There has been a recent gloss on the treatment of marital property on the breakdown of a marriage: the general law of trusts applies, and in circumstances where parties have contributed in unequal shares to a property then, even if the property is in the sole name of one spouse, the presumption will be that the two hold as tenants in common and that there is a resulting trust in favour of the other in proportion to that other's contribution (rebuttable by evidence of intention to confer the entire beneficial ownership on one spouse only): *Fountain v Mutch 1984* (per Deemster Corrin).

Footnotes

1 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1704/1704-0001/ActofSettlement1704_1.pdf and https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1704/1704-0002/ActofSettlementFurtherProvisionsAct1704_1.pdf.

2 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1963/1963-0002/ConveyancingAct1963_1.pdf.

3 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1954/1954-0008/LandlordandTenantAct1954_1.pdf and https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1976/1976-0010/LandlordandTenantMiscellaneousProvisionsAct1976_3.pdf.

4 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1969/1969-0001/AgriculturalHoldingsAct1969_1.pdf .

5 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2008/2008-0015/AgriculturalTenanciesAct2008_1.pdf.

End of Document

IOM-29 Personal property

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Part I General Law

Lifetime gifts

Personal property

IOM-29 In general, no formalities other than an act of real or constructive delivery are attached to the gift of personal property (movables).

However, a gift of shares in a company which are in registered form, though effective on the handing over of the share certificate with the expressed intention permanently to benefit the recipient must be completed by a stock transfer form being delivered to the company in accordance with the provisions of the company's articles of association (usually to the company secretary), the transfer then being entered in the register of members of the company itself (Companies Act 1931 s.64); Companies Act 2006 s.47). (See also the Uncertificated Securities Regulations 2005 (SD 754/05https://www.tynwald.org.im//links/tls/SD/2005/2005-SD-0754.pdf#search=%22Uncertificated%20Securities%20Regulations%22 and the Uncertificated Securities Regulations 2006 (SD 743/06https://www.tynwald.org.im//links/tls/SD/2006/2006-SD-0743.pdf#search=%22Uncertificated%20Securities%20Regulations%22 relating to the Companies Acts 1931–2004 and the Companies Act 2006 respectively).

There are no restrictions on the ability to make gifts of personal property and no taxes or duty are payable.

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IOM-30 Real property

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Part I General Law

Lifetime gifts

Real property

IOM-30 The transfer of real property situated in the Isle of Man is subject to the formal requirements on transfer and registration contained in the Conveyancing Acts 1908–1985. Upon completion of the conveyance, the fact of the transfer must be registered at the Deeds Registry in Douglas. The Land Registration Act 1982 came into force on 1 November 2000 and the process of registering all titles on sale or disposal is under way.

There are no restrictions on the ability to make gifts of real property. Details of fees payable are found in the Land Registration General Fees and Duty Order 2019 https://tynwald.org.im/links/tls/SD/2019/2019-SD-0230.pdf#search=%22Land%20Registration%20General%22 and the Land Registration Fixed Fees Order 2019 SD 2019/0229 https://tynwald.org.im/links/tls/SD/2019/2019-SD-0229.pdf#search=%22Land%20Registration%22.

End of Document

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Part I General Law

Estates of deceased individuals

IOM-31 Both real and personal estate, in which the deceased had a legal or an equitable interest, is capable of passing by will or on full or partial intestacy. For the avoidance of doubt, the Wills Act 1985 [1] (re-enacting earlier legislation) provides in s.29 that “all real property, of whatever description, may be devised by Will”.

The Isle of Man law of domicile was considered in *Estate of Turner Deceased 1990*, Deemster Callow stated:

> "1.A person receives at birth a domicile of origin which remains his domicile, wherever he goes, unless and until he acquires a new domicile.
>
> 2.A domicile of choice is acquired by an individual actually moving to another country and intending to remain there indefinitely.
>
> 3.The domicile of choice is lost by abandonment whereupon the domicile of origin revives unless and until some other domicile is acquired.
>
> 4.A domicile of choice is abandoned by an individual unequivocally determining to cease residence in the country of domicile and to cease to have the intention to return to it as his permanent home."

On the facts of the case, a man who had three years before his death taken up residence in the Isle of Man having spent most of his life in England, yet who died in England on holiday and was buried there, was deemed not to have abandoned the Isle of Man as his domicile of choice. The case may thus have helped to lay to rest the argument that a direction in a will or in some other permanent form that funeral arrangements are to be off-island indicates an intention to abandon the Isle of Man as a domicile of choice on death.

Section 1(1) of the Domicile and Matrimonial Proceedings Act 1974, which came into force on 9 July 1974, provides that:

> "… the domicile of a married woman … shall, instead of being the same as her husband's by virtue only of marriage, be ascertained by reference to the same factors as in the case of any other individual capable of having an independent domicile."

This is subject to a qualification (rendered less relevant by the passing of the intervening years) in s.1(2), which provides:

> "Where, immediately prior to [July 9, 1974] a woman was married and then had her husband's domicile by dependence, she is to be treated as retaining that domicile (as a domicile of choice, if it is not also her domicile of origin) unless and until it is changed by acquisition or revival of another domicile either on or after [July 9, 1974]."

Footnotes

1 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1985/1985-0011/WillsAct1985_3.pdf.

IOM-32 Wills

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Part I General Law

Estates of deceased individuals

Wills

IOM-32 The Wills Act 1985 re-enacted and revised the Wills Acts 1869–1983. The Act came into force on 1 January 1986. The Act makes provision for the application in the Isle of Man of the International Wills Convention (Uniform Law on the Form of an International Will, Washington 26 October 1973) and the Convention on the Establishment of a Scheme of Registration of Wills (Basle 16 May 1972). However, the sections dealing with such application (ss.25–27 and Sch.2) have not yet been brought into force and the Isle of Man government has no immediate plans to do so.

Formalities

IOM-33 No will made by a person under 18 years old is valid (Wills Act 1985 s.2), unless that person is a soldier or airman *on military service* or a mariner or seaman *at sea*, in which case the minimum age limit does not apply (and in addition there are in such cases no formalities) (Wills Act 1985 s.6).

To be valid, a will must comply with the requirements of the Wills Act 1985 s.3:

(a)the will must be in writing, signed by the testator (or by some other person in his presence and by his direction);

(b)it must be apparent that the testator intended by his signature to give effect to the will;

(c)the signature must be made or acknowledged by the testator in the presence of two or more witnesses who must themselves be present at the same time;

(d)each witness must attest and sign the will or, in the alternative, acknowledge his signature in the presence of the testator (but in this case not necessarily in the presence of any other witness).

A gift by will to a witness of the will or to that witness's spouse will be void.

In general, a will is revoked by the testator's subsequent marriage (Wills Act 1985 s.7(1)) or civil partnership (Wills Act 1985 s.8A(1), but where it appears from a will that at the time it was made the testator was expecting to be married to or enter into a civil partnership with a particular person and that he or she intended that the will should not be revoked by the marriage or civil partnership, then the will is not revoked by his or her marriage to or civil partnership with that person (Wills Act 1985 s.7(3)) and s.8A(3)).

Subsequent divorce also affects the will. The law in this area has been changed with effect from 1 July 1996 as regards a will made by a person dying on or after that date (regardless of the date of the will and the date of the dissolution of the marriage). The previous position under the Wills Act 1985 s.8 (which has with effect from 1 July 1996 been amended by the Law Reform (Miscellaneous Provisions) Act 1996 s.3(1) and (3)) was that where, after a testator had made a will, the marriage was dissolved or annulled, either by a decree of the High Court of the Isle of Man or in circumstances where a dissolution or annulment was entitled to recognition in the Isle of Man by virtue of the Recognition of Divorce Act 1987, the will would take effect as if any appointment of the former spouse as an executor or trustee of the will were omitted and any gift in the will to the former spouse would lapse (except insofar as a contrary intention appeared by the will). The new law provides by contrast that in such circumstances the will takes effect as if the former spouse had died on the date on which the marriage was dissolved or annulled and any property or interest in property gifted to the former spouse passes as if he or she had died on that date (except insofar as a contrary intention appears by the will). A former spouse is not, however, prevented in these circumstances from applying to the Court for relief under the Inheritance (Provision for Family and Dependants) Act 1982 (as to which, see para.IOM-34). The creation by statute of an entitlement of a married woman to dower or widowright was abolished with the coming into force of the Administration of Estates Act 1990 (and see generally the Matrimonial Proceedings Act 2003). Directly analogous provisions apply to the dissolution of a civil partnership (Wills Act 1985 s.8B).

The conversion of a civil partnership into a marriage pursuant to Civil Partnership Act 2011 s.27A does not revoke any will made by a party to the civil partnership before the conversion or affect any disposition in such a will.

A will is revoked either in accordance with the Wills Act 1985 s.7, s.8 or s.8A (see *above*) or by later will. It is also possible to revoke by a written statement that revocation has taken place, provided that such a statement is formally executed by the testator in the manner in which a will is required to be executed. Burning, tearing or otherwise destroying the same (with the *intention* to revoke) by the testator or by some other person in his presence and by his direction also amounts to revocation (Wills Act 1985 s.9).

Detailed rules of construction of wills are laid down in the Wills Act 1985 ss.13–18. A detailed consideration of these is outside the scope of this work, but note should be made of s.19, which applies to a will in so far as any part of it is meaningless, or the language used in any part of it is ambiguous on the face of it, or if there is evidence (other than evidence of the testator's intention) showing that the language used in any part of it is ambiguous in the light of surrounding circumstances: in such cases, extrinsic evidence, including evidence of the testator's intention, may be admitted to assist in the interpretation.

Section 20 of the Wills Act 1985 provides for the *rectification* of a will. "If the High Court is satisfied that a will is so expressed that it fails to carry out the testator's intentions, in consequence of a clerical error, or of a failure to understand his instructions, it may order that the will shall be rectified so as to carry out his intentions" (s.20(1)). Applications for rectification must be made within six months of the date upon which representation with respect to the estate of the deceased is taken out (unless the High Court grants an extension) (s.20(2)).

Sections 21–24 of the Wills Act 1985 deal with questions arising out of the execution of wills abroad. A will is treated as properly executed if its execution conformed to the internal law in force in:

(a)the territory where it was executed; or

(b)the territory where, at the time of its execution or of the testator's death, he was domiciled or had his habitual residence; or

(c)a state of which, at either of those times, he was a national (s.21).

Additional rules are contained in s.22, under which the following are treated as properly executed:

(a)a will executed on board a vessel or aircraft, if it conformed to the law of the territory with which that vessel or aircraft was most closely connected;

(b)a will, so far as it disposes of real estate (immovable property), if its execution conformed to the internal law in force in the territory where the property was situated;

(c)a will revoking a foreign-executed will if executed according to the law of the revoked will;

(d)a will exercising a power of appointment, if its execution conformed with the law governing the essential validity of the power.

If more than one system of law exists in a territory governing the formal validity of wills, then the rules of that territory regarding applicability of the relevant system are to be followed. If there are no such rules, then that system is to be applied with which the testator was most closely connected at the date of execution of his will or at his death (s.23).

Where (for any reason) a law in force outside the Isle of Man is to be applied in relation to a will, then any requirements of that law whereby:

(a)special formalities are to be observed by testators answering a particular description; or

(b)witnesses to a will are to possess certain qualifications,

will be treated, notwithstanding any rule of law to the contrary, as a *formal* requirement only (s.24).

The Civil Partnership Act 2011[1] ranks and treats spouses and civil partners equally for the purposes of the Wills Act 1985. Under the Marriage and Civil Partnership (Amendment) Act 2016[2] a marriage between same sex couples is valid. That Act has also amended the Civil Partnership Act 2011 s.4(1) by repealing the former restriction on civil partnerships between persons of different sex.

Footnotes

1 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2011/2011-0002/CivilPartnershipAct2011_10.pdf.

2 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2016/2016-0012/MarriageandCivilPartnershipAmendmentAct2016_1.pdf.

End of Document

IOM-34 Intestacy

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Part I General Law

Estates of deceased individuals

Intestacy

IOM-34 Where no will has been made, or where a will has not sufficiently covered the assets of the deceased, a full or partial intestacy results. In the case of a deceased who died fully or partially intestate, those assets passing on intestacy are, in accordance with the Administration of Estates Act 1990 s.52[1] (but subject to the provisions of the Inheritance (Provision for Family and Dependants) Act 1982)[2] distributed in the following manner or held on the following trusts:

(a)If the intestate leaves a husband or wife but no issue, the residuary estate is held in trust for the surviving husband or wife absolutely.

