



Brief - Isle of Man Foundations

An introduction to Guernsey foundations

This briefing note is intended to provide essential information on Isle of Man foundations.

The Isle of Man Foundations Act 2011 (the 'Act') came into effect from 1st January 2012 and provides an alternative model to the more traditional Isle of Man common law trusts.

What is an Isle of Man foundation?

An Isle of Man foundation has some of the characteristics of a company (such as separate legal personality) and some of the characteristics of a trust (such as the ability to hold assets for the benefit of others). It must, however, be considered as a separate type of entity in its own right which cannot be fully defined by reference to a traditional trust or company structure.

Perpetuity period

The Isle of Man foundation has no perpetuity period, unless this is otherwise defined in the foundation's instrument.

Formation of an Isle of Man foundation

An Isle of Man foundation is formed by one or more founders, who could be one or more individuals or bodies corporate, who provide assets to the foundation.

Initial capital

The initial capital dedication may comprise almost any type of asset wherever it is situated. There is no minimum initial dedication required to establish the foundation. A foundation can be therefore created without transferring any capital or significant assets, which might be useful under certain circumstances.

Purpose and benefit

A foundation can be established for either a purpose/s or to benefit beneficiaries or both. The purpose/s can be charitable or non-charitable. This may be desirable for those founders wishing to set up a company structure but with the flexibility of a trust.

Separate legal personalities

Foundations have a separate legal personality, like a company, and therefore can contract, sue and be sued, in their own capacity.

Orphan structure

An Isle of Man foundation has no shares or shareholders. It is therefore capable of acting as an 'orphan' structure which holds shares in companies itself.

Components of an Isle of Man foundation

An Isle of Man foundation has the following component parts:



Partnership

- A constitution made up of the foundation instrument and a set of rules.
- A council to administer the foundation.
- A founder.
- Depending on the terms of the foundation, an enforcer.

An Isle of Man foundation will be administered in accordance with its constitution which is made up of a foundation instrument and rules which are much like the memorandum and articles of a company.

Foundation Instrument

An Isle of Man foundation must have a foundation instrument which will state: (a) its name; (b) its objectives; (c) its initial endowment (if there is one); and (d) its duration (but only if it is to have a limited duration). The charter may also contain other matters which the founder wishes to include. The foundation will be public document that is filed with the Registrar in the Register of Foundations.

Rules

The rules must: (a) prescribe the functions of the council; (b) outline how distributions are to be made; (c) detail the procedure for the appointment, resignation and removal of councillors and the enforcer (if any); (d) if the councillors or enforcer are to be remunerated, make provision for such remuneration; and, (e) how the foundation may be wound up.

Administration

Council

The council administers the foundation. The councillors have a duty to the foundation to act in good faith in the exercise of their functions. This compares with a trust where the trustee's duties are to the beneficiaries. It is permitted for an Isle of Man foundation to have a sole council member provided this is specified in the constitution. Whilst it is not necessary for there to be a licensed fiduciary in the Isle of Man on the council, if there is no such person, it will be necessary for the foundation to appoint an Isle of Man registered agent to hold copies of the foundation's documents and records in the Isle of Man.

Founder

The founder provides the initial endowment to the foundation and must (either personally or through an agent) sign the foundation instrument. It is possible for the founder to reserve the power to amend, revoke, vary or terminate the foundation (provided that such power is set out in the instrument). The founder may be a councillor and/or the enforcer of the foundation and may also be a beneficiary.

Dedicator

This is any individual or corporate entity who places asset(s) in to the foundation. A dedicator is often the same person as the founder but does not need to be.

Beneficiaries

A foundation must have a purpose but need not have beneficiaries. A beneficiary has no automatic interest in the assets of a foundation. A beneficiary may, however, become entitled



to a benefit under the foundation at such time and to such extent as may be provided for in the instrument and rules.

Enforcer

The enforcer (whose role is compatible to that of a trust protector) is responsible for ensuring that the council of a foundation carries out its functions and acts in the best interest of the foundation. Appointment of an enforcer is optional, unless the foundation has been established to carry out a specified non-charitable purpose – in which case it is required to have an enforcer. Apart from the founder and registered agent, no person may be both a member of the council and its enforcer.

Registration

Registered agent

An Isle of Man foundation must appoint a registered agent in the Isle of Man. The registered agent must be a Isle of Man licensed fiduciary (who must be a holder of a class 4 licence under the Isle of Man Financial Services Act 2008), and has the right to obtain copies of the foundations' records. The foundation is also required to have a registered office in the Isle of Man at which all of its records are to be kept.

Registration

To establish a foundation in the Isle of Man, an application must be made by an Isle of Man licensed fiduciary to the Registrar in the Isle of Man. The application must include (a) the foundation instrument; (b) a declaration signed by the founder or resident agent that the details in the instrument are correct; (c) a declaration as to whether there are to be any beneficiaries; (d) the names and addresses of the first councillors; (e) the name and address of the proposed enforcer (if any); (f) the name and address of the registered agent (if any); (g) the address of the foundation's registered office; and (h) the registration fee. Once a foundation has been registered, its name will be inscribed in the register of foundations and it will be issued with a registration number.

The advantages of an Isle of Man foundation

- The foundation's separate legal personality means all liabilities remain corporate liabilities of the foundation and do not attach to foundation members. This limitation of liability:
 - provides the ability to hold potentially riskier assets, which trustees may be unwilling to hold,
 - removes the complications of trustee indemnities on retirement or distribution of assets.
- Unlike some other offshore jurisdictions, the Isle of Man foundation does not require the foundation council to comprise local licensed individuals.
- The founder can be a member of the foundation council and also the enforcer and is thus able to retain an element of 'control' over the foundation's assets and activities.
- A foundation does not have a perpetuity period, which trusts currently are required to include.
- Possible use with additional structures, i.e. hold the shares in private trust companies to provide 'orphan' planning flexibility.
- A foundation has limited public filing requirements meaning there is limited information available to the public.



Partnership

- Foundations are deemed to be more robust to the pitfalls of sham allegations, sometimes claimed with trust structures.
- Foundations possibly serve to cater for a number of commercial functions not typically associated with trusts, i.e. to hold or control assets of a trading nature.
- Foundations provide a more flexible solution to will planning where beneficiaries may reside in civil law and non civil law jurisdictions.
- Foundations therefore provide an attractive family planning and asset management structure.

Taxation of foundations in the Isle of Man

Isle of Man income tax is the only local tax that may be applicable to foundation structures. Where there is an Isle of Man foundation with an Isle of Man resident beneficiary, undistributed income within the trust is taxed at 18%. In the Isle of Man, there is no capital gains tax, inheritance tax or gift or estate taxes. For beneficiaries who live internationally, there is no Isle of Man tax applied.

Why an Isle of Man foundation?

It is anticipated that foundations in the Isle of Man will principally appeal to clients from civil law jurisdictions that are uncomfortable or unfamiliar with trusts. The flexibility that is afforded by the Law will permit foundations to be used for a myriad of purposes ranging from the traditional private client wealth structures to commercial and finance transactions. The advent of the new Law should permit fiduciary companies in the Isle of Man to provide innovative wealth management and asset holding structures.