



Brief - Isle of Man Trusts

Background

This briefing note is intended to provide essential information on Isle of Man trusts and outline some of the practical uses of the trust structure.

What is an Isle of Man trust?

An Isle of Man trust separates the legal title, or ownership, of property from the right to benefit from that property. It involves a person (settlor) transferring property (trust fund) to another (trustee) to hold for the benefit of another person/s (beneficiary/beneficiaries) or purpose.

Isle of Man Trust Legislation

Isle of Man Trust law is closely modelled on English trust law. The principal Isle of Man trust statute is the Trustee Act 1961 as amended by the Trustee Act 2001. Isle of Man legislation places a high duty of care on trustees which provides added protection for settlors and beneficiaries.

- Trustee Act 1961 – deals with administrative matters such as investment powers of trustees, appointment and discharge of trustees and the powers of the court.
- Variation of Trusts Act 1961 – allows the court to vary the terms of a trust upon a beneficiary's application.
- Perpetuities and Accumulations Act 1968 – provides for the duration of a trust and the trustee's ability to accumulate income.
- 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.
- 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.
- Purpose Trusts Act 1996 – allows non-charitable purpose trusts to be created under Manx law.
- Trustee Act 2001 – enacted to widen the powers of trustees, as well as to impose safeguards for beneficiaries.

Forming an Isle of Man trust

The actual formation of an Isle of Man trust requires simply the execution of a trust deed by the parties and the receipt by the trustees of some property, which is often for convenience a nominal cash sum, upon which the trust can operate. Before this occurs, however, there will be additional matters to consider.

The intending settlor will wish to discuss the form of trust most suited to his requirements. A trust can be established during an individual's lifetime (inter vivos trust) or upon their death under the terms of their will (testamentary trust). Nowadays, although a trust can still be established orally or by conduct, most trusts are formally established in a written instrument.

Trust deed

The trust deed is a legally drafted document that embodies the agreement wherein legal title in real property is transferred to a trustee, which holds in benefit for the beneficiaries of the trust.

Letter of wishes



A letter of wishes is a non-binding indication by the settlor of the manner in which he/she wishes the trustees to exercise their discretion in relation to a discretionary trust.

Trust fund

The trust fund means simply the assets held by the trustee. Generally speaking, assets can be added to a trust fund at any time, including by a person who was not the original settlor. Any type of asset can be held as part of the trust fund of an Isle of Man trust. Often, the 'real' assets will be held in a private investment company the shares of which are held by the trustee and form the trust fund.

Trustee

The trustee may be an individual or a company. In the Isle of Man there is no requirement for a corporate trustee to have particular status as a 'trust corporation'. A settlor must choose a trustee with care, to ensure as far as possible that the trustee will carry out the terms of the trust competently. Given that the trustee has a fiduciary responsibility to the beneficiaries of the trust, it is nowadays common for a corporate trustee to be appointed to the trust.

Settlor

As noted above, this is the person who causes the trust to be established by transferring the initial assets of the trust fund to the trustee. The settlor, or others, may subsequently transfer further assets. Usually, but not necessarily, the transfer is by way of absolute gift. Unless the trust deed reserves powers to the settlor, they have no subsequent right to interfere in the running of the trust or to enforce the terms of the trust - these rights are vested solely in the beneficiaries and the courts. A settlor may, however, be a beneficiary of a trust.

Settlor reserved powers

Under Isle of Man law it is possible for a settlor to reserve certain powers within the trust deed. These can be reasonably wide ranging, and settlors need to be mindful of reserving too many powers in case it is deemed as if they are controlling the trustees and the trust becomes a sham. However, common powers are:

- Power of appointment and removal of the trustees.
- Power of appointment and removal of the protector.
- Power of appointment and removal of beneficiaries.
- Investment decision making for the trust funds.

Beneficiaries

There will usually be named individual beneficiaries and/or a 'class' of beneficiaries who are eligible to benefit from a trust. The nature of their interest will depend upon the nature of the trust and its terms. The beneficiaries are however entitled to expect the trustee to administer the trust for their benefit in accordance with the terms of the trust and the duties of trustees laid down by the trust law.

For this reason, beneficiaries are entitled to copies of certain trust documents (including the trust deed) and to the accounts of the trust unless the trust deed provides otherwise (in which case they will have right to apply to the Isle of Man Courts of Justice for such information to be disclosed to them).

Protector

The protector is a person who can act as a control/sense check upon the way in which the trustees can exercise certain powers. Most commonly, a protector is given a power of veto over the exercise of



particular powers contained in the trust deed. A protector could also be given its own particular powers, such as the power to appoint new trustees. As such, the protector is not a trustee, but he/she may have duties of a fiduciary nature. A protector is often a trusted personal adviser of the settlor, and this is one means by which a settlor may retain some assurance that a trust will be administered as he/she had intended. It is possible for the settlor to appoint himself as protector to the trust, providing he/she is not a beneficiary of the trust.

