



# The Legal 500 Country Comparative Guides

## Isle of Man: Litigation

This country-specific Q&A provides an overview to litigation laws and regulations that may occur in Isle of Man.

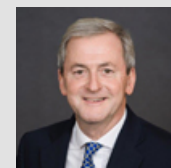
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### Contributing Firm



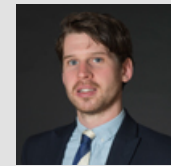
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## 1. What are the main methods of resolving commercial disputes?

The Isle of Man provides a cost effective user orientated common law legal system for resolving commercial disputes. There is an independent local judiciary who recognise the importance to the island of resolving disputes justly, fairly and expeditiously. Moneyval (a Council of Europe Committee of Experts) in January 2017 confirmed that “The rule of law and an independent judiciary are all well-established... The IoM has a sound legal system... It enjoys an independent judiciary committed to the rule of law... The Deemsters of the IoM have [an] excellent reputation...”. Further details in respect of the Isle of Man Courts of Justice including judgments and the rules of court can be found at [www.courts.im](http://www.courts.im).

The island also has an independent and well-resourced local Bar. Cains ([www.cains.im](http://www.cains.im)) is a leading Isle of Man law firm with a well-respected, dedicated commercial litigation department which has significant experience and expertise in dealing with commercial litigation including company and shareholder disputes, liquidations, trust disputes, asset tracing and recovery, judicial review, professional negligence, disciplinary and regulatory issues.

The main methods of resolving commercial disputes in the Isle of Man are: negotiation, arbitration, mediation and court proceedings.

## 2. What are the main procedural rules governing commercial litigation?

The Manx Rules of the High Court of Justice (RHC) are similar to the Civil Procedure Rules in England and Wales (CPR) but without the pre-action protocols. The overriding objective is to enable the High Court to deal with cases justly. The parties are required to help the court to further the overriding objective and rule 19(1) of the Advocates’ Practice Rules 2001 imposes upon advocates an overriding duty to ensure that the proper and efficient administration of justice is achieved.

## 3. What is the structure and organisation of local courts dealing with commercial claims? What is the final court of appeal?

A claim would be commenced in the High Court at first instance before a Deemster. An appeal lies from a decision of a Deemster at first instance to the local Appeal Division (presided over by a fulltime resident Judge of Appeal and at least one other Deemster) and thereafter, with leave, to the Judicial Committee of the Privy Council which is the final appeal court for the Isle of Man. In *Morris v Assessor of Income Tax* the Appeal Division Judge of Appeal Storey QC and Deemsters Doyle and Birt, in a judgment delivered on 22 December 2017, reiterated the test to be applied when considering whether leave should be granted.

## 4. How long does it typically take from commencing proceedings to get to trial?

Much depends on the nature of the claim and any interlocutory applications and appeals but

in straight forward non- urgent matters typically within 6-9 months. The Deemsters are mindful of the need for litigation to be conducted as reasonably and as quickly as possible.

**5. Are hearings held in public and are documents filed at court available to the public? Are there any exceptions?**

The fundamental principle of open justice requires that generally hearings are held in public but there are well established exceptions which pursuant to rule 9.2(3) include situations where (i) publicity would defeat the object of the hearing; (ii) there is confidential information and publicity would damage that confidentiality; and (iii) the court considers it to be necessary to sit in private in the interests of justice.

The provisions of the RHC must be read in light of the local case law including *Reid v McNicholas* (Appeal Division judgment 24 July 2018).

Rule 2.21 concerns the supply of documents from court records, including the limited circumstances where a non-party can obtain court documents.

**6. What, if any, are the relevant limitation periods?**

The Limitation Act 1984 as amended (which can be accessed at [www.legislation.gov.im](http://www.legislation.gov.im)) contains substantive provisions in respect of relevant limitation periods in commercial claims. Normally, a commercial claim based on contract or tort must be commenced within 6 years from the date upon which the cause of action arose. The equitable doctrine of laches (delay) will be applied in relation to claims where equitable relief is sought.

