



CAINS INTERNATIONAL BUSINESS GUIDE TO THE ISLE OF MAN

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2012



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The Isle of Man is one of the world's most respected international financial centres.

1 AN INTRODUCTION TO THE ISLE OF MAN

1.1 Overview

1.1.1 Development into a business centre

The Isle of Man is one of the world's most respected international financial centres. Effective public/private sector co-operation for over 25 years has led to the creation of an outstanding environment in which to do business featuring world class infrastructure and business support systems, a favourable fiscal regime, dynamic and responsive legislation and an expert professional services industry.

The Isle of Man's success can be seen in the rise in national income per head year on year for more than the past ten years. In 2008/09, national income per head stood at £38,638, exceeding the United Kingdom equivalent figure of £21,103 gross value added per head for the same period.

That success owes much to the political and economic independence and stability of the Isle of Man Government. Its agility and responsiveness has been demonstrated in recent times by its reactions to the global economic recession and consequent increased international scrutiny.

The Isle of Man has responded to the more difficult economic conditions positively and with confidence. A wide-ranging government restructuring programme in 2010 led to the creation of a new Department of Economic Development, tasked with promoting the development and the diversification of business on the Isle of Man. This Department has spearheaded a number of initiatives, both singly and in partnership with other public and private sector organisations. In September 2011, a new Isle of Man Finance Partnership was announced – a public private partnership created to lead the development of the financial services sectors. By encouraging business in such diverse sectors as manufacturing, telecommunications, e-gaming, film production, space and satellite licensing, and shipping and aircraft registration, together with developing the more established financial services, the Isle of Man is maturing from an international financial centre into an international business centre.

Both diversification and consolidation can be seen in the key legislative developments of the past few years. The Companies Act 2006 introduced a new vehicle for business incorporation that is legally robust yet flexible, cost-effective and easy to administer. Over 7,000 companies have been formed under the new legislation (up to 30 June 2011). The Financial Services Act of 2008 has consolidated all the financial services legislation into one user-friendly piece of legislation, a new Incorporated Cell Companies Act 2010 has been introduced, and legislation has been passed in 2011 on foundations and limited partnerships with separate legal personality. These developments act together to support the growing diversity of businesses and business structures on the Isle of Man.

The success of these initiatives can be seen in the fact that the Isle of Man has never fallen into recession, and in 2008/2009, achieved real growth of 4.75%. Whilst growth in 2009/2010 is likely to be 2.5%, indicators suggest improvement in 2010/11 to between 4 and 5 per cent.

The Isle of Man has experienced considerable international scrutiny, especially in the challenging economic climate of the past three years. Reviews of the Isle of Man's tax and regulatory practices have been undertaken by or at the behest of bodies such as the United Kingdom Treasury, the Organisation for Economic Co-operation and Development ("OECD"), and the International Monetary Fund ("IMF"). Without exception, such reviews have found the Isle of Man to have very high levels of compliance with relevant international standards and supervisory practices, and levels of co-operation that place it in the first division of offshore centres. In 2009, the Isle of Man was placed straight onto the OECD's white list of jurisdictions that implemented internationally agreed tax standards. A review by the IMF in 2009 also noted the Isle of Man's very high level of compliance with global standards of supervision and regulation in financial services.

The Isle of Man has a growing role as a valuable spoke for global international hubs, such as London and Singapore. The 2009 Review of the Crown Dependencies by Sir Michael Foot, commissioned by the United Kingdom Treasury, acknowledged the contribution made by the Isle of Man to the UK economy, by acting as a conduit for funds flowing from the Isle of Man to the City of London. The Isle of Man's key contribution to the City's economy was highlighted by the Isle of Man's Treasury Minister Anne Craine, when she delivered the Sir Thomas Gresham Lecture in the City in November 2010, describing the Isle of Man as a "core asset" to the City.

The external reviews have helped to foster a positive image of the Isle of Man, and have led to increased international co-operation and engagement by the Isle of Man's authorities. From negotiating and signing tax information exchange agreements with 25 countries (as at August 2011), to engaging with the European Union over its business taxation and establishing a permanent presence in Brussels to enhance co-operation and understanding, the Isle of Man is showing a growing confidence in shaping its own international profile.

The Isle of Man has a "AAA" accreditation from Moody's and Standard & Poor's, and has been awarded the accolade of "Best International Financial Centre" at the International Investment Fund and Product Awards in eight of the past ten years. There is no doubt it has steered its course with considerable success over the past two decades. The Isle of Man is looking to build for the future with its established culture of public/private sector co-operation, responsive legislative programme, and a growing international presence.

1.1.2 Location and accessibility

The Isle of Man is located in the centre of the Irish Sea and consequently enjoys a temperate climate. It lies just north of the fifty-fourth parallel of northern latitude and just west of the line of four degrees of western longitude. It is 33 miles (52 kilometres) long from north to south and 13 miles (22 kilometres) wide from east to west at its widest point. It has a land area of some 227 square miles (572 sq. km).

The Isle of Man is in the same time zone as London and its financial markets.

The Isle of Man is linked to its immediate neighbours and to the rest of the world by excellent air, sea, postal and telecommunications systems. The Isle of Man's principal airport,

The Isle of Man is politically and constitutionally separate from the United Kingdom.

Ronaldsway, handled 682,990 passengers during 2010 and has daily flights to London and the other major airports in the United Kingdom, Brussels and Ireland. The principal port at Douglas has deep-water berths and facilities for handling passengers, vehicles and cargo.

Mail from the Isle of Man is generally delivered in the United Kingdom the next day and postal rates are similar to equivalent United Kingdom rates.

1.1.3 People

The Isle of Man's resident population was revealed by the 2006 interim census to be 80,058, which represented a population increase of around 4.9% since 2001. Estimates in July 2011 put the population at 84,655, although the real figure is not known until the results of the 2011 census are published. The population is essentially a mixture of indigenous Manx people and British and Irish nationals, although the influx of increasing numbers of highly skilled people from around the world has increased cultural diversity. Approximately half of the populace lives in and around Douglas, the Isle of Man's capital and commercial centre. The Isle of Man has a population density of just 373 people per square mile, compared with 655 per square mile in the UK and 2055 per square mile in the Channel Islands.

The Isle of Man's development as a financial centre has had an impact on the lifestyle of many of the residents. Since the start of the 21st century, average earnings have increased by 45%, and in 2002, a MORI Quality of Life survey found that 93% of residents were satisfied or very satisfied with the Isle of Man as a place to live, a rating which compares with the best MORI has ever recorded.

The Isle of Man's education system is regarded as first rate and its results consistently outperform that of the United Kingdom system.

1.1.4 Constitution, government and stability

The Isle of Man is not part of the United Kingdom, but is within the British Isles. Queen Elizabeth II is acknowledged by the Isle of Man as its Head of State, but the Isle of Man is politically and constitutionally separate from the United Kingdom. The Isle of Man is a Crown Dependency, but is internally self-governing and independent in all matters except most foreign affairs and defence (both of which are the responsibility of the United Kingdom Government and for which the Isle of Man pays an annual contribution).

Tynwald, considering a report on independence for the Isle of Man in November 2000, concluded that, "the Isle of Man should remain a Crown Dependency whilst pursuing the constitutional development of the Isle of Man". It resolved to achieve this "by promoting and defending vigorously the Isle of Man's autonomy in relation to its internal affairs, and seeking to extend the Isle of Man's influence over external issues affecting the Isle of Man". Please see section 1.2.1 below for more information in relation to the Isle of Man's increasing ability to represent itself in foreign affairs.

The Isle of Man exercises its extensive political and legislative independence through its ancient parliament, Tynwald, which is the oldest legislature in the world in continuous existence.

Tynwald is tricameral, consisting of the House of Keys (which is elected by universal suffrage), the Legislative Council (whose members are elected primarily by members of the House of Keys ("MHKs")) and Tynwald Court, where the two chambers sit together. The 24 MHKs are elected for a period of 5 years and the last general election was in September 2011.

The Isle of Man was reported to be the first country in the world to grant women the right to vote in 1881 and the November 2006 general election marked another milestone for the Isle of Man, when individuals aged 16 years of age and older were permitted to vote. The Isle of Man is believed to be one of only six countries in the world, and the first country in Western Europe, to set its voting age at 16 years.

The Isle of Man has a ministerial system of government that is headed by the Chief Minister who selects the Manx Cabinet (the "Council of Ministers"). The Chief Minister is nominated by Tynwald from amongst its members after each general election. The politics of the Isle of Man is noteworthy for the relative absence of party politics, which has contributed to the remarkable stability of the Manx system. However, recent general elections have seen a slight erosion of the non-party political nature of Manx politics.

1.1.5 Language

The Isle of Man's population is English speaking and the language of business, commerce and law is therefore English. The last 'native speaker' of the Manx language, Manx Gaelic, died in 1974, but interest in the language has recently undergone a revival and Manx Gaelic has now been taught in the Isle of Man's schools since 1992, with a Gaelic primary school operational on the Isle of Man since 2001. Acts of Tynwald continue to be promulgated in both Manx and English when Tynwald Court assembles in the open air on Tynwald Hill, a Viking parliamentary site, each year on 5th July (the Isle of Man's national day).

1.1.6 Legal system

The Isle of Man has its own legal system and jurisprudence. English law generally has no direct application to the Isle of Man, but the Manx legal system is based on the principles of English common law which are shared by most Commonwealth countries. Manx law is thus very similar to English law in areas such as crime, contract, tort and family law. English case law is generally held to be of persuasive authority by the Manx Courts. In other areas, however, although modelled on English law, Manx law has been adapted to meet the Isle of Man's own special circumstances, particularly with regard to direct taxation, company law and financial supervision.

The Isle of Man's High Court judges are called Deemsters and have jurisdiction over all criminal and civil matters. The Manx Appeal Court, known as the Staff of Government Division, consists of a Deemster (who must not be the Deemster who heard the case at first instance) together with the Judge of Appeal, a part-time position filled by an English QC. The final avenue of appeal against decisions of the Manx Court, and one that is rarely pursued, is to the Judicial Committee of the Queen's Privy Council.

The Human Rights Act 2001, which came into force on 1 November 2006, incorporated into Isle of Man law the basic rights set out in the European Convention on Human Rights.

The strength of the professional services sector is a key factor for companies when choosing the Isle of Man as a place to do business.

1.1.7 Economy

As the Isle of Man has been a signatory to the Convention on Human Rights for nearly 50 years, it was unlikely that the Human Rights Act would prompt many changes. However, prior to the Act coming into force a considerable amount of preparation was undertaken, including checking legislation, policies and procedures for compliance, as well as raising awareness throughout the public sector.

The Manx economy has experienced sustained growth over 27 consecutive years, although challenging times are ahead. The real growth rate has averaged 7% since 1997, and the economy has experienced growth since 2008 despite the global recession. In 2008/2009 gross domestic product ("GDP") increased to £3.1 billion, which amounted to a real growth rate of 4.75%. The growth rate for 2009/10 is projected to be 2.5%, but 4.5% for 2010/11. Gross Government income for its 2010 financial year amounted to £877.3 million. Annual inflation at the end of 2010 was at 5.5%.

The Isle of Man has had low unemployment rates for the past decade (a rate of 2.1% in March 2011) and the high level of employment in the Isle of Man has contributed to the growth of GDP. The banking and finance industries constitute the largest single sector of the economy and account for 38% of total income from Manx sources (National Income Report 2008/9), but the ICT sector has in recent years been the fastest growing. In 2005/6, it accounted for 2% of total income from Manx sources, rising to 10% by 2008/9. This, together with rises in the professional services and corporate services sector, shows an increasing diversity in the Manx economy.

The expansion of the Manx economy is reflected in the comparison of GDP per capita between the Isle of Man and the United Kingdom. From 1993 there was a steady reduction in the differential between the two countries to the point where the Isle of Man overtook the UK in 2001. In 2008/2009, the Isle of Man's GDP per capita was £38,638, with the UK equivalent figure of gross value added ("GVA") per capita being £21,103.

The Government has a statutory duty to budget for a surplus, and has therefore been in a position to establish a number of reserve funds to provide for, inter alia, major capital expenditure programmes and future pension liabilities. £68m was paid into the reserve funds in 2008 and another £30m in 2009.

The buoyant economy of the years to 2008 allowed the Government to embark upon a number of major infrastructure projects. Electricity in the Isle of Man is now provided by a new power station, financed by a £185 million government bond issue. The power station uses natural gas that is supplied, via an inter-connector, by the undersea gas pipeline that runs between Scotland and Ireland. During periods of low and high demand, the Isle of Man can also feed to or draw power from the UK via the longest AC sub-sea cable in the world.

Other notable capital projects have included: the construction of a new £112 million hospital; a new waste incinerator; an Isle of Man-wide sewage treatment system; a new prison; a new water treatment works; and a yacht marina in Douglas, as well as a renovation of the quayside and harbour.

1.1.8 Professional facilities

In order to service its financial sector the Isle of Man has developed expertise across a broad range of professional activities.

Lawyers qualified in the Isle of Man are known as advocates and, since it is a fused profession, they fill the roles met by solicitors and barristers in England. Traditionally Manx advocates have been organised into partnerships. However, by virtue of the Advocates Incorporated Practice Rules 1999 (updated in 2007) they may now also choose to operate as private limited companies. Manx advocates have an exclusive right of audience in the Isle of Man's Courts although English barristers can, in certain limited circumstances, be licensed to appear in a specific action.

Lawyers qualified in certain other legal jurisdictions who are registered under the Legal Practitioners Registration Act 1986 are permitted to undertake legal work in the Isle of Man, but may not, for example, conduct proceedings in a Manx Court or prepare documents relating to Manx real estate.

The accountancy profession is well represented on the Isle of Man. Nearly all the major international firms have established an office on the Isle of Man as have a number of smaller firms, many of which specialise in non-audit activities.

Other financial and professional services are provided in the Isle of Man by banks, building societies, fund managers, insurance companies and brokers, stock brokers and company and trust administrators.

The strength of the professional services sector is a key factor for companies when choosing the Isle of Man as a place to do business.

1.2 External relations

1.2.1 Relationship with the United Kingdom

The United Kingdom Parliament legislates for the Isle of Man in respect of some matters that are of mutual concern to both territories, such as defence, nationality and immigration matters. The origin of Parliament's authority to do this is obscure, but is, in practice, accepted. In 1969, a Royal Commission examined the constitutional conventions governing the relationship between the United Kingdom and the Isle of Man. It was recognised that the United Kingdom Parliament only legislates on the Isle of Man's domestic matters with Tynwald's consent. However, the Commission concluded that the United Kingdom would require legislative powers so long as it remains responsible for the Isle of Man's good government and international relations.

Effectively, therefore, the Isle of Man is subject to two legislatures: Tynwald and Parliament. Although the United Kingdom is responsible for the Isle of Man's external relations, the Manx Government is, nonetheless, consulted before any international treaty that would affect the Isle of Man is finalised.

From 2007, responsibility for the Isle of Man has been in the hands of the re-organised and renamed Ministry of Justice ("MOJ"). The Isle of Man Government and the MOJ are in regular

Although not part of the EU, the Isle of Man recognises the need to engage constructively with EU initiatives.

contact and enjoy a constructive working relationship, and the constitutional relationship with the United Kingdom continues to develop and mature. For example, in 2010 the MOJ and Isle of Man Government agreed that from hence forward the Lieutenant Governor, the British Crown's representative on the Isle of Man, would be appointed by an all-Manx panel.

The Isle of Man is increasingly representing itself on the international stage on matters that directly affect it. For example, the Isle of Man is an active member of the OECD's Global Forum and is represented at ministerial level at the summits of the British-Irish Council.

The Isle of Man took a further step towards developing its international personality when on 1 May 2007 the Chief Minister on behalf of the Isle of Man and the Lord Chancellor on behalf of the United Kingdom signed a declaration setting out a framework of principles for the development of international identity of the Isle of Man. The framework of principles reinforces the Isle of Man's separate status within the context of its constitutional relationship with the United Kingdom. The agreed principles include:

- (a) the United Kingdom has no democratic accountability in and for the Isle of Man which is governed by its own democratically elected assembly, which means, inter alia, that the United Kingdom will not act internationally on behalf of the Isle of Man without prior consultation;
- (b) the Isle of Man has an international identity which is different from that of the United Kingdom;
- (c) the Isle of Man and the United Kingdom commit themselves to open, effective and meaningful dialogue with each other on any issue that may come to affect the constitutional relationship; and
- (d) the Isle of Man and the United Kingdom will work jointly to promote the legitimate status of the Isle of Man as a responsible, stable and mature democracy with its own broad policy interests and which is willing to engage positively with the international community across a wide range of issues.

This position has been strengthened by a United Kingdom Parliament Justice Committee Report on the Crown Dependencies published in March 2010. The Report stressed the Isle of Man's "essential independence from the United Kingdom" and that the Crown Dependencies were "democratic, self-governing communities". The Report recommended "clear and unambiguous representation of the Crown Dependencies' interests on the international stage" to help the Isle of Man build relationships with third countries and international organisations, to develop their international identities as envisaged in the 2007 framework mentioned above.

In parallel with these developments, the Isle of Man Government has actively sought to develop commercial links with the United Kingdom and other countries. In May 2011, a Government delegation visited the City of London, meeting with the Lord Mayor and reinforcing the importance of the Isle of Man's relationship with the City. Delegations have also visited

jurisdictions such as China, Bahrain and the United Arab Emirates in recent years.

1.2.2 Relationship with the European Union ("EU")

The Isle of Man's relationship with the EU is set out in Protocol 3 to the Act of Accession annexed to the Treaty of Accession 1972, by virtue of which the United Kingdom became a member of the European Community. The Isle of Man is neither a member state nor an associate member of the European Community. By virtue of Protocol 3, the Isle of Man is part of the customs territory of the EU. Therefore the common customs tariff, levies and other agricultural import measures apply to trade between the Isle of Man and non-member countries. There is free movement of goods and agricultural products between the Isle of Man and the EU, but the EU provisions which relate to trade in financial services and products and those in respect of the free movement of persons, services and capital do not apply to the Isle of Man. Consequently, EU law has direct application to the Isle of Man for very limited purposes. The Isle of Man's relationship with the EU can only be changed by the amendment of Protocol 3, which would require the unanimous agreement of all EU member states.

Although not part of the EU, the Isle of Man recognises the need to engage constructively with EU initiatives. This need has been nowhere more apparent than in the field of taxation. In 1997 the Council of Economic and Finance Ministers ("ECOFIN") drafted a Code of Conduct for Business Taxation (the "Code") as part of the European Commission's efforts to eliminate "harmful" business taxation practices. The Isle of Man Treasury reached an agreement with the EU to implement the legislative changes to the taxation system necessary to meet the Code's principles. The most notable response was the introduction of a zero-rate company tax regime which applies to both resident companies and companies formerly regarded as non-resident.

In the past few years the regime has undergone detailed scrutiny by the EU Code of Conduct Group (Business Taxation), which declared in November 2010 that aspects of the Isle of Man's tax regime give rise to harmful effects. In the Budget of March 2011, the Isle of Man's government announced that it will abolish the attribution regime for individuals ("ARI") in response to the pressure from the EU, whilst maintaining the zero-rate company tax (see section 4.1.3 for details). This move has received positive feedback from the Code of Conduct Group, which has indicated that, following the abolition of ARI, it would no longer regard the Isle of Man's business tax systems as harmful. This is an issue where constant engagement with the EU whilst maintaining independence and autonomy is vital for the Isle of Man's economic interests.

Consideration has also been given to Directive 2003/48 of the European Union on the taxation of savings income (the "Directive"), which came into force in the EU on 1 July 2005. The aim of the Directive is to ensure that individuals who are EU residents pay tax on their savings in their home state, regardless of where in the EU their savings are invested. It is important to stress that the Directive only applies to individuals and not, for example, to corporations or discretionary trusts.

In June 2011, a Peer Review Report by the OECD Global Forum commended the Isle of Man's approach to tax information exchange.

The EU member states were concerned that so long as certain other countries and territories did not apply equivalent measures, capital flight towards these countries or territories could imperil the attainment of the Directive's objectives. The Isle of Man, although not part of the EU, has implemented equivalent measures by entering into bilateral agreements with all EU Member States.

For a transitional period, the Isle of Man operated a form of retention tax on the savings income covered by the Directive. This period came to an end on 1 July 2011, when the Isle of Man moved to the automatic exchange of information on savings income with the EU.

Since 2008, the EU has been investigating extending the scope of the Directive, including to income equivalent to interest obtained through investments in some innovative financial products. A revised Directive is awaiting an EU Council decision. Please see section 4 of this Guide for more information on these tax measures.

The EU's eighth Company Law Directive was introduced in 2008, which (among other things) requires auditors of companies listed on EU stock exchanges to be subject to public oversight. The Isle of Man has adopted equivalent measures for auditors of Manx companies that trade on EU regulated markets, using the Financial Reporting Council as its oversight body in a local auditor oversight regime.

1.2.3 Relationships with international bodies

Organisation for Economic Co-operation and Development ("OECD")

The Isle of Man is a member, through the United Kingdom, of the OECD. Consequently, the Isle of Man's financial products and services have access to markets where OECD membership is an entry requirement. The main area of engagement with the OECD has been in the field of taxation, where the Isle of Man is a member of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes ("Global Forum").

Since 1998, the OECD has been addressing the issue of harmful tax practices with both member and non-member countries. It has set out criteria for analysing preferential tax regimes and identifying tax havens, with the objective of improving transparency and exchange of information on tax practices. In December 2000, the Isle of Man entered into an advance commitment with the OECD regarding tax information exchange.

As part of its commitment, the Isle of Man is prepared, on a bilateral basis, to enter into exchange of tax information on request with OECD member countries, provided it is satisfied that a level playing field exists. The OECD published its model Agreement on Exchange of Information on Tax Matters in April 2002, which the Isle of Man helped to draft, and six months later, the Isle of Man and the United States entered into an exchange of information agreement based on that model.

The US agreement provides for a bilateral exchange of information following a formal request being received by the competent authority in the Isle of Man. A request must be made on an individual case basis and the subject of the request must be under investigation in the requesting jurisdiction. Other safeguards are included to prevent 'fishing expeditions'. All information exchanged is confidential and may not be disclosed to any third party.

In August 2006, a package of ground-breaking tax agreements between the Isle of Man and the Netherlands came into operation. The agreements are part of a Manx/Dutch economic deal aimed at supporting business opportunities between the two countries. The agreements include (among other things) a tax information exchange agreement and a commitment to work towards a full double taxation agreement between the two jurisdictions.

The Isle of Man has, as at 1 August 2011, entered into a total of 25 tax information exchange agreements (see section 4.9), and is currently in negotiations with a number of other countries to enter more. As a result of its commitments to these agreements, the Isle of Man was placed straight onto a "white list" of countries implementing internationally agreed tax standards by the OECD in April 2009. In June 2011, a Peer Review Report by the OECD Global Forum commended the Isle of Man's approach to tax information exchange, describing the relationship of the Isle of Man with other tax information exchange partners as "open and transparent" and the exchange of information as "effective and expeditious".

Financial Action Task Force ("FATF")

FATF is an inter-governmental body established to examine measures to combat world-wide money laundering and terrorist financing. It has developed 40 recommendations for governments to implement effective anti-money laundering programmes and has agreed a set of Special Recommendations on Terrorist Financing, which commits members to a range of standards aimed at denying terrorists, and their supporters, access to the international financial system.

All countries were invited by FATF to undertake a self-assessment exercise to measure their compliance with both the Special Recommendations and the original 40 recommendations. The Isle of Man Government submitted its response in April 2002 demonstrating its strong anti-money laundering position and its ability to comply with the Special Recommendations.

FATF's recommendations have been revised on several occasions and the Isle of Man Government has re-affirmed its commitment to comply with the principles of all the FATF's recommendations.

Financial Stability Board ("FSB")

In March 2000, a working group of the then-called Financial Stability Forum completed a report addressing the implications of offshore financial centres on global financial stability. The Isle of Man was one of only eight offshore jurisdictions that were given the highest rating.

The Isle of Man has a number of legal assistance treaties covering a variety of areas.

International Monetary Fund (“IMF”)

The IMF is an organisation of 187 countries established to further global monetary cooperation, encourage financial stability, facilitate international trade, ease poverty and to promote high employment and sustainable economic growth.

Prompted by the work of the FSB, the IMF is undertaking a review of the regulatory standards in jurisdictions worldwide on a rolling programme basis. The Isle of Man was subject to detailed assessment when an IMF team visited the Isle of Man in October 2002, and again in September 2008. The subsequent reports represent the most comprehensive review of the Isle of Man's regulatory and anti-money laundering framework to date, and provide an opportunity to benchmark the Isle of Man against published standards. The latest assessment, published in 2009, confirmed the Isle of Man's reputation as being amongst the best regulated international financial centres. It found the Isle of Man broadly compliant with most of FATF's recommendations and found a very high level of compliance with the regulations amongst the Isle of Man's financial institutions.

