

GUIDE TO TRUSTS IN THE ISLE OF MAN

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PREFACE

This Guide is intended as a brief introduction to trusts in the Isle of Man, looking particularly at the types of trusts used, their objectives and key features.

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 & Trust Team, using the [contact information](#) provided at the end of this Guide./

Appleby

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1. OVERVIEW

The Isle of Man offers wealthy families a politically stable, well-regulated and practical base in which to establish wealth and business succession planning structures. Modern and robust legislation, high-quality professional advisers and service providers, and a reputation for cost-effectiveness, all contribute to the island's attractiveness as a trusts jurisdiction.

Isle of Man trusts are used to achieve many objectives, including:

- family provision and wealth preservation;
- business succession planning;
- protecting assets against personal liability;
- tax mitigation;
- charity and philanthropy;
- pensions and employee benefit schemes; and
- orphan ownership vehicles in the context of financing transactions, securitisations or private trust company structures.

Manx trust law has its roots in English law. It is based on common law principles, supplemented and enhanced by legislation which, for the most part, mirrors its English equivalents. The decisions of the English courts are highly persuasive in the Manx courts and the Judicial Committee of the Privy Council is the highest court of appeal for the Island.

A trust arises out of the separation of the legal title to property and the right to enjoy or benefit from that property. It involves one person (the settlor) transferring the ownership of property to another (the trustee) to hold for the benefit of a person or class of persons (the beneficiaries) or for a specific purpose. In most cases, the settlor expresses the terms of the trust in a document (the trust deed) and the trustees must administer the trust in accordance with those terms and with the law. A Manx trust is not a legal entity; all the business of the trust is carried on by and in the name of the trustees.

2. TYPES OF TRUST USED IN THE ISLE OF MAN

2.1 Discretionary Trusts

The most commonly used form of trust in the Isle of Man (and the offshore world generally) is the discretionary trust. The trust deed gives the trustees wide discretion to apply the income and capital of the trust assets for the benefit of a class of beneficiaries. The trustees decide which beneficiaries will benefit and how much they will receive; the beneficiaries have no right to receive a distribution, merely a hope that the trustees will exercise their discretion in their favour. The settlor may give guidance to the trustees, typically in the form of a letter of wishes, explaining how he or she would like the trustees to exercise their discretion, but the settlor cannot bind the trustees.

2.2 Life Interest Trusts

One or more specified beneficiaries (known as life tenants) have a right to receive a fixed share of the income from the trust property for a specified period (usually their lifetime). 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.

2.3 Purpose Trusts

Trusts for non-charitable purposes are permitted in the Isle of Man under the Purpose Trusts Act 1996. The purposes may be of any kind provided they are certain, reasonable and possible, and not unlawful, contrary to public policy or immoral. The trust must be created in writing and provide for the appointment of an enforcer independent of the trustees whose duty is to enforce the trust in respect of

its non-charitable purposes. A purpose trust must have at least two trustees, at least one of whom is a “designated person” (broadly, a regulated professional person within the Isle of Man); the designated person is then subject to record-keeping obligations for the trust within the island. Purpose trusts are commonly used in conjunction with asset financing transactions, securitisations or to hold the shares of a private trust company.

2.4 Charitable Trusts

Trusts for charitable purposes may be established in the Isle of Man. The trust’s objects will be exclusively charitable if they fall under one of the following categories:

- the relief of poverty;
- the advancement of education;
- the advancement of religion; or
- other purposes beneficial to the community.

The objects must also be for the public benefit. Any charity operating in the Isle of Man, and any Manx body operating as a charity anywhere in the world, is required to register with the Isle of Man Charities Registry under the Charities Registration Act 1989.

2.5 Employee Benefit Trusts and Pension Trusts

These are trusts 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.

3. PROFESSIONAL TRUSTEES IN THE ISLE OF MAN

The Isle of Man offers a wide range of professional trustees. The Isle of Man Financial Services Authority (**FSA**) regulates the activities of all persons providing trustee and other trust-related services by way of business in the Isle of Man and requires them to hold a “Class 5” licence issued by the FSA under the Financial Services Act 2008.

4. DUTIES OF A TRUSTEE

Trustees stand in a fiduciary relationship vis-à-vis the beneficiaries of the trust. In carrying out their functions in relation to the trust, the trustees are bound by overriding duties to act honestly, in good faith and in the best interests of the beneficiaries. They must never allow personal interests to conflict with their fiduciary duties.

Generally, trustees are subject to the following duties:

- to familiarise themselves with the terms of the trust and to obey them unless directed otherwise by the court;
- to protect the trust property and keep it separate from their own property and that of other trusts;
- to exercise such care and skill as is reasonable, having regard to any special knowledge or experience that they hold themselves out as having, and, if they are professional trustees, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession;
- to act fairly and impartially as between the differing interests of the beneficiaries;
- to exercise their powers in good faith and only for the purposes for which they have been conferred;
- to account to the beneficiaries and to be ready with their accounts. If the beneficiaries so request, trustees must provide them with accounting information regarding the current status of

the trust fund. This duty is fundamental to the concept of a trust being the means by which beneficiaries may monitor and protect their interests;

- to keep trust investments under regular review. When making or reviewing investments, trustees are required to consider certain investment criteria, and, unless they reasonably conclude that it is unnecessary or inappropriate to do so, to obtain appropriate professional advice. Trustees must formulate an investment policy and keep this policy under regular review. If there are investment managers or other professional advisers appointed, they should also receive a copy of the current investment policy of the trust.