Perpetuity period

As a general rule an Isle of Man trust usually has a perpetuity period of 150 years. Purpose trusts have a perpetuity period of 80 years.

Types of Isle of Man trusts

There are numerous trust types available:

Discretionary trust

Probably the most widely used type of offshore trust. The trustees are under a duty to use their discretion to apply the income and capital of the trust assets for the benefit of a class of beneficiaries. The trustees decide which beneficiaries benefit, and what proportion of the trust fund they receive. Whilst the trustees have discretion, they are subject to obligations as to how they exercise it and must do so only for the benefit of the beneficiaries. The beneficiaries have no right to either income or capital of the trust, but merely a hope that the trustees will exercise their discretion for their benefit. The settlor can give guidance (usually through a letter of wishes) to the trustees as to how they would like the trustees to exercise their discretion, but ultimately cannot control them.

Life interest or interest in possession trust

One or more specified beneficiaries (life tenant(s)) have a right to receive a fixed share of trust income for a specified period (usually life). Capital is held either on fixed interest trusts or at the discretion of the trustees for specified beneficiaries to benefit after the life tenant's death.

A popular use of this trust is to grant the right to live in a property to a life tenant but stipulate that on the death of the life tenant the property falls into the estate of another beneficiary.

Charitable trust

A trust set up for charitable purposes, which commonly enjoys certain tax benefits.

Non-charitable purpose trust

These trusts are neither for individuals nor for charities, but instead used for a specific purpose. For example, holding shares in a company. Under Isle of Man law, these trusts are only valid if in writing and the trust instrument nominates an enforcer who is responsible for ensuring that the trustees look after the trust fund within the agreed purposes of the trust.

Bare trust

Under this type of trust the beneficiary is really the owner of the trust assets and can ask the trustees to give assets to them at any time or alternatively direct the trustee to act in a particular way. The trustee is merely acting as a nominee or custodian. This form of trust is popular in offshore structures where, for example, a fiduciary company is the legal owner of shares in a company in a structure they administer.



Protective/asset protection trust

A sub-species of life interest trusts under which the income rights of a socially or financially vulnerable beneficiary, such as a bankrupt individual, automatically terminate if the beneficiary attempts to dispose of the rights, at which point the terms of the trust covering that income become discretionary, leaving the beneficiary with no defined right. These can be particularly useful, for example, as a way of preventing family assets dissipating in the event of a divorce.

Employee benefit trust and pension trust

A trust created to motivate employees by providing performance related benefits settled in trust by an employer or to house pensions funds (individual and occupational) for the benefit of their employees.

Private trust company ('PTC')

An Isle of Man PTC is a privately owned company that is incorporated specifically to act as trustee of a single trust or group of family trusts and is not permitted to offer trustee services to the public generally. PTC structures offer an opportunity for ultra-high-net-worth individuals to establish and manage, often with the assistance of their trusted advisors, their own trust company. Please see our separate briefing note on PTCs which expands in detail as to how these structures operate.

Trust uses

Trusts can be extremely useful structures for dealing with a variety of issues including:

Confidentiality

Assets are held in the name of the trustees, thereby keeping the identity and interests of the beneficiaries confidential.

Succession planning.

Subject to certain forced heirship rules, trusts enable clients to determine with greater flexibility exactly how their estate is distributed. For example, trusts are often established in wills to allow a second spouse to benefit from a property while alive, but ensuring that the children of a previous marriage receive the estate when the spouse dies.

Avoiding probate

The deceased settlor's assets are legally held by trustees and so do not form part of their estate on death. Probate, with its associated difficulties and costs, is therefore avoided.

Asset consolidation and management and asset protection

A way of placing worldwide assets in one holding vehicle to simplify asset management and centralise financial reporting. In addition, to establishing holding structures for wealth protection, growth and transition, a family office can be a tool to implement broader succession, leadership and governance plans. It may also be used to protect assets from claims of future creditors to the extent permitted by law.

Tax planning

May be used to reduce tax liabilities in some circumstances. For example, since assets settled in trust do not form part of the settlor's estate if settled within certain time constraints, inheritance taxes can be reduced.



Protecting minors

Trustees looking after assets until children are mature enough to deal wisely with their finances protects children from having control over too much money too early, whilst the trustees can, if the appropriate trust is drafted, direct money for their education, maintenance and other needs.

Taxation of trusts in Isle of Man

Isle of Man income tax is the only local tax that may be applicable to trust structures. Where there is an Isle of Man trust 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 the Isle of Man

The Isle of Man has a significant number of different types of trust, each of which might be suitable for use in a different set of circumstances. In addition, the legal system is strong and has been extensively tested since the Trustee Act was passed in 1961 and as a result many clients take confidence in the Isle of Man as a trust jurisdiction of choice.