

## Overview Isle of Man

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### Introduction

The Isle of Man is located in the middle of the Irish Sea, equidistant from England, Scotland and Ireland. The island is approximately 33 miles long and 13 miles wide. Its population is about 70,000, nearly half of whom live in and around the capital, Douglas, which is also the main professional and commercial centre. The island is part of the British Isles. It is a Dependency of the British Crown, although not part of the United Kingdom. The UK government conducts external relations and defence for the island.

The Isle of Man has a special relationship with the European Union. This is set out in Protocol 3 to the Act of Accession annexed to the Treaty of Accession 1972, by which the United Kingdom became a member of the European Union. The Isle of Man is not a member state of the European Union, nor is it an associate member. Under Protocol 3, the Isle of Man is within the EU Common Customs Tariff barrier for the purpose of trade in industrial and agricultural products. Because of its relationship with the European Union, the Isle of Man's finance sector is not directly involved in or affected by the 1992 'single market' programme. The island is outside the European Union for the purpose of trade in financial services and products.

The Isle of Man is a member of the Organization for Economic Cooperation and Development (OECD). This was confirmed in 1990 when the UK government made a declaration confirming that the convention applied to the island. This means that Isle of Man financial products and services have access to markets where OECD membership is an entry requirement. Although there has been a threat of the island being included in the OECD black list of harmful tax havens, the Isle of Man government has recently reached agreement with the OECD in terms which will prevent this.

The Isle of Man has the oldest continuous legislature, Tynwald, which was established over 1,000 years ago. Tynwald celebrated its millennium in 1979. The legislature comprises two branches: the House of Keys, of which there are 24 members, and the Council of Ministers, of which there are 10 members. The majority of the members of the House of Keys (MHKs) are independents, although in the last few years a form of party has emerged - the Alternative Group Party - which puts forward alternative views to the Council of Ministers.

There is a ministerial system of government. The political head is the chief minister, and he selects his ministers who have responsibility for the major government departments. The island enacts its own legislation, which is then subject to royal assent. In order to avoid any conflict arising over this, there is consultation with the UK government at an early stage as part of the legislative process. Parliament at Westminster has concurrent legislative jurisdiction over the island, but in practice only usually legislates in respect of the island on matters that are of concern to both jurisdictions, such as defence, nationality and immigration.

## Legal System

The legal profession in the Isle of Man is fused so lawyers, known as advocates, perform the roles of both solicitors and barristers. While Manx advocates have the exclusive right of audience in the Manx courts, English barristers can be licensed to appear in cases where the issues are sufficiently complex.

The Manx legal system is based on the principles of English common law. Accordingly, Manx law is very similar to English law in areas of crime, contract, tort and family law. Certain laws relevant to the operation of the island as a financial centre obviously differ from English law, such as direct taxation, company law and certain legislation enacted to encourage the use of the island by other jurisdictions.

The court system in the Isle of Man operates in a similar way to the English system. The two High Court judges (known as 'deemsters') have jurisdiction over the criminal and civil matters that in England would fall to the High Court, county court and crown court. In certain situations an English barrister (usually a queen's counsel (QC)) will be appointed as an acting deemster to hear a case on the island.

The appeal court is known as the Staff of Government Division, and consists of the deemsters and a judge of appeal (a part-time office filled by an English QC). The final appellate court is the Judicial Committee of the Queen's Privy Council. Decisions of English courts are highly persuasive but not binding, while decisions of the Privy Council on relevant matters are binding.

The rules of the High Court of the Isle of Man are based to some extent upon earlier versions of the 'White Book'. Similar rules of evidence as in England apply, with minor variations, and the procedure leading from the issue of a writ or petition to the conclusion of a hearing is likewise similar to the procedure used in England prior to the introduction of the new Civil Procedure Rules (which have not been adopted in the island).

Injunctive relief in the form of 'search and seize' and 'freezing' orders (still known in the island as Anton Pillar and Mareva Orders respectively) is commonly granted in the island, often in support of proceedings issued in England and elsewhere rather than solely in relation to substantive proceedings issued in the island.

## Commerce

Historically, at various times the island has been a prosperous centre for mining, the fishing industry and tourism. There is still some tourism, particularly in connection with the Tourist Trophy, the island's renowned motorcycling event, but a large proportion of the island's revenue is now derived from the finance sector. There is currently virtually no unemployment.

One particular area of business in respect of which the government offers incentives is the film industry, in which loan facilities are made available through the Isle of Man Film Commission on advantageous terms, including repayment to be made out of the proceeds from the film.

## Tax

The basic rate of personal income tax is 14% increasing to a maximum of 20%, with personal allowances against taxable income approximately double the amount of such allowances in the United Kingdom. Resident companies (without exempt status) pay income tax at the rate of 20%. VAT is collected for the United Kingdom at the same rates as in the United Kingdom under an agreement by which the Isle of Man government receives a fee.

There are no other taxes on capital or income, and there is no equivalent to stamp duty (other than a registration fee for recording a conveyance of real estate - currently £3.65 per £1,000 of value).