The World Trade Organisation (“WTO”)

The WTO has taken over from the General Agreement on Tariffs and Trade for the purpose of promoting free trade. The Isle of Man has all the legislation necessary to comply with the membership requirements of the WTO and the agreement has now been extended to the Isle of Man.

1.2.4 Mutual legal assistance

The Isle of Man has a number of legal assistance treaties covering a variety of areas. The most significant, although there are others, are probably those relating to financial services, reciprocal enforcement of judgments and money laundering.

Section 34 of the Financial Services Act 2008 permits the Isle of Man Financial Supervision Commission (“FSC”) to enter into mutual assistance agreements with regulators in other jurisdictions in relation to investment business matters. The FSC has power to inspect, investigate, make requests of, and give directions to, persons authorised in the Isle of Man to conduct financial services business to assist a foreign regulatory body exercise its functions. The FSC can also release customer information in very restricted circumstances.

In October 2005, the FSC became a signatory to the International Organisation of Securities Commission's Multilateral Memorandum of Understanding. This has become an important basis of providing assistance under relevant legislation for all investment and securities matters. The FSC has entered into a number of memoranda of understanding with overseas regulatory bodies to allow for mutual co-operation and assistance.

1.2.5 Reciprocal enforcement of judgments

The Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968 (the “1968 Act”) makes provision for the enforcement in the Isle of Man of certain judgments given in superior courts of those jurisdictions which give reciprocal treatment to judgments of the Manx Courts. Presently, qualifying judgments of the higher courts of the United Kingdom, Guernsey, Jersey, the Netherlands,

the Netherlands Antilles, Israel, Italy and Surinam may be enforced in the Isle of Man.

In order to qualify for enforcement under the 1968 Act, the correct procedures under the laws of the Isle of Man (including registration of the judgment with the Isle of Man Courts) must be complied with and the judgment of the foreign superior court must be: for a money judgment (not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty); final and conclusive; wholly unsatisfied (or if partially satisfied, only for the balance of the judgment debt); and be enforceable by execution in the originating country. There are a number of grounds upon which an application to set aside registration is likely to be successful.

Under section 4 of the Civil Jurisdiction Act 2001, which came into force in May 2010, judgments of the County Courts of England and Wales are potentially enforceable under, but subject to, the provisions of the 1968 Act.

1.3 Living and working on the Isle of Man

1.3.1 Restrictions on immigration

The Isle of Man, Channel Islands and the United Kingdom are part of a Common Travel Area, sharing the same immigration legislation. Those freely entitled to enter the United Kingdom may therefore also enter the Isle of Man. This includes citizens of the United Kingdom, Ireland, the Channel Islands and nationals of the European Economic Area (namely the member states of the European Union and the European Free Trade Area).

In general, persons from outside the Common Travel Area and the European Economic Area will require some form of entry clearance. However, Commonwealth citizens whose passports have been endorsed with a Certificate of Entitlement will have a right of abode.

The Manx Government enacted the Residence Act 2001 in March 2001, which effectively creates a system of residency control. However, the 2001 Act is not in force and it is unlikely that any residency controls will be imposed in the foreseeable future.

1.3.2 Work permits

Although access to the Isle of Man is largely unrestricted (other than restrictions highlighted in section 1.3.1 above), by virtue of the Control of Employment Acts an individual may only work on the Isle of Man for a maximum of 3 days, or in prescribed cases, for 10 days a year (with some exceptions) before he or she requires a work permit, unless he or she is an “Isle of Man worker”. The idea is that, where a suitable local worker is available for a particular job, he or she should generally have priority over non-locals. The criteria for qualifying as an “Isle of Man worker” include: being born in the Isle of Man; being resident on the Isle of Man for at least 5 years; being married to an “Isle of Man worker”; having received full-time education during residence (and having remained on the Isle of Man thereafter); or having a Manx-born parent who spent the first 5 years of their life on the Isle of Man.

The principal source of statutory employment law in the Isle of Man is the Employment Act 2006 and associated secondary legislation.

However, the unprecedented expansion of the finance sector in recent years has generated a demand for skilled professionals from outside the Isle of Man and this is likely to continue. Some important exemptions to the work permit requirements were added by the Control of Employment (Exemptions) Order 2009. Officers in charge of an international group's activities in the Isle of Man are exempt from the work permit requirement. International groups may employ persons mainly employed outside the Isle of Man for up to 48 days a year, although certain employments are excluded from this exemption and the company applying the exemption must submit an annual return containing certain information on exempt employees. Both these exemptions are subject to a criminality condition, as the exemption does not apply where a person has been convicted of a criminal offence involving custody which is not covered by the Rehabilitation of Offenders Act 2001.

Certain types of employment are also exempt from the work permit requirement. For example, registered doctors, registered dentists and those employed in the police service or on a vessel or aircraft do not require a work permit. A detailed guide to the work permit requirements and the exemptions can be found on the website of the Isle of Man's Department of Economic Development: www.gov.im/ded/employmentRights/workpermits.xml.

1.3.3 Employment legislation

The principal source of statutory employment law in the Isle of Man is the Employment Act 2006 (the "2006 Act") and associated secondary legislation. Aside from the 2006 Act, the Isle of Man has minimum wage legislation and there is provision for statutory redundancy pay under the Redundancy Payments Act 1990 (the "RPA"). Amongst other things, the 2006 Act stipulates the content of written particulars of employment, makes certain provision for rights during employment (including maternity, paternity and other family-related leave), provides for minimum notice periods to be given by the employer to the employee - and vice versa - and confers on an employee the right not to be unfairly dismissed (subject, in some cases, to a qualifying service period). There are specific provisions under the 2006 Act which deal with dismissal on the grounds of sex, race, religion and sexual orientation whilst the Employment (Sex Discrimination) Act 2000 has provisions relating to equal pay plus direct and indirect discrimination. The Isle of Man Government has also undertaken a consultation exercise on further employment equality legislation, although no draft bill has been published at the time of writing.

Written particulars of employment

Under Isle of Man law, most employees are entitled to receive written particulars from their employer setting out the main terms of their employment contract and the 2006 Act prescribes certain matters which must be stated. These include (but are not limited to) basic information about working arrangements such as hours, place of work, rate and frequency at which remuneration is paid, notice periods, holiday entitlement and so on.

Statutory leave entitlements

The 2006 Act introduced a new right to 26 weeks' ordinary maternity leave (without pay) together with a right to a further period of additional maternity leave (26 weeks, also unpaid)

subject to a qualifying service requirement. The 2006 Act also made provision for paternity leave, adoption leave (for the primary adopter and his or her partner along similar lines to maternity and paternity leave respectively), parental leave (time off to look after a child with a disability) and the right to request flexible working arrangements. Such entitlements are generally subject to notification requirements and qualifying service periods. In the Isle of Man there is no statutory requirement for an employer to make payments to employees in respect of a period of family leave (however, many do so voluntarily), although employees are usually eligible for Government allowances. The 2006 Act also made new provision for employees to be allowed four weeks' paid annual leave. Previously, entitlement to paid holidays arose only by virtue of the employment contract.

Unfair and wrongful dismissal

The legal principles relating to unfair dismissal and wrongful dismissal in the Isle of Man are materially the same as in the United Kingdom, although the method of calculating the basic award in successful claims for unfair dismissal cases differs (see below).

Unfair dismissal

Broadly speaking, where an employer has dismissed an employee (N.B. "dismissal" includes not renewing a fixed term contract and constructive dismissal), the employer must show that one of the statutory potentially fair reasons for the dismissal applied, that the reason was sufficient to justify dismissing the employee in question and that a fair procedure was followed. Potentially fair reasons for dismissal include capability/qualifications, conduct, redundancy, or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held. Certain grounds for dismissal are deemed automatically to be unfair (e.g. dismissal on the grounds of pregnancy or religion/race) with the result that the qualifying service period and age criteria that would otherwise apply for an employee to be eligible to bring a claim are not applicable. The 2006 Act expanded the number of "automatically unfair" grounds to include (mentioning just a couple of examples) dismissal for bringing proceedings to enforce, or claiming that the employer has breached, a statutory right or where the reason is because the employee has made a protected disclosure ("whistle-blowing"). From a procedural point of view, what is required of the employer depends on the reason for effecting the termination (and may, for example, entail consulting and carrying out investigations, as appropriate), but the overriding principle is that the employer must act reasonably.

Generally speaking, claims for unfair dismissal must be brought within 3 months from the effective date of termination. Awards under the 2006 Act comprise a basic award (calculated in accordance with similar principles to the redundancy pay calculation referred to below) and a compensatory award of such amount as the Employment Tribunal considers just and equitable (subject to an upper limit in most cases of £50,000). The 2006 Act also provides powers for the Employment Tribunal to order the employer to re-engage or reinstate the employee as well as to order the payment of compensation for injury to feelings up to a maximum of £5,000.

Under the Income Tax Act 1970, a person who is resident in the Isle of Man is assessable to Manx income tax in respect of income from all sources (whether or not remitted to the Isle of Man).

Wrongful dismissal

An action for wrongful dismissal derives from common law and occurs when an employer dismisses an employee in a way which is in breach of the employee's contract of employment (for instance, where an employer dismisses an employee summarily or on short notice) without sufficient justification for doing so. Wrongful dismissal may also occur if the employer terminates the employment contract without following some procedure prescribed in the employment contract or where the employee resigns as a result of the employer's fundamental breach of contract.

An employee may have a claim for wrongful dismissal independently of a claim for unfair dismissal. As a claim for breach of contract, damages in respect of wrongful dismissal are usually restricted to losses caused by breaches of the employment contract during employment and not upon termination, so no amounts may be recovered representing the manner of the dismissal or prejudice to reputation or (generally speaking) chances of obtaining alternative employment. In broad terms, the measure of damages where the employment contract is terminated is the net amount of the employee's salary and benefits for the notice period, which will either be the statutory minimum notice period prescribed in the 2006 Act or the contractual notice period (if longer). (Note that damages for wrongful dismissal are not subject to the statutory cap that applies in relation to unfair dismissal, however the employee is under a duty to mitigate his losses by seeking alternative sources of income).

Redundancy

In the event that an employee is made redundant, the RPA imposes an obligation on the employer to pay statutory redundancy pay ("SRP") subject to certain conditions/criteria. Employees need to be employed for a minimum of two years in order to be able to claim SRP. The maximum award for SRP is one week's pay (currently capped at £480) for each year of continuous service. Payments are, however, reduced by 1/12th per completed month of service after an employee's 64th birthday. To be effective, any claim for SRP by an employee would usually need to be brought within 12 months of the termination of his/her employment. Employers are required by law to provide employees with a written statement setting out how their redundancy payment has been calculated. Although redundancy is one of the potentially fair reasons for dismissal, the procedure by which redundancies are effected must be fair in both approach and practice. This would involve, amongst other things, issuing warnings to employees and employee consultation plus, where relevant, the use of objective selection criteria and their objective application. (N.B. Unlike in the United Kingdom, there is no requirement for collective consultation.)

Other Isle of Man issues

- As mentioned in section 1.3.2, the Isle of Man operates a work permit system and (subject to certain exceptions /derogations) non-Isle of Man workers are required to have a work permit in order to be employed or self-employed.
- The Isle of Man has its own arrangements in relation to matters such as national insurance contributions, contracting out certificates and the approval of pension plans and share save schemes. The Isle of Man operates a

system of income tax instalment payments (similar to PAYE in the United Kingdom) which requires employers to make certain deductions at source and to account for these to the Isle of Man Treasury.

- The Isle of Man has not implemented the EU Acquired Rights Directive and there is no equivalent to the Transfer of Undertakings (Protection of Employment) Regulations ("TUPE") on the transfer of undertakings. Furthermore, the Working Time Directive does not apply in the Isle of Man.

1.3.4 Tax residency

Under the Income Tax Act 1970, a person who is resident in the Isle of Man is assessable to Manx income tax in respect of income from all sources (whether or not remitted to the Isle of Man). For the purposes of the Income Tax Acts a 'person' includes any association of persons, incorporated or unincorporated.

'Residence' is not defined in the Income Tax Acts and the Manx Assessor of Income Tax will therefore have regard to United Kingdom decisions on comparable legislation. Currently, an individual will be regarded by the Assessor as resident in the Isle of Man for a particular year of assessment if he or she: is present in the Isle of Man for more than six months in that year; arrives in the Isle of Man with the intention of establishing residence; or visits the Isle of Man over a period of four or more consecutive years for an average of more than three months per year. The UK government has recently entered into a consultation over its definition of residency and it is likely that a number of changes will be expected to the current guidance on residency in the UK. There has been no announcement by Isle of Man Treasury on whether or not it intends to adopt any new rules on residency which the UK may adopt as at the writing of this Guide.

Since 6 April 2007, individuals who have accommodation in the Isle of Man available for their use are no longer deemed to be tax resident simply by virtue of having a Manx property, although any income generated from renting out the property will be subject to Manx taxation.

In 2003, the Treasury introduced a package of measures for individuals contractually obliged to take up residence in the Isle of Man in order to facilitate the start-up of a new business or the diversification or expansion of an existing one. An approved individual will be taxed only on Isle of Man source income during his or her first three years of residence and his or her employer will be given relocation financial assistance.

There is a tax cap on the total income tax payable per person of £115,000 and, in respect of a married couple that elects for joint taxation, £230,000.

Further information about individual income tax is provided in section 4.2 below.

1.3.5 Establishing domicile

Domicile is a concept of general law which has certain applications in the revenue law of some countries. An individual is usually domiciled in the country or state which he considers as "home". Such country or state must have its own legal system.

Domiciliation in one of the jurisdictions which comprise the United Kingdom is relevant, inter alia, when determining the liability of a person (or his estate) to United Kingdom inheritance tax.

The Isle of Man Government operates a vigorous system of regulation and supervision of financial services, insurance business, pensions and corporate, trust and partnership administration.

No taxes levied in the Isle of Man depend upon the determination of a person's domicile. The concept is, however, relevant for, inter alia, those persons who wish to demonstrate Isle of Man, as opposed to English, domicile in order to escape liability to United Kingdom inheritance tax. In these circumstances it would be necessary to demonstrate the change of domicile to the United Kingdom Revenue & Customs, which would be a matter of English law.

Domicile can change where an individual voluntarily acquires a new domicile (i.e., a domicile of choice), but there is a heavy burden of proof on an individual wishing to show that a domicile of choice has been acquired. Many factors are relevant, including the abandoning of an existing domicile. A person who, at the time of emigrating from, for example, the United Kingdom, is intending to acquire a new domicile should compile all evidence of such intention. This will entail taking up residence in the new country (preferably acquiring property there and selling all United Kingdom property), having a permanent intention to remain indefinitely in the new country and foregoing as many associations with the United Kingdom as possible.

The concept of domicile is distinct from the concept of residence, the latter being of crucial importance when determining liability to Manx tax.

1.3.6 Acquiring citizenship

British citizenship is the primary category of British nationality and the only one which carries the right of abode in the United Kingdom. Manx nationals are classed as British citizens. British citizenship may be acquired in various ways, but a discussion of these is beyond the scope of this Guide. A person who wishes to take up residence on the Isle of Man, but who is not a British citizen should contact his/her nearest British Embassy, High Commission or Consulate, who will be able to establish his/her immigration status.

British citizens are entitled to hold a British passport. If such a person was born in the Isle of Man, or is resident on the Isle of Man, or resided on the Isle of Man for a long period in the past, he is entitled to apply to the Isle of Man passport office for a passport. This is a British passport, but also features the Isle of Man's name (as the place of issue) on the cover.

1.4 Regulation and control

1.4.1 The Financial Supervision Commission (the "FSC") and the Insurance and Pensions Authority (the "IPA")

The Isle of Man Government operates a vigorous system of regulation and supervision of financial services, insurance business, pensions and corporate, trust and partnership administration. This task falls to the FSC in all cases, save in respect of insurance and pensions related activities, which are regulated by the IPA.

The FSC is an independent statutory body, established by Tynwald, whose main functions include: the licensing and supervision of banks, building societies, investment businesses and corporate service providers; the authorisation, recognition and regulation of collective investment schemes; and the

oversight of directors and persons responsible for the management, administration or affairs of commercial entities. Responsibility for the Companies Registry was transferred from the FSC to the Department of Economic Development in 2010.

The FSC's objectives are to protect the customers of those carrying on regulated activities in the Isle of Man's financial services sector; to reduce financial crime; and to support the Isle of Man's economy and its development as an international financial centre.

Two key pieces of legislation govern the functions and regulatory powers of the FSC – the Financial Services Act 2008 ("FSA") and the Collective Investment Schemes Act 2008 ("CISA").

The FSA incorporates new provisions governing the structure and remit of the FSC, setting out its functions and objectives clearly and laying down principles it must take into account in carrying these out. The FSA formalises existing accountability mechanisms, such as the publication of an annual report by the FSC, and adds new ones, including an obligation for the FSC to act in furtherance of policies and strategies set by the Isle of Man Treasury.

The CISA provides a modern regulatory framework for the promotion and regulation of collective investment schemes, clearly setting out the requirements for different scheme types. It updates the FSC's powers of intervention, extending the FSC's powers to issue directions and empowering the FSC to appoint a person to advise a scheme, or to take control of a scheme in certain circumstances.

The IPA is responsible for the regulation of the insurance and pensions sector on the Isle of Man. It is a statutory board, originally established under the Insurance Act 1986, and continued under the Insurance Act 2008. It is responsible for ensuring that those who operate insurance companies in or from the Isle of Man are fit and proper, and that insurers have and maintain sufficient resources. Authorised insurance companies must maintain a statutory solvency margin and, if reinsurance protection is purchased, the security of this must be demonstrated. As at 1 August 2011, there were 155 insurance companies on the Isle of Man. See section 5.6 below for a more comprehensive description of the Isle of Man's insurance sector.

1.4.2 Regulation of financial services

The regulation of financial services in the Isle of Man was consolidated and updated with the passing of the FSA and the CISA. These replaced the existing supervisory legislation, and the regulatory requirements across all the regulated sectors were standardised. The FSA brings together the regulatory provisions for banking, investment business and fiduciaries to provide a single reference point for companies which may require more than one type of licence.

The Financial Services Rulebook 2009 (the "Rulebook") is made under the FSA and contains detailed rules to be complied with by all regulated entities. As well as these general requirements, the Rulebook also contains specific requirements for the various types of regulated activity. The Rulebook is reviewed regularly, and changes made as required following consultation. The FSC may take appropriate enforcement action against a licence holder who is in contravention of the Rulebook.

The FSC's general policy is to licence only institutions or individuals of proven quality with an established track record.

Banks

The FSC attaches great importance to the protection of depositors so licences will only be granted to institutions of quality, with proven track records that will contribute to the Isle of Man. See section 5.2 below for a more comprehensive description of the Isle of Man's banking sector.

Investment business and financial services

The FSA regulates businesses conducting financial services business, including investment business, operating in or from the Isle of Man and requires a person undertaking investment type business to obtain a licence from the FSC. The Regulated Activities Order 2009 ("the Order") as amended lists the activities which constitute investment business as (in summary):

- (a) dealing in investments, either by a professional dealer as principal or as an agent;
- (b) arranging deals in investments on behalf of other people;
- (c) giving investment advice;
- (d) managing investments belonging to another person; and
- (e) providing for the administration or safeguarding of investments under a contractual relationship, including arranging for others to administer and safeguard investments.

The Order also specifies a number of activities which are excluded from the definition of investment business. In addition, the Financial Services (Exemptions) Regulations 2009 exempt a number of activities from the definition of "investment business".

The FSC will only issue an investment business licence to an applicant who passes the "fit and proper" test. The criteria applied in determining the "fit and proper" status of applicants are integrity, competence and financial standing. The FSC's general policy is to licence only institutions or individuals of proven quality with an established track record. Applicants are also expected to have drawn up a business plan setting out the viability of the business.

Some of the main requirements in the Rulebook for investment business licenceholders are detailed below.

- (a) Part 2 of the Rulebook concerns the financial resources and reporting requirements, both general to all licenceholders and specific for certain classes of licenceholder.
- (b) Part 3 of the Rulebook applies to investment business and service providers and concerns clients' money, making provision for the protection of clients' money in the event of a licence holder's insolvency. The Rulebook requires that clients' money should at all times be held in segregated and properly designated accounts on trust for the investor.
- (c) Part 4 of the Rulebook details rules on clients' investments, and ensures that, where licence holders have possession or control of investments belonging to others, adequate arrangements are maintained to ensure that such investments are kept safely and are properly recorded, identified, segregated and controlled so that, at any time, investments belonging to others are accounted for. The Rulebook also seeks to ensure that any administrative or financial difficulties to which the licence holder may be exposed will not have adverse consequences for clients or other persons.

- (d) Part 5 of the Rulebook concerns audit requirements, and requires that the auditors of investment businesses have professional indemnity insurance cover at an appropriate level suitable to the licence holder being audited. The FSC also wishes to be satisfied that the audit firm has sufficient knowledge and expertise in this specialised area and that the partner in charge of the audit can demonstrate that he has adequate experience. The FSC also requires the auditors of its licence holders to have a permanent place of business in the Isle of Man.
- (e) Part 6 of the Rulebook outlines the general principles and standards of conduct that the FSC expects licence holders to adopt in their relationship with clients, regulators and others. Rule 6.13 and the rules immediately following lay down general principles relating to advertisements.
- (f) Part 7 contains the rules on all aspects of administration, including changes of name or address, acquisitions of business or changes in ownership, and the winding up of regulated entities.
- (g) Part 8 concerns risk management and internal control, corporate governance and general internal policies and procedures. Rule 8.27 states that a licence holder must co-operate in an open and honest manner with the FSC and any other regulatory body to which it is accountable, and should keep them promptly informed of anything relevant to the Regulator's task. One of the most important requirements in this area is the requirement for the businesses of licence holders to be conducted on a day-to-day basis by at least 2 competent and responsible individuals who are Isle of Man resident officers and who are jointly responsible for overseeing the licence holder's proper conduct (Rule 8.21).
- (h) Schedule 2.2 of the Rulebook sets the minimum net tangible assets and minimum share capital requirements that the licence holder is required to maintain in order to minimise the risk of loss to investors. Although this financial resource requirement is a day-to-day requirement, the licence holder is required to submit annual financial statements to the FSC, and data as required by the FSC on a quarterly basis. The Rulebook also sets out the accounting and other records that are required to be maintained and submitted to the FSC by the licence holder.

For a more comprehensive description of the requirements in relation to establishment of an investment fund manager, see section 5.8.3 below.

1.4.3 Fiduciary service providers ("Fiduciaries")

The provision of certain services in relation to companies, trusts and partnerships in the Isle of Man are regulated activities. Broadly, such services include:

- (a) the formation, sale or transfer of companies;
- (b) the provision of company registered office facilities or accommodation addresses;
- (c) acting as registered agents, directors or company secretaries for others and performing company administration tasks;

The Financial Services Act 2008 (the “FSA”) was enacted with the aim of protecting anyone engaging the services of a Fiduciary.

- (d) equivalent services to (a) to (c) (inclusive) above (to the extent applicable) in respect of partnerships (including general and limited partnerships established under the Partnership Act 1909, and in respect of foundations established under the Foundations Act 2011, and any similar arrangements constituted under the law of any country or territory outside the Isle of Man);
- (e) acting as an enforcer (within the meaning of the Foundations Act 2011) in relation to a foundation;
- (f) acting as a trustee of an express trust;
- (g) the provision of trust administration services in relation to an express trust;
- (h) acting as a trust corporation; and
- (i) acting as a protector or (in respect of purpose trusts) an enforcer of a trust.

The FSA was enacted with the aim of protecting anyone engaging the services of a Fiduciary. It provides a framework for the licensing and supervision of Fiduciaries by the Financial Supervision Commission (“FSC”) and empowers the FSC to make regulations governing both the granting of such licences (including the power to require applicants for Fiduciary licences to furnish satisfactory information about their businesses) and the conduct of Fiduciary businesses. The legislation also aims to heighten awareness of possible abuse of a Fiduciary’s client company, trust, partnership or foundation by criminal elements.

The FSA requires all Fiduciaries engaging in regulated activities to be licensed. There are a number of different classes of regulated activity which may be applicable to a financial services licence under the Regulated Activities Order 2009 (as amended), depending on whether the licence holder is a provider of corporate services (a “CSP”) (Class 4 regulated activities), a provider of trust services (a “TSP”) or a trust corporation (Class 5 regulated activities). Only bodies corporate may hold a financial services licence for Class 5(4) regulated activities of acting as a trust corporation.