**7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?**

The RHC does not contain the CPR pre-action protocols but the litigation culture on the Isle of Man requires a reasonable rather than an unduly aggressive and confrontational approach. Disputes need to be resolved within a short space of time and at a reasonable cost (*Howell v DHSS* 2009 MLR 526; *Watson v Jolly* 2011 MLR N8).

**8. How are commercial proceedings commenced? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?**

Commercial proceedings are commenced by the filing of a claim form which should set out the details of the grounds of the claim and the relief sought. Service of the claim form once issued by the court is necessary. Subject to any other direction the court would normally expect the claimant to arrange for service of the claim form on the defendant and other interested parties.

Rule 2.36 in effect provides that where the defendant is represented by an advocate and the advocate is authorised to accept service and such has been notified to the party serving and personal service is not required by a court order, the claim form must be served by leaving it at the business address of the defendant's advocate.

Rule 2.37(1) provides that the claimant may, and where rule 2.36 or rule 2.41 (service out of the jurisdiction) does not apply must, cause the claim form to be served by a coroner, (the local equivalent of a service/enforcement bailiff) on the defendant in accordance with the methods specified in Rule 2.37(3). The rule is subject to rule 2.28 (service on minors and patients) and does not apply where (a) an order under rule 2.30 permits service by an alternative method; or (b) the claim form is to be served out of the jurisdiction.

## **9. How does the court determine whether it has jurisdiction over a claim?**

Legal entities present on the island can be served with claims and the court would have jurisdiction. The court also has power to order service out of the jurisdiction in certain instances (rule 2.41 and *AK Investment CJSC v Kyrgyz* [2011] UKPC 7). Moreover there may be challenges to jurisdiction and arguments over convenient forum.

The courts in the Isle of Man (see for relatively recent examples, Deemster Corlett's judgments in *Cunningham v Ellis* 27 January 2017 and *Nolan v Dildar* 10 January 2019) have adopted and applied the dicta of Lord Goff in *Spiliada Maritime Corp. v Cansulex Ltd* [1987] AC 460 at 477 and take into account the following factors:

- (a) which jurisdiction has the most real and substantial connection to the proceedings?
- (b) which jurisdiction is the most convenient?
- (c) which jurisdiction would be most costs effective?
- (d) what is the availability of witnesses?
- (e) what law governs any relevant transactions?
- (f) in which jurisdictions do the parties reside or carry on business?
- (g) will the parties obtain justice in the other jurisdiction?

## **10. How does the court determine what law will apply to the claims?**

Much will depend on the nature of the claim but (absent effective alternative choice of law by the parties in contractual disputes) usually Manx law would apply. In some cases where the

law of another foreign jurisdiction is relevant expert evidence may need to be adduced before the court.

**11. In what circumstances, if any, can claims be disposed of without a full trial?**

There may be default judgment, summary judgment, strike out, stays, determination of preliminary issues which effectively dispose of the main proceedings, or the claim may settle.

**12. What, if any, are the main types of interim remedies available?**

The usual type of interim remedies available in common law countries worldwide are available in the Isle of Man including (i) asset freezing orders (*Bitel LLC v Kyrgyz Mobil* 2011 MLR N7); (ii) *Anton Piller* search orders, (iii) Bankers Books Evidence Act orders, (iv) *Norwich Pharmacal* disclosure orders (*Secilpar* 2003-05 MLR 352), (v) *Chabra* orders (*Cruz City 1 Mauritius Holdings v Unitech Ltd* 2015 MLR 13), (vi) *Bankers Trust v Shapira* orders, (vii) the appointment of a receiver under section 42 of the High Court Act 1991, and (viii) the appointment of a liquidator provisionally under section 178 of the Companies Act 1931. Some rarely used additional local interim remedies include restoration of the status quo orders (*Bellamy v Forster* Appeal Division 6 April 2018) and actions of arrest orders (*Raad v Sturgeon* 2003-05 MLR N11).

See also rule 7.16 in respect of orders for interim remedies.

Under section 56B of the High Court Act 1991 the High Court can act in aid of proceedings in a foreign court or tribunal and grant interim relief where proceedings have been or are to be commenced outside the Isle of Man.

Manx courts act very quickly in urgent cases conscious of the island's reputation as a leading financial centre and the need to protect and enhance that reputation.