## Company Law

Company law in the Isle of Man is found in the Companies Acts 1931 to 1993. The 1931 act is the principal act and is modelled on the United Kingdom Act of 1929. Particular matters of interest include the following:

- ~ A private company need only have one shareholder but still requires two directors, who must be individuals;
- ~ The memorandum of association no longer requires the 'objects' clause and may only specify the acts that the company is not permitted to perform; and
- ~ Since 1986 an Isle of Man company has the capacity and, subject to the act, all the rights, powers and privileges of an individual.
- ~ The usual capitalization is £2,000 divided into 2,000 shares of £1 each (attracting the minimum registration fee). The principal types of company are:
  - resident company;
  - exempt company;
  - international business company; and
  - limited liability company.

### Resident company

Resident companies either trade or are managed and controlled in the Isle of Man, and pay tax at 20% on all profits.

### Exempt company

As provided in the Income Tax (Exempt Companies) Act 1984, subject to certain conditions on the nature of their activities, some companies may be exempted from income tax in the island on payment of an annual fee, currently £400. The act requires such a company to have at least one director resident in the island, and its secretary must be professionally qualified.

It is also a requirement that a resident director certifies annually to the assessor of income tax that no resident on the island is beneficially interested in the shares of the company and that, with certain exceptions, the company's income arises outside the Isle of Man.

### **International business company**

The International Business Act 1994 provides for certain companies to be exempt from income tax in the island, provided that no Isle of Man resident has an interest in the company and that all the company's income arises outside the Isle of Man, or from certain approved sources within the island.

International business companies must not carry on certain prescribed trades or businesses, nor hold, for example, banking or investment business licences, nor be an insurance company or certain other kind of prescribed company. At least one of the directors must be resident in the island, and the secretary or assistant secretary must be resident in the island and duly qualified.

International business companies are subject to tax either (i) based on a minimum tax charge of £300 in the first year of assessment (provided application is made within 30 days of commencement of business) and £400 per year thereafter, subject to certain adjustments, or (ii) at a rate agreed with the assessor of income tax, which will not exceed 35%.

### **Limited liability company**

Introduced under the Limited Liability Companies Act 1996, limited liability companies have legal personality and capacity for their purposes and powers. They must be dissolved within 30 years of being formed, and the liability of their members is limited to the extent of their contribution to the company's capital.

Restrictions are imposed on the transfer of members' interests in the company. Management of the company is vested in the members in proportion to their contribution to the capital of the company. The company must be wound up on the occurrence of certain events, such as the death or resignation of a member. Profits of the company are treated as the income of the members for the purposes of income tax.

Limited liability companies may not conduct insurance or banking business, hold an investment business licence or undertake other prescribed business. All limited liability companies must appoint a qualified registered agent in the island.

## **Trust Law**

The Anglo-Saxon concept of a trust has developed in the Isle of Man in parallel to that in England. Accordingly, trust legislation in the island exists not to establish the trust concept but rather, as in England, to facilitate the proper administration of trusts.

The pertinent legislation is as follows:

- ~ the Trustee Act 1961 - the principal act which reproduces and enlarges upon the English Trustee Act 1925 and Trustee Investment Act 1961;
- ~ the Variation of Trusts Act 1961 - based upon the English 1958 act;
- ~ the Recognition of Trusts Act 1988 (as amended by the Trusts Act 1995) - applies the Hague Convention on the law applicable to trusts. It also provides that no trust governed by the law of the island will be void by reason that (i) any foreign law does

- not recognize the concept of a trust, or (ii) the trust avoids or affects rights conferred on any person by foreign law by reason of relationship to the settlor or heirship;
- ~ the Perpetuity and Accumulations Act 1968 - reproduces the English 1964 act without the time limit on accumulations; and

the Purpose Trust Act 1996 - creates the concept of a non-charitable trust established for a purpose rather than a particular beneficiary. This is a vehicle that, among other uses, can be introduced in connection with the financing of an asset where the borrower does not own the asset during the finance period. The asset is thus protected from creditors of the borrower. The use of trusts in the Isle of Man in connection with estate planning has existed for many years. There is no accumulation period and therefore the income can accumulate throughout the trust period (a maximum of 80 years). The Manx trust concept is based on that in England, which makes it more attractive than the trust regimes in some other jurisdictions: this similarity will be maintained under a new Trustee Bill presently under consideration and based on the UK Trustee Act 2000.

### **Recent Legislation**

The Criminal Justice (Money Laundering Offences) Act 1998, together with subsequent regulations and guidelines, has introduced substantial changes to professional practice in the legal and financial sectors. In particular, there is now a requirement for professionals to operate anti-money laundering procedures, including the need in certain circumstances to report suspicions to the authorities.

The legal, accountancy, banking and insurance professions have been regulated for some time. More recently the Corporate Service Providers Act 2000 has introduced licensing and regulation for that sector, helping to ensure high professional standards and client confidence across the financial services industry.

The Electronic Transactions Act 2000 has paved the way for increasing use of technology in business, helping the development of the island as a centre for e-commerce.

In general terms, the government tends to react reasonably promptly to the need to introduce new legislation where relevant, in particular to keep pace with legislative changes in the United Kingdom, and to promote/protect local and international business.

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