Applicants for a Fiduciary’s licence must pass a “fit and proper test.” In order to be passed as fit and proper, a Fiduciary must satisfy three criteria; integrity, solvency and competence. Integrity is essentially about the management and controllers behaving honourably towards customers, creditors and regulatory bodies. Solvency is wider than maintaining a surplus of net assets and also includes maintaining adequate cover to enable a licence holder to survive periods of market weakness. Competence extends to adequate knowledge of the business and compliance with statutory rules and regulations. Such competence may be demonstrated by experience, performance and training towards recognised qualifications. It is a criminal offence to provide false or misleading information when applying for a licence.

The FSA and Financial Services Rule Book 2009 (as amended) also impose requirements as to financial resources and professional indemnity insurance on licence holders.

By requiring all Fiduciaries to conduct their businesses to the highest standards, the legislation sought to codify existing best

practice. Fiduciaries are, of course, also subject to all company, trust, partnership and foundation law provisions where relevant, investment business regulations and anti-money laundering regulations. It is a criminal offence for Fiduciaries to engage in any “regulated activity” without a licence. As at 6 June 2011, there were 191 Fiduciaries licensed as CSPs and 133 Fiduciaries licensed as TSPs.

There are, however, a number of exclusions and exemptions from the licensing requirement. The following exclusions and/or exemptions are worthy of note.

- (a) A company that, as a purely private arrangement, acts as a trustee for one or more trusts, is exempt from the requirement to hold a Class 5 trust services licence provided the administration of the relevant trusts is undertaken by a person holding a trust services licence. This exemption would, for example, apply to a corporate trustee that operates in or from the Isle of Man in respect of one or more related family trusts, but would not apply to a trust company that accepts business from an introducer from within or outside the Isle of Man, which would breach the condition that a private trust company must not directly or indirectly hold itself out to the public as a TSP.
- (b) The FSC does not wish to regulate professional services provided by accountants, advocates or registered legal practitioners. Therefore, any activity which would otherwise be regulated, but which is directly related to the provision of professional legal or accountancy services, is exempt.
- (c) The FSC does not wish to impose the burden of regulation upon the normal domestic trading activities of companies which carry on their day to day business on the Isle of Man. Thus, any corporate service provided to a company which is resident, has a permanent establishment in the Isle of Man and carries on as its main business activities directly linked to the Isle of Man, is exempt. Thus, the filing of an annual return for a local business, or acting as director or company secretary of such a business, is exempt. There are also exemptions that apply to the provision of trust services by specified persons (see paragraph (b) above) in respect of “domestic” trusts. These include testamentary trusts which arise out of the Will of a Manx testator who was resident or domiciled in the Isle of Man at the time of his death and also to quasi testamentary trusts set up in the deceased’s lifetime for the purpose of receiving the settlor’s assets on the winding up of his estate.
- (d) Services provided to companies in the same group are excluded. It should be noted, however, that services provided to clients of other group companies are not excluded or exempt and will be licensable if they fall within the definition of regulated activities.
- (e) Activities related to joint ventures are excluded where the activity is undertaken by a person who is or intends to be a participator in a joint enterprise. Thus, if company A and company B wish to enter into a joint enterprise and, for that purpose, form company C as a joint venture vehicle, the activity of forming and running company C, even if it is for a commercial purpose, is excluded.

The Isle of Man Office of Fair Trading operates a free, independent dispute resolution service for customers with a complaint against a financial firm operating in, or from, the Isle of Man.

- (f) A person who introduces a client to a CSP licence holder will not be treated as "arranging for others" (namely the Fiduciary or its appointees) to be officers or nominee shareholders of any company administered for that client.
- (g) Corporate and trust activities that are already regulated by the IPA are exempt. These include CSP and TSP activities that arise from, or form part of, the activities of an insurance manager registered under Section 23 of the Insurance Act 2008, and acting as a trustee or an administrator of a retirement benefits scheme authorised or registered respectively under the Retirement Benefits Schemes Act 2000.
- (h) Where an individual acts as a director of companies by way of business and this is the only CSP regulated activity he undertakes, that individual may hold up to ten appointments before the activity of acting as a company director becomes licensable. This number does not include any directorships which would otherwise be excluded or exempt under the provisions of the FSA and associated regulations. It is therefore possible for an individual to hold more than ten directorships without requiring a licence, provided that no more than ten of the offices held are not otherwise excluded or exempt.
- (i) There is also a de minimis exemption in respect of trust activities which applies to specified persons (see paragraph (b) above). This allows an individual or firm which is a specified person to engage in trust services for up to ten trusts without being required to hold a Class 5 trust services licence.
- (j) Acting as a personal representative in respect of the estate of a deceased person (including acting as a trustee for sale in winding up the estate) is a TSP regulated activity. However, persons who undertake this activity are exempt from licensing in respect of this activity unless they are acting as a trust corporation, as such term is defined in the Trustee Act 1961. Acting as a trust corporation is a TSP regulated activity.
- (k) Any CSP activity which is wholly incidental to the business or office of official receiver, liquidator or receiver is exempt.
- (l) The nominee services exemption allows a directly wholly-owned subsidiary company or a company that is wholly beneficially owned by a sole trader or the partners of a partnership, where respectively the licenceholder is a company, sole trader or partnership, to undertake regulated activities for the clients of its parent without holding a separate licence of its own. The regulated activities or functions of such subsidiary companies should be separated so each company only undertakes one specific activity i.e. only acting as a corporate director or a nominee shareholder and not both functions. It should also be noted that a nominee company's fiduciary activities are nevertheless regulated as part of its parent's licence.

It should be noted that Isle of Man company directors who are employed by CSPs are subject to the same fiduciary duties as any director of any Isle of Man company. The raft of director disqualification cases that have come before the Isle of Man High Court in recent years has also helped remind CSP directors of

their responsibilities. The Court, in a recent disqualification order against a director of a Fiduciary, made four significant comments relevant to Fiduciary directors:

- (a) a director must have full knowledge of the company's activities and must play his part in exercising control of the company. Failure to do so is an abrogation of duty;
- (b) delegation of duties as a director to someone who is insufficiently experienced to carry out such duties is also an abrogation of duty;
- (c) a director must not take on too many directorships. Whilst having a high number of directorships is not in itself forbidden, a director should only take on as much business as he can properly handle. It is not an answer to failure in his duties to one company, that his conduct in respect of another ninety nine was impeccable; and
- (d) the disqualification of a director has a dual purpose – to protect the public and to act as a deterrent to other directors.

A detailed guidance note on directors' duties under Isle of Man law is contained on the FSC website at www.fsc.gov.im.

1.4.4 The Financial Services Ombudsman Scheme

The Isle of Man Office of Fair Trading ("OFT") operates a free, independent dispute resolution service for customers with a complaint against a financial firm operating in, or from, the Isle of Man. The scheme is funded by the Isle of Man Government and is available to private individuals, who may be resident anywhere in the world.

Subject to prescribed time limits, a complaint may be referred to the Ombudsman if, in the course of supplying financial services, the firm has caused the customer financial loss, material distress or material inconvenience through its negligence or maladministration, although the customer must first exhaust the firm's complaints procedure. Financial services covered by the scheme include banking, mortgages, credit, investments, insurance, pension and financial advice. Trust and corporate service providers are currently excluded from the scheme and complaints about the administration and running of personal and occupational pension schemes should be referred to the Pensions Ombudsman.

A case officer will first attempt to resolve the dispute informally and failing this, an adjudicator will be appointed to investigate and render a judgment. The adjudicator is empowered to convene a hearing and, if the complaint is upheld, to impose a remedy, which can include a monetary award of up to £100,000.

The scheme was amended in 2008, when it became established under Schedule 4 of the FSA. The major modifications made at that time are as follows:–

- (a) The OFT may by order extend the scheme in the future to enable complainants to be corporate bodies, although to date this has not been effected.
- (b) The OFT can, by order, amend the scope of the financial services which fall under the remit of the scheme, although at present this ability has not been exercised.

The Isle of Man issues its own distinctive notes and coins, which are denominated in the same manner as the United Kingdom currency.

- (c) The scheme adjudicators are now appointed by the Appointments Commission established under the Tribunals Act 2006 rather than by the OFT.
- (d) Either party, the complainant or financial provider, has the right to request a review of an adjudicator's determination by the senior adjudicator. The outcome of any review is binding on both parties. Any final determination by an adjudicator, or by the senior adjudicator after review, can be subject to appeal to the High Court on a point of law. Previously, there was no right to review an adjudicator's determination.

1.4.5 Currency and exchange controls

The Isle of Man is in currency union with the United Kingdom. The Isle of Man issues its own distinctive notes and coins, which are denominated in the same manner as United Kingdom currency. Within the Isle of Man, both Manx and United Kingdom money are in circulation. Manx money is not legal tender in the United Kingdom, although Manx notes are accepted by banks.

In relation to the Euro, the Manx Government has indicated that, if the United Kingdom decided to participate in the European Single Currency, the Isle of Man would probably follow suit. This is primarily because most of the Isle of Man's trade is with the United Kingdom and Europe, and the introduction of currency controls would not be in the Isle of Man's best interests.

There are currently no exchange controls that apply to the movement of funds into, or out of, the Isle of Man, nor is there any legislation in place whereby such controls may be imposed.

1.4.6 Secrecy and disclosure

The Department of Economic Development ("DED") has responsibility for maintaining the register of companies (the "Companies Registry"). The Companies Acts 1931-2004 and the Companies Act 2006 stipulate that certain specified information must be lodged with the DED at the Companies Registry upon incorporation and thereafter. In respect of a company incorporated under the Companies Acts 1931-2004, notifications must be submitted in respect of (amongst other matters), a change in directors, secretary, issued share capital and registered office of a registered company and an annual return must be filed with the DED, as must the annual accounts for public companies (private companies are not required to file their annual accounts). In respect of a company incorporated under the Companies Act 2006, the scope of the information to be filed is reduced and the DED need only be notified of changes to the company's registered office and registered agent, although an annual return must still be filed containing a list of current directors. In addition, a company incorporated under the Companies Act 2006 may at its discretion elect to file details of its directors and members. The Companies Registry is open to the public and company files may be inspected for a small fee, either at its offices or online.

There is no general requirement for the details as to the beneficial ownership of a company's issued shares to be disclosed to the DED, the Assessor of Income Tax or the Collector of Customs and Excise. However, Fiduciaries need to know the beneficial owners of companies they administer in order to comply with the Isle of Man's anti-money laundering requirements (see section 1.4.8 below).

The provisions of the Registration of Business Names Act 1918 (as amended) require the registration of, inter alia, partnership and company business names with the DED if such names differ from the names of the respective partners or the company's name as registered.

Partnership agreements and partnership financial accounts do not have to be filed with the DED. However every Manx limited partnership must be registered with the DED.

The accounts of sole traders, partnerships and companies must be submitted every year to the Assessor of Income Tax to confirm the income tax returns already submitted. Annual accounts may also be inspected by the Collector of Customs and Excise.

No public register of non-charitable trusts exists, and there is no general requirement to file trust accounts or other information in relation to non-charitable trusts. There is likewise no requirement to disclose the names of likely beneficiaries of a discretionary settlement to any of the above mentioned public bodies.

The Financial Supervision Commission and the Insurance and Pensions Authority do require disclosure of beneficial ownership of banks, investment businesses, insurance companies and fiduciary service providers which are licensed or authorised in the Isle of Man.

1.4.7 Data protection

The Isle of Man has enacted legislation which regulates the processing of individuals' personal data. The Data Protection Act 2002 (the "DPA") came into force on 1 April 2003 and applies to the processing of personal data by "data controllers" meaning, essentially, someone who determines the purposes for which, and the manner in which, personal data are processed. Practically speaking, most people and organisations that hold/use individuals' personal data will be data controllers unless they are mere 'processors', who only deal with such data in accordance with a data controller's instructions. The two main forms of data to which the DPA applies are records generated by automated equipment (for example, computer records) and highly structured manual records.

The key features of the DPA are as follows:

- (a) data controllers must comply with eight "data protection principles", which are general rules to be observed when processing personal data. These include, for instance, the requirement to process data fairly and lawfully and to process data only for specified purpose(s);
- (b) certain conditions must be satisfied when a data controller processes personal data in order to comply with the DPA, with additional or further conditions to be met if the data are "sensitive personal data". This term refers to data concerning an individual's racial/ethnic origin, political beliefs, religious beliefs, membership (or otherwise) of a trade union, physical or mental health, sexual life, the commission/alleged commission of offences or criminal proceedings;

The Isle of Man has longstanding and comprehensive anti-money laundering legislation.

- (c) individuals can exercise certain rights in relation to their personal data against data controllers, including a general right to be told if information concerning them is being processed, and to be provided with a copy of it. Other rights include the ability to prevent certain types of processing, for instance, if it is likely to cause damage or distress, or if it is for the purposes of direct marketing. An individual may be entitled to claim compensation from a data controller who fails to comply with the requirements of the DPA;
- (d) except where a relevant exemption applies, a data controller must ensure when transferring personal data overseas that the destination country/territory provides an adequate level of protection for individuals with regard to the processing of their data. Transfers of personal data to destinations within the European Economic Area automatically meet this requirement. In other cases, the ability to transfer will depend on whether the destination country/territory's data protection measures are adequate (as determined by the European Commission) or, failing that, whether the data controller is satisfied that they are adequate in the circumstances of the particular transfer; and
- (e) the Isle of Man Data Protection Supervisor (the "Supervisor") is responsible for ensuring compliance with the DPA and for taking enforcement action where necessary. The Supervisor also maintains a public register of data controllers. Data controllers must not process personal data unless they apply to the Supervisor to be included in this register ('notification'), or are exempted from such requirement.

1.4.8 Anti-money laundering controls

Money laundering is the process by which criminals attempt to conceal the true origin and ownership of the proceeds of their criminal activities. If successful, it allows them to maintain control over those proceeds and, ultimately, provides a legitimate cover for the source of their income.

In the last 15 years or so, there have been specific international legislative initiatives aimed at combating drug trafficking, terrorism and the associated money laundering activities. The Isle of Man has longstanding and comprehensive anti-money laundering legislation, the relevant Manx statutes being:

- (a) the Proceeds of Crime Act 2008 ("POCA");
- (b) the Anti-Terrorism and Crime Act 2003 as amended ("ATCA").

POCA brought into force the Proceeds of Crime (Money Laundering) Code 2010 (the "Code"). The Code, which applies to certain designated businesses and commercial activities, comprises secondary Manx legislation which imposes mandatory requirements on a wide range of businesses, operating in or from the Isle of Man, to establish and operate various anti-money laundering procedures (including identification ("Know Your Customer"), record keeping, disclosure and training). It is a criminal offence to fail to comply. The Code also details the mechanisms for reporting suspicious activity. These developments largely bring the Isle of Man's legislation into line with European Union legislation and regulations and the international standards set by the Financial Action Task Force ("FATF"). This is in keeping with the Isle of Man's role and reputation as a responsible international centre (see section 1.2.3 above for more information about the FATF).

The statutory criminal money laundering offences are broadly in the areas of:

- (a) concealing, disguising, converting or transferring the proceeds of criminal conduct;
- (b) assisting another in retaining or controlling the proceeds of criminal conduct;
- (c) similar money laundering offences in relation to financing terrorism;
- (d) failing to report knowledge or suspicion of money laundering (whether in relation to criminal conduct or terrorism) gained in the course of business; and
- (e) prejudicing an investigation into terrorist financing or the proceeds of criminal conduct by disclosing to another person information likely to be prejudicial to the investigation.

The penalties for these offences are severe. As criminal law, the anti-money laundering statutes apply to all persons under the Isle of Man's jurisdiction.

ATCA, which replaced the Prevention of Terrorism Act 1990, is principally based on the Terrorism Act 2000 (of Parliament), but also contains provisions from the Anti-Terrorism, Crime and Security Act 2001 (of Parliament).

Although originally designed as a response to Irish terrorism, the counter-terrorist measures in ATCA are also applicable to the current international terrorist threat. ATCA gives both the Court and Treasury powers in relation to terrorist funds and property, provides the police with powers to investigate and to arrest and detain suspects, and also deals with the disclosure of information for the purposes of criminal investigations. ATCA came into force on 1 January 2005, and has been supplemented by further provisions set out within the Terrorism (Finance) Act 2009.

The Isle of Man has introduced secondary legislation which is largely identical to the Code, but is specifically designed to ensure that businesses have in place systems which adequately seek to prevent or forestall terrorist financing. This legislation, the Prevention of Terrorist Financing Code 2011, came into force on 1 September 2011.

In relation to certain regulated business activities, the above legislation is complemented by comprehensive guidance notes issued by the Financial Supervision Commission and the Insurance and Pensions Authority which deal with, inter alia, verification of identity, record keeping, recognition, reporting, education and training. These bodies regard the establishment and maintenance of adequate policies and procedures for deterring and preventing money laundering as an important element of the continuing "fit and proper" test applicable to all licence holders. In a jurisdiction like the Isle of Man, any money laundering discovered is likely to have a cross-border element and there is, therefore, provision for legal assistance. In particular, disclosure of any suspected money laundering should be made to the Financial Crime Unit of the Fraud Squad (the "FCU") of the Isle of Man. The FCU liaises with the Serious Organised Crime Agency in London. There are reciprocal provisions under sections 24 and 25 of the Criminal Justice Act 1990 for the Isle of Man's Attorney General to assist the United Kingdom's Serious Fraud Office in the investigation of serious fraud, the proceeds of which may be held on the Isle of Man.

The Manx Government's Department of Economic Development operates various schemes to assist in the growth and diversification of the Manx economy.

Such assistance may also be offered, at the Attorney General's discretion, to foreign police. In the case of *Re Frederiksen* (1997) it was held that, although the Manx courts did not act as tax collectors for foreign jurisdictions, there was nothing to prevent the Attorney General from giving assistance merely because the basis of an alleged crime was fiscal. This principle has been extended through the network of tax exchange of information agreements, which the Isle of Man has entered into with various other jurisdictions. On a related point, however, the situation where foreign authorities may seek confidential banking information held in the Isle of Man was clarified in *The Petition of Blayney and Grace* (2001), where inspectors from Ireland were refused disclosure of records held by an Isle of Man branch of an Irish bank under The Banker's Book Evidence Act 1935 (the "1935 Act"). The Deemster made it clear that disclosure under the 1935 Act would be ordered only where Manx legal proceedings were commenced. The Deemster stated (obiter) that the 1935 Act or equivalent legislation should not be used for fishing expeditions by foreign authorities beyond the ordinary rules of disclosure in litigation.

Finally, since the introduction of the Evidence (Proceedings in Other Jurisdictions) Act 1975 (an Act of Parliament which was extended to the Isle of Man in 1979), the Manx courts have been required to assist courts in other jurisdictions in obtaining evidence for proceedings in those jurisdictions.

1.5 Government incentives

1.5.1 Grants, loans and tax incentives

The Manx Government's Department of Economic Development ("DED") operates various schemes to assist in the growth and diversification of the Manx economy. The Financial Assistance Scheme, the Small Business Start-Up Scheme, and the Business Support Scheme are the main schemes available. Each scheme is subject to eligibility criteria.

The Financial Assistance Scheme is a discretionary support scheme designed to encourage new business, which offers the following grants and incentives to new and existing Isle of Man businesses:

- capital grants of up to 40% of the construction costs of a new building;
- capital grants of up to 40% of the cost of refurbishment of a building or the conversion of a building to be used for a new purpose;
- capital grants of up to 40% for new plant, machinery and equipment (including all hardware and software);
- operating grants of up to 40% in respect of non-recurring costs (i.e. first year expenses) associated with the establishment of a project (e.g. professional fees for the preparation of a business plan, legal fees, expenses associated with the transfer of equipment and key personnel to the Isle of Man and the setting up of an adequate system of financial management accounting);
- grants of up to 40% for special training directly associated with purchased plant and equipment;
- grants of up to 50% for employers participating in approved training schemes;
- grants of up to 40% of costs of specific new marketing ventures;
- grants of up to 40% of investments designed to conserve energy and reduce costs;
- grants of up to 40% of recognised costs of pursuing quality assurance standards such as BS and ISO;
- grants of up to 40% for employing consultants to help identify and address a specific business need;
- loans and loan guarantees may be available in certain circumstances in addition to the grants;
- up to 40% of the cost of renting a factory from a private developer for the initial period of a new project, should a company wish to rent rather than build its own factory with grant aid.

The Small Business Start-Up Scheme is aimed at fostering local enterprise in any sector, and offers help to individuals who are considering starting a business or have recently started a business. The scheme consists of a five day course designed to help the recipient decide whether the business idea is viable, provide training in basic business skills such as marketing and keeping financial records and to give sufficient know how to enable a business plan and cash flow forecast to be prepared. Financial assistance is available on a discretionary basis and may include a weekly living allowance of (currently) £50 for the first 30 weeks and a grant to help purchase equipment (of up to 50% of the purchase cost to a maximum of (currently) £1,500). If a successful application is made for financial assistance, a business adviser is made available to provide support for the first 18 months. 90% of new business start-ups supported on the Isle of Man succeed.

The Business Support Scheme offers financial assistance for business development with the specific purpose of helping a business become more efficient and effective by developing business skills and management competencies. The assistance takes the form of a project that delivers a business solution for an aspect of the business where sufficient knowledge, resources or a combination of the two may be lacking. The project, which is delivered by an independent business consultant who is accredited by the DED as a specialist in the relevant discipline, must relate to one of the following business disciplines which together cover all aspects of business development: business & financial management controls; business & strategic planning; design; E-business; environmental efficiency; human resource development; information communications technology/information systems; marketing; operation management; or quality. The DED will pay 50% of the cost of the project (up to a maximum of (currently) £4,500) and the business must pay the other 50%.

In addition, the STEP scheme run by DED matches small businesses with Manx undergraduates in their final or penultimate year at university, allowing students to gain work experience and businesses to utilise new skills to complete specific projects.

The government has recently introduced a 0% Green Business Loan Scheme. The Scheme is open to all business sectors and offers a 100% loan of up to £20,000 towards the cost of projects that improve energy efficiency in Isle of Man business premises.

DED also supports the Business Incubation Centre (“BIC”), which helps entrepreneurs in high-tech sectors to operate on the Isle of Man. BIC offers a pre-start up “Get Going” programme to develop and launch new ideas for business ventures and a “soft landing zone” (“SLZ”) for overseas businesses looking to establish new business operations on the Isle of Man. The SLZ is part of an international network, and helps by offering business development support such as access to professional services, government contacts, finding business premises and networking opportunities with the local business community.

In addition, the government has recently introduced a 0% Green Business Loan Scheme. The Scheme is open to all business sectors and offers a 100% loan of up to £20,000 towards the cost of projects that improve energy efficiency in Isle of Man business premises.

The above represent some of the most attractive aids and incentives to industry in the western world, particularly when considered together with the Isle of Man’s favourable tax regime. There are 100% first year capital allowances in respect of new buildings, improvements to buildings and plant and machinery. Such allowances combined with maximum capital grant support can give an effective rate of support of 60% of the costs of capital assets. Other specific incentives are available in respect of agriculture, fishing and tourism.

1.5.2 Freeport

The Manx Government has established a 20 acre Freeport adjacent to the Isle of Man’s main airport at Ronaldsway, officially opened in 1988. Customs formalities are much reduced and no duty is charged on imported goods. Goods may move freely between the Isle of Man and the European Community and the Freeport therefore enhances activities such as the assembly of components and processing of semi-manufactured goods for export; storage, stockholding and transshipment; packaging, labelling and preparation of goods for marketing. Discretionary financial assistance may also be available. The Freeport is the only one in the world which offers an easy accessibility to European markets and additional financial advantages of location in an international finance centre.

1.5.3 Film on the Isle of Man

The Isle of Man’s Government, latterly through CinemaNX Limited, has for a number of years actively supported and encouraged the development of a sustainable commercial film industry offering a discretionary investment for feature films and television productions filmed (or partly filmed) on the Isle of Man.

For further discussion of the Isle of Man’s film industry see section 5.5 below.

The two main types of corporate vehicle available in the Isle of Man are companies incorporated under the Companies Acts 1931 to 2004 and companies incorporated under the Companies Act 2006.

2 BUSINESS ORGANISATIONS

2.1 Corporate vehicles

2.1.1 Types of corporate vehicle

The two main types of corporate vehicle available in the Isle of Man are companies incorporated under the Companies Acts 1931 to 2004 (see section 2.1.2 below) and companies incorporated under the Companies Act 2006 (see section 2.1.3 below).

The Companies Acts 1931 to 2004 (the “Companies Acts”) are based, to a large extent, on English company law (for example, the Companies Act 1931 is modelled on the Companies Act 1929 of England and Wales) whilst the Companies Act 2006 (the “2006 Act”), which is a stand alone piece of legislation, follows the international business company model available in a number of other offshore jurisdictions.

Companies incorporated under the 2006 Act are governed solely by its provisions and (save in relation to liquidation and receivership) are not subject to the provisions of the Companies Acts. Equally, present and future companies incorporated under the Companies Acts are not subject to or affected by the terms of the 2006 Act.

