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Trusts in the Isle of Man

WHAT IS A TRUST IN THE ISLE OF MAN?

- Isle of Man trust law is closely modelled on and has developed in parallel to English Trust law.
- A trust is a legal relationship under which one or more persons ("the trustees") receive assets from another person ("the settlor") to hold for the use or benefit of specified persons ("the beneficiaries") on defined terms. The trust imposes strict obligations on the trustees to manage and deal with the assets in accordance with those terms. The effect of the trust is to give beneficiaries equitable rights that can be enforced in a court.
- The settlor will specify the trust terms, while he may be completely distanced from the assets in trust once it is established.

HOW IS A TRUST CREATED?

Normally by transferring the assets to the trustees and by the execution of a written document (usually a "settlement deed", "trust deed" or "declaration of trust"), which sets out the trust terms and defines what kind of trust it is.

TYPES OF TRUST COMMONLY USED IN THE ISLE OF MAN

Discretionary Trust

A trust where the trustees decide how income and capital of the trust assets is applied for the benefit of the beneficiaries. The trustees have wide discretion, but are subject to obligations as to how they exercise it and must do so for the benefit of the beneficiaries. The settlor can give guidance as to how he would like the

trustees to exercise its discretion, but ultimately cannot control them. If so desired, such trusts can be framed so as to qualify as accumulation and maintenance trusts (in the U.K.) or grantor trusts (in the U.S.).

Life Interest or Interest in Possession Trust

A trust where the income of the trust assets automatically belongs to one or more named persons in specified shares. While the trustees can deduct their administrative expenses and liabilities from the income, the balance belongs to the beneficiaries as specified. The trustees may be given discretionary powers to apply capital for the benefit of beneficiaries.

Purpose Trust

A trust expressed to be to fund a purpose. Previously unenforceable, a trust for a lawful purpose may be established under the Purpose Trusts Act 1996. The purpose must be certain, reasonably possible and not contrary to law, morals or public policy. An independent “enforcer” must be appointed to ensure that the trustees fulfil their duties. These trusts are subject to rules concerning perpetuities.

Charitable Trust

A trust for charitable purposes. It is an exception to the general rule against trusts for purposes, and is not subject to rules concerning perpetuities.

TRUST LEGISLATION IN THE ISLE OF MAN

1. **Trustee Act 1961** – the principal piece of Manx trust legislation - deals with administrative matters such as investment powers of trustees, appointment and discharge of trustees and the powers of the court - modelled on the UK Trustee Act 1925, but it not identical.
2. **Variation of Trusts Act 1961** – allows the court to vary the terms of a trust upon a beneficiary’s application - modelled on the UK Variation of Trusts Act 1958.
3. **Perpetuities and Accumulations Act 1968** – provides for the duration of a trust and the trustee’s ability to accumulate income - modelled on the UK Perpetuities and Accumulations Act 1964.
4. **Recognition of Trusts Act 1988** – extended the terms of the Hague Convention on the Law Applicable to Trusts and Their Enforcement to the Isle of Man and provided for the recognition of foreign trusts.
5. **Trusts Act 1995** – excludes property held in Manx Trusts from foreign heirship laws and other laws concerning the creation of trusts of non-Manx assets.
6. **Purpose Trusts Act 1996** – allows non-charitable purpose trusts to be created under Manx law.
7. **Trustee Act 2001** – enacted to widen the powers of trustees, as well as to impose safeguards for beneficiaries - modelled on the UK Trustee Act 2000.

A FEW TECHNICAL FEATURES OF MANX TRUST LAW

- The Isle of Man is a separate legal jurisdiction from those of the United Kingdom. Its laws are a combination of common law, custom and statute.
- Trust law in the Isle of Man is common-law based, with an overlay of statute, and closely follows English law.
- The statutory perpetuity period for trusts created after 2000 is 150 years and 80 years for trusts created before 2001, at the end of which the trust assets must vest as to interest (which means that all interests under the trust must become fixed and defined).
- There is no restriction on accumulation of trust income during the perpetuity period.
- Foreign laws (except those concerning formalities) concerning transfer of assets into trust are excluded by statute.
- The Isle of Man has legislation causing fraudulent transfers of assets to be void and permitting transfers at an undervalue to be set aside in some circumstances. It has no “asset protection” legislation. It does have legislation permitting the court to assist the courts of another jurisdiction in matters of insolvency.

ISLE OF MAN TAX IMPLICATIONS

There is no capital gains tax and there are no inheritance, gift or estate taxes in the Isle of Man. Trustees may be income tax payers, however, and may be obliged to file tax returns when they are resident in the Isle of Man. Manx trusts with Manx-resident beneficiaries are subject to income tax at 18% on undistributed income. Beneficiaries

receiving income may be liable to income tax if they are resident in the Isle of Man or the income arises in the Isle of Man. However, where the beneficiaries of a Manx trust are resident outside the Isle of Man and the income arises outside the Isle of Man (or is bank interest) there will generally be no Manx taxation in respect of trust income (except that there may be a deduction for EU residents entitled to income in accordance with the Savings Directive for life interest or interest in possession trusts).

REGULATION OF TRUSTEES

The Financial Supervision Commission has introduced legislation for the regulation of persons who provide trustee and other trust services by way of business.

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