Features Which Make Isle of Man Foundations Attractive Asset Protection Vehicles

By **Paul Harvey**, 12th July 2019

Background

Common law countries have traditionally used trusts while civil law countries have historically used foundations. Many individuals in civil law countries remain more comfortable with the concept of a foundation as it is a vehicle that they are familiar with and it is often viewed as being more transparent.

The Government of the Isle of Man offers legislation which provides for the establishment of foundations in the Isle of Man.

Foundations: Key Characteristics

A foundation is an incorporated legal entity, separate from its founder, officers and any beneficiaries. A foundation is established by a founder who dedicates assets to achieve the objects of the foundation. Assets placed in a foundation become the property of the foundation, both legally and beneficially.

A Foundation Compared to a Trust

Arguments can be made in favour of foundations as opposed to trusts and vice versa. The Isle of Man is a respected jurisdiction and offers the choice of a trust or a foundation, whichever is most suited to a particular situation.

Attractive Characteristics of Foundations

Foundations offer a number of important and distinctive characteristics:

These include:

- A foundation is recognised by law in the majority of European States, and most South American countries.
- A foundation has a separate legal personality and can enter into contracts in its own name.
- A foundation is a registered entity and is therefore relatively transparent, which can be of advantage to financial institutions and authorities when complicated transactions are being entered into.
- Legal charges can be placed against a foundation and can be recorded.
- The removal or addition of beneficiaries can be carried out by an amendment to the constitution documentation.
- A foundation is relatively unlikely to be challenged as a “sham” as it has defined laws and has its own legal personality.

Use of a Foundation for Commercial Purposes

The use of a foundation for commercial purposes can be achieved by inserting one or more underlying companies, with the shares owned 100% by the foundation. This offers all of the protection and advantages of a foundation, while allowing for a wide variety of business to be carried out by the underlying companies.

Additional Benefits of Foundations

- *Amendment of Foundation Powers*

A foundation can be written in such a manner as to give the founder and beneficiaries specific rights. During the life of the foundation these rights can be altered to take account of changing circumstances. Tax implications need to be taken into consideration when dealing with control, but it is possible to change the foundation rules during its lifetime.

- *Family Foundations*

A useful benefit for a number of families is that a foundation allows, by simple alteration to the rules, the inclusion or exclusion of beneficiaries. It is also possible for additional beneficiaries to be required to sign up to the rules of the foundation before they are allowed to become a beneficiary. This is an important control where families have reckless family members or where very specific control is needed from a financial perspective.

- *Orphan Vehicles*

During its life a foundation may not have any shareholders and/or any beneficiaries. The founder can form a foundation without a named beneficiary, but a procedure can be put in place to appoint one or more in the future. This can be very useful for financial institutions seeking vehicles where securitisation of assets is an issue. The foundation can act like a "purpose trust" and then, over time, appoint an intended beneficial interest.

Assets can therefore be held in a transparent manner with no owner, which assists confidentiality, and the rules amended at a later date to add one or more beneficiaries.

The Manx Foundation

The Isle of Man Foundations Act 2011 (the 'Act') was passed by Tynwald, the Isle of Man Government, in November 2011.

A Manx foundation has the following characteristics:

- *Legal Status*

A Manx foundation has a legal personality, capable of suing and being sued and holding its assets to achieve its objects. All questions of law concerning a foundation and the dedication of assets to its purposes are governed exclusively by Manx law and the impact of foreign law is excluded to a great extent.

- *Creation*

A foundation must have a registered agent licenced to provide corporate services, such as Dixcart, in the Isle of Man. The creation of a Manx foundation is by registration, following application to the registrar using the appropriate forms. The information needs to be filed by the registered agent.

- *Management*

Management is by a council, which is required to administer the assets of the foundation and carry out its objects. A council member can be an individual or a corporate body. There are requirements to keep adequate accounting records. The registered agent must be informed as to where the records are kept and has a statutory right of access to the information. There is a requirement to file an annual return.

- *Supervision of Foundations in the Isle of Man*

A distinctive feature with regard to Isle of Man foundations is that, unlike foundations in some other jurisdictions, Manx foundations will not always require a guardian or enforcer (except in respect of non-charitable purposes). A founder may appoint an enforcer, if they wish to do so, and the enforcer must exercise his/her duties in accordance with the terms of the Act and the rules.

Main Potential Benefits

An Isle of Man foundation offers the following potential benefits:

- Asset protection

- Effective tax planning

- No restriction on the assets that can be held or on the corporations holding the assets
- Potential for tax-deductible donations
- Potentially reduced tax liabilities on the assets held
- Structured management.

Summary

Foundations are available in the Isle of Man, for families and individuals who are more comfortable with such a vehicle, rather than a common law trust. Foundations offer another useful tool in terms of wealth planning and asset protection.

Additional Information

If you require additional information regarding foundations in the Isle of Man, please speak to your usual contact or to the Dixcart office in the Isle of Man: advice.iom@dixcart.com.

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