CAINS INTERNATIONAL BUSINESS GUIDE TO THE ISLE OF MAN

2014

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

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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

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.

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

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

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

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

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.

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 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

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)

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

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

Aviation
Civil Aviation Administration
St George's Court
Upper Church Street
Douglas, Isle of Man
IM1 1EX
caa@gov.im

Commerce & Retail Trade
Chamber of Commerce
Chamber Offices
Athol House
Athol Street
Douglas, Isle of Man
IM1 1LB

Companies Registry
Companies Registry
PO Box 345
St George's Court
Upper Church Street
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companies.registry@gov.im

Customs and Excise
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Douglas, Isle of Man
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customs@gov.im

E-Business
E-Business Division
Department of Economic Development
St George's Court
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Economic Information
Economic Affairs
Cabinet Office
Government Office
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IM1 3PN
economics@gov.im

Financial Services
Finance Division
Isle of Man Treasury
Third Floor
Government Offices
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Douglas, Isle of Man
IM1 3PZ

Financial Supervision Commission
PO Box 58
Finch Hill House
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IM99 1DT
fsc@gov.im

Gambling Supervision Commission
Ground Floor
St Georges' Court
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IM1 1ED
gaming@gov.im

Immigration/Passports
Government Offices
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IM1 3PN
Immigration@gov.im

Income Tax
Income Tax Division
Government Offices
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Douglas, Isle of Man
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Isle of Man Insurance and Pensions Authority
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Shipping
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Space & Satellites
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contact@mansat.com

Work Permits
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31 Prospect Hill
Douglas, Isle of Man
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workpermit@gov.im

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.

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.

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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