The trustees may be held to account personally to the beneficiaries to make good any losses to the trust arising from a breach of their duties.

5. DURATION OF A TRUST

The rule against remoteness of vesting (the rule which prevents property from being tied up in trust for too long) was abolished on 16 June 2015 in the Isle of Man in respect of (a) transfers of property into trust made after that date and (b) transfers of property into trust (whenever made) where the governing law of the trust is changed to Manx law after 16 June 2015. Prior to that, generally, a trust set up in the settlor's lifetime had to come to an end within 150 years of its creation. Now, whilst a settlor may still impose a fixed trust period if they so wish, it will be possible for a Manx trust to exist without any limit on its duration.

6. PRIVATE TRUST COMPANIES

A private trust company (**PTC**), a company which exists for the sole purpose of acting as trustee of a specific trust or trusts, can be an attractive alternative to using an institutional trustee. In essence, the settlor incorporates his own company to act as the trustee of the trust he is settling. The PTC regime in the Isle of Man is straightforward and practical, and, with no associated government licensing or registration fees, is one of the most cost-effective among the offshore finance centres. Provided they are not held out to the public as undertaking trust business, and that the administration of the underlying trust or trusts is carried out by a regulated corporate services provider in the Isle of Man, PTCs are exempt from the normal licensing requirements of the Financial Services Act 2008.

Typically, the shares of the PTC would be held in an Isle of Man purpose trust, the purpose being to incorporate, promote and maintain the PTC. The terms of the trust may provide for a mechanism by which board appointments are effected in accordance with the settlor's wishes (or any other formula). A Manx foundation might also be used for these purposes.

The benefits of using a PTC include:

- **Family control.** PTCs provide a means by which the client, or their family, can retain a greater degree of control over the trust affairs without compromising the validity of the family trusts. The client can compose the board of directors with themselves, family members and trusted advisers who have a heightened knowledge of the family's business and financial affairs and are empathetic to the needs of the beneficiaries. Careful thought needs to be given to the composition of the board of the PTC and also who is to have power to appoint and remove its directors.
- **Avoiding future changes in trusteeship.** Having a PTC as trustee of family trusts will avoid the need for future changes of trusteeship. Instead, only the management agreement between the PTC and the regulated corporate services provider would need to be terminated and a new agreement entered into between the PTC and the new service provider.
- **Confidentiality.** Ownership of the structure can remain confidential when structured with the use of a purpose trust.

- **Trustee liability.** Professional trustees are always aware of their liability and the risk of being sued, not only by beneficiaries but also third parties. As a result, professional trustees are reluctant to take ownership of assets or participate in ventures where substantial risks may be present. PTCs (due to the composition of the board) can provide for riskier investments to be accommodated within the structure.
- **Philanthropy.** PTCs can make confidential philanthropic payments whilst ensuring the person managing the structure understands their thought process in providing for such causes.
- **Flexibility.** PTCs are likely to be more flexible and able to act more quickly in dealing with trust assets

7. RESISTANCE TO FOREIGN LAWS

In common with many offshore finance centres, the Isle of Man has enacted “firewall” laws which seek to ensure that, as far as possible, a trust is shielded against attack by any party (including a court in an overseas jurisdiction) on the grounds that the trust offends or denies rights arising under foreign law - typically, rights of inheritance (such as forced heirship rights prescribed in certain civil law jurisdictions or under Sharia law) or rights arising through marriage or former marriage. It should be borne in mind that no firewall legislation provides absolute protection against such claims, particularly where the underlying trust assets are situated in the foreign territory where the claimant is bringing the claim.

The protection, found in the Trusts Act 1995, has three aspects.

- All questions concerning a trust (including the gift of property into the trust, the powers and obligations of the trustees, and the administration of the trust) are to be determined according to Manx law without reference to the laws of any other jurisdiction.
- No Manx trust, and no transfer of property into a Manx trust, is void or vulnerable to being set aside, nor is the capacity of a settlor, trustee, protector or beneficiary to be questioned, nor is any person to be subjected to an obligation or liability or deprived of a right, claim or interest, by reason that the law of any foreign jurisdiction does not recognise trusts, or the trust or transfer avoids or defeats any right, claim or interest conferred by foreign law upon any person by reason of a personal relationship to a settlor or beneficiary or by way of heirship rights.
- No judgment or order of a foreign court is to be recognised or enforced or give rise to any right, obligation or liability if inconsistent with the above principles, or if the High Court so orders for the purpose of protecting the interests of the beneficiaries of the trust or in the interests of the proper administration of the trust.

The effect of these provisions is that the party seeking to attack the trust will have to do so in the Manx court which will decide the matter applying only Manx law. A judgment of a foreign court which is inconsistent with these principles will not be recognised or enforced in the Isle of Man.

8. TAXATION OF TRUSTS IN THE ISLE OF MAN

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 20% 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).

9. **CONCLUSION**

The Isle of Man has earned a reputation as a premier offshore jurisdiction for the establishment and administration of trusts. Each settlor's circumstances and requirements will be specific to them with the result that no two trusts are the same. Anyone considering setting up a trust should obtain expert advice as to what type of trust (if any) best meets their needs.

For more specific advice on Trusts 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](#).