2014

International Business Guide on the Isle of Man

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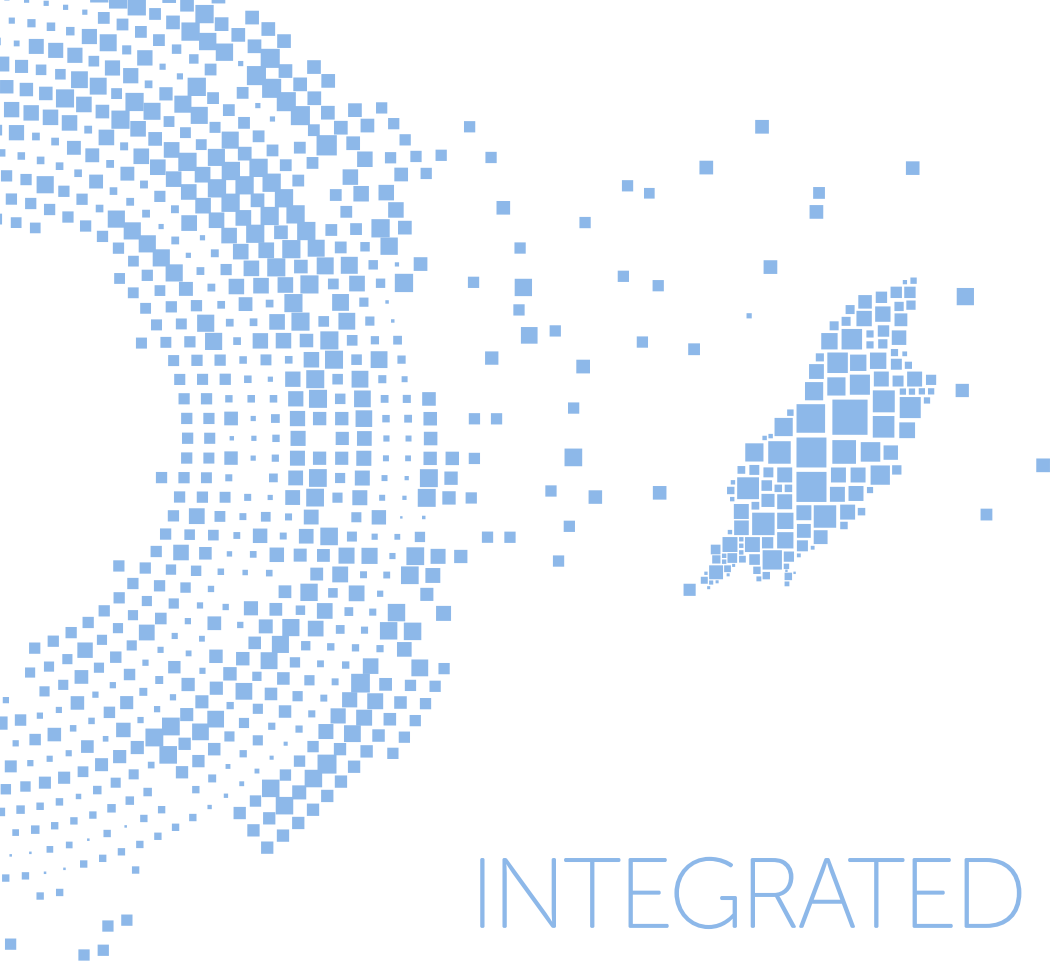

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CAINS INTERNATIONAL BUSINESS GUIDE TO THE ISLE OF MAN

2014

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The Isle of Man is one of the world's most respected international financial centres.

1 AN INTRODUCTION TO THE ISLE OF MAN

1.1 Overview

1.1.1 Development and diversification

The Isle of Man is one of the world's most respected international financial and business centres. Effective public/private sector co-operation for the past 30 years has led to the creation of an outstanding environment in which to do business featuring world class infrastructure and business support systems, a favourable fiscal regime, dynamic and responsive legislation and an expert professional services industry.

The Isle of Man's success is demonstrated by the fact that it has enjoyed 29 successive years of growth. Even in the challenging year 2011/12, the Isle of Man achieved a Gross Domestic Product of £3.8bn, resulting in growth in real terms of 2%. There has been a rise in national income per head year on year for the past fifteen years. In 2011/12, national income per head stood at £44,660, exceeding the United Kingdom equivalent figure of £21,693 gross value added per head for the year 2011.

This success owes much to the combination of stability, flexibility and engagement – a stable government, agility and responsiveness to global economic conditions and a willingness to engage locally and internationally.

The Isle of Man has responded to the more difficult economic conditions positively and with confidence. The Department of Economic Development, created by a government restructuring in 2010, is tasked with promoting the development and the diversification of business on the Isle of Man. This Department has spearheaded a number of initiatives, both singly and in partnership with other public and private sector organisations. In 2013, it undertook a detailed and sustained engagement with both the public and private sectors to develop a plan for the Isle of Man's economic future. The result was Vision2020, launched in January 2014, which set out 8 strategies in key areas of the Isle of Man economy, including manufacturing, telecommunications and e-business, clean energy businesses and financial services.

Diversification and consolidation can be seen in the key legislative developments of the past few years. Over 11,000 companies (to June 2014) have been incorporated under the Companies Act 2006, which introduced a robust yet flexible and cost-effective corporate vehicle for business. The Financial Services Act of 2008, which consolidated all the financial services legislation into one user-friendly piece of legislation, was amended in 2013 to provide a framework to allow transfers of deposit taking businesses via an application to the court. A new Incorporated Cell Companies Act 2010 has been introduced, and legislation was passed in 2011 on foundations and limited partnerships with separate legal personality. The Limited Liability Companies (Amendment) Act 2014 makes provision for singe member limited liability companies. These developments act together to support the growing diversity of businesses and business structures on the Isle of Man.

The Isle of Man has experienced considerable international scrutiny, especially in the challenging economic climate of the past few years. Reviews of the Isle of Man's tax and regulatory practices have been undertaken by or at the behest of bodies such as the Organisation for Economic Co-operation and Development ("OECD") and the International Monetary Fund ("IMF"). Without exception, such reviews have found the Isle of Man to have very high levels of compliance with relevant international standards and supervisory practices, and levels of co-operation that place it in the first division of offshore centres.

In 2009, the Isle of Man was placed straight onto the OECD's white list of jurisdictions that implemented internationally agreed tax standards, and in 2013, the Isle of Man received a top "compliant" rating from the OECD for its adherence to international standards on tax information exchange. A review by the IMF in 2009 also noted the Isle of Man's very high level of compliance with global standards of supervision and regulation in financial services. The Isle of Man has continued to implement measures recommended by the IMF to keep in line with international standards in such areas as anti-money laundering and the identification of beneficial ownership of companies. The Council of Europe's MONEYVAL committee acknowledged, in a report of September 2013 , the 'considerable progress' the Isle of Man had made to address issues arising from the IMF review.

The Isle of Man has taken a lead in the implementation of the United States Foreign Account Tax Compliance Act ("FATCA"), signing intergovernmental agreements with the United States of America and the United Kingdom in 2013, ensuring the Isle of Man meets global standards in the exchange of tax information (see section 4.10 for further details).

There is a steady recognition of the contribution of the Isle of Man economy to global international hubs like the City of London. The 2009 Review of the Crown Dependencies by Sir Michael Foot, commissioned by the United Kingdom Treasury, acknowledged the contribution made by the Isle of Man to the United Kingdom economy, by acting as a conduit for funds flowing from the Isle of Man to the City of London. Engagement with the international community has helped to foster a positive image of the Isle of Man, and has led to a growing international identity. From negotiating and signing tax information exchange agreements with over 30 countries, to engaging with the European Union over its business taxation and establishing contacts in Brussels and Washington to enhance co-operation and understanding, the Isle of Man is showing an increasing confidence in shaping its own international profile.

The Isle of Man continues to develop and diversify its economy, and to gain recognition as a place to do business. It was awarded the accolade of "Best International Financial Centre" at the International Investment Fund and Product Awards in 2013, for its enabling legislation, local and international involvement, and future growth prospects and initiatives. There is no doubt the Isle of Man has steered its course with considerable success over the past two decades. It continues to build for the future with its established culture of public/private sector co-operation, responsive legislative programme, and a growing international presence.

1.1.2 Location and accessibility

The Isle of Man is located in the centre of the Irish Sea and consequently enjoys a temperate climate. It is 33 miles (52 kilometres) long from north to south and 13 miles (22 kilometres) wide from east to west at its widest point. It has a land area of some 227 square miles (572 sq. km).

The Isle of Man is in the same time zone as London and its

The Isle of Man is politically and constitutionally separate from the United Kingdom.

financial markets.

The Isle of Man is linked to its immediate neighbours and to the rest of the world by excellent air, sea, postal and telecommunications systems. The Isle of Man's principal airport, Ronaldsway, handled 749,315 passengers during 2013 and has daily flights to London and the other major airports in the United Kingdom and Ireland. The principal port at Douglas has deep-water berths and facilities for handling passengers, vehicles and cargo.

Mail from the Isle of Man is generally delivered in the United Kingdom the next day and postal rates are similar to equivalent United Kingdom rates.

1.1.3 People

The Isle of Man's resident population was revealed by the 2011 census to be 84,497, which represented a population increase of around 5.5% since the interim census in 2006. The population is essentially a mixture of indigenous Manx people and British and Irish nationals, although the influx of increasing numbers of highly skilled people from around the world has increased cultural diversity. Just under half of the populace lives in and around Douglas, the Isle of Man's capital and commercial centre. The Isle of Man has a population density of just 382 people per square mile, compared with 677 per square mile in the United Kingdom and 2,176 per square mile in the Channel Islands.

The Isle of Man's development as a financial centre has had an impact on the lifestyle of many of the residents. Average earnings have increased by over 28% in the past ten years, and 42% of the economically active population works in financial, business, professional, educational, medical and scientific services.

The Isle of Man's education system is regarded as first rate and its results consistently outperform that of the United Kingdom system.

1.1.4 Constitution, government and stability

The Isle of Man is not part of the United Kingdom, but is within the British Isles. Queen Elizabeth II is acknowledged by the Isle of Man as its Head of State, but the Isle of Man is politically and constitutionally separate from the United Kingdom. The Isle of Man is a Crown Dependency, but is internally self-governing and independent in all matters except most foreign affairs and defence (both of which are the responsibility of the United Kingdom government and for which the Isle of Man pays an annual contribution).

Tynwald, considering a report on independence for the Isle of Man in November 2000, concluded that, "the Isle of Man should remain a Crown Dependency whilst pursuing the constitutional development of the Isle of Man". It resolved to achieve this "by promoting and defending vigorously the Isle of Man's autonomy in relation to its internal affairs, and seeking to extend the Isle of Man's influence over external issues affecting the Island". Please see section 1.2.1 below for more information in relation to the Isle of Man's increasing ability to represent itself in international affairs.

The Isle of Man exercises its extensive political and legislative independence through its ancient parliament, Tynwald, which is the oldest legislature in the world in continuous existence. Tynwald is tri-cameral, consisting of the House of Keys (which is elected by universal suffrage), the Legislative Council (whose members are elected primarily by members of the House of Keys ("MHKs")) and Tynwald Court, where the two chambers sit together. The 24 MHKs are elected for a period of 5 years and the next general election will be in September 2016.

The Isle of Man was reported to be the first country in the world to grant women the right to vote in 1881 and the November 2006 general election marked another milestone for the Isle of Man, when 16 year olds were permitted to vote. The Isle of Man is believed to be one of only six countries in the world, and the first country in Western Europe, to set its voting age at 16 years.

The Isle of Man has a ministerial system of government that is headed by the Chief Minister, who selects the Council of Ministers. The Chief Minister is nominated by Tynwald from amongst its members after each general election. The politics of the Isle of Man is noteworthy for the relative absence of party politics, which has contributed to the remarkable stability of the Manx system. However, recent general elections have seen a slight erosion of the non-party political nature of Manx politics.

1.1.5 Language

The Isle of Man's population is English speaking and the language of business, commerce and law is therefore English. The last 'native speaker' of the Manx language, Manx Gaelic, died in 1974, but interest in the language has recently undergone a revival and Manx Gaelic has now been taught in the Isle of Man's schools since 1992, with a Manx Gaelic primary school operational on the Isle of Man since 2001. Acts of Tynwald continue to be promulgated in both Manx and English when Tynwald Court assembles in the open air on Tynwald Hill, a Viking parliamentary site, each year on 5th July (the Isle of Man's national day).

1.1.6 Legal system

The Isle of Man has its own legal system and jurisprudence. English law generally has no direct application to the Isle of Man, but the Manx legal system is based on the principles of English common law, which are shared by most Commonwealth countries. Manx law is thus very similar to English law in areas such as crime, contract, tort and family law. English case law is generally held to be of persuasive authority by the Manx Courts. In other areas, however, although modelled on English law, Manx law has been adapted to meet the Isle of Man's own special circumstances, particularly with regard to direct taxation, company law and financial supervision.

The Isle of Man's High Court judges are called Deemsters and have jurisdiction over all criminal and civil matters. The Manx Appeal Court, known as the Staff of Government Division, consists of a Deemster (who must not be the Deemster who heard the case at first instance) together with the Judge of Appeal, a part-time position filled by an English QC. The final avenue of appeal against decisions of the Manx Court, and one that is rarely pursued, is to the Judicial Committee of the Queen's Privy Council.

The Human Rights Act 2001, which came into force on 1 November 2006, incorporated into Isle of Man law the basic rights set out in the European Convention on Human Rights. As the Isle of Man has been a signatory to the Convention on Human Rights for nearly 50 years, it was unlikely that the Human Rights Act would prompt many changes. However, prior to the Act coming into force a considerable amount of preparation was undertaken, including checking legislation, policies and procedures for compliance, as well as raising awareness throughout the public sector.

The strength of the professional services sector is a key factor for companies when choosing the Isle of Man as a place to do business.

1.1.7 Economy

The Manx economy has experienced sustained growth over 29 consecutive years. The real growth rate averaged 8% from 1997 to 2007, and the economy has still experienced growth since 2008 despite the global recession. In 2008/2009 there was a real growth rate of 4.7%. The growth rate for 2009/10 was 2.1%, 3.4% for 2010/11 and 2% for 2011/12. Gross government income for 2013/14 amounted to £890.9million. In 2013 annual inflation averaged 2.8%.

The Isle of Man has had low unemployment rates for the past decade (a rate of 2% in August 2014) and the high level of employment in the Isle of Man has contributed to the growth of GDP. The banking and finance industries constitute the largest single sector of the economy and account for 35.6% of total income from Manx sources (National Income Report 2011/12), but other sectors are emerging to contribute a significant share to national income. E-gaming accounts for 9.2% of national income, transport, communications and technology for 11.2%, and legal and professional services and corporate service providers for 11%.

The expansion of the Manx economy is reflected in the comparison of GDP per capita between the Isle of Man and the United Kingdom. From 1993 there was a steady reduction in the differential between the two countries to the point where the Isle of Man overtook the United Kingdom in 2001. In 2011/12, the Isle of Man's GDP per capita was £44,660, with the United Kingdom equivalent figure of gross value added ("GVA") per capita for 2011 being £21,693.

The buoyant economy of the years to 2008 allowed the government to embark upon a number of major infrastructure projects. Electricity in the Isle of Man is now provided by a new power station, financed by a £185 million government bond issue. The power station uses natural gas that is supplied, via an inter-connector, by the undersea gas pipeline that runs between Scotland and Ireland. During periods of low and high demand, the Isle of Man can also feed to or draw power from the United Kingdom via one of the longest AC sub-sea cables in the world.

Other notable capital projects have included: the construction of a new £112 million hospital; a new waste incinerator; an Island-wide sewage treatment system; a new prison; a new water treatment works; and a yacht marina in Douglas, as well as a renovation of the quayside and harbour.

1.1.8 Professional facilities

In order to service its financial sector the Isle of Man has developed expertise across a broad range of professional activities.

Lawyers qualified in the Isle of Man are known as advocates and, since it is a fused profession, they fill the roles met by solicitors and barristers in England. Traditionally Manx advocates have been organised into partnerships. However, by virtue of the Advocates Incorporated Practice Rules 1999 (updated in 2007) they may now also choose to operate as private limited companies. Manx advocates have an exclusive right of audience in the Isle of Man's Courts although English barristers can, in certain limited circumstances, be licensed to appear in a specific action.

Lawyers qualified in certain other legal jurisdictions who are registered under the Legal Practitioners Registration Act 1986 are permitted to undertake legal work in the Isle of Man, but may not, for example, conduct proceedings in a Manx Court or prepare documents relating to Manx real estate.

The accountancy profession is well represented on the Isle of Man. Nearly all the major international firms have established an office on the Isle of Man as have a number of smaller firms, many of which specialise in non-audit activities.

Other financial and professional services are provided in the Isle of Man by banks, building societies, fund managers, insurance companies and brokers, stock brokers and company and trust administrators.

The strength of the professional services sector is a key factor for companies when choosing the Isle of Man as a place to do business.

1.2 External relations

1.2.1 Relationship with the United Kingdom

The United Kingdom Parliament legislates for the Isle of Man in respect of some matters that are of mutual concern to both territories, such as defence, nationality and immigration matters. The origin of Parliament's authority to do this is obscure, but is, in practice, accepted. In 1969, a Royal Commission examined the constitutional conventions governing the relationship between the United Kingdom and the Isle of Man. It was recognised that the United Kingdom Parliament only legislates on the Isle of Man's domestic matters with Tynwald's consent. However, the Commission concluded that the United Kingdom would require legislative powers so long as it remains responsible for the Isle of Man's good government and international relations.

Effectively, therefore, the Isle of Man is subject to two legislatures: Tynwald and Parliament. Although the United Kingdom is responsible for the Isle of Man's external relations, the Manx government is, nonetheless, consulted before any international treaty that would affect the Isle of Man is finalised.

From 2007, responsibility for the Isle of Man has been in the hands of the Ministry of Justice ("MOJ"). The Isle of Man government and the MOJ are in regular contact and enjoy a constructive working relationship, and the constitutional relationship with the United Kingdom continues to develop and mature. For example, in 2010 the MOJ and Isle of Man government agreed that from hence forward the Lieutenant Governor, the British Crown's representative on the Isle of Man, would be appointed by an all-Manx panel.

The Isle of Man is increasingly representing itself on the international stage on matters that directly affect it. For example, the Isle of Man is an active member of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes and is represented at ministerial level at the summits of the British-Irish Council.

The Isle of Man took a further step towards developing its international personality when on 1 May 2007 the Chief Minister on behalf of the Isle of Man and the Lord Chancellor on behalf of the United Kingdom signed a declaration setting out a framework of principles for the development of international identity of the Isle of Man. The framework of principles reinforces the Isle of Man's separate status within the context of its constitutional relationship with the United Kingdom. The agreed principles include:

Although not part of the EU, the Isle of Man recognises the need to engage constructively with EU initiatives.

(a) the United Kingdom has no democratic accountability in and for the Isle of Man, which is governed by its own democratically elected assembly, which means, inter alia, that the United Kingdom will not act internationally on behalf of the Isle of Man without prior consultation;

(b) the Isle of Man has an international identity which is different from that of the United Kingdom;

(c) the Isle of Man and the United Kingdom commit themselves to open, effective and meaningful dialogue with each other on any issue that may come to affect the constitutional relationship; and

(d) the Isle of Man and the United Kingdom will work jointly to promote the legitimate status of the Isle of Man as a responsible, stable and mature democracy with its own broad policy interests and which is willing to engage positively with the international community across a wide range of issues.

This position has been strengthened by a United Kingdom Parliament Justice Committee Report on the Crown Dependencies published in March 2010. The Report stressed the Isle of Man's "essential independence from the United Kingdom" and that the Crown Dependencies were "democratic, self-governing communities". The Report recommended "clear and unambiguous representation of the Crown Dependencies' interests on the international stage" to help the Islands build relationships with third countries and international organisations, to develop their international identities as envisaged in the 2007 framework mentioned above.

In parallel with these developments, the Isle of Man government has actively sought to develop commercial links with the United Kingdom and other countries. In May 2011, a government delegation visited the City of London, meeting with the Lord Mayor and reinforcing the importance of the Isle of Man's relationship with the City. Delegations have also visited jurisdictions such as China, Bahrain and the United Arab Emirates in recent years.

1.2.2 Relationship with the European Union ("EU")

The Isle of Man's relationship with the EU is set out in Protocol 3 to the Act of Accession annexed to the Treaty of Accession 1972, by virtue of which the United Kingdom became a member of the European Community. The Isle of Man is neither a member state nor an associate member of the EU. By virtue of Protocol 3, the Isle of Man is part of the customs territory of the EU. Therefore the common customs tariff, levies and other agricultural import measures apply to trade between the Isle of Man and non-member countries. There is free movement of goods and agricultural products between the Isle of Man and the EU, but the EU provisions which relate to trade in financial services and products and those in respect of the free movement of persons, services and capital do not apply to the Isle of Man. Consequently, EU law has direct application to the Isle of Man for very limited purposes. The Isle of Man's relationship with the EU can only be changed by the amendment of Protocol 3, which would require the unanimous agreement of all EU member states.

Although not part of the EU, the Isle of Man recognises the need to engage constructively with EU initiatives. This need has been nowhere more apparent than in the field of taxation. In 1997, the Council of Economic and Finance Ministers ("ECOFIN") drafted a Code of Conduct for Business Taxation (the "Code") as part of the European Commission's efforts to eliminate "harmful" business taxation practices. The Isle of Man Treasury reached an agreement with the EU to implement the legislative changes to the taxation system necessary to meet the Code's principles. The most notable response was the introduction of a zero-rate company tax regime which applies to both resident companies and companies formerly regarded as non-resident.

The corporate tax regime has since undergone detailed scrutiny by the EU Code of Conduct Group (Business Taxation), leading to the abolition by the Isle of Man government of the attribution regime for individuals ("ARI"), but maintenance of the zero-rate company tax (see section 4.1.1 and the sections following for details). This response has led the Code of Conduct Group to indicate that it no longer sees the Isle of Man's business tax system as harmful. This is an issue where constant engagement with the EU whilst maintaining independence and autonomy has been vital for the Isle of Man's economic interests.

Consideration has also been given to Directive 2003/48 of the European Union on the taxation of savings income (the "Directive"), which came into force in the EU on 1 July 2005. The aim of the Directive is to ensure that individuals who are EU residents pay tax on their savings in their home state, regardless of where in the EU their savings are invested.

The EU member states were concerned that so long as certain other countries and territories did not apply equivalent measures, capital flight towards these countries or territories could imperil the attainment of the Directive's objectives. The Isle of Man, although not part of the EU, has implemented equivalent measures by entering into bilateral agreements with all EU Member States.

For a transitional period, the Isle of Man operated a form of retention tax on the savings income covered by the Directive. This period came to an end on 1 July 2011, when the Isle of Man moved to the automatic exchange of information on savings income with the EU.

The EU has been investigating extending the scope of the Directive since 2008. On 24 March 2014, Directive 2014/48 came into force, extending the Directive to include all types of savings income and preventing circumvention of the Directive by use of interposed entities or legal arrangements, or the channelling of interest payments through economic operators established outside the EU. Please see section 4 of this Guide for more information on these tax measures.

The EU's eighth Company Law Directive was introduced in 2008, which (among other things) requires auditors of companies listed on EU stock exchanges to be subject to public oversight. The Isle of Man has adopted equivalent measures for auditors of Manx companies that trade on EU regulated markets, using the Financial Reporting Council as its oversight body in a local auditor oversight regime.

1.2.3 Relationships with international bodies

(a) Organisation for Economic Co-operation and Development ("OECD")

The Isle of Man is a member, through the United Kingdom, of the OECD. Consequently, the Isle of Man's financial products and services have access to markets where OECD membership is an entry requirement. The main area of engagement with the OECD has been in the field of

In June 2011, a Peer Review Report by the OECD Global Forum commended the Isle of Man's approach to tax information exchange.

taxation, where the Isle of Man is a member of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes ("Global Forum").

Since 1998, the OECD has been addressing the issue of harmful tax practices with both member and non-member countries. It has set out criteria for analysing preferential tax regimes and identifying tax havens, with the objective of improving transparency and exchange of information on tax practices. In December 2000, the Isle of Man entered into an advance commitment with the OECD regarding tax information exchange.

As part of its commitment, the Isle of Man is prepared, on a bilateral basis, to enter into exchange of tax information on request with OECD member countries, provided it is satisfied that a level playing field exists. The OECD published its model Agreement on Exchange of Information on Tax Matters in April 2002, which the Isle of Man helped to draft, and six months later, the Isle of Man and the United States entered into an exchange of information agreement based on that model.

The Isle of Man has, as at 1 October 2014, entered into a total of 31 tax information exchange agreements (see section 4.9). The Agreements provide for a bilateral exchange of information following a formal request being received by the competent authority in the Isle of Man. A request must be made on an individual case basis and the subject of the request must be under investigation in the requesting jurisdiction. Other safeguards are included to prevent 'fishing expeditions'. All information exchanged is confidential and may not be disclosed to any third party. As a result of its commitments to these agreements, the Isle of Man was placed straight onto a "white list" of countries implementing internationally agreed tax standards by the OECD in April 2009.

In June 2011, a Peer Review Report by the OECD Global Forum commended the Isle of Man's approach to tax information exchange, describing the relationship of the Isle of Man with other tax information exchange partners as "open and transparent" and the exchange of information as "effective and expeditious". In 2013, the Isle of Man was awarded the top "compliant" rating by the Global Forum, one of only 18 out of the 50 countries reviewed to receive a top rating.

The Isle of Man further demonstrated its commitment to the OECD's initiatives for international tax co-operation by becoming, in November 2013, the first Crown Dependency to join the OECD Convention on Mutual Administrative Assistance in Tax Matters.

(b) Financial Action Task Force ("FATF")

FATF is an inter-governmental body established to examine measures to combat world-wide money laundering and terrorist financing. It has developed 40 recommendations for governments to implement effective anti-money laundering programmes and has agreed a set of Special Recommendations on Terrorist Financing, which commits members to a range of standards aimed at denying terrorists, and their supporters, access to the international financial system.

All countries were invited by FATF to undertake a self-assessment exercise to measure their compliance with both the Special Recommendations and the original 40 recommendations. The Isle of Man government submitted its response in April 2002 demonstrating its strong anti-money laundering position and its ability to comply with the Special Recommendations.

FATF's recommendations have been revised on several occasions (most recently in 2012) and the Isle of Man government has re-affirmed its commitment to comply with the principles of all the FATF's recommendations. In October 2012 the Isle of Man joined the Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism ("MONEYVAL"). MONEYVAL aims to ensure that its members have effective systems in place to combat money laundering and terrorist financing and comply with relevant international standards.

(c) Financial Stability Board ("FSB")

In March 2000, a working group of the then-called Financial Stability Forum completed a report addressing the implications of offshore financial centres on global financial stability. The Isle of Man was one of only eight offshore jurisdictions that were given the highest rating.

(d) International Monetary Fund ("IMF")

The IMF is an organisation of 188 countries established to further global monetary cooperation, encourage financial stability, facilitate international trade, ease poverty and to promote high employment and sustainable economic growth.

Prompted by the work of the FSB, the IMF is undertaking a review of the regulatory standards in jurisdictions worldwide on a rolling programme basis. The Isle of Man was subject to detailed assessment when an IMF team visited the Isle of Man in October 2002, and again in September 2008. The subsequent reports represent the most comprehensive review of the Isle of Man's regulatory and anti-money laundering framework to date, and provide an opportunity to benchmark the Isle of Man against published standards. The latest assessment, published in 2009, confirmed the Isle of Man's reputation as being amongst the best regulated international financial centres. It found the Isle of Man broadly compliant with most of FATF's recommendations and found a very high level of compliance with the regulations amongst the Isle of Man's financial institutions. The Isle of Man continues to implement measures recommended by the IMF to ensure it complies with the latest international regulatory standards.

(e) The World Trade Organisation ("WTO")

The WTO has taken over from the General Agreement on Tariffs and Trade for the purpose of promoting free trade. The Isle of Man has all the legislation necessary to comply with the membership requirements of the WTO and the agreement has now been extended to the Isle of Man.

1.2.4 Mutual legal assistance

The Isle of Man has a number of legal assistance treaties covering a variety of areas. The most significant, although there are others, are probably those relating to financial services, reciprocal enforcement of judgments and money laundering.

Section 34 of the Financial Services Act 2008 permits the Isle of Man Financial Supervision Commission ("FSC") to enter into

The latest IMF assessment confirmed the Isle of Man's reputation as being amongst the best regulated international financial centres.

mutual assistance agreements with regulators in other jurisdictions in relation to investment business matters. The FSC has power to inspect, investigate, make requests of, and give directions to, persons authorised in the Isle of Man to conduct financial services business to assist a foreign regulatory body to exercise its functions. The FSC can also release customer information in very restricted circumstances.

In October 2005, the FSC became a signatory to the International Organisation of Securities Commission's Multilateral Memorandum of Understanding. This has become an important basis of providing assistance under relevant legislation for all investment and securities matters. The FSC has entered into a number of memoranda of understanding with overseas regulatory bodies to allow for mutual co-operation and assistance.

1.2.5 Reciprocal enforcement of judgments

The Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968 (the "1968 Act") makes provision for the enforcement in the Isle of Man of certain judgments given in superior courts of those jurisdictions which give reciprocal treatment to judgments of the Manx Courts. Presently, qualifying judgments of the higher courts of the United Kingdom, Guernsey, Jersey, the Netherlands, the Netherlands Antilles, Israel, Italy and Surinam may be enforced in the Isle of Man.

In order to qualify for enforcement under the 1968 Act, the correct procedures under the laws of the Isle of Man (including registration of the judgment with the Isle of Man Courts) must be complied with and the judgment of the foreign superior court must be: for a money judgment (not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty); final and conclusive; wholly unsatisfied (or if partially satisfied, only for the balance of the judgment debt); and be enforceable by execution in the originating country. There are a number of grounds upon which an application to set aside registration is likely to be successful.

Under section 4 of the Civil Jurisdiction Act 2001, which came into force in May 2010, judgments of the County Courts of England and Wales are potentially enforceable under, but subject to, the provisions of the 1968 Act.

1.3 Living and working on the Isle of Man

1.3.1 Restrictions on immigration

The Isle of Man, Channel Islands and the United Kingdom are part of a Common Travel Area, sharing the same immigration legislation. Those freely entitled to enter the United Kingdom may therefore also enter the Isle of Man. This includes citizens of the United Kingdom, Ireland, the Channel Islands and nationals of the European Economic Area (namely the member states of the European Union and the European Free Trade Area).

In general, persons from outside the Common Travel Area and the European Economic Area will require some form of entry clearance. However, Commonwealth citizens whose passports have been endorsed with a Certificate of Entitlement will have a right of abode.

The Manx government enacted the Residence Act 2001, in March 2001, as a piece of contingency planning to enable the government to control residency on the Isle of Man in circumstances where government intervention to a seriously deteriorating economic or social situation is necessary. Despite the 2001 Act being enacted it is not in force and it is unlikely that any residency controls will be imposed in the foreseeable future.

1.3.2 Work permits

Although access to the Isle of Man is largely unrestricted (other than restrictions highlighted in section 1.3.1 above), by virtue of the Control of Employment Act 1975 (the "CEA") and associated regulations an individual may only work on the Isle of Man for a maximum of 3 days, or in prescribed cases, for 10 days a year (with some exceptions) before he or she requires a work permit, unless he or she is an "Isle of Man worker". The idea is that, where a suitable local worker is available for a particular job, he or she should generally have priority over non-locals. The criteria for qualifying as an "Isle of Man worker" include: being born in the Isle of Man; being resident on the Isle of Man for at least 5 years; being married to, or in a civil partnership with, an "Isle of Man worker"; receiving full-time education during residence (and remaining on the Isle of Man thereafter); and having a Manx-born parent who spent the first 5 years of their life on the Isle of Man.

The expansion of the finance sector in the 1990s and early part of the last decade generated a demand for skilled professionals from outside the Isle of Man. Whilst the overall number of permits issued has reduced in recent years in step with more challenging economic conditions, it is expected that the finance sector will continue to drive demand for work permits as one of the key areas of economic activity.

Some important exemptions to the work permit requirements were added by the Control of Employment (Exemptions) Order 2009. Officers in charge of an international group's activities in the Isle of Man are exempt from the work permit requirement. Additionally, international groups may employ persons mainly employed outside the Isle of Man for up to 48 days a year, although certain employments are excluded from this exemption and the company applying the exemption must submit an annual return containing certain information on exempt employees. Both these exemptions are subject to a criminality condition, as the exemption does not apply where a person has been convicted of a criminal offence involving custody which is not covered by the Rehabilitation of Offenders Act 2001.