(b)If the intestate leaves both a husband or wife and issue, then:

(i)the surviving husband or wife takes the personal chattels (i.e. cars, pets, household items, jewellery, pictures, wines etc) absolutely; and

(ii)in addition the residuary estate (except the personal chattels) stands charged with the payment of a net sum of £125,000, free of duties (if any) and costs, to the surviving husband or wife (this sum bears interest from the date of death until paid);

(iii)subject to this, the residuary estate (except the personal chattels) is held as to one half on trust for the surviving husband or wife and one half on the *statutory trusts* for the surviving issue (as to what constitutes the statutory mists, see below).

(c)If the intestate leaves issue but no surviving husband or wife, the residuary estate is held on the statutory trusts for the issue.

(d)If the intestate leaves no husband or wife or issue, but both parents, the residuary estate is held in trust for the father and mother in equal shares absolutely.

(e)If the intestate leaves no husband or wife or issue but one parent, the residuary estate is held in trust for the surviving father or mother absolutely.

(f)If the intestate leaves no husband or wife, no issue and no parent, the residuary estate is held in trust for die following persons living at the death of the intestate in die following order and manner:

(i)on the statutory trusts for the brothers and sisters of the whole blood of the intestate, but if no person takes an absolutely vested interest under those trusts; then

(ii)on the statutory trusts for the brothers and sisters of the half blood of the intestate, but if no person takes an absolutely vested interest under those trusts; then

(iii)for the grandparents of the intestate and, if more than one surviving the intestate, in equal shares, but if there is no member of that class; then

(iv)on the statutory trusts for the uncles and aunts of the intestate (being brothers and sisters of the whole blood of a parent of the intestate); but if no person takes an absolutely vested interest under those trusts; then

(v)on the statutory trusts for the uncles and aunts of the intestate (being the brothers and sisters of the half blood of a parent of the intestate), but if no person takes an absolutely vested interest under those trusts; then

(vi)on the statutory trusts for the great-uncles and great-aunts of the intestate (being brothers or sisters of the whole blood of a grandparent of the intestate); but if no person takes an absolutely vested interest under those trusts; then

(vii)on the statutory trusts for the great-uncles and great-aunts of the intestate (being brothers and sisters of the half blood of a grandparent of the intestate).

(g)If no person takes an absolute interest under paragraphs (a) to (f), the residuary estate of the intestate belongs to the Isle of Man Treasury as bona vacantia.

The Treasury can, notwithstanding bona vacantia, make provision "for dependants of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision" (Administration of Estates Act 1990 s.52(2)).

Where (in the case of a person dying on or after 1 July 1996) an intestate's wife or husband survives the intestate but dies before the end of the period of 14 days beginning with the day on which the intestate died, then the provisions of the Administration of Estates Act 1990 s.52 have effect as respects the intestate as if the wife or husband had not survived the intestate (s.52(7)).

Section 55 and Sch.1 of the Administration of Estates Act 1990 contain provisions safeguarding the position of the surviving husband and wife of an intestate in relation to the matrimonial home.

The statutory trusts are set out in the Administration of Estates Act 1990, s.53. The residuary estate held on the statutory trusts is held, in equal shares if more than one, for (a) the children of the intestate who attain the age of 18 years or marry under that age, and for (b) the issue (who attain the age of 18 years or marry under that age) of any such children who predecease the intestate,

such issue "to take through all degrees according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate".

The Civil Partnership Act 2011 ranks and treats spouses and civil partners equally for the purposes of the Administration of Estates Act 1990.

Illegitimacy

IOM-35 Section 57(1) of the Administration of Estates Act 1990 provides that "where any person dies intestate as respects any property, an illegitimate person, and any person related to an illegitimate person, shall be entitled to take any interest in it as if the illegitimate person had been born legitimate".

Footnotes

1 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1990/1990-0017/AdministrationofEstatesAct1990_2.pdf.

2 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1982/1982-0008/InheritanceProvisionforFamilyandDependantsAct1982_1.pdf.

End of Document

IOM-36 Administration of estates

European Cross-Border Estate Planning

Other European States

Isle of Man

Isle of Man

Part I General Law

Estates of deceased individuals

Administration of estates

IOM-36 The administration of estates is governed by the Administration of Estates Act 1990. Details of the procedures to be followed to obtain representation are contained in the Probate Rules 1988 (amended in 1992).

Application for a grant of probate (where the deceased died having left a will) or for a grant of letters of administration (where the deceased died intestate) is made to the Chief Registrar, who may seek guidance from a Deemster (Administration of Estates Act 1990 s.2). Application may also be made in the case of a partial intestacy for letters of administration with the will annexed (Administration of Estates Act 1990 s.21(1)). The number of personal representatives is limited to four and if there are minor beneficiaries the grant of administration must be made to a trust corporation (with or without an individual) or to not fewer than two individuals (unless it appears to the High Court to be expedient in all the circumstances to appoint an individual as sole administrator) (Administration of Estates Act 1990 s.4).

A trust corporation is defined in the Trustee Act 1961 s.65A as being:

> (a)the public trustee established under the Public Trustee Act 1906 (of the Imperial Parliament); or
>
> (b)a body which is incorporated under the law of the Island or of any part of the United Kingdom and is licensed under s.7 of the Financial Services Act 2008.

In the case of an intestacy, in granting letters of administration the High Court will have regard to the rights of all persons interested in the deceased's estate (Administration of Estates Act 1990 s.18). Every person to whom administration of the estate of a deceased person is granted has the same rights and liabilities and is accountable in the same manner as if he or she were an executor or trustee (Administration of Estates Act 1990 s.26).

Where any legal proceedings regarding the validity of a will are pending, the High Court may appoint an administrator pending suit (pendente lite), who is subject to the immediate control of the Court and who acts under its direction (Administration of Estates Act 1990 s.22).

In any case where a will has been first proved in a foreign court, an office copy (duly certified in accordance with the Evidence Act 1871 [1]) or the probate copy are prima facie evidence of the will having been duly proved (Administration of Estates Act 1990 s.16).

Where the deceased died domiciled outside the Isle of Man leaving immovable or movable property in the Isle of Man, then (assuming no Manx will has been made with regard to such assets or that such a Manx will has been revoked) probate or letters of administration (or their local equivalent in such place) must be reconfirmed by the High Court of the Isle of Man. It is not sufficient merely to present the foreign grant. The Court has discretion to issue a grant limited in such a way as it may direct (Probate Rules 1988 r.24(1)). Where the whole of the estate in the Isle of Man consists of immovable property, a grant limited to such property may be made in accordance with the law which would have been applicable if the deceased had died domiciled in the Isle of Man (r.24(2)(b)).

Survivorship

IOM-37 Section 43(1) of the Administration of Estates Act 1990 provides: "Where two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, then …the deaths shall for all purposes affecting the title to property be presumed to have occurred *simultaneously, and accordingly no one of them shall be deemed to have survived the other or others."* (emphasis added). In consequence, any land held by them as beneficial joint tenants is deemed to have been held as tenants in common. Any property other than land held by them beneficially on joint account is deemed to have been held in equal shares, and any gift by one to the other with a gift over to some other person in the event of the death of the beneficiary in the testator's lifetime will be treated as if the beneficiary predeceased the testator.

Forced heirship

IOM-38 The inheritance regimes of foreign states will be upheld in accordance with the principles of private international law. However, in the case of trusts governed by the law of the Isle of Man, the provisions of the Trusts Act 1995 [2] (which came into force on 17 January 1996) apply. The principal objects of the Act are to clarify the law of the Isle of Man as to the ability of a trust to change the law which is its governing law and to ensure that in relation to trusts which are governed by Manx law the courts will not have regard to foreign laws in determining certain matters. Specifically, s.5 of the Act provides:

> "…no trust governed by the law of the Island and no disposition of property to be held upon the trusts of such a trust is void, voidable, liable to be set aside or defective in any fashion, nor is the capacity of any settlor to be questioned by reason that—
>
> (a)the law of any foreign jurisdiction prohibits or does not recognise the concept of a trust; or
>
> (b)the trust or disposition—
>
> (i)avoids or defeats any right, claim or interest conferred by a foreign law upon any person by reason of a personal relationship to the settlor or by way of heirship rights; or
>
> (ii)contravenes any rule of foreign law or any foreign judicial or administrative order or action intended to recognise, protect, enforce or give effect to such a right, claim or interest."

Section 6 of the Act defines "heirship rights" to be:

> "any right, claim or interest in, against or to the property of a person arising or accruing in consequence of that person's death, other than any such right, claim or interest created by will or other voluntary disposition by such person or resulting from an express limitation in the disposition of the property to such person."

Personal relationship is broadly defined in s.6 to include "every form of relationship by blood or marriage" and includes within this definition natural, adopted, legitimate or illegitimate children. Also specifically included are cohabiting couples who so conduct themselves "as to give rise in any jurisdiction to any rights, obligations or responsibilities analogous to those of parent and child or husband and wife". Such a definition of cohabitation would appear not to exclude single sex relationships. Both the terms "adoption" and "marriage" are stated to include such states "whether or not … recognised by law".

Further legislation in this area is the Inheritance (Provision for Family and Dependants) Act 1982, which provides that where a person has died domiciled in the Isle of Man and is survived by a spouse (or unmarried former spouse), child, "child of the family" (a child treated by the deceased as being his or her child and maintained as such) or anyone being maintained by the deceased at the date of death, then any such individual can apply to the High Court for a family provision order on grounds that the deceased's will or the law relating to the deceased's full or partial intestacy fail to make reasonable financial provision for the applicant (s.1 of the 1982 Act).

The question of dependence is determined on the basis of whether or not the deceased was making a substantial contribution towards the applicant's maintenance and whether the deceased received full valuable consideration for that contribution:

> "These two questions must be considered … not on the de facto state of affairs existing at the instant before the death of the deceased, but in the light of the settled and enduring basis or arrangement then generally existing between the parties, using the date of death as the day on which that arrangement was to be considered."

(*Petition of C. 1994*, per Deemster Cain.)

A disposal of property below its true value within six years of the death, such disposal being made with the intention of defeating a future family provision order, may be the subject of an order of the High Court, whereby the donee of the property will be obliged to comply with the terms of such family provision order (Inheritance (Provision for Family and Dependants) Act 1982 s.10). Contracts to leave property by will are similarly subject to review by the High Court (s.11 of the 1982 Act).

The Civil Partnership Act 2011 ranks and treats spouses and civil partners equally for the purposes of the Inheritance (Provision for Family and Dependants) Act 1982.

Footnotes

1 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1871/1871-0001/EvidenceAct1871_2.pdf.

2 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1995/1995-0018/TrustsAct1995_2.pdf.

End of Document

IOM-39 Property belonging to spouses

European Cross-Border Estate Planning

Other European States

Isle of Man

Isle of Man

Part I General Law

International estate planning issues

Property belonging to spouses

IOM-39 As there are no community of property laws as such in the Isle of Man (see para.28), on the death of a married person or of a civil partner leaving a valid will or dying intestate or partially intestate the rules set out in paras 31 et seq. will be applied.

End of Document

IOM-40 Forced heirship

European Cross-Border Estate Planning

Other European States

Isle of Man

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Part I General Law

International estate planning issues

Forced heirship

IOM-40 In all cases other than those in which an Isle of Man settlement is sought to be relied upon, the inheritance regimes of foreign states will be upheld in accordance with the principles of private international law. The Trusts Act 1995 has created a new regime in the case of Isle of Man settlements (as to which see para.IOM-38).

End of Document

IOM-41 Movable and immovable property

European Cross-Border Estate Planning

Other European States

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Isle of Man

Part I General Law

International estate planning issues

Movable and immovable property

IOM-41 The law of the Isle of Man in relation to movables and immovables follows the rules of private international law. Movables and immovables are governed by the law of the domicile and the lex situs respectively. Intestate succession to movables is governed by the law of the deceased's last domicile. Intestate succession to immovables is governed by the lex situs or lex loci and not by the law of the domicile.

The requirement under Isle of Man law that foreign probate or letters of administration or their equivalent must be reconfirmed by the High Court of the Isle of Man (see para.IOM-36) does not have the effect of varying the law applicable to the immovable or movable concerned.

Where the whole of the estate in the Isle of Man consists of immovable property, a grant limited to such property may (if requested in the application and accompanied by supporting statements satisfactory to the Chief Registrar) be made in accordance with the law which would have been applicable if the deceased had died domiciled in the Isle of Man (Probate Rules 1988 r.24(2)(b)).

