

Isle of Man

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SECTION A: BRIEF SURVEY OF THE LOCAL SYSTEM

1. Type of System

- (a) The Isle of Man is a common law jurisdiction. **26.01**
- The island has its own common law. Decisions of other British Commonwealth (and especially English) courts are regarded as persuasive in Manx courts, and some of the principles below are drawn from English (and other Commonwealth) authorities. **26.02**
- (b) The island forms part of the non-metropolitan territories of the United Kingdom and is not part of the EU. It is not a fully sovereign state, but it is a separate jurisdiction from the United Kingdom. **26.03**

2. Wills

- (a) Under domestic law, wills are governed by the Wills Act 1985: **26.04**
- the will must be in writing (no distinction is drawn between holographic and printed or typed writing), signed by the testator/trix or by another person in his or her presence and at his or her direction;
 - it must appear that the testator/trix intended, by his or her signature, to give effect to the will;
 - the signature must be made or acknowledged in the presence of two or more witnesses at the same time; and
 - the witnesses must sign the will in the presence of the testator/trix.
- Formalities for a codicil, generally a shorter document, amending a will only in certain particulars, are the same as for a will. **26.05**
- Domestic Manx law recognizes wills otherwise in very limited circumstances only (essentially, where the testator/trix is a soldier or airman on active service or a sailor or mariner at sea). Manx law also recognizes gifts made in contemplation of impending death (*donationes mortis causa*). **26.06**
- Manx law recognizes the doctrine of ‘mutual wills’ (see Section A4). **26.07**

- 26.08** (b) (i) Wills may be revoked or amended by a subsequent will or codicil made according to the same formalities. They may also be revoked by being burnt, torn, or otherwise destroyed by or at the direction and in the presence of the testator/trix.
- 26.09** Individual gifts may be 'adeemed' by a later lifetime disposal of the subject of the gift. This may happen in various ways, including by sale or by the exercise by a third party of an option over the property concerned, but not where the subject changes in form only (e.g. where company shares are replaced by other securities on a reorganization).
- 26.10** A gift may also be adeemed by satisfaction during the life of the testator/trix. For example, under the 'rule against double portions', a lifetime gift can satisfy a gift by will.
- 26.11** Manx courts would, it is thought, forfeit the entitlements of a putative beneficiary who has murdered the deceased or, perhaps, been guilty of the deceased's manslaughter.
- 26.12** The court has discretion to 'rectify' a will where it fails to carry into effect the testator/trix's instructions because of a clerical error or a failure to understand his or her instructions.
- 26.13** (ii) Marriage automatically revokes all wills and codicils made previously, except for:
- dispositions or wills made in contemplation of a particular marriage; and
 - the exercise of testamentary powers of appointment.
- 26.14** (iii) Subject to contrary intention in the will, on the divorce of the testator/trix, or if the testator/trix's marriage is annulled: (1) gifts to the spouse of the testator/trix; (2) the conferral on the spouse of a power of appointment; and (3) appointment of the spouse as executor, are all treated as if the spouse had died on the date of the dissolution or annulment of the marriage.
- 26.15** (iv) Testamentary writing observing the same formalities may revive a revoked will. Revival of a will that was partially revoked before being totally revoked will not, subject to contrary intention, extend to the part already revoked at the date of revocation of the whole.
- 26.16** (v) Civil partnerships are recognized in the Isle of Man under the Civil Partnership Act 2011. (Note that same-sex marriage is also possible under Manx law.) A will is revoked where a testator/trix enters into a civil partnership, unless the will was made in contemplation of the formation of that partnership. A disposition in a will in exercise of a power of appointment is, however, not revoked by entry into a civil partnership unless, in default of appointment, the property subject to it would devolve on the deceased's personal representatives.
- 26.17** The dissolution of a civil partnership or a declaration of its nullity has similar consequences for the will as regards a former partner as a divorce or annulment of a marriage (see A2(b)(iii)).
- 26.18** (vi) Manx law recognizes the doctrine of 'mutual wills'—wills made by mutual agreement, with the intention that the survivor cannot change material provisions after the death of the first. Where it would be unconscionable on the death of the surviving testator/trix for another later to amend their will, the court may impose a

trust, limiting the surviving testator/trix's power to amend their will, and potentially attaching to the survivor's estate.

