

Trusts in the Isle of Man

There are many misunderstandings about trusts and trust law, even amongst professional advisors. Trusts are perceived to be legal operations or entities peculiar to Anglo-Saxon law jurisdictions – which they are in the main (though some claim that trusts existed during Roman times). However, that does not

prevent them from being useful for, and impacting upon, persons within non-Anglo-Saxon law jurisdictions. Courts in the civil law jurisdictions of Europe, for instance, where trusts are not normally recognised, have in fact recognised trusts in certain situations, typically involving international persons.



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Trusts are often perceived to be for estate and inheritance planning only, essentially to make orderly and confidential provisions for heirs. Certainly that is how they originated over 300 years ago. But trusts have moved on since then, so that now they are also used to protect assets, for tax planning, and to secure and facilitate a great variety of financial transactions. Also, trusts are often used to provide for charitable causes.

Trusts can be drafted so that the settlor (donor of trust assets) retains partial or total control under specified circumstances, or retains no control at all, according to the needs of the settlor and/or beneficiaries. You would properly sense that trusts are highly flexible within the guidelines set by law. For that reason, the drafting of

trusts is best left to a skilled professional. Clearly, a comprehensive review of the types and features of trusts is beyond the scope of this article. Suffice it to say that trusts established for purposes found to be illegal will be void.

Isle of Man Trusts

The Isle of Man has substantial law in place for the establishment and administration of trusts. What is more, the courts in the Isle of Man have substantial experience with trust law – something which cannot be said for all courts, even those within other Anglo-Saxon law jurisdictions.

International clients will take comfort from the similarity of Isle of Man and English law, since they are dealing with a familiar and truly tested body of law. Isle of Man law, though based upon English law, has several interesting differences.

One difference is that there are no restrictions on the accumulation of income in an Isle of Man trust. This means that trustees (those appointed to manage the trust on behalf of the designated beneficiaries) of Manx trusts are not obliged to restrict the accumulation of income within the trust over a period designated by law (typically 21 years from the date the trust is established).

Trusts which do not own real estate in the Isle of Man do not need to be registered, and therefore offer maximum privacy for trust settlors as well as trust beneficiaries. In spite of the numerous efforts these days to make private information readily available to the public, there remain a substantial number of families and businesses that prefer to keep their affairs confidential for wholly legitimate reasons. As I in-

dicated above, one of the benefits of trusts in general is that they allow estate matters to be kept out of probate courts, and therefore out of the public eye. In the same vein, business arrangements can be held confidential so as to avoid business competitors making use of sensitive information.

The Trustee Act 2001 changed the maximum perpetuity (life) of Manx trusts from 80 years (the traditional life span of English law trusts) to 150 years. Should that life span be a cause for concern, it is possible for one trust to create another trust or trusts at a later point in time, thereby effectively extending the life span of the trust arrangements.

For those in civil law jurisdictions, it may be of interest to know that the Trusts Act 1995 provides for forced-heirship laws to be overridden in favour of Isle of Man law. In turn, Isle of Man law allows for the designation of any and all heirs as may be determined by the settlor, even if that means to the exclusion of family members.

It is possible for the trustee of an Isle of Man trust to be someone not resident in the Isle of Man, though making use of an Isle of Man trustee is recommended in order to confirm residency of the trust as well as to ensure knowledge of and compliance with applicable Isle of Man law provisions.

Where it is not possible or desirable for a settlor to be the trustee of a trust, it is possible to appoint him or her as the protector of a trust. The protector essentially oversees the work of a trustee, and in some instances must approve certain transactions to be undertaken by a trustee.

The Purpose Trusts Act 1996 provides for the establishment of purpose trusts in the Isle of Man. Purpose trusts

are designed to exist so long as their intended purpose exists. Apart from charitable trusts (which are seen to be a type of public trust), purpose trusts (often referred to as private purpose trusts) are typically used in international financial transactions, such as secured transactions and leasing arrangements, to ensure that income is properly administered and distributed in accordance with well-defined terms calculated to protect all parties to the transaction. This is especially useful when conflicts of laws might make the securitization of financial transactions difficult or even impossible. Owing to their nature and the fact that they do not have beneficiaries to enforce as against the trustees, purpose trusts must be registered, must have at least one trustee in the Isle of Man with the qualifications specified by law, and will be enforced by the Isle of Man attorney general.