End of Document

IOM-61 Sources of law

European Cross-Border Estate Planning

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Part II Taxation

Taxes

Paul Beckett [1]

Sources of law

IOM-61 Taxation in the Isle of Man is regulated under the Income Tax Acts 1970–2011 and the Income Tax (Corporate Taxpayers) Act 2006, and (in relation to the only indirect taxation or duty in the Isle of Man) the Value Added Tax Act 1996. It is important to note, however, that a system of extra-statutory concessions is operated by the Assessor of Income Tax, and that in addition the Assessor issues practice notes. Both the concessions and the notes have the binding force of law. Full details of the income tax regime are available at https://gov.im/categories/tax-vat-and-your-money/income-tax-and-national-insurance/.

Footnotes

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IOM-62 Capital taxes

European Cross-Border Estate Planning

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Isle of Man

Part II Taxation

Taxes

Capital taxes

IOM-62 In the Isle of Man there are no death or estate duties, capital transfer or gift taxes, capital gains or wealth tax. There is no stamp duty or equivalent document tax.

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IOM-63 Withholding tax

European Cross-Border Estate Planning

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Part II Taxation

Taxes

Withholding tax

IOM-63 Local withholding tax takes two forms. First, “income tax instalments payment” is applied against earnings from employment. Secondly, there is a requirement to deduct 18 per cent from income paid to a non-resident person.

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IOM-64 Value added tax

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Isle of Man

Part II Taxation

Taxes

Value added tax

IOM-64 Value added tax (VAT) is chargeable on any supply of goods or services made in the Isle of Man, where it is a taxable supply made by a taxable person in the course of furtherance of any business carried on by him. The Isle of Man being in customs union with the UK, no customs barriers exist between those two countries. The Isle of Man has the statutory authority to levy its own rates of duty and tax, but by agreement with the UK made in 1979 the Isle of Man maintains its indirect taxation closely aligned with that of the UK. The current rate of VAT is 20 per cent.

The Isle of Man has its own Customs and Excise administration which is fully independent. It collects the duties and taxes arising in the Isle of Man, and applies the same import and export controls as those in the UK.

Guidance on the effect on Isle of Man VAT collection of withdrawal by the UK from the EU is currently fluid and updates are available from Isle of Man Customs and Excise at: https://gov.im/categories/tax-vat-and-your-money/customs-and-excise/eu-exit/.

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IOM-65 Income tax: individuals

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Part II Taxation

Taxes

Income tax: individuals

IOM-65 Taxable income is defined in the Income Tax Act 1970 s.2(1) as being, in the case of Isle of Man residents, income derived from the annual profits or gains of or from any kind of property or from earned income (in each case) on a worldwide basis. The taxable income of non-residents is that which is derived from the annual profits or gains of or from any kind of property or from earned income (in each case) in the Isle of Man. The Act adds further clarification:

> "Profit derived from anything produced in or imported into the Isle of Man, which is sold or exported out of the Isle of Man, whether such profit is derived in the Isle of Man or not, shall be deemed to be income derived from a source in the Isle of Man" (s.2(2)).

The Isle of Man is a low tax area. The standard rate of income tax for individuals for the tax year 2023–2024 commencing 6 April 2023 is 10 per cent with a higher rate of 20 per cent. The tax threshold for the higher-rate band is £6,500 for each individual and £13,000 for a married couple/civil partners seeking joint assessment.

The income tax personal allowance will remain at £14,500 for a resident individual and £29,000 for a jointly assessed couple. For higher earners, the personal allowance will be tapered and reduced by £1 for every £2 that a person's total income is above £100,000 (£200,000 for jointly assessed couples). This means if a person's total income is £129,000 (£258,000 for jointly assessed couples) or above their personal allowance will be zero.

A cap of £100,000 on an individual's income tax liability was introduced for the tax year 2006–2007, commencing on 6 April 2006. The tax cap for the tax year 2023–2024 is £200,000 for an individual and £400,000 for a jointly assessed couple.

With effect from 6 April 2014 an individual wishing to take advantage of the tax cap must elect to do so. This election commits that individual to pay not less than the tax cap amount for the succeeding five tax years, whether or not their actual taxable income for a year is sufficient to produce a tax liability equal to the tax cap.

Full details of rates and allowances are available at: https://gov.im/categories/tax-vat-and-your-money/income-tax-and-national-insurance/tax-practitioners-and-technical-information/rates-and-allowances/.

Under ss.65, 65A and 65B of the Income Tax Act 1970, with effect from tax year 2000–2001 married couples' personal allowances are no longer apportioned in relation to each partner's income. Instead, the computation is as though the couple were not married. This provides complete independence and confidentiality between partners. Income from property held in joint names is assessed in equal shares unless evidence is available that beneficial entitlement is not equal. This method of apportionment also applies to other items such as joint mortgage interest paid and joint life assurance premiums.

An election in writing for the separate treatment option may be made by *either* spouse by 31 December, in the year preceding the year of assessment for which it is to apply. An election can be revoked for a year of assessment if both parties make a written request by 30 June, immediately following the relevant year of assessment.

Residence for tax purposes: individuals

IOM-66 The following is taken from Practice Note issued by the Assessor of Income Tax on 13 June 2007 (PN 144/07) (https://gov.im/media/97083/pn14407taxresidenceintheisl.pdf).

> "1.There is no general definition of residence for tax purposes in the Isle of Man. Determining a person's residence status is important, however, in view of the underlying basis of our taxation system. A Manx resident is taxed on worldwide income whereas a non-resident is taxed on Manx-source income only (unless that Manx-source income is otherwise excluded from income tax when paid to a non-resident by virtue of statute, order or regulation). [...]
>
> 3.When considering residence, a frequently quoted passage from the speech of Viscount Cave in the 1928 UK tax case *Levene v Commissioners of Inland Revenue (13 TC 486)* remains applicable:
>
> > 'The word "reside" is a familiar English word and is defined by the Oxford English Dictionary as meaning 'to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place.'

> 4.As is common in many countries, the Isle of Man treats those individuals having a "view or intent of establishing residence" as tax resident from the date of their arrival here. The corollary is that we treat individuals who permanently cease residence as tax non-resident from the date of their departure.
>
> 5.The Assessor will look at evidence of a 'view or intent of establishing residence' as opposed to presence on the Island for a temporary purpose. We ask new residents to answer a number of questions by completing a Registration for Manx Income Tax Form R25 (New) in order to establish their residence status. In most circumstances, completion of this form and evidence of the person having accommodation in the Isle of Man is sufficient for the Assessor to accept that person as resident and it is not necessary to make any further enquiries. [...]""

Where no Form R25 has been submitted, there are specific rules in the Isle of Man that determine tax residence by physical presence.

> "6.For the avoidance of doubt, individuals residing in the Isle of Man for a period in the whole equal to more than six months in any tax year (i.e. the year commencing 6 April) are tax resident and liable to Manx income tax by virtue of Section 10, Income Tax Act 1970, which states:
>
> > '… every such person after residence in the Isle of Man for six months as aforesaid shall be chargeable with income tax for the year commencing on the sixth April as a person residing in the Isle of Man …'
>
> 7.Our practice, based on case law, is also to treat as tax resident individuals whose visits to the Island over a period of four or more consecutive years exceed an average of three months (which we take as 90 days) in each tax year. Where this 'three-month average rule' is broken, the Assessor will regard the person as resident from the fifth year. However, where it is clear when an individual first visits the Isle of Man that they intend to make visits exceeding an average of 90 days in each tax year over a period of four or more years, they will be treated as resident from the beginning of the first year. Similarly, an individual will be treated as resident from the beginning of the tax year in which they decide that they will make such visits. If an individual needs to spend days in the Isle of Man for exceptional circumstances beyond their control, those days will not be counted when considering this rule.
>
> 8.The Assessor does not count days of arrival and departure when determining the number of days that a person has spent in the Isle of Man.
>
> 9.By virtue of s.9 of the Income Tax Act 1970, individuals resident in the Isle of Man:
>
> > '…who shall have departed from the Isle of Man for the purpose only of occasional residence elsewhere, shall be deemed, notwithstanding

> such temporary absence, a person chargeable with income tax as a person residing in the Isle of Man.'
>
> However, where a normally-resident person is abroad for a complete tax year they will be treated for tax purposes as non-resident for that tax year. Furthermore, it is the practice of the Assessor to treat as permanently non-resident those individuals who are abroad for two complete tax years or more. Where a length of absence exceeding two tax years does not become clear until after the individual is already abroad, the Assessor may need to revise the person's tax position from the date that they left the Island. An individual returning to live in the Isle of Man after an absence of more than two complete tax years will be treated by the Assessor as a new resident.
>
> 12.For many years a key, if not the primary, test of establishing residence was that an individual should have accommodation available in the Isle of Man retained for their use [...].
>
> 13.The Assessor considers that the available accommodation test should no longer determine Manx tax residence, although accommodation of a standard consistent with being a permanent home is clearly an aspect of residence.'"

Schedule 14 to the Civil Partnership Act 2011 amends various items of primary tax legislation in order that references to husbands, wives, spouses, widows, widowers and former spouses include references to civil partners and surviving civil partners as required. From 6 April 2011, civil partners will receive the same income tax treatment as married couples. Practice Note 170/11 provides guidance on the income tax treatment of civil partners for tax years commencing on or after 6 April 2011 and is available at https://gov.im/media/511528/pn17011.pdf.

End of Document

IOM-67 Taxation of companies

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Part II Taxation

Taxes

Taxation of companies

IOM-67 Residence for taxation purposes for both individual and companies was clarified in a Practice Note issued by the Assessor of Income Tax on 13 June 2007 (PN 144/07) (https://gov.im/media/97083/pn14407taxresidenceintheisl.pdf). This has now been amended with regard to tax residence of companies and other corporate taxpayers by PN208/20 issued on 2 January 2020 (https://gov.im/media/1367940/pn208-20.pdf.

The Isle of Man applies a combination of both the place of incorporation and the place of central management and control of the company in determining the tax residence of a company. Section 2N Income Tax Act 1970 states that, for the purposes of the Income Tax Acts, all companies incorporated in the Isle of Man are resident in the Isle of Man. Section 2N also contains a specific provision for such companies to be considered as not resident for income tax purposes in certain circumstances.

Central management and control

IOM-67A A company incorporated outside the Isle of Man is regarded as tax resident in the Isle of Man when its central management and control is exercised in the Island. The Assessor refers to relevant UK case law for guidance as to the meaning of the term “central management and control” as there is no applicable Isle of Man case law. The Assessor considers the central management and control of a company to be the highest level of management and control, which is separate to the day to day operations and the administration of the company. When considering

whether a company is tax resident by virtue of its central management and control, the Assessor will generally consider:

- Whether the directors exercise the central management and control.
- If so, where they exercise that central management and control,
- If the directors do not exercise the central management and control, who does exercise it and where is this exercised.

Transfer of Domicile

IOM-67B A company incorporated in the Isle of Man which is transferring domicile (place of incorporation) to another jurisdiction will cease to be tax resident in the Island by virtue of its incorporation on the date that the transfer of domicile takes place. If the central management and control of the company will be exercised in the Isle of Man after that date, the company will be required to register as tax resident in the island as a company incorporated outside the island.

A company incorporated outside the Isle of Man which is transferring domicile to the island will commence tax residence by reason of incorporation on the date that the transfer of domicile takes place and it is added to the Isle of Man register of companies.

Characteristics of non-residence

IOM-67C A company will be considered not resident in the Isle of Man if it can prove to the satisfaction of the Assessor that—

(a)its business is centrally managed and controlled in another country;

(b)it is resident for tax purposes under the other country's law; and

(c)either —

(i)it is resident for tax purposes under the other country's law under a double taxation agreement between the Isle of Man and the other country in which a tie–breaker clause applies;

(ii)the highest rate at which any company may be charged to tax on any part of its profits in the other country is 15 per cent or higher; and

(d)there is a bona fide commercial reason for its residence status in the other country, which status is not motivated by a wish to avoid or reduce Isle of Man income tax for any person.

IOM-67D The following is taken from Practice Note 127/06 issued by the Assessor of Income Tax on 9 March 2006 (for the full text is at https://gov.im/media/511804/pn12706.pdf).

Resident companies

IOM-67E From 6 April 2006, the standard rate of income tax for companies in the Isle of Man is 0 per cent ("the standard rate"). The standard rate is generally applicable to all forms of income received by all companies with the two exceptions below:

- Licensed banks are taxed at a rate of 10 per cent on income from their banking business (for more information, see PN 124/06). Income received by banks that is not derived from their banking business will be taxed at the standard rate.

