Isle of Man Trust

<table>
<thead>
<tr>
<th><strong>General</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of entity</td>
<td>Trust</td>
</tr>
<tr>
<td>Type of law</td>
<td>Common</td>
</tr>
<tr>
<td>Our time to establish a Trust</td>
<td>1 – 5 days</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Trust Assets</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard currency</td>
<td>GBP</td>
</tr>
<tr>
<td>Permitted currencies</td>
<td>Any</td>
</tr>
<tr>
<td>Minimum</td>
<td>£10</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Trustees</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum number if individuals</td>
<td>Two</td>
</tr>
<tr>
<td>Local required</td>
<td>Yes</td>
</tr>
<tr>
<td>Minimum number if a body corporate</td>
<td>One</td>
</tr>
<tr>
<td>Local required</td>
<td>Yes</td>
</tr>
<tr>
<td>Publicly accessible records</td>
<td>Yes</td>
</tr>
<tr>
<td>Location of meetings</td>
<td>Anywhere</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Protector</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Required</td>
<td>Optional</td>
</tr>
<tr>
<td>Professional qualification held</td>
<td>Optional</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Trust Deed</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Publically accessible</td>
<td>No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Accounts</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement to prepare</td>
<td>Yes</td>
</tr>
<tr>
<td>Audit requirements</td>
<td>Optional</td>
</tr>
<tr>
<td>Publicly accessible accounts</td>
<td>No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Other</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement to file annual return</td>
<td>No</td>
</tr>
<tr>
<td>Forced Heirship Rules</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>

**GENERAL INFORMATION**

Introduction

The Isle of Man, situated in the centre of the British Isles, is an internally self-governing dependent territory of the British Crown which is not and never has been part of the United Kingdom. It is however, part of the British Isles. Tynwald, the Island's 1,000 year old Parliament, makes its own laws and oversees all internal administration, fiscal and social policies. External issues, such as foreign representation and defence, are administered on the Island's behalf by the UK Government and the Island makes an annual payment for these services.
As a British Crown dependency, the ultimate responsibility for the Island's good government is vested in the Crown but by long standing convention, the UK Government does not legislate for the Island except with the specific consent of the Island's Government. More information can be found at [www.gov.im](http://www.gov.im).

**Population**

The population of the Isle of Man is approximately 84,655.

**Political Structure**

Tynwald (Parliament) legislates on all domestic matters including taxation. Tynwald consists of two branches, known as the Upper and Lower. The Legislative Council, (Upper) consists of ten Members and is elected by the lower house. Members include the President of Tynwald, the Lord Bishop of Sodor and Man, HM Attorney General and HM Queen Elizabeth II. The House of Keys, (Lower) has twenty-four Members who are elected and serve a five-year term. HM Queen Elizabeth II holds the title Lord of Man, and is ultimately responsible for the governance of the Island. All legislation passed by Tynwald has to have Royal Assent before being enacted.

**Infrastructure and Economy**

There are regular daily air and ferry services to the UK and Ireland.

The economy is in its 26th year of growth the key sectors being financial services and professional services, Banking generates around one quarter of the Island’s gross domestic product.

In the last few years new economic activities have been developed, such as aircraft registration and most significantly, e-gaming and other areas of e-commerce due to an infrastructure of world-class telecommunications and services which cater for the full range of modern corporate voice and data communication requirements.

The Isle of Man has been awarded “AA+” Ratings from Standard and Poor and Moody’s.

**Language**

The official and spoken language is English.

**Currency**

The Manx Pound, which is on par with the UK Pound and freely exchangeable

**Exchange Control**

None.

**Type of Law**

Common Law; based on English Common Law.

**Principal Corporate Legislation applicable to trusts:**

- Trustee Act 1961
- Variation of Trust Act 1961
- Perpetuities and Accumulations Act 1968
- Powers of Attorney Act 1971
- Powers of Attorney Act 1983
- Recognition of Trusts Act 1988
- Trusts Act 1995
- Purpose Trusts Act 1996
- Trustee Act 2001

Other legislation which is relevant to trusts:

- Settled Land Act 1891
- Settled Land Act 1983
TRUST INFORMATION

Definition of a Trust

A trust relies on the distinction between the legal ownership in property and the equitable interest in that property.

The trustee is given the legal ownership interest, which enables him to deal with those assets as if they were his own property, subject to the terms of the trust deed. The beneficiaries have an equitable interest in the property which represents the rights to enjoy the benefit of the property subject to the terms of the trust deed. The beneficiaries can enforce the trust against the trustee and can, if necessary, take legal action against the trustees.

The trust may be:

- Express or Non-express
- Private or Public
- Bare

The most commonly used form of trust in a financial services environment is an inter vivos discretionary trust which is created by the express and intentional declaration of the settlor. The declaration is normally a written “deed” also referred to as a trust instrument; trusts can be established by will on the death of a settlor.

