

# GUIDE TO FOUNDATIONS IN THE ISLE OF MAN

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## PREFACE

The Isle of Man has become one of the leading jurisdictions for the formation and administration of private wealth planning structures in the offshore world. Political stability, modern and robust legislation, high-quality professional advisers and service providers, and a reputation for cost-effectiveness, have all contributed to the island's attractiveness and success as a centre for private client business.

We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they may be addressed to any member of the Private Client & Trusts Team, using the [contact information](#) provided at the end of this Guide.

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Isle of Man

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## 1. FOUNDATIONS IN THE ISLE OF MAN

Foundations were introduced into Manx law by the Foundations Act 2011 (the **Act**). A foundation is a simple, practical alternative to a trust and may be particularly attractive to private clients from civil law jurisdictions who are not familiar with the trust concept or who would like a wealth management entity which will be easily recognised by third parties in their home jurisdiction. Foundations share many characteristics with trusts and may be used to achieve similar objectives, for example:

- family provision and wealth preservation;
- business succession planning;
- protecting assets against personal liability;
- confidentiality;
- probate avoidance;
- tax mitigation; and
- charity and philanthropy.

A foundation is highly flexible in terms of how long it may last, how the founder may remain involved in the management of its affairs and how much information the beneficiaries are entitled to. It can also be used as part of a larger wealth management structure; to hold the shares of a private trust company; to act as an umbrella vehicle for other companies or assets; or to hold high risk or non-income producing assets which may not be suitable for a trust.

## 2. WHAT IS AN ISLE OF MAN FOUNDATION?

An Isle of Man foundation has its own separate legal personality although, unlike a company, it does not have shareholders. It holds assets in its own name in order to further the objects of the foundation. These objects may be persons, purposes (charitable or non-charitable) or a combination of both, provided that they are certain, reasonable and possible and not unlawful, contrary to public policy or immoral. The foundation operates in accordance with a constitution comprising two principal documents: the foundation instrument and the rules of the foundation. It is capable of exercising all the rights, powers and privileges of an individual provided that it may not directly engage in commercial trading that is not incidental to the attainment of its objects.

## 3. FORMATION AND CONSTITUTION

The foundation is formed by way of an application made by the registered agent of the foundation to the Registrar of Foundations (the **Registrar**). Every foundation is required to have a registered agent which is the holder of a Class 4 licence issued by the Isle of Man Financial Services Authority under the Financial Services Act 2008. If the application is successful, the Registrar enters the details of the foundation into its register together with the foundation instrument. The register is available for public inspection on payment of a fee. There is no requirement for an initial dedication of property to the foundation.

## 4. CONSTITUTIONAL DOCUMENTS

The foundation instrument must be in English and state the following information:

- the name of the foundation;
- its objects;
- the names and addresses of the council members; and
- the name and address of the registered agent.

The rules of the foundation must make provision for the following:

- the establishment of the council, the appointment, retirement, removal and remuneration (if any) of council members, the functions of the council and how council decisions are to be made;
- the appointment, retirement, removal and remuneration (if any) of the registered agent (so as to ensure that a Class 4 licence holder is always acting in this capacity);
- if the foundation is to have an enforcer, the appointment, retirement and remuneration (if any) of the enforcer and what his functions are;
- a record of all dedications of assets to the foundation;
- how the assets of the foundation are to be applied on winding-up; and
- if the foundation is to be wound up after a fixed period or on the happening of a particular event, or if a person has the right to have the foundation wound up, details of that period, event or right.

The rules may also provide for other matters relevant to the foundation, for example:

- the addition and removal of beneficiaries;
- the means by which amendments to the foundation instrument and the rules may be made (or any restrictions thereon); and
- the appointment, retirement, removal and remuneration (if any) of any other office- or power-holders.

The rules are a private document and, unless they provide otherwise (and subject to any applicable statutory provision or order of the court), need not be supplied to anyone other than the council members, the registered agent, the enforcer (if any) and the founder.

## 5. THE COUNCIL

Once established, a foundation acts through its council which will administer the assets of the foundation and carry out its objects in accordance with the foundation instrument and the rules. The council members perform much the same role as trustees or directors. Under the terms of the Act, the members have a fiduciary duty to act honestly and in good faith with a view to the best interests of the foundation; they are also required to exercise the care, diligence and skill that reasonably prudent persons would exercise in comparable circumstances. The council must have at least one member.

