

## Business Update:

# The use of Isle of Man companies, trusts and partnerships in real estate investment

Recent developments mean that the Isle of Man is able to offer an unrivalled package to tax and property advisors looking for the best possible option for their real estate clients. These developments include a flexible, modern corporate law and zero percent corporate taxes.

The Isle of Man is well-established as an international financial centre and enjoys particularly close and growing links with the emerging BRIC economies. It is increasingly becoming the jurisdiction of choice in relation to a wide variety of property investment structures, including property funds and property holding special purpose vehicles.

### The main benefits of the Isle of Man

The benefits of using Isle of Man companies and partnerships include:

- the Island's favourable tax regime: a zero per cent tax rate for companies and no capital gains tax, inheritance tax, stamp duty (including on share transfers) or SDLT;
- the similarity of the underlying principles of the Island's law (including its new flexible and modern company law) to English law enables advisors to be comfortable dealing with Isle of Man companies, trusts and partnerships;
- direct access to the global capital markets: the Island is a leading listings jurisdiction of origin for international companies admitted to trading on the London Stock Exchange Alternative Investment Market (AIM), on the basis of both the number of companies incorporated and their combined market capitalisation;
- the ability to list an Isle of Man vehicle or to establish an Isle of Man vehicle as a UK real estate investment trust (REIT) without the need for prior regulatory approval (if close-ended);
- a new dynamic regulatory regime for the establishment and operation of open-ended property funds;
- the availability of VAT registration on an expedited basis, allowing an Isle of Man company to VAT group with other Isle of Man companies and UK companies;
- the ability of an Isle of Man company to have its shares denominated in any currency;
- knowledgeable and expert professional advisers on the Island (lawyers, accountants and bankers) are able to

service the needs of sophisticated investment entities and financial institutions; and

- the Island's first-class reputation as a well regulated international financial centre (reinforced by Moody's and Standard & Poor's "AAA" accreditation) in the same time zone as London.

### Isle of Man companies

Persons electing to locate their investment vehicles in the Isle of Man have the choice of using a company incorporated under the Isle of Man Companies Act 2006 (a "New Manx Vehicle" or "NMV"). The NMV is fast becoming the Manx corporate vehicle of choice for real estate investment. Since its introduction in November 2006, over 3500 NMVs have been incorporated. The benefits of the NMV include:

- the ability to declare and pay dividends and make capital distributions (including distributions of assets in specie) subject only to meeting a statutory solvency test, allowing a streamlined return of capital to investors;
- the ability to purchase, redeem or otherwise acquire its own shares subject only to meeting the statutory solvency test;
- increased structuring and restructuring flexibility as no financial assistance prohibitions exist, shares may be issued with or without par value, there is no need to specify an authorised share capital and corporate directors are permitted;
- the ability to incorporate as a protected cell company (PCC), a guarantee company, a hybrid company or an unlimited company;
- less 'red tape': streamlined accounting and filing requirements and no need to hold annual general meetings;
- the ability to adopt pre-incorporation contracts; and
- simple merger, consolidation and transfer of domicile procedures.

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### Isle of Man trusts

The law of trusts has developed in the Isle of Man largely in parallel to that in England, and Isle of Man trusts share their main characteristics with those widely existing in all common law jurisdictions.

Types of trust able to be established in the Isle of Man and which are commonly used in real estate investment include fixed interest trusts (including interest in possession trusts), discretionary trusts, bare trusts and unit trusts (including property unit trusts (PUTs)).

Where income is derived from property held by one person as nominee for another, or from property held by a trustee for another person who is absolutely entitled to that property as against the trustee, then the person or trustee, respectively, is not within the scope of Isle of Man tax in respect of that income.

### Isle of Man partnerships

The Isle of Man also offers advisers and investors the choice of using either an Isle of Man general partnership or limited partnership.

As with trusts, the law of the Isle of Man concerning both general and limited partnerships has for many years mirrored that of England. The principal partnership legislation in the Island is the Partnership Act 1909, which is based on the United Kingdom's Partnership Act 1890 and Limited

Partnership Act 1907.

A partnership does not have separate corporate identity and is tax transparent for Isle of Man tax purposes.

### Cains

We are a leading international law practice incorporated in the Isle of Man. Cains' ability to provide legal services of the highest standards to its international clients was recognised recently when we were named as 'Offshore Firm of the Year' by the judges of Legal Week's 2007 British Legal Awards and achieved a similar accolade at The Lawyer Awards in June 2008.

The Hemscott survey, which ranks advisers to companies floating on AIM, reveals that Cains is the number one legal adviser to the AIM 100 based upon its number of clients, many of which are real estate and infrastructure companies.

We have established a continuously manned operation in the City of London to facilitate the provision of Isle of Man legal advice and solutions to the London market, and opened an office in Singapore in July 2008.

Cains' in-house fiduciary service provider, Equity Limited, is a licensed administrator of special purpose vehicles and trusts, offering our clients an efficient and competitive service in relation to the establishment of property investment structures.

Please see our website ([www.cains.com](http://www.cains.com)) for further details.

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This guide is believed to be accurate on the basis of materials and information available at February 2009

Please note that this guide is intended to provide an introduction to the Isle of Man and the possibilities that exist for establishing various types of structure in the jurisdiction. It seeks only to give the reader an overall view of the subject and is not a substitute for specific advice.

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