- Income received by companies that is derived from land and property in the Isle of Man is taxed at a rate of 10%. This income arises from rental, mineral extraction and property development activities (See Practice Note 138/06 issued by the Assessor of Income Tax on 2 November 2006.) https://gov.im/media/511764/pn13806.pdf.

Non-resident companies

IOM-67F The taxation of non-resident companies follows that of resident companies from 6 April 2006. The income of those companies registered under Pt XI of the Companies Act 1931 (often known as "F Register" companies) [Author's Note: Pt XI Companies Act 1931 has been repealed and replaced by the Foreign Companies Act 2014—see above para.IOM-12B] as being incorporated outside the Isle of Man, but having a place of business there, are taxed on their Manx-source income at the standard rate or at 10 per cent depending on the type of income that they receive. Companies incorporated outside the Isle of Man but having their management and control in the Island are normally tax resident there, and so their worldwide income is taxed at the standard rate or at 10 per cent depending on its nature.

End of Document

IOM-67G Dividends

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Part II Taxation

Taxes

Withholding taxes

Dividends

IOM-67G Dividends paid from income subject to tax at 10 per cent will suffer a 10 per cent withholding tax when the recipient is a non-resident company or individual. From 6 April 2007, dividends paid from income subject to tax at 10 per cent carry a 10 per cent tax credit.

This tax credit is not refundable where the recipient is a non-resident company or individual. However, no withholding taxes apply to any dividends from the same date.

With effect from 6 April 2006 by Extra Statutory Concession (GC 26/06 https://gov.im/media/377547/gc2606.pdf) no withholding tax will be deducted from directors' remuneration and consultancy fees made by a company incorporated under the Companies Acts 1931–2004 or registered as a Foreign Company to non-resident individuals, providing that the duties for which these payments are made are being carried on outside the Isle of Man (except for the statutory duties, such as attending Board meetings, which are required to be performed by directors).

Other payments

IOM-67H Except for the following examples, the Isle of Man does not charge withholding taxes on payments made by companies to non-residents from 6 April 2006:

• Rents paid by a company to a non-resident company will suffer a withholding tax of 10 per cent.

• Rents and other taxable payments (such as remuneration) paid by a company to a non-resident individual will suffer a withholding tax of 18 per cent.

Distributions from company reserves

IOM-67I The following is taken from Practice Note 174/12, issued by the Assessor of Income Tax on 22 June 2012 (https://gov.im/media/511512/pn17412.pdf).

Introduction

IOM-67J This guidance is relevant to all Isle of Man resident companies, their members and agents. It explains a revision to the Assessor's practice in respect of the tax treatment of company distributions.

The Assessor has for a number of years been prepared to relax the strict application of the law in defined circumstances and to treat certain distributions as if they were capital in the hands of the company's shareholders. The Assessor considers that this concessionary treatment is no longer appropriate. The conditions set out in Practice Note 156/09, whereby 100 per cent of the profit of the most recently ended accounting period must be distributed in order to take advantage of the concessionary treatment, continue to apply for distributions made up to 21 February 2012.

The overarching principle in the Isle of Man that income tax is imposed on income and not on capital gains, is and will remain unchanged.

It is accepted that the new approach set out in this guidance will lead to an increase in the compliance burden for corporate taxpayers. Careful attention to good record-keeping by corporate taxpayers in particular will ease this burden.

General Principles

The general principles to be followed are that:

1.distributions by a corporate taxpayer of its accumulated income profits should be taxed when they are received by individual members;

2.distributions by a corporate taxpayer of its accumulated capital profits should not be taxed when they are received by individual members;

3.repayment of the par value of share capital and any share premium reserve of a corporate taxpayer should not be taxable distributions when received by individual members;

4.economic double taxation should in general not occur in the Isle of Man.

The Assessor will not accept claims to relate distributions to earlier accounting periods, or to vary the treatment of distributions made in respect of an earlier accounting period which have already been reported and settled. However, in cases of genuine uncertainty, the Assessor will be prepared to offer an opinion to the company or member; provided that all relevant facts are disclosed.

Company Winding Up or Dissolution

Under the Isle of Man Companies Acts there are a number of ways that a company can be wound up or dissolved; including winding up by a Court, voluntary winding up, dissolution by an officer or member or striking off by the Registrar.

Where a winding up, dissolution or striking off of a corporate taxpayer which commences after 21 February 2012 leads to a distribution, then the accumulated income profit element of this distribution will be subject to income tax.

Distributions of Capital Profits

Whilst capital profits may be distributed on a tax-free basis it is not appropriate that tax relief should effectively be given for capital losses. It is also essential to the fairness of the tax system that only genuine capital profits (i.e. gains on the disposal of assets that are capital assets for tax purposes) can be distributed on a tax-free basis.

Where a corporate taxpayer has an accumulated profit from disposals of its capital assets, these capital profits can be received by the members free of tax when distributed; but for tax purposes a distribution will be treated as made out of capital profits only if all income profits have been distributed first.

Tax Credits etc.

IOM-68 From the 2006/07 tax year onwards, economic double taxation on dividends received from Isle of Man corporate taxpayers' profits which have been subject to Manx income tax at 10%, or which have been subject to the distributable profits charge (DPC), is avoided via statutory tax credits.

Economic double taxation on dividends received from Isle of Man corporate taxpayers' profits which have been attributed to members under the provisions of the attribution regime for

individuals (ARI) is avoided because distributions from that profit are not, statutorily, subject to further taxation.

Economic double taxation on dividends received from Isle of Man corporate taxpayers' profits accumulated in periods prior to 6 April 2006 will be avoided by providing a concessionary treatment that section 25A(3), Income Tax Act 1970, shall not apply, if agreed with the Assessor: and the tax credits resulting from this concessionary treatment will not be refundable.

Economic double taxation can also arise on distributions from corporate taxpayers where the underlying profit has suffered tax in other jurisdictions. If a full credit were to be given for the foreign tax, in most scenarios no Manx tax would then be payable on the distribution. The unilateral granting of a tax credit by the Isle of Man for tax paid in another jurisdiction has an effect on local tax revenue, and this issue will be subject to further consultation. In the interim, distributions made by Isle of Man resident corporate taxpayers from profits taxed in another jurisdiction at a rate of 20% or higher (or, for periods prior to 6 April 2010, 18% or higher) will, by concession, not be subject to further taxation. Note that such distributions will be included in the income of the recipient for the purposes of the personal allowance credit.

Ordering

Three forms of profit can be distributed at any time and without reference to the ordering system set out below. These are:

- profits certified as attributed in accordance with ARI;
- profits subject to DPC; and
- profits which have been subject to Manx income tax at the 10% rate.

In order to benefit from the concessionary treatment set out in this guidance, distributions will be treated as being made from accumulated profits in the following order.

For the purpose of the ordering process, profit reserves will be allocated to "boxes". A distribution will only be treated as being paid out of a box of a higher number if all of the lower numbered boxes are empty.

Box 1 Accumulated income profits which have not been taxed, attributed or subject to DPC.

Box 2 Accumulated income profits for the period of account forming the basis of the income tax assessment for 2005/06 or earlier, less any agreed capital profits and distributions already made from this reserve.

Box 3 Accumulated income profits of a resident corporate taxpayer which have suffered foreign tax at a rate of at least the Isle of Man individual higher rate applying in the period during which the profits arose.

Box 4 Accumulated capital profits.

Corporate taxpayers will be expected to provide a schedule setting out reserves and distributions (see also the ‘Monitoring’ section below) and failure to do this will result in distributions being treated as made from Box 1.

End of Document

IOM-70 Published Guidance

European Cross-Border Estate Planning

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Part II Taxation

Taxes

Published Guidance

IOM-70 The Income Tax Division's Guidance Notes relating to DPC, the pay and file regime for companies and ARI (numbers 36, 38 and 41, respectively) will be updated to take account of the changes outlined in this Practice.

Note. These updates will cover the treatment of losses, estates, trusts and foundations.

End of Document

IOM-71 Monitoring and Protecting the Isle of Man Revenue

European Cross-Border Estate Planning

Other European States

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Isle of Man

Part II Taxation

Taxes

Monitoring and Protecting the Isle of Man Revenue

IOM-71 The Assessor has been charged with monitoring the flow of revenue carefully during the transition period following the repeal of ARI, and for this reason, corporate taxpayers will be asked to provide additional information with their tax returns. This information will comprise a declaration of certain reserves at the beginning and end of the accounting period, distributions made and the reserves from which the distributions have been made. Further details will be made available in due course; although it is expected that this information will be in respect of the profits mentioned in the "Ordering" section above.

If for any reason the pattern of revenue collection changes more than had been estimated in relation to the abolition of ARI, Treasury may take further action.

In cases where, in the opinion of the Assessor, artificial arrangements have been used to avoid or reduce the liability of any person to income tax, the Assessor will consider counteracting those arrangements through the application of Sch.1 of the Income Tax Act 1980.

Practice Note 156/09, now superseded, can be found at https://gov.im/media/365215/pn15609.pdf.

With effect from 6 April 2015 the rate of tax on companies receiving income from land and property situated in the Isle of Man (development and rental income) is increased from 10 per cent to 20 per cent. (See Practice Note PN 187/15 available at https://gov.im/media/1346939/pn18715.pdf).

In relation to the Budget 2022, see generally Practice Note PN 218/22 issued on 15 February 2022 available at https://www.gov.im/media/1375707/pn-218-22-budget-2022.pdf.

End of Document

IOM-72 Limited liability companies

European Cross-Border Estate Planning

Other European States

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Part II Taxation

Taxes

Limited liability companies

IOM-72 All LLCs are taxed as partnerships (see para.IOM-74).

End of Document

IOM-73 Protected Cell Company (PCC)

European Cross-Border Estate Planning

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Part II Taxation

Taxes

Protected Cell Company (PCC)

IOM-73 The following guidance has been issued by the Assessor of Income Tax in Practice Note 107/04, 29 October 2004, https://gov.im/media/511922/pn10704.pdf.

For Manx taxation purposes there is one legal entity, that being the company. The cells within the PCC are not a separate legal person and therefore cannot be assessed separately for taxation purposes.

Investors in and creditors of a PCC will be entering into transactions with the company on the understanding that it is regarded as a single entity and the tax treatment applied in the Isle of Man reflects this status, while at the same time protecting the investors in and creditors of one particular cell from the tax liability attributable to the profits of another cell.

The taxable profits of each cell should be computed separately, as though each cell carries on a separate business with, for example, separate capital allowance claims. Losses will not be relievable between cells.

A single assessment will be raised on the PCC, being the legal entity. This assessment will have one liability that will not be apportioned between the different cells and the core cell within the assessment notice.

Ultimately, the liability must be apportioned between the different cells within the company and this apportionment of the liability can be made by the PCC itself. Alternatively, the Income Tax Division will, upon request, issue a separate statement detailing the liability of each cell.

An election by a PCC for a particular status, e.g. Tax Exempt Company status or International Company status, will apply for the company as a whole and will not apply for any particular cell within the company. The activities of each cell must therefore meet the criteria for the relevant status.

Where a fee is payable upon application for the status, then the fee charged will be one fee for the company and not be dependent on the number of cells within the company. Likewise, in the case of International Company status, the rate of tax charged will apply to the whole of the company's taxable profits and not as different rates to individual cells.

End of Document

IOM-74 Economic substance

European Cross-Border Estate Planning

Other European States

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Part II Taxation

Taxes

Economic substance

IOM-74 In accordance with the Income Tax (Substance Requirements) Order 2018 SD 2018/0263 [1] which came into effect on 1 January 2019, provisions were added to the Income Tax Act 1970 as Pt 6A —Substance requirements.

The provisions apply to corporate taxpayers, defined in s.120 Income Tax Act 1970 to include inter alia a limited liability company, any other body corporate created by or under a statutory provision or charter, a foundation under the Foundations Act 2011, an investment club and a members' club. Limited liability partnerships are not included.

The provisions cover a number of "relevant sectors" as defined in s.80D(1) Income Tax Act 1970: (a) banking; (b) insurance; (c) shipping; (d) fund management; (e) financing and leasing; (f) headquartering; (g) operation of a holding company; (h) holding intangible property; and (i) distribution and service centre business.

A corporate taxpayer that is a resident company with income from a relevant sector is a "relevant sector company" (s.80D(2)).

Section 80C provides that a relevant sector company is required to have adequate substance in the Isle of Man. The requirements of adequate substance are set out in s.80E: (a) it is directed and managed in the Isle of Man; (b) there is an adequate number of qualified employees in the Isle of Man; (c) it has adequate operating expenditure proportionate to the level of activity carried on in the Isle of Man; (d) it has adequate physical presence in the Isle of Man; and (e) it conducts core income-generating activity in the Isle of Man. Part 6A drills down into greater detail in respect of each of those requirements.

