

Business Update: The Isle of Man Foundation

The Isle of Man Foundations Act 2011 (the “Act”) and provides an alternative to more traditional Isle of Man common law trusts.

Under the Act, a foundation is a body corporate registered with the Registrar of Foundations (the “Registrar”) in the Isle of Man; the name of a foundation must end with the word “Foundation”. It holds assets provided by the founder and/or any other contributors for a particular purpose or for the benefit of designated beneficiaries. It does not have shares or shareholders and beneficiaries generally do not have any legal or beneficial interest in the assets of the foundation.

Unlike an Isle of Man trust (but like an Isle of Man company), a foundation has its own separate legal personality (so that it may own property in its own name) and may continue in perpetuity and also sue or be sued in its own name.

A foundation may not engage in commercial trading which is not incidental to the attainment of its objects. It does, however, have the capacity to exercise all the rights, powers and privileges of an individual. The capacity of a foundation is not limited by anything in its rules (see below) or the act of any person appointed under its rules.

In order to establish a foundation under the Act, application must be made by the foundation's registered agent to the Registrar. The application must be accompanied by the foundation instrument (see below) and the appropriate filing fee. If the application meets the requirements of the Act, the Registrar will register the foundation in the Register of Foundations and will issue a certificate of establishment.

Under the Act, a foundation requires two official documents, these being the foundation instrument (the “Instrument”) and the foundation rules (the “Rules”), respectively. The Instrument (which will be a public document) is the major constitutional document of a foundation and, amongst other things, sets out the objects of the foundation. The Rules (which will not be a public document) govern how a foundation operates constitutionally. While there is a great deal of scope to tailor the Rules to particular requirements, the Act requires certain matters to be dealt with in the Rules including, inter alia, administrative matters relating to the foundation council (see below) and the registered agent (see below).

The objects of the foundation must be certain, reasonable and possible and must not be unlawful or contrary to public policy or immoral. The objects may either be charitable, non-charitable or both. Furthermore, they may benefit a person or class of persons or carry out a specific purpose.

A foundation need not have an initial dedication of assets (if it does, details are to be included in the Rules). Unless prohibited by the Rules, assets may be dedicated to a foundation after it has been established (details are to be specified in the Rules). The key participants in foundations are the following:

Founder

The person on whose instruction a registered agent applies for establishment of a foundation. The founder will have such rights (if any) in relation to the foundation and its assets as may be set out in the Rules.

Council

The council of a foundation (comprising one or more members, which can include bodies corporate) administers the assets of the foundation and carries out its objects. Council members (who must act in accordance with the Instrument and Rules and the Act) have a fiduciary duty to act honestly and in good faith in the best interests of the foundation and must exercise the care, diligence and skill of a reasonable prudent person in discharging their functions.

Registered agent

A foundation must have a registered agent (who must be the holder of a class 4 licence under the Isle of Man Financial Services Act 2008). The registered agent has responsibility for performance of certain prescribed functions under the Act.

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continued



Dedicators

This is the term used for any persons, other than the founder, who dedicates assets to a foundation.

Enforcer

The enforcer (whose role is comparable to that of a trust protector) is responsible for ensuring that the council of a foundation carries out its functions and acts in the best interests of the foundation. Appointment of an enforcer is optional, unless the foundation has been established to carry out a specified non-charitable purpose - in which case it is required to have an enforcer. Apart from the founder and the registered agent, no person may be both a member of the council and its enforcer.

Beneficiaries

A beneficiary has no automatic interest in the assets of a foundation. A beneficiary may, however, become entitled to a benefit under the foundation at such time and to such extent as may be provided for in the Instrument and Rules.

Uses

The uses of Isle of Man foundations include, but are not limited to:

- an alternative to trusts for clients in non-common law jurisdictions (where foundations may be more familiar than trusts);
- succession planning vehicles with legal personality;
- charitable and philanthropic purposes; and
- asset holding vehicles (for holding commercial assets such as private aircraft, for example) for non-charitable purposes.

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This briefing is intended as a general introduction to Isle of Man company law, and is not intended to provide, or be a substitute for, specific legal advice. Should you have any questions on topics raised herein or on other topics please contact any of the individuals named above, or your usual advisor at Cains.

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