- (c) A testator/trix cannot confer a power to decide how his or her estate is to be distributed generally. There is no objection, however, to granting a power of appointment of assets among a class of beneficiaries under a trust, and even to include a power to add beneficiaries. **26.19**
- (d) It is common to create trusts by will or to fund them by a gift to trustees to hold on an existing trust. **26.20**
- (e) Legislation allowing the creation of a depository of wills is not in force. There is no formal requirement for the registration of a will. **26.21**

3. Intestacy

- (a) Entitlement on intestacy is determined by the Administration of Estates Act 1990. **26.22**

If the deceased leaves a spouse or civil partner who survives the testator/trix for 14 days, the spouse or civil partner receives the personal chattels of the deceased, £250,000, and half of the residue of the estate. The spouse or civil partner has a right to redeem the cash legacy against the deceased's interest in the matrimonial home. The issue (if any) inherit the balance on the statutory trusts (see two paragraphs on). If there is no issue, the surviving spouse or civil partner inherits the entire estate. **26.23**

There is no automatic entitlement for persons claiming solely as co-habitees. They might, however, be able to claim under the Inheritance (Provision for Family and Dependents) Act 1982 (see Section A5) if they can show that they were maintained, in whole or part, by the deceased or if they live for two or more years with the deceased as spouses or as civil partners. **26.24**

Subject to the rights already stated of a spouse or civil partner, the order of classes of beneficiary entitled to inherit (see two paragraphs back) is: **26.25**

- (1) issue on statutory trusts;
- (2) parents;
- (3) brothers and sisters of whole blood on the statutory trusts;
- (4) brothers and sisters of half blood on the statutory trusts;
- (5) grandparents;
- (6) uncles and aunts of whole blood on the statutory trusts;
- (7) uncles and aunts of half blood on the statutory trusts;
- (8) great-uncles and aunts of whole blood on the statutory trusts;
- (9) great-uncles and aunts of half blood on the statutory trusts;
- (10) *bona vacantia* to the Treasury of the Isle of Man.

Under the statutory trusts, a beneficiary's interest is dependent upon the beneficiary's attaining the age of 18 (or marrying earlier). If he or she does not attain that age (or marry), or if he or she predeceases the intestate, leaving issue, the issue take *per stirpes* in his or her place. **26.26**

- (b) Moveable and immoveable assets are treated similarly on intestacy. **26.27**

4. Freedom of Testation

- 26.28** (a) There is no compulsory sharing of estate under Manx law, and testator/trix's generally have unlimited testamentary freedom.
- 26.29** (b) (i) A contract of inheritance is not binding on a testator/trix, but may entitle a disappointed party to damages.
- 26.30** Manx law recognizes the doctrine of 'mutual wills'—wills made by mutual agreement. Where it would be unconscionable on the death of one testator/trix for another later to amend his or her will, because of an agreement between the parties to make their wills in agreed form (and not to revoke material provisions after the death of the first to die), the court may impose a trust, limiting the surviving testator/trix's power to amend his or her will, and potentially attaching to the survivor's estate.
- 26.31** (ii) Lifetime advances settled on issue of a deceased intestate person for advancement or on marriage or formation of a civil partnership are brought into account in determining their entitlement under the rules of intestacy (see Section A3). Similarly, a surviving spouse or civil partner must bring gifts made in any effective part of a will into account against the fixed cash legacy. Such gifts and advances are said to be 'brought into hotchpot'.
- 26.32** There is no separate category of arrangement for succession among a family (apart from on intestacy or a claim for provision: see Section A5).
- 26.33** (c) Some persons believing that inadequate provision has been made for them can seek provision from an estate (see Section A5).
- 26.34** A person promised an entitlement, and who acts to his or her detriment relying upon this promise, may be entitled to legal remedy for 'proprietary estoppel'.
- 26.35** (d) Adopted children and children born out of wedlock are, as regards dispositions by will (and subject to contrary intention in the will), treated equivalently to natural children born within wedlock. Whether gifts to half-siblings are as effective as gifts to siblings of the whole blood will depend upon interpretation of the will.