## 6. THE ROLE OF THE FOUNDER

The founder may reserve rights within the rules of the foundation, for example, a power to amend, revoke or vary the objects of the foundation, to appoint and remove council members or beneficiaries, or a requirement that his consent be obtained before the council carries out certain actions. Such rights may also be granted to third parties. The founder may be a beneficiary, a member of the council and/or the enforcer of the foundation.

## 7. THE ENFORCER

Any foundation may have an enforcer. A foundation whose objects include a non-charitable purpose must have an enforcer in respect of that object. Apart from the founder and the registered agent of the foundation, no person may be both a member of the council and an enforcer.

The principal role of the enforcer is to ensure that the council is carrying out its functions properly; in order to do so he may require the council to account to him for the way in which it has administered the foundation's assets and furthered its objects. He may also be given other functions, including a power to sanction or authorise acts of the council which would not otherwise be permitted under the rules but

which the enforcer is satisfied are being carried out in good faith and in the best interests of the foundation.

## 8. THE BENEFICIARIES

Beneficiaries have no interest in the assets of the foundation. However, if a beneficiary becomes entitled to receive a benefit and that benefit is not provided, he may apply to the court for an order compelling the foundation to comply.

## 9. PROVISION OF INFORMATION AND THE ROLE OF THE COURT

Any "person with sufficient interest" in the foundation (broadly, this is anyone connected with the foundation, including the founder, a dedicator of assets, a council member, a beneficiary, the enforcer and the registered agent) may require the foundation to provide full and accurate information about its financial position, its assets and the manner in which they are being administered, and the way in which it is carrying out its objects. The rules of the foundation may prohibit such disclosure and, in that case, the person may apply to the court for an order requiring the provision of the information.

The High Court has a supervisory jurisdiction over the affairs of the foundation and any person with sufficient interest in the foundation may apply to the court for an order:

- compelling a person to comply with requirements of the Act, the foundation instrument or the rules;
- varying the terms of the foundation instrument or the rules;
- giving directions to assist in the administration of the foundation;
- protecting the interest of any person under the foundation;
- appointing or replacing the registered agent or any other person appointed under the rules;
- taking action on behalf of any person who has failed to act.

## 10. ADMINISTRATION OF FOUNDATIONS

### 10.1 Record keeping

The foundation must retain the following documents and records within the Isle of Man (generally, this will be at the business address of the registered agent):

- up-to-date copies of the foundation instrument and foundation rules;
- a register showing the names and addresses of the council members;
- records sufficient to show and explain its transactions, including minutes of meetings of the council and resolutions of the council;
- a record of the appointment of any enforcer - the name, address and date of appointment;
- records that disclose, with reasonable accuracy, its financial position; and
- a register of the names and addresses of all dedicators to the foundation.

### 10.2 Financial statements

The foundation must maintain reliable accounting records which are sufficient to allow financial statements to be prepared. If a foundation has not prepared financial statements for a continuous period of eighteen months or more, a person with sufficient interest may demand that financial statements be prepared for the period.

### 10.3 Annual return

Foundations are required to submit an annual return to the Registrar and to pay an annual fee.

#### 10.4 **Notifications to the Registrar**

The foundation must notify the Registrar of any amendment to its foundation instrument (including any change in the name of the foundation, registered agent or composition of the council) within one month of the amendment taking effect.

#### 11. **CONTINUATION OF FOREIGN FOUNDATIONS INTO THE ISLE OF MAN**

In addition to the creation of new foundations, it is anticipated that clients may wish to migrate existing foreign law foundations to the Isle of Man in order to take advantage of the island's white list regulatory status, high standards of professional service, sophisticated court system, and proximity to London and Switzerland. Accordingly, provided the terms of its constitution allow, a foundation currently existing under a foreign law may, through its prospective registered agent, apply to the Registrar to be registered under the Act as an Isle of Man foundation.

#### 12. **TAXATION OF FOUNDATIONS**

In the Isle of Man, a foundation is treated as a corporate taxpayer for income tax purposes and so will be largely tax neutral (being subject to a general rate of 0% and 10% in respect of income received from land and property in the Isle of Man). There is no capital gains tax and no form of inheritance, gift or estate tax in the Isle of Man. When setting up a Manx foundation, clients are advised to take appropriate tax advice in the jurisdiction of residence of the founder, beneficiaries and council members, and, in particular, where there are connections with the UK as HMRC's treatment of foundations for tax purposes is not yet clear.

#### 13. **CONCLUSION**

Each client's circumstances and requirements are specific to them with the result that no two foundations are the same. Anyone considering setting up a foundation should obtain expert advice as to what type of foundation (if any) best meets their needs.

For more specific advice on Foundations in the Isle of Man, we invite you to contact:

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For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).