
Isle of Man

International Estate Planning Guide

Individual Tax and Private Client Committee

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I. Wills and Disability Planning Documents

A. Will Formalities and Enforceability of Foreign Wills

1. Formalities for Isle of Man Wills

The governing legislation for the formalities of wills in the Isle of Man is the Wills Act 1985 (the "Wills Act"). The Wills Act states that no will shall be valid unless it is:

- in writing, and signed by the testator, or by some other person in his presence and by his direction; and
- it appears that the testator intended by his signature to give effect to the will; and
- the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the time; and
- each witness either:
 - attests and signs the will; or
 - acknowledges his signature, in the presence of the testator (but not necessarily in the presence of any other witnesses).

If a person attests the execution of the will and a gift is made by the will to that person or to his spouse, the gift shall be void so far as it concerns that person or that person's spouse or civil partner, or any person claiming either of them.

If a person who attests the execution of a will is, either at the time of execution or at any time afterwards, incompetent to be admitted as a witness to prove the execution of the will, the will shall not on that account be invalid.

2. Enforceability of Foreign Wills

Section 21 of the Wills Act states that a will shall be treated as properly executed if its execution conformed to the international law in force in either the territory where it was executed, or the territory where, at the time of the execution or of the testator's death, he was domiciled or had his habitual residence, or a state of which, at either of those times, he was a national.

Pursuant to section 25 of the Wills Act, the Annex to the International Wills Convention providing a Uniform Law on the Form of an International Will shall have the force of law in the Island. This means that a will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the provisions of the Annexure.

B. Will Substitutes (Revocable Trusts or Entities)

There is no need to obtain probate in respect of assets held in an Isle of Man trust duly established during a settlor's lifetime, whether the trust is revocable or irrevocable. When the settlor dies the assets of the trust continue to be held by the trust and no change in asset ownership occurs. The use of such an *inter vivos* trust may have a number of advantages: the trustee may be given discretion in relation to the assets held by the trust and can take into account the changing circumstances of the beneficiaries and any changes in legislation or taxation before and after the settlor's death. Such a trust can also be established by will, when probate would be required. When a grant of probate is obtained the will becomes a public document, whereas the terms of an *inter vivos* trust remain confidential even after the settlor's death. Probate may in some circumstances be required to be obtained in other jurisdictions due to the location of assets; if assets are owned by the trust the trustee of an *inter vivos* trust continues to administer international assets notwithstanding the location of the assets.

However, the costs of the establishment and maintenance of a trust can be comparatively high compared with the cost of obtaining a grant of probate on the Isle of Man. Accordingly, a trust would

generally only be established by high-net worth individuals or those with specific reasons to do so rather than as a general substitute for a will.

Payable on death accounts are also permissible, but under Isle of Man law these would be treated as trusts, accordingly, the same advantages and disadvantages apply.

C. Powers of Attorney, Directives and Similar Disability Documents

1. Powers of Attorney

An ordinary power of attorney loses its validity if the donor loses the mental capacity to manage his or her own affairs; by contrast, an enduring power of attorney is a power of attorney given when the individual is of sound mind but is intended to ensure that, should the donor lose their mental capacity at a future date, his or her affairs can be dealt with by the appointed attorney.

The donor can choose one or more persons to act as his or her attorney. If more than one person is appointed, they can be appointed to act either jointly (where the attorneys must always act together) or jointly and severally (when each attorney may act alone). An enduring power of attorney document can provide general authority for the attorney to deal with the donor's affairs and/or specific powers to deal with certain assets and affairs, such as bank accounts or property. The powers can be limited and certain assets exempt from the power such as a limit on the attorney's ability to sell the donor's home.

If the donor loses mental capacity, the enduring power of attorney must be registered with the High Court of Justice of the Isle of Man. The application must be supported by a report from a suitable medical practitioner, and formal notices of the intention to register the power of attorney must be served on the donor and on their next of kin.