Section 80G deals with high risk IP companies, which are defined as an IP company that holds an IP asset (that is, an intellectual property right including copyright, design right, trademark, brand, patent and similar asset) that—(a) has been acquired from related parties or obtained through the funding of overseas research and development activities; and (b) is licensed to related parties or monetised through activities performed by foreign related parties.

Under s.80G(1) in the case of a high risk IP company, the substance requirements are presumed not to be met, even if there are core income-generating activities being carried on in the Isle of Man relevant to the business and the IP assets unless the company provides evidence to satisfy the Assessor that this presumption is rebutted.

Under s.80G(1A) This evidence must include inter alia (a) information which demonstrates that there is and historically was a high degree of control over the development, exploitation, maintenance, enhancement and protection of the IP asset, exercised by an adequate number of full time employees with the necessary qualifications who permanently reside and perform their activities in the Island; (b) detailed business plans which demonstrate the commercial rationale for the company holding the IP assets in the Island; (c) information regarding the company's employees, their level of experience, type of contract, qualifications and the duration of their employment; (d) evidence that the company's decision making takes place within the Island;

If the Assessor is not satisfied that a relevant sector company meets the substance requirements, the Assessor will issue a notice to the company to that effect and also will "disclose to a foreign tax official any relevant information which relates to the relevant sector company under and in accordance with the articles on spontaneous exchange of information in an international agreement." (s.80H).

Penalties for non-compliance range from fines of up to £100,000 to a maximum prison term of seven years.

With effect from 16 June 2021 under the Income Tax (Substance Requirements) Order 2021 SD 2021/0156 (https://tynwald.org.im//links/tls/SD/2021/2021-SD-0156.pdf#search=%22substance%22 substance requirements are extended to apply to partnerships under the Partnership Act 1909 and to LLCs under the Limited Liability Companies Act 1996.

Guidance is available from the Assessor of Income Tax at: https://gov.im/categories/tax-vat-and-your-money/income-tax-and-national-insurance/economic-substance/ and specifically on the new tax registration (substance) requirement for partnerships and Limited Liability Companies see Practice Note 217/21 issued by the Assessor of Income Tax on 1 July 2021 (https://gov.im/media/1373410/pn-217-21-new-registration-requirement-for-partnerships.pdf).

Footnotes

1 https://www.tynwald.org.im//links/tls/SD/2018/2018-SD-0263.pdf#search=%22Income%20tax%20(Substance%20Requirements)%22.

End of Document

IOM-75 Taxation of Isle of Man trusts

European Cross-Border Estate Planning

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Part II Taxation

Taxes

Taxation of Isle of Man trusts

IOM-75 The following is taken from Practice Note 141/07 (https://gov.im/media/511752/pn14107.pdf) issued by the Assessor of Income Tax on 8 March 2007:

> "Every person who has a liability to Manx income tax is required to make a return of income each year to the Assessor. This requirement applies to persons residing in the Isle of Man and to persons not residing in the Isle of Man but who derive income from sources in the Island (subject to certain exceptions).
>
> Trusts, settlements, trustees and beneficiaries are not referred to in Manx income tax law (although it would be feasible to introduce trust-specific legislation in the future). Nevertheless, trustees and beneficiaries are 'persons' for the purposes of Isle of Man income tax and it is possible to determine the taxation position of trustees and beneficiaries on the basis of current law and practice, i.e. a combination of residence and source-based taxation, having particular regard to the residence of the beneficiaries of the trust rather than the residence of the settlor or the trustees.
>
> The Assessor acknowledges that as trust property is held for the use and benefit of the beneficiaries, the taxation of the trust should reflect the tax position of the beneficiaries. This means that the burden of tax imposed on the income of a trust should be the same as would have been levied on the beneficiaries had they received the income directly.
>
> Trusts having at least one trustee resident in the Isle of Man, or where the administration of the trust is conducted in the Isle of Man, will be referred to for convenience as Manx trusts, and are within the scope of Manx income tax.

Where income is derived from property held by one person as nominee for another, or from property held by a trustee for another person who is absolutely entitled to that property as against the trustee, then the person or trustee, respectively, is not within the scope of Manx income tax in respect of that income.

A beneficiary may have an immediate entitlement to all or part of the income produced by trust property, net of income expenses, including trust management expenses, met by the trustees. In this situation the beneficiary is said to have an interest-in-possession (IIP). If the trustees have the power to prevent any right of present enjoyment (such as a power to accumulate income) then an IIP does not exist. The fact that trustees have a power to terminate an IIP does not prevent a beneficiary's income entitlement from being an IIP while it continues. For the purposes of this guidance, if a beneficiary of a trust does not have an IIP then they have a discretionary interest, meaning that the trustees have the power to determine how much income, if any, the beneficiary receives.

When an IIP exists in respect of only a part of a trust's income, the trust will be treated as two separate trusts, one being an IIP trust and the other a discretionary trust.

The Assessor will adopt the following approach to Manx trusts:

(A) IIP trusts *Archer-Shee v Baker (1927, 11 TC 749)* established that when a beneficiary has an absolute right to the income of a trust, that beneficiary will be taxable in respect of the trust income as and when it arises. The Assessor will apply this principle to treat a beneficiary of an IIP trust as though the trust income accrued directly to the beneficiary. The trustees are not liable to tax in this case.

(B) Discretionary trusts If trust income is distributed, the beneficiaries will be taxed according to their residence status:

(a)beneficiaries who are not resident in the Isle of Man will be taxed on the income distributed to them as if the income accrued to them directly;

(b)beneficiaries who are resident in the Isle of Man will be subject to Manx tax in respect of any income distributed to them (to the extent that it has not already been taxed in the hands of the trustees as previously undistributed income).

The trustees will be taxed on income not distributed as follows:

(i)if all of the beneficiaries are not resident in the Isle of Man, undistributed income will be subject to the same amount of tax as would be charged where the same type and amount of income had been received by a non-resident individual;

(ii)if any of the beneficiaries is resident in the Isle of Man, undistributed income will be subject to Manx tax.

The Isle of Man has a combination of residence and source-based taxation. For the avoidance of doubt, income which is derived from business transactions outside the Isle of Man, or from dealings with persons resident outside the Isle of Man, or from the

provision of services outside the Isle of Man, will not be considered as Manx source income merely because the transaction is carried out by a Manx trust or a partnership which includes one or more Manx trusts.

A trust will be regarded as having a Manx resident beneficiary if a person resident in the Isle of Man is identified in the trust deed either specifically by name or generally by virtue of being a member of a class of beneficiaries. To obviate the need for unnecessary enquiries, the Assessor will accept a declaration on an annual basis that no current Isle of Man resident did or could benefit from the income of a trust in that year of assessment.

A trust shall not be regarded as having an Isle of Man resident beneficiary solely because:

(a)a person resident in the Isle of Man may become a beneficiary; or,

(b)there have been distributions in the past to a Manx resident beneficiary; or

(c)the trust deed does not have a Manx ‘exclusion clause’.

The income derived from any property of any trust established for charitable purposes only is exempt from Manx income tax. Where the only Manx resident beneficiaries who can benefit from the income of a Manx trust are a charity or charities, or an arrangement or arrangements the objects of which are wholly charitable, then the Assessor will not treat the trust as having any Isle of Man resident beneficiaries solely because of the residence of the Manx charity or charities.

The Assessor will take appropriate action where it appears that any arrangement or arrangements, including those involving trusts, have been entered into with the intention of avoiding taxation in the Isle of Man."

This has been supplemented by the provisions of Practice Note 160/09 issued by the Assessor of Income Tax on 23 October 2009. [1]

3.

Trustees are obliged by law to inform the Assessor when there is, or may be, an Isle of Man income tax liability.

Isle of Man Resident Exclusion Clause

4.

The Assessor will adopt a "look through" approach as set out in section 9 of PN 141/07 in relation to a trust if:

a)the primary or supplementary trust deed has a clause which specifically excludes any Isle of Man resident from becoming a beneficiary;

b)that clause has not been revoked; and

c)the trust has no Isle of Man source income other than from certain sources (see paragraph 20 regarding withholding tax).

A trust that meets all the above criteria will be what is hereinafter referred to as a "non-liable trust".

5.

If a trust satisfies the criteria in paragraph 4, the Assessor does not require notification that the trust has been created. However, trustees who wish to have written confirmation in respect of the taxation position of a particular trust should submit a copy of the trust deed and a completed trust questionnaire … to the Assessor.

6.

Annual tax returns will not be required from a non-liable trust. Where the trustees have sought written confirmation from the Assessor, they will be contacted on a four-yearly basis to confirm that the circumstances of the trust remain as in paragraph 4 above.

7.

If a primary or supplementary trust deed has a clause which specifically excludes any Isle of Man resident from becoming a beneficiary, but that trust receives income from taxable sources in the Island (e.g. rental income from a property in the Isle of Man or profits from a business carried on in the Isle of Man) there is a liability to Isle of Man income tax. Although the tax treatment of trustees and beneficiaries is explained in detail in paragraph 9 of PN 141/07, there is an obligation on the trustees to submit a completed trust questionnaire and a copy of the relevant trust accounts, showing worldwide income received and expenses incurred. These should be received by the Assessor by 6 October in the year following the year of assessment in which the income was received. The Assessor will notify the trustees of what is required of them on an ongoing basis.

No Isle of Man Resident Exclusion Clause

8.

The Assessor will also treat a trust as a non-liable trust where the trust deed does not have a clause which specifically excludes any Isle of Man resident from becoming a beneficiary, if:-

a)the trust has no Isle of Man resident beneficiaries; and

b)the trust has no income from taxable sources in the Island.

9.

If, in any year of assessment there is an Isle of Man resident beneficiary who may have moved to the Island or been added as a beneficiary, the trustees must supply a copy of the trust deed, a completed trust questionnaire and a copy of the trust accounts for that year. These should be received by the Assessor by 6 October in the year following the year of assessment in which the beneficiary was added.

10.

Should a trust based on a deed which does not have a clause specifically excluding any Isle of Man resident from becoming a beneficiary receive income from taxable sources in the Island, the trustees are required to notify the Assessor as soon as possible but not later than the normal return form submission date of 6 October following the year of assessment in which the income is received.

11.

Where the trustees are required to give notice to the Assessor under paragraphs 9 or 10, the Assessor will require a tax return to be filed annually showing the worldwide income of the trust and any expenses incurred, accompanied by a tax computation and full details of any distributions made. The taxation position of the trustees and the beneficiaries is dealt with in paragraph 9 of PN 141/07.

General

12.

It is the trustees' obligation to inform the Assessor when there have been any changes which affect or may affect a trustee's tax position. Such changes include:

- when a trust ends;
- when trust interests or assets vest;
- a change in the Isle of Man residence status of a beneficiary; and
- the commencement or cessation of an income source in the Isle of Man.

13.

If there is a change in trustees, the Assessor should be notified as soon as possible by the retiring or new trustees and a copy of the deed of retirement and appointment should be submitted. There is no obligation to inform the Assessor when changes under this paragraph or under paragraph 12 occur to a trust which is non-liable both before and after the change.

Trustee Management Expenses

14.

Trustee remuneration is deductible from the income of the trust by virtue of Section 27 of the Income Tax Act 1970, which provides:

> "Where a settlor or testator under any instrument creating a trust has directed remuneration to a trustee out of the income of the trust, or where the trustee or the beneficiary of the trust proves to the satisfaction of the Assessor that the trustee at the time of accepting the trust contracted for remuneration for his services as trustee out of the income of the trust, the beneficiary shall be entitled to a deduction of such remuneration from such income up to an amount not exceeding five per centum of the annual income of the trust."

15.

Trustee remuneration is frequently not identified in trust accounts and so by long standing practice the Assessor has allowed a general deduction which is often referred to as "trustee management expenses". The Assessor will allow a deduction for expenses incurred up to 5% of the trust's gross income, or £500, whichever is the greater.

16.

Where a trust receives rental income, expenses allowable under s.58 of the Income Tax Act 1970 can be relieved against that rental income.[2] For the purposes of calculating trustee management expenses, the net rental income figure is used.

Rate of Tax

17.

The rate of tax applicable to all non-corporate entities is set out in Statutory Document 225/06, which can be viewed on the Division's website. The tax rate applicable to trusts with effect from the 2009/10 year of assessment is 18%.

