

ISLE OF MAN TRUSTS

TURNBULL ADVOCATE & SOLICITOR

Exchange House
54-58 Athol Street
Douglas
Isle of Man
IM1 1JD

Tel: +44 (0)1624 614516
Mobile: +44 (0)7624 456418
Fax: +44 (0)1624 675256
Email: jt@turnbulladvocate.com
Website: www.turnbulladvocate.com

The law of trusts in the Isle of Man derives almost entirely from English trust concepts and, unlike jurisdictions which do not follow the English common law tradition (such as Jersey), legislation in this area targets anomalies which arise from time to time.

Reference to English case law establishes relevant legal principles in relation to a substantial number of issues which may be litigated in the Isle of Man. However, in certain areas, Isle of Man case law has gone beyond English common law to establish clear principles, for example in relation to the position of the protector of a trust and the rights of discretionary beneficiaries to require the production of accounts.

Although Isle of Man statutes have to some extent been tailored to local requirements, English and Isle of Man trust statutes largely compare as follows:-

Isle of Man

Trustee Act 1961
Variation of Trusts Act 1961
Perpetuities and Accumulations Act 1968
Recognition of Trusts Act 1988
Trustee Act 2001

England

Trustee Act 1925
Variation of Trusts Act 1958
Perpetuities and Accumulations Act 1964
Recognition of Trusts Act 1987
Trustee Act 2000

Taxation

An Isle of Man trust not having a resident settlor or beneficiaries is not assessable to income tax in the Isle of Man and no withholding tax will apply to distributions to beneficiaries. There is no capital gains tax levied in the Isle of Man.

Accumulation of Income

In Isle of Man trust law, in the absence of contrary provision in the trust deed, there is no restriction on the accumulation of income of the trust for the whole of the perpetuity period.

Perpetuity Period

The perpetuity period under Isle of Man law is 150 years (80 years for purpose trusts).

Trust Corporations

The Isle of Man has no equivalent to the definition of a trust corporation contained in the Trustee Act 1925 (of Parliament), namely a corporation with a place of business in the United Kingdom having a minimum share capital of £25,000. Under Isle of Man law acting as a trust corporation is a regulated activity within the Financial Services Act 2008 and a trust corporation must have a with a minimum authorised share capital. Approved trust corporations are permitted to provide executor services.

Governing Law and Forced Heirship

The Isle of Man has enacted “forced heirship” laws, similar to those found in other offshore jurisdictions. The Trusts Act 1995 provides that a term of a trust selecting the law of the Island to govern the trust is valid, effective and conclusive regardless of any other circumstances. The Trusts Act 1995 permits: express provision in trust instruments allowing for changes in the governing law of the trust in particular circumstances, provides that particular matters fall to be determined by the Courts of the Isle of Man where the trust is governed by the laws of the Island, and excludes foreign law to the extent that it may render the trust void, unenforceable, otherwise defective or liable to be set aside due to prohibition of or failure to recognise the trust concept or as a result of certain other heirship issues.

There are important limits on the provisions contained in the Trustee Act 1995; it does not apply to any testamentary trust or testamentary disposition unless valid under the law of the domicile of the testator at time of death, nor does it apply to 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.

Purpose Trusts

Prior to 1996 the only form of purpose trust permitted under Manx law was the Charitable Trust, the charitable criteria only being slightly broader than the English charitable trust. The Purpose Trust Act 1996 provided a statutory framework within which a trust could be validly established for a purpose or purposes. Trusts can now be established to fulfil a particular purpose rather than for the benefit of a particular beneficiary. A purpose trust must satisfy certain statutory requirements, including:-

- Legality, reasonableness, morality;
- It must not remain in existence for more than 80 years;
- It may not own land in the Isle of Man;
- It must have an enforcer who is independent of the trustees to ensure that the purpose of the trust is enforced;
- One trustee is classified as a designated person and must either have a specified qualification (for example an advocate or chartered accountant) or be an “approved trust corporation”;
- The designated person must keep in the Island documents relating to the trust, which the Attorney General in the Isle of Man has a right to inspect.

Purpose trusts are frequently utilized in structures to permit orphan companies.

Asset Protection Trusts

In recent years there has been considerable debate as to whether or not the Island is an appropriate jurisdiction for the so-called “asset protection trust”. Although cases such as *Re Heggbotham* (Common Law Division, 15th February 1999) in the Manx High Court have done little to clarify the position, the best view is that the Fraudulent Assignment Act 1736 (based on the Statute of Elizabeth in England) prevents the use

of Isle of Man trusts for the purpose of defrauding creditors (whether or not ascertained at the date of the settlement of the trust).

Privacy

Save for charitable trusts, there is no register of trusts in the Isle of Man and no public filing requirement in respect of accounts.

If the Assessor of Income Tax believes that the beneficiary or the settlor is a Manx person then he is entitled to require sight of the trust deed. Banks will when opening accounts for trustees, require sight of the trust document to ascertain the beneficiaries of the trust in order to comply with anti-money laundering legislation. If a trust has any interest in Manx real estate, the trust deed (or a certified copy thereof) must be lodged in the Isle of Man Deeds Registry. Trustees may lodge trust instruments in the Isle of Man Deeds Registry, even if they do not affect real estate, although in practice this rarely occurs. It should be noted that the Isle of Man Deeds Registry is a public registry and registered deeds are open to public inspection. Isle of Man charities require the approval of the Attorney General, must be registered and file annual accounts. The High Court of Justice has an overriding power to require the production of trust documentation.

Regulation of Trust Service Providers

Those providing certain trust services by way of business, including trustees, protectors and trust administration, in or from the Isle of Man are subject to regulation by the Financial Supervision Commission. The regulatory regime aims to ensure that those offering such services are fit and proper (in terms of integrity, competence and solvency) by requiring such persons to be licensed by the Commission.

Anti-Money Laundering

Please note that there is a statutory requirement for the identity of certain persons to be established in connection with the settlement of a trust (including the settler, trustees and beneficiaries) and that evidence as to source of funds will also be required.

**Turnbull
October 2009**

PLEASE NOTE:

Whilst every effort has been made to ensure that the details contained herein are accurate; the contents of this brochure are intended to provide a brief summary only. This brochure does not constitute legal advice and should not be considered a substitute for proper legal advice specific to the particular circumstances and matters in question, which should be sought in all cases.