Certain types of employment are also exempt from the work permit requirement. For example, registered doctors, registered dentists and those employed in the police service or on a vessel or aircraft do not require a work permit. In addition, and by way of response to current labour market demands, measures have been introduced to "fast-track" work permit applications for engineers and skilled ICT workers.

A detailed guide to the work permit requirements and the exemptions can be found on the website of the Isle of Man's Department of Economic Development: https://www.gov.im/media/407511/guide_to_work_permits.pdf.

A new Control of Employment Bill has been passed by Tynwald and, at the publication of this Guide, is yet to come into effect. In addition, draft regulations enabled by the new Bill have been prepared. Whilst essentially re-enacting the CEA, the new legislation will entail some changes to the existing system which are expected to be implemented by the end of 2014.

A new Control of Employment Bill has been passed.

1.3.3 Employment legislation

The principal source of statutory employment law in the Isle of Man is the Employment Act 2006 (the "2006 Act") and associated secondary legislation. Aside from the 2006 Act, the Isle of Man has minimum wage legislation and there is provision for statutory redundancy pay under the Redundancy Payments Act 1990 (the "RPA"). Amongst other things, the 2006 Act stipulates the content of written particulars of employment, makes certain provision for rights during employment (including maternity, paternity and other family-related leave), provides for minimum notice periods to be given by the employer to the employee - and vice versa - and confers on an employee the right not to be unfairly dismissed (subject, in some cases, to a qualifying service period). There are specific provisions under the 2006 Act which deal with dismissal on the grounds of sex, race, religion and sexual orientation whilst the Employment (Sex Discrimination) Act 2000 has provisions relating to equal pay plus direct and indirect discrimination. The Isle of Man government released long-expected draft equality legislation in August 2014, which will introduce various additional protected characteristics and is based on the United Kingdom's Equality Act 2010. Consultation is due to close in November 2014.

Written particulars of employment

Under Isle of Man law, most employees are entitled to receive written particulars from their employer setting out the main terms of their employment contract and the 2006 Act prescribes certain matters which must be stated. These include (but are not limited to) basic information about working arrangements such as hours, place of work, rate and frequency at which remuneration is paid, notice periods, holiday entitlement and so on.

Statutory leave entitlements

The 2006 Act introduced a new right to 26 weeks' ordinary maternity leave (without pay) together with a right to a further period of additional maternity leave (26 weeks, also unpaid) subject to a qualifying service requirement. The 2006 Act also made provision for paternity leave, adoption leave (for the primary adopter and his or her partner along similar lines to maternity and paternity leave respectively), parental leave (time off to look after a child with a disability) and the right to request flexible working arrangements. Such entitlements are generally subject to notification requirements and qualifying service periods. In the Isle of Man there is no statutory requirement for an employer to make payments to employees in respect of a period of family leave (however, many do so voluntarily), although employees are usually eligible for government allowances. The 2006 Act also made new provision for employees to be allowed four weeks' paid annual leave. Previously, entitlement to paid holidays arose only by virtue of the employment contract.

Unfair and wrongful dismissal

The legal principles relating to unfair dismissal and wrongful dismissal in the Isle of Man are materially the same as in the United Kingdom, although the method of calculating the basic award in successful claims for unfair dismissal cases differs (see below).

Unfair dismissal

Broadly speaking, where an employer has dismissed an employee (N.B. "dismissal" includes not renewing a fixed term contract and constructive dismissal), the employer must show that one of the statutory potentially fair reasons for the dismissal applied, that the reason was sufficient to justify dismissing the employee in question and that a fair procedure was followed. Potentially fair reasons for dismissal include capability/qualifications, conduct, redundancy, or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held. Certain grounds for dismissal are deemed automatically to be unfair (e.g. dismissal on the grounds of pregnancy or religion/race) with the result that the qualifying service period and age criteria that would otherwise apply for an employee to be eligible to bring a claim are not applicable. The 2006 Act expanded the number of "automatically unfair" grounds to include (mentioning just a couple of examples) dismissal for bringing proceedings to enforce, or claiming that the employer has breached a statutory right, or where the reason is because the employee has made a protected disclosure ("whistle-blowing"). From a procedural point of view, what is required of the employer depends on the reason for effecting the termination (and may, for example, entail consulting and carrying out investigations, as appropriate), but the overriding principle is that the employer must act reasonably.

Generally speaking, claims for unfair dismissal must be brought within three months from the effective date of termination. Awards under the 2006 Act comprise a basic award (calculated in accordance with similar principles to the redundancy pay calculation referred to below) and a compensatory award of such amount as the Employment Tribunal considers just and equitable (subject to an upper limit in most cases of £50,000). The 2006 Act also provides powers for the Employment Tribunal to order the employer to re-engage or reinstate the employee as well as to order the payment of compensation for injury to feelings up to a maximum of £5,000.

Wrongful dismissal

An action for wrongful dismissal derives from common law and occurs when an employer dismisses an employee in a way which is in breach of the employee's contract of employment (for instance, where an employer dismisses an employee summarily or on short notice) without sufficient justification for doing so. Wrongful dismissal may also occur if the employer terminates the employment contract without following some procedure prescribed in the employment contract or where the employee resigns as a result of the employer's fundamental breach of contract.

An employee may have a claim for wrongful dismissal independently of a claim for unfair dismissal. As a claim for breach of contract, damages in respect of wrongful dismissal are usually restricted to losses caused by breaches of the employment contract during employment and not upon termination, so no amounts may be recovered representing the manner of the dismissal or prejudice to reputation or (generally speaking) chances of obtaining alternative employment. In broad terms, the measure of damages where the employment contract is terminated is the net amount of the employee's salary and benefits for the notice period, which will either be the statutory minimum notice period prescribed in the 2006 Act or the contractual notice period (if longer). (Note that damages for wrongful dismissal are not subject to the statutory cap that applies in relation to unfair dismissal, however the employee is under a duty to mitigate his losses by seeking alternative sources of income).

The Isle of Man operates a system of income tax instalment payments.

Redundancy

In the event that an employee is made redundant, the RPA imposes an obligation on the employer to pay statutory redundancy pay ("SRP") subject to certain conditions/criteria. Employees need to be employed for a minimum of two years in order to be able to claim SRP. The maximum award for SRP is one week's pay (currently capped at £480) for each year of continuous service. Payments are, however, reduced by 1/12th per completed month of service after an employee's 64th birthday. To be effective, any claim for SRP by an employee would usually need to be brought within 12 months of the termination of his/her employment. Employers are required by law to provide employees with a written statement setting out how their redundancy payment has been calculated. Although redundancy is one of the potentially fair reasons for dismissal, the procedure by which redundancies are effected must be fair in both approach and practice. This would involve, amongst other things, issuing warnings to employees and employee consultation plus, where relevant, the use of objective selection criteria and their objective application. (N.B.: unlike in the United Kingdom, there is no requirement for collective consultation.)

Other Isle of Man issues

- As mentioned in section 1.3.2, the Isle of Man operates a work permit system and (subject to certain exceptions/derogations) non-Isle of Man workers are required to have a work permit in order to be employed or self-employed.
- The Isle of Man has its own arrangements in relation to matters such as national insurance contributions, contracting out certificates and the approval of pension plans and share save schemes. The Isle of Man operates a system of income tax instalment payments (similar to PAYE in the United Kingdom) which requires employers to make certain deductions at source and to account for these to the Isle of Man Treasury.
- The Isle of Man has not implemented the European Union Acquired Rights Directive and there is no equivalent to the Transfer of Undertakings (Protection of Employment) Regulations ("TUPE") on the transfer of undertakings. Furthermore, the Working Time Directive does not apply in the Isle of Man.

1.3.4 Tax residency

Under the Income Tax Act 1970, a person who is resident in the Isle of Man is assessable to Manx income tax in respect of income from all sources (whether or not remitted to the Isle of Man). For the purposes of the Income Tax Acts a 'person' includes any association of persons, incorporated or unincorporated.

'Residence' is not defined in the Income Tax Acts and the Manx Assessor of Income Tax will therefore have regard to United Kingdom decisions on comparable legislation. Currently, an individual will be regarded by the Assessor as resident in the Isle of Man for a particular year of assessment if he or she: is present in the Isle of Man for more than six months in that year; arrives in the Isle of Man with the intention of establishing residence; or visits the Isle of Man over a period of four or more consecutive years for an average of more than three months (90 days) per year. The United Kingdom government has introduced a statutory definition of residency in recent years. The Isle of Man has not introduced anything similar to this.

Since 6 April 2007, individuals who have accommodation in the Isle of Man available for their use are no longer deemed to be tax resident simply by virtue of having a Manx property, although having accommodation of a standard consistent with being a permanent home will be a relevant factor in determining whether or not an individual has an intention to establish residence.

In 2003, the Treasury introduced a package of measures for individuals contractually obliged to take up residence in the Isle of Man in order to facilitate the start-up of a new business or the diversification or expansion of an existing one. In particular, an approval process was introduced for so-called "key-employees" coming to the Isle of Man to work. An approved individual will be taxed only on Isle of Man source income during his or her first three years of residence and his or her employer will be given relocation financial assistance.

There is a tax cap on the total income tax payable per person of £120,000 in any fiscal year and, in respect of a married couple that elects for joint taxation, £240,000. In order to benefit from the tax cap a taxpayer must make a five year election that must be made before commencement of the first applicable year.

Further information about individual income tax is provided in section 4.2 below.

1.3.5 Establishing domicile

Domicile is a concept of general law which has certain applications in the revenue law of some countries. An individual is usually domiciled in the country or state which he considers as "home". Such country or state must have its own legal system.

Domiciliation in one of the jurisdictions which comprise the United Kingdom is relevant, inter alia, when determining the liability of a person (or his estate) to United Kingdom inheritance tax.

No taxes levied in the Isle of Man depend upon the determination of a person's domicile. The concept is, however, relevant for, inter alia, those persons who wish to demonstrate Isle of Man, as opposed to English, domicile in order to escape liability to United Kingdom inheritance tax. In these circumstances it would be necessary to demonstrate the change of domicile to the United Kingdom Revenue & Customs, which would be a matter of English law.

Domicile can change where an individual voluntarily acquires a new domicile (i.e., a domicile of choice), but there is a heavy burden of proof on an individual wishing to show that a domicile of choice has been acquired. Many factors are relevant, including the abandoning of an existing domicile. A person who, at the time of emigrating from, for example, the United Kingdom, is intending to acquire a new domicile should compile all evidence of such intention. This will entail taking up residence in the new country (preferably acquiring property there and selling all United Kingdom property), having a permanent intention to remain indefinitely in the new country and foregoing as many associations with the United Kingdom as possible.

The concept of domicile is distinct from the concept of residence, the latter being of crucial importance when determining liability to Manx tax.

1.3.6 Acquiring citizenship

British citizenship is the primary category of British nationality and the only one which carries the right of abode in the United Kingdom. Manx nationals are classed as British citizens. British

The Isle of Man operates a vigorous system of regulation and supervision of financial services.

citizenship may be acquired in various ways, but a discussion of these is beyond the scope of this Guide. A person who wishes to take up residence on the Isle of Man, but who is not a British citizen should contact his/her nearest British Embassy, High Commission or Consulate, who will be able to establish his/her immigration status.

British citizens are entitled to hold a British passport. If such a person was born in the Isle of Man, or is resident on the Isle of Man, or resided on the Isle of Man for a long period in the past, he is entitled to apply to the Isle of Man passport office for a passport. This is a British passport, but also features the Isle of Man's name (as the place of issue) on the cover.

1.4 Regulation and control

1.4.1 The Isle of Man Financial Supervision Commission (the "FSC") and the Isle of Man Insurance and Pensions Authority (the "IPA")

The Isle of Man government operates a vigorous system of regulation and supervision of financial services, insurance business, pensions and corporate, trust and partnership administration. This task falls to the FSC in all cases, save in respect of insurance and pensions related activities, which are regulated by the IPA.

The FSC is an independent statutory body, established by Tynwald, whose main functions include: the licensing and supervision of banks, building societies, investment businesses and corporate service providers; the authorisation, recognition and regulation of collective investment schemes; and the oversight of directors and persons responsible for the management, administration or affairs of commercial entities. Responsibility for the Companies Registry was transferred from the FSC to the Department of Economic Development in 2010.

The FSC's objectives are to protect the customers of those carrying on regulated activities in the Isle of Man's financial services sector; to reduce financial crime; and to support the Isle of Man's economy and its development as an international financial centre.

Two key pieces of legislation govern the functions and regulatory powers of the FSC - the Financial Services Act 2008 ("FSA") and the Collective Investment Schemes Act 2008 ("CISA").

The FSA incorporates new provisions governing the structure and remit of the FSC, setting out its functions and objectives clearly and laying down the principles it must take into account in carrying these out. The FSA formalises existing accountability mechanisms, such as the publication of an annual report by the FSC, and adds new ones, including an obligation for the FSC to act in furtherance of policies and strategies set by the Isle of Man Treasury.

The CISA provides a modern regulatory framework for the promotion and regulation of collective investment schemes, clearly setting out the requirements for different scheme types. It updates the FSC's powers of intervention, extending the FSC's powers to issue directions and empowering the FSC to appoint a person to advise a scheme, or to take control of a scheme in certain circumstances.

The IPA is responsible for the regulation of the insurance and pensions sector on the Isle of Man. It is a statutory board, originally established under the Insurance Act 1986, and continued under the Insurance Act 2008. It is responsible for ensuring that those who operate insurers in or from the Isle of Man are fit and proper, and that insurers have and maintain sufficient resources. Authorised insurers must maintain a statutory solvency margin and, if reinsurance protection is purchased, the security of this must be demonstrated. As at 17 September 2014, there were 137 authorised insurers on the Isle of Man. See section 5.6 below for a more comprehensive description of the Isle of Man's insurance sector.

1.4.2 Regulation of financial services

The regulation of financial services in the Isle of Man was consolidated and updated with the passing of the FSA and the CISA. These replaced the existing supervisory legislation, and the regulatory requirements across all the regulated sectors were standardised. The FSA brings together the regulatory provisions for banking, investment business and fiduciaries to provide a single reference point for companies which may require more than one type of licence.

The Financial Services Rulebook 2013 (the "Rulebook") is made under the FSA and contains detailed rules to be complied with by all regulated entities. As well as these general requirements, the Rulebook also contains specific requirements for the various types of regulated activity. The Rulebook is reviewed regularly, and changes made as required following consultation. The FSC may take appropriate enforcement action against a licenceholder who is in contravention of the Rulebook.

Banks
The FSC attaches great importance to the protection of depositors so licences will only be granted to institutions of quality, with proven track records that will contribute to the Isle of Man. See section 5.3 below for a more comprehensive description of the Isle of Man's banking sector.

Investment business and financial services
The FSA regulates businesses conducting financial services business, including investment business, operating in or from the Isle of Man and requires a person undertaking investment type business to obtain a licence from the FSC. The Regulated Activities Order 2011 (as amended) ("the Order") lists the activities which constitute investment business as (in summary):

(a) dealing in investments, either by a professional dealer as principal or as an agent;

(b) arranging deals in investments on behalf of other people;

(c) giving investment advice;

(d) managing investments belonging to another person;

(e) providing for the administration or safeguarding of investments under a contractual relationship, including arranging for others to administer and safeguard investments; and

(f) advising a trustee or manager of a retirement benefits scheme, any investor or attorney for an investor on the suitability or otherwise of buying, selling, subscribing for or underwriting investments, or exercising any right conferred by such investments.

The Order also specifies a number of activities which are excluded from the definition of investment business. In addition,

The FSC's general policy is to license only institutions or individuals of proven quality with an established track record.

the Financial Services (Exemptions) Regulations 2011 exempt a number of activities from the definition of "investment business".

The FSC will only issue an investment business licence to an applicant who passes the "fit and proper" test. The criteria applied in determining the "fit and proper" status of applicants are integrity, competence and financial standing. The FSC's general policy is to licence only institutions or individuals of proven quality with an established track record. Applicants are also expected to have drawn up a business plan setting out the viability of the business.

Some of the main requirements in the Rulebook for investment business licenceholders are detailed below.

(a) Part 2 of the Rulebook concerns the financial resources and reporting requirements, both general to all licenceholders and specific for certain classes of licenceholder.

(b) Part 3 of the Rulebook applies to investment business and service providers and concerns clients' money, making provision for the protection of clients' money in the event of a licenceholder's insolvency. The Rulebook requires that clients' money should at all times be held in segregated and properly designated accounts on trust for the investor.

(c) Part 4 of the Rulebook details rules on clients' investments, and ensures that, where licenceholders have possession or control of investments belonging to others, adequate arrangements are maintained to ensure that such investments are kept safely and are properly recorded, identified, segregated and controlled so that, at any time, investments belonging to others are accounted for. The Rulebook also seeks to ensure that any administrative or financial difficulties to which the licenceholder may be exposed will not have adverse consequences for clients or other persons.

(d) Part 5 of the Rulebook concerns audit requirements, and requires that the auditors of investment businesses have professional indemnity insurance cover at an appropriate level suitable to the licenceholder being audited. The FSC also wishes to be satisfied that the audit firm has sufficient knowledge and expertise in this specialised area and that the partner in charge of the audit can demonstrate that he has adequate experience. The FSC also requires the auditors of its licenceholders to have a permanent place of business in the Isle of Man.

(e) Part 6 of the Rulebook (Conduct of Business) outlines the general principles and standards of conduct that the FSC expects licenceholders to adopt in their relationship with clients, regulators and others. Rule 6.13 and the rules immediately following lay down general principles relating to advertisements.

(f) Part 7 contains the rules on all aspects of administration, including changes of name or address, acquisitions of business or changes in ownership, and the winding up of regulated entities.

(g) Part 8 concerns risk management and internal control, corporate governance and general internal policies and procedures. Rule 8.27 states that a licenceholder must co-operate in an open and honest manner with the FSC and any other regulatory body to which it is accountable and should keep them promptly informed of anything relevant to the regulator's task. One of the most important requirements in this area is the requirement for the businesses of licenceholders to be conducted on a day-to-day basis by at least 2 competent and responsible individuals who are Isle of Man resident officers and who are jointly responsible for overseeing the licenceholder's proper conduct (rule 8.21).

(h) Appendix 2 of the Rulebook sets the minimum net tangible assets and minimum share capital requirements that the licenceholder is required to maintain in order to minimise the risk of loss to investors. Although this financial resource requirement is a day-to-day requirement, the licenceholder is required to submit annual financial statements to the FSC, and data as required by the FSC on a quarterly basis. The Rulebook also sets out the accounting and other records that are required to be maintained and submitted to the FSC by the licenceholder.

For a more comprehensive description of the requirements in relation to establishment of an investment fund manager, see section 5.8.3 below.

1.4.3 Fiduciary service providers ("Fiduciaries")

The provision of certain services in relation to companies, trusts and partnerships in the Isle of Man are regulated activities. Broadly, such services include:

(a) the formation, sale or transfer of companies;

(b) the provision of company registered office facilities or accommodation addresses;

(c) acting as registered agents, directors or company secretaries for others and performing company administration tasks;

(d) equivalent services to (a) to (c) (inclusive) above (to the extent applicable) in respect of partnerships (including general and limited partnerships established under the Partnership Act 1909, and in respect of foundations established under the Foundations Act 2011, and any similar arrangements constituted under the law of any country or territory outside the Isle of Man);

(e) acting as an enforcer (within the meaning of the Foundations Act 2011) in relation to a foundation;

(f) acting as a trustee of an express trust;

(g) the provision of trust administration services in relation to an express trust;

(h) acting as a trust corporation; and

(i) acting as a protector or (in respect of purpose trusts) an enforcer of a trust.

The FSA was enacted with the aim of protecting anyone engaging the services of a Fiduciary. It provides a framework for the licensing and supervision of Fiduciaries by the FSC and empowers the FSC to make regulations governing both the granting of such licences (including the power to require applicants for Fiduciary licences to furnish satisfactory information about their businesses) and the conduct of Fiduciary businesses. The legislation also aims to heighten awareness of possible abuse of a Fiduciary's client company, trust, partnership or foundation by criminal elements.

The FSA requires all Fiduciaries engaging in regulated activities to be licensed. There are a number of different classes of regulated activity which may be applicable to a financial services licence under the Regulated Activities Order 2011 (as amended), depending on whether the licence holder is a provider of corporate services (a "CSP") (Class 4 regulated activities), a provider of trust services (a "TSP") or a trust corporation (Class 5 regulated activities). Only bodies corporate may hold a financial services licence for the Class 5(4) regulated activity of acting as a trust corporation.

A Fiduciary must satisfy three criteria: integrity, solvency and competence.

Applicants for a Fiduciary's licence must pass a "fit and proper test." In order to be passed as fit and proper, a Fiduciary must satisfy three criteria; integrity, solvency and competence. Integrity is essentially about the managers and controllers behaving honourably towards customers, creditors and regulatory bodies. Solvency is wider than maintaining a surplus of net assets and also includes maintaining adequate cover to enable a licence holder to survive periods of market weakness. Competence extends to adequate knowledge of the business and compliance with statutory rules and regulations. Such competence may be demonstrated by experience, performance and training towards recognised qualifications. It is a criminal offence to provide false or misleading information when applying for a licence.

The FSA and Financial Services Rule Book 2013 also impose requirements as to financial resources and professional indemnity insurance on licence holders.

By requiring all Fiduciaries to conduct their businesses to the highest standards, the legislation sought to codify existing best practice. Fiduciaries are, of course, also subject to all company, trust, partnership and foundation law provisions where relevant, investment business regulations and anti-money laundering regulations. It is a criminal offence for Fiduciaries to engage in any "regulated activity" without a licence. As at September 2014, there were 171 Fiduciaries licensed as CSPs and 114 Fiduciaries licensed as TSPs.

There are, however, a number of exclusions and exemptions from the licensing requirement. The following exclusions and/or exemptions are worthy of note.

(a) A company that, as a purely private arrangement, acts as a trustee for one or more trusts, is exempt from the requirement to hold a Class 5 trust services licence provided the administration of the relevant trusts is undertaken by a person holding a trust services licence. This exemption would, for example, apply to a corporate trustee that operates in or from the Isle of Man in respect of one or more related family trusts, but would not apply to a trust company that accepts business from an introducer from within or outside the Isle of Man, which would breach the condition that a private trust company must not directly or indirectly hold itself out to the public as a TSP.

(b) The FSC does not wish to regulate professional services provided by accountants, advocates or registered legal practitioners. Therefore, any activity which would otherwise be regulated, but which is directly related to the provision of professional legal or accountancy services, is exempt.

(c) The FSC does not wish to impose the burden of regulation upon the normal domestic trading activities of companies which carry on their day to day business on the Isle of Man. Thus, any corporate service provided to a company which is resident, has a permanent establishment in the Isle of Man and carries on as its main business activities directly linked to the Isle of Man, is exempt. Thus, the filing of an annual return for a local business, or acting as director or company secretary of such a business, is exempt. There are also exemptions that apply to the provision of trust services by specified persons (see paragraph (b) above) in respect of "domestic" trusts. These include testamentary trusts which arise out of the will of a Manx testator who was resident or domiciled in the Isle of Man at the time of his death and also to quasi testamentary trusts set up in the deceased's lifetime for the purpose of receiving the settlor's assets on the winding up of his estate.

(d) Services provided to companies in the same group are excluded. It should be noted, however, that services provided to clients of other group companies are not excluded or exempt and will be licensable if they fall within the definition of regulated activities.

(e) Activities related to joint ventures are excluded where the activity is undertaken by a person who is or intends to be a participator in a joint enterprise. Thus, if company A and company B wish to enter into a joint enterprise and, for that purpose, form company C as a joint venture vehicle, the activity of forming and running company C, even if it is for a commercial purpose, is excluded.

(f) A person who introduces a client to a CSP licence holder will not be treated as "arranging for others" (namely the Fiduciary or its appointees) to be officers or nominee shareholders of any company administered for that client.

(g) Corporate and trust activities that are already regulated by the IPA are exempt. These include CSP and TSP activities that arise from, or form part of, the activities of an insurance manager registered under Section 23 of the Insurance Act 2008, and acting as a trustee or an administrator of a retirement benefits scheme authorised or registered respectively under the Retirement Benefits Schemes Act 2000.

(h) Where an individual acts as a director of companies by way of business and this is the only CSP regulated activity he undertakes, that individual may hold up to ten appointments before the activity of acting as a company director becomes licensable. This number does not include any directorships which would otherwise be excluded or exempt under the provisions of the FSA and associated regulations. It is therefore possible for an individual to hold more than ten directorships without requiring a licence, provided that no more than ten of the offices held are not otherwise excluded or exempt.

(i) There is also a de minimis exemption in respect of trust activities which applies to specified persons (see paragraph (b) above). This allows an individual or firm which is a specified person to engage in trust services for up to ten trusts without being required to hold a Class 5 trust services licence.

(j) Acting as a personal representative in respect of the estate of a deceased person (including acting as a trustee for sale in winding up the estate) is a TSP regulated activity. However, persons who undertake this activity are exempt from licensing in respect of this activity unless they are acting as a trust corporation, as such term is defined in the Trustee Act 1961. Acting as a trust corporation is a TSP regulated activity.

(k) Any CSP activity which is wholly incidental to the business or office of official receiver, liquidator or receiver is exempt.

(l) The nominee services exemption allows a directly wholly-owned subsidiary company or a company that is wholly beneficially owned by a sole trader or the partners of a partnership, where respectively the licenceholder is a company, sole trader or partnership, to undertake regulated activities for the clients of its parent without holding a separate licence of its own. The regulated activities or functions of such subsidiary companies are required to be separated so each company only undertakes one specific activity i.e. only or 'solely' acting as a corporate director or a nominee shareholder and not both functions. It should also be noted that a nominee company's fiduciary activities are nevertheless regulated as part of its parent's licence.

The Isle of Man is in currency union with the United Kingdom.

It should be noted that Isle of Man company directors who are employed by CSPs are subject to the same fiduciary duties as any director of any Isle of Man company. A detailed guidance note on directors' duties under Isle of Man law is contained on the FSC website at www.gov.im/fsc.

1.4.4 The Financial Services Ombudsman Scheme

The Isle of Man Office of Fair Trading ("OFT") operates a free, independent dispute resolution service for customers with a complaint against a financial firm operating in, or from, the Isle of Man. The scheme is funded by the Isle of Man government and is available to private individuals, who may be resident anywhere in the world.

Subject to prescribed time limits, a complaint may be referred to the Financial Services Ombudsman if, in the course of supplying financial services, the firm has caused the customer financial loss, material distress or material inconvenience through its negligence or maladministration, although the customer must first exhaust the firm's complaints procedure. Financial services covered by the scheme include banking, mortgages, credit, investments, insurance, pension and financial advice. Trust and corporate service providers are currently excluded from the scheme and complaints about the administration and running of personal and occupational pension schemes should be referred to the Pensions Ombudsman.

A case officer will first attempt to resolve the dispute informally and failing this, an adjudicator will be appointed to investigate and render a judgment. The adjudicator is empowered to convene a hearing and, if the complaint is upheld, to impose a remedy, which can include a monetary award of up to £100,000 in respect of an act or omission which occurred before 1st April 2012 or £150,000 if that act or omission occurs on or after 1st April 2012.

The scheme was amended in 2008, when it became established under Schedule 4 of the FSA. The major modifications made at that time are as follows: -

(a) The OFT may by order extend the scheme in the future to enable complainants to be corporate bodies, although to date this has not been effected.

(b) The OFT can, by order, amend the scope of the financial services which fall under the remit of the scheme, although at present this power has not been exercised.

(c) The scheme adjudicators are now appointed by the Appointments Commission, established under the Tribunals Act 2006 rather than by the OFT.

(d) Either party (the complainant or financial provider) has the right to request a review of an adjudicator's determination by the senior adjudicator. The outcome of any review is binding on both parties. Any final determination by an adjudicator, or by the senior adjudicator after review, can be subject to appeal to the High Court on a point of law. Previously, there was no right to review an adjudicator's determination.

1.4.5 Currency and exchange controls

The Isle of Man is in currency union with the United Kingdom. The Isle of Man issues its own distinctive notes and coins, which are denominated in the same manner as United Kingdom currency. Within the Isle of Man, both Manx and United Kingdom money are in circulation. Manx money is not legal tender in the United Kingdom, although Manx notes are accepted by banks.

In relation to the Euro, the Manx Government has indicated that, if the United Kingdom decided to participate in the European Single Currency, the Isle of Man would probably follow suit. This is primarily because most of the Isle of Man's trade is with the United Kingdom and Europe, and the introduction of currency controls would not be in the Isle of Man's best interests.

There are currently no exchange controls that apply to the movement of funds into, or out of, the Isle of Man, nor is there any legislation in place whereby such controls may be imposed.

1.4.6 Companies Registry and disclosure of information

The Department of Economic Development ("DED") has responsibility for maintaining the official register of companies (the "Companies Registry"). The Companies Acts 1931-2004 and the Companies Act 2006 (as well as other company-related legislation, e.g. in relation to limited liability companies and foundations etc.) stipulate that certain specified information must be lodged with the DED at the Companies Registry at the stage of forming the company and thereafter. In respect of a company incorporated under the Companies Acts 1931-2004, notifications must be submitted in respect of (amongst other matters), a change in directors, secretary, issued share capital and registered office of a registered company and an annual return must be filed with the DED, as must the annual accounts for public companies (private companies are not required to file their annual accounts). In respect of a company incorporated under the Companies Act 2006, the scope of the information to be filed is reduced and the DED need only be notified of changes to the company's registered office and registered agent, although an annual return must still be filed containing a list of current directors. In addition, a company incorporated under the Companies Act 2006 may at its discretion elect to file details of its directors and members. The Companies Registry is open to the public and company files may be inspected for a fee, either at its offices or online.

There is no general requirement for the details as to the beneficial ownership of a company's issued shares to be disclosed to the DED, the Assessor of Income Tax or the Collector of Customs and Excise. However, Fiduciaries need to know the beneficial owners of companies they administer in order to comply with the Isle of Man's anti-money laundering requirements (see section 1.4.8 below). In addition, certain private companies incorporated under the Companies Acts 1931-2004, which are not clients of a corporate service provider or licensed regulated entities, must provide details of beneficial ownership to a nominated officer of such a company under the provisions of the Companies (Beneficial Ownership) Act 2012.

The provisions of the Registration of Business Names Act 1918 (as amended) require the registration of, inter alia, partnership and company business names with the DED if such names differ from the names of the respective partners or the company's name as registered.

Partnership agreements and partnership financial accounts do not have to be filed with the DED. However every Manx limited partnership must be registered with the DED.

The accounts of sole traders, partnerships and companies must be submitted every year to the Assessor of Income Tax to confirm the income tax returns already submitted. Annual accounts may also be inspected by the Collector of Customs and Excise.

The Isle of Man has long-standing and comprehensive legislation aimed at anti-money laundering.

No public register of non-charitable trusts exists, and there is no general requirement to file trust accounts or other information in relation to non-charitable trusts. There is likewise no requirement to disclose the names of likely beneficiaries of a discretionary settlement to any of the above mentioned public bodies.

The FSC and the IPA do require disclosure of beneficial ownership of banks, investment businesses, insurance companies and fiduciary service providers which are licensed or authorised in the Isle of Man.

1.4.7 Data protection

The Isle of Man has enacted legislation which regulates the processing of individuals' personal data. The Data Protection Act 2002 (the "DPA") came into force on 1 April 2003 and applies to the processing of personal data by "data controllers" meaning, essentially, someone who determines the purposes for which, and the manner in which, personal data are processed. Practically speaking, most people and organisations that hold/use individuals' personal data will be data controllers unless they are mere 'processors', who only deal with such data in accordance with a data controller's instructions. The two main forms of data to which the DPA applies are records generated by automated equipment (for example, computer records) and highly structured manual records.

