Isle of Man Trust Law

A Brief Summary

November 2008

Introduction

1. Isle of Man trust law has developed in parallel with English trust law. Isle of Man trust statutes are modelled on English trust statutes, and decisions of the English superior courts are of high persuasive authority in the Isle of Man courts.

Preliminary issues

2. Generally, any individual over 18 and of sound mind can under Isle of Man law make an inter vivos or testamentary trust. A body corporate may be a settlor or a beneficiary of a trust (subject to its constitutional documents and applicable law). Any individual may be a beneficiary of a trust. In order to establish a valid trust, there must be reasonable certainty as to (i) the intention of the settlor to do so (ii) the trust property and (iii) the beneficiaries. A trust for purposes is not permitted unless (a) for exclusively charitable purposes (b) pursuant to the Purpose Trusts Act 1996 (see below) or (c) in certain narrow exceptional cases.

3. A perpetuity period of 150 years has been permitted since 2001, prior to which the perpetuity period was 80 years. Isle of Man law has no restriction on accumulations of income during the perpetuity period.

4. A transfer by a settlor to a settlement to defraud creditors will be void as against the settlor's creditors under the Fraudulent Assignments Act 1736. This will apply when a person is insolvent or the effect of the transfer is to leave him unable to pay his present debts or his known and ascertained debts which will fall due in the future. The Isle of Man High Court has held that an inability to pay contingent debts which may never materialise is not a state of insolvency for this purpose.

The foreign element

5. The Recognition of Trusts Act 1988 (modelled on the English Recognition of Trusts Act 1987) extends the Hague Convention on the Law applicable to Trusts and on their Recognition to the Isle of Man. A trust is governed by its proper law, which is usually specified in the trust instrument. Under the Convention, the proper law governs the validity of the trust, its construction, its effects and the

administration of the trust. The Convention does not apply to preliminary issues relating to the validity of wills or of other acts by virtue of which assets are transferred to the trustees.

6. The Trusts Act 1995 provides that a term of a trust selecting the law of the Isle of Man to govern the trust is valid, effective and conclusive regardless of any other circumstances. It further provides that all questions arising in respect of a trust governed by Isle of Man law, any disposition of property upon the trusts of such a trust, and the capacity of any settlor are to be determined according to the law of the Island, without reference to the laws of any other jurisdiction with which the trust or disposition may be connected. It is provided, however that this is not so as to affect the recognition of the law of the place of incorporation of a body corporate as regards the capacity of that body or foreign laws prescribing generally (without reference to the existence or terms of the trust) the formalities for the disposition of property. The Act specifically provides that the forced heirship laws of any other jurisdiction shall not affect the validity of a trust governed by Isle of Man law or the disposition of property to be held on the trusts thereof.

Trust statutes

7. Apart from those mentioned above, the statutes which relate to Isle of Man trust law and the English statutes on which they were modelled are:

Isle of Man statute	**English model**
Trustee Act 1961	Trustee Act 1925 and Trustee Investments Act 1961
Variation of Trusts Act 1961	Variation of Trusts Act 1958
Perpetuities and Accumulations Act 1968	Perpetuities and Accumulations Act 1964
Trustee Act 2001	Trustee Act 2000

Some differences between the statutory position in the Isle of Man and that in England are as follows.

8. The Isle of Man did not enact an equivalent of the English Trusts of Land and Appointment of Trustees Act 1996. However, in 1997 the Isle of Man introduced an equivalent of the right given by section 19 of the 1996 Act to beneficiaries (all being *sui juris* and together absolutely entitled) to direct the retirement and appointment of trustees.

9. The Isle of Man did not enact an equivalent of the English Trustee Delegation Act 1999, although it was ahead of England in implementing the recommendations of the Law Commission in its report The Law of Trusts: Delegation by Individual Trustees (1994) by in 1996 amending Section 24 of the Trustee Act 1961

substantially in the same way as the 1999 Act amended Section 25 of the English Trustee Act 1925.

10. Sections 36(1)(c) and 38(1) of the Trustee Act 1961 provide that in certain circumstances a retiring trustee is not discharged from the trust unless there will remain either a trust corporation or at least two individuals to act as trustees to perform the trust. The equivalent provisions in the English Trustee Act 1925 were amended in 1996 to allow a retiring trustee to be discharged if there remained a trust corporation or two persons (whether individuals or companies) as trustees.