5. Maintenance

- 26.36** Manx law makes no automatic provision for any person from the estate of a deceased person. The Inheritance (Provision for Family and Dependents) Act 1982 allows the court to order provision for particular persons, varying the devolution of the estate.
- 26.37** The power applies only where the deceased dies domiciled in the Isle of Man at death. It enables application:
- for reasonable financial provision in the circumstances for the surviving spouse (unless judicially separated) or civil partner (unless a separation order is in place) of the deceased or, in some circumstances, by a former spouse or civil partner of the deceased; or

- for such maintenance as would be reasonable in all the circumstances, by a former spouse or civil partner of the deceased (who has not remarried or entered into a subsequent civil partnership), a spouse judicially separated from the deceased, a civil partner separated by separation order from the deceased, a person living for at least two years as the spouse or civil partner of the deceased, a child of the deceased or a person treated as a child of a marriage or civil partnership of the deceased, or a person maintained by the deceased.

Matters to be taken into consideration when deciding what would be reasonable differ depending upon the particular applicant, but always include ‘any...matter... which in the circumstances of the case the court may consider relevant.’ **26.38**

In favour of the applicant, the court can order: **26.39**

- regular (periodic) payments
- payment of a lump sum
- transfer of particular assets
- settlement of assets
- acquisition of assets for transfer or settlement
- variation of nuptial settlements

Application must be made within six months of the date of grant of representation in the Isle of Man, or later with permission of the court. Gifts made within six years of death to defeat claims under statute, gifts made by nomination, *donationes mortis causa* (see Section A2(a)) and assets passing by survivorship of co-owners can all be affected by an order. Dispositions under contracts to leave assets in a particular way, entered into other than on arm’s-length terms and with a view to defeating claims under the statute, can be reversed. **26.40**

Allowance is also made for interim (temporary) application to be made for urgent maintenance. **26.41**

6. Community Property between Husband and Wife

- (a) Community of property does not exist under Manx law. See Section B, however, for cases where there is a foreign element. **26.42**
- (b) Marriage has no substantive effect of its own accord on the ownership of property during marriage or on death. **26.43**

7. Joint Property

Co-owners of property can hold it jointly (as ‘joint tenants’ for real property) or in ‘undivided shares’ (as ‘tenants in common’ for real property). A joint owner’s title passes to the surviving joint owners by ‘survivorship’. The interest of an owner of an undivided share is separate from the others’ interests, and passes as part of their estate on death. **26.44**

Subject to contrary intention, Manx law presumes that real property is held in undivided shares and that personal property is held jointly. **26.45**

8. Gifts (*Inter Vivos*)

- 26.46** (a) Lifetime gifts to any beneficiary are not automatically discounted against any gift by will (but see Sections A2(b)(i), A3(a), and A4(b)(ii)). An *inter vivos* gift brought into account on intestacy will be offset against the beneficiary's share of the estate.
- 26.47** (b) The set-off will be up to the full value of the gift.

9. Capacity

- 26.48** (a) The testator/trix must have mental and legal capacity.
- 26.49** Testators/trices will have mental capacity if they are of sound disposing mind: they must understand that they are making a will, understand the nature and extent of their assets, and appreciate the fitting objects of their will. In addition, they must not be subject to any insane delusions that might affect any gift under the will.
- 26.50** A will may be made under the auspices of the court for a mentally incapable testator/trix.
- 26.51** In addition, the testator/trix must know and approve the contents of the will.
- 26.52** Legal capacity (subject to special provisions for soldiers, airmen, sailors, and mariners— see Section A2(a)) demands that the testator/trix be at least 18.
- 26.53** (b) Witnesses need not be of any particular age, but must have mental capacity.
- 26.54** While capable of witnessing the will, a gift to a witness, or to his or her spouse or civil partner, under the will is generally void unless there would otherwise be sufficient witnesses for the will to be valid anyway.
- 26.55** (c) A beneficiary must be in existence at the date of death, although a gift to an individual can be made to his or her personal representatives in case he or she predeceases the testator/trix.
- 26.56** A beneficiary must be legally capable of receiving a gift and gifts cannot be made to those forbidden by law from receiving gifts (*e.g.* certain officials).
- 26.57** Gifts can be made to minors, but they will not (absent a power in a will) be able to give a valid receipt until they attain majority. In practice, it may be impossible to complete a gift until the minor attains majority; minors cannot, for example, become registered owners of land in the Isle of Man. Executors may be prepared to rely on the power of persons having parental responsibility for the minor to give receipts under the Children and Young Persons Act 2001, s. 2.