Income Distributions to Non-resident Beneficiaries

18.

When a trustee of an Isle of Man trust (excluding a non-liable trust) makes a distribution of trust income to a non-resident beneficiary, the trustee may on receipt of a notice from the Assessor be required to deduct withholding tax at the rate set for non-corporate taxpayers from the distribution and remit this to the Assessor. The tax rate applicable to the income of trusts with effect from the 2009/10 year of assessment is 18%, and is set out in Statutory Document 225/06 (Income Tax) (Rates of Income Tax) (Non Corporate Taxpayers) Order 2006)[3]

19.

Paragraph 9 in PN 141/07 details the taxation treatment of trustees and beneficiaries. However, despite certain distributions from a discretionary trust being treated as if the income accrued to them directly, there is still an obligation on the trustees to deduct withholding tax at source.

20.

Withholding tax need not be deducted from an income distribution in the following circumstances:

- where the distribution is of interest from a bank or building society in the Isle of Man;

- where the distribution is of dividends received from a company resident in the Isle of Man;
- where a distribution is of income which is derived from business transactions outside the Isle of Man, or from dealings with persons resident outside the Isle of Man, or from the provision of services outside the Isle of Man; and
- where the distribution is of income that has already suffered Isle of Man tax in the hands of the trustees.

21.

Non-resident beneficiaries in receipt of income from non-approved Isle of Man sources will need to register with the Income Tax Division and file an annual tax return if they wish to claim a personal allowance. The return must detail all Isle of Man source income. For further details see PN 130/06—Taxation of Non-resident Individuals. [4]

Purpose Trust

22.

A purpose trust cannot be created for the benefit of a particular person or persons. The Assessor accepts that any income received by a purpose trust will not be subject to Isle of Man income tax during the lifetime of the trust.

23.

If a person resident in the Isle of Man is or may be the residual beneficiary on the termination of a purpose trust and that person receives a distribution from the trust which includes accumulated income, then the Assessor may charge that person to income tax on the income distribution. Where the Isle of Man resident person is a charity, there will be no charge to income tax.

24.

If, in the Assessor’s opinion, a purpose trust is being used to reduce the income tax liability of any person who is resident in the Isle of Man, he may consider the trustees to be liable to income tax.

Avoidance

25.

The Assessor will take appropriate action where it appears that any arrangement or arrangements, including those involving trusts, have been entered into with the intention of avoiding taxation in the Isle of Man.

The taxation of trusts is subject to the anti-avoidance provisions found in Sch.1 to the Income Tax Act 1980 (see para.79).

Taxation of foundations

The general company tax regulations will apply to foundations, so they will incur no income tax on profits other than those generated by the exploitation of Isle of Man land, which is taxed at 10 per cent. Full details are to be found in Practice Note 178/12 (23 May 2012). [5]

Footnotes

1 https://www.gov.im/media/512061/pn16009.pdf.
2 See PN 51/94—Assessment of Income Arising from Land and Property" https://www.gov.im/media/514421/pn_51_94.pdf.
3 https://www.gov.im/media/517141/sd22506.pdf.
4 https://www.gov.im/media/511796/pn13006.pdf.
5 https://gov.im/media/511496/pn17812.pdf.

End of Document

IOM-77 Isle of Man estate planning

European Cross-Border Estate Planning

Other European States

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Part II Taxation

Principles of estate planning

Isle of Man estate planning

IOM-77 Given the absence of gift and inheritance taxation in the Isle of Man, there is little or no need for Isle of Man residents to plan how to avoid or minimise Isle of Man taxation on lifetime transfers of property or on death.

End of Document

IOM-78 Foreign estate planning

European Cross-Border Estate Planning

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Part II Taxation

Principles of estate planning

Foreign estate planning

IOM-78 The sophisticated array of tax planning vehicles available in the Isle of Man attracts individuals resident or domiciled in other countries. Such vehicles would include Isle of Man trusts, companies and partnerships.

The key to fiscal planning for the non-resident is that there should be effective alienation of the assets concerned (e.g. by transferring them to trustees or donating them to a hybrid company), yet in such a way that the ultimate beneficiaries have no immediate right to those assets but merely an expectation (Anspruch, aspiration). The legal and fiscal certainty of Isle of Man vehicles greatly assists the foreign fiscal planner in interlinking his or her domestic requirements and constraints with the opportunities available in the island.

End of Document

IOM-79

European Cross-Border Estate Planning

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Part II Taxation

Anti-tax avoidance

IOM-79 The Assessor of Income Tax in the Isle of Man is empowered under the Income Tax Act 1980 Sch.1 [1] (as amended by the Income Tax Act 2001 s.3) to make an assessment to prevent avoidance of income tax:

> "If the Assessor is of the opinion that the purpose or one of the purposes of any transaction is the avoidance or reduction of the liability of any person to income tax, the Assessor may … make such assessment or additional assessment on that person as the Assessor considers appropriate to counteract the avoidance or reduction of liability." (Sch.1 para.1(1).)

Prior to the provisions introduced under the Income Tax Act 2001 no assessment or additional assessment would be made if the person in respect of whom it would have been made were able to show to the satisfaction of the Assessor either that the purpose of avoiding or reducing the liability to Income Tax was not the main purpose or one of the main purposes for which the transaction was effected or that the transaction was a bona fide commercial transaction and was not designed for the purpose of avoiding or reducing liability to income tax. Both of these grounds which were previously contained in Sch.1 para.1(2) have been repealed.

An appeal lies from the decision of the Assessor to the Isle of Man Income Tax Commissioners.

Footnotes

1 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1980/1980-0016/IncomeTaxAct1980_3.pdf.

End of Document

IOM-81 Enforcement

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Enforcement

IOM-81 The Income Tax Act 1970 (as amended) provides in s.96 that income tax is due and payable by bodies corporate on or before 1 January in every year, in respect of the year ending on the following 5 April. All non-corporate tax payers are subject to ss.96A and 96B, under which income tax in respect of a year of assessment is due and payable where a person dies or ceases to be regarded as resident in the Isle of Man, 30 days after the date of assessment and, in other cases, on 6 January in the year next following that year. Non-corporate taxpayers are required to make a payment on account of liability to income tax for a year of assessment on or before 6 January in that year or within 30 days of receiving a payment on account notice from the Assessor (if served after December 6 in that year). Sections 98A and 99 empower the Assessor to apply to the Coroner of the appropriate Sheading in the Isle of Man to issue a warrant for the recovery of any unpaid sums and to institute such legal proceedings as shall be necessary. A certificate issued by the Assessor is sufficient evidence of the sum mentioned in it having been duly charged and assessed and of the same being due and owing (s.100). Where it is found that there has been an error, omission or mistake in the preparation or production of any first or supplementary assessment, the Assessor is empowered within six years of the year of assessment in question to make an additional assessment. An appeal by the taxpayer can be made to the Isle of Man Commissioners of Income Tax (s.101).

End of Document

IOM-82 Exchange of information: banking

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Enforcement and exchange of information

Exchange of information: banking

IOM-82 Foreign courts cannot compel a bank licensed in the Isle of Man to reveal details about its customers. Application must be made to the High Court of Justice of the Isle of Man pursuant to the Bankers' Books Evidence Act 1935. [1] Such assistance will only be considered in relation to legal proceedings brought within the Isle of Man and not to foreign proceedings. Further:

> "A banker or officer of a bank shall not, in any legal proceedings to which the bank is not a party, be compelled to produce any banker's books the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of a [Deemster] made for special cause." (Section 6.)

This proposition was confirmed in *Re Blayney and Grace re National Irish Bank Limited 2001–03 MLR 13 (CHD)*. The Court quoted the preceding paragraph of this work and stated that it agreed with the author. Deemster Cain concluded: "I am satisfied that the reference to 'legal proceedings' in the 1935 Act refers to a legal proceeding within this jurisdiction."

In the English case *R. v Grossman [1981] Crim LR 396*, the English Court of Appeal considered the relationship between the English courts and the courts of the Isle of Man in the context of the exchange of banking information. The English High Court at first instance had granted an order made pursuant to the Bankers' Books Evidence Act 1879 s.7 (of the Imperial Parliament) that the London head office of a major bank, itself incorporated in the UK, be compelled to reveal to the United Kingdom Inland Revenue customer account information held in its branch in Douglas, Isle of Man. Lord Denning MR held:

> "We now know that the courts of the Isle of Man take a strong view against their process being used to compel bankers' books there being inspected so as to help legal proceedings in England. In this very case, after the order was made … [Deemster Eason] made an order granting an injunction against [the Douglas branch] restraining them from disclosing or permitting inspection of their books."

The Learned Master of the Rolls stated that the Douglas branch of the bank, licensed and regulated in the Isle of Man, should be considered as an entity separate from its head office in London, and continued:

> "Any order in respect of the production of the books ought to be made by the courts of the Isle of Man, if they will make such an order. It ought not to be made by these courts. Otherwise there would be danger of conflict of jurisdictions between the High Court here and the courts of the Isle of Man. That is a conflict which we must always avoid."

The question of information exchange was discussed by the Isle of Man appeal court in *Tucker, Re, 1988*, a case involving a request by the United Kingdom Inland Revenue as one of two creditors seeking the assistance of the Manx court under the Bankruptcy Act 1914 (of the Imperial Parliament) s.122. The proposition was reaffirmed that the Manx court would not if called upon to do so by a foreign state aid that state to collect its taxes, as this is contrary to established public policy. On the facts of the case, however, assistance was granted to the Trustee of Bankruptcy of Mr Tucker, as the Trustee (who had not been appointed at the instigation of the United Kingdom Inland Revenue) was seeking merely the examination of witnesses in order to trace the assets of the debtor, and although this might ultimately benefit the United Kingdom Inland Revenue (now HMRC) it was not in ordinary language an action to enforce a revenue law. Referring to the established proposition, the court commented:

> "So far as public policy is concerned, it is vital that this is interpreted and applied to conditions as they are and not as they were two hundred years ago … We accept that [the proposition] developed as a defence to a claim by one sovereign in the courts of another for a money judgment for tax due, and that the basis of the rule was that the entertaining of the claim would be seen as the acceptance by the latter sovereign of an assertion in his own territory of the sovereignty of another. We fail to understand how such a doctrine can be said to apply to a situation where two friendly states adopt reciprocal legislation to enable the courts of each to aid the courts of the other. If the request of aid is an assertion of sovereignty, it is an assertion that has been willingly accepted by the other sovereign in exchange for a reciprocal submission. The mere fact that as a result of the submission to such assertion of sovereignty the revenue of the asserting sovereign will benefit is in itself no bar to relief." (Per Acting Deemster BA Hytner, QC, Staff of Government Division.)

The learned Deemster commented further; “Times and the climate of international co-operation have changed”.

In *Petition of McLean* (a decision of Deemster Corrin, CBE, sitting in the Isle of Man High Court, Common Law Division, 3 November 1997) (reported in Manx Law Bulletin, Vol.29, p.29) the Court considered the Bankruptcy Act 1988 s.1(2) under which the Court, i.e. UK courts and those of countries listed in the Bankruptcy (Designation of Relevant Countries) Order 1999 (SID 73/99) is given a discretion in considering applications by foreign courts for assistance and in doing so is required to have regard to the rules of private international law. The case involved a request from the Northern Irish High Court that the Manx Court give assistance in enquiring into a bankrupt’s assets which may be held in the Isle of Man by holding private examinations of individuals connected with banks in the Isle of Man. The Court held, applying the reasoning in the English case *State of Norway’s Applications (Nos 1 & 2) [1989] 1 All E.R. 1745*, that an application by a state may be considered. There was no infringement of the rules of private international law because the letter of request issued by a foreign jurisdiction does not amount to the attempted enforcement, either directly or indirectly, of foreign revenue laws in the requested jurisdiction, but is merely seeking the assistance of that jurisdiction to obtain evidence to enable foreign revenue laws to be enforced in that foreign jurisdiction. There is not any extra-territorial exercise of sovereign authority in seeking the assistance of the courts of one country in obtaining evidence which will be used for the enforcement of the revenue laws of another country where enforcement is to take place in that other country.

Footnotes

1 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1935/1935-0001/BankersBooksEvidenceAct1935_1.pdf.

End of Document

IOM-83 International agreements

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Enforcement and exchange of information

International agreements

IOM-83 Details of Tax Information Exchange Agreements and of Double Taxation Agreements to which the Isle of Man is a party are available online at https://gov.im/categories/tax-vat-and-your-money/income-tax-and-national-insurance/international-agreements/all-agreements/.

