Trusts and Foundations: Current Perspectives from Dixcart Isle of Man

Find out more about Isle of Man Trusts and Foundations and what multi-jurisdictional families should consider

By **Paul Harvey**, 11th November 2022

Background: Isle of Man Trusts and Foundations

The Isle of Man is a jurisdiction well known for the establishment and management of both Isle of Man Trusts and Foundations. We have recently drafted a series of three comprehensive Articles in relation to Offshore Trusts. Similarly you can find three Articles, featured on our website, on the topic of Isle of Man Foundations.

This Article is more of a discussion piece, with the case study demonstrating how Trusts and Foundations can be used in combination, to achieve specific objectives. It also explores forthcoming changes to Isle of Man Trust Law.

Are Trusts and Foundations the Best Structures for Asset Preservation and Succession Planning?

Recent changes in the global landscape, both in terms of taxation, but also public opinion, mean that HNW families need to look at a range of solutions to achieve their aims.

Where individual circumstances allow, Trusts and Foundations, however, continue to play an important role in HNW family estate planning. The public generally still have the perception that tax mitigation is the sole purpose of establishing a Trust or Foundation structure, when in fact they have a much wider purpose, especially in relation to succession planning.

The characteristics offered by Trusts and Foundations include:

- The ability for families to set out how they would like assets to be held and distributed in the long-term.

- Oversight in relation to family assets, with appropriate ‘checks and balances’ regarding trustees or foundation board members, who take on the responsibility to look after things in a way that meets the needs of the specific family.

- A structure that ensures that the intentions of a deceased or disabled wealth owner regarding how assets should be administered and distributed, are fully taken into account.

What Should Multi-jurisdictional Families Consider When Setting up a Trust or Foundation?

Each client must consider their individual circumstances, followed closely by what they are looking to achieve.

Once these two points have been identified, the next step should always be to seek tax advice specific to the circumstances.

Case Study

The Dixcart office in the Isle of Man, recently assisted a client who was looking to put in place asset protection and succession planning for their family business.

The principal was a UK resident non-dom, whilst the wider family were based in various Civil Law jurisdictions.

On first examination, given the connection to Civil Law jurisdictions, a Foundation seemed likely to be the best fit, however, given the UK’s treatment of Foundations as a corporate vehicle, at least at the time, this could have been disadvantageous to the principal, who would have received greater certainty via a Trust structure.

Conversely there was a concern that as the majority of the family were located in Civil Law jurisdictions, their local tax authorities may not recognise a Trust structure.

- Ultimately, and of course subject to specialist advice at the time, we put in place a Trust/Foundation Hybrid structure which provided protection to the family as a whole. An Isle of Man foundation was created, with the sole purpose of acting as Trustee of an Isle of Man trust.

As such, from a Common Law perspective, the structure was recognised as a trust structure, however should the structure be challenged within a Civil Law jurisdiction, the courts would recognise the legal status of the Foundation, thus preserving its asset protection characteristics.

Is Anything About to Change in the Isle of Man Relating to Trusts?

The last major review of Trust Legislation in the Isle of Man was the Trustee Act 2001, so a revisit was definitely overdue.

The Trusts and Trustees Bill 2022 received its first reading in Tynwald, the Isle of Man Parliament, in June 2022. The draft bill aims to further modernize the Islands Trust Legislation and proposes several amendments to the current legislation.

Two of the amendments which are of particular interest are:

1. Duty to Disclose Trust Information

Trust 'information' is defined as information or documentation relating to a Trust, including the Trust accounts. The Bill sets out provisions that the Trust Instrument may confer and/or indeed restrict who has the right to receive Trust Information.

It also proposes to confer the right to certain parties, specifically the beneficiaries and Protector(s) of a non-charitable Trust and Protectors, to request information.

2. Power to Declare Exercise of a Power Voidable

This provision allows the court to set aside the exercise of a power by a trustee(s), where the Trustees exercised their powers validly, but failed to take into account relevant considerations, and if they had done so, would not have carried out the action that had been taken.

Additional Information

If you require further information regarding trusts and foundations and how we can assist, please feel free to get in touch with **Paul Harvey** at the Dixcart office in the Isle of Man.

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