10. Authority (Court, Notarial, or Other)

- 26.58** (a) A deceased's estate is administered by his or her personal representatives (see Section A15). They are known as 'executors,' where they are appointed by will, or

‘administrators’, where they are appointed by the court. Application must be made to the court for a grant of representation. In the case of a will ‘proved’ by executors, this will be a ‘grant of probate’. Otherwise, it is a grant of ‘letters of administration’. Special types of grant apply in specific circumstances.

- (b) Application is made by a person having the right to make it, in a statutory form, on oath. Any will and codicils referred to in the application must accompany the application, together with the fee (up to £8,234 at the time of first publication of this edition) and a death certificate. **26.59**

Additional evidence may be required by the court in particular circumstances. **26.60**

The court retains the original grant of representation, but court-certified copies may be obtained for production to third parties to prove title to assets. **26.61**

- (c) A person opposing the grant of representation to others in an estate may register a ‘caveat’. A grant cannot be made without notice to the ‘caveator’, who can then confirm objection by ‘entering an appearance’. **26.62**

A probate action, or an application to the court for directions, in the Civil Division of the court will be required where an application for a common (non-contentious) form grant is opposed. **26.63**

If a grant of representation has already been granted, it may remain open to others to seek its revocation on application to court. **26.64**

11. Invalidity of Will

- (a) A will is invalid if: **26.65**
- the formalities for its execution are not met (see Section A2(a));
 - the will is forged; or
 - the testator/trix lacked legal or mental capacity to execute the will.

A will, or part of it, may also be invalid if the testator/trix did not know and approve the contents of the will at the time of execution. Hence, among other things, a will (or the part in question) may be challenged because it was prepared (or included) because of undue influence, fraud, or mistake. **26.66**

- (b) A will, or a provision of a will, defective at law is void. **26.67**

- (c) The circumstances in which rectification may be appropriate are described in Section A2(b)(i). **26.68**

- (d) It is for the person seeking to prove a will (or revocation of a will) to satisfy the court as to its validity. It will generally be presumed that a will has been properly executed by a person having capacity if the appropriate formalities appear to have been complied with and the will appears reasonable on its face. However, additional evidence may be called for in some circumstances. Where valid execution of the will or its contents are challenged the executor will have to prove it in solemn form. **26.69**

12. Simultaneous Death

- 26.70** (a) If relevant, admissible evidence of the order of deaths will be heard. The common law is that no person dying in circumstances where it cannot be determined whether he or she survived another is deemed to have survived that other. By statute, this is largely preserved, but subject to any order of the court and the terms of any instrument. In addition, by statute:
- any property held jointly is deemed to have been held in equal shares (not passing by ‘survivorship’); and
 - a testamentary gift by one person to the other, providing for a gift over if the latter predeceases the former, causes the gift over to take effect.
- 26.71** (b) There are no presumptions under Manx law as to the order of death. Instead, subject to contrary evidence and to contrary intention in the will, no relevant person is presumed to have survived the other/s (see Section A12(a)).

13. Presumption of Death

- 26.72** The application for a grant of representation requires a death certificate unless the court orders otherwise. The rules provide for the possibility of admitting other evidence of death, which might be necessary in some circumstances. Where a person has been absent for seven years and no one who would be likely to have heard from him or her has done so during that time, death will be presumed.
- 26.73** Once death is proved, the usual rules will apply.