The key features of the DPA are as follows:

(a) data controllers must comply with eight "data protection principles", which are general rules to be observed when processing personal data. These include, for instance, the requirement to process data fairly and lawfully and to process data only for specified purpose(s);

(b) certain conditions must be satisfied when a data controller processes personal data in order to comply with the DPA, with additional or further conditions to be met if the data are "sensitive personal data". This term refers to data concerning an individual's racial/ethnic origin, political beliefs, religious beliefs, membership (or otherwise) of a trade union, physical or mental health, sexual life, the commission/alleged commission of offences or criminal proceedings;

(c) individuals can exercise certain rights in relation to their personal data against data controllers, including a general right to be told if information concerning them is being processed, and to be provided with a copy of it. Other rights include the ability to prevent certain types of processing, for instance, if it is likely to cause damage or distress, or if it is for the purposes of direct marketing. An individual may be entitled to claim compensation from a data controller who fails to comply with the requirements of the DPA;

(d) except where a relevant exemption applies, a data controller must ensure when transferring personal data overseas that the destination country/territory provides an adequate level of protection for individuals with regard to the processing of their data. Transfers of personal data to destinations within the European Economic Area automatically meet this requirement. In other cases, the ability to transfer will depend on whether the destination country/territory's data protection measures are adequate (as determined by the European Commission) or, failing that, whether the data controller is satisfied that they are adequate in the circumstances of the particular transfer; and

(e) the Isle of Man Data Protection Supervisor (the "Supervisor") is responsible for ensuring compliance with the DPA and for taking enforcement action where necessary. The Supervisor also maintains a public register of data controllers. Data controllers must not process personal data unless they apply to the Supervisor to be included in the register (this process is referred to as 'notification'), or are exempted from such requirement.

1.4.8 Anti-money laundering controls

Money laundering is the process by which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activities. If successful, it allows them to maintain control over those proceeds and, ultimately, provides a legitimate cover for the source of their income.

In the last 20 years or so, there have been specific international legislative initiatives aimed at combating drug trafficking, terrorism and the associated money laundering activities. The Isle of Man has longstanding and comprehensive legislation aimed at anti-money laundering ("AML") and countering the financing of terrorism ("CFT"), the principal Manx statutes being:

(a) the Proceeds of Crime Act 2008 ("POCA");

(b) the Anti-Terrorism and Crime Act 2003 as amended ("ATCA").

POCA also enables the Money Laundering and Terrorist Financing Code 2013 (the "Code") to be brought into force. The Code, which applies to certain designated businesses and commercial activities (businesses in the regulated sector), comprises secondary Manx legislation which imposes mandatory requirements on a wide range of businesses, operating in or from the Isle of Man, to establish and operate various AML/CFT procedures (including procedures relating to identification ("Know Your Customer"), record keeping, disclosure and training). It is a criminal offence to fail to comply. The Code also details the mechanisms for reporting suspicious activity. These developments largely bring the Isle of Man's legislation into line with European Union legislation and regulations and the international standards set by the Financial Action Task Force ("FATF"), albeit that the Isle of Man has announced its intention to review and re-issue the Code during 2014/2015 with a view to ensuring that it meets the revised FATF Recommendations and underlying methodologies. This is in keeping with the Isle of Man's role and reputation as a responsible international centre (see section 1.2.3 above for more information about the FATF).

The statutory criminal money laundering offences under POCA are broadly in the areas of:

(a) concealing, disguising, converting or transferring the proceeds of criminal conduct;

(b) assisting another in retaining or controlling the proceeds of criminal conduct;

(c) using , possessing or acquiring the proceeds of criminal conduct;

(d) failing to report knowledge or suspicion of money laundering (whether in relation to criminal conduct or terrorism) gained in the course of business in the regulated sector; and

(e) prejudicing an investigation into terrorist financing or the proceeds of criminal conduct by disclosing to (tipping off) another person information likely to be prejudicial to the investigation.

The penalties for these offences are severe. As criminal law, the

The Isle of Man Government operates various schemes to assist in the growth and diversification of the Manx economy.

anti-money laundering statutes apply to all persons under the Isle of Man's jurisdiction.

Similar criminal offences to those summarised above have been enacted in respect of terrorist financing. ATCA, which replaced the Prevention of Terrorism Act 1990, is principally based on the Terrorism Act 2000 (of Parliament), but also contains provisions from the Anti-Terrorism, Crime and Security Act 2001 (of Parliament).

Although originally designed as a response to Irish terrorism, the counter-terrorist measures in ATCA are also applicable to the current international terrorist threat. ATCA gives both the Court and Treasury powers in relation to terrorist funds and property, provides the police with powers to investigate and to arrest and detain suspects, and also deals with the disclosure of information for the purposes of criminal investigations. ATCA came into force on 1 January 2005, and has been supplemented by further related provisions set out within the Terrorism (Finance) Act 2009 and the Terrorism Asset-Freezing etc. Act 2010 (Isle of Man) Order 2011. A Bill - the Terrorism and Other Crime (Financial Restrictions) Bill 2014 - is making its way through the Isle of Man's legislature and if passed into law, will re-enact with slight amendment the Terrorism (Finance) Act 2009 and certain provisions in the ATCA together with the Terrorism Asset-Freezing etc. Act 2010 (Isle of Man) Order 2011 so that all the provisions concerned with the controlling of the financing of terrorism and related matters are brought together into one Act.

It should be noted that Code (above) requires the measures prescribed under it to be implemented by businesses in the regulated sector not only to forestall money laundering but also as a protection against the threat of terrorist financing. In relation to certain regulated business activities, the above legislation is complemented by comprehensive guidance notes issued by the Financial Supervision Commission and the Isle of Man Insurance and Pensions Authority which deal with, inter alia, verification of identity, record keeping, recognition, reporting, education and training. These bodies regard the establishment and maintenance of adequate policies and procedures for deterring and preventing money laundering or terrorist financing as an important element of the continuing "fit and proper" test applicable to all licence holders. In a jurisdiction like the Isle of Man, any money laundering or terrorist financing discovered is likely to have a cross-border element and there is, therefore, provision for legal assistance. In particular, disclosure of any suspected money laundering or terrorist financing should be made to the Financial Crime Unit of the Fraud Squad (the "FCU") of the Isle of Man. The FCU liaises with the National Crime Agency in London. There are reciprocal provisions under sections 24 and 25 of the Criminal Justice Act 1990 for the Isle of Man's Attorney General to assist the United Kingdom's Serious Fraud Office (or other foreign law enforcement authorities) in the investigation of serious fraud or bribery, the proceeds of which may be held on the Isle of Man.

Such assistance may also be offered, at the Attorney General's discretion, to foreign police. In the case of Re Frederiksen (1997) it was held that, although the Manx courts did not act as tax collectors for foreign jurisdictions, there was nothing to prevent the Attorney General from giving assistance merely because the basis of an alleged crime was fiscal. This principle has been extended through the network of tax exchange of information agreements, which the Isle of Man has entered into with various other jurisdictions. On a related point, however, the situation where foreign authorities may seek confidential banking information held in the Isle of Man was clarified in The Petition of Blayney and Grace (2001), where inspectors from Ireland were refused disclosure of records held by an Isle of Man branch of an Irish bank under The Banker's Book Evidence Act 1935 (the "1935 Act"). The Deemster made it clear that disclosure under the 1935 Act would be ordered only where Manx legal proceedings were commenced. The Deemster stated (obiter) that the 1935 Act or equivalent legislation should not be used for fishing expeditions by foreign authorities beyond the ordinary rules of disclosure in litigation.

Finally, since the introduction of the Evidence (Proceedings in Other Jurisdictions) Act 1975 (an Act of Parliament which was extended to the Isle of Man in 1979), the Manx courts have been required to assist courts in other jurisdictions in obtaining evidence for proceedings in those jurisdictions.

1.5 Encouraging business

1.5.1 Grants, loans and tax incentives

The Isle of Man government's Department of Economic Development ("DED") operates various schemes to assist in the growth and diversification of the Manx economy. The Financial Assistance Scheme, the Small Business Start-Up Scheme, and the Business Support Scheme are the main schemes available. Each scheme is subject to eligibility criteria.

The Financial Assistance Scheme
The Financial Assistance Scheme is a discretionary support scheme designed to encourage new business to develop, and existing business to adopt new technologies and practices. It offers the following grants and incentives to new and existing Isle of Man businesses:

- capital grants of up to 40% of the costs of new buildings, building improvements and new plant and machinery (including new hardware or software);
- operating grants of up to 40% in respect of non-recurring costs (i.e. first year expenses) associated with the establishment of a project;
- grants of up to 40% of the costs of specific new marketing ventures;
- grants of up to 40% of the costs of implementing quality standards and energy conservation;
- up to 40% of the costs of special training directly associated with purchased plant and equipment;
- up to 40% of the cost of renting a factory from a private developer for the initial period of a new project, should a company wish to rent rather than build its own factory with grant aid;
- loans and loan guarantees may be available in certain circumstances in addition to the grants.

Further information is available at:
http://www.gov.im/categories/business-and-industries/growing-a-business/financial-assistance-scheme/

The Small Business Start-Up Scheme
The Small Business Start-Up Scheme is aimed at fostering local enterprise in any sector, and offers help to Isle of Man resident individuals who are considering starting a business or

The Isle of Man is a party to the key international intellectual property treaties.

have recently started a business. The scheme consists of a five day course designed to help the recipient decide whether the business idea is viable, provide training in basic business skills such as marketing and keeping financial records and to give sufficient know how to enable a business plan and cash flow forecast to be prepared. Financial assistance is available on a discretionary basis and may include a weekly living allowance of (currently) £50 for a maximum of 30 weeks and a grant to help purchase equipment (of up to 50% of the purchase cost to a maximum of (currently) £1,500). If a successful application is made for financial assistance, a business adviser is made available to provide support for the first 18 months. Around 200 clients a year are trained under the scheme.

The Business Support Scheme
The Business Support Scheme offers financial assistance for business development with the specific purpose of helping a business become more efficient and effective by developing business skills and management competencies. The assistance takes the form of a project that delivers a business solution for an aspect of the business where sufficient knowledge, resources or a combination of the two may be lacking. The project, which is delivered by an independent business consultant who is accredited by the DED as a specialist in the relevant discipline, must relate to one of the following business disciplines which together cover all aspects of business development: business & financial management controls; business & strategic planning; design; e-business; environmental efficiency; human resource development; information communications technology/ information systems; marketing; operations management; retail consultancy; or quality. The DED will pay 50% of the cost of the project (up to a maximum of (currently) £4,500) and the business must pay the other 50%.

Other support schemes
In addition to the schemes described above, there are other more specific avenues of support for business. The STEP scheme run by DED matches small businesses with Manx undergraduates in their final or penultimate year at university, allowing students to gain work experience and businesses to utilise new skills to complete specific projects.

The government has also introduced a 0% Green Business Loan Scheme. The Scheme is open to all business sectors and offers a 100% loan of up to £20,000 towards the cost of projects that improve energy efficiency in Isle of Man business premises. In the year March 2012 to March 2013, loans to the value of £80,420.71 had been approved.

The Isle of Man government has for a number of years actively supported and encouraged the development of a sustainable commercial film industry offering discretionary investment for feature films and television productions filmed (or partly filmed) on the Isle of Man. There are incentives offered to film makers and producers on the Isle of Man via the Media Development Fund, subject to certain criteria. The Media Development Fund is part of a range of services offered by Isle of Man Film, which operates as part of the DED to actively promote the Isle of Man film industry.

The above represent some of the most attractive aids and incentives to industry in the western world, particularly when considered together with the Isle of Man's favourable tax regime.

1.5.2 Freeport

The Manx government has established a Freeport adjacent to the Isle of Man's main airport at Ronaldsway. Customs formalities are much reduced and no duty is charged on imported goods. Goods may move freely between the Isle of Man and the European Union and the Freeport therefore enhances activities such as the assembly of components and processing of semi-manufactured goods for export; storage, stockholding and transhipment; packaging, labelling and preparation of goods for marketing. The Manx government has more recently promoted an area of the site as an airport technology park, offering several development plots to attract high- tech export businesses in the aerospace, bio tech, clean teach, electronics, IT and space and satellite sectors.

1.5.3 Intellectual property

The Isle of Man is a good base for technology companies, not only because of its favourable corporate tax regime and the high standards of its professional support services, but also because it offers intellectual property protection rights in line with those of the United Kingdom and other countries in the European Union.

The Isle of Man is a party to the key international intellectual property treaties such as the Madrid Protocol relating to the Madrid Agreement concerning the International Registration of Marks, and the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty. United Kingdom legislation relating to registered intellectual property rights has been extended to the Isle of Man, making the Isle of Man and the United Kingdom a single territorial unit for the purposes of the registration of designs, patents and trade marks. The Isle of Man does not have its own intellectual property register, but any design, trade mark or patent registered with the United Kingdom Intellectual Property Office automatically receives protection in the Isle of Man.

Registered Community trade marks have been protected in the Isle of Man since 1998, and such protection has recently been enhanced by the Community Trade Mark Order 2014, which applies Council Regulation 207/2009 to the Isle of Man. Community designs have been protected by the introduction of the Community Design Order 2014, applying certain provisions of the Council Regulation 6/2002 on Community Designs to the Isle of Man.

The Isle of Man has its own legislation relating to unregistered intellectual property rights - copyright, design rights and performers' protection. This legislation is revised as necessary to meet United Kingdom and European Union standards. For example, recently the European Union (Intellectual Property) Order 2013 applied five European Union Directives to the Isle of Man relating to the protection of copyright, and further legislation has applied European Union Directives on the enforcement of intellectual property rights in relation to patents, trade marks and registered designs as well as copyright. The Copyright (Amendment) Act 2014, when it comes into force, will provide further protection for unregistered intellectual property rights, including wider provision for forfeiture of articles infringing copyright and for licensing in relation to "orphan works".

1.5.4 Information and communications technology ("ICT") infrastructure

The Isle of Man offers world class telecommunications, connectivity and data hosting. It has a history of being at the vanguard of new technologies and its principal providers have consistently invested to provide the latest services.

The Isle of Man offers world class telecommunications, connectivity and data hosting.

The backbone of the telecom infrastructure is provided by Manx Telecom, a company formed in 1987, originally owned by British Telecom and now publicly owned, listed on the London AIM market. Manx Telecom provides fixed and mobile telecommunications services, internet services and data hosting. The other leading Isle of Man-based internet service and data hosting provider is Domicilium. Cable & Wireless also provides mobile telecommunications services on the Isle of Man through its "Sure" brand.

The ICT sector is the one of the fastest growing sectors of the Isle of Man's economy and the government is committed to supporting and developing it by encouraging development of the infrastructure, training provision and new initiatives.

Fixed line network

The Isle of Man's infrastructure is a Next Generation Network (NGN) that provides fixed line, mobile and broadband services on a single resilient IP network.

Mobile network

The Isle of Man was the first nation in the world to launch a 3.5G mobile broadband service and a 4G service was launched by Manx Telecom in July 2014. Sure also provides mobile telecommunications services on the Isle of Man. Roaming agreements are in place with most major networks.

Internet connectivity

Diverse high bandwidth connections to the Isle of Man are provided by five discrete cables from the north of England and Ireland. The large transmission capacity of these links will easily meet demands for many years to come. The main providers on the Isle of Man peer with all major Tier-1 internet providers.

Within the Isle of Man, a self-healing fibre ring provides resilient connectivity. Domicilium also provide high bandwidth wireless connectivity. High quality standards regarding latency and jitter are evident in the provision of internet services.

Broadband is available on all fixed lines on the Isle of Man, with VDSL available most of these offering download speeds of up to 40Mbps.

Data Hosting

Five different companies provide a choice of data centres up to Tier 3+ standard. The stable geographic and political environment of the Isle of Man means that these facilities are less vulnerable to disruptive events compared to those in most other areas. The location and excellent connectivity also results in low latency to most parts of the world.

Power Infrastructure

The Isle of Man is self-sufficient in power and exports electricity to the United Kingdom via a subsea cable. The power network is robust and reliable with significant spare capacity and diverse fuel supplies.

Due to the flexible characteristics, a company incorporated under the 2006 Act has become the corporate vehicle of choice for international business transactions.

2 BUSINESS ORGANISATIONS

2.1 Corporate vehicles

2.1.1 Types of corporate vehicle

The two main types of corporate vehicle available in the Isle of Man are companies incorporated under the Companies Acts 1931 to 2004 (see section 2.1.2 below) and companies incorporated under the Companies Act 2006 (see section 2.1.3 below).

The Companies Acts 1931 to 2004 (the "Companies Acts") are based, to a large extent, on English company law (for example, the Companies Act 1931 is modelled on the Companies Act 1929 of England and Wales) whilst the Companies Act 2006 (the "2006 Act"), which is a stand-alone piece of legislation, follows the international business company model available in a number of other offshore jurisdictions.

Companies incorporated under the 2006 Act are governed solely by its provisions and (save in relation to liquidation and receivership) are not subject to the provisions of the Companies Acts. Equally, present and future companies incorporated under the Companies Acts are not subject to or affected by the terms of the 2006 Act.

Due to its flexible characteristics, a company incorporated under the 2006 Act has become the corporate vehicle of choice for international business transactions

2.1.2 Isle of Man companies incorporated under the Companies Acts 1931 to 2004

Introduction

Under the Companies Acts, a company may be either public or private. Private companies are not permitted to offer their shares to the public. Companies can also be limited by shares, limited by guarantee, limited by guarantee and have a share capital ("hybrid companies") or have a share capital with unlimited liability. In addition, it is possible to establish companies incorporated under the Companies Acts that are protected cell companies and incorporated cell companies (see section 2.1.6 below).

A company incorporated under the Companies Acts is a separate legal entity which is formed by one or more subscribers signing the Memorandum and Articles of Association, which are then filed at the Isle of Man Department of Economic Development (the "Department") Companies Registry (the "Companies Registry"). Upon incorporation, the Department issues a Certificate of Incorporation which is conclusive evidence of the association's status as a duly registered company. The beneficial ownership of the company need not be disclosed to the Companies Registry and shares may be held by nominees.

Companies are required to have a registered office in the Isle of Man, to which all communications and notices from the Companies Registry are addressed. The name of the company must be displayed at the registered office and at every other office or place of business. Any change in the registered office following incorporation must be filed within one month at the Companies Registry. A register of charges, a register of directors and secretary and a register of members must be maintained at the registered office and be available for inspection by the members.

In the case of a company formed after 1 June 1988, the Memorandum of Association (the "Memorandum") must state, inter alia, the name of the company, that the registered office is situated in the Isle of Man, that all the requirements of the Companies Acts in relation to incorporation have been complied with, that in respect of a limited company the members have limited liability, and the amount and division of the share capital. Finally, any permitted restrictions on the powers and objects of the company must be stated. The Companies Act 1986 removed the need for a company's objects to be set out in its Memorandum, so that, under Section 2(1) of that Act, "a company has the capacity and, subject to the Act, the rights, powers and privileges of an individual". In consequence, Isle of Man companies incorporated after 1 June 1988 do not contain long-form objects clauses and no concept of ultra vires exists in Isle of Man law in relation to such companies. A company incorporated before 1 June 1988 may, by special resolution, resolve that the provisions of the Companies Act 1986 apply and adopt the new form of Memorandum.

The Articles of Association ("Articles") are the internal regulations for the conduct of a company's business and can either be defined at length or by reference to the adoption of a model form of Articles set out in the Schedule to the Companies (Memorandum and Articles of Association) Regulations 1988. In respect of a company limited by shares, these model articles are normally referred to as "Table A".

A company may issue shares which are redeemable at the option of the holder and/or the company and it is possible to redeem preference shares out of a company's share premium account. Share warrants to bearer may no longer be issued, although those issued prior to 1 April 2004 remain valid (although the rights associated with them are no longer exercisable until they are converted into registered shares).

Capital duty on a company's authorised share capital is no longer payable. Furthermore, an Isle of Man company does not have to comply with any minimum capital requirement.

A fee is payable upon the incorporation of a new company. The standard incorporation fee, where the company is incorporated within a 48 hour period, is £100. However, two expedited incorporation services are also offered by the Companies Registry: it is possible to incorporate a company within 2 hours (for a fee of £250) or upon the presentation of the relevant documentation to the Companies Registry (for a fee of £500).

Members

The Single Member Companies Act 1993 permits Isle of Man private companies to have only one member (shareholder) provided that the register of members states that this is the case and states the date on which the company became a single member company. However, two founder members, known as subscribers, are required to incorporate public companies and unlimited companies. A company can have any number of members.

Officers

All companies must have at least two directors, neither of whom may be a body corporate. The company must have a secretary which, provided it is not a public company, can be another company. In the case of a public company, the secretary must be one of the following:

- a member of the Institute of Chartered Secretaries and

Administrators;

- a member of the Chartered Institute of Management Accountants;
- a member of the Institute of Chartered Accountants;
- a member of the Chartered Institute of Public Finance and Accountancy;
- a member of the Association of Chartered Certified Accountants;
- a member of the Association of Authorised Public Accountants; or
- a lawyer admitted in England, Scotland or the Isle of Man.

Accounts and audit

A private company is not required to file its accounts at the Companies Registry. However, the Companies Acts contain strict accounting requirements and professional advice should be sought in this connection. In each year a profit and loss account, balance sheet, auditors' report and directors' report must be prepared irrespective of whether such accounts need to be filed or audited (see following paragraph). To maintain its existence, regardless of whether it is trading/conducting business, a company must file an annual return in the prescribed form with the Companies Registry.

A private company can be audit exempt in any financial year if:

(a) the company is able to meet two of the following three criteria:

(i) its turnover in that year does not exceed £5.6 million;

(ii) its balance sheet total does not exceed £2.8 million at any time during that year;

(iii) it employs no more than 50 persons at any time during that year; or

(b) throughout that year, all its members are directors and it exists wholly for the purpose of holding shares, securities, other investments or land.

For the purposes of requirement (a)(i) above, "turnover" means the amounts derived from the provision of goods and services falling within the company's ordinary activities, after deduction of (A) trade discounts, (B) value added tax, and (C) any other taxes based on the amounts so derived. If a company is able to meet any of the above two conditions, it may elect not to be subject to the audit requirements. Such election requires the approval of every member of the company and a copy of the elective resolution must be filed with the Department. In addition, if a company wishes to do so, it may amend its Articles to reflect the election and submit them to the Department.

If the private company carries on banking or insurance business or carries on investment business, it may not make the election.

Public offers

An Isle of Man public company proposing to offer its shares or debentures to the public may need to comply with the prospectus requirements of the Companies Acts.

(a) Public offer by way of written instrument

If a public offer is made by way of a written instrument, that instrument is likely to constitute a prospectus. The Companies Acts place a general prohibition on the circulation or distribution of any prospectus, notice, circular, advertisement, or other invitation offering to the public for subscription or purchase any shares or debentures of a company that does not comply with the provisions of the Companies Acts. The provisions lay down requirements in relation to: the registration of the prospectus; the contents of the prospectus; the requirement for experts' consents to the issue of the prospectus; and civil and criminal liability for mis-statements in a prospectus.

The directors of a company must ensure that any prospectus issued in relation to such company:

(i) contains all material information relating to the offer or invitation to which the prospectus relates:

(a) that the intended recipients would reasonably expect to be included in it in order to enable them to make an informed decision as to whether or not to accept the offer or make the application referred to in it; and

(b) of which the directors or proposed directors (as the case may be) were aware at the time of issue of the prospectus, or of which they would have been aware had they made such enquiries as would have been reasonable in all the circumstances; and

(ii) set out such information fairly and accurately.

For the purposes of the above, 'intended recipients' means those persons who, taking into account the terms of the prospectus and all the circumstances in which the prospectus was issued, might reasonably be expected to accept an offer to acquire shares or debentures contained in the prospectus or to apply to acquire such shares or debentures.

(b) Private placement by way of written instrument

If a written document is used to offer shares, but the offer does not constitute a public offer, the prospectus requirements of the Companies Acts may be avoided. There is no clear definition of "public offer" or "offer to the public" contained in the Companies Acts. In the absence of local authority, the Isle of Man courts have traditionally looked to English case law for guidance. Such authorities would therefore be of relevance in determining whether an offer constituted an "offer to the public".

The Companies Acts do, however, contain certain provisions which limit the scope of the expression "offer to the public". Consequently, an offer of shares will not be deemed to be an "offer to the public" solely by reason that it is made to certain categories of person, including, among others, existing members of the company, existing or former employees of the company and members of the family of such members or employees.

The Companies (Private Placements) (Prospectus Exemptions) Regulations 2000 also indicate that the issue of an offering document by or on behalf of a company shall constitute a private placement, and be exempt from the Companies Acts' prospectus requirements, if it is issued to:

(i) persons whose ordinary activities involve them in acquiring, holding, managing or disposing of shares or debentures (as principal or agent) for the purposes of their businesses; or

(ii) persons who it is reasonable to expect will acquire, hold, manage or dispose of shares or debentures (as principal or agent) for the purposes of their businesses; or

(iii) a restricted circle of persons whom the issuer of the document reasonably believes to be sufficiently knowledgeable to understand the risks involved in accepting the offer in the

document; or

(iv) a restricted circle of persons numbering no more than fifty whom it is reasonable to believe will acquire any shares or debentures which are the subject of the offer in the document for investment purposes and not with a view to their imminent resale.

(c) Public offer not made by way of written instrument

If the offer is public, but it is not made by reference to any written document, then the prospectus requirements could be avoided.

Starting the company

This section provides a brief synopsis of the documentation required under the Companies Acts and accompanying regulations in order to conduct and manage a company incorporated under the Companies Acts.

To incorporate an Isle of Man company an application for name approval for the proposed company should be made to the Department, ideally in advance of applying for incorporation. The application must contain information relating to the nature of the company's proposed business and details as to any particular significance in the proposed name (for example, abbreviations). Certain words (notably "Bank", "Trust", "Holdings", "Fund" and "International") are not acceptable for inclusion in a company name unless circumstances warrant them. The Department may require additional information or stipulate the minimum paid-up share capital before approval is given for the adoption of such names. There is no requirement to disclose the identity of the beneficial owner of the proposed company.

Confirmation or rejection of the proposed name will normally be received within 2 to 3 working days. If the name is approved, the following must be lodged with the Department:

(a) the Memorandum and Articles signed by the subscribers, each of whom must take a minimum of one share. Alternatively, a company limited by shares (or by guarantee) may be formed by one person and may have one member by virtue of the Single Member Companies Act 1993;

(b) particulars of the first directors and secretary, together with their signed consents to act (Form 1); and

(c) a cheque payment in respect of the appropriate incorporation fee (being £100 for the standard 48 hour incorporation service, £250 for the 2 hour incorporation service or £500 for the "while you wait" incorporation service).

As an alternative to forming a new company, a company which has previously been incorporated, but which has never traded, may be purchased. This alternative is particularly important where time is of the essence. Names of companies can, if required, be changed at a later date by filing the appropriate documents with the Department.

The company must have business notepaper on the first day of trading. This must state the name of the limited company, the place of registration of the company, the number with which it is incorporated, the address of the registered office and names (including present and former names) of the directors. Documents sent electronically should also contain such information.

It is important to stress that any person forming companies by way of business will need to be a licensed fiduciary (see section 1.4.3 above) and perform full anti-money laundering due diligence on the promoters of the company before proceeding to incorporation.

Effect of incorporation

The Companies Acts respect the two fundamental company law principles of corporate personality and limited liability.

An Isle of Man company has a separate legal personality, distinct from that of its officers or members. Accordingly, a company can undertake the same range of activities as an individual and can sue and be sued in its own name. Isle of Man courts, in common with their English counterparts, are reluctant, in the absence of (inter alia) fraud, to lift the corporate veil.

The concept of separate legal personality does not always afford protection to a company's officers and employees. They may, in some circumstances, be found liable for their acts or omissions, such as when the offence of fraudulent trading has been committed. The offence is constituted where officers of a company continue to trade and incur debts when there is no reasonable prospect of them being paid when they fall due.

The concept of limited liability means that the liability of the members is limited to paying to the company the full amount due and payable on their shares. The company, however, is always fully liable for its debts and has unlimited liability.

Running the company

(a) Administrative matters after incorporation

Normally, a board meeting will be held shortly after incorporation. All directors should receive reasonable notice of the time and place of the meeting and, to be a valid meeting, there must be the necessary quorum of directors present. Typical matters dealt with at the first board meeting are:

(i) report on incorporation and company number;

(ii) report on directors, secretary and registered office;

(iii) appointment of chairman;

(iv) adoption of a company seal (optional);

(v) appointment of auditors;

(vi) determination of year-end for accounting purposes;

(vii) appointment of bankers;

(viii) allotment of shares to subscribers to the Memorandum and perhaps others; and

(ix) issue of share certificates.

After the meeting, the board minutes should be written up by the company secretary.

A company must keep certain statutory books at its registered office. These include the Register of Members, Register of Directors, Register of Mortgages and Charges, Register of Debentures, Minutes, Accounting Records, copies of Charges, Register of Sealings (where appropriate) and copies of documents lodged with the Department. An Annual Return listing details of the current directors, members, share capital and certain other information should be sent to the Department each year within one calendar month of return date with a filing fee (currently £380 (subject to exemptions)).

(b) Calling and conduct of meetings

An Annual General Meeting ("AGM") must be held once in each

calendar year, and not more than fifteen months after the holding of the last AGM. However, provided the company holds its first AGM within eighteen months of its incorporation, it need not hold it in the calendar year of its incorporation or in the following calendar year. Any other general meeting will be an Extraordinary General Meeting ("EGM") which the directors may call whenever they think fit and members may call subject to the provisions of the Companies Acts. The notice period required for an AGM or EGM will depend on the nature of the resolutions proposed to be passed at the meeting. In certain circumstances, a meeting of the holders of a particular share class may also be required.

(c) Types of resolution

In general, responsibility for the operation and management of a company lies with the directors. However, certain matters may require the prior approval of shareholders either pursuant to the provisions of the Companies Acts or a company's Articles.

Matters which require shareholder approval fall into one of three categories: (i) those which must be decided by way of a special resolution of the shareholders; (ii) those which must be decided by way of an extraordinary resolution of the shareholders; and (iii) those which must be decided by way of an ordinary resolution of the shareholders.

(i) Special resolution

In order to pass a special resolution: (a) 21 clear days' notice of the meeting must be given to the shareholders (unless all shareholders entitled to attend and vote at the meeting agree to accept shorter notice); and (b) a majority of 75% of the votes cast must be in favour of the resolution proposed.

(ii) Extraordinary resolution

In order to pass an extraordinary resolution: (a) 14 clear days' notice of the meeting must be given to the shareholders (unless all shareholders entitled to attend and vote at the meeting agree to accept shorter notice); and (b) a majority of 75% of the votes cast must be in favour of the resolution proposed.

(iii) Ordinary resolution

In order to pass an ordinary resolution: (a) 14 clear days' notice of the meeting must be given to the shareholders (unless all shareholders entitled to attend and vote at the meeting agree to accept shorter notice); and (b) a simple majority of the votes cast must be in favour of the resolution proposed.

The Articles may provide that an extraordinary resolution will be required in any case where under the Companies Acts an ordinary resolution would have sufficed. The Articles may also specify longer notice periods than the statutory periods detailed above.

Voting on a resolution is normally by way of a show of hands, unless a poll is demanded (in which case, members have one vote for each share held). The Articles may give the chairman a casting vote.

The Articles usually provide that a written resolution, signed by, or on behalf of, all the members, will be as effective as if it had been passed at a general meeting, duly convened and held.

Any notice of a general meeting must specify the time and place of the meeting, the general nature of the business to be transacted and, if applicable, confirm that the directors intend to propose the resolution as a special or extraordinary resolution. In the case of an AGM, the notice must specify the meeting is such. Under a company's Articles, notices must normally be delivered to all shareholders, the personal representatives of a deceased shareholder, the trustees of a bankrupt shareholder, the directors and the auditors, in each case, either personally or by post to the registered address.

If a director or a shareholder is unable to attend either a board or general meeting (as applicable) the Articles will usually include provisions allowing for the appointment of an alternate director or proxy (as applicable).

Changes in the company

(a) Altering the constitution

A company may, by special resolution and with the approval of the Department, change its name. A Certificate of Change of Name for the company will be issued. Upon the issuance of a Certificate of Change of Name the company notepaper and email footers must be changed. Companies which utilise a business name will be required to register that name under the Registration of Business Names Acts 1918 (as amended).

A company may by special resolution amend or vary its Articles. Some alterations require the consent of all the existing members, notably alterations increasing a members' liability to contribute to share capital. The amended Articles must be filed with the Department.

The nominal capital may (unless contrary provision is contained in the Articles) be increased by an ordinary resolution of the members. The Department must receive notification of the increase within one month of the resolution being passed.

The share capital of a company may also be decreased, subject to certain stringent statutory requirements. In outline, if the share capital has been issued, a special resolution authorising the reduction must be passed and the approval of the Court must be obtained.

(b) Appointment and removal of directors

Subject to the express provisions of a company's Articles, a person proposed by the directors or a member may be appointed a director. Additionally, the directors alone may appoint a director, in which case that director will, subject to the Articles, normally hold office until the next AGM when he or she will retire unless reappointed at that meeting by the members.