Unit trusts are but another type of trust commonly found in the Isle of Man. They typically allow a group of investors to accumulate investment funds so as to invest for a common purpose. These trusts will be subject to statutory requirements and to regulation by the Financial Supervision Commission in the same way that any other investment business would be subject to such regulation in the Isle of Man.

Another pleasing difference applicable to Isle of Man trusts, and one which makes Manx trusts of particular interest for international clients doing estate planning, is that there is no inheritance tax in the Isle of Man. Likewise, there will be no tax liability in the Isle of Man for trusts which do not have settlors and/or beneficiaries resident in the Isle of Man, or do not otherwise conduct business there, apart from the normal administration and banking business of the trust.

Isle of Man Foundations

For clients unable to make use of trusts because of the laws where they live or do business, it is also possible to establish foundations in the Isle of Man. These foundations will function in the same way as those established in civil law jurisdictions in Europe. Again,

Trusts auf der Isle of Man

Trusts gelten gemeinhin als optimale Instrumente für die Erbschaftsplanung. Dies ist sicherlich der ursprüngliche Zweck, der mit Trusts seit ihrem Erscheinen vor über 300 Jahren verfolgt wurde. Doch die Trusts haben sich seither auch weiterentwickelt und werden heute für eine Vielfalt von Zielen eingesetzt, vom Vermögensschutz über die Steuerplanung bis zu wohltätigen Zwecken.

Die Isle of Man verfügt über eine umfangreiche Gesetzgebung für die Gründung und Administration von Trusts. Und, weder unwichtig noch selbstverständlich für zahlreiche andere Jurisdiktionen: Die Gerichte auf der Isle of Man kennen sich in der Materie gründlich aus.

Die Gesetzgebung auf der Isle of Man basiert zwar auf englischem Recht, besitzt aber eine Reihe interessanter Eigenheiten. Dazu gehört zum Beispiel, dass es bezüglich Einkommensakkumulation bei einem Isle-of-Man-Trust keine Beschränkungen gibt.

Trusts, die auf der Isle of Man selbst kein Grundeigentum besitzen, brauchen nicht öffentlich registriert zu werden, und bieten damit sowohl den Errichtern als auch den Begünstigten ein Maximum an Vertraulichkeit. Dies gilt nicht nur für Private und Familien, sondern auch für Unternehmen, die mit einem Isle-of-Man-Trust geschäftliche Arrangements vertraulich abwickeln können, ohne Gefahr zu laufen, dass die Konkurrenz Zugang zu sensiblen Informationen bekommen kann.

Internationale Kunden, die aufgrund der Gesetzgebung in ihren Heimatländern keine Trusts errichten können, können auf der Isle of Man problemlos auf Stiftungen ausweichen – und zwar einfacher und mit viel weniger bürokratischem Aufwand als in den meisten anderen Jurisdiktionen, in denen Stiftungen angeboten werden. Schliesslich bieten sowohl Isle-of-Man-Trusts als auch -Stiftungen internationalen Privat- und Geschäftskunden zahlreiche attraktive steuerliche Vorteile.

there is a certain amount of flexibility in the way a foundation can be established, and confidentiality of the terms of the foundation can be preserved, much in the same way as for a trust. Furthermore, the foundation can be free of tax liability in the Isle of Man if that is desirable. These are obvious advantages over foundations established in the jurisdictions referred to. Other significant advantages are that Manx foundations are not subject to the vast amount of bureaucracy and operational expense that they would be elsewhere. In some situations, it would actually be better to make use of a foundation instead of a trust.

A very recent court decision by the Isle of Man High Court has also added certainty to the use of Isle of Man foundations. The court ruled that only

the Manx High Court has the jurisdiction to rule upon the ownership of issued shares in Manx companies. As foundations are established under company law in the Isle of Man, and in some instances issue shares when that is advantageous, there is comfort in knowing which body of law will apply to the disposition of foundation shares, and with that the assets of the foundation.

The Isle of Man is not part of the United Kingdom and not part of the European Union (though it does have treaty rights of free trade). The Isle of Man has its own tax laws and fiscal arrangements, with foreign relations and defence administered by the UK. The Isle of Man has only one double-taxation treaty, being a limited treaty pertaining to UK citizens or residents. ■