Due to its flexible characteristics, a company incorporated under the 2006 Act has become the corporate vehicle of choice for international business transactions.

2.1.2 Isle of Man companies incorporated under the Companies Acts 1931 to 2004

Introduction

Under the Companies Acts, a company may be either public or private; private companies are not permitted to offer their shares to the public. Companies can also be limited by shares, limited by guarantee, limited by guarantee and have a share capital (“hybrid companies”) or have a share capital with unlimited liability. In addition, it is possible to establish companies incorporated under the Companies Acts that are protected cell companies and incorporated cell companies (see section 2.1.6 below).

A company incorporated under the Companies Acts is a separate legal entity which is formed by one or more subscribers signing the Memorandum and Articles of Association, which are then filed at the Isle of Man Department of Economic Development (the “Department”) Companies Registry (the “Companies Registry”). Upon incorporation, the Department issues a Certificate of Incorporation which is conclusive evidence of the association’s status as a duly registered company. The beneficial ownership of the company need not be disclosed to the Companies Registry and shares may be held by nominees.

Companies are required to have a registered office in the Isle of Man, to which all communications and notices from the Companies Registry are addressed. The name of the company

must be displayed at the registered office and at every other office or place of business. Any change in the registered office following incorporation must be filed within one month at the Companies Registry. A register of charges, a register of directors and secretary and a register of members must be maintained at the registered office and be available for inspection by the members.

In the case of a company formed after 1 June 1988, the Memorandum of Association (the “Memorandum”) must state, inter alia, the name of the company, that the registered office is situated in the Isle of Man, that all the requirements of the Companies Acts in relation to incorporation have been complied with, that in respect of a limited company the members have limited liability, and the amount and division of the share capital. Finally, any permitted restrictions on the powers and objects of the company must be stated. The Companies Act 1986 removed the need for a company’s objects to be set out in its Memorandum, so that, under Section 2(1) of that Act, “a company has the capacity and, subject to the Act, the rights, powers and privileges of an individual”. In consequence, Isle of Man companies incorporated after 1 June 1988 do not contain long-form objects clauses and no concept of ultra vires exists in Isle of Man law in relation to such companies. A company incorporated before 1 June 1988 may, by special resolution, resolve that the provisions of the Companies Act 1986 apply and adopt the new form of Memorandum.

The Articles of Association (“Articles”) are the internal regulations for the conduct of a company’s business and can either be defined at length or by reference to the adoption of a model form of Articles set out in the Schedule to the Companies (Memorandum and Articles of Association) Regulations 1988. In respect of a company limited by shares, these model articles are normally referred to as “Table A”.

A company may issue shares which are redeemable at the option of the holder and/or the company and it is possible to redeem preference shares out of a company’s share premium account. Share warrants to bearer may no longer be issued, although those issued prior to 1 April 2004 remain valid (although the rights associated with them are no longer exercisable until they are converted into registered shares).

Capital duty is payable on a company’s authorised share capital. For a company with a capital of up to £2,000, the duty will be £133. Companies having a higher nominal capital will pay an additional £17 duty per £1,000, or part thereof, up to a maximum company duty payment of £5,000. An Isle of Man company does not have to comply with any minimum capital requirement.

Members

The Single Member Companies Act 1993 permits Isle of Man private companies to have only one member (shareholder) provided that the register of members states that this is the case and states the date on which the company became a single member company. However, two founder members, known as subscribers, are required to incorporate public companies and unlimited companies. A company can have any number of members.

An Isle of Man public company proposing to offer its shares or debentures to the public may need to comply with the prospectus requirements of the Companies Acts.

Officers

All companies must have at least two directors, neither of whom may be a body corporate. The company must have a secretary which, provided it is not a public company, can be another company. In the case of a public company, the secretary must be one of the following:

- a member of the Institute of Chartered Secretaries and Administrators;
- a member of the Chartered Institute of Management Accountants;
- a member of the Institute of Chartered Accountants;
- a member of the Chartered Institute of Public Finance and Accountancy;
- a member of the Association of Chartered Certified Accountants;
- a member of the Association of Authorised Public Accountants; or
- a lawyer admitted in England, Scotland or the Isle of Man.

Accounts and audit

A private company is not required to file its accounts at the Companies Registry. However, the Companies Acts contain strict accounting requirements and professional advice should be sought in this connection. In each year a profit and loss account, balance sheet, auditors' report and directors' report must be prepared irrespective of whether such accounts need to be filed or audited (see following paragraph). To maintain its existence, regardless of whether it is trading/conducting business, a company must file an annual return in the prescribed form with the Companies Registry.

A private company can be audit exempt in any financial year if:

- (a) the company is able to meet two of the following three criteria:
 - (i) its turnover in that year does not exceed £5.6 million;
 - (ii) its balance sheet total does not exceed £2.8 million at any time during that year;
 - (iii) it employs no more than 50 persons at any time during that year; or
- (b) throughout that year, all its members are directors and it exists wholly for the purpose of holding shares, securities, other investments or land.

For the purposes of requirement (a)(i) above, "turnover" means the amounts derived from the provision of goods and services falling within the company's ordinary activities, after deduction of (A) trade discounts, (B) value added tax, and (C) any other taxes based on the amounts so derived. If a company is able to meet any of the above two conditions, it may elect not to be subject to the audit requirements. Such election requires the approval of every member of the company and a copy of the elective resolution must be filed with the Department. In addition, if a company wishes to do so, it may amend its Articles to reflect the election and submit them to the Department.

If the private company carries on banking or insurance business or carries on investment business, it may not make the election.

Public offers

An Isle of Man public company proposing to offer its shares or debentures to the public may need to comply with the prospectus requirements of the Companies Acts.

(a) Public offer by way of written instrument

If a public offer is made by way of a written instrument, that instrument is likely to constitute a prospectus. The Companies Acts place a general prohibition on the circulation or distribution of any prospectus, notice, circular, advertisement, or other invitation offering to the public for subscription or purchase any shares or debentures of a company that does not comply with the provisions of the Companies Acts. The provisions lay down requirements in relation to: the registration of the prospectus; the contents of the prospectus; the requirement for experts' consents to the issue of the prospectus; and civil and criminal liability for mis-statements in a prospectus.

The directors of a company must ensure that any prospectus issued in relation to such company:

- (i) contains all material information relating to the offer or invitation to which the prospectus relates:
 - (a) that the intended recipients would reasonably expect to be included in it in order to enable them to make an informed decision as to whether or not to accept the offer or make the application referred to in it; and
 - (b) of which the directors or proposed directors (as the case may be) were aware at the time of issue of the prospectus, or of which they would have been aware had they made such enquiries as would have been reasonable in all the circumstances; and
- (ii) set out such information fairly and accurately.

For the purposes of the above, "intended recipients" means those persons who, taking into account the terms of the prospectus and all the circumstances in which the prospectus was issued, might reasonably be expected to accept an offer to acquire shares or debentures contained in the prospectus or to apply to acquire such shares or debentures.

(b) Private placement by way of written instrument

If a written document is used to offer shares, but the offer does not constitute a public offer, the prospectus requirements of the Companies Acts may be avoided. There is no clear definition of "public offer" or "offer to the public" contained in the Companies Acts. In the absence of local authority, the Isle of Man courts have traditionally looked to English case law for guidance. Such authorities would therefore be of relevance in determining whether an offer constituted an "offer to the public".

An Isle of Man company has a separate legal personality, distinct from that of its officers or members.

The Companies Acts do, however, contain certain provisions which limit the scope of the expression “offer to the public”. Consequently, an offer of shares will not be deemed to be an “offer to the public” solely by reason that it is made to certain categories of person, including, among others, existing members of the company, existing or former employees of the company and members of the family of such members or employees.

The Companies (Private Placements) (Prospectus Exemptions) Regulations 2000 also indicate that the issue of an offering document by or on behalf of a company shall constitute a private placement, and be exempt from the Companies Acts’ prospectus requirements, if it is issued to:

- (i) persons whose ordinary activities involve them in acquiring, holding, managing or disposing of shares or debentures (as principal or agent) for the purposes of their businesses; or
- (ii) persons who it is reasonable to expect will acquire, hold, manage or dispose of shares or debentures (as principal or agent) for the purposes of their businesses; or
- (iii) a restricted circle of persons whom the issuer of the document reasonably believes to be sufficiently knowledgeable to understand the risks involved in accepting the offer in the document; or
- (iv) a restricted circle of persons numbering no more than fifty whom it is reasonable to believe will acquire any shares or debentures which are the subject of the offer in the document for investment purposes and not with a view to their imminent resale.

(c) *Public offer not made by way of written instrument*

If the offer is public, but it is not made by reference to any written document, then the prospectus requirements could be avoided.

Starting the company

This section provides a brief synopsis of the documentation required under the Companies Acts and accompanying regulations in order to conduct and manage a company incorporated under the Companies Acts.

To incorporate an Isle of Man company an application for name approval for the proposed company should be made to the Department, ideally in advance of applying for incorporation. The application must contain information relating to the nature of the company’s proposed business and details as to any particular significance in the proposed name (for example, abbreviations). Certain words (notably “Bank”, “Trust”, “Holdings”, “Fund” and “International”) are not acceptable for inclusion in a company name unless circumstances warrant them. The Department may require additional information or stipulate the minimum paid-up share capital before approval is given for the adoption of such names. There is no requirement to disclose the identity of the beneficial owner of the proposed company.

Confirmation or rejection of the proposed name will normally be received within 2 to 3 working days. If the name is approved, the following must be lodged with the Department:

- (a) the Memorandum and Articles signed by the subscribers, each of whom must take a minimum of one share. Alternatively, a company limited by shares (or by guarantee) may be formed by one person and may have one member by virtue of the Single Member Companies Act 1993;
- (b) particulars of the first directors and secretary, together with their signed consents to act (Form 1); and
- (c) a cheque payment in respect of duty, registration and filing fees (in the case of a company with a nominal capital of £2,000, these would amount to £195). The Certificate of Incorporation will usually be issued within 2 to 3 working days following receipt of the completed documentation.

As an alternative to forming a new company, a company which has previously been incorporated, but which has never traded, may be purchased. This alternative is particularly important where time is of the essence. Names of companies can, if required, be changed at a later date by filing the appropriate documents with the Department.

The company must have business notepaper on the first day of trading. This must state the name of the limited company, the place of registration of the company, the number with which it is incorporated, the address of the registered office and names (including present and former names) of the directors. Documents sent electronically should also contain such information.

It is important to stress that any person forming companies by way of business will need to be a licensed fiduciary (see section 1.4.3 above) and perform full anti-money laundering due diligence on the promoters of the company before proceeding to incorporation.

Effect of incorporation

The Companies Acts respect the two fundamental company law principles of corporate personality and limited liability.

An Isle of Man company has a separate legal personality, distinct from that of its officers or members. Accordingly, a company can undertake the same range of activities as an individual and can sue and be sued in its own name. Isle of Man courts, in common with their English counterparts, are reluctant, in the absence of (inter alia) fraud, to lift the corporate veil.

The concept of separate legal personality does not always afford protection to a company’s officers and employees. They may, in some circumstances, be found liable for their acts or omissions, such as when the offence of fraudulent trading has been committed. The offence is constituted where officers of a company continue to trade and incur debts when there is no reasonable prospect of them being paid when they fall due.

The concept of limited liability means that the liability of the members is limited to paying to the company the full amount due and payable on their shares. The company, however, is always fully liable for its debts and has unlimited liability.

Isle of Man courts, in common with their English counterparts, are reluctant, in the absence of (inter alia) fraud, to lift the corporate veil.

Running the company

(a) Administrative matters after incorporation

Normally, a board meeting will be held shortly after incorporation. All directors should receive reasonable notice of the time and place of the meeting and, to be a valid meeting, there must be the necessary quorum of directors present. Typical matters dealt with at the first board meeting are:

- (i) report on incorporation and company number;
- (ii) report on directors, secretary and registered office;
- (iii) appointment of chairman;
- (iv) adoption of a company seal (optional);
- (v) appointment of auditors;
- (vi) determination of year-end for accounting purposes;
- (vii) appointment of bankers;
- (viii) allotment of shares to subscribers to the Memorandum and perhaps others; and
- (ix) issue of share certificates.

After the meeting, the board minutes should be written up by the company secretary.

A company must keep certain statutory books at its registered office. These include the Register of Members, Register of Directors, Register of Mortgages and Charges, Register of Debentures, Minutes, Accounting Records, copies of Charges, Register of Sealings (where appropriate) and copies of documents lodged with the Department. An Annual Return listing details of the current directors, members, share capital and certain other information should be sent to the Department each year within one calendar month of return date with a filing fee (currently £360 (subject to exemptions)).

(b) Calling and conduct of meetings

An Annual General Meeting ("AGM") must be held once in each calendar year, and not more than fifteen months after the holding of the last AGM. However, provided the company holds its first AGM within eighteen months of its incorporation, it need not hold it in the calendar year of its incorporation or in the following calendar year. Any other general meeting will be an Extraordinary General Meeting ("EGM") which the directors may call whenever they think fit and members may call subject to the provisions of the Companies Acts. The notice period required for an AGM or EGM will depend on the nature of the resolutions proposed to be passed at the meeting. In certain circumstances, a meeting of the holders of a particular share class may also be required.

(c) Types of resolution

In general, responsibility for the operation and management of a company lies with the directors. However, certain matters may require the prior approval of shareholders either pursuant to the provisions of the Companies Acts or a company's Articles.

Matters which require shareholder approval fall into one of three categories: (i) those which must be decided by way of a special resolution of the shareholders; (ii) those which must be decided by way of an extraordinary resolution of the shareholders; and (iii) those which must be decided by way of an ordinary resolution of the shareholders.

(i) Special resolution

In order to pass a special resolution: (a) 21 clear days' notice of the meeting must be given to the shareholders (unless all shareholders entitled to attend and vote at the meeting agree to accept shorter notice); and (b) a majority of 75% of the votes cast must be in favour of the resolution proposed.

(ii) Extraordinary resolution

In order to pass an extraordinary resolution: (a) 14 clear days' notice of the meeting must be given to the shareholders (unless all shareholders entitled to attend and vote at the meeting agree to accept shorter notice); and (b) a majority of 75% of the votes cast must be in favour of the resolution proposed.

(iii) Ordinary resolution

In order to pass an ordinary resolution: (a) 14 clear days' notice of the meeting must be given to the shareholders (unless all shareholders entitled to attend and vote at the meeting agree to accept shorter notice); and (b) a simple majority of the votes cast must be in favour of the resolution proposed.

The Articles may provide that an extraordinary resolution will be required in any case where under the Companies Acts an ordinary resolution would have sufficed. The Articles may also specify longer notice periods than the statutory periods detailed above.

Voting on a resolution is normally by way of a show of hands, unless a poll is demanded (in which case, members have one vote for each share held). The Articles may give the chairman a casting vote.

The Articles usually provide that a written resolution, signed by, or on behalf of, all the members, will be as effective as if it had been passed at a general meeting, duly convened and held.

Any notice of a general meeting must specify the time and place of the meeting, the general nature of the business to be transacted and, if applicable, confirm that the directors intend to propose the resolution as a special or extraordinary resolution. In the case of an AGM, the notice must specify the meeting is such. Under a company's Articles, notices must normally be delivered to all shareholders, the personal representatives of a deceased shareholder, the trustees of a bankrupt shareholder, the directors and the auditors, in each case, either personally or by post to the registered address.

If a director or a shareholder is unable to attend either a board or general meeting (as applicable) the Articles will usually include provisions allowing for the appointment of an alternate director or proxy (as applicable).

Isle of Man legislation allows for the migration of companies between the Isle of Man and other jurisdictions without the need for dissolution or winding up.

Changes in the company

(a) Altering the constitution

A company may, by special resolution and with the approval of the Department, change its name. A Certificate of Change of Name for the company will be issued. Upon the issuance of a Certificate of Change of Name the company notepaper and email footers must be changed. Companies which utilise a business name will be required to register that name under the Registration of Business Names Acts 1918 (as amended).

A company may by special resolution amend or vary its Articles. Some alterations require the consent of all the existing members, notably alterations increasing a members' liability to contribute to share capital. The amended Articles must be filed with the Department.

The nominal capital may (unless contrary provision is contained in the Articles) be increased by an ordinary resolution of the members. The Department must receive notification of the increase within one month of the resolution being passed, together with a cheque for the additional capital duty (referred to above) payable.

The share capital of a company may also be decreased, subject to certain stringent statutory requirements. In outline, if the share capital has been issued, a special resolution authorising the reduction must be passed and the approval of the Court must be obtained.

(b) Appointment and removal of directors

Subject to the express provisions of a company's Articles, a person proposed by the directors or a member may be appointed a director. Additionally, the directors alone may appoint a director, in which case that director will, subject to the Articles, normally hold office until the next AGM when he or she will retire unless reappointed at that meeting by the members.

Article 73 of Table A provides that at the first AGM all the directors shall retire from office and at every subsequent AGM one third shall retire from office. This provision is often excluded from the Articles of a company.

A director may resign from his office by notice in writing to the company. He may also be removed by a special resolution of the members under, and subject to, the terms of the Companies Acts and any relevant provisions contained in the company's Articles.

The Articles of a company generally provide that the office of a director will be vacated if he or she ceases to be a director under the provisions of the Companies Acts or is prohibited by law, becomes bankrupt, becomes of unsound mind, resigns in writing or is absent without permission for more than six consecutive months and the board so resolves.

The appropriate form must be sent to the Department upon the appointment or removal of a director.

(c) Allotment and transfer of shares

Authority to allot shares is conferred on the directors unless the Articles expressly reserve such authority to the shareholders. There is no statutory right of pre-emption under the Companies Acts, although such a right may be provided in the Articles. No stamp duty is payable in the Isle of Man, but a return of allotments form must be sent to the Department. Before allotting shares, the directors must ensure that there is sufficient unissued nominal capital for the proposed allotment. Shares may be allotted for cash or other consideration.

In order to transfer shares, a completed stock transfer form and share certificate(s) must be sent to the company and, following approval by the directors, the register of members must be altered. No stamp duty is payable. The Articles of a company may allow the directors to refuse to register a transfer. For instance, Article 24 of Table A grants authority for the directors to refuse to register the transfer of a share which is not fully paid to a person of whom they do not approve.

Creation of security

An Isle of Man company has the power to charge its assets in any manner permitted by the laws governing the assets in question. In addition to creating fixed security, an Isle of Man company can grant a floating charge over all of its assets and undertaking. Under section 79 of the Companies Act 1931, as amended, most charges created by Isle of Man companies must be registered with the Department within one month of being created, otherwise they are invalid against a liquidator or creditor of the company.

Redomiciliation of companies

Isle of Man legislation allows for the migration of companies between the Isle of Man and other jurisdictions without the need for dissolution or winding up. Any type of company may apply to redomicile, although companies performing certain activities are not permitted to redomicile to the Isle of Man. Redomiciliation is only possible in circumstances where the corresponding jurisdiction has equivalent legislation.

The legislation significantly reduces the costs of moving domicile where this is commercially desirable, without interrupting business operations. Existing contracts can continue, assets can remain within the company and business can continue during the process of redomiciliation.

Potential migrant companies require the authorisation of the Department and the regulatory body from their home or destination jurisdiction in order to transfer. They are also required to, inter alia, pass a special resolution in favour of the migration in the case of an outward migration, publish legal notices in local and foreign newspapers, submit details of all existing charges, obtain the consents of any charge holders, irrevocable undertakings and declarations of solvency from the directors (and the company in respect of the former), and an advocate's opinion certifying that the migrant company has complied with the legislation and regulations. In respect of companies incorporated under, or to be incorporated under, the Companies Acts the fee to redomicile to the Isle of Man is currently £330 and the fee to redomicile from the Isle of Man is currently £2,950.

The 2006 Act, which is a stand alone piece of legislation, updated and modernised Isle of Man company law by introducing a new simplified corporate vehicle, often referred to as a new Manx vehicle.

Pursuant to the Insurance Act 2008, an insurance company may apply to the Isle of Man Government Insurance & Pensions Authority ("IPA") for redomiciliation to or from the Isle of Man. Certain conditions must be satisfied both in relation to the IPA and the regulatory body of the destination jurisdiction. The insurance company must perform actions and submit certain information to the IPA similar to those required by the Companies (Transfer of Domicile) Act 1998 and listed in the preceding paragraph.

2.1.3 Isle of Man companies incorporated under the Companies Act 2006

Introduction

The steady decline in the number of companies incorporated in the Isle of Man, in contrast to the soaring incorporation rates in other jurisdictions, such as the British Virgin Islands, focused attention on the need to reform Isle of Man company law. The result was the introduction of the Companies Act 2006 (the "2006 Act") which came into force on 1 November 2006.

The 2006 Act, which is a stand alone piece of legislation, updated and modernised Isle of Man company law by introducing a new simplified corporate vehicle, often referred to as a new Manx vehicle. The new corporate vehicle follows the international business company model available in a number of other offshore jurisdictions. The 2006 Act is based on familiar concepts and, whilst it does not contain any novelties as such, it sweeps away a number of the traditional company law formalities, including the concept of authorised share capital, the requirement to hold an annual general meeting, the requirement to maintain capital (subject to solvency), the requirement to have a company secretary, the prohibition on financial assistance and the number of compulsory registry filings. The result is a modern, flexible and simplified corporate vehicle that will be attractive to business.

A company incorporated under the 2006 Act is a separate legal entity which is formed by one or more subscribers who sign the proposed memorandum and articles of association of the company. Under the 2006 Act, it is only registered agents (who hold an appropriate licence under the Financial Services Act 2008) who are authorised to file an application for the incorporation of a company at the Companies Registry. Upon incorporation, the Companies Registry will issue a certificate of incorporation to the company.

A company must at all times have a registered office at a physical address in the Isle of Man. A resolution to change the location of a company's registered office may be passed either by the members of the company or (unless the memorandum or articles of association of the company provide otherwise) by the directors of the company. The change will only take effect on the registration of the notice of change of registered office with the Companies Registry.

The memorandum of association of a company registered under the 2006 Act (the "Memorandum") must state, inter alia, the name of the company, the address of the first registered office of the company, the name of the first registered agent of the company, the full name and residential or business address of each subscriber and the agreement of each subscriber to take one or more shares on the incorporation of the company and/or to become a member on the incorporation of the company. In addition, the Memorandum may include a statement

specifying the purposes for which the company is established, or the business, activities or transactions which the company is permitted to undertake, or any restrictions upon such purposes, business, activities or transactions for which the company is established, although there is no statutory requirement to do so. There is no requirement for details of a company's share capital to be included in its Memorandum, because the 2006 Act does not recognise the concept of authorised share capital and replaces the traditional capital maintenance requirements with a new solvency test (see the Statutory solvency test section below).

The 2006 Act enables the Companies Registry to prescribe model articles of association ("Articles") for each type of company available under the 2006 Act (except for companies limited by shares and formed as protected cell companies or incorporated cell companies). If model Articles have been prescribed, a company can either adopt such model Articles or use its own bespoke Articles.

The 2006 Act does not distinguish between public and private companies. All types of company are permitted to offer their shares or securities to the public, whether the names of such companies end with the words "Limited" or "public limited company" or otherwise. Under the 2006 Act, companies can be limited by shares, limited by guarantee, limited by shares and by guarantee, unlimited with shares, or unlimited without shares. Companies can also be registered as protected cell companies or incorporated cell companies under the 2006 Act (see section 2.1.6 below). Shares in a company may (without limitation) be: convertible, common or ordinary; redeemable at the option of the shareholder or the company or either of them; confer preferential rights to distributions; confer special, limited or conditional rights, including voting rights; entitle participation only in certain rights; or confer no voting rights. In addition, unless a company's Memorandum or Articles provide otherwise, shares may be issued by a company with or without a par value. Bearer shares are not permitted.

The 2006 Act contains relatively simple procedures to enable a company incorporated under the Companies Acts 1931 to 2004 to re-register as a company under the 2006 Act.

Statutory solvency test

The previously complex traditional capital maintenance requirements of the Companies Acts 1931 to 2004 have been relaxed under the 2006 Act.

Subject to any express provision in its Memorandum or Articles, where a company can satisfy a statutory solvency test immediately after a distribution has been made, the directors can make such a distribution without the need for a formal members resolution.

The following are deemed to be a distribution for the purposes of the 2006 Act: (i) the transfer of any company asset to any member; (ii) the incurring of a debt by the company to or for the benefit of any member, including the payment of dividends; and (iii) the redemption of shares or a purchase of own shares.

A company will satisfy the solvency test if it can pay its debts as they become due in the normal course of its business and the value of its assets exceeds the value of its liabilities. It is the directors' responsibility to ensure that the company can satisfy the solvency test prior to making a distribution.

