

Trust Laws of the Isle of Man

Paul R Beckett

Gelling Johnson Farrant, Douglas



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During the latter part of 1995 there began a period of rapid statutory development in the trust laws of the Isle of Man. The law of trusts in the Isle of Man is of great antiquity, compounded by a general equitable concept of 'breast law', being the right of the island's two judges, the Deemsters, to exercise full equitable discretion without thereby setting a precedent should they deem the case before them to merit this. Responding to the changing needs of international tax and wealth planners, the island has now supplemented its trust law with the introduction of the Trusts Act 1995 and the Purpose Trusts Act 1996.

Trusts Act 1995

The Act has as its principal objects the clarification of the law in the Isle of Man as to the ability of a trust to change the law by which it is governed 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.

The Act does *not* apply to:

- (1) a testamentary trust or disposition unless the trust or disposition is valid under the law of the domicile of the testator at death; or
- (2) 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.

Governing law and change of governing law

Sections 2 and 3 of the Act clarify and confirm the position under Manx common law. The selection of Manx law in a trust instrument to govern that trust is valid, effective and conclusive regardless of any other circumstances (Section 2(1)). References to Manx law governing a

particular aspect of the trust or to the forum of administration of the trust being the Isle of Man are to be similarly construed (Section 2(2)).

The power to change effectively the governing law of the trust is less extensive. In the case of a change to Manx law, the change must be recognised by the prior governing law of the trust. In the case of a change from Manx law, the effectiveness of such a change will depend upon the validity of the trust and the respective rights or interests of the beneficiaries (actual or potential) (Section 3(1)). Any change has prospective effect only (Section 3(2)).

Matters regarded as determined by the governing law

Having established that Manx law governs the settlement, then Section 4 provides (in so far as the terms of the settlement do not provide otherwise) that Manx legal principles shall be used in determining the capacity of any Settlor, the validity of dispositions, trust powers conferred or retained (including powers of variation or revocation, and powers of appointment), administration and the capacity, powers, duties, obligations, liabilities and rights of trustees).

Section 4 does *not* operate to affect the recognition of the law of the place of incorporation of a body corporate (as regards its capacity) or foreign laws prescribing generally the formalities for the disposition of property.

Recognition of trusts and forced heirship

The Act replaces previously existing rules of private international law in the Isle of Man with regard to *the recognition of trusts and forced heirship*.

Section 5 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 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 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 Section 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'.

The Trusts Act 1995 came into effect on 17 January 1996.

Purpose Trusts Act 1996

The Purpose Trusts Act 1996 is based in part on the Trusts (Special Provisions) Act 1989 of Bermuda.

The mechanism

There is no need for the trust to have as its purpose a philanthropic or charitable aim. 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.

Under the Act, a purpose trust must be for a purpose which is certain, reasonable and possible; and must not be for a purpose which is unlawful, contrary to public policy or immoral (Section 1 (1)(a)).

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

- (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
- (c) for charitable purposes (Section 9(1)).

The trust must be created by deed or by Will capable of being 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) (Section 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 (Member of the Isle of Man Bar), 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 or a trust corporation (Sections 1 (1)(c) and 9(1)).

To enforce the trust there must be appointed 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 (Sections 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 (Section 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, and these are to be open to inspection by the Attorney General (or anyone authorised by the Attorney General). Public inspection is not required, however (Section 2).

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

The Act does not permit any interest in land in the Isle of Man to be held, directly or indirectly, in a purpose trust (Section 5).

Penalties can be imposed on the designated person for failure to comply with his or her obligations as to record keeping etc.

Uses of purpose trusts

Purpose trusts are already widely used in offshore and fiscal planning, particularly in the following situations:

- (a) holding shares in a company which can then be voted in accordance with the terms of the trust – particularly useful in circumstances where an individual does not

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