

Not just a pretty place

With its wild beaches and warm and friendly people, the Isle of Man is an attractive place. It is also, however, attractive to conservative and alternative lenders - both old and new - as the offshore jurisdiction with the most facilitative enforcement legislation for business and specialised transactions.



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Isle of Man insolvency law is essentially the regime in place in the United Kingdom in the mid-1980s prior to the introduction of the changes now contained in the Insolvency Act 1986 (and its subsequent amendment by the Enterprise Act 2002). It is worth noting that the Isle of Man also does not have an equivalent to the English Law of Property Act 1925.

Under Isle of Man law, a receiver (and manager) may be appointed to an Isle of Man company as a matter of contract, pursuant to the terms of, and the powers set out in, security

documentation. It is therefore still possible under Isle of Man law for a floating charge holder to appoint a receiver over the whole, or substantially the whole, of a company's property with immediate effect (i.e. a de facto administrative receiver in U.K. Insolvency Act 1986 terms). The chargee owes a duty of care to ensure any receiver appointed is a competent professional. The receiver so appointed owes a duty of care to the company to act in good faith and for proper purposes, but his primary duty is to the chargee in securing

repayment of the monies owed. The chargee's interests may therefore be given primacy over those of both the company and any unsecured creditors.

In the Isle of Man, a receiver appointed subject to any security documentation will invariably have the power to protect, collect and realise all property and assets subject to the security. To trigger the appointment of the receiver, a notice of default is simply served in accordance with the provisions of the security agreements prior to the receiver's appointment. No statutory

notice is required to be given prior to enforcement, making enforcement immediate.

There is a wide range of enforcement options for a commercial lender under Isle of Man law. Not only may a floating charge holder appoint a receiver over a borrowing company's property, but Isle of Man law also allows for the appointment of a receiver with wide powers, set out in the charge document, in relation to a chargor company's shares, allowing a secured creditor to take control of a company or group structure rather than its assets, giving the secured creditor time to restructure any assets prior to disposal. There is no requirement to effect an immediate sale of a defaulting company's assets, allowing time for values in the market to rise or for new investors to be introduced.

Enforcement at company level in the Isle of Man can also be particularly attractive if local enforcement processes in the jurisdiction in which the company's assets are situated are problematic, expensive or time consuming. In recent years, for example, this process has been successfully used by a consortium of European banks to take control of a large portfolio of underperforming German real estate assets held through several Isle of Man companies. Without taking direct ownership of the companies or needing to resort to German law governed enforcement processes in respect of multiple properties, the lenders were able to institute their own asset management procedures and ultimately sell on the group with stapled debt. There are also several examples of its use in relation to property assets situated in Scotland held by Isle of Man companies, due to the lack of availability of English

Law of Property Act receivership at Scots law.

Also, in Jersey and Guernsey, by contrast, floating charges and receivers are not recognisable legal concepts. In the many Jersey based structures which own property in the UK, for example, the relevant borrowings are generally secured by an English or Scots law fixed charge over the property and also by a security interest over the units in a Jersey property unit trust (JPOT) and/or over the shares in the borrower. This security may only be enforced over units or shares under Jersey law by means of a statutory power of sale, arising after an event of default.

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In addition, the security hardening periods in the Isle of Man are attractive to commercial lenders, being up to six months for all creditors, contrasting with up to two years in England and Guernsey when related to “connected persons” and 12 months for all creditors in Jersey.

As well as the numerous Isle of Man law options regarding the

appointment of a receiver, there is also now a clear precedent under Isle of Man law for those options to be further extended by way of a company being placed into English law administration, with the assistance of the Isle of Man courts.

On 6th March 2014, Mr Justice Mann placed Gulldale Limited (“Gulldale”) a company incorporated, and with its Centre of Main Interest, in the Isle of Man, into administration in England. Gulldale was part of a structure involving English companies and English property. As the English court had no jurisdiction to place Gulldale into administration in England unless it did so pursuant to a letter of request for assistance from the Isle of Man Court received under s426 of the Insolvency Act 1986, an application had previously been made to the Manx Court for such a letter.

On 9 January 2014, Deemster Doyle had readily issued the letter of request. In so doing he stressed “the interests of the Island in terms of its reputation outside these shores” and determined that “the issuing of a letter of request in the circumstances of this case will hopefully facilitate the most efficient and effective administration of the Defendant's assets in the best interests of all concerned.”

In a period where EU banks are seeking to shed unwanted loan portfolios, especially in relation to commercial property, to comply with regulatory standards, the use of Isle of Man structures is something that can give alternative as well as traditional commercial lenders a real advantage when it comes to the enforcement of security. The Isle of Man offers a regime which is flexible and relatively straightforward and inexpensive. It's not just a pretty place, but a place to do business.