Article 73 of Table A provides that at the first AGM all the directors shall retire from office and at every subsequent AGM one third shall retire from office. This provision is often excluded from the Articles of a company.

A director may resign from his office by notice in writing to the company. He may also be removed by a special resolution of the members under, and subject to, the terms of the Companies Acts and any relevant provisions contained in the company's Articles.

The Articles of a company generally provide that the office of a director will be vacated if he or she ceases to be a director under the provisions of the Companies Acts or is prohibited by law, becomes bankrupt, becomes of unsound mind, resigns in writing or is absent without permission for more than six consecutive months and the board so resolves.

The appropriate form must be sent to the Department upon the appointment or removal of a director.

(c) Allotment and transfer of shares

Authority to allot shares is conferred on the directors unless the Articles expressly reserve such authority to the shareholders.

There is no statutory right of pre-emption under the Companies Acts, although such a right may be provided in the Articles. No stamp duty is payable in the Isle of Man, but a return of allotments form must be sent to the Department. Before allotting shares, the directors must ensure that there is sufficient unissued nominal capital for the proposed allotment. Shares may be allotted for cash or other consideration.

In order to transfer shares, a completed stock transfer form and share certificate(s) must be sent to the company and, following approval by the directors, the register of members must be altered. No stamp duty is payable. The Articles of a company may allow the directors to refuse to register a transfer. For instance, Article 24 of Table A grants authority for the directors to refuse to register the transfer of a share which is not fully paid to a person of whom they do not approve.

Creation of security

An Isle of Man company has the power to charge its assets in any manner permitted by the laws governing the assets in question. In addition to creating fixed security, an Isle of Man company can grant a floating charge over all of its assets and undertaking. Under section 79 of the Companies Act 1931, as amended, most charges created by Isle of Man companies must be registered with the Department within one month of being created, otherwise they are invalid against a liquidator or creditor of the company.

Redomiciliation of companies

Isle of Man legislation allows for the migration of companies between the Isle of Man and other jurisdictions without the need for dissolution or winding up. Any type of company may apply to redomicile, although companies performing certain activities are not permitted to redomicile to the Isle of Man. Redomiciliation is only possible in circumstances where the corresponding jurisdiction has equivalent legislation.

The legislation significantly reduces the costs of moving domicile where this is commercially desirable, without interrupting business operations. Existing contracts can continue, assets can remain within the company and business can continue during the process of redomiciliation.

Potential migrant companies require the authorisation of the Department and the regulatory body from their home or destination jurisdiction in order to transfer. They are also required to, inter alia, pass a special resolution in favour of the migration in the case of an outward migration, publish legal notices in local and foreign newspapers, submit details of all existing charges, obtain the consents of any charge holders, irrevocable undertakings and declarations of solvency from the directors (and the company in respect of the former), and an advocate's opinion certifying that the migrant company has complied with the legislation and regulations. In respect of companies incorporated under, or to be incorporated under, the Companies Acts the fee to redomicile to the Isle of Man is currently £100 and the fee to redomicile from the Isle of Man is currently £3,000.

Pursuant to the Insurance Act 2008, an insurance company may apply to the Isle of Man Insurance and Pensions Authority ("IPA") for redomiciliation to or from the Isle of Man. Certain conditions must be satisfied both in relation to the IPA and the regulatory body of the destination jurisdiction. The insurance company must perform actions and submit certain information to the IPA similar to those required by the Companies (Transfer of Domicile) Act 1998 and listed in the preceding paragraph.

2.1.3 Isle of Man companies incorporated under the Companies Act 2006

Introduction

The steady decline in the number of companies incorporated in the Isle of Man, in contrast to the soaring incorporation rates in other jurisdictions, such as the British Virgin Islands, focused attention on the need to reform Isle of Man company law. The result was the introduction of the Companies Act 2006 (the "2006 Act") which came into force on 1 November 2006.

The 2006 Act, which is a stand-alone piece of legislation, updated and modernised Isle of Man company law by introducing a new simplified corporate vehicle, often referred to as a new Manx vehicle. The new corporate vehicle follows the international business company model available in a number of other offshore jurisdictions. The 2006 Act is based on familiar concepts and, whilst it does not contain any novelties as such, it sweeps away a number of the traditional company law formalities, including the concept of authorised share capital, the requirement to hold an annual general meeting, the requirement to maintain capital (subject to solvency), the requirement to have a company secretary, the prohibition on financial assistance and the number of compulsory registry filings. The result is a modern, flexible and simplified corporate vehicle that will be attractive to business.

A company incorporated under the 2006 Act is a separate legal entity which is formed by one or more subscribers who sign the proposed memorandum and articles of association of the company. Under the 2006 Act, it is only registered agents (who hold an appropriate licence under the Financial Services Act 2008) who are authorised to file an application for the incorporation of a company at the Companies Registry. Upon incorporation, the Companies Registry will issue a certificate of incorporation to the company.

A company must at all times have a registered office at a physical address in the Isle of Man. A resolution to change the location of a company's registered office may be passed either by the members of the company or (unless the memorandum or articles of association of the company provide otherwise) by the directors of the company. The change will only take effect on the registration of the notice of change of registered office with the Companies Registry.

The memorandum of association of a company registered under the 2006 Act (the "Memorandum") must state, inter alia, the name of the company, the address of the first registered office of the company, the name of the first registered agent of the company, the full name and residential or business address of each subscriber and the agreement of each subscriber to take one or more shares on the incorporation of the company and/or to become a member on the incorporation of the company. In addition, the Memorandum may include a statement specifying the purposes for which the company is established, or the business, activities or transactions which the company is permitted to undertake, or any restrictions upon such purposes, business, activities or transactions for which the company is established, although there is no statutory requirement to do so. There is no requirement for details of a company's share capital to be included in its Memorandum, because the 2006 Act does not recognise the concept of authorised share capital and replaces the traditional capital maintenance requirements with a new solvency test (see the Statutory solvency test section below).

The 2006 Act enables the Companies Registry to prescribe model articles of association ("Articles") for each type of company available under the 2006 Act (except for companies limited by shares and formed as protected cell companies or incorporated cell companies). If model Articles have been prescribed, a company can either adopt such model Articles or use its own bespoke Articles.

The 2006 Act does not distinguish between public and private companies. All types of company are permitted to offer their shares or securities to the public, whether the names of such companies end with the words "Limited" or "public limited company" or otherwise. Under the 2006 Act, companies can be limited by shares, limited by guarantee, limited by shares and by guarantee, unlimited with shares, or unlimited without shares. Companies can also be registered as protected cell companies or incorporated cell companies under the 2006 Act (see section 2.1.6 below). Shares in a company may (without limitation) be: convertible, common or ordinary; redeemable at the option of the shareholder or the company or either of them; confer preferential rights to distributions; confer special, limited or conditional rights, including voting rights; entitle participation only in certain rights; or confer no voting rights. In addition, unless a company's Memorandum or Articles provide otherwise, shares may be issued by a company with or without a par value. Bearer shares are not permitted.

The 2006 Act contains relatively simple procedures to enable a company incorporated under the Companies Acts 1931 to 2004 to re-register as a company under the 2006 Act.

Statutory solvency test

The previously complex traditional capital maintenance requirements of the Companies Acts 1931 to 2004 have been relaxed under the 2006 Act.

Subject to any express provision in its Memorandum or Articles, where a company can satisfy a statutory solvency test immediately after a distribution has been made, the directors can make such a distribution without the need for a formal members' resolution.

The following are deemed to be a distribution for the purposes of the 2006 Act: (i) the transfer of any company asset to any member; (ii) the incurring of a debt by the company to or for the benefit of any member, including the payment of dividends; and (iii) the redemption of shares or a purchase of own shares.

A company will satisfy the solvency test if it can pay its debts as they become due in the normal course of its business and the value of its assets exceeds the value of its liabilities. It is the directors' responsibility to ensure that the company can satisfy the solvency test prior to making a distribution.

Should a company not satisfy the solvency test immediately after a distribution has been made to a member, such a distribution may be recovered from the member provided certain conditions are met. If the member received the distribution other than in good faith and the member's position had not been altered by relying on the distribution and it would not prejudice the member to recover the payment in full, then such distribution shall be recoverable.

Unless a company's Memorandum or Articles provide otherwise and provided that a company can satisfy the solvency test immediately after taking the following actions, the directors of a company may pay dividends to members in money, shares or other property and reduce its share capital in any way.

The registered agent

Every company incorporated under the 2006 Act must at all times have a registered agent in the Isle of Man. The failure by a company to have a registered agent is one of the grounds upon which a company can be struck off the register by the Companies Registry. In addition it is a criminal offence under the Act for a company not to have a registered agent.

The registered agent is one of the key people responsible for ensuring that a company is properly administered. In addition, only the registered agent of a company is permitted to make certain filings with, and submit certain applications to, the Companies Registry.

A registered agent can be liable for any offence committed by a company under the 2006 Act if the offence is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, the registered agent.

To reflect the responsibility placed on the registered agent and the importance of the role played by the registered agent, only persons holding the appropriate fiduciary's licence granted by the Isle of Man Financial Supervision Commission (the "FSC") can act as registered agents.

It is important to mention that a registered agent will require full anti-money laundering due diligence on the promoters of the company before proceeding to incorporation.

Members

Under the 2006 Act, a company is permitted to have one or more shareholders.

Officers

Under 2006 Act, a company is permitted to have a single director which may be an individual or a body corporate. In order for a body corporate to be eligible to act as a corporate director, it, or another body corporate of which it is a subsidiary, must either hold the appropriate fiduciary's licence granted by the FSC or be permitted to do so by regulations made by the Companies Registry. The number of directors of a company may be fixed by, or in the manner provided for in, the Articles of the company. A company incorporated under the 2006 Act is not required to have a company secretary.

Accounts and audit

The accounting requirements imposed on companies incorporated, registered or continued under the 2006 Act are less prescriptive (but no less stringent) than the accounting requirements imposed upon companies incorporated under the Isle of Man Companies Acts 1931 to 2004 (see section 2.1.2 above). The 2006 Act requires companies to keep reliable accounting records which correctly explain the transactions of the company to enable the financial position of the company to be determined with reasonable accuracy at any time and to allow financial statements to be prepared. Companies are also required to retain such invoices, contracts and other information as are necessary to allow the company to document (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure took place; (ii) all sales and purchases; and (iii) the assets and liabilities of the company. Without prejudice to the requirements of any other enactment, the accounting records must be maintained by or on behalf of the

company for at least six years from the end of the financial period of the company to which they relate. Save for certain exceptions (for example, companies whose securities are listed or admitted to trade on a securities market or exchange must appoint a suitably qualified auditor), there is no statutory requirement under the 2006 Act for a company to have its accounts audited if it chooses not to do so.

Companies incorporated, registered or continued under the 2006 Act are required to file annual returns made up to the company's return date. The annual return must be filed with the Companies Registry by the registered agent within one month of the company's return date, together with a fee of (currently) £380. In order to ease the administrative burden on registered agents, the annual return takes the form of a "shuttle return". The Companies Registry extracts the information relevant to the annual return from a company's file and asks the registered agent to confirm, add to and/or correct the information and return it to the Companies Registry so that the company's up to date and correct details as at the due date can be placed on the company's public record.

Public offers

The 2006 Act does not distinguish between public and private companies and (subject to any restrictions in a company's Memorandum or Articles) any type of company under the 2006 Act can offer its securities to the public.

The prospectus/offering document requirements in the 2006 Act are similar to the prospectus requirements contained in the Isle of Man Companies Acts 1931 to 2004 (see section 2.1.2 above). The directors of a company, or the proposed directors of a company which is yet to be incorporated, must ensure that any offering document issued in relation to that company contains all material information relating to the offer or invitation contained therein:

(a) that the intended recipients would reasonably expect to be included in order to enable them to make an informed decision as to whether or not to accept the offer or make the application referred to in the offering document; and

(b) of which the directors or proposed directors were aware at the time of issue of the offering document, or of which they would have been aware had they made such enquiries as would have been reasonable in all the circumstances.

Such information must be set out fairly and accurately. The 2006 Act does not require a company to file its offering document with the Companies Registry but a company may voluntarily choose to do so.

Starting the company and re-registration procedure

The following paragraphs provide a brief outline on the incorporation and re-registration procedures under the 2006 Act.

The name of a company incorporated, registered or continued under the 2006 Act must be approved by the Companies Registry. A company will not be permitted to have a name:

(a) the use of which would contravene any other enactment or regulations;

(b) that is identical to the name of a company registered under the 2006 Act or the Companies Acts 1931 to 2004 or is so similar to such a name that the use of that name would be likely to confuse or mislead;

(c) that is identical to a name which has been reserved by a company or is so similar to such a name that the use of that name would be likely to confuse or mislead;

(d) that contains a restricted word or phrase (unless the Companies Registry has given its prior written consent to the use of that word or phrase); or

(e) that is offensive or, for any other reason, objectionable.

The name of every company limited by shares, limited by guarantee or limited by shares and by guarantee must end with one of the following words: "Limited", "Corporation" or "Incorporated"; or "Public Limited Company" or "public limited company"; or "Ltd", "Corp", "Inc", "PLC" or "plc". The name of an unlimited company with or without shares may (but need not) end with the word "Unlimited" or the abbreviation "Unltd". The name of a protected cell company must include "Protected Cell Company", "protected cell company", "PCC" or "pcc". The name of an incorporated cell company must include "Incorporated Cell Company" or "ICC" and the name of an incorporated cell must include "Incorporated Cell" or "IC". A company may also have an additional foreign character name approved by the Companies Registry.

As briefly mentioned above, a company is incorporated under the 2006 Act by one or more subscribers who sign the proposed Memorandum and Articles of the company as evidence of their agreement to take one or more shares in the company and/or to become members of the company on the terms set out in the Memorandum and Articles. On incorporation of the company, the subscriber(s) become the first member(s) of the company. Only registered agents are authorised to file an application for the incorporation of a company.

In order to incorporate a company under the 2006 Act, the following documents must be filed with the Companies Registry:

(a) the proposed Memorandum of the company complying with the requirements of the 2006 Act;

(b) the proposed Articles of the company if they are to differ from any relevant model Articles prescribed by regulations made by the Companies Registry; and

(c) a cheque in respect of the relevant incorporation fee (being £100 for the standard 48 hour incorporation service, £250 for the 2 hour incorporation service or £500 for the "while you wait" incorporation service).

A company formed under the Companies Acts 1931 to 2004 can be re-registered as a company under the 2006 Act by submitting to the Companies Registry the following: (i) an application form signed by the proposed registered agent of the company; (ii) certified copies of a resolution passed by a member or members holding at least 75% of the voting rights exercised in relation thereto and a resolution of each class of members passed by a member or members holding at least 75% of the voting rights exercised in relation thereto, in each case authorising the re-registration of the company under the 2006 Act, the adoption of a new Memorandum and (if necessary) the adoption of new Articles; (iii) the proposed new Memorandum and (if necessary) Articles of the company; and (iv) a cheque in respect of filing fees for (currently) £100. Following such re-registration under the 2006 Act, the Companies Acts 1931 to 2004 will cease to apply to such company (save in relation to liquidation and receivership).

The re-registration of a company does not create a new legal entity or prejudice or affect the continuity of the company. Obligations and liabilities incurred by the company prior to re-registration will therefore continue to be binding on the company following re-registration.

Upon receipt of the documents, the Companies Registry will register them, allot a unique company number to the company and issue a certificate of incorporation or, in case of re-registration, a certificate of de-registration and a certificate of re-registration to the company. The Memorandum and Articles of a company will be a matter of public record.

The certificate of incorporation or, in the case of re-registration, the certificates of de-registration and re-registration, is conclusive evidence that all of the requirements of the 2006 Act as to incorporation or re-registration have been complied with and that the company was incorporated or re-registered on the date specified in the relevant certificate.

A company's name and (if it has one) its foreign character name must be clearly stated in every document that evidences or creates a legal obligation of the company.

In addition all written communications by or on behalf of a company must state the following information in relation to the company: full name and foreign character name (if there is one); the company number in figures; the place of incorporation; and the registered office address. There is no requirement for directors' details to be included on written communications issued by or on behalf of a company.

A company incorporated under the 2006 Act can be re-registered as a company of another type permitted by the 2006 Act by submitting an application along with a statutory declaration as to the solvency and a new Memorandum and (if necessary) new Articles.

Effect of incorporation

The effect of incorporation is the same for a company incorporated under the 2006 Act as it is for a company incorporated under the Companies Acts 1931 to 2004 (see the Effect of incorporation in section 2.1.2 above).

Running the company

(a) Administrative matters after incorporation

The matters dealt with at the first board meeting are essentially the same as for companies subject to the Isle of Man Companies Acts 1931 to 2004 (see Running the company in section 2.1.2 above).

Under the 2006 Act, a company is required to keep the following records and documents at the office of its registered agent: copies of its Memorandum and Articles signed by each subscriber; its register of members; its register of directors; its register of charges; copies of all notices and other documents filed by it pursuant to the 2006 Act in the previous 6 years; any accounting records it is required to keep under the 2006 Act; and an imprint of its common seal. A director of a company, on giving reasonable notice, is entitled to inspect all the documents and records of the company without charge and to make copies of, or take extracts from, such documents and records. Members of a company have slightly more restricted rights of inspection. On giving written notice to the company, a member is entitled to inspect and to make copies of, or take extracts from the company's Memorandum and Articles, its register of members, its register of directors, its register of charges and its accounting records.

To the extent that a company's register of members and/or register of directors do not contain details of the residential addresses of all past and present members and/or directors, the registered agent is required to maintain a separate record of such residential addresses.

Every company is also required to maintain records of minutes of meetings and resolutions of members and directors. These records are not required to be kept at the office of the company's registered agent and may be kept at any place within or outside the Isle of Man as the directors decide. If the records are not kept at the office of the registered agent the company must provide the registered agent with a written record of the physical address of the place or places where the records are kept.

All records required to be kept by a company under the 2006 Act can be kept either in written form or wholly or partly as electronic records, provided that any electronic records comply with the requirements of the Electronic Transactions Act 2000 regarding the integrity of electronic data.

In comparison with companies incorporated under the Companies Acts 1931 to 2004, companies subject to the 2006 Act are subject to reduced compulsory registry filings. However, a 2006 Act company is still required to file the following documents with the Companies Registry, all of which will be a matter of public record: its Memorandum and Articles and any subsequent amendments; any change in its name; any change of its registered office address; any change of its registered agent; its annual return; any applications and filings in connection with its dissolution, restoration or winding up; any applications and filings in connection with any re-registration, scheme of merger, consolidation or arrangement or transfer of domicile. Although not compulsory under the 2006 Act, it is advisable to file all the details of any charges created by a company (including any subsequent variation or release) (for further details, see the Creation of security section below).

A company can voluntarily elect to file a copy of its register of members and/or register of directors with the Companies Registry. If a company makes such an election the registers will be a matter of public record and the company must notify the Companies Registry of any change in those details within one month of any change being made. If a company has elected to file a copy of its register of members and/or register of directors with the Companies Registry it may rescind that election at any time by filing a notice to that effect with the Companies Registry.

In addition, if a company issues an offering document in respect of its securities, the company can voluntarily elect to file that offering document with the Companies Registry and that offering document will then be a matter of public record. However, it is not mandatory for a company to do so.

(b) Calling and conduct of meetings

The 2006 Act does not require a company to hold an annual general meeting of its members. Instead, subject to anything to the contrary in the company's Memorandum and Articles, a meeting of members can be held at such time and in such place, within or outside the Isle of Man, as the convener of the meeting considers appropriate. The directors of a company and any person authorised by the company's Memorandum and Articles may convene a meeting of the members. In addition, the members of

a company can require the directors to call a meeting. Not less than 14 days' notice must be given for a meeting of members. The Articles of a company may provide for a longer notice period than the statutory minimum of 14 days' notice. Such meetings may also be called on shorter notice if a member or members holding at least 90% (or such smaller percentage as is specified in the Articles) of the voting rights have waived notice of the meeting. Electronic and telephonic members' meetings are permitted provided that all members participating in the meeting are able to communicate with each other.

(c) Types of resolution

The members generally exercise any power given to them under the 2006 Act, or the company's Memorandum or Articles, by resolution passed at a members meeting or passed as a written resolution. There is no concept of "special resolutions", "extraordinary resolutions" or "ordinary resolutions" in relation to companies subject to the 2006 Act. A resolution of the members is passed at a members meeting if it is approved by a member or members holding a majority in excess of 50% of the voting rights exercised (subject to any requirement for a higher majority specified in the 2006 Act or any contrary provision in the company's Memorandum or Articles). It is possible for a company incorporated under the 2006 Act to make a decision by passing a written resolution. A resolution is passed as a written resolution if it is consented to in writing or by email, telex, fax or other electronic communication by all members entitled to vote or by a member or members holding such percentage of the voting rights as is specified in the Memorandum or Articles (subject to any requirement for a resolution to be passed by a particular majority specified in the 2006 Act).

Unless the Memorandum or Articles of a company make contrary provision, votes of shareholders are counted according to the votes attached to the shares held by the shareholder voting.

Changes in the company

(a) Altering the constitution

A company may change its name or its foreign character name by making an application to the Companies Registry. Unless the Articles provide otherwise, any such application can be authorised by either a resolution of the company's directors or a resolution of the company's members.

If the Companies Registry approves the company's proposed new name it will register the change of name and issue a certificate of change of name to the company. The change of name will be effective from the date of the certificate of change of name issued by the Companies Registry.

Subject to contrary provision in the company's Memorandum, the members of a company can amend the company's Memorandum and Articles by resolution.

It is possible to include one or more of the following provisions in the Memorandum of a company in order to restrict the rights of members to amend the Memorandum or Articles: that the Memorandum or Articles, or specified provisions of the Memorandum or Articles, can only be amended by a members resolution passed by a member or members holding a specified majority of the voting rights; and/or that the Memorandum or Articles, or specified provisions of the Memorandum or Articles, can only be amended if certain specified conditions are met.

In addition, the directors of a company may amend a company's Memorandum or Articles if they are expressly authorised to do so by the company's Memorandum. However, in order to protect members' rights, the 2006 Act prohibits the directors from exercising any such power to amend the Memorandum or Articles: if the purpose of such amendment is to restrict the rights or powers of the members to amend the Memorandum or Articles; or to change the majority of the voting rights of members required to be exercised in order to pass a resolution to amend the Memorandum or Articles; or in circumstances where the Memorandum or Articles cannot be amended by the members of the company.

Notice of any amendment to the Memorandum or Articles of a company must be filed with the Companies Registry within one month of the amending resolution, together with a restated copy of the Memorandum or Articles incorporating the amendments made. These documents will be registered by the Companies Registry and will be a matter of public record.

(b) Appointment and removal of directors

Subject to contrary provision in a company's Memorandum or Articles, a person may be appointed as a director (either to fill any casual vacancy or as an additional director) by a resolution of the directors or by a resolution of the members.

Notwithstanding anything in a company's Memorandum or Articles or in any agreement between a company and any of its directors, a director may be removed from office by resolution of the members. Such a resolution may only be passed at a meeting of the members called for the purpose of removing the director or for purposes including the removal of the director; or by a written resolution consented to by a member or members holding at least 75% of the voting rights. A director may only be removed from office by a resolution of the directors if the directors are expressly given such authority in the Memorandum or Articles of the company.

A director can resign from office by giving written notice to the company. Such resignation is effective from the date the notice is received by the company or from such later date as may be specified in the notice.

(c) Allotment and transfer of shares

The 2006 Act does not recognise the concept of capital maintenance, nor does it require a company which issues shares to have an authorised share capital.

The 2006 Act gives the directors of a company the power to issue shares and grant options to acquire shares at such times, to such persons, for such consideration and on such terms as they decide. However, restrictions on the powers of directors to issue shares can be included in the company's Memorandum or Articles.

Shares can be issued for consideration in any form including money, a promissory note or other written obligation to contribute money or property, real property, personal property (including goodwill and know-how), services rendered, or a contract for future services. However, before issuing shares for a consideration other than money, the directors of the company must pass a resolution stating: (i) the amount to be credited for the issue of the shares; (ii) what they have determined the reasonable present cash value of the non-money consideration for the issue to be; and (iii) that, in their opinion, the present cash value of the non-money consideration for the issue is not less than the

amount to be credited for the issue of the shares.

A share is only deemed to be issued when the name of the shareholder is entered on the company's register of members.

Section 36 of the 2006 Act sets out statutory pre-emption rights which apply on the issue of shares. However, the section does not apply automatically to every company and a company must positively elect in its Memorandum or Articles if it wishes the statutory pre-emption rights to apply to it.

A share in a company is personal property and, subject to any restrictions in the company's Memorandum or Articles or the 2006 Act, is transferable. No stamp duty is payable on the transfer of shares.

Power and capacity

The doctrine of ultra vires does not apply to companies incorporated, registered or continued under the 2006 Act.

The 2006 Act expressly states that, notwithstanding any provision to the contrary in its Memorandum or Articles, a company has unlimited capacity to carry on or undertake any business or activity, to do or to be subject to any act, or to enter into any transaction irrespective of corporate benefit and whether or not it is in the best interests of the company to do so.

In addition, in favour of any person dealing with a company in good faith, the power of the directors to bind the company or to authorise others to do so, is deemed to be free of any limitations (including limitations deriving from any provision in the company's Memorandum or Articles, any resolution of the members, or any agreement between the members).

Creation of security

Similar to companies incorporated under the Companies Acts 1931 to 2004, companies formed under the 2006 Act have the power to create charges over their assets in any manner permitted by the laws governing the relevant assets.

A company may register any charge which it creates (including any charge existing on property acquired by a company) with the Companies Registry within one month after the date of its creation (or the date of acquisition of the property). It is not mandatory to register charges. However, failure to register a charge will result in the charge being void against the liquidator and any creditor of the company and may also affect the priority of the charges created by the company.

If a company neglects to file a charge with the Companies Registry, the company may submit the charge to the Companies Registry for late registration at any time prior to the commencement of the winding up of the company. There is no need to make an application to the Isle of Man Court for an order for late registration. However, any charge registered outside of the statutory period will be subject to the rights acquired by any person during the period between the date of creation of the charge and the date of its registration.

A company must keep a register of all charges created by it over any company property showing: (if the charge is a charge created by the company) the date of its creation, or (if the charge is a charge existing on property acquired by the company) the date on which the property was acquired; a description of the liability secured by the charge; a description of the property charged; the name and address of the chargee; and whether or not there is any prohibition or restriction contained in the instrument creating the charge on the company creating any future charge ranking in priority to or equally with the charge.

Redomiciliation of companies

The 2006 Act enables a non-Isle of Man company to be continued in the Isle of Man as a type of company permitted under the 2006 Act. An application must be submitted by the person who it is proposed will be the company's registered agent to the Department accompanied with: a Memorandum containing specified information; Articles; a statutory declaration regarding certain solvency-related matters; proof of compliance with all home-jurisdiction laws and requirements; and information regarding all charges registered against the company together with the consent of all charge holders. The fee to redomicile to the Isle of Man as a form of company under the 2006 Act is currently £100.

If an Isle of Man company wants to be continued in another jurisdiction and discontinued in the Isle of Man under the 2006 Act, then its registered agent should submit an application to the Registrar of Companies at the Companies Registry for consent to be continued in a country or territory outside the Isle of Man. The application must be accompanied with the following: a resolution passed by member(s) holding at least 75% of the voting rights exercised in relation thereto and a resolution of each class of members passed by member(s) holding at least 75% of the voting rights exercised in relation thereto; a statutory declaration of solvency; a copy of a prescribed form of notice sent to each member at least 21 days before the application is made for the company to discontinue its incorporation in the Isle of Man; and the consent of all charge holders to the application to be made for the company to discontinue its incorporation in the Isle of Man. The fee payable on an application for the consent of the Department for a company created under the 2006 Act to be continued in a territory outside the Isle of Man is currently £3,000.

2.1.4 Companies incorporated outside the Isle of Man

A company which is incorporated outside the Isle of Man may establish a place of business in the Isle of Man or have an interest in real estate in the Isle of Man. Either activity would require the company to register as a foreign company under the Foreign Companies Act 2014. Such a company would then, prima facie, become subject to Manx income tax on such of its profits as were derived from Isle of Man source income (albeit most likely at zero rate). It is thus important to distinguish between the place of a company's incorporation and the place of a company's residence.

A company is deemed to be resident in the Isle of Man if its central management and control is exercised in or from the Isle of Man. For example, if the majority of its board of directors are resident, and/or the company's board meetings are held, in the Isle of Man.

2.1.5 Limited liability companies

The Limited Liability Companies Act 1996 (the "LLC Act") introduced the concept of a limited liability company ("LLC") into Manx law. This American concept, based upon the Wyoming model, combines a partnership-like membership structure and tax treatment with limited liability protection for its members. The LLC is a separate legal entity whose members' liability is limited to the amount of their capital contribution. The right to manage the LLC is vested in the members themselves, in proportion to their contributions, although they do have the option of appointing a

manager.

To form an LLC, the following must be delivered to the Department: articles of organisation prepared in accordance with the LLC Act; a completed form L6 which gives details of the intended registered office and registered agent; and the relevant incorporation fee (being £100 for the standard 48 hour incorporation service, £250 for the 2 hour incorporation service or £500 for the "while you wait" incorporation service).. The LLC Act was amended in 2014 to provide for single member LLCs.

LLCs can be used for a wide variety of purposes, including joint venture vehicles and asset finance and leasing arrangements. The Isle of Man has developed a reputation as an efficient jurisdiction in which to establish aircraft finance and leasing structures and is used for these purposes by some of the world's largest airlines and aircraft lessors. The structures may include the sale and leaseback of aircraft by Manx private limited companies (including LLCs) which can make payments free of any Isle of Man withholding tax. LLCs may also be used for shipping related activities because of similarities to a partnership structure.

The circumstances in the event of which an LLC must be wound up and dissolved include: the period (if any) fixed for the duration of the LLC expires; the unanimous written agreement to that effect of all the members; the death, retirement, resignation, expulsion, dissolution of a member or occurrence of any other event which terminates the continued membership in the LLC unless the appropriate notice has been delivered to the Companies Registry; an order of the High Court.

2.1.6 Cell companies

A cell company is a company that has the power to create one or more cells, each with its own assets, liabilities, business activities and risk. By separating the assets and liabilities of a cell from another cell, or the cell company itself, a cell company is able to effectively restrict the access of creditors to specific assets.

There are two types of cell company in the Isle of Man:

- a protected cell company; and
- an incorporated cell company.

Protected cell companies

(a) Legal structure

With the enactment of the Protected Cell Companies Act 2004 (the "PCC Act"), the Isle of Man government introduced the concept of the protected cell company ("PCC") into Isle of Man law. Just like a conventional company, a PCC has a single, separate legal personality, distinct from both its members and directors, and is subject to all the provisions of the Isle of Man Companies Acts 1931 to 2004.

A PCC differs from a conventional company in that the company is sub-divided into a number of legally distinct portions, known as the core (the non-cellular part of the company) and cells. Whilst the core and the cells are legally distinct, the cells of a PCC do not have a separate legal personality. Each cell has its own share of the PCC's overall share capital, allowing a shareholder to be the sole owner of one cell whilst only having a small interest in the PCC as a whole. The assets, liabilities and revenue streams attributable to each cell are segregated from those attributable to every other cell and from those attributable to the core. The PCC Act provides the statutory regime for this segregation.

Under the PCC Act it is possible for a conventional company to convert into a PCC provided the conversion is authorised in its articles of association.

(b) Segregation of core and cells and position of creditors

Assets attributable to a cell are available only to satisfy the claims of creditors of the PCC attributable to that cell and are protected from the creditors of the PCC attributable solely to the core or to any other cell.

In order to further protect the assets of one cell from the creditors of any other cell, the PCC Act provides that certain terms are implied into every transaction to which a PCC is a party (unless expressly excluded in writing). These implied terms include an agreement by the counterparty contracting with a PCC that the counterparty will not seek to make assets of the PCC that are attributable to one cell liable in respect of liabilities attributable to any other cell or to the core; and that if the counterparty nevertheless does so, it is liable to pay to the PCC an amount equivalent to the benefit received and/or to hold the relevant assets on trust for the PCC (in which case any such amount or benefit received is used by the PCC to compensate the adversely affected cell).