End of Document

IOM-84 The Common Reporting Standard

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Enforcement and exchange of information

The Common Reporting Standard

IOM-84 The Isle of Man made an early commitment to the Common Reporting Standard (CRS) and on 29 October 2014 adopted the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Information. It completed its first exchanges of financial account information in September 2017.

The Isle of Man legislation dealing with the implementation of the CRS is The Income Tax (Common Reporting Standard) Regulations 2015 (SD 2015/0323). These have been the subject of further amendment (SD 2017/0056, SD 2019/0079 and SD 2021/0144) and an unofficial consolidation has been issued. [1]

The Income Tax Division of the Isle of Man Treasury has issued Guidance Note 53 on the application of the CRS for Isle of Man Financial Institutions (updated 27 January 2022). [2]

The CRS was developed by the Organisation for Economic Co-operation and Development (OECD) to put a global model of automatic exchange of information into practice and draws extensively on the intergovernmental approach taken in order to implement the Foreign Account Tax Compliance Act (FATCA). The Isle of Man had signed an intergovernmental agreement with the United States of America on 13 December 2013 to improve international tax compliance and to implement FATCA. That initiative, still subsisting, will be superseded by the adoption of the CRS.

Under the CRS, jurisdictions obtain financial account information from their financial institutions and automatically exchange that information with other reportable jurisdictions on an annual basis. Under the CRS, Isle of Man financial institutions will provide the Assessor of Income Tax with the

required information and the Assessor will exchange that information with the competent authority in the relevant jurisdictions.

Footnotes

1 https://gov.im/media/1373297/unofficial-consolidated-common-reporting-standard-regulations.pdf.
2 https://www.gov.im/media/1375585/gn53-crs-guidance-notes-270122.pdf.

End of Document

IOM-85 Base Erosion and Profit Shifting

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Base Erosion and Profit Shifting

IOM-85 Base Erosion and Profit Shifting (BEPS) refers to tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits between jurisdictions in order to minimise tax liability. At the request of G20 leaders in June 2012, an OECD/G20 project was launched in order to identify the key issues that lead to BEPS and in 2015 the BEPS Package, made up of a 15-point Action Plan was delivered. In November 2015 the BEPS package was endorsed by G20 leaders who called on the OECD "to develop an inclusive framework" in order "to monitor the implementation of the BEPS project globally." In June 2016 the Isle of Man committed to the OECDs BEPS standards and joined the Inclusive Framework which, as of October 2017, comprised 103 global jurisdictions.

In order to tackle BEPS effectively it was recognised that there were key priorities. As a result four minimum standards were identified to

- fight harmful tax practices (BEPS Action 5);
- prevent tax treaty abuse (Action 6);
- improve transparency with Country-by-Country Reporting (Action 13); and
- enhance the effectiveness of dispute resolution (Action 14). [1]

As a member of the Inclusive Framework the Isle of Man is committed to implementing the four minimum standards.

Further details are available at https://gov.im/categories/tax-vat-and-your-money/income-tax-and-national-insurance/international-agreements/base-erosion-and-profit-shifting/.

Footnotes

1 See Inclusive Framework of BEPS: Action 14 Making Dispute Resolution More Effective MAP Peer review report: Isle of Man Best practices (2022) https://www.oecd.org/tax/beps/beps-action-14-peer-review-best-practices-isle-of-man-2022.pdf (published 24 January 2022) and Making Dispute Resolution More Effective – MAP Peer Review Report, Isle of Man (Stage 2): Inclusive Framework on BEPS: Action 14, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris https://doi.org/10.1787/fd56cc8d-en.

End of Document

IOM-86 Money laundering

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Money laundering

IOM-86 Reference should be made to the materials available on the website of the Isle of Man Financial Services Authority (http://iomfsa.im).

The introduction of the Criminal Justice (Money Laundering Offences) Act 1998 extended the definition of money laundering to cover all serious crimes, leading to its informal title of "the all crimes legislation". In addition, it led to the creation of the Anti-Money Laundering Code, which came into force on 1 December 1998. The Anti Money Laundering Code was replaced by the Criminal Justice (Money Laundering) Code 2007 in September 2007. This was in turn superseded by the Criminal Justice (Money Laundering) Code 2008, which came into effect on the 18 December 2008.

On 1 September 2010 this was superseded by the Proceeds of Crime (Money Laundering) Code 2010. This was in turn supplemented by the Prevention of Terrorist Financing Code 2011 which came into effect on 1 September 2011. On 1 May 2013 the Money Laundering and Terrorist Financing Code 2013 came into effect which broadly mirrored the requirements of the previous Codes but combined them into one piece of legislation; and was amended by the Money Laundering and Terrorist Financing (Amendment) Code 2013 on 1 July 2013. This was superseded on 1 April 2015, by the revised Anti-Money Laundering and Countering the Financing of Terrorism Code 2015 came into effect. Further developments have followed, and on 1 June 2019 the Anti-Money Laundering and Countering the Financing of Terrorism Code 2019 ("the Code") came into effect. Schedule 4 of the Proceeds of Crime Act 2008 lists the businesses to which the Code applies [https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2008/2008-0013/ProceedsofCrimeAct2008_23.pdf]. The requirements of the Code which is available at https://iomfsa.im/media/1520/appendixa.pdf include:

1. *A risk based approach to customer due diligence including enhanced customer due diligence for higher risk customers. There must be a business risk assessment, customer risk assessment and a technology risk assessment.*

2. *Identification and verification of identity of applicants for business and beneficial owners*, e.g. through satisfactory evidence of name, date of birth, address, and nationality.

3. *Provisions dealing with relationships involving Politically Exposed Persons* (PEP) including determining whether any applicant for business, beneficial owner or existing customer is a PEP and requiring approval of senior management to continue or commence a business relationship with a PEP.

4. *Provisions concerning correspondent banking services*—additional steps to be taken where relationships involve correspondent banking services and prohibition from entering or continuing relationships with shell banks.

5. *Provisions with respect to foreign branches and subsidiaries*—ensuring measures taken by foreign branches and subsidiaries are consistent with the Code.

6. *Ongoing monitoring of existing business relationships*—including reviews of customer due diligence information and scrutiny of transactions.

7. *Report suspicious transactions*—when merited, following a robust assessment of the circumstances.

8. *Maintain adequate records*—in terms of completeness, format, location and period of retention, including a register of all enquiries made to the institution by the investigating authorities.

9. *Adopt adequate internal controls and communication procedures*—written procedures for preventing money laundering, and a register of all disclosures made by the relevant person to the investigating authorities.

10. *Maintain procedures and controls to prevent the misuse of technological developments for money laundering or terrorist financing.*

11. *Screen staff*—in order to be satisfied as to the integrity of new directors or partners and new appropriate employees.

12. *Provide appropriate training for employees*—to educate them on a regular basis about money laundering techniques, their obligations under the law, the internal procedures to forestall and prevent money laundering, and the procedures to follow where money laundering is known or suspected.

13. *Establish internal reporting procedures*—requires that relevant businesses must establish written internal reporting procedures covering:

a. to whom staff should report suspicious transactions;

b. the establishment of a reporting chain;

c. the appointment of a Money Laundering Reporting Officer (MLRO);

d. the MLRO having access to all relevant information, and that the MLRO takes account of it;

e. the prompt reporting of suspicious transactions by the MLRO as soon as practicable, to the Financial Crime Unit; and

f. and the establishment of a register recording certain minimum information.

The current version (July 2021) of the Financial Services Authority's Anti Money Laundering and Countering the Financing of Terrorism Handbook is available at https://iomfsa.im/media/2842/aml-handbook-july-2021.pdf.

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IOM-87 Civil Penalties

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Civil Penalties

IOM-87 The Anti-Money Laundering and Countering the Financing of Terrorism (Civil Penalties) Regulations 2019 SD 2019/0201 extend the range of sanctions in relation to contraventions of compliance with the AML/CFT Code 2019 (previously only criminal sanctions could be imposed for a Code breach). Available at: https://iomfsa.im/media/2598/anti-money-laundering-and-countering-the-financing-of-terrorism-civil-penalties-regulations-2019.pdf.

End of Document

IOM-88 The Gambling Code

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The Gambling Code

IOM-88 Gambling activities have been separated out from the AML/CFT Code 2019 into an industry specific code, the Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Code 2019 SD 2019/0219 which is available at https://tynwald.org.im//links/tls/SD/2019/2019-SD-0219.pdf#search=%222019/0219%22.

End of Document

IOM-89 The Specified Non-Profit Organisations Code

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The Specified Non-Profit Organisations Code

IOM-89 A further carve out from the AML/CFT Code 2019 is The Specified Non-Profit Organisations Code 2019 SD 2019/0200 available at https://tynwald.org.im//links/tls/SD/2019/2019-SD-0200.pdf#search=%222019/0200%22. An SNPO is defined in the SNPO Code as:

> "a body corporate or other legal person, the trustees of a trust, a partnership, other unincorporated association or organisation or any equivalent or similar structure or arrangement established solely or primarily to raise or distribute funds for charitable, religious, cultural, educational, political, social, fraternal or philanthropic purposes with the intention of benefitting the public or a section of the public—(a) which has an annual or anticipated annual income of £5,000 or more; (b) which has remitted, or is anticipated to remit, at least £2,000 in any one financial year to one or more ultimate recipients in or form one or more high risk jurisdictions; and (c) where the decision of where to remit the funds is made within the [Isle of Man]."

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IOM-90 MONEYVAL

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MONEYVAL

IOM-90 On the 10 October 2012 the Council of Europe's Committee of Ministers passed resolution CM/Res (2012)6 authorising the participation of the Isle of Man in the mutual evaluation process and procedures of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism ("MONEYVAL"). This allows the Isle of Man to participate in MONEYVAL's evaluation and follow-up procedures.

The MONEYVAL Fifth Round Mutual Evaluation Report (December 2016) makes extensive updating suggestions (a lesson in itself of how time-consuming and legislatively challenging it is for smaller jurisdictions to incorporate into domestic law a constantly shifting set of international standards) and in Recommendations 24 and 25 provides a highly detailed analysis of the existing statutory (including regulatory) requirements under Isle of Man law in relation to beneficial ownership transparency.

In its 1st Enhanced Follow-up Report issued in July 2018 MONEYVAL has re-rated the Isle of Man to "Compliant" with Recommendations 5 (criminalization of the financing of terrorism), 6 (targeted financial sanctions on the financing of terrorism), 16 (wire transfers), 29 (financial intelligence unit), 32 (cash couriers) and 33 (statistics); and to "Largely Compliant" with Recommendations 24 (transparency of legal persons) and 35 (sanctions).

In its 2nd Enhanced Follow-up Report issued in July 2019 MONEYVAL re-rated the Isle of Man to "Compliant" with Recommendations 11 (Record Keeping), 12 (Politically Exposed Persons), 17 (Reliance on Third Parties) and 25 (Transparency and Beneficial Ownership arrangements).

In August 2020 the Isle of Man Government published its report *Anti-Money Laundering and Countering the Financing of Terrorism in the Isle of Man: A Review of Progress Following the*

MONEYVAL Mutual Evaluation Report of 2016.[1] The Isle of Man was "Fully Compliant" or "Largely Compliant" with 39 out of the 40 FATF Recommendations.

The MONEYVAL 3rd Enhanced Follow-up Report & Technical Compliance Re-Rating on the Isle of Man was published in September 2020.[2]

On 6 May 2021 following the conclusion of the 61st MONEYVAL Plenary Council meeting, it was confirmed that the Isle of Man is no longer required to report to MONEYVAL on an annual basis. The Isle of Man has been positively marked on 39 out of the 40 FATF Recommendations.[3]

The MONEYVAL 4th Enhanced Follow-up Report & Technical Compliance Re-Rating on the Isle of Man was published in November 2022.[4]

Footnotes

1 https://gov.im/media/1370349/moneyval-review-report-2020.pdf.
2 https://rm.coe.int/moneyval-2020-3-sr-5th-round-fur-mer-isle-of-man/1680a016e6.
3 https://gov.im/news/2021/may/06/end-of-annual-reporting-to-moneyval-reflects-positive-progress-for-the-isle-of-man/?iomg-device=Desktop.
4 https://www.fatf-gafi.org/en/publications/Mutualevaluations/Fur-isle-of-man-2022.html.

End of Document

IOM-91 Anti-Terrorism and Crime Act 2003

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Anti-Terrorism and Crime Act 2003 [1]

IOM-91 The Act came into force on 1 January 2005, repealing earlier legislation (the principal repealed statute being the Prevention of Terrorism Act 1990).