14. Estate Taxes

- 26.74** (a) There are no gift, inheritance, wealth, estate, capital gains, or death taxes or duties in the Isle of Man, on or as a result of death.
- 26.75** (b) Not applicable (see Section A14(a) above).
- 26.76** (c) Not applicable (see Section A14(a) above).
- 26.77** (d) In principle, income arising to personal representatives resident in the Isle of Man is taxable (at up to 20%) in the Isle of Man. In practice, the Assessor of Tax will generally not seek to tax the personal representatives, but will tax the beneficiaries instead in respect of income allocated to them. Where the beneficiaries are non-Manx resident, only Manx-source income (other than, most notably, bank and building society interest, and company dividends) not protected by treaty relief will be taxable.

15. Administration of Estates

- 26.78** (a) The administration of estates is largely governed by the *Administration of Estates Act 1990* and the *Probate Rules 1988*.

The estate is administered by the deceased's personal representatives. They must obtain a grant of representation from the court to give them, or confirm, their authority. If appointed by will, they obtain a grant of probate (see Section A10), and are 'executors.' Otherwise, they apply for a grant of letters of administration ('with the will annexed', if there is a will), and are 'administrators'. **26.79**

- (b) The personal representatives are under a statutory duty to administer the estate according to law and, if required to do so by the court, to exhibit on oath a full inventory of the estate and to render an account of their administration of the estate to the court. This is rarely required in practice. It is usual, though, to provide estate accounts to the residuary beneficiaries of the estate (the beneficiaries entitled to the balance of the estate, or to a share in it, after expenses, liabilities, and specific and pecuniary legacies have been paid out). **26.80**
- (c) There is no specific active supervision of personal representatives. However, the court has jurisdiction to hear applications from appropriate parties and a wide discretion as to what remedy to order. **26.81**

Residuary beneficiaries are entitled to an account of the administration (see Section A15(b)). They may also raise questions and objections and apply to the court for remedies against personal representatives. **26.82**

- (d) Beneficiaries of an estate have a right to have the estate duly administered. Applications regarding a personal representative's conduct may be made by beneficiaries, creditors, or other personal representatives (who may also seek directions) to the extent that it may affect their interest in the estate. **26.83**
- (e) Personal representatives pass assets to those entitled by 'assent': the release of an asset to a beneficiary, out of the personal representatives' control. An assent is required even where the beneficiaries are the same persons as the personal representatives and whether they are entitled personally or as trustees. Assents may generally be oral or written, but must in practice be written where it concerns real property (commonly referred to as a 'vesting assent'). In the case of chattels, there need be no formal assent and an assent may be inferred from the conduct of the parties. **26.84**

There may be additional formalities according to the nature of the assets (*e.g.* registration of transfers of shares). Subject to contrary intention expressed in a will, in the case gifts of specific assets, the expense of transferring or delivering assets is borne by beneficiaries. **26.85**

- (f) Creditors generally receive payment from personal representatives. Personal representatives are personally liable to meet the entitlements of creditors to the extent of assets passing through their hands. If the estate does not appear to be solvent, (a) it is unlikely that executors named in a will, or expectant beneficiaries, will take on the role of personal representative, but a creditor seeking to obtain payment may do so, and (b) even the creditors may not be paid in full (so there is a statutory order that determines the order in which debts will be met from the estate). **26.86**
- (g) Where there is a valid will, but no express appointment of executors is made, executors may nevertheless be held to have been appointed 'according to the tenor', if it can be inferred from the will that named persons were intended to administer the estate. **26.87**

- 26.88** If for any reason there are no executors, beneficiaries or creditors will be entitled to apply for letters of administration (see Section A15(a)).
- 26.89** (h) An agreement among those entitled under the will of a deceased testator/trix has no direct effect on the will itself (if there is one). An agreement may, of course, change the entitlements of the parties under a will or intestacy with effect from the date of the agreement, and even create new ones. There are no estate or gift taxes and no capital gains tax in the Isle of Man, so there are no capital tax consequences as regards a change in entitlement to the estate. The income tax position may change for the period following execution of the agreement, depending on its effect. In practice, it is reasonably common for agreements to be made under Manx law by way of disclaimer or, more commonly, variation in terms designed to satisfy the taxation laws of the United Kingdom rather than the Isle of Man (where there are no capital taxes).
- 26.90** Decisions of the court are subject to the usual rights of appeal. Actions of the personal representatives may be challenged by commencing an action (usually an action for administration or for directing an account) in the court.