2. Healthcare Directives

There is no specific legislation in the Isle of Man which relates to the legal requirements for advanced healthcare directives or 'living wills'. However, it is the case that individuals may discuss with their doctor how they would like to be treated and which treatments they do not wish to have. If an individual has a specific wish, it is often advisable to include these wishes in a written document, in order that if they become unable to discuss these matters with their doctors and incapable of making any decisions, the doctors will still know their wishes.

An advance statement is a general statement of an individual's views and wishes. It can indicate the treatment they would prefer and can also address non-medical issues, such as decisions deriving from personal religious beliefs. An advance decision is a decision to refuse specific treatment which the individual may not wish to have in the future. Advance statements or decisions are not legally binding, but the individual's doctors should take the instructions into account when deciding the best treatment for the individual.

II. Estate Administration

A. Overview of Administration Procedures

Following the death of a person with an estate in the Isle of Man, in order to have authority to distribute the estate to the person or persons entitled to inherit it, it is necessary to apply for a grant of representation from the Civil Division of the High Court of Justice of the Isle of Man. If the person made a will covering his or her Isle of Man estate, the person or persons named as executors in the will would typically apply for a grant of probate. Where no will covering the Isle of Man estate has been left, a person with a beneficial interest in the estate may apply for letters of administration authorising him or her or his attorney to administer it. Where a valid will has been left but there are no persons able or willing to execute it, a person interested in the estate may apply under the intestacy provisions for a grant of letters of administration with the will annexed, allowing that person or his or her attorney to administer the Isle of Man estate in accordance with the provisions of the will.

Applications for grants of representation are dealt with in an administrative process, without a hearing, unless the application is contested. A Court application fee of up to GBP649 is payable, depending on the value of the Isle of Man estate. Grants of representation are typically issued within six weeks of successful application.

B. Intestate Succession and Forced Heirship

The residuary estate of a person who has died without making a will, or who leaves a will but dies intestate as to some beneficial interest in his estate, is distributed in accordance with section 52 of the Administration of Estates Act 1990. This provides that, if a person dies leaving a spouse or civil partner but no children or more remote descendants (“issue”), the spouse or partner receives the entire estate. In the event that a person dies leaving both a spouse or civil partner and issue, the spouse or partner will receive the personal chattels and the first GBP 250,000 of the estate, with any balance of the estate being divided between the spouse or partner (50%) and the issue (50%, in equal shares). If the person dies leaving issue but no spouse or civil partner, the estate is divided between the issue in equal shares. In more remote circumstances, the parents, siblings, grandparents, parents’ siblings and grandparents’ siblings may benefit. If no person takes an absolute interest under these provisions, the estate ultimately falls to the Treasury of the Isle of Man Government *bona vacantia* in trust for the Crown.

Isle of Man law makes no provision for forced heirship, and Isle of Man domiciled individuals are generally free to provide for the distribution of their estate as they see fit. However, the Inheritance (Provision for Family and Dependents) Act 1982 contains provisions pursuant to which the close family or other dependants of a person who has died domiciled in the Isle of Man may apply to the Court for financial provision out of the estate, in the event that they are not appropriately provided for in the will or intestacy distribution.

C. Marital Property

Isle of Man matrimonial law is generally similar in its provisions and application to English law. In the event of divorce proceedings or civil partnership dissolution proceedings, a party has a right to apply for financial provision from the other. Comparatively few of such proceedings reach a formal hearing in Court, with most parties agreeing questions of financial provision out of Court.

There is no statutory formula providing for the division of property between spouses or civil partners. Instead, the Court has wide discretion to examine the parties’ property and to “look through” trust and other alienated interests in order to ascertain the true value of the property (whether held jointly or separately) so that the Court can make a financial division between them that the Court, under the circumstances, considers fair. Factors such as the length of the marriage and the degree of past financial support will be considered in determining financial provision, rather than any apportionment of blame for the failure of the relationship. Appropriate provision for children is a major factor in considering the amount and nature of any order for financial provision.

