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FOREWORD

The Isle of Man Government continues to encourage economic growth by creating a sympathetic tax regime and world class regulatory standards offering a non-bureaucratic approach to business. It has also capped the individual income tax rate at £120,000 for the tax year starting 6th April 2012 and continues with a zero corporate tax rate for trading and investment income but Banking business and land & property income are taxed at a rate of 10%.

The abolition of corporate tax added substantially to the attractions of asset-holding companies on the Island, which already benefit from the absence of capital gains tax, stamp duty and inheritance tax.

The introduction of an Isle of Man Foundation (to appeal to clients and practitioners of civil law jurisdictions) came into effect on the 1st January 2012 with the benefit of 0% income tax on profits.

The new Isle of Man law was welcomed by Treasury Minister Eddie Teare. The law received Royal Assent in Tynwald in 2011:

“The Manx Foundation will be a bespoke product that will provide our financial services industry with an additional tool to open up new business opportunities. The world of wealth management is highly competitive so it is vitally important that government keeps working in partnership with the private sector to enhance the island’s offering to international clients.”.

The Foundation is a separate legal entity in its own right and has the ability to manage its own assets in its own name and arrange for its own funding. Similar to a company it has limited liability and can be run in perpetuity.

Designed to take advantage of the growing international market the Manx Foundation is a flexible vehicle with the advantages of:

- Effective Tax Planning
- Structured Management
- Tax reduction on Assets
- Tax deductible donations
- No restrictions on assets held
Having the world's oldest continuous legislature (over 1,000 years) the Island has developed its own sophisticated legal system based on English law and has a well regulated international finance centre which has been awarded an AA+ rating. Clients who establish a Manx Foundation can be assured of a professional approach to meet their needs.

CONCEPT

Whilst Trusts date back as far as Roman times the concept of a “Foundation” has only been known, in Civil Law countries, for several centuries. Common law jurisdictions are now legislating to introduce the concept.

The term “foundation” in general is used to describe a distinct legal entity which may have a diversity of forms and usually follows the regulations of the jurisdiction in which it was formed. In some jurisdictions the Foundation may only acquire its legal personality when it is entered into a Public Registry, while in other jurisdictions the mere act of creation of the Foundation through a specific instrument is sufficient.

A foundation is a hybrid between a trust and a company – is a legal entity (with limited liability and unlimited duration) separate from its creators, constituted through sole donation or several donations that form an independent and autonomous estate for a definite purpose which can be charitable or non-charitable.

A foundation is established by will or charter executed by a founder, who may be a natural person. By way of the charter, a founder may reserve powers to itself such as the ability to revoke the foundation, amend the charter itself or add or remove beneficiaries known at the date of establishment or set out procedures for naming them at a later date.

A foundation can provide for the appointment of a protector / enforcer / supervisory body who can play an active or passive role depending on the foundation’s charter.

The day to day administration of the foundation is undertaken by the “Foundation Council” which is similar to a “Board of Directors” (Corporation) or “Trustees” (Trust) who are governed by the rules or regulations set up at the time of establishment of the Foundation in accordance with the Founder’s wishes and includes the distribution of assets.

The Charter / Instrument is usually a public document registered at the Public Registry whilst the rules or regulations of the Foundation need not be registered.
THE ISLE OF MAN FOUNDATION

The legislation provides a new vehicle which is suitable for civil-law jurisdictions and offers an additional asset management structure which enhances the Isle of Man offerings and has certain advantages over a Manx Trust.

The Foundation contains some elements of a Trust with the advantage of being a separate legal entity in its own right which allows it to own assets in its own name, trade and arrange for its own finance.

The Isle of Man Foundation is similar to those created in other jurisdictions, with the following exceptions:

- Council members do not need to hold a foundation licence.
- The Enforcer is optional.
- The Foundation “Instrument” must be in English although the “Rules” can be in any language with an English translation available.
- An Isle of Man licensed registered agent must be appointed.
- The Foundation must prepare annual financial statements similar to a Manx company.
- The Instrument containing the name of the Foundation, name and addresses of the council members is a document of Public Record.

The Isle of Man Private Foundation will appeal to individuals and families from civil law jurisdictions where Trusts are not legally recognised.

The many attractions include:

- Excludes forced heir-ship
- Separate legal personality
- Limited Liability
- Can arrange for its own funding
- Beneficiaries can be named on establishment or at a later date
- No initial property is required for establishment
- The “founder” can be a beneficiary or an “enforcer” of the foundation
KEY ELEMENTS OF THE LEGISLATION

Instrument (other jurisdictions refer to this document as the "Charter")

The foundation consists of one or more “founders” who instructs the fiduciary service provider to apply to the Registrar for the establishment of the Foundation. The application must be made in a form and manner published by the Registrar and accompanied by:

- A copy of the foundation instrument (document of public record)
- The published fee
- Declaration from fiduciary service provider stating:
  1. The fiduciary service provider will become the Registered Agent of the Foundation upon establishment
  2. The fiduciary service provider is in possession of the foundation rules which have been approved by both the founder and the licence holder
  3. The address in the Isle of Man, specified in the declaration is the business address of the fiduciary service provider

The Foundation Instrument must be in English and specify the name of the Foundation and end with the word “foundation”. The name must not be identical or similar (ignoring the suffix) to any other name under which a company or foundation has been established in the Isle of Man under:

- The Companies Act 1931 – 2004
- The Companies Act 2006
- The Limited Liability Companies Act 1996
- The Foundation Act 2011
- The Charity Registration Act 1989

The name must not in the opinion of the Registrar be offensive, misleading or otherwise undesirable. The Registrar may publish restricted words and phrases.