**13. After a claim has been commenced, what written documents must (or can) the parties submit and what is the usual timetable?**

A defendant can reply to a claim via an acknowledgment of service and then by filing a defence. In proceedings under the chancery procedure normally the only pleading will be the claim form (see rule 5.19). In other proceedings there will be a pleading setting out the defence and any counterclaim and then a reply and where appropriate a defence to counterclaim.

Under rule 6.26 there is 14 days after service of the particulars of claim to file a defence or if the defendant files an acknowledgment of service 28 days. The parties may agree an extension for up to 28 days but any agreement must be notified to the court in writing.

Once the pleadings are closed and disclosure has taken place the parties would usually exchange witness evidence and file and serve concise skeleton arguments, authorities and paginated bundles including draft orders.

**14. What, if any, are the rules for disclosure of documents? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?**

Rules 7.31 to 7.52 provide a comprehensive regime for disclosure and inspection of documents and there is significant local case law in this important area of commercial litigation. Directions are either agreed by the parties or ordered by the court.

Standard disclosure requires a party to make a reasonable search for documents and to disclose only documents (a) on which he relies; (b) which adversely affect his own case or another party's case; or (c) support another party's case.

A party's duty to disclose documents is limited to documents which are or have been in his control i.e. (a) it is or was in his physical possession; (b) he has or had a right to possession of it; or (c) he had or has had a right to inspect or take copies of it.

A party may object to inspection of a document on numerous grounds including (a) legal professional or other privilege; (b) public interest immunity; (c) without prejudice communications; (d) confidentiality of third parties; (e) compliance with foreign legal obligations and (f) inspection would be disproportionate.

The procedure for standard disclosure involves the careful preparation of a list which must include a disclosure statement.

**15. How is witness evidence dealt with in commercial litigation (and, in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?**

Witness evidence is provided usually by witness statements and sometimes by way of affidavits and depositions. Witnesses who attend voluntarily or are compelled to attend to give oral evidence are subject to cross-examination in the usual way which will be familiar to any common law lawyer. In proceedings under the chancery procedure unless the court requires or permits oral evidence to be given, only written evidence is to be given.

**16. Is expert evidence permitted and how is it dealt with? Is the expert appointed by the court or the parties and what duties do they owe?**

Expert evidence is permitted in certain cases but where it is permitted it is restricted to that which is reasonably necessary to resolve the proceedings. A party would normally apply to adduce expert evidence where necessary and there would then, if the application was

successful, be an order appointing the expert. Under the common law (see for example *Hawthorne v Jones* 2007 MLR 199 applying the *Ikarian Reefer* [1993] 2 Lloyd's Rep 68) and rule 8.53 experts have a duty to help the court on matters within their expertise. An expert must assist the court by providing objective, unbiased opinion on matters within his expertise and must not assume the role of an advocate. The expert must consider all material facts, including those which might detract from his opinion and he must make it clear (i) when a question or issue falls outside his expertise; and (ii) when he is not able to reach a definite opinion (for example because he has insufficient information). If, after producing a report, an expert changes his view on any material matter, he must communicate such change of view to all the parties without delay, and when appropriate to the court. The duty of an expert to the court overrides any obligation to the person from whom he has received instructions or by whom he is paid.

The expert evidence would usually be in the form of a written report but an expert may have to attend for cross examination.

The court has power to direct that evidence on a certain issue be provided by a single joint expert instructed by the parties and the court may, at any stage, direct a discussion between experts to try and reach an agreed opinion on certain issues.

**17. Can final and interim decisions be appealed? If so, to which court(s) and within what timescale?**

Final and interim decisions can be appealed.

Rule 14.3 (which is subject to any statutory provision specifying the Division to which an appeal lies) provides in effect that an appeal to the court (other than by way of case stated) lies from a decision of the Civil Division to the Appeal Division.

Some orders (such as consent or costs only) may however only be appealed with leave (section 19(1) of the High Court Act 1991).

The appellant must file the appeal notice within (a) such period as may be allowed by a relevant statutory provision; (b) where there is no such provision, such period as may be directed by the lower court; or (c) where the lower court makes no such direction, the following period after the date of the decision of the lower court (i) 42 days, in the case of a final judgment or order; (ii) 14 days, in any other case.