D. Tenancies, Survivorship Accounts, and Payable on Death Accounts

Under Isle of Man law, co-owners of real property (rights in relation to land and buildings) and personal property (other rights) may designate whether they hold that property as “joint tenants” or as “tenants in common”. In the absence of such designation, there is a presumption that personal property is held as joint tenants and real property as tenants in common. Upon death, property held as joint tenants, including survivorship accounts, passes to the surviving co-owner or co-owners, regardless of the provisions of any will. Property held as tenants in common is treated as being in divided shares, and co-owners can agree among themselves as to the proportion of each co-owner’s ownership. Upon the death of a tenant in common, their share will pass in accordance with their law or the law of intestacy.

Payable on death accounts are permissible, and under local law would be treated as trusts. Payable on death accounts are not, however, typically used in the Isle of Man as the speed and simplicity of the probate process, comparative to other jurisdictions, and the high cost of maintaining the trustee relationship prior to death, renders such provision less necessary.

III. Trusts, Foundations, and Other Planning Structures

A. Common Techniques

1. Trusts

A trust is a legal relationship under which a trustee receives assets from a settlor to hold for the use or benefit of beneficiaries, or to benefit defined purposes. The trustee is given the legal ownership interest, whereas the beneficiaries have an equitable interest in the trust property which enables the beneficiary to enjoy the benefit of the property subject to the terms of the trust.

There are different types of trust which can be established in the Isle of Man. Most trusts are established for the benefit of beneficiaries, who are either named or defined as a class of people. The trust instrument sets out the circumstances under which the beneficiaries are eligible for any benefit, whether, for instance, they have a life interest or an interest in the remainder of the trust fund, or whether they have a vested interest or whether benefit is in the discretion of the trustees. Discretionary trusts are common in the Isle of Man, as they allow the trustees the freedom to decide how income and capital of the assets is applied for the benefit of the beneficiaries. The settlor may give guidance to the trustees, but the trustees are ultimately in control of the trust assets. The powers of the trustees are subject to obligations as to how they are exercised and actions must be taken for the benefit of the beneficiaries.

Life interest or interest in possession trusts are trusts where the income of the trust assets automatically belongs to one or more persons, in the shares specified. The trustees may be given discretionary powers to apply the capital for the benefit of the beneficiaries.

Trusts may be designated for a specific non-charitable purpose or purposes. The Purpose Trusts Act 1996 specifies the requirements for the establishment of a purpose trust. The purpose must be certain, reasonably possible and must not be contrary to law, morals or public policy.

Trusts in the Isle of Man are subject to the rules concerning perpetuities. A discretionary trust can have a perpetuity period of 150 years, whereas a non-charitable purpose trust can have a perpetuity period of 80 years. A trust established for charitable purposes will not be subject to the rules concerning perpetuities.

2. Hybrid Companies

For many years practitioners have made use of hybrid companies, that is, companies having both shareholding and non-shareholding classes of members, in some contexts in which those companies can act in a similar manner to trusts. A hybrid company could, for instance, have a professional or nominee shareholder who owns all of the shares but cannot derive any economic benefit, with a board of directors (acting like trustees) who can decide on the distribution of economic benefits to the non-shareholding guarantee members of the company. As the hybrid company remains a company rather than a trust, it has long been seen as an appropriate format for doing business and holding assets in jurisdictions which do not recognise trusts, such as France and Belgium.

3. Foundations

The Foundations Act 2011 is in force and as from 1 January 2012, foundations can be created in the Isle of Man. The intent of the foundations legislation is to provide a business and structuring option which is more familiar to practitioners with a civil law background.

It is likely that foundations will be used for private wealth and charitable purposes but they could also be used in a commercial context. Foundations can be used as the equivalent of a family trust, used to benefit successive generations of family members, or as a charitable foundation, operating in a similar way as a charitable trust. A foundation may be used in the same way as a purpose trust having as its objects the ownership of assets. A foundation may benefit a person or a group of people.