The foundation instrument may prohibit future name changes but if not strictly prohibited the name can be changed but said change must be notified to the Registrar.
The Foundation instrument must specify the objects for which the foundation is established. The objects must be:

- Certain, reasonable and possible
- Must not be unlawful, contrary to public policy or immoral
- The objects may be charitable, non-charitable or both
- The object may benefit a person or class of persons
- The objects may carry out a specified purpose

The foundation instrument must also include:

- Full names and addresses of the Council Members
- The procedures to appoint remove and remunerate council members, enforcer and the registered agent
- Rules in relation to the office of enforcer, if appointed
- Rules in relation to any initial or further dedications of assets
- Rules in relation to the duration of the foundation, destination of surplus assets or winding up
- Rules in relation to beneficiaries
- Rules in relation to the administration of assets
- Rules in relation to delegation of duties

The Rules

The Foundation Rules may be in any language but the foundation must supply an accurate English translation of the rules to the Registered Agent. The rules must include:

- The procedures to appoint, remove, retire and remunerate council members, enforcer and the registered agent
- The full name and address of the council members and enforcer, if appointed
- Procedures in case of the death of the Registered Agent
- Provide rules in relation to the office of enforcer, if appointed
- Rules in relation to any initial or further dedications of assets
- Rules in relation to the duration of the foundation, destination of surplus assets or winding up
- Rules in relation to beneficiaries
- Rules in relation to the administration of assets
- Rules in relation to delegation of duties

The rules may provide for or restrict amendments to the foundation instrument or the foundation rules.

**Perpetuity Period**

A Foundation can run in perpetuity unlike a trust which has a limited life span.

**Assets**

A foundation need not have an initial dedication of assets however, if it does, details of the dedication must be included in the rules. After establishment, further assets may be dedicated to the foundation unless the rules prohibit this. Details of any further dedications permitted under the rules, must be specified in the foundation rules which must be amended to include the details of additional dedications.

*The definition of assets:*

- Any assets (including money, investments and other property) dedicated to the foundation
- Any capitalised income added to the assets so dedicated

*The dedication of assets to a foundation by a person does not:*

- Make the person a founder
- Vest in the person a right vested in a founder of the foundation

All Dedications by a “Dedicator” must be recorded by the registered agent who is required to maintain a register of all names and addresses of dedicators.

**Founder**

The person establishing the Foundation is known as the “Founder” similar to a Settlor in a trust. The name of the Founder will not be on public record.

**Enforcer**

An enforcer is optional and may be an individual or body corporate. The enforcer can be the Founder. If the foundation does have an enforcer the foundation rules must specify the full name and address of the enforcer, provide for the enforcer’s appointment, retirement and remuneration.
Council Members

Council Members are appointed in a similar manner to Trustees of a trust, the minimum number being one. Council members are bound to act within the scope of the foundation rules and have exposure to unlimited liability if they engage in misconduct. The Company Officers (Disqualification) Act 2009 applies to foundations.

Beneficiaries

The beneficiaries of the Foundation are entitled to information on the Foundation but not necessarily a right to any income.

The Act defines a beneficiary in respect of a foundation that has the provision to benefit a person or class of persons as one of its objects, as a person (whether or not yet born or otherwise in existence) who is or who becomes a member of class of persons that is:

- Specified in the foundation instrument or
- Determined in accordance with the foundation rules

Limited Liability

A Foundation is similar to a company in that it carries limited liability.

Taxation

The rules applying to Limited Companies will also apply to Foundations. A Foundation will incur no tax on profits other than those connected with the business of Isle of Man property which will pay corporate tax at a rate of 10%. A withholding tax at the same rate is imposed if the dividend is paid to a non-resident individual or corporate body.

VAT

The Foundation may only engage in commercial trading if it is attainable of its objects. Isle of Man Foundations may be registered for VAT purposes and the VAT prefix will be “GB”, which is recognised in Europe.
Financial Statements Required

Whilst there is no requirement to file audited financial statements with the authorities, it is important to note that a Foundation is required to keep financial records, which reflect the financial position of the Foundation.

If accounting records are kept at a place outside the Isle of Man they must be sent to the Foundation’s registered office in the Isle of Man at not less than 6 month intervals. Failure to maintain accounts or make them available for inspection at a company’s registered agent is an offence punishable by imprisonment or a fine.

The Assessor of Income Tax reserves the right to call in the financial records for inspection.

Administration

A Foundation must include its name, business address (that of its Registered Agent) and registration number in all written communications, including electronic mail.

Annual Return

The Foundation must file an annual return each year.
WHO TO CONTACT

The OCRA Worldwide Group has a presence spanning every continent in the world with offices in 20 locations. We are open 24/7 around the world, speak many languages and are in tune with the world’s many cultures, but above all else ‘our business’ is about people and we have people to serve you!

If you have read this document and found something that relates to your circumstances, then be assured that we are dedicated to the delivery of business solutions designed to reduce costs and maximise profits.

The consulting office for doing business in this country follows on the next page. Should you prefer to deal with another of our offices, please visit our website at www.ocra.com for a full listing of office contact details.

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