Where the assets attributable to one cell are (notwithstanding the provisions of the PCC Act) made liable for a liability attributable to another cell or to the core (and no compensation or restoration is available from the unjustly enriched creditor under the provisions described above), the PCC Act imposes an obligation on the PCC to transfer to the adversely affected cell from the cell or the core (as the case may be) where the liability rightfully rests, assets sufficient to compensate the adversely affected cell. Where the liability is rightfully that of another cell, and the assets of that cell are insufficient to compensate the affected cell, then recourse must be had to the core assets.

The PCC Act states that where a liability is attributable to a particular cell, then the basic rule is that the assets of that cell will be primarily liable, but once those assets have been exhausted the core assets of the PCC are liable. However, it is open for the PCC to include in its agreement with any counterparty a provision (a "Limited Recourse Provision") that its liability to such counterparty will only be met from the relevant cellular assets and that the counterparty will have no recourse to the core assets. Such a Limited Recourse Provision is expressly provided for in the PCC Act.

A receivership mechanism exists under the PCC Act in order to allow an "insolvent" cell to be "wound up" without the PCC as a whole entering liquidation. In fact, the PCC can carry on its usual business in all respects save for matters relating to the "insolvent" cell. Through this mechanism, it should be possible for the PCC to carry on business notwithstanding the "insolvency" of any particular cell and without requiring the owner of the core to provide any further core or cell capital.

(c) Uses of PCCs

A company within the meaning of the Companies Act 1931 may, regardless of its description or the business or class of business it carries on, be incorporated or converted into a PCC.

(d) Reservations

The PCC is still a relatively novel vehicle and it is not known whether, and to what extent, foreign courts would recognise the

statutory segregation of assets and liabilities provided for in the PCC Act. The issue is highly relevant where assets of a PCC are held outside the Isle of Man. For example, a judgment creditor of a PCC in respect of one cell might seek execution against assets of the PCC that are attributable to a different cell and which are held in a foreign jurisdiction. The foreign court might not recognise the cellular structure of the PCC and thereby permit assets attributable to one cell effectively to be used to satisfy liabilities attributable to another cell. It is, therefore, important to structure the business of a PCC to minimise this risk.

However, protected cell companies (also known as "segregated account companies" in some jurisdictions) have been in use in various jurisdictions for some years and an increasing number of jurisdictions (including a number of States in the USA) are developing an appetite for this type of corporate vehicle. The number of PCCs licensed to act as insurers or reinsurers around the world continues to grow at a significant rate, as do the uses of the PCC structure.

(e) PCCs under the Companies Act 2006

The 2006 Act provides a regime for companies, incorporated, registered or continued under the 2006 Act that are PCCs. Although the 2006 Act mainly reflects the regime which exists under the PCC Act, it does include a couple of significant differences (which are summarised below).

Only companies limited by shares can be formed as a PCC. A company limited by shares that has been incorporated, registered or which continued its existence under the 2006 Act that is not a PCC can apply to be converted into a PCC.

Being a company regulated under 2006 Act, notwithstanding any provision to the contrary included in its memorandum or articles of association, a PCC has (irrespective of corporate benefit and irrespective of whether or not it is in the best interests of the company to do so), unlimited capacity to carry on or undertake any business or activity, to do, or to be subject to, any act or to enter into any transaction.

Incorporated cell companies

(a) Legal status

Like a PCC, an incorporated cell company consists of a core and one or more cells. The core of an ICC is the incorporated cell company itself, which core has the power and authority to create any number of legally distinct cells called incorporated cells ("Incorporated Cells"). Unlike a PCC, however, each of the Incorporated Cells has a separate legal personality.

Although an Incorporated Cell is created by its ICC, the shares in an Incorporated Cell do not have to be held by its ICC. An Incorporated Cell may also own shares in another Incorporated Cell of its ICC, although it may not own shares in its ICC. An ICC is not therefore limited in its use as an alternative to a group structure.

ICCs can determine (subject to the agreement of the applicable Incorporated Cells) whether to prepare separate financial statements for the ICC and each Incorporated Cell, or consolidated financial statements for the ICC and its Incorporated Cells. Similarly, the ICC and each Incorporated Cell may be audited separately or, if the applicable Incorporated Cells agree, on a consolidated basis. This affords ICCs the added flexibility over a PCC of being able to restrict the financial information which is shared with shareholders to that which is specifically relevant to the Incorporated Cell in which the shareholder has an investment.

Notwithstanding that each Incorporated Cell has its own corporate personality, when entering into transactions with third parties, the directors of an ICC and an Incorporated Cell are required by law to inform the counterparty whether the transaction is being entered into by the ICC or by an Incorporated Cell, and if it is by an Incorporated Cell, they must identify which Incorporated Cell is the contracting party.

(b) Segregation of assets and position of creditors

The key distinction between a PCC and an ICC is that each Incorporated Cell has a separate legal personality. As discussed above, there have been concerns that foreign courts which are not familiar with the concept of a separate cell vehicle might not recognise the cellular structure of the PCC and might permit assets attributable to one cell to be used to satisfy the liabilities attributable to another cell. In contrast, as the separation of corporate personality is respected in most jurisdictions, the ICC structure can provide more comfort in international structures and transactions.

(c) Uses and advantages of ICCs

As at the date of publication a company cannot be incorporated as an Isle of Man ICC unless it is, or will be, authorised to carry on insurance business within the meaning of the Insurance Act 2008.

The ICC offers an advantage over the PCC structure in that separate Incorporated Cells under the same ICC may contract with each other and transfer assets among the Incorporated Cells freely.

The ICC regime is particularly flexible in terms of corporate mobility. The ICC Act allows for a company incorporated under the provisions of either the Companies Acts 1931 to 2004 or the Companies Act 2006 to convert into an ICC. A PCC can also be converted to an ICC. Similarly an Incorporated Cell may be converted into a company independent of its ICC. It is also possible to migrate companies from other jurisdictions to the Isle of Man.

The ICC structure may also offer benefits in the context of capital markets and restructuring transactions. The separate legal personality of an Incorporated Cell means that third parties can undertake more focussed due diligence, focussing only on the target Incorporated Cell or Incorporated Cells.

It is possible for a limited partnership to adopt separate legal personality.

2.2 Partnerships

2.2.1 Overview

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 Isle of Man is the Partnership Act 1909 (the "1909 Act") which is based on the United Kingdom's Partnership Act 1890 and Limited Partnership Act 1907.

In terms of the 1909 Act, a "partnership" is the relationship which subsists between persons carrying on a business in common with a view to a profit. Both general and limited partnerships are usually constituted by way of written agreement, although this is not a legal requirement.

By virtue of the Isle of Man's Registration of Business Names Acts 1918 and 1954, a partnership's business name must be registered with the Department of Economic Development if that name does not consist of the name of all the partners. There is no requirement for other information such as the partnership agreements or the partnership accounts to be filed, although there are further requirements in respect of limited partnerships (see section 2.2.3 below).

Generally speaking, a partnership governed by Isle of Man law with Isle of Man resident partners is referred to as a "Manx" partnership (regardless of where the partnership property is located). The 1909 Act does not state that only partnerships expressly governed by Isle of Man law fall within the ambit of that Act and the statutory provisions governing limited partnerships do not appear to prohibit partnerships governed by foreign law, with foreign partners, from registering in the Isle of Man as limited partnerships. The nexus required for taxation is considered further in section 4.5.2 below.

As a matter of Isle of Man law, partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives. Partnership accounts provide information for partners, help demonstrate management and control of partnership assets and may also be required for taxation purposes. There is no prescribed format for partnership accounts, nor any requirement for such accounts to be audited (although they often are).

2.2.2 General partnerships

Unlike a limited partnership, the partners of a general partnership each normally have responsibility and unlimited personal liability for the debts and liabilities of the partnership.

The acts of a partner in pursuance of the usual business of the partnership are binding on the partnership.

The 1909 Act describes, inter alia, the nature of partnership, the relations of partners to one another and to third parties and the dissolution of the partnership and its consequences.

2.2.3 Limited partnerships

As in England, the rules relating to general partnerships are modified in respect of limited partnerships.

Every Manx limited partnership must be registered with the Department of Economic Development (the "Department"). Such registration is achieved by delivering a statement detailing, inter alia, the firm's name, the general nature of the business (which need not be in the Isle of Man, although a place of business must be maintained there), the names of the partners and the amount contributed by each limited partner. The partnership deed does not have to be registered. In default of registration, the partnership will be regarded as a general partnership and each limited partner will be deemed to be a general partner and, therefore, liable for all the debts of the partnership.

It is possible for a limited partnership to adopt separate legal personality. For income tax purposes, a limited partnership with legal personality will continue to be treated as a partnership and each member will continue to be treated as a partner.

Under Manx law, a limited partnership must consist of one or more general partners and one or more limited partners. Either type of partner may be an individual or a corporate entity. A registration fee (being £100 for the standard 48 hour registration service, £250 for the 2 hour registration service or £500 for the "while you wait" registration service) is payable to the Department in respect of the registration of a limited partnership. The number of partners is generally restricted to twenty. However, regulations (made pursuant to the 1909 Act) exempt the following categories of limited partnerships from this general limit:

(a) those which constitute collective investment schemes (within the meaning of the section 1 of the Collective Investment Schemes Act 2008);

(b) those engaged in shipping or aviation operations; and

(c) those whose interests are admitted to the Official List of the United Kingdom Listing Authority.

The powers and duties of the general partner of a Manx limited partnership are essentially the same as those of a partner of a general partnership. Provided a limited partner takes no part in the management of the partnership's business, its liability for the debts and obligations of the partnership will be limited to its contributions to the partnership. If a limited partner gets involved in the management of the business it will, together with the general partner, be liable for all debts and obligations incurred whilst taking part in such management. However, the 1909 Act makes it clear that a limited partner will not be regarded as taking part in the management of the partnership business by, inter alia, consulting with and advising the general partner, investigating, reviewing, approving or being advised as to the accounts or business affairs of the partnership, or voting as a limited partner in relation to its affairs.

A limited partner may receive, out of the capital of the limited partnership, a payment representing a return of the whole or part of its contribution to the partnership, provided the partnership is solvent and able to pay its debts as they fall due (before and after the payment) and the general partner makes a statutory declaration to that effect. This is a clear development from the normal position where a partner can only realise his investment upon the dissolution of the partnership or by assigning his partnership interest.

Annual statements must be filed with the Department concerning the limited partnership, as must details of any change in the name, place of business or partners, within one month of the change.

Manx limited partnerships are required to maintain a place of business in the Isle of Man. This will generally entail the general partner (if a company) being incorporated under the Isle of

Trusts are highly important structures in private wealth planning, structuring commercial transactions, ownership of property...and philanthropy.

Man Companies Acts or registering in the Isle of Man as a foreign company under the same. Such partnerships must also appoint one or more persons, resident in the Isle of Man, who are authorised to accept service of any legal process or other documents served on the partnership.

3 TRUSTS AND FOUNDATIONS

3.1 Overview of trusts

Trusts are highly important structures in private wealth planning, structuring commercial transactions, ownership of property for groups of persons and philanthropy.

A trust is a legal arrangement under which property is held in the name of one or more persons ("trustees") for the benefit of others ("beneficiaries"). Trusts may arise by law or by the imposition of express terms by the person placing assets in trust (the "settlor").

A trust is given effect in common law jurisdictions like England under the part of law known as the law of "equity". The Isle of Man is a common law jurisdiction so the law of trusts in the Isle of Man has broadly followed the development of the law of trusts in England.

Occasional decisions in the Manx and English courts and legislation passed in the last 20 years or so have caused a few differences to develop between Manx and English trust law. Still, an English lawyer will readily understand the concepts of Manx trust law.

Legislation in the Isle of Man exists not so much as to establish the trust concept, but rather, as in England, to facilitate trust administration and to clarify uncertainties. The current legislation is as follows:

(a) Trustee Act 1961 - this is closely based on the Trustee Act 1925 of the United Kingdom Parliament ("Parliament");

(b) Variation of Trusts Act 1961 - this is closely based on the Variation of Trusts Act 1958 of Parliament;

(c) Perpetuities and Accumulations Act 1968 - this is based on the Perpetuities and Accumulations Act 1964 of Parliament, but with a higher perpetuity period;

(d) Recognition of Trusts Act 1988 - this applies, with some modifications, The Hague Convention on the Law Applicable to Trusts and on their Recognition to the Isle of Man. Manx courts thereby recognise foreign trusts and seek to uphold private international law conflicts principles applying to the proper law of the trust, save where to do so would be manifestly incompatible with Isle of Man public policy;

(e) Trusts Act 1995 - this confirms the ability to change the governing law of a trust in appropriate circumstances and ensures that, as regards trusts governed by Manx law, the Manx courts will not have regard to foreign laws in determining certain matters, such as the capacity of the settlor, the validity of the trust and the powers of the trustees;

(f) Purpose Trusts Act 1996 - this permits the establishment of certain non-charitable purpose trusts in the Isle of Man; and

(g) Trustee Act 2001 - this is based on the Trustee Act 2000 of Parliament which modernises the default powers of trustees in relation to investment and the appointment of agents and which also establishes a new statutory duty of care for trustees. The Act also raised the maximum statutory perpetuity period for trusts governed by Manx law and established after 2000 to 150 years.

The Trusts (Amendment) Bill 2014 (the "Bill") is likely to come into operation in 2015. The Bill makes amendments to the Trustee Act 1961, the Perpetuities and Accumulations Act 1968 and the Trusts Act 1995. More details on these prospective amendments are set out later in this Trusts section of the Guide.

Other legislation pertinent to trusts includes the Settled Land Act 1891, Settled Land Act 1983, Charities Acts 1962 and 1986, Charities Registration Act 1989, Wills Act 1985 and Powers of Attorney Acts 1983 and 1987. As can be seen from the above, Manx trust legislation is similar to that in England. However, the Isle of Man has not enacted statutes equivalent to the Trusts of Land and Appointment of Trustees Act 1996, the Trustee Delegation Act 1999 or the Charities Act 2011 of Parliament. The law on settlements of land for successive interests also differs somewhat from English law.

The persuasive nature of decisions of the English courts in the Isle of Man, which are generally followed unless there is some Manx statutory provision or clear decision of a Manx court to the contrary, makes the similarity between trust law in England and the Isle of Man strong. The significance and frequency of court decisions in international centres such as the Isle of Man, and the growing confidence of their courts to deal with major issues in the past ten or fifteen years, has caused trust law in the Isle of Man and elsewhere to develop in a more sophisticated manner, reflecting more modern reality and practice.

3.2 Classification of trusts

Trusts may be classified in various ways:

3.2.1 How they arise: express trusts versus implied trusts

This classification divides trusts according to how they arise.

Express trusts are created with the imposition of specific terms. This is normally done in writing: in a formal trust instrument for a lifetime trust or by will for a testamentary trust.

Implied trusts are implied by law from the circumstances (rather than the settlor's express directions) and comprise:

(a) resulting trusts: presumed to arise where the settlor has failed to divest himself of the beneficial ownership of assets that he has placed on another's name; and

(b) constructive trusts: implied by the conduct of the parties concerned. It will be the case that, where a constructive trust does arise, it will be inequitable for the person holding the asset concerned to deny the existence of a trust. That does not appear to be sufficient in itself for such a trust to arise but, in a departure from English law, in the case of Cusack and Cotter v Scroop Limited (1997) 1 OFLR (ITELR) 68, the Manx court upheld the possibility of remedial constructive trusts, to be imposed by the court on the basis that equity demanded it. On 19th July 2000, in Re Scottish Life International Insurance Company Limited, the Manx court did impose a remedial constructive trust.

Trusts may also be imposed by statute, such as the statutory trusts imposed over the proceeds of an intestate deceased person's

estate by the Administration of Estates Act 1990.

3.2.2 For whose benefit they exist: private, public and purpose trusts

A fundamental rule of trust law is that a trust requires one or more beneficiaries to enforce it. This is known as the "beneficiary principle". Classification on this basis is determined by who that is.

(a) "Private trusts" are trusts made for the benefit of specific persons (beneficiaries) and are enforceable by any of the beneficiaries concerned.

(b) "Public trusts" are trusts made for the benefit of the public at large or a section of the public. They are also known as "charitable" trusts. Trusts for charitable purposes basically have no specific beneficiaries, but satisfy the "beneficiary principle" because they are enforceable by action by the Attorney General as parens patriae.

The Manx definition of charity is probably a little more generous than that in England but the concept is largely the same. Registration of charities is most important to their supervision but there exists a most attractive regime for privately funded charities (see the Charities (Exemption) Regulations 2008).

(c) "Purpose trusts" are trusts for purposes that are not for the benefit of particular persons (or even a class of persons). Trusts for charitable purposes are classified and enforceable as above. Having no beneficial objects, historically trusts for non-charitable purposes were invalid except in very limited circumstances. Responding to commercial demand, and emulating the move in other international centres, the Purpose Trusts Act 1996 was passed. This permits the establishment of trusts for non-charitable purposes, provided they satisfy certain requirements. Broadly:

(i) they must not exceed 80 years in duration;

(ii) the purpose must legal, reasonable and moral;

(iii) there must be an "enforcer", to address the beneficiary principle; and

(iv) one of the two or more trustees must be a "designated person" - resident in the Isle of Man and holding a necessary professional status.

3.2.3 The extent of the beneficial interest: bare trusts, fixed interest trusts and discretionary trusts

(a) A bare trust exists when the trustees hold property for a beneficiary who is absolutely entitled to it. The trustee is a nominee.

(b) A fixed interest trust specifically identifies the beneficiaries and stipulates how, to what extent and when, they are to enjoy the trust property. In the area of private wealth, the fixed interests are likely to comprise:-

(i) the right to receive the income from the trust property – commonly for life (referred to as a "life interest"); and

(ii) the right to receive the capital of the trust property. This may be immediate or deferred, contingent or vested, and absolute or subject to defeasance.

A beneficiary's own entitlement may be subject to prior interests. A basic fixed interest trust might comprise, for example, a right to the income for life for A with a right to the capital (subject to the life interest) for B. They may also be subject to overriding powers, enabling the holder of those powers (usually the trustees) to revoke the interests concerned and to direct new terms to the extent permitted by the powers.

(c) Discretionary trusts are, broadly, trusts where (at least during a certain period) no one is absolutely entitled to the income and capital of the trust. Instead, the trustees will be directed to determine (from among the beneficiaries) who will benefit from the income and/or capital, to what extent and when. Income that is not distributed will often be directed to be accumulated during the perpetuity period. Discretionary trust instruments will generally also confer powers over the capital of the trust property on trustees.

(d) Protective trusts are life interest trusts subject to section 33 of the Trustee Act 1961. The life interest ends if the principal beneficiary does, or attempts to do, anything that would deprive him of his right to receive the income of the trust fund and is replaced with a discretionary trust over income, under which the principal beneficiary and specified relatives of his are potential beneficiaries.

3.2.4 Commercial trusts

Trusts are used in many commercial contexts. This is principally because they allow:-

- One person to hold title to property for a number of other persons;
- One person to manage property on behalf of other persons;
- Flexible interests to be created over property;
- The beneficial ownership of property to be determined without the need for express transfer of title.

Examples include:-

Unit trusts: the Isle of Man has a collective investment scheme/ mutual fund industry. Manx collective investment vehicles take a variety of forms, one of which is the unit trust. The terms of the trust deed provide for the investment property to be held on specified terms among the various investors (who will be holders of units of interest in it. They usually allow participants to redeem their units at prices related to the value of the unit trust's net assets (see section 5.8.4 for more details).

Occupational pension schemes, employee benefits and share schemes: benefits can be provided for employees through tax-efficient trusts, whether in the form of cash benefits or shares or share options. The terms of the trust will be critical in matching the employees' interests with the tax law requirements.

Syndicated lending: a single borrower may be able to borrow from a group of lenders where one acts as trustee for the others, so that recovered funds are held for the lenders generally in accordance with the trust terms.

3.3 Creation of trusts

3.3.1 Form

Whilst trusts governed by Manx law do not necessarily need to be committed to writing, they usually are. Whether trusts of land need to be evidenced or created in writing seems doubtful, but they almost invariably are for express trusts of land (not least for registration purposes).

3.3.2 Registration

A private trust is essentially a private document and (apart from any taxation requirements) does not require registration.

Charitable trusts (for public charitable purposes) are public trusts and must be registered with, and are subject to supervision by, the court in the Isle of Man. Such trusts must also file annual audited accounts. There are exemption regulations, however, permitting privately funded charities that satisfy certain criteria as to their management and establishment to escape public registration, provided they register with the Attorney General.

Pensions may need to be registered under the Retirement Benefits Schemes Act 2000 and unit trusts under the Collective Investment Schemes Act 2008.

3.3.3 The basic requirements of a trust: (1) trust property

A trust requires property in order to exist. Hence, at creation, the initial trust assets must be lawfully transferred to the trustees to, or at least under the control of, the trustees, to "constitute" the trust.

The property must be capable of being the subject of a trust.

Trust property need not necessarily have any connection with the Isle of Man, but, if the place where the property is situated does not permit property to be held other than absolutely, the trust may prove ineffective in practice.

3.3.4 The basic requirements of a trust: (2) the "three certainties"

In addition to trust property, it must be certain that a trust has been imposed over it. There are three essential requirements:

(a) **certainty of intention** - a clear intention by the settlor to impose a trust evidenced by express and unambiguous language – it must not amount to a mere hope or wish or to an outright gift;

(b) **certainty of subject matter** – since trust property is a prerequisite, the trust property must be clearly identifiable; and

(c) **certainty of object** - those for whose benefit the trust exists (the beneficiaries) must be identifiable (this requirement is modified, of course, for charitable or purpose trusts).

If a settlor does not intend to create a trust and/or does not intend to transfer the trust property wholly to the trustees, the trust will lack essential certainty of intention. It may therefore be held to be a "sham". The Jersey decision in Re the Esteem Settlement, Group Torras SA v Al-Sabah & Ors [2004] WTLR 54 has been considered in decided cases and seems likely to be applied in the Isle of Man.

It would appear that trusts may be vulnerable to attack either because of the way they have been established (a formal sham) or administered (a substantive sham). A formal sham would occur if the trust instrument itself allowed the settlor so much control over the trust assets that the trustees were effectively nominees and not independent trustees. A substantive sham would occur when, notwithstanding the express terms of the trust instrument, the reality of the arrangement is that the settlor (with the agreement or acquiescence of the trustees) can exercise dominion and control over the trustees in the management and administration of the trust.

3.3.5 Fraudulent assignments

The Isle of Man has no specific asset protection legislation. However, to the extent that the assets of a properly constituted trust have passed from the beneficial ownership of the settlor into the legal ownership of the trustees, trusts are, to an extent, automatically asset protective.

The Statute of Elizabeth 1571 (13 Eliz, c5) of Parliament was passed to tackle the mischief of a settlor who, facing mounting debts, transfers his assets to a third party to hold on trust and thereby makes himself 'a man of straw' to the clear prejudice of his lawful creditors who would thus have no hope of being paid.

It is not entirely clear as to whether or not the Statute of Elizabeth still applies to the Isle of Man. However, the Isle of Man's Fraudulent Assignments Act 1736 (the "1736 Act") is broadly equivalent to the Statute of Elizabeth. Under the 1736 Act "all fraudulent assignments or transfers of the debtor's goods or effects shall be void and of no effect against his just creditors, any custom or practice to the contrary notwithstanding." There is no time limit for such a finding.

The Manx case of Re Heginbotham 1999-01 MLR 53 is currently the leading decision as to how these provisions apply to trusts under Isle of Man law. It was held that, for the provisions to apply, the debtor must intend to assign or transfer his goods or effects fraudulently for such assignment or transfer to be void. It was decided in that case that the settlor must be settling property to defeat existing and present debts (i.e. those subsisting at the date of the transaction), together with known and ascertained debts (which are to fall due on a date in the future), for the transfer to be fraudulent. Debts which may possibly be incurred at some future date would not fall within the ambit of a fraudulent assignment.

Thus, where assets are settled on trust to defraud existing current and/or known and ascertainable future creditors, such a settlement is liable to be set aside if the relevant settlor was insolvent at the time of settlement or was rendered insolvent by making the settlement. A Manx trust will only protect against unknown future creditors of the settlor.

There is also a provision under section 30 of the Bankruptcy Code 1892 that voluntary settlements of property in some circumstances can be void against a trustee in bankruptcy if the settlor becomes bankrupt within two years of making the transfer (or ten years if he was insolvent at the time or became so as a result).

3.3.6 Capacity of settlor and choice of governing law

Absence of complete constitution and satisfaction of the "three certainties" (above) are not the sole grounds on which a trust or the transfer of property on its terms might be challenged.

As a general principle, a settlor must have capacity to transfer the trust property and to impose the trust upon it. This means that the settlor must have legal capacity to hold and transfer the legal interest in the trust assets to the trustees. He must also have the necessary mental capacity. Under Manx domestic law, an individual has legal capacity at the age of 18 and has mental capacity if (very broadly) he understands the effect of his acts. At common law, the settlor's domicile may affect these factors. The Trusts Act 1995 (the "1995 Act"), however, provides that a term of a trust selecting Manx law as the governing law of the trust is valid, effective and conclusive, regardless of any other

circumstances and that Manx law governs issues of capacity. However, there are some notable exceptions to this rule. In particular, the 1995 Act will not validate a trust of foreign real estate which is invalid according to the laws of the jurisdiction where the land is situated, or a testamentary trust created by a will that was invalid according to the law of the testator's country of domicile.

The Hague Convention on the Law Applicable to Trusts and their Recognition (given effect by the Recognition of Trusts Act 1988) permits the settlor to select the governing law of a trust unless it would be manifestly incompatible with public policy. The 1995 Act expressly provides that a selection of Manx law extends to the settlor's capacity. The Trusts (Amendment) Bill 2014 (see section 3.1), once effective, will amend the 1995 Act to extend this protection for Manx trusts from foreign legal claims to the capacity of the trustee, protector and beneficiary, as well as to the settlor. It also will exclude the recognition or enforcement of foreign court judgments in so far as these will be inconsistent with the 1995 Act unless the High Court of the Isle of Man orders that such judgments are to be recognised.

The 1995 Act also provides that, subject to certain provisos and where the terms of the trust so provide, the governing law of a trust may be changed.

3.3.7 Reserved powers and protectors

Manx law makes no specific provision as to which powers, if any, may be reserved by the settlor or vested in a person who is not a trustee (such as a protector). The common law therefore applies.

Article 2 of The Hague Convention on the law applicable to trusts and their recognition states that the reservation of certain rights and powers by the settlor is not necessarily inconsistent with the existence of a trust. However, the reservation (or vesting in the protector) of too much power calls into doubt the substance of the trust (on the grounds that the holder of the powers effectively owns the assets) or results in the settlor (or protector, as appropriate) being deemed to be a trustee (which may have taxation or other ramifications).

Protectors are used widely in Manx trusts. Their role is not defined in statute but acting as protector in the course of business in or from the Isle of Man may subject the protector to regulation (in the same way that trustees are) in the Isle of Man under the Financial Services Act 2008.

In the Manx case of Rawcliffe v Steele 1993-95 MLR 426, it was held that a protector owed fiduciary duties and was therefore subject to the court's inherent jurisdiction for the administration of a trust. In IFG International Trust Company Limited and others v French 2012 MLR 637, the court considered carefully the entitlement of a protector to be indemnified from trust property, again considering the protector's position to be fiduciary in nature. It also refused to imply a right to indemnity in addition to an express one.

The trust instrument will normally grant the protector various powers. It is common for a protector to have power to remove and appoint trustees, to change the 'proper' law governing the trust, to veto distributions and other changes to the terms of the trust and to obtain information regarding the administration of the trust.

3.3.8 Letters of wishes

Letters of wishes are common in the context of trusts governed by Manx law and offer trustees assistance as to how to exercise their discretionary dispositive and administrative powers. The court is likely to consider that a trustee can and should consider a letter of wishes, to the extent that it is framed in proper terms. Nevertheless, it is not binding and a trustee should not slavishly follow a letter of wishes without applying its mind to the subject. Beneficiaries will only be entitled to see them in limited circumstances.

3.3.9 Perpetuities and accumulations

Manx common law requires that trust assets vest as to interest within the requisite perpetuity period. Since the coming into effect of the Perpetuities and Accumulations Act 1968, the fact that a trust instrument permits a trust to exceed the perpetuity period is not necessarily fatal ab initio – a "wait and see" period operates to allow the trust interests to vest within the appropriate period. In the absence of express provision in the trust instrument, the common law period of a relevant life or relevant lives in being plus 21 years (plus a period of gestation) applies.

The Act also permitted a statutory period of up to 80 years to be selected - increased to 150 years under the provisions of the Trustee Act 2001 for trusts settled from 2001 onwards. The Trusts (Amendment) Bill 2014 (see section 3.1), once effective, will amend the Perpetuities and Accumulations Act 1968 to remove the requirement of a fixed perpetuity period at all for future dispositions.

There is no Manx legislation restricting accumulations of income, but it must not cause a trust to breach perpetuity rules.

3.3.10 Requirements as to settlors and beneficiaries

See sections 3.3.5 and 3.3.6 above regarding capacity and solvency requirements.

There are no Manx law requirements regarding residence for a trust to be created under Manx law. Likewise, it is open to a settlor to create a trust under non-Manx law, even over assets situated in the Isle of Man (Recognition of Trusts Act 1988).

3.4 Trustees

3.4.1 Requirements as to trustees

Trustees may be individuals or companies, provided they have capacity to hold property and to act as trustee. They need not, under Manx law, have a presence in the Isle of Man and the trust property need not be located in the Isle of Man (see the Recognition of Trusts Act 1988).

There are special requirements for trustees of purpose trusts (see section 3.2.2 above).

Those who provide trustee services by way of business in or from the Isle of Man are regulated under the Financial Services Act 2008 and, subject to certain exceptions, must hold a fiduciary licence (see section 1.4.3 above).

The Money Laundering and Terrorist Financing Code 2013 (see section 1.4.8 above) applies to trustee services.

There is no general preclusion against trustees of trusts governed by Isle of Man law owning assets (including real property) in the

Isle of Man or elsewhere except as regards land (and interests in it) in the Isle of Man being held in purpose trusts and certain kinds of property being held in pension schemes.

3.4.2 Powers of trustees

Trustees' powers derive from the trust deed, Isle of Man statute and, where required, court order. Even where the Trustee Act 1961 or the Trustee Act 2001 confer powers on trustees, these may be subject to the terms of the relevant trust deed.

Trustees' powers may be dispositive (for example, to pay or apply income or capital to or for the benefit of beneficiaries) or administrative (for example, to invest the trust fund).

Owing to the duties imposed on trustees, they need certain protection. To begin with, they have an implied power to be indemnified from trust property for liabilities properly incurred in the course of acting as trustee. In addition, the court has power to forgive them for breaches of trust where they have acted reasonably and it would be equitable to do so. The trust instrument can expressly provide for the limitation of a trustee's liability, which offers greater certainty, but a trust instrument cannot exclude liability for fraud or dishonesty.

3.4.3 Duties of trustees

Trustees owe various duties to the beneficiaries of the trust, including very broadly (and subject to the terms of the trust instrument) the following duties:

- a duty of care, which will be higher where the trustees hold themselves out as having greater expertise (or might be expected owing to special qualifications they have);
- a duty to comply with the provisions of the trust instrument;
- a duty to obtain advice (unless they reasonably conclude that it is unnecessary or inappropriate to do so) when considering and reviewing investments;
- a duty to consider the statutory investment criteria when making and reviewing investments;
- a duty to review investments;
- a duty to act personally unless they are authorised to delegate; and
- a duty to exercise their powers in an informed manner, taking relevant considerations into account and ignoring irrelevant ones, in good faith and for the purposes for which the powers have been given.

In addition, their fiduciary position requires trustees to act with undivided loyalty towards their beneficiaries. This prohibits self-dealing, profiting and acting for the benefit of a third-party (including where they might be trustees of another trust) unless authorised by the trust instrument or by all of the beneficiaries.

3.4.4 Appointment and removal of trustees

Trustees must consent to being appointed as such (at least as regards express trusts).

The first trustees are normally appointed in the trust instrument. From time to time, they will change – owing to their own wishes, to circumstances or to the intervention of parties holding the necessary authority. Provision is made for the retirement and replacement of trustees in the Trustee Act 1961 in some circumstances, but there are rules as to the number of trustees under that Act.

Currently, where a trust fund includes real property, where the statutory powers apply, there must be at least two individuals or an approved trust corporation (and no more than four trustees) following the retirement or replacement of trustees. Following the coming into force of the Trusts (Amendment) Bill 2014, the Trustee Act 1961 will be amended to permit a trust to have a single trustee (unless the trust otherwise provides).

The trust instrument may name a person to appoint trustees under the statutory powers – otherwise they are exercisable by the trustees.