A foundation is established by an application to the registrar of foundations by the holder of a relevant fiduciary licence issued by the Isle of Man Financial Supervision Commission, which licence-holder will act as the foundation's registered agent.

The objects for which the foundation is established must be specified in the foundation instrument and therefore will be a matter of public record. The objects must be certain, reasonable and possible.

The foundation must also have a set of rules which contain the internal governance of the foundation, but these rules are not a public document. The initial rules must be approved by both the founder and the licence-holder who makes the initial application. The Foundations Act 2011 states what the rules must specify and the areas of governance which they must regulate.

A foundation acts through its council. The council must have at least one member who, if an individual, must be at least 18. The legislation does not require that any council member be resident or regulated in the Isle of Man and a company is not prevented from being a council member.

If the foundation's object is to carry out specified non-charitable purposes, the foundation must also have an enforcer in respect of that object. Therefore, for any commercial venture, an enforcer will be necessary. Any other foundations may also have an enforcer, although this is not a requirement.

The enforcer has a duty to ensure that the council carries out its functions, and may require the council to account to him. The founder may be the enforcer.

B. Fiduciary Duties

1. Trustees

Trustees must always comply with the terms of the trust deed and must not act beyond the express powers given to them. Any powers given to the trustees must be exercised properly and in good faith, for the purposes for which they are given and fairly for the interests of the beneficiaries.

Trustees owe a duty of care to the beneficiaries both under statute and at common law, and a fiduciary relationship arises between the trustees and the beneficiaries. Trustees must at all times consider what is in the best interests of the beneficiaries and of the trust as a whole and must not allow their personal self-interest at any time to conflict with their fiduciary duties.

Trustees have a duty to exercise reasonable skill and care in carrying out the role of trustee. If the trustee has any special knowledge or experience, this will be taken into consideration when complying with this duty. A person who by reason of experience or qualification is a professional person will be considered to have a greater degree of knowledge and by consequence a greater level of responsibility than that of a lay person.

Trustees also have more specific duties to beneficiaries including the duty to account to beneficiaries and keep the trust accounts up to date, to keep trust monies separate from their own funds and the funds of other trusts and to ensure that any investments are made wisely and kept under regular review.

2. Foundation Council

The council of a foundation equates to the board of directors of a company. The council and the members of the council must act honestly and in good faith with a view to the best interests of the foundation and must exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

A foundation may purchase insurance in respect of council members, but the coverage must not include insurance in respect of any liability that the council member may incur to the foundation.

C. Treatment of Foreign Trusts and Foundations

The Recognition of Trusts Act 1988 provides for the recognition of foreign trusts in the Isle of Man. The provisions of the Convention on the Law Applicable to Trusts and on their Recognition set out in the schedule to the Act, subject to the provision of the Act, have the force of law in the Isle of Man.

A foreign trust shall be governed by the law chosen by the settlor. The choice must be expressed or be implied in the terms of the instrument creating or the writing evidencing the trust, interpreted, if necessary, in the light of the circumstances of the case. If the foreign trust complies with the requirements of the Convention, it shall be recognised as a trust.

There is no specific Isle of Man legislation which recognises foreign foundations; however, it is expected, depending on the foundation structure in question, that the Isle of Man would treat a foundation as a separate legal entity, in particular, due to the recent creation of Isle of Man foundations.

IV. Taxation

A. Domicile and Residency

The Isle of Man tax system for individuals when determining how income should be taxed is concerned with whether an individual is resident or non-resident. There is no general definition of individual residence for tax purposes in the Isle of Man. An Isle of Man resident is taxed on worldwide income, whereas a non-resident is generally taxed on Isle of Man-source income only.