In October 2017, for the first time in the island's history and evidencing the importance the island places on the rule of law, a resident full time judge of appeal was appointed. Consequently appeals are dealt with expeditiously. Once an appeal notice is issued directions (including the filing of a paginated bundle and skeleton arguments) would normally follow within 14 days with the appeal taking place within 2 months and judgment following shortly

thereafter.

The Judicial Committee of the Privy Council is the island's final court of appeal from decisions of the Isle of Man Appeal Division.

**18. What are the rules governing enforcement of foreign judgments?**

A claimant may sue, at common law, in the Isle of Man upon a final non-tax money judgment obtained in a foreign jurisdiction subject to well established principles of private international law.

Under the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968 a Manx court will enforce final money judgments given in superior courts of other countries to which the Act has been extended by order of the Council of Ministers. Such countries include the UK, Jersey, Guernsey, Surinam, Israel, Italy and the Netherlands.

**19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side?**

Costs are largely in the discretion of the court but normally costs would follow the event i.e. the losing party would normally be ordered to pay the costs or a proportion of the costs of the winning party. There is however invariably a significant divergence from the legal costs billed to and paid by a winning party and the legal costs that the court will consider should be reimbursed by a losing party to a winning a party on an assessment basis.

**20. What, if any, are the collective redress (e.g. class action) mechanisms?**

Under rule 3.33(1) the court may make a group litigation order where there are or are likely to be a number of claims giving rise to group issues. Under rule 3.33(4) a group litigation order may not be made except with the consent of the First Deemster. Rule 11.46 concerns costs where the court has made such an order. Group litigation is rare in the Isle of Man.

**21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings?**

Under rule 6.49 a defendant who wishes to counterclaim against a person other than the claimant must apply to the court for an order that that person be added as defendant to counterclaim.

Rule 6.51 applies to other additional claims including in effect "third parties" in the language of the old rules. A defendant may make an additional claim (a) without the court's permission if the additional claim is issued before or at the same time as he files his defence; (b) at any



other time with the court's permission and such application may be made without notice unless the court directs otherwise. The application must be supported by relevant evidence.

The court has very wide case management powers including under rule 7.2(2)(g) the specific and express power to consolidate proceedings and under (h) to try 2 or more claims on the same occasion.

**22. Are third parties allowed to fund litigation? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?**

Deemster Corlett (the Island's First Deemster) in a lecture "Ten Years a Deemster" given in Jersey on 5 October 2017 stated: "The rules relating to champerty and maintenance still apply (so far as I am aware)".

Rule 8 of the Advocates' Practice Rules 2001 in effect prohibits an advocate from sharing his professional fees with a person who is not a lawyer or an employee.

Rule 9 in effect prohibits contingency fees.

The High Court in *Tomlinson* 2005-06 N13 concluded that it did have jurisdiction to compel a party or his advocate to disclose the identity of the funder of the legal proceedings.

Third party funders can be made liable for the costs incurred by the other side.

**23. What, in your opinion, is the main advantage and the main disadvantage of litigating international commercial disputes?**

The main advantage is that the judiciary are very supportive of the island's commercial litigation sector (*Oxleys of Douglas Ltd* 2003-05 MLR 57 at para 18 and *Dev Property Development plc* 7 May 2008 at paras 19-24). Moreover, the local judiciary and legal profession have vast experience of dealing with high value, cross-border commercial disputes. There is an established body of local law that largely recognises English court decisions and decisions from other leading common law jurisdictions as persuasive. This in turn facilitates, where necessary, input from specialist leading English counsel who may where appropriate be granted temporary licences to appear in the local courts for specific cases.

The main disadvantage may be perceived by some to be the cost, in terms of time and money, of travelling to the island but this would only be necessary in the event that oral evidence in person is required at the final hearing if the dispute has not been settled.

**24. What, in your opinion, is the most likely growth area for disputes for the next five**

**years?**

Trust, corporate, shareholder and regulatory disputes.

**25. What, in your opinion, will be the impact of technology on commercial litigation in the next five years?**

More use of electronic documentation and bundles before the courts and perhaps the court resolving some interlocutory issues on line.