Alternatively, the trust instrument may set out express provisions for the retirement, appointment and even removal of trustees. This may be more liberal than the statutory provisions but may also be more restrictive (for example, as to the number of trustees).

The court also has power to appoint, replace and remove trustees, both under statute and under its inherent jurisdiction for the supervision of the administration of trusts.

This area of law is rather more complex than can be explained fully here and advice should always be taken: the consequence of the failure to appoint or discharge trustees can be profound since many subsequent steps may be defective without the correct trustees taking part.

Former trustees remain liable for breaches of trust committed during their periods of trusteeship.

Some legislation requires trustees with particular qualifications to be appointed (for example, the Purpose Trusts Act 1996, the Retirement Benefits Schemes Act 2000).

3.4.5 Regulation of trustees

Trustees who act as such in the course of business in or from the Isle of Man are subject to regulation under the Financial Services Act 2008 unless an exemption applies under regulations. This requires the holding of a licence (see section 1.4.3 for further details on the regulation of trust service providers).

3.5 Beneficiaries and the objects of powers

Beneficiaries are objects of trusts. As noted above, the beneficiary principle requires that a trust (not being a charitable trust or a purpose trust under the Purpose Trusts Act 1996) has one or more beneficiaries who can hold the trustees to account. Trusts may also contain powers to benefit persons who are not necessarily beneficiaries of trusts as such but may benefit from the exercise of a power contained in the trust instrument. The differences between trusts and powers are too complex to address here. Helpfully, for many purposes, there is no material difference. One such area is holding trustees to account: obtaining information, invoking the court's powers to remove and appoint trustees and taking action for a breach of trust (a breach by the trustees of their obligations under a trust - at least where it affects the trust property in which they are interested or which may be applied for their benefit).

The extent of beneficiaries' interests has also been considered earlier in this section 3.

Foundations are a recent innovation in Manx law.

3.6 Accounting for trust assets and providing information to beneficiaries

3.6.1 Trust accounts

Under Manx law, as under English law, a trustee must keep clear and accurate accounts of the trust property and, at all reasonable times, account to his beneficiaries. This may mean that the trustee must make financial and other information available to beneficiaries making a request (see below).

Trust accounts not only provide information for beneficiaries but demonstrate management and control of the trust fund, allow successor trustees to administer the trust and may also be required for taxation purposes.

There is no prescribed format for private trust accounts and such format therefore varies depending on the nature of the trust, the funds involved and the purpose of the accounts. There is no requirement for the accounts of express private trusts to be audited (although they often are).

3.6.2 Rights of beneficiaries to information

Since the Isle of Man case of *Schmidt v Rosewood Trust Limited* [2003] UKPC 26, it has been clear that:-

- no beneficiary or object of a power has any automatic right to information;
- objects of powers may be entitled to information just as beneficiaries of the trusts themselves are;
- disclosure is ultimately based upon the court's power of supervision of trusts and the need to allow beneficiaries and objects of powers to invoke the court's power;
- the rights of beneficial objects to information will depend to an extent on the nature and remoteness of their respective trust interest; and
- protection may need to be put in place for confidentiality.

Express provisions in trust deeds which purport to preclude trustees from releasing information in the manner described above are of doubtful enforceability, at least to the extent that the trustee would (if they were effective) escape supervision by the court at the instance of beneficial objects.

3.7 Foundations

3.7.1 Overview

Foundations are a recent innovation in Manx law. They have existed under civil law for some time and other international financial centres have introduced their own versions. They are similar to trusts in their role but they are registered like companies. Private clients from civil law countries are thought to prefer them to trusts in some cases, probably owing to familiarity and the fact that they are registered entities.

The relevant law is set out in the Foundations Act 2011 ("the Act").

At its heart, a foundation is a legal entity that arises where property is dedicated, with the appropriate formality, to allowable objects. Those objects can include the provision of benefits (among a family, for example), but may equally be for charitable or non-charitable purposes.

Foundations largely have uses analogous to those of trusts. While they have legal personality, they are closer in function to trusts than to companies, owing to the focus on application of property for specified purposes.

3.7.2 Differences from trusts

There are various aspects of foundations, which may make them more or less attractive than trusts:

- Foundations have legal personality, separate from their council.
- The fact that foundations are registered entities with a statutory framework seems to make it more difficult to find them to be a sham (although the doctrine of piercing a corporate entity would no doubt apply).
- Beneficiaries of a foundation have no interest in the assets of the foundation. Instead, the property belongs to the foundation itself (although a little care is required regarding the treatment of foundation income).
- While the theoretical basis of foundations is based on foundation property, the Act permits the creation of a foundation with no property.
- Property belonging absolutely to a foundation is not subject to the rule against perpetuities (remoteness of vesting).
- Trusts are more familiar in practice and have rather more case law, both in the Isle of Man and in England and the other Crown Dependencies. There is more limited knowledge of precisely where issues may lie with the foundations legislation and the operation of foundations in the Isle of Man.
- Foundations require no council members in the Isle of Man but do require a regulated person there to act as registered agent.

3.7.3 Creation of foundations

Form
Foundations require a foundation instrument and foundation rules.

The foundation instrument is a public document and is required to set out certain fundamental facts about the foundation – not unlike a memorandum of association of a company. It must include the objects of the foundation but, in practice, as regards providing benefits to persons, it can refer to the foundation rules (which are private for non-charitable foundations).

The foundation rules are private, except for a charitable foundation. The Act provides that the rules must provide for a council, a registered agent in the Isle of Man, an enforcer (if the foundation has non-charitable purposes as its objects), the initial assets (if any) and winding up. They may also provide for other matters, including reserved powers.

Registration
A foundation comes into existence on registration (whether or not it has property). The register is public.

A charitable foundation will also need to register as a charity under the Charities Registration Act 1989 unless it is exempt from registration under the Charities (Exemption) Regulations 2008. If it is registered, its rules will need to be registered and will be public.

3.7.4 Transfers to foundations and firewall legislation

Foundations are subject to the legislation prohibiting fraudulent dispositions in the same way as trusts (see section 3.3.5).

Likewise, there is legislation broadly equivalent to the Trusts Act 1995, protecting transfers to foundations from the ravages of foreign law. Still, differences in detail may produce different consequences for transfers to foundations.

The Act requires the rules to be updated whenever property is dedicated to the foundation. Dedication includes the transfer of property to a foundation for consideration as well as for no consideration.

3.7.5 Enforcement

Various persons are entitled to intervene, through the court, in the affairs of a foundation, including any beneficiaries, the enforcer of non-charitable purposes and the Attorney-General, in respect of charitable purposes. The Act provides for various remedies that they can seek.

The Act also provides for certain persons to be entitled to information, although it is possible to exclude the right for beneficiaries and others to demand information without court sanction (which will only be given where necessary for the proper supervision of the foundation).

3.7.6 Reserved powers and protectors

Reserved powers can be created, and may be transmissible, in accordance with the rules. It would be possible, for example, to create a role akin to that of trust protectors under the rules.

3.7.7 Council

The foundation rules must provide for a council to administer the affairs of the foundation.

They must (if individuals) be over eighteen years of age and are subject to legislation permitting disqualification from acting as a corporate director. There is no residence requirement in the Isle of Man. It is thought that companies may be appointed as council members.

Council members are subject to duties to act in good faith, with reasonable care and in the interests of the foundation. The Act makes specific provision as to the persons who are entitled to intervene in the affairs of the foundation.

3.7.8 Registered agent

While a foundation requires no Isle of Man-resident council members, it does require a registered agent there. The intention is very broadly to allow Manx authorities to intervene in the affairs of a Manx-registered foundation when it might otherwise have little or no other presence, so as to avoid their abuse or mismanagement. The registered agent must be a regulated entity and will be bound to maintain the foundation rules and other documents, as well as certain information. The registered agent also has an express right to certain information about the foundation.

The registered agent may, but need not, be a member of the council.

The registered agent also plays a critical role in creation of the foundation, being the party that must file the application.

The role is quite an onerous one – a registered agent is only discharged on the appointment of a replacement and there are various punishments if the registered agent fails to meet its obligations (including for its individual officers).

3.7.9 Enforcers

A foundation does not require an enforcer under Manx law except in respect of non-charitable purposes among its objects. The rules may provide for an enforcer even if there are no such purposes in its objects. If there is an enforcer, the Act provides for an entitlement to information and documents and constitutes the enforcer as a person who is entitled to intervene in the affairs of the foundation.

3.7.10 Migration of foundations

The Foundations (Continuance) Regulations provide for migration of foundations into the Isle of Man from other countries and for the migration of foundations from the Isle of Man to other countries.

The standard rate of income tax for companies in the Isle of Man is 0%.

4 TAXATION

4.1 Corporate income taxes

4.1.1 Introduction

Isle of Man corporate tax legislation largely refers to "corporate taxpayers". For ease of reading, this section 4.1 refers to "company" throughout instead of "corporate taxpayer". However, save where the context otherwise requires, such references to "company" should be regarded as including all forms of body corporate wherever established except for a Corporation Sole, a Scottish Partnership or a Limited Liability Partnership. Furthermore a Limited Liability Company established under the Isle of Man Limited Liability Companies Act 1996 is treated for Isle of Man income tax purposes not as a company but as a partnership (see section 4.5).

A company is normally considered to reside for tax purposes at the place where "central management and control" is exercised, which will usually be the place where the board of directors generally meet. All companies incorporated in the Isle of Man are deemed (for Isle of Man income tax purposes) to be resident in the Isle of Man. A company incorporated elsewhere will be held to reside in the Isle of Man if its management and control is exercised from the Isle of Man.

It is possible for an Isle of Man incorporated company to be treated as not resident in the Isle of Man for income tax purposes where it is managed and controlled elsewhere and the Assessor of Income Tax is satisfied that relevant conditions (as defined) are met.

There is no corporation tax or stamp duty payable in the Isle of Man, but companies in the Isle of Man are potentially liable to corporate income tax. In 2002 the Isle of Man government revealed a radical new tax strategy of standard zero rate income tax for Isle of Man companies, which took effect on 6 April 2006. The measure was designed, in part, to resolve the Isle of Man's issue with the European Union ("EU") over its exempt and non-resident companies legislation, which had allowed around 10,000 companies on the Isle of Man to claim a tax exemption on income derived from outside the Isle of Man. This special treatment was perceived as 'harmful' within the rules of the EU Code of Conduct on Business Taxation (the "Code of Conduct").

The aim was to achieve a uniform tax system for the whole business sector, with a new standard zero rate of corporate tax for both resident and non-resident companies, but combined with a higher rate of 10% levied on income deriving from certain banking and property activities (see section 4.1.2 below for further detail). The European Commission has confirmed that this standard zero rate is acceptable under the Code of Conduct.

4.1.2 Zero rate and exceptions

The standard rate of income tax for companies in the Isle of Man is 0% (the "standard zero rate"). The standard zero rate is applicable to all forms of income received by all companies save for three exceptions below (together, the "Exceptions").

Isle of Man licensed banks are taxed at a rate of 10% on income deriving from their "banking business". In summary, banking business includes: deposit taking and its related activities, including the re-investment or utilisation of deposits in any manner; ancillary income from deposit taking activities; and income deriving from capital held by a bank that it is required to hold under its banking licence conditions. Income received by banks that is not derived from their banking business will be taxed at the standard zero rate. Banking business does not include: income deriving from capital held by a bank in excess of the minimum amount required to be held under its banking licence conditions; income arising from sources of funding other than customer deposits, such as group funded lending; fiduciary deposits; and (subject to review by the Assessor of Income Tax) income arising from group functions.

The second exception to the standard zero rate is in respect of income received by companies that is derived from land and property in the Isle of Man that derives from rental, mineral extraction and property development activities.

The final exception is for retail business. Where a company carries on a retail business in the Isle of Man and has a taxable profit of more than £500,000 in any year from such business then it will be subject to the 10% rate.

It should be noted that since the introduction of the standard zero rate, the taxation of non-resident companies follows that of resident companies. Those companies registered under the Foreign Companies Act 2014 (formerly under the provisions of Part XI of the Companies Act 1931) as being incorporated outside the Isle of Man, but having a place of business on the Isle of Man, are taxed on their Manx source income at the standard zero rate (or 10% in respect of any income that derives from any of the Exceptions). Companies incorporated outside the Isle of Man, but having their management and control in the Isle of Man are normally regarded as tax resident in the Isle of Man and, therefore, their worldwide income is taxed at the standard zero rate (or 10% in respect of any income that derives from any of the Exceptions).

4.1.3 Distributions from companies

The Attribution Regime for Individuals ("ARI") was a taxation measure that affected accounting periods ending after 5 April 2008. It was repealed for periods commencing after 6 April 2012.

Broadly, the regime was designed to attribute the profits of Isle of Man resident companies to their Isle of Man resident shareholders where a sufficient distribution of profits did not happen. Following the repeal of ARI the Income Tax Division determined that it was necessary to issue guidance regarding the Isle of Man tax treatment of distributions made by Isle of Man companies.

Accordingly, on 22 June 2012 the Income Tax Division released a practice note on the taxation of distributions paid from Isle of Man Companies to Isle of Man resident shareholders. This practice note set out that previous concessions allowing certain distributions to be treated as capital (and so not subject to Isle of Man income tax) would no longer apply and strict new ordering rules were introduced.

Guidance followed in March 2013 setting out the application of the new ordering rules.

Broadly the rules state that any distribution will be treated firstly as untaxed income, then Isle of Man taxed income, then foreign taxed income and finally as capital.

4.1.4 Election to pay corporate income tax at higher rate

A company that is liable to pay tax at the standard zero rate if desired, may elect to pay tax at the higher rate of 10%.

An election must be made on or before the statutory filing date for the return of profits to which the election first relates. This election will apply for a five year period and is irrevocable.

4.1.5 Basis of assessment

All companies are assessed for tax on a current year accounting period basis "pay and file" system. Returns are issued at the end of a company's accounting period and the due date for the filing of company tax returns is 12 months and one day after the end of the accounting period. This is also the date by which payment of any income tax liability or charge must be made. However, returns can be filed and payments can be made before the due date.

Interest may be charged on any income tax liability or charge that is not paid by the due date and will be calculated from the due date, no matter when any form of payment notice was issued. Late penalties are also charged if a return is not filed by the due date.

The above system is only effective for accounting periods ending on or after 6 April 2007.

4.2 Individual income taxes

Acquiring tax residency in the Isle of Man is discussed in section 1.3.4 above.

The Income Tax Act 1970, as amended, provides for:

(a) Manx resident income tax, imposed on worldwide income, from all sources, of persons residing in the Isle of Man; and

(b) Manx non-resident income tax, imposed on Manx-source income derived by persons not resident in the Isle of Man.

4.2.1 Resident income tax

If residence is established, an individual is subject to Manx income tax at a basic rate of 10% on the first £10,500 of taxable income for individuals, £21,000 for married couples, and thereafter at a rate of 20%.

The taxable income of an individual resident in the Isle of Man is his total income less available allowances. 'Total income' is the total income from all sources worldwide less specific deductions given against a particular source of income (e.g. pension scheme contributions) and less general deductions (e.g. interest payments to a Manx lender and maintenance payments) which are given first against unearned income with any balance against earned income.

Some specific general deductions only attract tax relief at 10%. These include interest on mortgages and loans charitable donations or deeds of covenant, private medical insurance payments, nursing expenses and educational deeds of covenant entered into on or before 5 April 2011 and where the student is in qualifying full time education at that date.

Personal allowances are currently £9,500 for individuals and £19,000 for married couples. The additional allowance for single parents is £6,400 and for blind and disabled persons, £2,900.

A cap on personal income tax was introduced in 2006. This cap is set at a maximum level of £120,000 per annum, irrespective of earnings. The cap on the total income tax payable by a married couple (who do not elect for separate taxation) is set at £240,000. This measure is intended to attract high-net-worth individuals and active entrepreneurs to the Isle of Man with the drive to further stimulate the Isle of Man's thriving economy.

The 2014 Manx budget introduced further rules surrounding the tax cap. From 2014/15 it is necessary for an individual to elect for the cap for a period of five years, whereas previously it was possible to consider each year individually. If, during the five year election period the tax payer's circumstances change, the election may be withdrawn entirely, or suspended if the Assessor is satisfied that it was unforeseen at the time of making the election.

4.2.2 Non-resident income tax

Manx non-resident income tax is generally chargeable in respect of income arising or accruing from Isle of Man sources that belong to persons not residing in the Isle of Man. A non-resident person is not entitled to a personal allowance.

Directive 2003/48 of the European Union on the taxation of savings income (the "Directive") (which, for the purposes thereof, can include the proceeds of a redemption of certain investments in some circumstances) seeks to bring about the effective taxation of interest payments in a beneficial owner's member state of tax residence through the automatic exchange of information on cross border interest payments to individual beneficial owners. Although outside of the scope of the Directive, the Isle of Man has agreed to adopt the same measures as those set out in the Directive.

Accordingly, the Isle of Man entered into agreements with all the EU member states to apply a retention tax during a transitional period and has since moved to an automatic exchange of information with effect from 1st July 2011. Organisations who fall within the remit of the Directive ('paying agents') are required to report any relevant payments of interest made to EU resident citizens (as defined) to the Isle of Man Tax Authorities who will in turn, share that information with the relevant taxation authorities in those EU states.

Some types of income are subject to deduction of tax at source. For example, rents derived from Manx property are subject to withholding tax at 20% if paid to a non-resident individual by an Isle of Man company or by a resident individual who has received a notice from the Isle of Man Treasury requiring him to withhold tax at source. Other types of income, for example bank interest from approved institutions in the Isle of Man, are paid gross without deduction of tax at source.

Tax charged on the Manx income of a non-resident individual is subject to a limit. The limit is defined as the sum of: (i) the tax that would be due on Manx income reduced by any excluded income, and (ii) tax deducted at source from any excluded income. Excluded income sources include: dividends paid by a company incorporated under the Companies Acts 1931 to 2004 or the Companies Act 2006 or registered under the Foreign Companies Act 2014 (or formerly under Part XI of the Companies Act 1931); deposit interest paid by a banking institution; interest or dividends paid by a building society authorised under section 2 or 4A of the Building Societies Act 1986; interest or dividends paid by the Isle of Man government in respect of bonds; other remuneration paid by a company incorporated under the Companies Acts 1931 to 2004 or the Companies Act 2006 or registered under the Foreign Companies Act 2014 (or formerly under Part XI of the Companies Act 1931) to a company director

for services performed outside the Isle of Man, or in order to carry out statutory functions or attend board meetings within the Isle of Man.

4.2.3 Tax return requirements

Every person who has a liability to Manx income tax is required to make a return of his total income each year to the Assessor. This includes persons residing in the Isle of Man and persons not residing in the Isle of Man, but who derive income from sources within the Isle of Man. Tax returns are normally issued during April and must be completed and returned to the Assessor by 6 October.

Failure to make and deliver the required return will lead to a default assessment to Manx income tax and penalties will become due.

4.2.4 Personal service companies

New legislation was introduced in February 2014 regarding the taxation of payments made to Personal Service Companies ("PSCs"). Following this a guidance note was released in March 2014. The guidance note describes a PSC as "one through which services are rendered to its clients by a shareholder of the company or by a relative of such a person". The legislation is designed to remove the opportunity to obtain a tax advantage through the use of a PSC via income tax deferral and reduced national insurance contributions.

The legislation introduces "deemed employment" provisions which require a deemed employer to withhold tax and national insurance on payments made to a PSC. Penalties and interest will apply to the deemed employer where this is not adhered to.

The provisions apply where there is a relationship akin to employment between a worker and a client, but where the contract is made via a third party.

4.3 Withholding taxes

4.3.1 Payments from an individual to an individual

Where an Isle of Man resident individual has received a notice from the Isle of Man Treasury requiring him to withhold tax at source, tax must be withheld at a rate of 20% on any taxable payment made by him to another individual, who is not resident in the Isle of Man.

Examples of payments to non-residents that are subject to the 20% rate include: rental income; alimony and maintenance; payments under the terms of an educational deed of covenant; and interest payments.

There are other payments that may be subject to other forms of tax deduction at source, e.g. income tax instalment payments (ITIP).

As mentioned in section 4.2.2 above, non-resident individuals are able to benefit from a personal allowance and from a limit on the amount on income tax charged on Manx income. The Income Tax Division may permit a payer to take the non-resident personal allowance into account in computing the amount of income tax to be withheld from a payment to a non-resident individual. In all such cases, and in any other cases of doubt, the Income Tax Division should be consulted beforehand.

4.3.2 Payments from companies subject to the standard zero rate

Dividends paid to a non-resident company or individual will not suffer withholding tax.

Loan interest paid to a non-resident company will not suffer withholding tax.

Loan interest paid to a non-resident individual will not suffer withholding tax.

Rental income from Manx land and property will be subject to a 10% withholding tax if it is paid to a non-resident company and 20% if it is paid to a non-resident individual.

Certain directors' and consultancy fees will not be subject to withholding tax: (i) no withholding tax is due in respect of directors and consultancy fees where the duties are wholly performed outside the Isle of Man or, where directors' fees are paid solely in respect of statutory duties such as attending board meetings in the Isle of Man; (ii) if the directors' fees are paid in respect of executive duties in the Isle of Man in addition to statutory duties, then the rate of tax to be withheld from the whole of the fees paid is 20%.

Other Manx source income paid to a non-resident individual will be subject to 20% withholding tax at the discretion of the Assessor of Income Tax.

4.3.3 Payments from companies subject to the ten percent rate

Dividends paid out of profits of an accounting period ending on or after the 6 April 2007 are not subject to withholding tax. By virtue of the Income Tax (Corporate Taxpayers) Act 2006, dividends are no longer deductible when computing taxable profits but they carry a tax credit equal to the rate of tax paid by the company.

Rental income from Manx land and property is subject to a 10% withholding tax if it is paid to a non-resident company and 20% if it is paid to a non-resident individual.

Loan interest paid to a non-resident company does not suffer withholding tax.

Loan interest paid to a non-resident individual does not suffer withholding tax.

Certain directors' and consultancy fees will not be subject to withholding tax: (i) no withholding tax is due in respect of directors' and consultancy fees where the duties are wholly performed outside the Isle of Man or, where directors' fees are paid, these are solely in respect of statutory duties such as attending board meetings in the Isle of Man; (ii) if the directors' fees are paid in respect of executive duties in the Isle of Man in addition to statutory duties, then the rate of tax to be withheld from the whole of the fees paid is 20%.

Any other income paid to a non-resident company will not suffer withholding tax.

Other Manx source income paid to a non-resident individual will be subject to 20% withholding tax at the discretion of the Assessor of Income Tax.

Please note that payments may also be subject to withholding pursuant to the EU Savings Directive. Further details regarding how the Directive is applied in the Isle of Man are set out in section 1.2.2 above.

4.4 Transfer taxes on death or gifts

The Isle of Man does not levy death, inheritance or estate duty, stamp duties, capital gains, wealth or similar capital levies, capital

transfer or gift duties. Accordingly, no transfer taxes are payable on death or on gifts. There is a probate fee charged by the government, the maximum fee (where the value of an estate exceeds £1,000,000) is currently £7,500. Income tax is the only tax which is directly charged by Tynwald.

4.5 Taxation of partnerships

4.5.1 General

A partnership does not have separate corporate identity and is thus not assessable to Manx income tax in its own right. Rather, each partner is liable to pay income tax in respect of his share of the partnership income.

A return of the partnership's income must be submitted each year to the Manx Assessor of Income Tax by any one of the partners. The Assessor normally requires all such returns to be accompanied by a copy of the relevant annual partnership accounts and details as to the manner in which profits or losses are shared by the partners (usually contained in the partnership agreement). The amount of trading profits or losses, as adjusted for income tax purposes each year, is divided among the partners according to their profit-sharing arrangements for the accounting year and assessed on the respective partners for the year of assessment, of which the partnership's accounting year forms the basis of assessment for each individual partner. The amount to which a partner is entitled must therefore be shown in the tax return which that partner is required to make annually to the Assessor.

4.5.2 Nexus required for taxation

For the purposes of the Manx Income Tax Act 1970 (as amended), the expression "partnership" is ordinarily taken to include general partnerships and limited partnerships:

(a) established in the Isle of Man under Manx law, where the annual partnership profits include profits derived from business carried on in the Isle of Man;

(b) established in the Isle of Man under Manx law, where the profits are derived from business carried on outside the Isle of Man, but where one or more partners reside in the Isle of Man;

(c) established outside the Isle of Man under foreign law, but which derives profits from business carried on in the Isle of Man; and

(d) established outside the Isle of Man under foreign law and where the profits are derived from business carried on outside the Isle of Man, but where one or more partners reside in the Isle of Man.

Manx income tax is charged in respect of income arising or accruing from sources within the Isle of Man (whether or not the owners of the sources reside in the Isle of Man) and in respect of income arising or accruing from sources outside the Isle of Man which belong to persons who are resident in the Isle of Man.

Therefore, taxation nexus is determined by the residence of each partner and the location of each source of the partnership profits.

4.5.3 Brief synopsis

The following are examples of how partners may be treated for tax purposes under Isle of Man law:

(a) a partner who resides in the Isle of Man and whose partnership is established either in the Isle of Man under Manx law or outside the Isle of Man under foreign law is liable to Manx resident income tax in respect of his share of the partnership profits derived in the Isle of Man or elsewhere;

(b) a partner who does not reside in the Isle of Man and whose partnership is established either in the Isle of Man under Manx law or outside the Isle of Man under foreign law is liable to Manx non-resident income tax in respect of his share of the partnership profits derived from business carried on in the Isle of Man;

(c) a partner who does not reside in the Isle of Man and whose partnership does not carry on business in the Isle of Man or derive any income from Manx sources will have no liability to Manx non-resident income tax (regardless as to where the partnership is established); and

(d) a partner who does not reside in the Isle of Man is not liable to Manx resident income tax in respect of any foreign source income of the partnership.

4.5.4 Limited liability companies

Although a body corporate, a limited liability company established under the Isle of Man Limited Liability Companies Act 1996 is not a company for Isle of Man income tax purposes but a partnership subject to tax under this section, 4.5.

4.6 Taxation of trusts

Every person who has a liability to Manx income tax is required to make a return of income each year to the Assessor of Income Tax. Subject to certain exceptions, this requirement applies to persons residing in the Isle of Man and to persons not residing in the Isle of Man, but who derive income from sources in the Isle of Man.

Trusts, settlements, trustees and beneficiaries are not referred to in Manx income tax law. Nevertheless, trustees and beneficiaries are 'persons' for the purposes of Isle of Man income tax and it is possible to determine the taxation position of trustees and beneficiaries on the basis of current law and practice, i.e. a combination of residence and source-based taxation, having particular regard to the residence of the beneficiaries of the trust rather than the residence of the settlor or the trustees.

The Assessor of Income Tax has acknowledged that, as trust property is held for the use and benefit of the beneficiaries, the taxation of a trust should reflect the tax position of the beneficiaries. This means that the burden of tax imposed on the income of a trust should be the same as would have been levied on the beneficiaries had they received the income directly.

Trusts having at least one trustee resident in the Isle of Man or where the administration of the trust is conducted in the Isle of Man ("Manx trusts") are within the scope of Manx income tax.

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 Manx income tax in respect of that income.

A beneficiary may have an immediate entitlement to all or part of the income produced by trust property, net of income expenses, including trust management expenses, met by the trustees (i.e. an interest-in-possession ("IIP")). If the trustees have the power to prevent any right of present enjoyment (such as a power to accumulate income) then an IIP does not exist. The fact that trustees have a power to terminate an IIP does not prevent a beneficiary's income entitlement from being an IIP while it continues. If a beneficiary of a trust does not have an IIP then it

has a discretionary interest, meaning that the trustees have the power to determine how much income, if any, the beneficiary receives.

When an IIP exists in respect of only a part of a trust's income, the trust will be treated as two separate trusts, one being an IIP trust and the other a discretionary trust.

The Assessor has adopted the following approach to Manx trusts:

(a) **IIP trusts**

The English case of Archer-Shee v Baker (1927, 11 TC 749) established that when a beneficiary has an absolute right to the income of a trust, that beneficiary will be taxable in respect of the trust income as and when it arises. Accordingly, the beneficiary of an IIP trust is treated as though the trust income accrued directly to the beneficiary and the trustees are not liable to tax in this circumstance.

(b) **Discretionary trusts**

If trust income is distributed, the beneficiaries will be taxed according to their residence status:

(i) beneficiaries who are not resident in the Isle of Man will be taxed on the income distributed to them as if the income accrued to them directly; and

(ii) beneficiaries who are resident in the Isle of Man will be subject to Manx tax in respect of any income distributed to them (to the extent that it has not already been taxed in the hands of the trustees as previously undistributed income).

The trustees will be taxed on income not distributed as follows:

(iii) if all of the beneficiaries are not resident in the Isle of Man, undistributed income will be subject to the same amount of tax as would be charged where the same type and amount of income had been received by a non-resident individual; and

(iv) if any of the beneficiaries is resident in the Isle of Man, undistributed income will be subject to Manx tax.

As mentioned above, the Isle of Man has a combination of residence and source-based taxation. For the avoidance of doubt, income which is derived from business transactions outside the Isle of Man, or from dealings with persons resident outside the Isle of Man, or from the provision of services outside the Isle of Man, will not be considered as Manx source income merely because the transaction is carried out by a Manx trust or a partnership which includes one or more Manx trusts.

A trust will generally be regarded as having a Manx resident beneficiary if a person resident in the Isle of Man is identified in the trust deed either specifically by name or generally by virtue of being a member of a class of beneficiaries. However, a trust shall not be regarded as having an Isle of Man resident beneficiary solely because:

(a) a person resident in the Isle of Man may become a beneficiary;

(b) there have been distributions in the past to a Manx resident beneficiary; or,

(c) the trust deed does not have a Manx 'exclusion clause'.

To obviate the need for unnecessary enquiries, the Assessor will usually accept a declaration on an annual basis that no current Isle of Man resident did or could benefit from the income of a trust in that year of assessment.

The income derived from any property of any trust established for charitable purposes only is exempt from Manx income tax. Where the only Manx resident beneficiaries who can benefit from the income of a Manx trust are a charity or charities, or an arrangement or arrangements the objects of which are wholly charitable, then the Assessor will not treat the trust as having any Isle of Man resident beneficiaries solely because of the residence of the Manx charity or charities.

4.7 Taxation of mutual funds

4.7.1 Companies

As set out in section 4.1.2 above, save for two limited exceptions the standard rate of corporate income tax is 0%.

Please see sections 4.1.3 and 4.3 above for further information with respect to distributions from companies and withholding taxes.

4.7.2 Unit trusts

Unit trusts will have no liability to Manx tax if all their income arises outside the Isle of Man and no Manx resident has any interest in them.

4.7.3 Limited partnerships

Limited partnerships and their partners whose income derives from non-Manx sources and without any Isle of Man resident with an interest therein will have no liability to pay Isle of Man income tax. For limited partners who are Manx companies please see section 4.1 above.

4.7.4 Fund managers and administrators

There is no Manx corporate income tax to pay on the profits of Isle of Man resident fund managers and licensed third party fund administrators which relate to the management or administration of Manx funds.

The management and administration fees charged by managers of Manx funds (excluding exempt international funds) are normally exempt from Value added tax ("VAT"). Investment management fees charged by United Kingdom managers to certain Manx funds may also be exempt from VAT.

4.8 Indirect taxation

Income tax is the only tax which is directly charged by Tynwald. The main indirect taxes which are imposed in the Isle of Man are customs and excise duties and VAT. Indirect taxation in the Isle of Man has been the subject of agreements with the United Kingdom since 1894. The Collector of Customs and Excise is the head of the Customs and Excise Division of the Isle of Man government's Treasury Department and is responsible for the assessment and collection of customs and excise duties and VAT.

The Isle of Man last entered into a customs and excise agreement with the United Kingdom in 1979 (the "1979 Agreement"). It is through this agreement that the European Union's programme for the harmonisation of indirect taxes applies to the Isle of Man. Under the 1979 Agreement, the Manx government agreed to keep its law in respect of customs and excise duties and VAT in line with that of the United Kingdom, to impose identical rates of duty and tax as the United Kingdom government (with certain minor exceptions) and to establish a customs and excise service responsible for the administration, control, collection and enforcement of customs and excise duties, VAT and car tax. Businesses must register for VAT if their turnover exceeds a

threshold of £81,000, but businesses with a lower turnover may voluntarily register, in order to claim VAT refunds.