Sections 7–10 establish offences relating to the assistance of terrorism by fund-raising and funding arrangements, the use and possession of terrorist property and money laundering.

Under s.11, where a person believes or suspects that another person has committed an offence under any of ss.7–10, and bases his belief or suspicion on information which comes to his attention in the course of a trade, profession, business or employment, then he commits an offence if he does not disclose to a constable as soon as is reasonably practicable his belief or suspicion, and the information on which it is based. It is a defence for a person charged with such an offence to prove that he had a reasonable excuse for not making the disclosure.

Substantively identical provisions are applied specifically under s.14 to the "regulated sector" (though this does not apply to a person who is a professional legal advisor and the information came to him in privileged circumstances). The "regulated sector" is defined in Sch.1 Pt 1 to include banking, investment and insurance businesses, and under s.15 any such disclosure will be protected in the sense that (legal privilege excepted) it will not be deemed to be a breach of any restriction on the disclosure of information, howsoever imposed.

(The Act has been subject to minor amendments under the Anti-Terrorism and Crime (Amendment) Act 2011 [2] and the Anti-Money Laundering and Other Financial Crime (Miscellaneous Amendments) Act 2018. [3]

Footnotes

1 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2003/2003-0006/Anti-TerrorismandCrimeAct2003_13.pdf.

2 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2011/2011-0006/Anti-TerrorismandCrimeAmendmentAct2011_1.pdf.

3 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2018/2018-0011/Anti-MoneyLaunderingandOtherFinancialCrimeMiscellaneousAmendmentsAct2018_1.pdf.

End of Document

IOM-92 Proceeds of Crime Act 2008

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Proceeds of Crime Act 2008 [1]

IOM-92 The Proceeds of Crime Act 2008 is extensive (based on the Proceeds of Crime Act 2002 (as amended) of the UK and has as its fundamental principle the recovery in civil proceedings of the proceeds of unlawful conduct. Crime Act s.1(1) enables the Attorney General to recover, in civil proceedings before the High Court, property which is, or represents, property obtained through unlawful conduct; and enables cash which is, or represents, property obtained through unlawful conduct, or which is intended to be used in unlawful conduct, to be forfeited in civil proceedings before a court of summary jurisdiction.

Section 2 defines “unlawful conduct”:

> "(1)Conduct occurring in the Island is unlawful conduct if it is unlawful under the criminal law.
>
> (2)Conduct which—
>
> (a)occurs in a country outside the Island and is unlawful under the criminal law of that country; and
>
> (b)if it occurred in the Island, would be unlawful under the criminal law of the Island,
>
> is also unlawful conduct.
>
> (3)The court must decide on a balance of probabilities whether it is proved—
>
> (a)that any matters alleged to constitute unlawful conduct have occurred; or

(b)that any person intended to use any cash in unlawful conduct."

Footnotes

1 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2008/2008-0013/ProceedsofCrimeAct2008_23.pdf.

IOM-93 Bribery Act 2013

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Bribery Act 2013 [1]

IOM-93 The Bribery Act 2013 repeals and replaces the Corruption Act 2008 which came into force on 16 July 2008 and which therefore predated and pre-figured the Bribery Act 2010 of the UK. The Bribery Act 2013 closely reflects the provisions of the Bribery Act 2010 of the UK. Under s.7 of the Act, offences of bribing another person are set out:

1. A person is guilty of an offence if the person—
   a. offers, promises or gives a financial or other advantage to another person; and
   b. intends the advantage—
      i. to induce a person to perform improperly a relevant function or activity; or
      ii. to reward a person for the improper performance of such a function or activity.

2. A person is guilty of an offence if the person—
   a. offers, promises or gives a financial or other advantage to another person; and
   b. knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.

Under s.8 of the Act, offences relating to being bribed are set out:

1. A person is guilty of an offence if the person—
   a. requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by himself or herself or another person);

b. requests, agrees to receive or accepts a financial or other advantage, and the request, agreement or acceptance itself constitutes the improper performance by the person of a relevant function or activity;

c. requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by himself or herself or another person) of a relevant function or activity; and

d. in anticipation, or in consequence, of the person's requesting, agreeing to receive or accepting a financial or other advantage, improperly performs a relevant function or activity or requests, assents to or acquiesces in, such performance by another person.

2. For an offence in this section it does not matter—

a. whether the person requests, agrees to receive or accepts (or is to request, agree to receive or accept) the advantage directly or through a third party; and

b. whether the advantage is (or is to be) for the benefit of the person or another person.

3. For the offences in subss.(1)(b) to (d) it does not matter whether the person knows or believes that the performance of the function or activity is improper.

4. For the offence in subs.(1)(d), if another person is performing the function or activity, it also does not matter whether that person knows or believes that the performance of the function or activity is improper.

The Act extends to the bribery of foreign public officials (s.9) and imposes obligations on commercial organisations to prevent bribery (ss.10–12).

There is a duty to report public sector corruption (s.13) and penalties for failing to do so.

Penalties applied to a person guilty of an offence under the Act range up to a maximum term of imprisonment of 10 years (s.17).

Footnotes

1 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2013/2013-0007/BriberyAct2013_4.pdf.

End of Document

IOM-94 Designated Businesses (Registration and Oversight) Act 2015

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Designated Businesses (Registration and Oversight) Act 2015 [1]

IOM-94 The following summary is taken from the website of the Isle of Man Financial Services Authority:

Following comments from the IMF report in 2009, the Council of Ministers considered proposals put forward by the then Chief Secretary's Office (now the Cabinet Office) to place responsibility on the Isle of Man Financial Services Authority ("the Authority") for the oversight of the adherence of certain businesses and professions ("Designated Businesses") to the Island's anti-money laundering and countering the financing of terrorism legislation ("AML/CFT legislation").

The Designated Businesses (Registration and Oversight) Act 2015 ("the Act") was passed in order to address these comments and came into force on 26 October 2015.

The Act does not make persons affected by its provisions licence holders of the Authority. The Authority's role in licensing and supervising Financial Institutions is distinct and entirely separate from its role under this Act.

Designated businesses are registered and overseen by the Authority for AML/CFT compliance only—they retain their current status with the various bodies (if any) responsible for their wider business, competence or other matters, such as the Isle of Man Law Society, the ICAEW, ACCA, CIMA, the Office of Fair Trading etc.

Details of what businesses are deemed designated are found in Sch.1 to the Act (as most recently amended by the Designated Businesses (Amendment) Order 2019 SD 2019/0203. [2]

Footnotes

1 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2015/2015-0009/DesignatedBusinessesRegistrationandOversightAct2015_9.pdf.

2 https://tynwald.org.im//links/tls/SD/2019/2019-SD-0203.pdf#search=%22Designated%20Businesses%22.

End of Document

IOM-95 Terrorism and Other Crime (Financial Restrictions) Act 2014

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Terrorism and Other Crime (Financial Restrictions) Act 2014 [1]

IOM-95 The Act came into force on 1 January 2015. The Act re-enacts with amendments the Terrorism (Finance) Act 2009, the Terrorist Asset-Freezing etc. Act 2010 (Isle of Man) Order 2011 and parts of the Anti-Terrorism and Crime Act 2003; amends further the Anti-Terrorism and Crime Act 2003 and the Proceeds of Crime Act 2008; and amends other legislation in connection with bail, sexual offences and the enforcement of fines and other financial penalties; and for connected purposes. The Act empowers the Isle of Man Treasury to take preventative action to combat the risk of money laundering or terrorist financing activities.

Directions may be issued to individuals or companies in the Island's financial services industry to enhance customer due diligence, monitoring or systematic reporting. Freezing orders may be made which prohibit persons from making funds available to or for the benefit of any person specified in the order. The Treasury may require a financially restricted person (that is, a person who is subject to a financial restriction order either in the form of a direction or of a freezing order) to provide information concerning (a) funds or economic resources owned, held or controlled by or on behalf of the financially restricted person; or (b) any disposal of such funds or economic resources.

Footnotes

1 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2014/2014-0013/TerrorismandOtherCrimeFinancialRestrictionsAct2014_10.pdf.

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IOM-96 Fraud Act 2017

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Fraud Act 2017 [1]

IOM-96 The Fraud Act 2017 entered into force on 1 November 2017. It consolidates a statutory definition of fraud (covering false representation, failure to disclose information, abuse of position and participation in fraudulent businesses). Part 4 of the Act extends its jurisdiction extraterritorially. Conspiracy to commit fraud and aiding and abetting fraud within the Isle of Man are offences under the Act notwithstanding that the parties concerned intended that the fraud be committed outside the Isle of Man. Similarly, if a person ordinarily resident in the Isle of Man does anything outside the Isle of Man which, if it had taken place in the island, would have been an offence under the Act, that person can be prosecuted under the Act.

Footnotes

1 https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2017/2017-0007/FraudAct2017_2.pdf.

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IOM-97 EU Savings Directive

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EU Savings Directive

IOM-97 At the meeting of the Council of Economic and Finance Ministers of the EU held on 3 June 2003, all EU Member States agreed to adopt a Tax Package one element of which is the EU Savings Directive (Council Directive 2003/48/EC on taxation of savings income in the form of interest payments). The EU Savings Directive (EUSD) came into force on 1 July 2005.

In the negotiations between Member States leading to the 3 June 2003 agreement, the UK resolved to promote, inter alia, the adoption of the measures set out in the Savings Directive by its dependent or associated territories.

Although the Isle of Man was never part of the EU, it introduced measures equivalent to the EUSD. This was on the condition that all 25 EU Member States, European third countries and associated territories also adopted either the EUSD or equivalent measures. The Isle of Man has entered into bilateral agreements with each of the EU Member States. What will be the continuing status of these bilateral agreements following the exit of the UK from the EU is as yet unclear.

On 1 July 2011, the Isle of Man Government implemented measures to move to automatic exchange of information for accounts held in the Isle of Man where the beneficial owner is resident in the EU. Therefore, there is no option for EU-resident account holders to opt for tax retention rather than information exchange.

Practice Note 168/11 issued by the Isle of Man Income Tax Division advises paying agents of these reporting obligations which apply from 1 July 2011. [1]

Footnotes

1 https://www.gov.im//media/511561/pn16811.pdf.

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IOM-98 Cryptoasset/Token Activity and Regulation

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Cryptoasset/Token Activity and Regulation

IOM-98 On 18 September 2020 the Isle of Man Financial Services Authority published guidance (no longer available on the IOMFSA website) aimed at those considering selling, issuing, managing or administering cryptoassets/tokens, illustrating which token-related activities, undertaken using Distributed Ledger Technology, may have regulatory implications.

The guidance distinguishes

Security Tokens (which provide rights analogous to shares, debentures, units in collective investment schemes and derivatives) which may come within the definition of regulated investments under the Regulated Activities Order 2011 from Electronic Money (E-Money) Tokens. E-Money has the following characteristics. It must:

i)hold electronically stored fiat monetary value (such as Pounds, Dollars or Euros);

ii)be represented by a "claim on the electronic money issuer" (which means that the person or business issuing the token is obliged to convert it back into fiat money);

iii)be issued on receipt of funds (meaning that the token must be paid for);

iv)be used for the intended purpose of making payments (not merely held then converted back to fiat money); and

v)be accepted as a means of payment by a person other than the person or business issuing or selling the token.

If the token does not meet all of these characteristics (and is not a security token), then it is likely that the token is unregulated. Any issuer of E-Money—whether issuing in token form or otherwise—requires a financial services licence if not otherwise exempted or excluded.

On 3 November 2022 the IOMFSA announced that it was maintaining "a watching brief on potential crypto regulation":

The Isle of Man Financial Services Authority is continuing to monitor global developments to help shape its approach to fintech innovation, particularly in relation to crypto-assets. […] Dan Johnson, Senior Manager, Policy and Authorisations, said: 'There are a number of substantially different regulatory regimes under development around the world and all are facing practical hurdles for which there are not yet clear solutions. This means that the time is not right for the Authority to make firm decisions on the introduction of crypto-related regulation in the Island.' He added: 'The Authority is open to innovative new ways of conducting business, but as a risk-based regulator we always seek to strike the right balance. We will continue to maintain a watching brief on how this sector, and the international landscape, develops and matures. Any proposed updates to the Island's regulatory perimeter will be subject to full consultation.'

https://www.iomfsa.im/fsa-news/2022/nov/authority-maintains-watching-brief-on-potential-crypto-regulation/.

Last updated on 5 August 2020, the IOMFSA's FAQ's on cryptoasset activity and regulation are available at: https://www.iomfsa.im/media/2717/regulatory-perimeter-faqs.pdf.

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