In determining the residence of individuals, the Assessor of Income Tax will look at evidence of a "view or intent of establishing residence" as opposed to presence on the Island for a temporary purpose. New residents complete a commencement of residence form in order to establish their residence status. In most circumstances, this will result in that person being accepted as resident.

When individuals claim not to be resident for tax purposes, despite regularly visiting the Isle of Man, specific rules apply to determine tax residence based on physical presence. Individuals residing in the Isle of Man for a period in the whole equal to more than six months in any tax year (i.e. the year commencing 6 April) are tax resident and liable to Isle of Man income tax. The Assessor does not count days of arrival and departure when determining the number of days that a person has spent in the Isle of Man.

Based on decided cases, individuals whose visits to the Island over a period of four or more consecutive years exceed an average of three months (90 days) in each tax year are also treated as resident. In cases where the average exceeds 90 days per year, the Assessor will regard the individual as resident from the fifth year: however, where it is clear when an individual first visits the Isle of Man that he intends to make visits exceeding an average of 90 days in each tax year over a period of four or more years, he will be treated as resident from the beginning of the first year.

If a company is incorporated in the Isle of Man, it will automatically be treated as resident. A company incorporated outside the Isle of Man and not resident in the Isle of Man which has a branch in the Isle of Man is liable to taxation in respect only of the business conducted in the Isle of Man at either the standard rate or the 10% rate of corporate income tax. A company incorporated outside the Isle of Man is regarded as resident in the Isle of Man where its management and control is in the Isle of Man.

The concept of individual domicile is not relevant to Isle of Man domestic tax. However, if an individual is able to establish an Isle of Man domicile to the satisfaction of foreign tax authorities, the tax neutrality of an Isle of Man domicile may be to his advantage in terms of his liability for that foreign tax.

B. Gift, Estate, and Inheritance Taxes

Gift, estate and inheritance taxes are not levied in the Isle of Man. However, Land Registry fees based on the market value of a property are payable on the transfer of real estate in the Isle of Man, even where a transfer is made as a gift, and Court fees are payable upon application for probate or letters of administration, based on the value of the estate.

C. Taxes on Income and Capital

The standard rate of personal income tax, which applies to the first £10,500 of a resident's taxable income (£21,000 in the case of a jointly assessed couple), is 10 percent, with income above that level being taxed at the higher rate of 20 percent.

There is a resident personal allowance of untaxed worldwide income of £9,300 (£18,600 in the case of a jointly assessed couple). There is no personal allowance for non-resident individuals. Non-resident couples may not apply to be assessed jointly. The non-resident rate of income tax, which applies to all Isle of Man-source income, is 20 percent.

In an effort to encourage the residence of high net worth individuals in the Isle of Man, an individual's personal income tax liability is capped at £115,000, regardless of the amount of that person's earnings. The liability of jointly assessed married couples is capped at £230,000.

Married couples and civil partners may elect to be taxed jointly, in which case they may pool their untaxed personal allowances and standard rate bands. This can result in a significant reduction in the amount of tax payable in cases where one spouse or partner works but the other does not. The spouses or partners are jointly and severally responsible for their tax affairs.

Where no such election is made, spouses or partners are taxed independently; in which case each spouse or partner would have responsibility only for his or her own tax affairs, but the couple would not be able to take advantage of the pooling of personal allowances and standard rate bands.

The standard rate of Isle of Man corporate income tax is 0 percent. However, income from banking business and from land and property in the Isle of Man is subject to a 10 percent rate of corporate income tax. Income derived from land and property in the Island includes income from rents (although not very short term hiring of facilities), land development (although not building, construction, civil engineering and other professional activity in connection with land development) and mineral extraction.

No Isle of Man tax is levied on capital gains, although any increase in the value of land in the Isle of Man deriving from land development as a business undertaking will be liable to taxation as income, either at the 10 percent rate of corporate income tax for companies, or in the case of individuals at that person's relevant marginal rate (10 percent or 20 percent).

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