Public and private trusts are defined by their purpose e.g. a charitable trust for a public charitable purpose is a public trust and must be registered in the Isle of Man must file annual audited accounts and are subject to supervision by Her Majesty’s Attorney-General in the Isle of Man. A public trust is always an express trust.

A Private Trust is not registered in the Isle of Man registry and is not required to file annual accounts.

A “bare” trust is where a trustee holds property on trust. The trustee has no power or discretion to do anything other than hold the property and deliver it when requested to the beneficiary.

Perpetuity Period

Trusts in the Isle of Man have a perpetuity period of 150 years. Purpose trusts have a perpetuity period of 80 years.

Accumulation Period

There is not statutory rule against accumulations in the Isle of Man and the trust property can be added for the duration of the trust.

Procedure to Establish

Trusts are often created and constituted at different times. The trust is created when the trustees become bound by law to hold and dispose of the trust assets in accordance with the terms of the trust. The trust is constituted when the legal interest in the trust asset is lawfully transferred to the trustees.

There are “three certainties” which must be fulfilled for a trust to be created, or the trust will fail:

- Intention
- subject
- objects

Certainty of Intention is a vital element of the creation of a trust. Whilst it is possible to reserve powers to either the settlor (or protector), case law indicated that the reservation of too much power can be taken as evidence that there was no intention to create a trust. If a trust is challenged in court, this can result in the trust property being deemed to have been the property of the settlor at all times which may have adverse tax consequences for the settlor or his estate. The Isle of Man does not have express reserved powers legislation.

Certainty of Subject requires that the property that is to be settled in the trust be described with “certainty and particularity”. If it proves impossible to identify the trust property the trust will fail.
Certainty of Objects requires that the intended beneficiaries of the trust be named, identified or described with sufficient certainty as to allow them to be determined with certainty. Since the beneficiaries are able to enforce the trust against the trustees, it follows that the trust is not enforceable against the trustees, the trust will again fail.

Language of Legislation Documents
English.

Time to Establish
One to five days,

Name Restrictions
Must end with the name “Trust”.

COMPLIANCE

Taxation
Taxation is a dynamic area and the latest information can be obtained from the Income Tax Division’s website at www.gov.im/treasury/incometax. There is no capital gains tax and no inheritance, gift or estate taxes in the Isle of Man. Manx trusts with Manx resident beneficiaries are subject to income tax at 20% on undistributed income. However where the beneficiaries of a Manx trust reside outside the Isle of Man and the income is generated outside the Isle of Man there will be no Manx taxation in respect of trust income.

Financial Statements Required
The duties of the Trustee(s) include providing the beneficiaries with a full and proper explanation of the dealings of the trust. There is no statutory provision covering the format that the trust accounts must take, accounts need not be audited but if an audit is deemed appropriate the trustees can arrange for an audit which will be paid for out of the trust assets.

The Settlor
Also commonly referred to as a “Grantor”, the Settlor establishes the trust by transferring the trust property to the trustee(s) to hold under the terms of the trust. The settlor may also be a beneficiary of the Trust or act as the Protector.

The Trustees
A Trustee is obliged to manage and dispose of trust property in accordance with the term of the trust instrument. A trustee can be either an individual or a body corporate.

Those persons who are able to provide trust services are:

- Fiduciary service providers licensed by the Financial Supervision Commission of the Isle of Man to conduct trust services under Class 5.
- Manx Advocates
- Manx Accountants

The trustees have a duty to ensure that the administration and management of the trust is done in the best interest of the beneficiaries and to act fairly and impartially towards the beneficiaries at all times.

The Trustee Act 2001 imposes a statutory “duty of care” in certain circumstances. It requires a trustee to exercise such care and skill as is reasonable in the circumstances, having particular regard to:

- Any special knowledge or experience that he has or holds himself out as having; and
- If he acts as trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind or business or profession.

The Beneficiaries
The beneficiaries are those people for whose benefit the trust is established. They can either be named or described by reference to a class of person in the trust instrument. Beneficiaries have the right to enforce the trust against the trustees but may also enforce their equitable ownership interest against others as necessary.
The Protector

The role of “protector” is optional but they are frequently appointed. The role of the protector is:

- To provide guidance to the trustees.
- To provide comfort to the settlor that the trust is being administered in accordance with his/her wishes and intentions.

The role can be undertaken by a qualified professional in the course of normal business activity or by a person who is acquainted with the particular circumstances surrounding the trust e.g. Settlor or relative. The protector does have a fiduciary duty to the beneficiaries.

Termination of Trusts

Unless specifically provided for in the trust deed, the deed as executed is binding and cannot be changed. However it is possible to include a specific power of revocation in the trust instrument, thereby making the trust revocable.

OTHER TAX PLANNING ENTITIES

Other business entities used for international tax planning include:

- Hybrid Companies
- Limited Liability Companies (LLC)
- New Manx Vehicle Companies (NMV)
- Partnerships
- Foundations

Further information on these alternative structures is available on request.

Disclaimer

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