Every company incorporated under the 2006 Act must at all times have a registered agent in the Isle of Man.

Should a company not satisfy the solvency test immediately after a distribution has been made to a member, such a distribution may be recovered from the member provided certain conditions are met. If the member received the distribution other than in good faith and the member's position had not been altered by relying on the distribution and it would not prejudice the member to recover the payment in full, then such distribution shall be recoverable.

Unless a company's Memorandum or Articles provide otherwise and provided that a company can satisfy the solvency test immediately after taking the following actions, the directors of a company may pay dividends to members in money, shares or other property and reduce its share capital in any way.

The registered agent

Every company incorporated under the 2006 Act must at all times have a registered agent in the Isle of Man. The failure by a company to have a registered agent is one of the grounds upon which a company can be struck off the register by the Companies Registry. In addition it is a criminal offence under the Act for a company not to have a registered agent.

The registered agent is one of the key people responsible for ensuring that a company is properly administered. In addition, only the registered agent of a company is permitted to make certain filings with, and submit certain applications to, the Companies Registry.

A registered agent can be liable for any offence committed by a company under the 2006 Act if the offence is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, the registered agent.

To reflect the responsibility placed on the registered agent and the importance of the role played by the registered agent, only persons holding the appropriate fiduciary's licence granted by the Isle of Man Financial Supervision Commission (the "FSC") can act as registered agents.

It is important to mention that a registered agent will require full anti-money laundering due diligence on the promoters of the company before proceeding to incorporation.

Members

Under the 2006 Act, a company is permitted to have one or more shareholders.

Officers

Under 2006 Act, a company is permitted to have a single director which may be an individual or a body corporate. In order for a body corporate to be eligible to act as a corporate director, it, or another body corporate of which it is a subsidiary, must either hold the appropriate fiduciary's licence granted by the FSC or be permitted to do so by regulations made by the Companies Registry. The number of directors of a company may be fixed by, or in the manner provided for in, the Articles of the company. A company incorporated under 2006 Act is not required to have a company secretary.

Accounts and audit

The accounting requirements imposed on companies incorporated, registered or continued under the 2006 Act are less prescriptive (but no less stringent) than the accounting requirements imposed upon companies incorporated under the Isle of Man Companies Acts 1931 to 2004 (see section 2.1.2 above). The 2006 Act requires companies to keep reliable accounting records which correctly explain the transactions of the company to enable the financial position of the company to be determined with reasonable accuracy at any time and to allow financial statements to be prepared. Companies are also required to retain such invoices, contracts and other information as are necessary to allow the company to document (i) all sums of money received and expended and the matters in respect of which the receipt and expenditure took place; (ii) all sales and purchases; and (iii) the assets and liabilities of the company. Without prejudice to the requirements of any other enactment, the accounting records must be maintained by or on behalf of the company for at least six years from the end of the financial period of the company to which they relate. Save for certain exceptions (for example, companies whose securities are listed or admitted to trade on a securities market or exchange must appoint a suitably qualified auditor), there is no statutory requirement under the 2006 Act for a company to have its accounts audited if it chooses not to do so.

Companies incorporated, registered or continued under the 2006 Act are required to file annual returns made up to the company's return date. The annual return must be filed with the Companies Registry by the registered agent within one month of the company's return date, together with a fee of (currently) £360. In order to ease the administrative burden on registered agents, the annual return takes the form of a "shuttle return". The Companies Registry extracts the information relevant to the annual return from a company's file and asks the registered agent to confirm, add to and/or correct the information and return it to the Companies Registry so that the company's up to date and correct details as at the due date can be placed on the company's public record.

Public offers

The 2006 Act does not distinguish between public and private companies and (subject to any restrictions in a company's Memorandum or Articles) any type of company under the 2006 Act can offer its securities to the public.

The prospectus/offering document requirements in the 2006 Act are similar to the prospectus requirements contained in the Isle of Man Companies Acts 1931 to 2004 (see section 2.1.2 above). The directors of a company, or the proposed directors of a company which is yet to be incorporated, must ensure that any offering document issued in relation to that company contains all material information relating to the offer or invitation contained therein:

- (a) that the intended recipients would reasonably expect to be included in order to enable them to make an informed decision as to whether or not to accept the offer or make the application referred to in the offering document; and

Only registered agents are authorised to file an application for the incorporation of a company.

- (b) of which the directors or proposed directors were aware at the time of issue of the offering document, or of which they would have been aware had they made such enquiries as would have been reasonable in all the circumstances.

Such information must be set out fairly and accurately. The 2006 Act does not require a company to file its offering document with the Companies Registry but a company may voluntarily choose to do so.

Starting the company and re-registration procedure

The following paragraphs provide a brief outline on the incorporation and re-registration procedures under the 2006 Act.

The name of a company incorporated, registered or continued under the 2006 Act must be approved by the Companies Registry. A company will not be permitted to have a name:

- (a) the use of which would contravene any other enactment or regulations;
- (b) that is identical to the name of a company registered under the 2006 Act or the Companies Acts 1931 to 2004 or is so similar to such a name that the use of that name would be likely to confuse or mislead;
- (c) that is identical to a name which has been reserved by a company or is so similar to such a name that the use of that name would be likely to confuse or mislead;
- (d) that contains a restricted word or phrase (unless the Companies Registry has given its prior written consent to the use of that word or phrase); or
- (e) that is offensive or, for any other reason, objectionable.

The name of every company limited by shares, limited by guarantee or limited by shares and by guarantee must end with one of the following words: "Limited", "Corporation" or "Incorporated"; or "Public Limited Company" or "public limited company"; or "Ltd", "Corp", "Inc", "PLC" or "plc". The name of an unlimited company with or without shares may (but need not) end with the word "Unlimited" or the abbreviation "Unltd". The name of a protected cell company must include "Protected Cell Company", "protected cell company", "PCC" or "pcc". The name of an incorporated cell company must include "Incorporated Cell Company" or "ICC" and the name of an incorporated cell must include "Incorporated Cell" or "IC". A company may also have an additional foreign character name approved by the Companies Registry.

As briefly mentioned above, a company is incorporated under the 2006 Act by one or more subscribers who sign the proposed Memorandum and Articles of the company as evidence of their agreement to take one or more shares in the company and/or to become members of the company on the terms set out in the Memorandum and Articles. On incorporation of the company, the subscriber(s) become the first member(s) of the company. Only registered agents are authorised to file an application for the incorporation of a company.

In order to incorporate a company under the 2006 Act, the following documents must be filed with the Companies Registry:

- (a) the proposed Memorandum of the company complying with the requirements of the 2006 Act;
- (b) the proposed Articles of the company if they are to differ from any relevant model Articles prescribed by regulations made by the Companies Registry; and
- (c) a cheque in respect of filing fees of (currently) £195.

A company formed under the Companies Acts 1931 to 2004 can be re-registered as a company under the 2006 Act by submitting to the Companies Registry the following: (i) an application form signed by the proposed registered agent of the company; (ii) certified copies of a resolution passed by a member or members holding at least 75% of the voting rights exercised in relation thereto and a resolution of each class of members passed by a member or members holding at least 75% of the voting rights exercised in relation thereto, in each case authorising the re-registration of the company under the 2006 Act, the adoption of a new Memorandum and (if necessary) the adoption of new Articles; (iii) the proposed new Memorandum and (if necessary) Articles of the company; and (iv) a cheque in respect of filing fees for (currently) £95. Following such re-registration under the 2006 Act, the Companies Acts 1931 to 2004 will cease to apply to such company (save in relation to liquidation and receivership).

The re-registration of a company does not create a new legal entity or prejudice or affect the continuity of the company. Obligations and liabilities incurred by the company prior to re-registration will therefore continue to be binding on the company following re-registration.

Upon receipt of the documents, the Companies Registry will register them, allot a unique company number to the company and issue a certificate of incorporation or, in case of re-registration, a certificate of de-registration and a certificate of re-registration to the company. The Memorandum and Articles of a company will be a matter of public record.

The certificate of incorporation or, in the case of re-registration, the certificates of de-registration and re-registration, is conclusive evidence that all of the requirements of the 2006 Act as to incorporation or re-registration have been complied with and that the company was incorporated or re-registered on the date specified in the relevant certificate.

A company's name and (if it has one) its foreign character name must be clearly stated in every document that evidences or creates a legal obligation of the company.

In addition all written communications by or on behalf of a company must state the following information in relation to the company: full name and foreign character name (if there is one); the company number in figures; the place of incorporation; and the registered office address. There is no requirement for directors' details to be included on written communications issued by or on behalf of a company.

A company incorporated under the 2006 Act can be re-registered as a company of another type permitted by the 2006 Act by submitting an application along with a statutory declaration as to the solvency and a new Memorandum and (if necessary) new Articles.

In comparison with companies incorporated under the Companies Acts 1931 to 2004, companies subject to the 2006 Act are subject to reduced compulsory registry filings.

Effect of incorporation

The effect of incorporation is the same for a company incorporated under the 2006 Act as it is for a company incorporated under the Companies Acts 1931 to 2004 (see the Effect of incorporation in section 2.1.2 above).

Running the company

(a) Administrative matters after incorporation

The matters dealt with at the first board meeting are essentially the same as for companies subject to the Isle of Man Companies Acts 1931 to 2004 (see *Running the company* in section 2.1.2 above).

Under the 2006 Act, a company is required to keep the following records and documents at the office of its registered agent: copies of its Memorandum and Articles signed by each subscriber; its register of members; its register of directors; its register of charges; copies of all notices and other documents filed by it pursuant to the 2006 Act in the previous 6 years; any accounting records it is required to keep under the 2006 Act; and an imprint of its common seal. A director of a company, on giving reasonable notice, is entitled to inspect all the documents and records of the company without charge and to make copies of, or take extracts from, such documents and records. Members of a company have slightly more restricted rights of inspection. On giving written notice to the company, a member is entitled to inspect and to make copies of, or take extracts from the company's Memorandum and Articles, its register of members, its register of directors, its register of charges and its accounting records.

To the extent that a company's register of members and/or register of directors do not contain details of the residential addresses of all past and present members and/or directors, the registered agent is required to maintain a separate record of such residential addresses.

Every company is also required to maintain records of minutes of meetings and resolutions of members and directors. These records are not required to be kept at the office of the company's registered agent and may be kept at any place within or outside the Isle of Man as the directors decide. If the records are not kept at the office of the registered agent the company must provide the registered agent with a written record of the physical address of the place or places where the records are kept.

All records required to be kept by a company under the 2006 Act can be kept either in written form or wholly or partly as electronic records, provided that any electronic records comply with the requirements of the Electronic Transactions Act 2000 regarding the integrity of electronic data.

In comparison with companies incorporated under the Companies Acts 1931 to 2004, companies subject to the 2006 Act are subject to reduced compulsory registry filings. However, a 2006 Act company is still required to file the following documents with the Companies Registry, all of which will be a matter of public record: its Memorandum and Articles and any subsequent amendments; any change in its name; any change of its registered office address; any

change of its registered agent; its annual return; any applications and filings in connection with its dissolution, restoration or winding up; any applications and filings in connection with any re-registration, scheme of merger, consolidation or arrangement or transfer of domicile. Although not compulsory under the 2006 Act, it is advisable to file all the details of any charges created by a company (including any subsequent variation or release) (for further details, see the *Creation of Security* section below).

A company can voluntarily elect to file a copy of its register of members and/or register of directors with the Companies Registry. If a company makes such an election the registers will be a matter of public record and the company must notify the Companies Registry of any change in those details within one month of any change being made. If a company has elected to file a copy of its register of members and/or register of directors with the Companies Registry it may rescind that election at any time by filing a notice to that effect with the Companies Registry.

In addition, if a company issues an offering document in respect of its securities, the company can voluntarily elect to file that offering document with the Companies Registry and that offering document will then be a matter of public record. However, it is not mandatory for a company to do so.

(b) Calling and conduct of meetings

The 2006 Act does not require a company to hold an annual general meeting of its members. Instead, subject to anything to the contrary in the company's Memorandum and Articles, a meeting of members can be held at such time and in such place, within or outside the Isle of Man, as the convener of the meeting considers appropriate. The directors of a company and any person authorised by the company's Memorandum and Articles may convene a meeting of the members. In addition, the members of a company can require the directors to call a meeting. Not less than 14 days' notice must be given for a meeting of members. The Articles of a company may provide for a longer notice period than the statutory minimum of 14 days' notice. Such meetings may also be called on shorter notice if a member or members holding at least 90% (or such smaller percentage as is specified in the Articles) of the voting rights have waived notice of the meeting. Electronic and telephonic members meetings are permitted provided that all members participating in the meeting are able to communicate with each other.

(c) Types of resolution

The members generally exercise any power given to them under the 2006 Act, or the company's Memorandum or Articles, by resolution passed at a members meeting or passed as a written resolution. There is no concept of "special resolutions", "extraordinary resolutions" or "ordinary resolutions" in relation to companies subject to the 2006 Act. A resolution of the members is passed at a members meeting if it is approved by a member or members holding a majority in excess of 50% of the voting rights exercised (subject to any requirement for a higher majority specified in the 2006 Act or any contrary provision in the company's Memorandum or Articles). It is possible for a company incorporated under the 2006 Act to make a decision by

The 2006 Act gives the directors of a company the power to issue shares and grant options to acquire shares at such times, to such persons, for such consideration and on such terms as they decide.

passing a written resolution. A resolution is passed as a written resolution if it is consented to in writing or by email, telex, fax or other electronic communication by all members entitled to vote or by a member or members holding such percentage of the voting rights as is specified in the Memorandum or Articles (subject to any requirement for a resolution to be passed by a particular majority specified in the 2006 Act).

Unless the Memorandum or Articles of a company make contrary provision, votes of shareholders are counted according to the votes attached to the shares held by the shareholder voting.

Changes in the company

(a) Altering the constitution

A company may change its name or its foreign character name by making an application to the Companies Registry. Unless the Articles provide otherwise, any such application can be authorised by either a resolution of the company's directors or a resolution of the company's members.

If the Companies Registry approves the company's proposed new name it will register the change of name and issue a certificate of change of name to the company. The change of name will be effective from the date of the certificate of change of name issued by the Companies Registry.

Subject to contrary provision in the company's Memorandum, the members of a company can amend the company's Memorandum and Articles by resolution.

It is possible to include one or more of the following provisions in the Memorandum of a company in order to restrict the rights of members to amend the Memorandum or Articles: that the Memorandum or Articles, or specified provisions of the Memorandum or Articles, can only be amended by a members resolution passed by a member or members holding a specified majority of the voting rights; and/or that the Memorandum or Articles, or specified provisions of the Memorandum or Articles, can only be amended if certain specified conditions are met.

In addition, the directors of a company may amend a company's Memorandum or Articles if they are expressly authorised to do so by the company's Memorandum. However, in order to protect members' rights, the 2006 Act prohibits the directors from exercising any such power to amend the Memorandum or Articles: if the purpose of such amendment is to restrict the rights or powers of the members to amend the Memorandum or Articles; or to change the majority of the voting rights of members required to be exercised in order to pass a resolution to amend the Memorandum or Articles; or in circumstances where the Memorandum or Articles cannot be amended by the members of the company.

Notice of any amendment to the Memorandum or Articles of a company must be filed with the Companies Registry within one month of the amending resolution, together with a restated copy of the Memorandum or Articles incorporating the amendments made. These documents will be registered by the Companies Registry and will be a matter of public record.

(b) Appointment and removal of directors

Subject to contrary provision in a company's Memorandum or Articles, a person may be appointed as a director (either to fill any casual vacancy or as an additional director) by a resolution of the directors or by a resolution of the members.

Notwithstanding anything in a company's Memorandum or Articles or in any agreement between a company and any of its directors, a director may be removed from office by resolution of the members. Such a resolution may only be passed at a meeting of the members called for the purpose of removing the director or for purposes including the removal of the director; or by a written resolution consented to by a member or members holding at least 75% of the voting rights. A director may only be removed from office by a resolution of the directors if the directors are expressly given such authority in the Memorandum or Articles of the company.

A director can resign from office by giving written notice to the company. Such resignation is effective from the date the notice is received by the company or from such later date as may be specified in the notice.

(c) Allotment and transfer of shares

The 2006 Act does not recognise the concept of capital maintenance, nor does it require a company which issues shares to have an authorised share capital.

The 2006 Act gives the directors of a company the power to issue shares and grant options to acquire shares at such times, to such persons, for such consideration and on such terms as they decide. However, restrictions on the powers of directors to issue shares can be included in the company's Memorandum or Articles.

Shares can be issued for consideration in any form including money, a promissory note or other written obligation to contribute money or property, real property, personal property (including goodwill and know-how), services rendered, or a contract for future services. However, before issuing shares for a consideration other than money, the directors of the company must pass a resolution stating: (i) the amount to be credited for the issue of the shares; (ii) what they have determined the reasonable present cash value of the non-money consideration for the issue to be; and (iii) that, in their opinion, the present cash value of the non-money consideration for the issue is not less than the amount to be credited for the issue of the shares.

A share is only deemed to be issued when the name of the shareholder is entered on the company's register of members.

Section 36 of the 2006 Act sets out statutory pre-emption rights which apply on the issue of shares. However, the section does not apply automatically to every company and a company must positively elect in its Memorandum or Articles if it wishes the statutory pre-emption rights to apply to it.

A share in a company is personal property and, subject to any restrictions in the company's Memorandum or Articles or the 2006 Act, is transferable. No stamp duty is payable on the transfer of shares.

A company which is incorporated outside the Isle of Man may establish a place of business in the Isle of Man or have an interest in real estate in the Isle of Man.

Power and capacity

The doctrine of ultra vires does not apply to companies incorporated, registered or continued under the 2006 Act.

The 2006 Act expressly states that, notwithstanding any provision to the contrary in its Memorandum or Articles, a company has unlimited capacity to carry on or undertake any business or activity, to do or to be subject to any act, or to enter into any transaction irrespective of corporate benefit and whether or not it is in the best interests of the company to do so.

In addition, in favour of any person dealing with a company in good faith, the power of the directors to bind the company or to authorise others to do so, is deemed to be free of any limitations (including limitations deriving from any provision in the company's Memorandum or Articles, any resolution of the members, or any agreement between the members).

Creation of security

Similar to companies incorporated under the Companies Acts 1931 to 2004, companies formed under the 2006 Act have the power to create charges over their assets in any manner permitted by the laws governing the relevant assets.

A company may register any charge which it creates (including any charge existing on property acquired by a company) with the Companies Registry within one month after the date of its creation (or the date of acquisition of the property). It is not mandatory to register charges, however, failure to register a charge will result in the charge being void against the liquidator and any creditor of the company and may also affect the priority of the charges created by the company.

If a company neglects to file a charge with the Companies Registry, the company may submit the charge to the Companies Registry for late registration at any time prior to the commencement of the winding up of the company. There is no need to make an application to the Isle of Man Court for an order for late registration. However, any charge registered outside of the statutory period will be subject to the rights acquired by any person during the period between the date of creation of the charge and the date of its registration.

A company must keep a register of all charges created by it over any company property showing: (if the charge is a charge created by the company) the date of its creation, or (if the charge is a charge existing on property acquired by the company) the date on which the property was acquired; a description of the liability secured by the charge; a description of the property charged; the name and address of the chargee; and whether or not there is any prohibition or restriction contained in the instrument creating the charge on the company creating any future charge ranking in priority to or equally with the charge.

Redomiciliation of companies

The 2006 Act enables a non-Isle of Man company to be continued in the Isle of Man as a type of company permitted under the 2006 Act. An application must be submitted by the person who it is proposed will be the company's registered agent to the Department accompanied with: a Memorandum containing specified information; Articles; a statutory declaration

regarding certain solvency-related matters; proof of compliance with all home-jurisdiction laws and requirements; and information regarding all charges registered against the company together with the consent of all charge holders. The fee to redomicile to the Isle of Man as a form of company under the 2006 Act is currently £370.

If an Isle of Man company wants to be continued in another jurisdiction and discontinued in the Isle of Man under the 2006 Act, then its registered agent should submit an application to the Registrar of Companies at the Companies Registry for consent to be continued in a country or territory outside the Isle of Man. The application must be accompanied with the following: a resolution passed by member(s) holding at least 75% of the voting rights exercised in relation thereto and a resolution of each class of members passed by member(s) holding at least 75% of the voting rights exercised in relation thereto; a statutory declaration of solvency; a copy of a prescribed form of notice sent to each member at least 21 days before the application is made for the company to discontinue its incorporation in the Isle of Man; and the consent of all charge holders to the application to be made for the company to discontinue its incorporation in the Isle of Man. The fee payable on an application for the consent of the Department for a company created under the 2006 Act to be continued in a territory outside the Isle of Man is currently £2,865.

2.1.4 Companies incorporated outside the Isle of Man

A company which is incorporated outside the Isle of Man may establish a place of business in the Isle of Man or have an interest in real estate in the Isle of Man. Either activity would require the company to register as a foreign company under Part XI of the Companies Act 1931. Such a company would then, prima facie, become subject to Manx income tax on such of its profits as were derived from Isle of Man source income (albeit most likely at zero rate). It is thus important to distinguish between the place of a company's incorporation and the place of a company's residence.

A company is deemed to be resident in the Isle of Man if its central management and control is exercised in or from the Isle of Man. For example, if the majority of its board of directors are resident, and/or the company's board meetings are held, in the Isle of Man.

2.1.5 Limited liability companies

The Limited Liability Companies Act 1996 (the "LLC Act") introduced the concept of a limited liability company ("LLC") into Manx law. This American concept, based upon the Wyoming model, combines a partnership-like membership structure and tax treatment with limited liability protection for its members. The LLC is a separate legal entity whose members' liability is limited to the amount of their capital contribution. The right to manage the LLC is vested in the members themselves, in proportion to their contributions, although they do have the option of appointing a manager.

To form an LLC, the following must be delivered to the Department: articles of organisation prepared in accordance with the LLC Act; a completed form L6 which gives details of the intended registered office and registered agent; and the registration fee which is currently £140.

With the enactment of the Protected Cell Companies Act 2004, the Isle of Man Government introduced the concept of the protected cell company into Isle of Man law.

LLCs can be used for a wide variety of purposes, including joint venture vehicles and asset finance and leasing arrangements. The Isle of Man has developed a reputation as an efficient jurisdiction in which to establish aircraft finance and leasing structures and is used for these purposes by some of the world's largest airlines and aircraft lessors. The structures may include the sale and leaseback of aircraft by Manx private limited companies (including LLCs) which can make payments free of any Isle of Man withholding tax. LLCs may also be used for shipping related activities because of similarities to a partnership structure.

The circumstances in the event of which an LLC must be wound up and dissolved include: the period (if any) fixed for the duration of the LLC expires; the unanimous written agreement to that effect of all the members; the death, retirement, resignation, expulsion, dissolution of a member or occurrence of any other event which terminates the continued membership in the LLC unless the appropriate notice has been delivered to the Companies Registry; an order of the High Court.

2.1.6 Cell companies

A cell company is a company that has the power to create one or more cells, each with its own assets, liabilities, business activities and risk. By separating the assets and liabilities of a cell from another cell, or the cell company itself, a cell company is able to effectively restrict the access of creditors to specific assets.

There are two types of cell company in the Isle of Man:

- a protected cell company; and
- an incorporated cell company.

Protected cell companies

(a) Legal structure

With the enactment of the Protected Cell Companies Act 2004 (the "PCC Act"), the Isle of Man Government introduced the concept of the protected cell company ("PCC") into Isle of Man law. Just like a conventional company, a PCC has a single, separate legal personality, distinct from both its members and directors, and is subject to all the provisions of the Isle of Man Companies Acts 1931 to 2004.

A PCC differs from a conventional company in that the company is sub-divided into a number of legally distinct portions, known as the core (the non-cellular part of the company) and cells. Whilst the core and the cells are legally distinct, the cells of a PCC do not have a separate legal personality. Each cell has its own share of the PCC's overall share capital, allowing a shareholder to be the sole owner of one cell whilst only having a small interest in the PCC as a whole. The assets, liabilities and revenue streams attributable to each cell are segregated from those attributable to every other cell and from those attributable to the core. The PCC Act provides the statutory regime for this segregation.

Under the PCC Act it is possible for a conventional company to convert into a PCC provided the conversion is authorised in its articles of association.

(b) Segregation of core and cells and position of creditors

Assets attributable to a cell are available only to satisfy the claims of creditors of the PCC attributable to that cell and are protected from the creditors of the PCC attributable solely to the core or to any other cell.

In order to further protect the assets of one cell from the creditors of any other cell, the PCC Act provides that certain terms are implied into every transaction to which a PCC is a party (unless expressly excluded in writing). These implied terms include an agreement by the counterparty contracting with a PCC that the counterparty will not seek to make assets of the PCC that are attributable to one cell liable in respect of liabilities attributable to any other cell or to the core; and that if the counterparty nevertheless does so, it is liable to pay to the PCC an amount equivalent to the benefit received and/or to hold the relevant assets on trust for the PCC (in which case any such amount or benefit received is used by the PCC to compensate the adversely affected cell).