The standard rate of VAT in the Isle of Man is 20%. However, there are various categories of goods and services which are zero-rated or exempt from VAT. The 1979 Agreement has been varied to allow a lesser rate of VAT (5%) to be levied in respect of the provision of hotel accommodation, domestic gas and electricity supply and the renovation and repair of private dwellings. The Collector of Customs and Excise is also responsible for the collection of excise duties levied upon alcoholic drinks, tobacco and petrol.

The indirect tax revenue sharing arrangement with the United Kingdom was most recently revised in July 2011, principally at the request of the United Kingdom. The new Tax Based Measurement Method is still based on the comparative economic activity of the two nations, but it now looks at national income on a sector by sector basis. This is considered by the United Kingdom to be fairer on the basis that the Isle of Man has a higher proportion of businesses that are exempt from collecting VAT, principally in the finance and insurance sector. Ultimately, the new system is supposed to mean that the Isle of Man should get the same amount of indirect tax revenue as it would do if it operated its own independent indirect tax system.

The European Community recognises the customs union between the United Kingdom and the Isle of Man and allows Manx traders to export to, and import from, Member States of the European Community. In recent times there have been calls, notably from the Isle of Man's finance sector and tourism industry, for the abrogation of the 1979 Agreement. However, change is opposed by the Manx manufacturing industry, which would suffer if a customs barrier between the Isle of Man and the United Kingdom was imposed.

The Isle of Man is aiming to capitalise in a wider context upon its unique position as a low tax jurisdiction within the European Union VAT and Customs area. It has established a sophisticated entry processing unit for the clearance of goods being imported into the United Kingdom (and soon the whole of the European Union) without the need for such goods to be brought physically into the Isle of Man.

4.9 Tax treaties and tax information exchange agreements ("TIEAs")

The Isle of Man has a number of formal income tax treaties.

As part of the Isle of Man's commitment to the Organisation for Economic Co-operation and Development ("OECD"), the Isle of Man is prepared, on a bilateral basis, to enter into exchange of tax information on request with OECD member countries, provided that it is satisfied that there is likely to be a mutuality of benefits and a level playing field exists. A number TIEAs have now been entered into by the Isle of Man. The Isle of Man is also currently in negotiations with a number of other countries with a view to entering into formal tax treaties and TIEAs.

The Isle of Man can decline a request for information that does not conform to the provisions of an agreement. A summary of the Tax Treaties and TIEAs that the Isle of Man holds is summarised below (correct as at 1 October 2014):

Status treaties	Double tax agreements	Tax information exchange ("TIEAs")	
In force	Bahrain	Argentina	Ireland
	Estonia	Australia	Japan
	Guernsey	Canada	Mexico
	Jersey	China	Netherlands
	Malta	Czech Republic	New Zealand
	Qatar	Denmark	Norway
	Seychelles	Faroe Islands	Poland
	Singapore	Finland	Portugal
	UK	France	Slovenia
		Germany	Sweden
		Greenland	UK
		Iceland	USA
		India	
Concluded but not yet in force	Belgium	Botswana	Switzerland
	Luxembourg	Indonesia	Turkey
		Italy	
		Lesotho	

Other agreements relating to the taxation of shipping and air transport operation, procedures for the adjustment of profits and the avoidance of double taxation of individuals have been concluded alongside a number of the TIEAs listed above.

Full details of these can be found on the Isle of Man government website at the following address: http://www.gov.im/incometax-internationalagreements

4.10 FATCA

The Foreign Account Tax Compliance Act ("FATCA") was introduced by the United States in 2010 with the purpose of reducing tax evasion by United States citizens. FATCA requires financial institutions outside the US to report information on financial accounts held by their United States customers to the Internal Revenue Service ("IRS"). The information to be reported by foreign financial institutions is equivalent to that required to be reported by United States citizens in their United States tax returns. Failure to meet these new reporting obligations would result in a 30% withholding tax on the financial institutions.

An inter-governmental agreement ("IGA") reduces some of the administrative burden of complying with the United States FATCA regulations, and provides a mechanism for financial institutions to comply with their obligations without breaching data protection laws. Under the IGA, financial institutions pass information to their domestic tax authority who will then automatically exchange this information with the IRS.

The Isle of Man has signed IGAs with the United States (13 December 2013) and the United Kingdom (10 October 2013). In addition, the Isle of Man has also indicated that it will participate in the Common Reporting Standard ("the CRS") that is being developed by the OECD.

Major international airlines and aircraft operators hold the Isle of Man in high regard as a jurisdiction in which to do business.

5 SPECIFIC SECTORS

5.1 Aviation

Isle of Man companies, partnerships, limited liability companies and trust structures are frequently used in aircraft ownership and financing structures. Major international airlines and aircraft operators hold the Isle of Man in high regard as a jurisdiction in which to do business.

The Isle of Man took a further step towards establishing itself as a focal point of the aviation industry on 1 May 2007 when the Isle of Man Aircraft Registry (the "Aircraft Registry") came into operation. The Aircraft Registry's aim is to be the world's leading aircraft registry dedicated to the registration of high quality private and corporate owned business jets and turbine-engine helicopters. The Aircraft Registry also provides a valuable profile raising platform for the Isle of Man and assists its general economic development.

Unlike other aircraft registries, the Aircraft Registry is not intended to be a profit making venture for the government – its charges only cover its operating costs - and does not impose a requirement that aircraft are owned or leased by Isle of Man companies. Bodies incorporated in the Commonwealth, European Economic Area (EEA) states and Switzerland are all qualified to own Isle of Man registered aircraft.

The Aircraft Registry operates the fastest growing aircraft register of its type in the World. Now in its 7th year, over 700 aircraft have been registered. However, its success is reflected as much in the quality, as in the number, of aircraft registered. The policy of the Aircraft Registry is to accept aircraft of over 5700kg maximum take-off mass ("MTOM") and twin turbine-engine helicopters. Aircraft with a MTOM of between 2730kg and 5700kg will be considered by the Aircraft Registry, who will take into account the economic benefit to the Isle of Man before allowing the aircraft to be registered. The vast majority of aircraft registered have been high quality, often new, private and corporate business aircraft such as Bombardier Challengers and Global Expresses, Dassault Falcons, Gulfstreams and Boeing Business Jets.

The Aircraft Registry also accepts commercial airliners which are parked or between commercial leases, providing a quick and efficient registration service with minimum down-time between leases.

Aircraft registered on the Isle of Man Aircraft Register carry the unique "M" nationality mark. However, the legal and regulatory framework relating to the Aircraft Register has been created largely by extending the United Kingdom regime to the Isle of Man with favourable modifications. This gives the Aircraft Register a legally robust and internationally recognised footing, whilst being sufficiently flexible and accommodating to avoid the bureaucracy and fees that can be experienced when attempting to register aircraft on other registers. For example, aircraft, crew licences and maintenance organisations that comply with highly regarded international standards are generally accepted by the Aircraft Registry without the imposition of further requirements, such as modifying the aircraft or retraining crew.

The Aircraft Registry is renowned for providing a highly professional, but also user-friendly and competitively priced, service, whilst ensuring that only aircraft of a high international standard are accepted on the Aircraft Register.

5.2 Aerospace engineering

A collaboration of the public and private sector and between individual companies, a so called 'cluster', established to share knowledge and resources towards the strategic development, has enabled the field of aerospace engineering to become one in which the Isle of Man is achieving worldwide recognition.

Aerospace manufacturing has a sixty year history in the Isle of Man. However, a decisive step towards establishing the local industry on an international stage was taken in 2006 when the Isle of Man government's Department of Economic Development joined with the Isle of Man Chamber of Commerce to establish the Isle of Man Aerospace Cluster (the "Cluster").

With links to the United Kingdom based Northwest Aerospace Alliance and a five year development plan, the Cluster has not only raised the local industry profile, but has assisted in the Isle of Man's general economic development. In fact, manufacturing has been identified as a key sector within the government's Vision2020 strategy for continued economic growth and diversification (see section 1.1.1).

The Isle of Man has been described as an 'aerospace hot spot'. Leading aerospace companies are now firmly established on the Isle of Man, attracted by the aerospace expertise and comprehensive service on offer. In terms of recruitment, recent figures released by the 22 Cluster member businesses reveal employment to be up nearly 38% since the Cluster was created. It is envisaged that moving forward, expansion and the provision of world class 'mission critical' high tech manufacturing will continue, aiming always to retain existing business as well as to attract new potential collaborators. One way in which the industry proposes to accomplish this is through the implementation of the Rolls Royce business improvement tool, 'Journey to Process Excellence', which demonstrates a local commitment particularly to maintaining and improving industry standards.

Owing to the comparatively small size and independence of the Isle of Man, the government can match the Cluster in terms of quick turnaround and reaction to the exigencies of the industry. In particular, the government has demonstrated continued commitment to aerospace engineering through investment in training and future resources. Cluster member companies have received significant financial support from the Department of Economic Development in the form of grants. In addition, nearly £1 million has been allocated in the 2014 government budget to converting an Isle of Man government training centre into a dedicated engineering training centre of excellence.

5.3 Banks

The banking sector is a vital part of the Manx economy and is dominated by branches and subsidiaries of the main United Kingdom clearing banks. Many other United Kingdom and foreign banks are also established on the Isle of Man, together with branches and subsidiaries of major United Kingdom building societies.

All banks in the Isle of Man are subject to a licensing and supervision regime, administered by the Isle of Man Financial Supervision Commission ("FSC"). The Financial Services Act 2008 ("FSA") provides the statutory basis for the regulation of deposit taking business. The FSC has authority under the FSA to make regulations in the form of the Financial Services Rulebook 2013 (the "Rulebook"), which sets out the standard licence conditions

The government has been proactive in encouraging cleantech investment in the Isle of Man

for banks including capital adequacy rules, risk asset ratios and financial statements and accounting records. For further details on the Rulebook, please see section 1.4.2 above.

Deposit taking licences may be issued to banks with a full presence (in terms of staff and management) in the Isle of Man, and to subsidiary companies or branches of banks licensed in another jurisdiction applying equivalent regulatory standards to those in the Isle of Man. In the case of branches of banks licensed elsewhere, a licence is only granted when the regulator of the head office of the bank agrees to exercise consolidated supervision with the FSC, which includes consideration of capital adequacy.

The FSC's licensing policy is based upon the fact that the Isle of Man has no lender of last resort and is too small to shoulder high risk or start-up operations. Accordingly, it will only licence branches or subsidiaries of existing banks already licensed in jurisdictions which the FSC believes exercise proper licensing and supervision. In assessing the jurisdiction, the FSC will consider reports on the jurisdiction by the International Monetary Fund regarding the supervision of relevant regulated activities and compliance with Financial Action Task Force standards. Applicants must have an established track record and, further, the ownership and management must be acceptable to the FSC. The minimum start up level of share capital for a bank is £3.5 million sterling or its equivalent in another jurisdiction.

A deposit taking licence normally permits a bank to conduct a full range of banking business with customers both in the Isle of Man and elsewhere. The licenceholder must have a real presence on the Isle of Man (e.g. its own premises, management, staff, systems and resources). Banks operating under domestic licences are subject to Manx income tax at a rate of up to 10% of their taxable income.

The Isle of Man has had a compensation scheme for depositors since 1991 and was the first small international financial centre jurisdiction to introduce such a scheme. The current scheme is the Depositors' Compensation Scheme 2010 (as amended) ("the Scheme"). All holders of a deposit taking licence on the Isle of Man must be members of the Scheme unless specifically exempted. The amount of compensation payable to each depositor is an amount equal to 100% of the eligible protected deposit liability, subject to a maximum compensation payment to any depositor of £50,000 for individuals and £20,000 for other depositors. Protection is extended to foreign currency, as well as sterling, deposits.

Most of the Isle of Man's banks offer a full range of private banking services including treasury, investment management and trust administration and are thus licensed as domestic banks. As of the end of September 2014, there were 26 banking licences in force and as of the end of June 2014 total bank deposits stood at £40.86 billion.

5.4 Cleantech industries

5.4.1 Introduction

"Cleantech", or clean technology, refers to products or services that improve efficiency, performance or productivity whilst simultaneously reducing energy consumption, waste or pollution.

The three dominant cleantech sectors are solar energy (solar photovoltaics), wind power and biofuels. However, although investment in cleantech initially concentrated on solar and biofuels start-ups, more recently investments have been made in a more diverse range of cleantech sectors, including energy efficiency, clean transportation and recycling and waste. Ocean energy (wave or tidal energy) is also attracting much attention internationally and according to the World Energy Council the estimated potential market for wave energy alone is in excess of 2,000Twh/year, which represents a capital expenditure of over £500 billion.

According to Clean Energy Trends 2014 – the report by the leading US research firm CleanEdge - the combined revenues for the global solar photovoltaics, wind power and biofuels markets grew from approximately US$38.7 billion in 2005 to US$247.6 billion in 2013. The growth in this sector may be attributed to a combination of increased consumer and government awareness of global warming and climate change, and, although most recently there has been a shift from venture capital investment to corporate and later stage project financing sources, to a greater appreciation of the financial returns from cleantech investment in terms of both energy efficiency and business opportunities.

5.4.2 Cleantech in the Isle of Man

The government has been proactive in encouraging cleantech investment in the Isle of Man and has targeted clean technology as a specific sector for development. Among several initiatives introduced by the Isle of Man government is the training of "Energy Champions" - individuals in public and private sector organisations who have received training in energy efficiency. Through the business support scheme (see section 1.5.1), the government provides assistance to an organisation towards an energy survey to identify energy efficiency projects which an energy champion may implement. The government has also introduced a 0% Green Business Loan Scheme (see section 1.5.1 for further details).

Potential businesses in the cleantech sector will find the Isle of Man tax regime particularly favourable. The combination of a zero rate corporate tax regime and the absence of any tax on capital gains result in a potentially higher return for investors on the sale of businesses and assets (including lucrative intellectual property) than might be realised in alternative jurisdictions.

In addition to the favourable tax regime, the Isle of Man offers cleantech businesses a variety of advantages over other jurisdictions including:

- constant offshore wind and tidal energy resource;
- a highly efficient sole electricity provider;
- a highly resilient communication network;
- a precision manufacturing sector;
- a mature financial services sector;
- a cleantech cluster and cleantech forum;
- the protection of all the major international intellectual property treaties;
- highly experienced corporate service providers;
- easy access to Ministers and decision makers;
- excellent transport links to the United Kingdom and Ireland;
- government grant funding;
- government infrastructure and assets available for research and

The Isle of Man's e-gaming sector has a world-class reputation.

development; and

- supporting services from government.

Not surprisingly, the cleantech sector has experienced significant growth in the Isle of Man. A survey commissioned by the Isle of Man government into the cleantech sector in June 2011 showed that the Isle of Man has a very diverse cleantech sector across much of the range of cleantech activity. Over 100 companies in the Isle of Man were recorded as active in the sector, with 40 key companies having a combined turnover of £92m, with £4.64m of this turnover wholly attributable to cleantech activities. May 2014 saw the launch of the Manx Cleantech Hub which forms part of a growing network of such hubs operating across the Commonwealth through their affiliation with the Commonwealth Environmental Investment Platform (CEIP) which is designed to assist small and medium enterprises to share knowledge, increase international awareness, to identify possible market opportunities and to facilitate trade and investment in environmentally friendly and sustainable technologies.

The Isle of Man is chosen by cleantech businesses because it is a safe and sound place to do business, has a high level of protection for intellectual property rights, and quality professional support services, as well as a generally favourable fiscal environment.

5.5 E-business

5.5.1 Overview

The Isle of Man has recognised the value and importance of e-business to its continued growth and has sought to attract and retain new and existing businesses in the e-business sector. The overriding policy of the Isle of Man government has been to facilitate growth and attract investment in the sector, balanced, where appropriate, with legislation to ensure that the Isle of Man retains its reputation as a well regulated and highly regarded business centre. Financial incentives have are available to e-business enterprises, including government funding of up to 40% towards the costs of relocation, marketing, hardware and software (See section 1.5.1 for more details on business incentive schemes.)

Critical to any venture looking to invest in e-business is the integrity and reliability of telecommunications. The Isle of Man boasts a world class information and communications technology infrastructure (see section 1.5.4 for further details). In general, Isle of Man law will follow English law on technology-based issues. For example, Isle of Man law permits electronic transactions to be conducted according to the parties' wishes and places electronic commerce and paper-based commerce on the same legal footing.

Information and intellectual property is protected under Isle of Man law to the same degree as it is in the United Kingdom, the Isle of Man having either extended the United Kingdom legislative regime to apply to it (as it has in relation to patents, trademarks and registered design rights) or passed an Act of Tynwald mirroring the United Kingdom provisions (as it has in relation to copyright, database rights, data protection and unregistered design rights). (See section 1.5.3 for more details).

It is therefore not surprising that the two leading Isle of Man based internet and data communications service providers – Manx Telecom and Domicilium – have attracted a wide variety of clients, including leading businesses in e-gaming and sports betting along with businesses in various other e-business sectors, including e-government, e-finance, e-money and e-travel.

5.5.2 E-gaming

In respect of e-business, the Isle of Man's e-gaming sector has a world-class reputation. It has attracted much favourable attention in the international press and is undoubtedly set to continue to grow in the future. The Isle of Man government prides itself on being one of the most dynamic and reputable jurisdictions in the e-gaming sector. It is "white listed" by the United Kingdom Gambling Commission and the OECD respectively for e-gaming and tax co-operation purposes. Not surprisingly, the Isle of Man has sought to maintain an advantage over competing offshore jurisdictions by introducing legislation which encourages growth and rewards entrepreneurship, whilst at the same time seeking to protect players as well as its own reputation and credibility as a world class jurisdiction.

Regulation and Legislation

The Isle of Man's principal legislation governing the regulation of e-gaming activities is the Online Gambling Regulation Act 2001 ("OGRA"). It is important to note that, although OGRA imposes a licensing regime on certain classes of e-gaming activities, this does not extend to certain related activities including marketing, software and web design, administration services and hosting disaster recovery services (with GSC approval).. The entity responsible for regulating operators requiring a licence pursuant to OGRA is the Gambling Supervision Commission ("GSC").

Licences

Where a licence is required, there are a variety of options available, tailored towards the needs of the applicant. These include:

i) a Standard Licence, which covers all activities including sportsbook, poker, fantasy sports, casino, bingo and lotteries. Licensed operators can offer technology to sub-licensees under the reduced fee sub-licence scheme;;

ii) a Network Services Licence, which allows a holder to offer its networks to foreign operators and sub-licensing opportunities for its business partners;

iii) a Sub-Licence which is designed to provide new operators that wish to establish a foothold in the Isle of Man with the option of using an Isle of Man based licensed operator to develop their operations. Sub-licensees are limited to operating exclusively with a licensed operator with a full licence.

Basic Requirements

In order to secure an Isle of Man e-gaming licence there are certain basic requirements that must be satisfied to ensure that the licensed operator has a genuine presence on the Isle of Man:

i) the business must be carried on by a company incorporated in the Isle of Man;

ii) the business must have a minimum of two Isle of Man resident directors who are individuals, not corporate entities;

iii) the business must have a resident "designated official", or where the designated official cannot reside in the Isle of Man, an Isle of Man resident "operations manager" must be appointed;

iv) gambling and trading accounts should be located in a bank in the Isle of Man; and

The insurance industry is rightly regarded as one of the cornerstones of the Isle of Man's finance sector.

v) players must be registered on Isle of Man servers or the licensed operator must operate under a network services licence which obliges it to establish network services in the Isle of Man.

The Isle of Man government's commitment to the e-gaming sector is illustrated by the presence and establishment of an e-gaming team which forms part of the Department of Economic Development. Their aim is to provide hands-on support to companies and individuals that wish to do business in the Isle of Man.

5.6 Insurance

The insurance industry is rightly regarded as one of the cornerstones of the Isle of Man's finance sector and legislation has been enacted in relation to such matters as the carrying on of insurance business and the businesses of insurance intermediation and insurance management.

5.6.1 Insurance business

Insurance business carried on by any person in or from the Isle of Man or by an Isle of Man company outside the Isle of Man is governed principally by the Insurance Act 2008 and the Insurance Regulations 1986. Broadly speaking, no person may carry on or hold himself out as carrying on insurance business in or from the Isle of Man unless he is authorised (in the case of an Isle of Man insurer) or permitted (in the case of an insurer authorised under the laws of the United Kingdom or other overseas jurisdiction) to do so by the Supervisor, who is the Chief Executive Officer of the Isle of Man Insurance and Pensions Authority ("IPA") (see section 1.4.1 above), or is exempted from the requirement for authorisation or permission and no Isle of Man company may carry on insurance business outside the Isle of Man unless authorised to do so by the Supervisor.

The two main elements in the Isle of Man's insurance industry are offshore life assurance and captive insurance. As at 31 December 2012, funds under management in the life sector amounted to £53.1 billion (an all-time high and the first time ever that that funds under management exceeded the £50 billion level) and in the non-life sector to £5.5 billion (of which the captive sector contributed the vast majority).

Captive insurers have become an integral part of the risk management strategy of many large companies and the Isle of Man is one of the most successful and established captive locations, attracting business from all over the world. Captives are usually managed by one of the registered insurance managers on the Isle of Man, although some do have their own management. The appeal of the Isle of Man as a base for captive operations has been enhanced by, among other developments, the introduction of a statutory mechanism pursuant to which foreign captives may re-domicile to the Isle of Man without the need to comply with incorporation formalities which would otherwise apply, the introduction of the protected cell company structure and the incorporated cell company structure (see section 2.1.6 above) for use in the captive insurance market and provisions in the Insurance Act 2008 permitting the use of companies incorporated under the Companies Act 2006 (see section 2.1.3 above).

The Isle of Man has also been successful in attracting major international companies to establish life offices on the Isle of Man. As at 31 December 2012, there were 16 life companies authorised in the Isle of Man. Its life industry is arguably the best developed of any offshore centre and the industry is one of the Isle of Man's major employers. Originally marketing primarily to British expatriates, life companies now target business not only from British expatriates but also from locals of other nationalities around the world.

Life offices are subject to strict actuarial supervision. The Life Assurance (Compensation of Policyholders) Regulations 1991 provide protected policyholders, wherever they may reside, with compensation of up to 90% of their claims should an Isle of Man life office be unable to meet its liabilities to them.

The Isle of Man is also host to branch offices of major United Kingdom general insurers which service the requirements of local residents and businesses alike.

As part of the Isle of Man's ongoing commitment to high standards of corporate governance, a corporate governance code, the Corporate Governance Code of Practice for Regulated Insurance Entities, came into effect on 1 October 2010. The Corporate Governance Code applies to authorised insurers, permit holders (except those authorised to carry on an insurance business in any Member State of the European Union ("EU")) and registered insurance managers. The Corporate Governance Code requires regulated entities to which it applies to have in place appropriate and effective systems of governance that provide for their sound and prudent management and imposes specific requirements in that regard.

5.6.2 Insurance intermediation

Insurance intermediaries that are involved in general business are subject to a different regulatory regime from that applicable to those involved in long-term business. An insurance intermediary who carries on business in or from the Isle of Man in relation to contracts of insurance (broadly speaking, general business) which do not constitute investments for the purposes of the Financial Services Act 2008 is required to be registered with the IPA pursuant to section 24 of the Insurance Act 2008. An insurance intermediary who carries on business in or from the Isle of Man in relation to contracts which are investments for the purposes of the Financial Services Act 2008 is required to be licensed pursuant to section 5 of the Financial Services Act 2008 (see section 1.4.2 above).

5.6.3 Insurance management

If management of an insurer authorised or permitted to carry on an insurance business in or from the Isle of Man is to be exercised solely by the directors and controllers of the insurer, it is usually a requirement (in addition to the requirement that staffing of the insurer is adequate and competent, having regard to the nature of the business being conducted) that at least two of the directors are resident on the Isle of Man. The requirement in relation to directors resident in the Isle of Man is, however, subject to relaxation where the insurer appoints an insurance manager who is registered with the IPA pursuant to the Insurance Act 2008 or who is exempt from the requirement for registration. As at 31 March 2012, there were 21 registered insurance managers on the Isle of Man.

5.6.4 Regulatory Developments

Insurance-Linked Securities

With the continuing convergence of capital markets and reinsurance in mind, the Isle of Man is expected to introduce regulations towards the end of 2014 or, failing that, in 2015 which will facilitate the formation and domicile of special purpose

Isle of Man corporate vehicles have direct access to global capital markets and have established a successful track record of listing on recognised stock exchanges.

reinsurance vehicles in the Isle of Man. The regulations, coupled with what are expected to be rapid response times on the part of the IPA, are expected to make the Isle of Man an attractive domicile for the market to consider, especially for transactions emanating from the City of London.

Updating the Isle of Man's Regulatory Framework for Insurance Business

The International Association of Insurance Supervisors substantially updated its Insurance Core Principles in October 2011 and in 2012 the Financial Action Task Force revised its recommendations, prompting a comprehensive review by the IPA of the Isle of Man's existing regulatory framework. Following the review, the IPA published its "Roadmap for Updating the Isle of Man's Regulatory Framework for Insurance Business" (the "Roadmap"). The changes for which the Roadmap provides are expected to be fully implemented by the end of 2017 and include, among other things, introduction of the following:

- a more sophisticated risk based capital and solvency regime;
- a group based supervision framework;
- additional conduct of business requirements;
- public disclosure requirements in certain circumstances; and
- enhanced regulatory reporting.

5.6.5 Solvency II

Solvency II, the new capital and solvency regime for EU insurers and reinsurers, is currently due to come into effect on 1 January 2016. Solvency II seeks to implement solvency requirements that better reflect the risks faced by insurers and reinsurers than do the various requirements currently imposed by EU member states and also to put in place a consistent supervisory system throughout the EU. The Isle of Man is not a member state of the EU (see section 1.2.2 above), so that the Solvency II directive is not automatically applicable to it. While the Solvency II directive does make provision for jurisdictions outside the EU to apply for recognition that their regulatory systems are equivalent to Solvency II, the Isle of Man has not applied for Solvency II equivalence.

Information published by the IPA suggests that the majority of Isle of Man underwriters of life business belong to groups which are headquartered within the EU and/or carry on business in countries which are seeking equivalence. With that in mind, as it sets about developing the more sophisticated risk based capital and solvency assessment framework provided for in the Roadmap (see section 5.6.4 above), the IPA will seek to ensure that the revised framework, insofar as it applies to the life sector, will also be capable of a positive equivalence assessment under the Solvency II framework on a bifurcated basis (which is an arrangement under the Solvency II regime which permits a country to seek equivalence only for a specific and clearly defined segment of its insurance industry).

5.7 Listings

Isle of Man corporate vehicles have direct access to global capital markets and have established a successful track record of listing on recognised stock exchanges in London, Singapore, Frankfurt and Toronto. In addition, the Hong Kong Stock Exchange (HKSE) has approved the Isle of Man as an "acceptable overseas jurisdiction" thus paving the way for the flotation of Isle of Man companies in Hong Kong.

A wide variety of international businesses have used Isle of Man companies to access the capital markets in London and further afield including international media and entertainment groups (such as Eros International plc), oil and gas exploration and service companies (such as Exillon Energy plc and Lamprell plc), telecoms and IT companies (such as Norcon plc) and property investment companies (such as South African Property Opportunities plc and Dragon Ukraine Properties Development plc).

The reasons why the Isle of Man has become a favourite offshore jurisdiction from which to list on the world's major capital markets include:

Taxation

- Tax neutrality at the holding company level: an Isle of Man company is not subject in the Isle of Man to any income or capital taxes, there are no withholdings on account of Isle of Man tax on the payment of dividends or interest on loans, and no stamp duty or other similar taxes are levied in the Isle of Man on the issue or transfer of shares in an Isle of Man company.
- The Isle of Man is the only offshore jurisdiction that is part of an onshore VAT network, allowing an Isle of Man holding company to VAT group with other group companies in the United Kingdom on an expedited basis through the Isle of Man Government's Customs and Excise Division. The ability to deal with VAT registration and filings in the Isle of Man is a potential advantage for any United Kingdom or European Union business seeking to establish a holding company in a tax neutral jurisdiction and is a clear differentiator between the Isle of Man's international offering and the offerings of other off-shore jurisdictions.

Flexible yet robust legal framework

- The Isle of Man Companies Act 2006 provides a robust legal framework for a flexible and cost-effective corporate vehicle that is very attractive for both international businesses and investors. Key benefits include:

(a) a company's articles of association can be structured in such a way as to meet the expectations of investors and accommodate the requirements of any relevant listing rules;

(b) there are no prescriptive content requirements for offering documents; such documents must simply contain all material information required to enable informed investment decisions to be made by recipients;

(c) shares can be traded through CREST (or certain other electronic trading platforms) without the need for depositary receipts and can be denominated in any currency;

(d) distributions (including dividends), shares buy-backs and capital returns may be made subject solely to a resolution of the directors and satisfaction of a statutory solvency test (unless provided otherwise in the company's articles of association);

(e) financial assistance may be given without any statutory prohibition or restriction; and

(f) the United Kingdom Takeover Code applies to Isle of Man companies.

- Closed-ended companies are not currently subject to financial services regulation in the Isle of Man and there are no

The Isle of Man's government and private sector have worked together for many years to develop a flexible regulatory framework that allows the mutual fund industry to develop new products.

requirements to obtain pre-incorporation or pre-listing approval from any Isle of Man government agency (unlike in some other offshore jurisdictions).

- In relation to LSE Main Market listings, Isle of Man companies are potentially eligible for inclusion in the FTSE Indices, giving access to a larger range of institutional investors.

Jurisdictional benefits

- The Isle of Man, which was immediately "whitelisted" by the OECD in 2009, is a leading international finance centre that is well regarded by international governments and regulators as a jurisdiction which has co-operated fully with international initiatives (such as those against money laundering, terrorist financing and tax evasion).

  In the words of the Minister of the United Kingdom Ministry of Justice, the Isle of Man "leads the way in terms of how small jurisdictions with financial services should operate".

- Other key benefits of the Isle of Man include:

(a) a stable and sophisticated finance industry with highly qualified and motivated professionals in law, accountancy, banking and fiduciary services (the fees for such services typically being very competitive when compared to the cost of similar service offerings in certain other off-shore jurisdictions);

(b) a legal system that is based on the principles of English common law;

(c) the Isle of Man is bound by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards;

(d) an established and well regarded track record of Isle of Man company listings;

(e) a quick and simple company incorporation process: incorporation "while you wait" or within 2 hours (for expedited services) or 48 hours (for a normal service) of documents being lodged with the Companies Registry; and

(f) in the same time zone as London.

5.8 Mutual funds

5.8.1 Mandatory requirements

The following are the key factors to be borne in mind in relation to any proposal to carry on investment business including managing or administering mutual funds in the Isle of Man: -

(a) As investment business is classified as a regulated activity for the purposes of the Financial Services Act 2008 (as amended) (the "FSA"), a person cannot engage in investment business in or from the Isle of Man (or hold themselves out as doing so) without a licence issued by the Financial Supervision Commission ("FSC") (see section 1.4.2 above). There are, however, various exemptions and exclusions from this general requirement.

(b) A fund manager who wishes to carry on investment business in or from the Isle of Man must have a demonstrable track record in the promotion and management of mutual funds. There are, however, certain exemptions from this general requirement.

(c) Licence holders conducting investment business are subject to certain minimum financial resources requirements and must comply with regulatory codes.

(d) Specialist funds must have an administrator appropriately licensed in the Isle of Man to act as such or licensed in a jurisdiction acceptable to the FSC.

(e) Qualifying funds must have a manager licensed in the Isle of Man by the FSC and a custodian licensed by the FSC in the Isle of Man or in a suitable jurisdiction.

(f) The manager of a regulated fund is required to be licensed by the FSC with permission to act for that fund.

(g) Authorised schemes must have a manager which must be a body corporate and an Isle of Man licenceholder. Authorised schemes must also have a fiduciary custodian or a trustee, both of which must be bodies corporate, but are not required to have a place of business in the Isle of Man. In the case of the fiduciary custodian or trustee with a place of business outside the Isle of Man, both must be appropriately authorised to act as such by the regulator in an equivalent jurisdiction.

(h) The acceptance of subscription monies from prospective investors is subject to international standard "know your customer" regulations.

5.8.2 Recent developments

The Isle of Man's government and private sector have worked together for many years to develop a flexible regulatory framework that allows the industry to develop new products and encourages innovation. This constructive engagement between the Isle of Man's mutual fund industry and the government has led, in recent years, to the introduction of reforms for the mutual fund industry that included such significant measures as:

(a) VAT exemption for management fees in respect of key fund types; and

(b) an overseas funds exemption enabling the removal from direct regulation of certain overseas funds that are administered or managed on the Isle of Man and regulated elsewhere.

