

Business Update: Isle of Man Purpose Trusts

The Isle of Man Purpose Trusts Act 1996 (the “Act”) makes provision for the creation and validity of trusts for a specific purpose or purposes.

The Act permits the establishment of non-charitable purpose trusts not exceeding 80 years in duration provided that: the purpose is legal, reasonable and moral; there is an enforcer; and one of the trustees is a designated person who is resident in the Isle of Man and professionally qualified.

Isle of Man purpose trusts can be used as suitable vehicles in both commercial and private client structures where it is beneficial to hold property and / or undertake a particular transaction through an “orphan vehicle” or a “non-owned vehicle”, the purpose trust having no individual beneficiaries with a beneficial ownership interest in the trust’s property. Examples of the use of purpose trusts are:

- in securitisation and finance transactions, generally in conjunction with the use of special purpose vehicles;
- to hold legal title to a shareholding in an underlying operating company and exercise a controlling interest whilst the economic interest and right to participate in the profits and capital of the enterprise accrue to a different beneficiary;
- to hold assets off balance sheet;
- to hold an investment where it is desirable to avoid consolidation issues where a controlling interest is held in the investment entity;
- to hold shares in a private trust company where it is desirable for professional trustees not to be regarded as the beneficial owner of the private trust company; or
- where a settlor wishes to establish a vehicle to promote interests or objectives which might be business related or philanthropic in nature and therefore for non-charitable purposes.

An Isle of Man purpose trust cannot be used to hold any interest directly or indirectly in land in the Isle of Man.

Under the Act a purpose trust may be created by deed or by will having obtained probate in the Isle of Man. There is no public register of trusts in the Isle of Man and, unlike a conventional trust arrangement, it is not necessary for there to be certainty of who is to benefit.

The trust may be created by way of a declaration of trust but the instrument must name at least two trustees one of whom is defined as the “designated person”, together with a person who is independent to the trustees known as “the enforcer”.

Trustees/Designated Person

The trustees may be individual persons or corporate trustees but there is a minimum requirement of two. One of the trustees must be named as the “designated person”. The designated person must be a suitable person as defined in the Act and a resident of the Isle of Man or a holder of a licence under the Financial Services Act 2008 in respect of trust services, such as Cains Fiduciaries Limited. The designated person is responsible for keeping in the Isle of Man copies of all trust records and maintaining a register specifying the name of the person who created the trust, a summary of its purpose and the name and address of the enforcer. Such register is not available for public inspection.

Enforcer

The enforcer (whose role is comparable to that of a trust protector) must be an independent person to the trustees and is required to ensure that the trustees carry out the objects of the purpose trust. To do so the enforcer has an absolute right of access to any information or documentation which relate to the trust, including the assets of the trust and the records in respect of its administration.

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Please note that this guide is intended to provide an introduction to the Isle of Man and the possibilities that exist for establishing various types of structure in the jurisdiction. It seeks only to give the reader an overall view of the subject and is not a substitute for specific advice.

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