Where the assets attributable to one cell are (notwithstanding the provisions of the PCC Act) made liable for a liability attributable to another cell or to the core (and no compensation or restoration is available from the unjustly enriched creditor under the provisions described above), the PCC Act imposes an obligation on the PCC to transfer to the adversely affected cell from the cell or the core (as the case may be) where the liability rightfully rests, assets sufficient to compensate the adversely affected cell. Where the liability is rightfully that of another cell, and the assets of that cell are insufficient to compensate the affected cell, then recourse must be had to the core assets.

The PCC Act states that where a liability is attributable to a particular cell, then the basic rule is that the assets of that cell will be primarily liable, but once those assets have been exhausted the core assets of the PCC are liable. However, it is open for the PCC to include in its agreement with any counterparty a provision (a "Limited Recourse Provision") that its liability to such counterparty will only be met from the relevant cellular assets and that the counterparty will have no recourse to the core assets. Such a Limited Recourse Provision is expressly provided for in the PCC Act.

A receivership mechanism exists under the PCC Act in order to allow an "insolvent" cell to be "wound up" without the PCC as a whole entering liquidation. In fact, the PCC can carry on its usual business in all respects save for matters relating to the "insolvent" cell. Through this mechanism, it should be possible for the PCC to carry on business notwithstanding the "insolvency" of any particular cell and without requiring the owner of the core to provide any further core or cell capital.

(c) Uses of PCCs

A company within the meaning of the Companies Act 1931 may, regardless of its description or the business or class of business it carries on, be incorporated or converted into a PCC.

The key distinction between a PCC and an ICC is that each Incorporated Cell has a separate legal personality.

(d) Reservations

The PCC is still a relatively novel vehicle and it is not known whether, and to what extent, foreign courts would recognise the statutory segregation of assets and liabilities provided for in the PCC Act. The issue is highly relevant where assets of a PCC are held outside the Isle of Man. For example, a judgment creditor of a PCC in respect of one cell might seek execution against assets of the PCC that are attributable to a different cell and which are held in a foreign jurisdiction. The foreign court might not recognise the cellular structure of the PCC and thereby permit assets attributable to one cell effectively to be used to satisfy liabilities attributable to another cell. It is, therefore, important to structure the business of a PCC to minimise this risk.

However, protected cell companies (also known as “segregated account companies” in some jurisdictions) have been in use in various jurisdictions for some years and an increasing number of jurisdictions (including a number of States in the USA) are developing an appetite for this type of corporate vehicle. The number of PCCs licensed to act as insurers or reinsurers around the world continues to grow at a significant rate, as do the uses of the PCC structure.

(e) PCCs under the Companies Act 2006

The 2006 Act provides a regime for companies, incorporated, registered or continued under the 2006 Act that are PCCs. Although the 2006 Act mainly reflects the regime which exists under the PCC Act, it does include a couple of significant differences (which are summarised below).

Only companies limited by shares can be formed as a PCC. A company limited by shares that has been incorporated, registered or which continued its existence under the 2006 Act that is not a PCC can apply to be converted into a PCC.

Being a company regulated under 2006 Act, notwithstanding any provision to the contrary included in its memorandum or articles of association, a PCC has (irrespective of corporate benefit and irrespective of whether or not it is in the best interests of the company to do so), unlimited capacity to carry on or undertake any business or activity, to do, or to be subject to, any act or to enter into any transaction.

Incorporated cell companies

(a) Legal status

Like a PCC, an incorporated cell company consists of a core and one or more cells. The core of an ICC is the incorporated cell company itself, which core has the power and authority to create any number of legally distinct cells called incorporated cells (“Incorporated Cells”). Unlike a PCC, however, each of the Incorporated Cells has a separate legal personality.

Although an Incorporated Cell is created by its ICC, the shares in an Incorporated Cell do not have to be held by its ICC. An Incorporated Cell may also own shares in another

Incorporated Cell of its ICC, although it may not own shares in its ICC. An ICC is not therefore limited in its use as an alternative to a group structure.

ICCs can determine (subject to the agreement of the applicable Incorporated Cells) whether to prepare separate financial statements for the ICC and each Incorporated Cell, or consolidated financial statements for the ICC and its Incorporated Cells. Similarly, the ICC and each Incorporated Cell may be audited separately or, if the applicable Incorporated Cells agree, on a consolidated basis. This affords ICCs the added flexibility over a PCC of being able to restrict the financial information which is shared with shareholders to that which is specifically relevant to the Incorporated Cell in which the shareholder has an investment.

Notwithstanding that each Incorporated Cell has its own corporate personality, when entering into transactions with third parties, the directors of an ICC and an Incorporated Cell are required by law to inform the counterparty whether the transaction is being entered into by the ICC or by an Incorporated Cell, and if it is by an Incorporated Cell, they must identify which Incorporated Cell is the contracting party.

(b) Segregation of assets and position of creditors

The key distinction between a PCC and an ICC is that each Incorporated Cell has a separate legal personality. As discussed above, there have been concerns that foreign courts which are not familiar with the concept of a separate cell vehicle might not recognise the cellular structure of the PCC and might permit assets attributable to one cell to be used to satisfy the liabilities attributable to another cell. In contrast, as the separation of corporate personality is respected in most jurisdictions, the ICC structure can provide more comfort in international structures and transactions.

(c) Uses and advantages of ICCs

As at the date of publication a company cannot be incorporated as an Isle of Man ICC unless it is, or will be, authorised to carry on insurance business within the meaning of the Insurance Act 2008.

The ICC offers an advantage over the PCC structure in that separate Incorporated Cells under the same ICC may contract with each other and transfer assets among the Incorporated Cells freely.

The ICC regime is particularly flexible in terms of corporate mobility. The ICC Act allows for a company incorporated under the provisions of either the Companies Acts 1931 to 2004 or the Companies Act 2006 to convert into an ICC. A PCC can also be converted to an ICC. Similarly an Incorporated Cell may be converted into a company independent of its ICC. It is also possible to migrate companies from other jurisdictions to the Isle of Man.

The ICC structure may also offer benefits in the context of capital markets and restructuring transactions. The separate legal personality of an Incorporated Cell means that third parties can undertake more focussed due diligence, focussing only on the target Incorporated Cell or Incorporated Cells.

The law of the Isle of Man concerning both general and limited partnerships has for many years mirrored that of England.

2.2 Partnerships

2.2.1 Overview

The law of the Isle of Man concerning both general and limited partnerships has for many years mirrored that of England. The principal partnership legislation in the Isle of Man is the Partnership Act 1909 (the “1909 Act”) which is based on the United Kingdom’s Partnership Act 1890 and Limited Partnership Act 1907.

In terms of the 1909 Act, a “partnership” is the relationship which subsists between persons carrying on a business in common with a view to a profit. Both general and limited partnerships are usually constituted by way of written agreement, although this is not a legal requirement.

By virtue of the Isle of Man’s Registration of Business Names Acts 1918 and 1954, a partnership’s business name must be registered with the Department of Economic Development if that name does not consist of the name of all the partners. There is no requirement for other information such as the partnership agreements or the partnership accounts to be filed, although there are further requirements in respect of limited partnerships (see section 2.2.3 below).

Generally speaking, a partnership governed by Isle of Man law with Isle of Man resident partners is referred to as a “Manx” partnership (regardless of where the partnership property is located). The 1909 Act does not state that only partnerships expressly governed by Isle of Man law fall within the ambit of that Act and the statutory provisions governing limited partnerships do not appear to prohibit partnerships governed by foreign law, with foreign partners, from registering in the Isle of Man as limited partnerships. The nexus required for taxation is considered further in section 4.5.2 below.

As a matter of Isle of Man law, partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives. Partnership accounts provide information for partners, help demonstrate management and control of partnership assets and may also be required for taxation purposes. There is no prescribed format for partnership accounts, nor any requirement for such accounts to be audited (although they often are).

2.2.2 General partnerships

Unlike a limited partnership, the partners of a general partnership each normally have responsibility and unlimited personal liability for the debts and liabilities of the partnership.

The acts of a partner in pursuance of the usual business of the partnership are binding on the partnership.

The 1909 Act describes, *inter alia*, the nature of partnership, the relations of partners to one another and to third parties and the dissolution of the partnership and its consequences.

2.2.3 Limited partnerships

As in England, the rules relating to general partnerships are modified in respect of limited partnerships.

Every Manx limited partnership must be registered with the Department of Economic Development (the “Department”). Such registration is achieved by delivering a statement detailing, *inter alia*, the firm’s name, the general nature of the business (which need not be in the Isle of Man, although a place of business must be maintained there), the names of the partners and the amount contributed by each limited partner. The partnership deed does not have to be registered. In default of registration, the partnership will be regarded as a general partnership and each limited partner will be deemed to be a general partner and, therefore, liable for all the debts of the partnership.

Pursuant to the Limited Partnership (Legal Personality) Act, which is at the date of publication is passed but yet to receive Royal Assent, it will be possible for a partnership to adopt separate legal personality. Existing partnerships will also be granted a period of time during which they may elect to adopt separate legal personality. For income tax purposes, a limited partnership with legal personality will continue to be treated as a partnership and each member will continue to be treated as a partner.

Under Manx law, a limited partnership must consist of one or more general partners and one or more limited partners. Either type of partner may be an individual or a corporate entity. A fee, currently £220, is payable to the Department in respect of the registration of a limited partnership. The number of partners is generally restricted to twenty. However, regulations (made pursuant to the 1909 Act) exempt the following categories of limited partnerships from this general limit:

- (a) those which constitute collective investment schemes (within the meaning of the section 1 of the Collective Investment Schemes Act 2008);
- (b) those engaged in shipping or aviation operations; and
- (c) those whose interests are admitted to the Official List of the UK Listing Authority.

The powers and duties of the general partner of a Manx limited partnership are essentially the same as those of a partner of a general partnership. Provided a limited partner takes no part in the management of the partnership’s business, its liability for the debts and obligations of the partnership will be limited to its contributions to the partnership. If a limited partner gets involved in the management of the business it will, together with the general partner, be liable for all debts and obligations incurred whilst taking part in such management. However, the 1909 Act makes it clear that a limited partner will not be regarded as taking part in the management of the partnership business by, *inter alia*, consulting with and advising the general partner, investigating, reviewing, approving or being advised as to the accounts or business affairs of the partnership, or voting as a limited partner in relation to its affairs.

Manx limited partnerships are required to maintain a place of business in the Isle of Man.

A limited partner may receive, out of the capital of the limited partnership, a payment representing a return of the whole or part of its contribution to the partnership, provided the partnership is solvent and able to pay its debts as they fall due (before and after the payment) and the general partner makes a statutory declaration to that effect. This is a clear development from the normal position where a partner can only realise his investment upon the dissolution of the partnership or by assigning his partnership interest.

Annual statements must be filed with the Department concerning the limited partnership, as must details of any change in the name, place of business or partners, within one month of the change.

Manx limited partnerships are required to maintain a place of business in the Isle of Man. This will generally entail the general partner (if a company) being incorporated under the Isle of Man Companies Acts or registering in the Isle of Man as a foreign company under the same. Such partnerships must also appoint one or more persons, resident in the Isle of Man, who are authorised to accept service of any legal process or other documents served on the partnership.

The law of trusts has developed in the Isle of Man largely in parallel to its development in England.

3 TRUSTS

3.1 Overview

The law of trusts has developed in the Isle of Man largely in parallel to its development in England.

There is no specific all-embracing definition of a trust under Manx law. By way of example only, the following definition is taken from the seventeenth edition of Underhill and Hayton's "Law of Trusts and Trustees":

"A trust is an equitable obligation, binding a person (called a trustee) to deal with property (called trust property) owned by him as a separate fund, distinct from his own private property, for the benefit of persons (called beneficiaries or, in old cases, cestuis que trust), of whom he may himself be one, and any one of whom may enforce the obligation."

A trust is thus a fiduciary relationship in which the trustee receives property from the settlor to hold for the use and benefit of the beneficiaries. Legal ownership vests in the trustee and the beneficiaries have an equitable interest only.

The trust is conceptually different from relationships of bailment, agency, debt and contract.

Legislation in the Isle of Man exists not so much as to establish the trust concept, but rather, as in England, to facilitate trust administration and to clarify uncertainties. The current legislation is as follows:

- (a) Trustee Act 1961 – this is closely based on the Trustee Act 1925 and Trustee Investments Act 1961 of the United Kingdom Parliament ("Parliament");
- (b) Variation of Trusts Act 1961 – this is closely based on the Variation of Trusts Act 1958 of Parliament;
- (c) Perpetuities and Accumulations Act 1968 – this is based on the Perpetuities and Accumulations Act 1964 of Parliament, but with a higher perpetuity period and without the time limit on accumulations;
- (d) Recognition of Trusts Act 1988 – this applies, with some modifications, The Hague Convention (on the law applicable to trusts and on their recognition) to the Isle of Man. Manx courts thereby recognise foreign trusts and seek to uphold private international law conflicts principle applying to the proper law of the trust, save where to do so would be manifestly incompatible with Isle of Man public policy;
- (e) Trusts Act 1995 – this clarifies the ability to change the governing law of a trust and ensures that, as regards trusts governed by Manx law, the Manx courts will not have regard to foreign laws in determining certain matters, such as the capacity of the settlor, the validity of the trust and the powers of the trustees;
- (f) Purpose Trusts Act 1996 – this allows the establishment of certain non-charitable purpose trusts in the Isle of Man; and
- (g) Trustee Act 2001 – this is based on the Trustee Act 2000 of Parliament which modernises the default powers of trustees in relation to investment and the appointment of agents and which also establishes a new statutory duty of care for

trustees. The Act also raises the statutory maximum perpetuity period for trusts governed by Manx law to 150 years.

Other legislation pertinent to trusts includes the Settled Land Act 1891, Settled Land Act 1983, Charities Acts 1962 and 1986, Charities Registration Act 1989, Wills Act 1985 and Powers of Attorney Acts 1983 and 1987. As can be seen from the above, Manx trust legislation is similar to that in England. However, the Isle of Man has not enacted statutes equivalent to the Trusts of Land and Appointment of Trustees Act 1996 or the Trustee Delegation Act 1999 of Parliament.

The persuasive nature of decisions of the English courts in the Isle of Man, which should generally be followed unless there is some Manx statutory provision or clear decision of a Manx court to the contrary, makes the nexus between trust law in England and the Isle of Man strong. Furthermore, due to the preponderance of trusts created internationally in common law jurisdictions such as the Isle of Man, there is now a certain symbiosis in the development of trust law onshore and offshore. In many respects, the courts in the Crown dependent territories and Commonwealth jurisdictions have been leading the way in recent years as regards the development of modern trust law.

3.2 Classification of trusts

The types of Trusts permitted may be classified as follows.

3.2.1 Express trusts

These are trusts created voluntarily and intentionally:

- (a) *inter vivos* by the settlor. A deed of settlement is executed by the settlor and the trustees, under which the settlor transfers assets to the trustees to hold subject to its terms;
- (b) *inter vivos* by the settlor transferring assets to the trustees and the trustees executing a declaration of trust (to which the settlor is not a party) whereby the trustees acknowledge that they hold the assets subject to the terms of the trust set out in the instrument; or
- (c) on death by the will of the testator taking effect, whereby the testator's executors are directed to transfer all or part of the testator's estate to trustees to hold subject to the trusts set out in the will.

3.2.2 Implied trusts

These may be implied by law from the circumstances (rather than the settlor's express intentions) and include:

- (a) resulting trusts, which are implied where the purpose of a transaction fails and the property reverts back to the settlor; and
- (b) constructive trusts, which arise by operation of law and which may be imposed by a court in circumstances where it would be inequitable for a person holding property to keep it as such person would have been unjustly enriched. The Manx case of *Cusack and Cotter v Scoop Limited* 1 OFLR 68/409 explores the feasibility of remedial constructive trusts, and in a judgment given on 19th July 2000 in *Re Scottish Life International Insurance Company Limited*, the Manx court did impose a remedial constructive trust.

Trust structures are utilised by the Isle of Man's collective investment scheme/mutual fund industry.

3.2.3 Private, public and purpose trusts

Trusts may also be classified according to why they are created and may include:

- (a) private trusts, made for the benefit of specific private individuals, or a class thereof;
- (b) public trusts, made for the benefit of the public at large or a section of the public. For example, a charitable trust established to relieve poverty, to advance education or to promote religion. The Manx definition of charity is somewhat wider than that applicable under English law and would include purposes of benevolence, philanthropy and social welfare. Such trusts are subject to supervision by HM Attorney General in the Isle of Man;
- (c) purpose trusts. The Purpose Trust Act 1996 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 trustee is a "designated person" who is resident in the Isle of Man and is professionally qualified. Neither public nor purpose trusts require an ascertainable human beneficiary.

3.2.4 Bare trusts

A bare trust occurs when the trustees hold property for a beneficiary who is absolutely entitled to it. The trustee is essentially no more than a nominee.

3.2.5 Fixed interest and discretionary trusts

Most trusts created under Manx law are express private trusts and such trusts may be fixed interest or discretionary.

Fixed interest trusts are created when the trust deed specifically identifies the beneficiaries and stipulates how, and when, they are to enjoy the trust property. Such trusts include:

- (a) life interest trusts, where the life tenant beneficiary has the right to enjoy the income of the trust fund for life and the remainderman have the successive interests, usually the right to the capital of the trust upon the death of the life tenant;
- (b) contingent interest trusts, where a contingent gift is held in trust pending satisfaction of a specific condition, whereupon the gift is vested in the beneficiary; and
- (c) protective trusts, being a statutory form of trust created under section 33 of the Trustee Act 1961 which shares the characteristics of a life interest trust and a discretionary trust. The life interest ends if the principal beneficiary does, or attempts to do, anything which would deprive him of his right to receive income of the trust fund and is replaced with a discretionary trust, under which the principal beneficiary is a potential beneficiary. These are known as spendthrift trusts in the US for obvious reasons.

A discretionary trust is one whereby the settlor creates a trust in favour of a class of beneficiaries and gives the trustees power to determine how much, if anything, each potential beneficiary should receive, and when. The discretionary beneficiaries have no right to enjoy the trust assets, only a hope.

3.2.6 Unit trusts

The Isle of Man has a collective investment scheme/mutual fund industry. Manx collective investment vehicles take a variety of forms, one of which is the unit trust. The terms of the trust deed usually allow participants to redeem their units at prices related to the value of the unit trust's net assets (see section 5.9.4 for more details).

3.3 Creation of trusts

3.3.1 Form

Whilst trusts governed by Manx law do not necessarily need to be committed to writing (unless real estate is involved or the trust is created by the will of a deceased testator), they usually are so evidenced.

3.3.2 Registration

A private trust is essentially a private document and, with the same exceptions regarding real estate and wills where probate is to be obtained in the Isle of Man, does not require registration in the Isle of Man. Charitable trusts (for public charitable purposes) are public trusts and must be registered with, and are subject to supervision by, HM Attorney General in the Isle of Man. Such trusts must also file annual audited accounts.

3.3.3 Trust property

Trust property (i.e. the assets comprising the trust fund) need not necessarily have any connection with the Isle of Man.

3.3.4 The three certainties

Basically, under Isle of Man law, for a trust to be created there are three essential requirements:

- (a) certainty of intention – a clear intention by the settlor to create a trust evidenced by express and unambiguous language;
- (b) certainty of subject matter – the trust property must be clearly identified; and
- (c) certainty of objects – namely, ascertainable beneficiaries (this requirement need not be present for charitable or purpose trusts).

3.3.5 Complete constitution

The trust assets must be lawfully transferred to the trustees to constitute the trust completely.

3.3.6 Sham

If a settlor does not intend to create a trust and/or does not intend to transfer the trust property wholly to the trustees, the trust will lack essential certainty and will not be completely constituted. It may therefore be set aside as a "sham". The Jersey decision in *Re the Esteem Settlement, Group Torras SA v Al-Sabah & Ors* [2004] WTLR 54 is likely to be applied in the Isle of Man.

It would appear that trusts may be vulnerable to attack either because of the way they have been established (a formal sham)

There are no Manx provisions preventing a trust governed by Isle of Man law from being managed and controlled outside the Isle of Man.

or administered (a substantive sham). A formal sham would occur if the trust instrument itself allowed the settlor so much control over the trust assets that the trustees were effectively nominees and not independent trustees. A substantive sham would occur when, notwithstanding the express terms of the trust instrument, the reality of the arrangement is that the settlor (with the agreement or acquiescence of the trustees) can exercise dominion and control over the trustees in the management and administration of the trust.

3.3.7 Fraudulent assignments

The Isle of Man has no specific asset protection legislation. However, to the extent that the assets of a properly constituted trust have passed from the beneficial ownership of the settlor into the legal ownership of the trustees, trusts are, to an extent, automatically asset protective.

The Statute of Elizabeth 1571 (13 Eliz, c5) of Parliament was passed to tackle the mischief of a settlor who, facing mounting debts, transfers his assets to a third party to hold on trust and thereby makes himself 'a man of straw' to the clear prejudice of his lawful creditors who would thus have no hope of being paid.

The Isle of Man's Fraudulent Assignments Act 1736 (the "1736 Act") is broadly equivalent to the Statute of Elizabeth. Under the 1736 Act "all fraudulent assignments or transfers of the debtor's goods or effects shall be void and of no effect against his just creditors, any custom or practice to the contrary notwithstanding."

The Manx case of *Re Heginbotham* (1999-01) MLR 53 clarified the position under Isle of Man law. It was held that the debtor must intend to assign or transfer his goods or effects fraudulently for such assignment or transfer to be void. In connection with the question of whether an intent to defraud creditors applies only to present existing creditors or also to future creditors, it was decided that existing and present debts (i.e. those subsisting at the date of the transaction), together with known and ascertained debts (which are to fall due on a date in the future), are covered. Debts which may possibly be incurred at some future date would not fall within the ambit of the 1736 Act.

On the basis of the above, where assets are settled on trust to defraud existing current and/or known and ascertainable future creditors, such a settlement is liable to be set aside if the relevant settlor was insolvent at the time of settlement or was rendered insolvent by making the settlement. An Isle of Man trust will only protect against unknown future creditors of the settlor.

It may be useful to note that there is also a provision under section 30 of the Bankruptcy Code 1892 that voluntary settlements of property in some circumstances can be void against a trustee in bankruptcy if the settlor becomes bankrupt within a specified period of the settlement.

3.3.8 Capacity of settlor and choice of governing law

The settlor must have the personal capacity (i.e. be over 18 years of age and not suffering from any mental disability) to hold and transfer the legal interest in the trust assets to the trustees and must also have the right to vest the legal title to the assets in the trustees (i.e. he must own them).

A settlor must also have "proprietary capacity", which becomes relevant when it is proposed that a trust be governed by a law

other than that of the settlor's domicile. The position may be complicated where the laws of the country of the settlor's domicile prohibit the settlor from creating a trust. By way of clarification, the Trusts Act 1995 (the "1995 Act") confirms that a term of a trust selecting Manx law as the governing law of the trust is valid, effective and conclusive, regardless of any other circumstances. However, there are some notable exceptions to this rule. In particular, the 1995 Act will not validate a trust of foreign real estate which is invalid according to the laws of the jurisdiction where the land is situated, or a testamentary trust created by a will that was invalid according to the law of the testator's country of domicile. The 1995 Act also provides that, subject to certain provisos and where the terms of the trust so provide, the governing law of a trust may be changed. There are no Manx provisions preventing a trust governed by Isle of Man law from being managed and controlled outside the Isle of Man.

3.3.9 Reserved powers and protectors

Manx law makes no specific provision as to which powers may be reserved by the settlor or vested in a person who is not a trustee (such as a protector).

Article 2 of The Hague Convention (on the law applicable to trusts and their recognition) states that the reservation of certain rights and powers by the settlor is not necessarily inconsistent with the existence of a trust. However, the reservation (or vesting in the protector) of too much power is likely either to invalidate the trust (on the grounds of sham) or result in the settlor (or protector, as appropriate) being deemed to be a trustee (which is likely to have taxation ramifications). This is a developing area of law.

Protectors are used widely in Manx trusts although their role is not defined in statute. The Manx case of *Rawcliffe v Steele* (1993-95) MLR 426 broadly follows the rationale of other early offshore protector cases. It was held that a protector's functions derive from those of a trustee and that a protector owes fiduciary duties to the trust beneficiaries.

The trust instrument will normally grant the protector such powers as the settlor determines. It is common for a protector to have power to remove and appoint trustees, change the 'proper' law governing the trust and obtain information regarding the administration of the trust. More extensive powers are sometimes granted, but there is a risk that the protector may be seen to be so involved as to be acting as a de facto trustee.