It has also led, among other things, to the introduction of the specialist fund and qualifying fund (see section 5.8.5 below), both of which are suitable for use as hedge funds.

As at 30 June 2014, there were 357 funds registered with the FSC. The most numerous funds were exempt schemes (163 funds having a total value of $6.3bn) and overseas funds (61 funds having a total value of $5.78bn). The net asset value of the total number of funds under management as at 30 June 2014 stood at $22.04bn.

The Collective Investment Schemes Act 2008 (the "CISA"), provides a new modern, flexible framework for these funds. 2010 saw the introduction of the regulated fund (see section 5.8.5 below) and updated versions of the specialist fund and qualifying fund, which are now classified as registered funds. At the end of June 2014, there were 17 specialist funds ($645m) and 15 qualifying funds ($539m).

In 2013, the United Kingdom changed the regulations surrounding the marketing of authorised schemes into the United Kingdom to require individual recognition by the United Kingdom Financial Conduct Authority of each fund (previously Isle of Man authorised schemes were generally able to receive automatic recognition in the United Kingdom). This change to the United Kingdom regime will affect all authorised schemes that wish to market into the United Kingdom to the United Kingdom retail public.

The Collective Investment Schemes (Authorised Schemes)

(Trustee and Fiduciary Custodian) Order 2013, which allows for the appointment of non-Isle of Man trustees and fiduciary custodians of authorised schemes, came into operation on 1 February 2014. To implement this regime the FSC has put in place a framework for approval, monitoring and oversight of non-Isle of Man trustees and fiduciary custodians.

The FSC is currently consulting the industry concerning the Isle of Man's funds structures in the light of new international standards and a desire to ensure the Isle of Man's offering is clear and appropriate. Any necessary changes are intended to be an evolution of the funds offering and will be introduced with appropriate transitional arrangements to ensure continuity of business.

5.8.3 Establishing an Isle of Man investment manager and other functionaries

Fund and investment managers and other persons carrying on investment business in or from the Isle of Man (or holding themselves out as doing so) must generally be licensed by the FSC pursuant to the FSA as a result of carrying out a regulated activity (see section 1.4.2 above).

Authorised schemes must have a manager which must be a body corporate and an Isle of Man licenceholder. Authorised schemes must also have a fiduciary custodian or a trustee, both of which must be bodies corporate, but are not required to have a place of business in the Isle of Man. In the case of the fiduciary custodian or trustee with a place of business outside the Isle of Man, both must be appropriately authorised to act as such by the regulator in an equivalent jurisdiction.

A regulated fund is required to have a manager licensed by the FSC with permission to act for the fund. Furthermore, a regulated fund must have a fiduciary custodian or trustee regulated in the Isle of Man, United Kingdom, Ireland, Luxembourg, Jersey or Guernsey or which is otherwise acceptable to the FSC.

A specialist fund is required to have an administrator licensed in the Isle of Man by the FSC or an administrator in a jurisdiction accepted by the FSC as applying appropriate standards of regulation to overseas administrators of this type of fund.

A qualifying fund is required to have a manager licensed in the Isle of Man by the FSC and a custodian licensed by the FSC in the Isle of Man or in a suitable jurisdiction.

An exempt scheme is not required to appoint either a trustee/custodian or a manager, although some find it convenient to do so. In the event that an exempt scheme appoints a manager in the Isle of Man, the manager may be carrying on investment business and thus require to be licensed accordingly by the FSC. However, where the manager is acting for only one exempt scheme, the manager will usually not require to be licensed purely as a result of such activity.

The manager or administrator (as appropriate) of an overseas scheme must be specifically licensed by the FSC to undertake the provision of management or administration services (as appropriate) to an overseas scheme.

All managers of Isle of Man funds, which are not exempt from the requirement to be licensed to conduct such regulated activity, must conduct their business in accordance with any conditions attaching to their licence and the Financial Services Rulebook 2013 (the "Rulebook") issued by the FSC (see section 1.4.2 above).

The close working relationship which has been built up over the years between the Isle of Man's mutual funds industry and the FSC has helped in the development of a sophisticated regulatory regime that balances the demands of investor protection with the flexibility needed by the ever changing global fund industry.

The FSC requires licence holders to comply with the Money Laundering and Terrorist Financing Code 2013 (see section 1.4.8 above) and to follow the guidance notes issued by it. The FSC considers the introduction and maintenance of adequate policies and procedures for the deterrence and prevention of money laundering as an important element of the continuing "fit and proper" test applicable to all licence holders.

5.8.4 Establishing a fund

The three principal forms of mutual funds which can be established in the Isle of Man are as follows.

Open-ended investment companies
Investment companies are probably the most popular vehicle for mutual funds in the Isle of Man, offering the important advantage of limited liability status which, for certain types of funds, can be extremely important. A key distinction is to be made between open-ended and closed-ended investment companies as the latter do not fall within the regulatory net for mutual funds (although Manx companies legislation is applicable).

Unit trusts (see also section 3.2.4 above)
The Isle of Man legal system, being derived from English common law, has long recognised the concept of a trust and in more recent times the unit trust has become a widely used form of collective investment vehicle. A unit trust is constituted by a trust deed which regulates the rights and obligations of the participants in the unit trust. Generally the trust deed will be between the trustee, who holds the assets on trust for the participants, and the manager, responsible for the management and general administration of the trust. The manager will normally have the ability to delegate investment management and other functions to specialist advisers. The terms of the trust deed usually allow participants to redeem their units at prices related to the value of the unit trust's net assets.

Limited partnerships (see also section 2.2.3 above)
The laws of the Isle of Man concerning general and limited partnerships have historically been similar to those of England. A limited partnership is generally established by a partnership deed under which the participants (limited partners) contribute capital to the partnership for management by the general partner, but do not themselves take part in the day-to-day affairs of the partnership. For investors in certain jurisdictions, limited partnerships may offer significant taxation advantages over other forms of collective investment vehicle. The maximum number of partners allowed in a limited partnership is generally restricted to 20. This restriction does not, however, apply in the case of mutual funds established as limited partnerships. It is also worth noting that a limited partner in a Manx limited partnership can usually withdraw some or all of his capital contribution during the life of the partnership without losing the benefit of his limited liability status. Furthermore, the Limited Partnership (Legal Personality) Act 2011 allows limited partnerships in the Isle of Man to elect to register with separate legal personality which may be of particular importance to certain types of fund.

5.8.5 Supervision

The CISA provides for the regulation of collective investment schemes (or funds) in the Isle of Man. There are a number of

different categories of fund which can be established in the Isle of Man which vary in terms of their regulatory status, and thus the extent to which the FSC oversees their regulation on the Isle of Man. In fact, there are also a number of funds which are not subject to any regulation in the Isle of Man and are merely subject to regulation in their home jurisdiction.

The main categories of Isle of Man funds are as follows.

Authorised funds
These are the most highly regulated of all Isle of Man funds and are marketable to the general public in the Isle of Man. These funds are particularly suited to any investors who are seeking an investment in a fund which is subject to rigorous regulation in the Isle of Man. At present, only authorised securities schemes (of which government and other public securities funds are a particular type), money market funds, umbrella funds, warrant funds, property funds, futures and options funds, geared futures and options funds, funds of funds and feeder funds are eligible for authorisation under paragraph 2 of schedule 1 to the CISA.

Applications for authorisation must be made to the FSC by the governing body or manager and the trustee or fiduciary custodian of the fund acting jointly. Such application must be in the prescribed form and be accompanied by the prescribed fee. The FSC may only make an authorisation order in relation to a unit trust scheme established under and governed by the laws of the Isle of Man or an open-ended investment company incorporated under the Companies Acts 1931 to 2004 or such other description of scheme as is prescribed. Consequently, a scheme constituted under the law of another country or territory outside the Isle of Man is not eligible for authorisation. The process for obtaining an authorisation order from the FSC normally takes between one and two months but in any event the FSC is required, within six months of the application being received, to inform the applicant of its decision.

Authorised schemes must have a manager which must be a body corporate and an Isle of Man licenceholder. Authorised schemes must also have a fiduciary custodian or a trustee, both of which must be bodies corporate, but are not required to have a place of business in the Isle of Man. In the case of the fiduciary custodian or trustee with a place of business outside the Isle of Man, both must be appropriately authorised to act as such by the regulator in an equivalent jurisdiction.

The Isle of Man is a "designated territory" for the purpose of United Kingdom financial services legislation. Accordingly, certain Isle of Man authorised funds may apply for recognition in the United Kingdom for the purpose of marketing that fund within the United Kingdom. Similar reciprocal arrangements apply in respect of Ireland, Jersey, Guernsey, Hong Kong and Australia.

Authorised funds benefit from compensation arrangements and are not suitable for use as hedge or other alternative investment funds. There is no minimum investment level prescribed in relation to an authorised scheme and there are no specific entrant criteria.

Regulated fund
A regulated fund, as the name suggests, is a fund which is regulated by the FSC. Regulated funds are subject to FSC pre approval and, in order to become a regulated fund, prior notification must be given to the FSC with specified documentation and a specified fee.

There are no prescribed restrictions on the types of investors who are allowed to invest in a regulated fund but the governing body of a regulated fund will set the minimum investment level and entrance criteria of a regulated fund.

A regulated fund is required to have a manager licensed by the FSC with permission to act for the fund. Furthermore, a regulated fund must have a fiduciary custodian or trustee regulated in the Isle of Man, United Kingdom, Ireland, Luxembourg, Jersey or Guernsey or which is otherwise acceptable to the FSC. A regulated fund must also appoint a promoter who may be the manager or a person who the governing body has assessed as being suitable to act as the fund's promoter.

Specialist fund
The specialist fund was introduced with effect from 1 November 2007. It has become one of the most popular types of fund aimed at institutional investors and high net-worth individuals. Specialist funds are not regulated in the Isle of Man but are classed as registered funds.

Investors in a specialist fund must: satisfy certain criteria; have certified that they are sufficiently experienced to understand the risks associated with an investment in a specialist fund; meet the minimum initial subscription level required per investor of US$100,000; and fall into one of the prescribed categories of investor.

In order to become registered as a specialist fund in the Isle of Man, notification must be given to the FSC within 10 working days after its launch and, as such, no pre-approvals are required to be sought from the FSC. A specialist fund is required to include certain specified information in its offering document but, on the whole, there are few regulatory requirements in relation to the contents of the offering document of a specialist fund.

A specialist fund is required to have an administrator licensed in the Isle of Man by the FSC or an administrator in a jurisdiction accepted by the FSC as applying appropriate standards of regulation to overseas administrators of this type of fund. There is no necessity to have a fiduciary custodian, trustee or promoter.

A specialist fund can be a company, a protected cell company, a unit trust, or a limited liability partnership established in the Isle of Man. No structure established outside the Isle of Man can become a specialist fund in the Isle of Man.

Qualifying fund
The qualifying fund, which is aimed at non retail investors, was introduced with effect from 1 November 2007. It is a fund which is established and registered in the Isle of Man but is not regulated in the Isle of Man.

The qualifying fund may only be sold to investors who are classified as "qualifying investors", being persons or bodies who, in relation to a qualifying fund, have certified that they are sufficiently experienced to understand the risks associated with an investment in that fund and who fall into one of the prescribed categories of investor. Unlike specialist funds, there is no minimum initial investment which qualifying investors are required to make, unless such requirement is determined by the manager and governing body of the qualifying fund.

Notification must only be given to the FSC within 10 working days after the launch of the qualifying fund and, as such, prior notifications need not be given, nor are any application fees payable.

A qualifying fund is required to have a manager licensed in the

Isle of Man by the FSC and a custodian licensed by the FSC in the Isle of Man or in a suitable jurisdiction. A regulated promoter may be required in certain circumstances but no fiduciary custodian or trustee is required.

The offering document of a qualifying fund must contain certain information specified in regulations but, as is the case with the specialist fund, the amount of information which is required to be included in the offering document is minimal compared with other more heavily regulated categories of fund in the Isle of Man. However, as there is no minimum subscription level imposed on investors in a qualifying fund they are subject to slightly more regulation than specialist funds.

A qualifying fund can be constituted as a company, a protected cell company, a unit trust or a limited liability partnership established in the Isle of Man. No structure established outside the Isle of Man can become a qualifying fund in the Isle of Man.

Exempt schemes
This class of fund is considered to be a private arrangement which is not subject to the CISA or the regulations made thereunder. A fund is classified as an exempt scheme if it has less than fifty participants and its constitutional documents prohibit the making of an invitation, in any part of the world, to the public (or any section of it) to subscribe for or purchase units in the fund, and its constitutional documents do not imply that the fund is regulated under the CISA. Such exempt schemes have found considerable favour as private arrangements for institutional investors where regulation is not desired.

An exempt scheme is not required to appoint either a trustee/custodian or a manager, although some find it convenient to do so. If an exempt scheme appoints a manager in the Isle of Man, the manager may be carrying on investment business and thus require to be licensed accordingly by the FSC. However, where the manager is acting for only one exempt scheme, the manager will not require to be licensed purely as a result of such activity.

In order to qualify as an exempt scheme, the fund must be a unit trust established under and governed by the laws of the Isle of Man, an open-ended investment company in the Isle of Man, a limited partnership registered in the Isle of Man or such other description of scheme as is prescribed.

Overseas schemes
Overseas schemes are schemes which are established outside the Isle of Man (not constituting an exempt scheme or recognised scheme) but which are administered or managed in the Isle of Man.

Although an overseas scheme is not subject to approval or regulation by the FSC, the manager or administrator (as appropriate) of an overseas scheme must be specifically licensed by the FSC to undertake the provision of management or administration services (as appropriate) to an overseas scheme. Furthermore, an overseas scheme is subject to the regulatory regime in the jurisdiction in which the overseas scheme is established.

The manager or administrator (as appropriate) of an overseas scheme must notify the FSC that it has engaged in the provision of such services within 10 business days of entering into an agreement to provide such services and of ceasing to provide such services.

Recognised schemes
A recognised scheme is a scheme which originates from outside the Isle of Man, and is authorised and managed in a country or territory outside the Isle of Man, but which may be promoted to the general public in the Isle of Man by virtue of being "recognised" by the FSC. At present certain schemes established in the designated territories (United Kingdom, Jersey, Guernsey, Luxembourg and Ireland) may notify the FSC (with documentation and an application fee) seeking recognition. If no objection is received from the FSC within 2 months, recognition is automatic. Applications for recognition may also be made on an individual basis for schemes originating from countries other than designated territories, although the applicant and scheme will be subjected to detailed scrutiny. Applications for recognition from schemes which comply with internationally accepted standards (such as the Undertakings for Collective Investment in Transferable Securities Directives) will generally be processed by the FSC quicker than those which do not.

A recognised scheme is required to include certain specified information in its offering document (such offering document to be filed with the FSC together with any revisions of the same) but the FSC does not vouch for the financial soundness of the scheme or the correctness of any statements made or opinions expressed with regard to it, but the FSC will not "recognise" a scheme unless it is satisfied that adequate protection is offered to participants.

The governing body of a recognised scheme is required to maintain, at an address in the Isle of Man, facilities where, inter alia, the instruments constituting the scheme and the most recent scheme particulars, reports and accounts may be inspected (and copies obtained). These schemes are not suitable for use as hedge funds.

5.8.6 Investment restrictions

Authorised funds
The Authorised Collective Investment Schemes Regulations 2010 set out significant investment restrictions for authorised funds and, as a result, such funds are not presently suitable for use as hedge or other alternative investment funds.

Specialist funds and qualifying funds
There are no statutory investment restrictions applicable to specialist funds or qualifying funds, nor are there any regulations in place relating to hedging, gearing and borrowing in relation to such funds.

Regulated fund
As the regulated fund is more heavily regulated by the FSC than specialist funds and qualifying funds, the FSC has policies in place in relation to, inter alia, risk spreading and risk management to be observed by regulated funds. Furthermore, there are regulations in place in relation to, inter alia, hedging, gearing and borrowing which relate to regulated funds.

5.8.7 Investor protection

Compensation will be paid to investors in authorised collective investments schemes should the manager or trustee/fiduciary custodian be unable or be likely to be unable to satisfy claims in respect of any description of civil liability incurred by them to an investor in connection with that business. Compensation is paid on a pro rata basis up to a maximum of £48,000 and the regulations provide for the levying of contributions to the compensation fund from managers and trustees /fiduciary

An increasing number of international property investors have chosen the Isle of Man as a jurisdiction.

custodians of authorised funds. No compensation scheme exists for any other type of Isle of Man fund.

5.8.8 Taxes

Taxation in relation to funds is discussed in section 4.7 above.

5.9 Property investment

An increasing number of international property investors have chosen the Isle of Man as a jurisdiction which provides a first class business environment underpinned by excellent service levels and access to the primary commercial real estate markets in the United Kingdom and Europe.

Research carried out by the real estate services firm by Cushman and Wakefield shows that over 77% of investment activity in the first quarter of 2014 in the real estate market of the City of London and Docklands was by overseas investors. Such investors, a mixture of institutions and high net worth individuals, are attracted to the Isle of Man by its proximity to the United Kingdom and Europe, and its highly flexible investment vehicles.

In particular, the Isle of Man is uniquely able to offer the administrative convenience of its own value added tax ("VAT") office, providing expedited registration and grouping for real estate investment structures.

Other factors which produce an excellent environment for commercial and high end residential property investment include:

- the Isle of Man'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 stamp duty land tax;
- the similarity of the underlying principles of the Isle of Man's law (including its flexible and modern company law) to English law enables advisors to property investors to be comfortable dealing with Isle of Man companies, trusts and partnerships;
- a dynamic and flexible regulatory regime for the establishment and operation of open-ended and closed-ended property funds;
- knowledgeable and expert professional advisers on the Isle of Man (lawyers, accountants and bankers) are able to service the needs of sophisticated investment entities and financial institutions; and
- the Isle of Man's first-class reputation as a well regulated international financial centre within easy reach of London, the United Kingdom and Europe.

5.10 Retirement benefits

5.10.1 General

The Retirement Benefits Schemes Act 2000 (the "2000 Act") established an overarching framework for the governance of domestic and international retirement benefit plans. The supervision of the 2000 Act is overseen by the Isle of Man Insurance and Pensions Authority (the "IPA") which was originally established as the Insurance Authority in 1986 and became the IPA in January 1997 following the inclusion of retirement benefits under its supervisory remit (see section 1.4.1 for more on the IPA).

In addition to the IPA, the regulation of domestic plans is complemented by the Department of Health and Social Care (the "DHSC") which has a discretionary power to modify and apply United Kingdom statutory provisions relating to retirement benefits. The DHSC tends to exercise this power in respect of those provisions relating to the preservation, revaluation, disclosure, and transfer of retirement benefits as well as those that address contracting-out of the State Second Pension. Finally, the Assessor of Income Tax regulates the tax treatment of both domestic and international plans.

International plans may be either occupational or personal plans and are relevant to businesses or individuals whose focus is entirely outside of the Isle of Man. They provide employers and individuals who have a cross-jurisdictional footprint with an opportunity to rationalise retirement provision to allow benefits to be provided from one jurisdiction, under one regulatory regime and, if desired, one set of trustees, advisers and administrators. Additionally, the scope of "retirement benefits" under the 2000 Act is sufficiently flexible to deliver innovative benefits and the 2000 Act regime allows international plans to provide ancillary benefits, such as 'hardship withdrawals' and group illness cover etc., alongside the retirement benefits that form the principal purpose of these plans.

Similarly, domestic plans may be either occupational or personal retirement benefit plans. As well as providing domestic plans for local businesses, the Isle of Man is also home to a number of providers that are able to offer, inter alia, qualifying recognised overseas pension schemes ("QROPS") and qualifying non-United Kingdom pension schemes ("QNUPS") that are compliant with the requirements of Her Majesty's Revenue & Customs ("HMRC").

5.10.2 The 2000 Act regime

Two key features of the 2000 Act regime are administrative integrity and flexibility. The latter is crucial for the development of a legislative structure that can operate on both a domestic and international level. It also enables international plans to provide bespoke benefit structures. In a market where retirement benefits are increasingly prized, a commitment to provide such benefits is a significant tool for employers looking to retain and incentivise existing staff, and attract good calibre employees to carry their business forward. However, innovative and varied benefits mean employers can allocate resources in a cost effective manner to reflect employees' seniority as well as take account of the inevitable variations applicable to corporate and market strategies on a global scale.

Administrative integrity goes to good governance, which the Isle of Man recognises is an essential element of any offering it makes to the international market in respect of retirement benefits. In this regard, the 2000 Act regime introduced provisions conducive to good management and member protection. In particular, the new regime compares very favourably with the Organisation for Economic Co-operation and Development Guidelines for Pension Fund Governance. Crucially, however, the legislators have been wise enough not to seek to burden employers with overly prescriptive provisions. It is clear from the 2000 Act that, where appropriate, the IPA has been left adequate scope to take into account the specific circumstances of individual plans. Many employers are only too familiar with the problems of prescriptive legislation and how it can lead to unwanted consequences and increased costs.

5.10.3 The environment

Employers and individuals both require reassurance that the jurisdiction within which they establish a retirement benefit plan will not be subject to any catastrophic events that will disrupt the smooth administration of their plans. The Isle of Man's proximity to the United Kingdom and its legal, regulatory, tax

Many of the space and satellite industry's leading companies have established operations on the Isle of Man.

and commercial environment all complement the Isle of Man's offering in this regard. In particular, its tax regime provides a favourable tax treatment for both domestic and international plans and its status as a common law jurisdiction with political stability, investor protection, stable currency, a strong banking sector and sensible regulation are all key components of the Isle of Man's retirement benefit industry.

In addition, the Isle of Man is extremely well placed to assist multinational employers whose international plans are exposed to reporting requirements in respect of Foreign Account Tax Compliance Act (FATCA) type legislation. The interaction of the Isle of Man's regulatory regime under the IPA and the way it interacts with the Income Tax Division of Treasury means the Isle of Man benefits from available reporting exemptions under both the United Kingdom and USA FATCA legislation. As a result, there has been a clear trend in international retirement plans being established in the Isle of Man or re-domiciling to the Isle of Man from other offshore jurisdictions that, due to their less developed regulatory regimes, cannot benefit from similar FATCA exemptions.

5.10.4 The way ahead

Ultimately, the provision and administration of domestic and international plans represents an established business sector that is continuing to evidence impressive growth within a coherent and well run regulatory and tax framework. Its development is partly due to the wider economic, political, and regulatory landscape noted above and partly due to the range of complementary industry sectors that the Isle of Man has established including the life, group medical and captive insurance sectors and the specialist company and trust service providers the Isle of Man maintains. It offers a jurisdiction that has relevant levels of expertise and resource capable of delivering retirement benefit solutions for Isle of Man resident employers and individuals as well as for multi-national companies, temporary expatriates, and overseas retirees.

5.11 Space and satellite industry

The Isle of Man continues to be recognised as a centre of excellence for the provision of specialised financial and regulatory services to the global space and satellite industry. A positive and proactive regulatory environment is a key factor in the profitability and success of any business and the Isle of Man government and the private sector have worked hard to establish the Isle of Man as an ideal location for the establishment and incorporation of space and satellite related businesses.

The Isle of Man was the first jurisdiction in the world to offer a zero tax rate for companies working in the space sector (all Isle of Man companies - with two limited exceptions - are now taxed at zero rate). Satellite and space companies can achieve significant savings using the Isle of Man's zero tax regime by structuring the operations of subsidiaries in the Isle of Man. The Isle of Man adopted the United Kingdom's Outer Space Act in 1990.

Many of the space and satellite industry's leading companies have established operations on the Isle of Man with many more actively investigating the opportunities offered by the Isle of Man. Inmarsat, Sea Launch, Telesat and Viasat have operational structures on the Isle of Man. SES, one of the world's largest satellite operators, has a manned office in the Isle of Man from which it runs its Isle of Man subsidiary, SES Satellite Leasing Limited.

The Isle of Man's role at the forefront of the space industry has been endorsed by the publication of a report by the Futron Corporation entitled "Innovative strategies for space competitiveness: assessing the SpaceIsle's policy and results". The report states that the "Isle of Man emerges as a leader that consistently punches above its weight". The Isle of Man has also been hailed as an example for the United Kingdom to follow in its approach to space commerce by The Economic Policy Centre, a London-based thinktank.

Space interests on the Isle of Man are uniquely served in that the Isle of Man has chosen to outsource the handling of certain space activities to ManSat Limited (an Isle of Man company with offices in Houston, Texas and London). Working closely with ManSat, Isle of Man satellite companies are able to access orbital positions and radio frequencies via the International Telecommunications Union (ITU) in Geneva.

The cost of insurance is a significant issue in the space industry. Structuring through the Isle of Man can help minimise insurance costs by virtue of the absence any form of insurance premium tax and the provision of captive insurance services. Many of the global names in insurance provide captive management services on the Isle of Man, such as Willis, Aon and Marsh. With access to such insurance heavyweights, space and satellite companies can take advantage of the Isle of Man's captive insurance regime (which is not subject to European Union captive insurance rules) and avail themselves of the many benefits associated with captives, such as reduced cost of coverage, direct access to re-insurers and improved cash flow.

Despite being worth approximately US$300 billion per year, the space industry is relatively small in terms of decision makers, and knowledge of the advantages of establishing or structuring in the Isle of Man is pervading through this industry. In October 2008, the International Institute of Space Commerce was established on the Isle of Man through a partnership between the International Space University (ISU) and the Manx government. The Institute's mission is to become the leading think-tank in the study of the economics of space. The Institute is a not for profit foundation and has been located at the International Business School on the Isle of Man to "capitalize on the Isle of Man's growing importance and position in the world's space industry".

5.12 Transportation

5.12.1 Merchant shipping

The Isle of Man's long maritime history has led to its emergence in recent decades as a global maritime centre. The first ship was registered on the Isle of Man Ship Register in 1786, but for 200 years only locally operated vessels were registered. More recently, the development of an international shipping register was viewed by the Manx government as a natural complement to the services provided by the finance sector and the existing shipping industry. The government therefore implemented appropriate legislation and a number of international maritime conventions have been extended to the Isle of Man.

The Isle of Man Ship Register is, in effect, British and the ships registered are British ships. Ships registered in the Isle of Man fly the British red ensign and are entitled to British consular services and the assistance of the Royal Navy. The register is not a flag of convenience and enforces high, though not excessive, regulatory standards.

The Isle of Man Ship Registry has now been operational for over

A leading maritime centre of excellence.

30 years. Regarded as a leading maritime centre of excellence, and as a division of the Department of Economic Development, it administers the register and is responsible for ensuring the compliance of Manx registered vessels to the required international standards. The Registry has developed a global reputation for efficiency, pragmatism and facilitation. Charges for the registration, survey and certification of ships, and annual fees, are set at levels that are not intended to produce a profit.

The fleet of vessels registered on the Isle of Man Ship Register, in terms of total Gross Registered Tonnage, exceeds 16 million tonnes, a figure that has more than doubled over the past ten years. In 2013, the registered tonnage for new ship owners was more than twice the growth rate of the world's fleet at 7.4 per cent. The actual number of vessels on the Register has increased by a third over the same 10 year period and includes both modern merchant ships and superyachts.

Growth in recent years has been driven primarily through the introduction of new clients from the Far East following targeted marketing in the region. In fact, 40 per cent of the tonnage on the Manx Register is managed or controlled from Asia. Development continues in this area, particularly towards the aim of spreading the Registry's global coverage of surveyors, able to provide survey, audit and certification services.

The Isle of Man Ship Registry appears consistently in the highest tier of the White List published in the annual report of the Paris Memorandum on Port State Control. The White, Grey and Black Lists featured in the report evidence the performance of flag states whose ships have been inspected in European ports. As the name suggests, the White List represents quality flags with a consistently low detention record.

Manx registered vessels often benefit from favourable treatment with national port authorities. The Isle of Man continues to be included in the United States Coast Guard's Qualship 21 Scheme, which recognises quality shipping in the 21st Century by analysing the safety performance of ships visiting US ports. The Isle of Man is included in the Qualship 21 list, along with only 22 other countries, out of the possible 130 states operating international registers. This is an external benchmark, very difficult to achieve, but demonstrating the quality of the ships registered in the Isle of Man.

Shipping as an industry is well represented on the Isle of Man and employs approximately 600 people. A number of international ship managers have set up offices which have grown to become significant operations. The industry is serviced by experienced local professionals in the banking, legal, accountancy and insurance professions.

Substantial fiscal benefits arise from setting up a shipping company in the Isle of Man. All Manx companies (with two limited exceptions) are taxed at zero rate on their income in the Isle of Man. The government also offers various start-up incentives (see section 1.5.1 above) and taxation concessions.

5.12.2 Yachts

Although the registration of private yachts of any size has been possible on the Isle of Man for many years, in January 2003 the Isle of Man adopted a large yacht code, allowing commercial yachts of over 24 metres to be registered. The introduction of the Commercial Yacht Register was in response to strong interest from the industry. The Isle of Man has continued to adopt new editions of the Large Commercial Yacht Code, and has very recently proposed to implement new regulations to give effect to the third edition of this Code, which will apply to all commercial yachts of 24 metres or more, permitted to carry a maximum of 12 passengers or over and constructed on or after 20 August 2013.

The Isle of Man has been able to offer tax planning opportunities, together with a first class service standard and a Ship Registry that is highly experienced in the more specialist issues relating to yacht registration. There are many companies in the Isle of Man working in the yacht industry, including a number which offer commercial yacht management facilities.

As at September 2014, approximately 100 vessels are registered on the Commercial Yacht Register (together with over 300 registered pleasure yachts). The Isle of Man is regarded internationally as a significant jurisdiction for super-yacht registration, finance and ownership structures, with many of the world's best known super-yachts registered on the Commercial Yacht Register and/or owned by Isle of Man companies or limited partnerships.

6 ADDITIONAL INFORMATION

6.1 Other Information Sources

The Isle of Man Government's Department of Economic Development is responsible for promoting business development on the Isle of Man. The Department's "Where you can" website is a gateway to a variety of information and publications, including articles, fact sheets, and brochures on a variety of business related topics and sector specific information (www.whereyoucan.com).

The website of the Isle of Man Government's Economic Affairs Division contains a number of downloadable documents including the Digest of Economic and Social statistics.

The Isle of Man Government's website is at www.gov.im, providing access to all departments and their publications, annual reports, legislation and many miscellaneous publications. In particular, the 'Business and Industries' section on the government website contains useful links for further information on Isle of Man business sectors.

6.2 Important Isle of Man contacts

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Civil Aviation Administration
St George's Court
Upper Church Street
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IM1 1EX
caa@gov.im

Commerce & Retail Trade
Chamber of Commerce
Chamber Offices
Athol House
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Douglas, Isle of Man
IM1 1LB

Companies Registry
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Customs and Excise
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Economic Information
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Financial Services
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Financial Supervision Commission
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CAINS ADVOCATES LIMITED

The Firm

Cains is a leading international law practice incorporated in the Isle of Man where we have practised law for over one hundred years. Our qualified staff include English barristers and solicitors, as well as lawyers qualified in various other jurisdictions, in addition to Manx advocates.

Cains is the exclusive member firm for the Isle of Man of Lex Mundi, the world's leading association of independent law firms and commands a prominent position in the provision of global offshore legal services. Our reputation has been built through the sustained provision of a high quality work product at response times expected by the global market. Our success also reflects a dedicated investment in our staff, their training and an IT infrastructure which enables us to ensure that our clients' needs are met efficiently and as cost effectively as possible.

We offer specialist legal services to our international and domestic clients, providing Isle of Man and other legal advice and regularly co-ordinate the provision of advice and the management of multijurisdictional transactions. Out international clients include major banks and financial institutions, multi-national enterprises including major airlines and ship-owners, in addition to other public and private companies from a wide cross-section of industry and commerce. We also act for a select number of private individuals.

We specialise in banking, capital markets, financial services, insolvency, securitisation, asset financing, captive insurance, international equity offerings and listings, mutual funds, venture capital, commercial and private trusts and commercial and trust litigation.

Offices outside the Isle of Man

We have established operational offices in the City of London and in Singapore, to facilitate the provision of Isle of Man and other offshore legal advice and solutions to the London and Asian markets.

The future

Our firm and lawyers are fully committed to the future development of the Isle of Man and to continuing to provide our clients with the high quality Isle of Man and other legal services to which they have become accustomed.
Our lawyers maintain close links with the Isle of Man government and its various organs in a consultative and advisory capacity, and as such, our interest, in common with the government, is to develop and maintain the Isle of Man's reputation as a leading financial centre.

If you would like more information on us, our services and the Isle of Man, please visit our website at **www.cains.com.**

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