16. Domicile/Nationality

- 26.91** (a) Under Manx private international law, broadly, the rules of a deceased's domicile (*lex domicilii*) or the rules of the location of property (*lex situs*) affect some of the previous answers. In particular, they affect:
- the required capacity of an individual making a will ('testamentary capacity');
 - whether a person's marriage revokes a will that he or she has made;
 - the provisions that are permissible ('essential validity');
 - the applicable rules of intestate succession;
 - the availability of financial provision orders;
 - the relevance of community property regimes;
 - entitlement to a grant of representation; and
 - to a more limited extent, the form in which, and procedure by which, a will must be made ("formal validity").
- 26.92** (b) The court has statutory power to make a grant of representation even where the deceased leaves no estate in the Isle of Man.

17. Charitable Giving

- 26.93** (a) Gifts can be made by will to charities, either as a legacy or by way of gift in trust.
- 26.94** (b) Gifts can be made by will to a named charity or on charitable trusts. It is common for a charitable trust to be created, or for narrower charitable objects to be imposed on a gift to a charity, in the will itself.
- 26.95** (c) Gifts can be made by will to foreign charities, subject to the usual considerations regarding particular beneficiaries (e.g. capacity to take a gift).

- (d) There are no capital taxes in the Isle of Man, so no tax exemption is relevant on the gifts themselves. Charities pay no income tax in the Isle of Man on income from property or investments. **26.96**

SECTION B: APPLICABLE LAW/PROCEDURE WHERE FOREIGN ELEMENTS ARE INVOLVED

1. Jurisdiction

- a) The Manx court claims jurisdiction to administer assets in the Isle of Man at a person's death. Detailed laws determine *situs*. **26.97**
- (b) While the devolution of moveable assets may be affected by the deceased's domicile, all Manx-situate assets of the deceased not passing by survivorship or ceasing to exist on his or her death are subject to the jurisdiction of the Manx courts, and require a Manx grant of representation. **26.98**
- (c) The Civil Division of the High Court of Justice of the Isle of Man deals with all probate proceedings. **26.99**

2. Applicable Law

Manx law governs the administration of assets in the Isle of Man at death but not necessarily succession to them. Succession to immoveables is, under Manx law, governed by the *lex situs* while succession to moveables is governed by the *lex domicilii* of the deceased at death (see Section A16(a)). See also Section B7 regarding conflict between Manx and foreign succession laws. **26.100**

Additional rules govern whether or not a will is formally valid (see Section B10). **26.101**

3. Foreign Succession/Inheritance Orders

- (a) Foreign orders or grants are not recognized in the Isle of Man as regards assets situate there. **26.102**
- (b) A foreign succession order has no effect in the Isle of Man, because Manx courts reject the jurisdiction of a foreign court to administer assets located there. It is therefore necessary for one or more persons to apply for a grant of representation in the Manx courts appointing him or her as a personal representative or personal representatives, to enable Manx assets to be administered. A Manx bank or life office, for example, will not, except in the case of small balances, release funds held for the deceased except to a personal representative appointed by the Manx court. **26.103**
- (c) Since foreign orders are not recognized as conferring authority or vesting assets in the Isle of Man, application for a grant of representation, enabling the appointed personal **26.104**

representatives to deal with Manx assets, must be made to the court in the same manner as for estates having only Manx involvement.