3.3.10 Letters of wishes

Letters of wishes are common in the context of trusts governed by Manx law and offer trustees assistance as to how to exercise their discretionary dispositive and administrative powers. However, as they are not legally binding, trustees are free to have regard to, or ignore, them. Trustees must always exercise their discretions in a proper way and slavishly following a letter of wishes increases the likelihood that the trust will be set aside as a sham.

3.3.11 Perpetuities and accumulations

The Perpetuities and Accumulations Act 1968 requires that trust assets vest within the requisite trust period, otherwise the trust will fail. The statutory period used to be 80 years, but is now 150 years under the provisions of the Trustee Act 2001. In the absence of express provision in the trust deed, the common law period of a life in being plus 21 years (plus a period of gestation) applies.

There is no preclusion on trustees of trusts governed by Isle of Man law owning assets (including real property) in the Isle of Man or elsewhere.

There is no Manx legislation regarding accumulations, but it is generally recognised that trust income may accumulate provided the ultimate vesting occurs within the perpetuity period.

3.3.12 Requirements as to settlors and beneficiaries

There are no specific Manx requirements regarding residence. However, for taxation reasons, it is common for trusts governed by Isle of Man law to exclude Manx residents from benefiting so that all the trust income which arises or accrues from sources outside the Isle of Man will not be charged to Manx income tax and no withholding tax will apply to distributions to beneficiaries.

3.4 Trustees

3.4.1 Requirements as to trustees

Trustees may be individuals or companies. Those who are resident on the Isle of Man and providing trustee services by way of business are now regulated by the Financial Services Act 2008 and, subject to certain exceptions, must hold a fiduciary licence (see section 1.4.3 above).

The Proceeds of Crime (Money Laundering) Code 2010 and the Terrorism Finance (Money Laundering) Code 2011, which recently came into force (see section 1.4.8 above) apply to the business of acting as trustee in return for payment or providing or taking steps to provide persons to act as trustees in return for payment. In this context, a trustee includes a person who is registered as the legal owner of any interest in a share in a body corporate as nominee for another (thereby including nominee shareholder provisions within the ambit of the Code).

There is no preclusion on trustees of trusts governed by Isle of Man law owning assets (including real property) in the Isle of Man or elsewhere.

3.4.2 Powers of trustees

Trustees' powers derive from the trust deed, Isle of Man statute and, where required, court order. Provisions of the Trustee Act 1961 and Trustee Act 2001 confer certain powers on trustees, although these are subject to the terms of the relevant trust deed. Trust deeds generally give the trustees extensive dispositive powers (for example, to pay income or distribute capital) as well as wide powers of management (for example, to invest the trust fund as they see fit) and administration. Manx law is essentially identical to English law in this respect.

3.4.3 Duties of trustees

Trustees' duties are also essentially the same for trusts governed by Manx law as they are for trusts governed by English law. These duties have evolved concurrently with the development of trust law.

Trustees owe fiduciary duties to the beneficiaries of the trust. The fiduciary standard of care is onerous, requiring trustees to use the utmost diligence when exercising their powers. The duties are imposed by general law and not by the terms of a trust deed. In particular, a trustee has a duty to:

- (a) comply strictly with the duties and discretions set out in the trust deed;

- (b) put the interests of the beneficiaries first;
- (c) exercise any discretionary powers in an informed manner, in accordance with the nature of the office of trustee;
- (d) exercise dispositive decisions honestly and in good faith; and
- (e) exercise administrative decisions with an appropriate standard of prudent care.

Professional trustees must exercise higher standards of diligence and care than other lay trustees.

A remuneration provision for trustees should be expressly included in the trust deed to ensure that the trustee can be fully remunerated (although statute does provide for remuneration in certain circumstances). In equity, a trustee is prohibited from deriving any direct or indirect personal profit or benefit from his office.

The Trustee Act 2001 imposes a statutory duty of care on trustees (which can be modified, or excluded (save in respect of certain core duties), by the trust deed). This follows the position in England.

3.4.4 Appointment and removal of trustees

Trustees must consent to being appointed as such.

Where a trust fund includes real property which is to be sold or the trust is a purpose trust, there must be at least 2 trustees (or an approved trust corporation) and no more than 4 trustees. In other circumstances, one trustee will suffice.

Trustees of private express trusts may be appointed by the settlor (in the trust deed), by a person given express power under the trust deed to appoint trustees, by the Manx court or under the provisions of section 35 of the Trustee Act 1961 (the "1961 Act"), which provides for the appointment of trustees where a trustee dies, absents himself, or otherwise vacates his office.

The trust deed must provide for the trustee's retirement and replacement (although the Manx Court also has the inherent power to approve a retirement). Section 38 of the 1961 Act provides for the retirement of trustees, without replacement, where sufficient trustees remain. Former trustees remain liable for breaches of trust committed during their periods of trusteeship.

3.5 Accounting for trust assets and providing information to beneficiaries

3.5.1 Trust accounts

Under Manx law, as under English law, a trustee must keep clear and accurate accounts of the trust property and, at all reasonable times, make financial information available to beneficiaries on request.

Trust accounts provide information for beneficiaries, demonstrate management and control of the trust fund and may also be required for taxation purposes.

There is no prescribed format for trust accounts and such format therefore varies depending on the nature of the trust, the funds involved and the purpose of the accounts. There is no requirement for the accounts of express private trusts to be audited (although they often are).

Under Manx law, as under English law, a trustee must keep clear and accurate accounts of the trust property and, at all reasonable times, make financial information available to beneficiaries on request.

3.5.2 Rights of beneficiaries to information

This is a developing area of law encompassing judicial decisions in various common law jurisdictions (both onshore and offshore) which show the symbiotic development of trust law in such jurisdictions.

The rights of beneficiaries to information depend on the nature of their respective trust interest.

For example:

- (a) the life tenant of an interest in possession trust is generally entitled to receive details of the trust fund and to inspect trust documents;
- (b) remaindermen under an interest in possession trust are also generally entitled to receive details and inspect documents, although it is usual to confine this information to the capital of the trust fund;
- (c) beneficiaries of discretionary trusts, notwithstanding that they only benefit if and when the trustees exercise a discretionary power, also have the right to request and be supplied with accounting information (*Chaine-Nickson v Bank of Ireland* [1976] IR 393); and
- (d) the Court has a discretion, exercisable in appropriate cases, to order that objects of fiduciary powers of appointment be provided with information and documentation concerning the administration of a trust by its trustees (*Schmidt v Rosewood Trust Limited* [2003] UKPC 26).

A trustee is not, however, bound to supply copies of accounts or trust documents, except at the expense of the requesting beneficiary.

Furthermore, trustees are not required to release details as to how they exercised their discretion (*Re: Londonderry's Settlement* [1965] Ch 918) or, in certain circumstances, information which would then be used in proceedings against the trustees where such disclosure was not in the interests of the beneficial class as a whole (*Lemos v Coutts & Co* [1992-93] CILR 5/460).

In *Hartigan Nominees Pty Limited v Rydge* [1991] 29 NSWLR 405, it was decided that a letter of wishes was confidential and would not be released to beneficiaries. However, in *Re the Rabaiotti 1989 Settlement and other settlements* (2000) 2 ITELR 763, the Court held that it did have jurisdiction to order disclosure of a letter of wishes where the beneficiary showed the Court that there were good grounds for ordering disclosure. In this case, the Court held that it had discretion to refuse to order disclosure of trust documents and accounts where such disclosure would not be in the interests of the beneficiaries as a whole.

The case of *Re Murphy's Settlement* [1998] 3 All ER 1 suggests that discretionary beneficiaries may also have a right to be notified of their "interests", even though they are discretionary in nature. This development is not followed widely by professional trustees and could have important ramifications in the context of "blind" trusts where the only named beneficiary is a charity.

Express provisions in trust deeds which purport to preclude trustees from releasing information in the manner described above are of doubtful enforceability.

3.6 Foundations

The Isle of Man is set to offer a new legal entity – the Isle of Man foundation. The legislature has passed the Foundations Bill 2010, which is on the point of receiving Royal Assent as at the date of the publication of this Guide. The foundation should provide an alternative to a trust, and be a familiar concept to those used to working with foundations in civil law jurisdictions.

The Isle of Man has long been able to offer a foundation-like structure through the flexibility of its company legislation. Companies incorporated under either the Companies Acts 1931 to 2004 or the Companies Act 2006 can be limited by guarantee and have a share capital, making them so-called "hybrid companies". These have been used as quasi trusts, with the shareholders acting as quasi-trustees and the guarantors as beneficiaries. A company incorporated under the Companies Act 2006 and limited by shares can also be structured to incorporate charitable objects. The Isle of Man foundation will add another possible product for charitable or estate planning purposes.

The Isle of Man foundation has some characteristics of a trust, and some of a company. Like a company, it will be a separate legal entity, and will be able to manage and own assets and arrange for its own funding, and carry limited liability. It will also be able to run in perpetuity, and is required to have a registered agent and keep books and records. Like a company, a foundation will be a matter of public record, with details such as the foundation name and the names and addresses of council members (the foundation's board) placed on a public register. However, the foundation rules, which govern how the foundation is run, will be a private document. Like a trust, the individuals or purposes to benefit from a foundation will not be the members, but the beneficiaries or objects specified in the foundation instrument and rules.

The foundation as it will be in the Isle of Man is similar to those found in other jurisdictions, but there are some differences. In Jersey, for example, the foundation must have a licensed council member, but in the Isle of Man the council members do not need to hold a foundation licence, although a licensed registered agent must be appointed. Unlike in some jurisdictions, there is no requirement that the Isle of Man foundation have an enforcer, as this is optional. The foundation instrument of the Isle of Man foundation must be written in English, and if the foundation rules are not in English, a translation must be available, and this is not a requirement in some jurisdictions.

At the date of publication of this Guide, draft rules under the new legislation have been published for consultation, which will allow foreign foundations to continue in the Isle of Man under the new Foundations Act.

The Isle of Man foundation should offer a new, alternative structure for charitable and non-charitable purposes which should be recognised in civil law jurisdictions. When combined with the high standards of the Isle of Man's corporate services, it could prove a useful asset management vehicle in new markets. The Foundations Bill is another example of the Isle of Man Government creating the legislative framework that will broaden the Isle of Man's economic base and add to its variety and flexibility.

The standard rate of income tax for companies in the Isle of Man is 0%.

4 TAXATION

4.1 Corporate income taxes

4.1.1 Introduction

Isle of Man corporate tax legislation largely refers to “corporate taxpayers”. For ease of reading, this section 4.1 refers to “company” throughout instead of “corporate taxpayer”. However, save where the context otherwise requires, such references to “company” should be regarded as including all forms of body corporate wherever established except for a Corporation Sole, a Scottish Partnership or a Limited Liability Partnership. Furthermore a Limited Liability Company established under the Isle of Man Limited Liability Companies Act 1996 is treated for Isle of Man income tax purposes not as a company but as a partnership (see section 4.5).

A company is normally considered to reside for tax purposes at the place where “central management and control” is exercised, which will usually be the place where the board of directors generally meet. All companies incorporated in the Isle of Man are deemed (for Isle of Man income tax purposes) to be resident and a company incorporated elsewhere will be held to reside in the Isle of Man if its management and control is exercised from the Isle of Man.

There is no corporation tax or stamp duty payable in the Isle of Man, but companies in the Isle of Man are potentially liable to corporate income tax. In 2002 the Isle of Man Government revealed a radical new tax strategy of standard zero rate income tax for Isle of Man companies, which took effect on 6 April 2006. The measure was designed, in part, to resolve the Isle of Man’s issue with the European Union (“EU”) over its exempt and non-resident companies legislation, which had allowed around 10,000 companies on the Isle of Man to claim a tax exemption on income derived from outside the Isle of Man. This special treatment was perceived as ‘harmful’ within the rules of the EU Code of Conduct on Business Taxation (the “Code of Conduct”).

The aim was to achieve a uniform tax system for the whole business sector, with a new standard zero rate of corporate tax for both resident and non-resident companies, but combined with a higher rate of 10% levied on income deriving from certain banking and property activities (see section 4.1.2 below for further detail). The European Commission has confirmed that this standard zero rate is acceptable under the Code of Conduct.

4.1.2 Zero rate and exceptions

Since 6 April 2006, the standard rate of income tax for companies in the Isle of Man is 0% (the “standard zero rate”). The standard zero rate is applicable to all forms of income received by all companies save for two exceptions below (together, the “Exceptions”).

Isle of Man licensed banks are taxed at a rate of 10% on income deriving from their “banking business”. In summary, banking business includes: deposit taking and its related activities, including the re-investment or utilisation of deposits in any manner; ancillary income from deposit taking activities; and

income deriving from capital held by a bank that it is required to hold under its banking licence conditions. Income received by banks that is not derived from their banking business will be taxed at the standard zero rate. Banking business does not include: income deriving from capital held by a bank in excess of the minimum amount required to be held under its banking licence conditions; income arising from sources of funding other than customer deposits, such as group funded lending; fiduciary deposits; and (subject to review by the Assessor of Income Tax) income arising from group functions.

The second exception to the standard zero rate is in respect of income received by companies that is derived from land and property in the Isle of Man that derives from rental, mineral extraction and property development activities.

It should be noted that since the introduction of the standard zero rate, the taxation of non-resident companies follows that of resident companies. Those companies registered under Part XI of the Companies Act 1931 as being incorporated outside the Isle of Man, but having a place of business on the Isle of Man, are taxed on their Manx source income at the standard zero rate (or 10% in respect of any income that derives from either of the Exceptions). Companies incorporated outside the Isle of Man, but having their management and control in the Isle of Man are normally regarded as tax resident in the Isle of Man and, therefore, their worldwide income is taxed at the standard zero rate (or 10% in respect of any income that derives from either of the Exceptions).

4.1.3 Attribution regime for individuals (“ARI”)

In order to maintain the flow of Treasury receipts, it was necessary to put in place measures that prevent the indefinite deferral of personal income tax by Manx resident individuals using standard zero rated companies. Accordingly, a key element of the introduction of the mainstream zero tax rate for companies was the treatment of undistributed profits to Isle of Man resident shareholder individuals.

From 6 April 2006, in certain circumstances companies with Isle of Man resident members were required to pay a Distributable Profits Charge (“DPC”). This charge was paid by the company as agent for the resident members on account of their deemed tax liability based on their entitlement to a share of the profits in the company and was not relevant in circumstances where a company had no Isle of Man resident members.

The DPC was deemed to be non compliant by the Code of Conduct group as it treated companies with Isle of Man resident members differently to those with no Isle of Man resident members. In order to overcome this, the DPC was replaced by the ARI for accounting periods commencing after 6 April 2008 to address the same issues as the DPC but in a different way.

Whilst the ARI still acted to avoid the indefinite deferral of personal income tax by Manx resident members of Isle of Man companies, the Isle of Man based resident member was required to settle the charge rather than the company.

No ARI is due where a company is not a relevant company. In general terms, a company is not a relevant company where (among others):

If residence is established, an individual is subject to Manx income tax at a basic rate of 10% on the first £10,500 of taxable income for individuals, £21,000 for married couples, and thereafter at a rate of 20%.

- (a) it is a trading company and distributes at least 55% of its distributable profits. Where a company derives its income from both trading and non-trading ventures then, providing that more than 50% of its income is from trading activities, then the company will be classed as a trading company regardless of the fact it has non-trading income;
- (b) it already pays Isle of Man income tax at 10% on all its profits;
- (c) it is trading and elects to pay Isle of Man income tax at 10%;
- (d) its members cannot benefit from distributions; or
- (e) it is otherwise exempt. This category includes (among others) companies that are: listed on a prescribed stock exchange; charities; licensed financial institutions; approved pension funds; and companies in "start up" – any company commencing business in the Isle of Man will be deemed a distributing company for the first 3 years if it is deemed in the interests of the Isle of Man's economy and necessary for establishing/developing a new business on the Isle of Man (this exemption requires an application to be made to, and approved by, the Income Tax Division of Treasury).

The ARI will normally only be due on any immediate Isle of Man resident member's interests in a company that is subject to the ARI. For example, where an Isle of Man resident is an indirect beneficial owner of a company which is subject to the ARI, such resident's interest will not be included in the ARI calculation. However, if the Assessor suspects that a structure is being used by an Isle of Man resident to reduce liability to Isle of Man income tax, such resident's interest may be traced through any number of vehicles. When determining the resident ownership of a company, the residence of nominee shareholders (which are extremely common in the Isle of Man) can be disregarded.

Following further pressure from the EU, the ARI will be abolished for accounting periods starting after 6 April 2012. There has been no announcement as to how the Isle of Man Government proposes to deal with the threat of Isle of Man resident members using Isle of Man companies to defer personal taxes indefinitely. However, the abolition of ARI has received positive feedback from the EU.

4.1.4 Election to pay corporate income tax at higher rate

Companies whose business consist wholly or mainly of the carrying on of a trade or trades and liable to the standard zero rate may wish to retain profits for reinvestment within the business. However, the retention of profits in this way may bring any Isle of Man resident member of the company within the scope of the ARI (subject to the comments in section 4.1.3 above). To alleviate this potential difficulty, trading companies may elect to pay income tax at the 10% rate and, consequently, be classified as distributing companies for ARI purposes (see section 4.1.3 above), thereby avoiding the ARI.

An election must be made on or before the statutory filing date for the return of profits to which the election first relates, and will apply for a five year period and is irrevocable.

4.1.5 Basis of assessment

All companies are assessed for tax on a current year accounting period basis "pay and file" system. Returns are issued at the end of a company's accounting period and the due date for the filing of company tax returns is 12 months and one day after the end of the accounting period. This is also the date by which payment of any income tax liability or charge must be made. However, returns can be filed and payments can be made before the due date.

Interest may be charged on any income tax liability or charge that is not paid by the due date and will be calculated from the due date, no matter when any form of payment notice was issued. Late penalties are also charged if a return is not filed by the due date.

The above system is only effective for accounting periods ending on or after 6 April 2007.

4.2 Individual income taxes

Acquiring tax residency in the Isle of Man is discussed in section 1.3.4 above.

The Income Tax Act 1970, as amended, provides for:

- (a) Manx resident income tax, imposed on worldwide income, from all sources, of persons residing in the Isle of Man; and
- (b) Manx non-resident income tax, imposed on Manx-source income derived by persons not resident in the Isle of Man.

4.2.1 Resident income tax

If residence is established, an individual is subject to Manx income tax at a basic rate of 10% on the first £10,500 of taxable income for individuals, £21,000 for married couples, and thereafter at a rate of 20%.

The taxable income of an individual resident in the Isle of Man is his total income less personal allowances. 'Total income' is the total income from all sources worldwide less specific deductions given against a particular source of income (e.g. pension scheme contributions) and less general deductions (e.g. interest payments to a Manx lender and maintenance payments) which are given first against unearned income with any balance against earned income.

Personal allowances are currently £9,300 for individuals and £18,600 for married couples. The additional allowance for single parents is £6,400 and for blind and disabled persons, £2,900.

A cap on personal income tax was introduced in 2006. This cap is set at a maximum level of £115,000 per annum, irrespective of earnings. The cap on the total income tax payable by a married couple (who do not elect for separate taxation) is set at £230,000. This measure is intended to attract high-net-worth individuals and active entrepreneurs to the Isle of Man with the drive to further stimulate the Isle of Man's thriving economy.

The Income Tax Division may permit a payer to take the non-resident personal allowance into account in computing the amount of income tax to be withheld from a payment to a non-resident individual.

4.2.2 Non-resident income tax

Manx non-resident income tax is generally chargeable in respect of income arising or accruing from Isle of Man sources that belong to persons not residing in the Isle of Man. A non-resident person is not entitled to a personal allowance.

Directive 2003/48 of the European Union on the taxation of savings income (the "Directive") (which, for the purposes thereof, can include the proceeds of a redemption of certain investments in some circumstances) seeks to bring about the effective taxation of interest payments in a beneficial owner's member state of tax residence through the automatic exchange of information on cross border interest payments to individual beneficial owners. During the transitional period set out in the Directive, three member states (namely Austria, Belgium and Luxembourg) shall not be required to exchange information but shall apply a withholding tax to savings income covered by the Directive. The Isle of Man has entered into agreements with all the EU member states to apply a retention tax during the transitional period in the same manner as the withholding tax under the Directive, moving to an automatic exchange of information with effect from 1st July 2011.

Manx non-resident income tax is re-introduced annually and the current rate is 20%.

Some types of income are subject to deduction of tax at source. For example, rents derived from Manx property are subject to withholding tax at 20% if paid to a non-resident individual by an Isle of Man company or by a resident individual who has received a notice from the Isle of Man Treasury requiring him to withhold tax at source. Other types of income, for example bank interest from approved institutions in the Isle of Man, are paid gross without deduction of tax at source.

Tax charged on the Manx income of a non-resident individual is subject to a limit. The limit is defined as the sum of: (i) the tax that would be due on Manx income reduced by any excluded income, and (ii) tax deducted at source from any excluded income. Excluded income sources include: dividends paid by a company incorporated under the Companies Acts 1931 to 2004 or the Companies Act 2006 or registered under Part XI of the Companies Act 1931; deposit interest paid by a banking institution; interest or dividends paid by a building society authorised under section 2 or 4A of the Building Societies Act 1986; interest or dividends paid by the Isle of Man Government in respect of bonds; other remuneration paid by a company incorporated under the Companies Acts 1931 to 2004 or the Companies Act 2006 or registered under Part XI of the Companies Act 1931 to a company director for services performed outside the Isle of Man, or in order to carry out statutory functions or attend board meetings within the Isle of Man.

4.2.3 Tax return requirements

Every person who has a liability to Manx income tax is required to make a return of his total income each year to the Assessor. This includes persons residing in the Isle of Man and persons not residing in the Isle of Man, but who derive income from sources within the Isle of Man. Tax returns are normally issued during

April and must be completed and returned to the Assessor by 6 October.

Failure to make and deliver the required return will lead to a default assessment to Manx income tax and penalties will become due.

4.3 Withholding taxes

4.3.1 Payments from an individual to an individual

Where an Isle of Man resident individual has received a notice from the Isle of Man Treasury requiring him to withhold tax at source, tax must be withheld at a rate of 20% on any taxable payment made by him to another individual, who is not resident in the Isle of Man.

Examples of payments to non-residents that are subject to the 20% rate include: rental income; alimony and maintenance; payments under the terms of an educational deed of covenant; and interest payments.

There are other payments that may be subject to other forms of tax deduction at source, e.g. income tax instalment payments (ITIP).

As mentioned in section 4.2.2 above, non-resident individuals are able to benefit from a personal allowance and from a limit on the amount on income tax charged on Manx income. The Income Tax Division may permit a payer to take the non-resident personal allowance into account in computing the amount of income tax to be withheld from a payment to a non-resident individual. In all such cases, and in any other cases of doubt, the Income Tax Division should be consulted beforehand.

4.3.2 Payments from companies subject to the standard zero rate

Dividends paid to a non-resident company or individual will not suffer withholding tax.

Loan interest paid to a non-resident company will not suffer withholding tax.

Loan interest paid to a non-resident individual will not suffer withholding tax.

Rental income from Manx land and property will be subject to a 10% withholding tax if it is paid to a non-resident company and 20% if it is paid to a non-resident individual.

Certain directors' and consultancy fees will not be subject to withholding tax: (i) no withholding tax is due in respect of directors and consultancy fees where the duties are wholly performed outside the Isle of Man or, where directors' fees are paid solely in respect of statutory duties such as attending board meetings in the Isle of Man; (ii) if the directors' fees are paid in respect of executive duties in the Isle of Man in addition to statutory duties, then the rate of tax to be withheld from the whole of the fees paid is 20%.

Other Manx source income paid to a non-resident individual will be subject to 20% withholding tax.

The Isle of Man does not levy death, inheritance or estate duty, stamp duties, capital gains, wealth or similar capital levies, capital transfer or gift duties.

4.3.3 Payments from companies subject to the ten percent rate

Dividends paid out of profits of an accounting period ending on or after the 6 April 2007 will not be subject to withholding tax. By virtue of the Income Tax (Corporate Taxpayers) Act 2006, dividends will no longer be deductible when computing taxable profits but will carry a tax credit equal to the rate of tax paid by the company.

Rental income from Manx land and property will be subject to a 10% withholding tax if it is paid to a non-resident company and 20% if it is paid to a non-resident individual.

Loan interest paid to a non-resident company will not suffer withholding tax.

Loan interest paid to a non-resident individual will not suffer withholding tax.

Certain directors' and consultancy fees will not be subject to withholding tax: (i) no withholding tax is due in respect of directors and consultancy fees where the duties are wholly performed outside the Isle of Man or, where directors fees are paid, these are solely in respect of statutory duties such as attending board meetings in the Isle of Man; (ii) if the directors' fees are paid in respect of executive duties in the Isle of Man in addition to statutory duties, then the rate of tax to be withheld from the whole of the fees paid is 20%.