11. In the Isle of Man, acting by way of business as a trustee of an express trust is an activity requiring a licence pursuant to the Financial Services Act 2008. A "trust corporation" for the purposes of Isle of Man law is a company which has been licensed as such by the Isle of Man Financial Supervision Commission. There are a number of exclusions in this legislation, one of which exempts a private trust company from the requirement to be licensed. A private trust company is a company the sole purpose of which is to provide services in respect of a specific trust or trusts, which does not hold itself out to the public as undertaking trust business and the administration of the trust or trusts is carried out by a holder of a fiduciary licence.

Trust case law

12. Decisions of the English superior courts are of high persuasive authority in Isle of Man courts, which provides a significant corpus of additional authority available to the Isle of Man courts, and also allows reference to the standard textbooks on English trust law. Trust law cases are heard by the High Court of Justice of the Isle of Man at first instance. The appellate courts are the Staff of Government Division of the High Court and the Privy Council, the latter being the final court of appeal in the Isle of Man legal system. The Isle of Man courts have recently decided a number of significant trust law cases, examples being *Steele v Paz* and *Schmidt v Rosewood*.

13. In *Steele v Paz (sub nom Rawcliffe v Steele)* [1993-95] MLR 426, the Isle of Man Staff of Government on appeal from the High Court decided that the powers conferred on the protector by the trust deed in question were fiduciary in nature. No protector had been named or appointed, but the Court decided that it could intervene on the principle that a trust will not fail for want of a trustee. The Court held that in principle the Court could and if necessary should appoint a protector just in the same circumstances as it would appoint a trustee if a trustee was either not appointed or declined to act. The Court might not intervene if the particular nature of the protectorship in question was so unique that only the settlor or a person selected by the settlor could act, however the Court held that that was not the case on an analysis of the trust deed. Whether the powers conferred on a protector are fiduciary or otherwise is to be determined on the facts of each case, and in particular the terms of the trust deed.

14. *Schmidt v Rosewood Trustee Limited* [2003] UKPC 26 was a decision of the Privy Council on appeal from the Staff of Government. Simcocks Advocates Limited acted for Rosewood Trustee Limited. The Privy Council clarified the law in relation to beneficiaries' rights to inspect documents relating to a trust. It was held that there was no distinction to be drawn between a beneficiary and a discretionary object in this regard, and that neither was entitled as of right to inspection of documents. Rather, the question of inspection of trust document was best approached as part of the court's inherent jurisdiction to supervise, and if necessary to intervene in, the administration of trusts. In deciding whether to order disclosure, the court may have to balance the competing interests of different beneficiaries, the trustees themselves and third parties.

15. The decision may have implications in relation to the documents which a tax authority may require a beneficiary within its jurisdiction to produce to it, in relation to the affairs of the trust concerned. If a beneficiary has a right to inspection of such documents, a taxing authority may have a statutory power to require him to produce those documents to it, with concomitant penalties for failure to do so. By holding, however, that no beneficiary had an entitlement as of right to trust documents, the Privy Council may have taken trust documents outside the ambit of such statutory powers. This may not matter in a case where the trustees are themselves in the relevant jurisdiction, but where they are in another jurisdiction in which such statutory powers cannot be enforced, the decision may narrow the powers available to a taxing authority.

Isle of Man tax

16. The Isle of Man has no capital taxes. The Isle of Man Assessor of Income Tax has in Practice Note PN 141/07 dated 8 March 2007 set out the approach adopted in relation to the taxation of trustees in the Isle of Man. Where a trust has no beneficiaries resident for the time being in the Isle of Man, and the trustees have no Isle of Man source income, the trustees even though resident in the Isle of Man will not be subject to Isle of Man tax in respect of trust income.

17. The Isle of Man has a double taxation agreement with the United Kingdom, which broadly provides that the commercial or industrial profits of an Isle of Man enterprise will only be taxed in the Isle of Man, except those arising from a permanent establishment in the United Kingdom. The Isle of Man has entered into tax information exchange agreements with the United Kingdom, the United States of America, the Netherlands, Denmark, Finland, Norway, Iceland, Finland, Sweden, the Faroe Islands, Greenland and Ireland.

18. Consequent on the EU Savings Directive, the Isle of Man has introduced legislation providing for interest payments to be subject to a retention tax or exchange of information; the associated Guidance Note GN31 issued on 22 December 2004 by the Assessor states that the retention tax will not apply to interest payments made to a trust (except in the case of an interest in possession

trust where a relevant beneficiary in the EU has the immediate and absolute entitlement to an interest payment).

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