- 26.105** The original will (if any) may have been deposited in another court if a foreign order has been made in respect of it. If so, a copy of the will and the order certified by the foreign court (together with a translation into English supported by affidavit by a suitably qualified person) will be required with the application. An affidavit of law will probably be required for an estate of a non-Manx domiciliary (not comprising solely immoveable Manx assets) where the will (if any) has not first been proved in the jurisdiction of domicile.
- 26.106** The court has wide discretion (especially on intestacy) regarding the appointment of personal representatives. In particular, in this context, it may grant representation to a person charged with administration in the jurisdiction of the deceased's domicile (see Section A16(a)).
- 26.107** (d) (i) Trusts form part of the common law of the Isle of Man. The Isle of Man also has legislation (the Foundations Act 2011) permitting the creation of foundations, along the lines of those long recognized in civil law countries.
- 26.108** (ii) If a trust is governed by Manx law, the Trusts Act 1995 provides that (a) Manx law applies to a number of specific (but broadly all-encompassing) issues, and (b) foreign law, and judgments and orders of foreign courts, designed to give effect to such foreign law (such as those that might be made where nominal beneficiaries under forced heirship, or in connection with matrimonial claims), and inconsistent with the 1995 Act, are excluded from effect in the Isle of Man.

4. Two or More Succession or Probate Orders

- 26.109** Foreign orders are not recognized under Manx law—only the Manx court has jurisdiction to administer assets in the Isle of Man.
- 26.110** If a will appoints executors who are applying for a Manx grant of probate, that will normally be conclusive for the Manx court (although the court retains discretion). If there are no executors appointed who are willing and able to act, the court will make a grant of administration to whomever it thinks most fit. If the deceased died domiciled in the Isle of Man, where it exercises its discretion, the court leans in favour of Manx personal representatives. Conversely, if the deceased was not Manx-domiciled at death, personal representatives entrusted with the administration of the estate in the country of the deceased's final domicile may be preferred.

5. Assets

- 26.111** The Manx courts can grant representation in appropriate cases, even where there are no assets in the Isle of Man. The Manx courts will not, however, make orders directly in relation to assets outside the Isle of Man at the deceased's death and which have not at least been brought into the island after his or her death while still in the nature of the deceased's assets.

6. Expert Evidence

- (a) If a will has already been proved in the courts of the deceased's domicile, it will not normally be necessary for expert evidence to be obtained to confirm its formal validity. Otherwise, where the law of another jurisdiction affects a decision of the Manx court (for example, essential validity of a will or the rules of intestate succession to moveables), expert evidence will normally be required. **26.112**
- (b) The Manx court may accept evidence of foreign law, where it is required, in the form of an affidavit given by a person having necessary knowledge or experience (as set out in the affidavit) or a certificate by, or act before, a notary in the relevant jurisdiction. A personal appearance will only be required where the matter is contentious and not all the parties accept the evidence. Even then, it may be that the witness cannot be compelled to appear (although, tactically, it may be preferable to do so). **26.113**

7. Unity of Succession

The Isle of Man is a 'schismatic' (as opposed to 'unitary') jurisdiction and, therefore, where the deceased has died domiciled outside the Isle of Man, applies the *lex domicilii* (see Section A16(a)) to moveables (including those of a unitary jurisdiction) but the *lex situs* to immoveables. Where it is referred to a foreign system of law by Manx private international law regarding succession, but the foreign law refers the issue back to Manx law, Manx law will, it is thought, apply the English doctrine of 'total *renvoi*'. Consequently, it will decide whether the foreign court would accept a reference back to the laws of that other place, and, if so, apply the domestic law of that other place (or, if not, Manx law). **26.114**

8. Formalities

See Section B10(a). **26.115**

9. The Hague Convention

The Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions extends to the Isle of Man and is in force. The Convention Providing a Uniform Law on the Form of an International Will and the Convention on the Establishment of a Scheme of Registration of Wills have also been provided for, but are not in force in the Isle of Man. **26.116**

10. Wills

- (a) At common law, a will is formally valid so far as it relates to immoveable assets if it complies with the laws of the jurisdiction in which they are located; a will made **26.117**

in accordance with the law of the testator/trix's domicile at the date of execution is properly executed so far as it relates to moveable assets. Under statute, a will is also formally valid:

- if its execution conforms with the domestic law of the jurisdiction in which it was executed or of which the testator/trix (at the time of death or execution of the will) had his or her domicile or habitual residence or was a national;
- if executed on a vessel or aircraft, its execution conforms with the domestic law of the jurisdiction with which the vessel or aircraft was most closely connected;
- as regards immovable assets, if its execution conforms with the domestic law of the jurisdiction in which the assets are located (reflecting the common law position, already mentioned);
- as regards the revocation of a will valid under the three conditions given so far, if it conforms with the law governing the validity of the revoked will; and
- so far as it exercises a power of appointment, if it conforms with the domestic law of the jurisdiction whose law governs the essential validity of the power.

- 26.118** (b) Where the testator/trix selects the law governing interpretation, Manx law will generally give effect to that. Otherwise, it will be presumed that the testator/trix intended it to be construed according to the law of his or her domicile at the date of its execution. A later change of domicile should not affect construction.
- 26.119** (c) The inheritance rights of heirs and beneficiaries are determined by *lex domicilii* for moveables and *lex situs* for immovables. Individuals aggrieved by insufficient provision under a will or the rules of intestacy may only apply for provision (see Section A5) if the deceased dies domiciled in the Isle of Man, even if the foreign law refers such issues to Manx law.
- 26.120** (d) *Lex situs* governs the capacity of a beneficiary to take a gift of immovable property. The *lex domicilii* of the testator/trix or, if more favourable, the *lex domicilii* of the beneficiary governs capacity to take a gift of moveable property.
- 26.121** (e) The question as to the law of which jurisdiction governs testamentary capacity is not straightforward. It is thought that the *lex situs* applies to capacity to make a will of immovables and the *lex domicilii* to moveables.
- 26.122** (f) *Lex domicilii* at death governs moveables and *lex situs* governs immovables in determining essential or material validity of a will or of individual provisions in it.
- 26.123** Capacity to exercise a testamentary power of appointment over moveables is governed by the testator/trix's *lex domicilii* at the date of execution. The *lex situs* governs the position as regards immovables.
- 26.124** (g) A will exercising a power of appointment is formally valid if it meets the requirements of Section B10(a). By statute, the exercise by will of a power of appointment is also formally valid if the execution of the will conforms with the law governing the essential validity of the instrument creating the power. The same rule applies to interpretation as in Section B10(b).

The governing law of the instrument creating (not exercising) the testamentary power of appointment determines the essential validity of a testamentary exercise of the power over moveables; *lex situs* governs immoveables. **26.125**

- (h) As regards moveables, the general view is that, at common law, a will may be revoked by an act of revocation if, by the law of a testator/trix's domicile at the date of the act, it would revoke the will. Similarly, whether a later will revokes or amends an earlier will depends upon the *lex domicilii* at death, because the test of whether the will is valid applies. For immoveables, the *lex situs* governs. By statute, where a will is formally valid under the statutory provisions in Section B10(a), a will revoking or amending it will be formally valid if it qualifies under the same provisions. The law governing the making of a will also largely governs revival. It appears, however, that the testator's/trix's domicile at the time of marriage (which largely determines matters of personal law) governs whether his or her marriage (or, by extension, entry into a civil partnership) revokes a previous will. **26.126**
- (i) There is no reserve to any person under Manx laws of succession. The right to apply for provision (see Section A5) depends upon the deceased's Manx domicile: the domicile status of the applicant is irrelevant. **26.127**

11. Domicile/Nationality

- (a) The date for considering the deceased's domicile, where relevant, is addressed in the relevant section of this chapter. **26.128**
- (b) The domicile of a beneficiary is largely irrelevant in Manx law. A rare exception is the rule concerning capacity of a beneficiary to inherit moveables (see Section B10(d)). **26.129**
- (c) Nationality and domicile are resolved by evidence (in a straightforward case, by affidavit). **26.130**

12. Taxation

There are no estate taxes in the Isle of Man (see Section A14 regarding income taxation). **26.131**