Any other income paid to a non-resident company will not suffer withholding tax.

Other Manx source income paid to a non-resident individual will be subject to 20% withholding tax.

Please note that payments may also be subject to withholding pursuant to the EU Savings Directive. Further details regarding how the Directive is applied in the Isle of Man are set out in section 1.2.2 above.

4.4 Transfer taxes on death or gifts

The Isle of Man does not levy death, inheritance or estate duty, stamp duties, capital gains, wealth or similar capital levies, capital transfer or gift duties. There are, therefore, no transfer taxes payable on death or on gifts. There is a probate fee charged by the government, but the maximum fee (where the value of an estate exceeds £200,000) is currently £649. Income tax is the only tax which is directly charged by Tynwald.

4.5 Taxation of partnerships

4.5.1 General

A partnership does not have separate corporate identity and is thus not assessable to Manx income tax in its own right. Rather, each partner is liable to pay income tax in respect of his share of the partnership income.

A return of the partnership's income must be submitted each year to the Manx Assessor of Income Tax by any one of the partners. The Assessor normally requires all such returns to be accompanied by a copy of the relevant annual partnership accounts and details as to the manner in which profits or losses are shared by the partners (usually contained in the partnership agreement). The amount of trading profits or losses, as adjusted for income tax purposes each year, is divided among the partners according to their profit-sharing arrangements for the accounting year and assessed on the respective partners for the year of assessment, of which the partnership's accounting year forms the basis of assessment for each individual partner. The amount to which a partner is entitled must therefore be shown in the tax return which that partner is required to make annually to the Assessor.

4.5.2 Nexus required for taxation

For the purposes of the Manx Income Tax Act 1970 (as amended), the expression "partnership" is ordinarily taken to include general partnerships and limited partnerships:

- (a) established in the Isle of Man under Manx law, where the annual partnership profits include profits derived from business carried on in the Isle of Man;
- (b) established in the Isle of Man under Manx law, where the profits are derived from business carried on outside the Isle of Man, but where one or more partners reside in the Isle of Man;
- (c) established outside the Isle of Man under foreign law, but which derives profits from business carried on in the Isle of Man; and
- (d) established outside the Isle of Man under foreign law and where the profits are derived from business carried on outside the Isle of Man, but where one or more partners reside in the Isle of Man.

Manx income tax is charged in respect of income arising or accruing from sources within the Isle of Man (whether or not the owners of the sources reside in the Isle of Man) and in respect of income arising or accruing from sources outside the Isle of Man which belong to persons who are resident in the Isle of Man.

Therefore, taxation nexus is determined by the residence of each partner and the location of each source of the partnership profits.

Every person who has a liability to Manx income tax is required to make a return of income each year to the Assessor of Income Tax.

4.5.3 Brief synopsis

The following are examples of how partners may be treated for tax purposes under Isle of Man law:

- (a) a partner who resides in the Isle of Man and whose partnership is established either in the Isle of Man under Manx law or outside the Isle of Man under foreign law is liable to Manx resident income tax in respect of his share of the partnership profits derived in the Isle of Man or elsewhere;
- (b) a partner who does not reside in the Isle of Man and whose partnership is established either in the Isle of Man under Manx law or outside the Isle of Man under foreign law is liable to Manx non-resident income tax in respect of his share of the partnership profits derived from business carried on in the Isle of Man;
- (c) a partner who does not reside in the Isle of Man and whose partnership does not carry on business in the Isle of Man or derive any income from Manx sources will have no liability to Manx non-resident income tax (regardless as to where the partnership is established); and
- (d) a partner who does not reside in the Isle of Man is not liable to Manx resident income tax in respect of any foreign source income of the partnership.

4.5.4 Limited liability companies

Although a body corporate, a limited liability company established under the Isle of Man Limited Liability Companies Act 1996 is not a company for Isle of Man income tax purposes but a partnership subject to tax under this section, 4.5.

4.6 Taxation of trusts

Every person who has a liability to Manx income tax is required to make a return of income each year to the Assessor of Income Tax. Subject to certain exceptions, this requirement applies to persons residing in the Isle of Man and to persons not residing in the Isle of Man, but who derive income from sources in the Isle of Man.

Trusts, settlements, trustees and beneficiaries are not referred to in Manx income tax law. Nevertheless, trustees and beneficiaries are 'persons' for the purposes of Isle of Man income tax and it is possible to determine the taxation position of trustees and beneficiaries on the basis of current law and practice, i.e. a combination of residence and source-based taxation, having particular regard to the residence of the beneficiaries of the trust rather than the residence of the settlor or the trustees.

The Assessor of Income Tax has acknowledged that, as trust property is held for the use and benefit of the beneficiaries, the taxation of a trust should reflect the tax position of the beneficiaries. This means that the burden of tax imposed on the income of a trust should be the same as would have been levied on the beneficiaries had they received the income directly.

Trusts having at least one trustee resident in the Isle of Man or where the administration of the trust is conducted in the Isle of Man ("Manx trusts") are within the scope of Manx income tax.

Where income is derived from property held by one person as nominee for another, or from property held by a trustee for another person who is absolutely entitled to that property as against the trustee, then the person or trustee, respectively, is not within the scope of Manx income tax in respect of that income.

A beneficiary may have an immediate entitlement to all or part of the income produced by trust property, net of income expenses, including trust management expenses, met by the trustees (i.e. an interest-in-possession ("IIP")). If the trustees have the power to prevent any right of present enjoyment (such as a power to accumulate income) then an IIP does not exist. The fact that trustees have a power to terminate an IIP does not prevent a beneficiary's income entitlement from being an IIP whilst it continues. If a beneficiary of a trust does not have an IIP then it has a discretionary interest, meaning that the trustees have the power to determine how much income, if any, the beneficiary receives.

When an IIP exists in respect of only a part of a trust's income, the trust will be treated as two separate trusts, one being an IIP trust and the other a discretionary trust.

The Assessor has adopted the following approach to Manx trusts:

(a) IIP trusts

The English case of *Archer-Shee v Baker* (1927, 11 TC 749) established that when a beneficiary has an absolute right to the income of a trust, that beneficiary will be taxable in respect of the trust income as and when it arises. Accordingly, the beneficiary of an IIP trust is treated as though the trust income accrued directly to the beneficiary and the trustees are not liable to tax in this circumstance.

(b) Discretionary trusts

If trust income is distributed, the beneficiaries will be taxed according to their residence status:

- (i) beneficiaries who are not resident in the Isle of Man will be taxed on the income distributed to them as if the income accrued to them directly; and
- (ii) beneficiaries who are resident in the Isle of Man will be subject to Manx tax in respect of any income distributed to them (to the extent that it has not already been taxed in the hands of the trustees as previously undistributed income).

The trustees will be taxed on income not distributed as follows:

- (iii) if all of the beneficiaries are not resident in the Isle of Man, undistributed income will be subject to the same amount of tax as would be charged where the same type and amount of income had been received by a non-resident individual; and
- (iv) if any of the beneficiaries is resident in the Isle of Man, undistributed income will be subject to Manx tax.

Unit trusts will have no liability to Manx tax if all their income arises outside the Isle of Man and no Manx resident has any interest in them.

As mentioned above, the Isle of Man has a combination of residence and source-based taxation. For the avoidance of doubt, income which is derived from business transactions outside the Isle of Man, or from dealings with persons resident outside the Isle of Man, or from the provision of services outside the Isle of Man, will not be considered as Manx source income merely because the transaction is carried out by a Manx trust or a partnership which includes one or more Manx trusts.

A trust will generally be regarded as having a Manx resident beneficiary if a person resident in the Isle of Man is identified in the trust deed either specifically by name or generally by virtue of being a member of a class of beneficiaries. However, a trust shall not be regarded as having an Isle of Man resident beneficiary solely because:

- (a) a person resident in the Isle of Man may become a beneficiary;
- (b) there have been distributions in the past to a Manx resident beneficiary; or,
- (c) the trust deed does not have a Manx 'exclusion clause'.

To obviate the need for unnecessary enquiries, the Assessor will usually accept a declaration on an annual basis that no current Isle of Man resident did or could benefit from the income of a trust in that year of assessment.

The income derived from any property of any trust established for charitable purposes only is exempt from Manx income tax. Where the only Manx resident beneficiaries who can benefit from the income of a Manx trust are a charity or charities, or an arrangement or arrangements the objects of which are wholly charitable, then the Assessor will not treat the trust as having any Isle of Man resident beneficiaries solely because of the residence of the Manx charity or charities.

4.7 Taxation of mutual funds

4.7.1 Companies

As set out in section 4.1 above, save for two limited exceptions the standard rate of corporate income tax is 0%.

Please see sections 4.1 and 4.3 above for further information with respect to the attribution regime for individuals ("ARI") and withholding taxes on distributions.

4.7.2 Unit trusts

Unit trusts will have no liability to Manx tax if all their income arises outside the Isle of Man and no Manx resident has any interest in them.

4.7.3 Limited partnerships

Limited partnerships and their partners whose income derives from non Manx sources and without any Isle of Man resident with an interest therein will have no liability to pay Isle of Man income tax. For limited partners who are Manx companies please see section 4.1 above.

4.7.4 Fund managers and administrators

There is no Manx tax to pay on the profits of Isle of Man resident fund managers and licensed third-party fund administrators which relate to the management or administration of Manx funds unless they fall within the ambit of the ARI. However, this charge will only be made on profits attributable to Manx resident individuals (see section 4.1.3 above for further details).

The management and administration fees charged by managers of Manx funds (excluding exempt international funds) are exempt from VAT. Recent decisions in the United Kingdom have also made it clear that investment management fees charged by UK managers to certain Manx funds are exempt from VAT.

4.8 Indirect taxation

Income tax is the only tax which is directly charged by Tynwald. The main indirect taxes which are imposed in the Isle of Man are customs and excise duties and value added tax ("VAT"). Indirect taxation in the Isle of Man has been the subject of agreements with the United Kingdom since 1894. The Collector of Customs and Excise is the head of the Customs and Excise Division of the Isle of Man Government's Treasury Department and is responsible for the assessment and collection of customs and excise duties and VAT.

The Isle of Man last entered into a customs and excise agreement with the United Kingdom in 1979 (the "1979 Agreement"). It is through this agreement that the European Union's programme for the harmonisation of indirect taxes applies to the Isle of Man. Under the 1979 Agreement, the Manx Government agreed to keep its law in respect of customs and excise duties and VAT in line with that of the United Kingdom, to impose identical rates of duty and tax as the United Kingdom Government (with certain minor exceptions) and to establish a customs and excise service responsible for the administration, control, collection and enforcement of customs and excise duties, VAT and car tax. Businesses must register for VAT if their turnover exceeds a £73,000 threshold, but businesses with a lower turnover may voluntarily register, in order to claim VAT refunds.

The standard rate of VAT in the Isle of Man is 20%. However, there are various categories of goods and services which are zero-rated or exempt from VAT. The 1979 Agreement has been varied to allow a lesser rate of VAT (5%) to be levied in respect of the provision of hotel accommodation, domestic gas and electricity supply and the renovation and repair of private dwellings. The Collector of Customs and Excise is also responsible for the collection of excise duties levied upon alcoholic drinks, tobacco and petrol.

The indirect tax revenue sharing arrangement with the UK has most recently been revised in July 2011, principally at the request of the UK which felt that the arrangement needed to be based on a more equitable basis. The new Tax Based Measurement Method is still based on the comparative economic activity of the two nations, but it now looks at national income on a sector by sector basis. This is considered by the UK to be fairer on the basis that the Isle of Man has a higher proportion of businesses that are exempt from collecting VAT, principally in the finance and insurance sector. Ultimately, the new system is supposed to mean that the Isle of Man should get the same amount of indirect tax revenue as it would do if it operated its own independent indirect tax system.

A Chinese government think tank has identified the Isle of Man as a potentially important conduit in implementing the national “Going Out” strategy, aimed at encouraging business to seek opportunities overseas.

The European Community recognises the customs union between the United Kingdom and the Isle of Man and allows Manx traders to export to, and import from, Member States of the European Community. In recent times there have been calls, notably from the Isle of Man's finance sector and tourism industry, for the abrogation of the 1979 Agreement. However, change is opposed by the Manx manufacturing industry, which would suffer if a customs barrier between the Isle of Man and the United Kingdom was imposed.

The Isle of Man is aiming to capitalise in a wider context upon its unique position as a low tax jurisdiction within the European Union VAT and Customs area. It has established a sophisticated entry processing unit for the clearance of goods being imported into the UK (and soon the whole of the European Union) without the need for such goods to be brought physically into the Isle of Man. Largely on the basis of this facility, a Chinese government think tank has identified the Isle of Man as a potentially important conduit in implementing the national “Going Out” strategy, aimed at encouraging business to seek opportunities overseas.

4.9 Tax treaties and tax information exchange agreements (“TIEAs”)

The Isle of Man has a number of formal income tax treaties.

As part of the Isle of Man's commitment to the OECD, the Isle of Man is prepared, on a bilateral basis, to enter into exchange of tax information on request with OECD member countries, provided that it is satisfied that there is likely to be a mutuality of benefits and a level playing field exists. A number TIEAs have now also been entered into by the Isle of Man. The Isle of Man is also currently in negotiations with a number of other countries with a view to entering into formal tax treaties and TIEAs.

The Isle of Man can decline a request for information that does not conform to the provisions of an agreement. A summary of the Tax Treaties and TIEAs that the Isle of Man holds is summarised below (correct as at 1 August 2011):

Status	Double tax treaties	Tax information exchange agreements (“TIEAs”)		
In force	Estonia	Australia	India	
	Malta	Denmark	Ireland	
	United Kingdom	Faroe Islands	Netherlands	
		Finland	New Zealand	
		France	Norway	
		Germany	Sweden	
		Greenland	United Kingdom	
		Iceland	USA	
	Concluded but not yet in force	Bahrain	Canada	Mexico
		Belgium	China	Poland
Czech Republic			Portugal	
		Indonesia	Slovenia	
		Japan		

Other agreements relating to the taxation of shipping and air transport operation, procedures for the adjustment of profits and the avoidance of double taxation of individuals have been concluded alongside a number of the TIEA's listed above.

Full details of these can be found on the Isle of Man Government website at the following address: <http://www.gov.im/treasury/incometax/sections/practitioners/internationalagreements.xml>

Major international airlines and aircraft operators hold the Isle of Man in high regard as a jurisdiction in which to do business.

5 SPECIFIC SECTORS

5.1 Aviation

Isle of Man companies, partnerships, limited liability companies and trust structures are frequently used in aircraft ownership and financing structures. Major international airlines and aircraft operators hold the Isle of Man in high regard as a jurisdiction in which to do business.

The Isle of Man took a further step towards establishing itself as a focal point of the aviation industry on 1 May 2007 when the Isle of Man Aircraft Registry became operational. The Aircraft Registry's aim is to be the world's leading – and Europe's only – aircraft registry dedicated to the registration of high quality private and corporate owned business jets and turbine-engine helicopters. The Aircraft Registry also provides a valuable profile raising platform for the Isle of Man and assists its general economic development.

Unlike other aircraft registries, the Isle of Man Aircraft Registry is not intended to be a profit making venture for the government – its charges only cover its operating costs – and does not impose a requirement that aircraft are owned or leased by Isle of Man companies. Bodies incorporated in the Commonwealth, European Economic Area (EEA) states and Switzerland are all qualified to own Isle of Man registered aircraft.

The Isle of Man Aircraft Registry experienced an extraordinarily successful first 4 years of operation, registering over 350 aircraft and becoming the fastest growing business jet register in the World. However, the success of the Aircraft Registry is reflected as much in the quality, as in the number, of aircraft registered. Although the Aircraft Registry is prepared to register fixed-wing aircraft weighing less than 5,700kgs for residents or businesses operating from the Isle of Man, the vast majority of aircraft registered have been high quality, often new, private and corporate business aircraft such as Bombardier Challengers and Global Expresses, Dassault Falcons, Gulfstreams and Boeing Business Jets.

Aircraft registered on the Isle of Man Aircraft Register carry the unique "M" nationality mark. However, the legal and regulatory framework relating to the Aircraft Register has been created largely by extending the United Kingdom regime to the Isle of Man with favourable modifications. This gives the Aircraft Register a legally robust and internationally recognised footing, whilst being sufficiently flexible and accommodating to avoid the bureaucracy and fees that can be experienced when attempting to register aircraft on other registers. For example, aircraft, crew licences and maintenance organisations that comply with highly regarded international standards are generally accepted by the Aircraft Registry without the imposition of further requirements, such as modifying the aircraft or retraining crew.

The Aircraft Registry is, like the Isle of Man Ship Registry, a division of the Isle of Man Government Department of Economic Development and has adopted the same approach that has permitted the Ship Registry to become internationally renowned. In particular, the Aircraft Registry is renowned for providing a highly professional, but also user-friendly and competitively priced, service, whilst ensuring that only aircraft of a high international standard are accepted on the Aircraft Register. The Yacht Register and Aircraft Register also complement each other to the extent that clients can use the Isle of Man to register both their yachts and aircraft.

5.2 Banks

The banking sector is a vital part of the Manx economy and is dominated by branches and subsidiaries of the main United Kingdom clearing banks. Many other United Kingdom and foreign banks are also established on the Isle of Man, together with branches and subsidiaries of major United Kingdom building societies.

All banks in the Isle of Man are subject to a licensing and supervision regime, administered by the Isle of Man Financial Supervision Commission. The Financial Services Act 2008 ("FSA") provides the statutory basis for the regulation of deposit taking business. The FSC has authority under the FSA to make regulations in the form of the Financial Services Rulebook 2009 (the "Rulebook"), which sets out the standard licence conditions for banks including capital adequacy rules, risk asset ratios and financial statements and accounting records. For further details on the Rulebook, please see section 1.4.2 above.

Deposit taking licences may be issued to banks with a full presence (in terms of staff and management) on the Isle of Man, and to subsidiary companies or branches of banks licensed in another jurisdiction applying equivalent regulatory standards to those on the Isle of Man. In the case of branches of banks licensed elsewhere, a licence is only granted when the regulator of the head office of the bank agrees to exercise consolidated supervision with the FSC, which includes consideration of capital adequacy.

The FSC's licensing policy is based upon the fact that the Isle of Man has no lender of last resort and is too small to shoulder high risk or start-up operations. Accordingly, it will only licence branches or subsidiaries of existing banks already licensed in jurisdictions which the FSC believes exercise proper licensing and supervision. In assessing the jurisdiction, the FSC will consider reports on the jurisdiction by the IMF regarding the supervision of relevant regulated activities and compliance with FATF standards. Applicants must have an established track record and, further, the ownership and management must be acceptable to the FSC. The minimum start up level of share capital for a bank is £3.5 million.

A deposit taking licence normally permits a bank to conduct a full range of banking business with customers both in the Isle of Man and elsewhere. The licence-holder must have a real presence on the Isle of Man (e.g. its own premises, management, staff, systems and resources). Banks operating under domestic licences are subject to Manx income tax at a rate of up to 10% of their taxable income.

The Isle of Man has had a compensation scheme for depositors since 1991 and was the first small international financial centre jurisdiction to introduce such a scheme. The current scheme is the Depositors' Compensation Scheme 2010 ("the Scheme"). All holders of a deposit taking licence on the Isle of Man must be members of the Scheme unless specifically exempted. The amount of compensation payable to each depositor is an amount equal to 100% of the eligible protected deposit liability, subject to a maximum compensation payment to any depositor of £50,000 for individuals and £20,000 for other depositors. Protection is extended to foreign currency, as well as sterling, deposits.

Most of the Isle of Man's banks offer a full range of private banking services including treasury, investment management and trust administration and are thus licensed as domestic banks. As of 30 June 2011, there were 34 banking licences in force and total bank deposits stood at £48.33 billion.

The Isle of Man Government has been proactive in encouraging cleantech investment in the Isle of Man and has targeted clean technology as a specific sector for development.

5.3 Cleantech industries

5.3.1 Introduction

“Cleantech”, or clean technology, refers to products or services that improve efficiency, performance or productivity whilst simultaneously reducing energy consumption, waste or pollution.

The three dominant cleantech sectors are solar energy (solar photovoltaics), wind power and biofuels with solar energy representing almost half of all forms of cleantech venture investment globally. Ocean energy (wave or tidal energy) is attracting much attention internationally and according to the World Energy Council the potential market for wave energy alone is worth over £620 billion.

According to Clean Energy Trends – the report by the leading US research firm CleanEdge – the combined revenues for the global solar photovoltaics, wind power and biofuels markets grew from approximately £86.4 billion in 2000 to £116.8 billion in 2010 (a 35.2 percent increase). The growth in this sector may be attributed to a combination of increased consumer and government awareness of global warming and climate change, and a greater appreciation of the financial returns from cleantech investment in terms of both energy efficiency and business opportunities.

5.3.2 Cleantech in the Isle of Man

The Isle of Man Government has been proactive in encouraging cleantech investment in the Isle of Man and has targeted clean technology as a specific sector for development. Among several initiatives introduced by the Isle of Man Government are the Energy Champion Awards which reward the achievements of the Isle of Man's businesses and public sector in reducing their energy consumption and improving the efficiency of their organisations. The government has also very recently introduced a 0% Green Business Loan Scheme, offering a 100% loan of up to £20,000 towards the cost of projects that improve energy efficiency in Isle of Man business premises. The Scheme is open to all business sectors.

Potential businesses in the cleantech sector will find the Isle of Man tax regime particularly favourable. The combination of a zero rate corporate tax regime and the absence of any tax on capital gains result in a potentially higher return for investors on the sale of businesses and assets (including lucrative intellectual property) than might be realised in alternative jurisdictions.

In addition to the favourable tax regime, the Isle of Man offers cleantech businesses a variety of advantages over other jurisdictions including:

- constant offshore wind and tidal energy resource;
- highly efficient electricity provider;
- precision manufacturing sector;
- mature financial services sector;
- business & Innovation Centre;
- government grant funding;
- government infrastructure and assets available for research and development;
- supporting services from government.

Not surprisingly, the cleantech sector has experienced significant growth in the Isle of Man. A survey commissioned by the Isle of Man Government into the cleantech sector in June 2011 showed that the Isle of Man has a very diverse cleantech sector across much of the range of cleantech activity. Over 100 companies in the Isle of Man are active in the sector, with a key 40 companies having a combined turnover of £92m. £4.64m of this turnover is wholly attributable to cleantech activities – a figure set to increase to £10m by 2014. The Isle of Man is chosen by cleantech businesses due to it being a safe and sound place to do business, the high level of protection for intellectual property rights offered by Isle of Man structures, and the quality of professional support services, as well as the generally favourable fiscal environment.

5.4 E-business

The Isle of Man has recognised the value and importance of e-business to the continued growth of the Isle of Man and has sought to attract and retain new and existing businesses in the e-business sector. The overriding policy of the Isle of Man government has been to facilitate growth rather than restrict or inhibit the opportunities and advantages that e-business can offer.

Legislation has been introduced, where appropriate, to ensure that the Isle of Man retains its reputation as a well regulated and highly regarded business centre, whilst ensuring that the jurisdiction remains attractive to investors. Financial incentives have also been made available to e-business enterprises, including government funding of up to 40% towards the costs of relocation, marketing, hardware and software; annual government funding of up to 50% for training; and government grants which can be applied for on an annual basis. (See section 1.5.1 for more details on business incentive schemes.)

Critical to any venture looking to invest in e-business is the integrity and reliability of the telecommunications infrastructure. The Isle of Man offers world class telecommunications, unlimited bandwidth and world class data hosting; the latest generation 3.5G technology provides incredibly fast HSDPA internet services direct to the mobile phone; and high bandwidth self-healing fibre ring connectivity and unmetered usage gives exceptional access to Europe, the United States and Asia.

Not only does the Isle of Man offer first class technology to the e-business sector, but the offshore location means that its state-of-the-art data storage facilities are less vulnerable to disruptive events compared to those built in large urban areas.

The backbone of the telecom infrastructure is provided by the Isle of Man's incumbent telecommunications and Internet service provider, Manx Telecom, which was sold during June 2010 by Telefonica S.A Group to CPS Partners (a specialist telecommunications management company, with a strong focus on Isle of Man and small country telecoms) and private equity investor HgCapital.

Domicilium is the other leading Isle of Man-based Internet and data communications service provider and Cable & Wireless is licensed to provide mobile telecommunications services on the Isle of Man.

By exploiting its telecommunications infrastructure, the Isle of Man was one of the first countries in the world to enjoy broadband ADSL services during 2001 and then the super-fast

The insurance industry is rightly regarded as one of the cornerstones of the Isle of Man's finance sector

HSDPA (3.5G) service during 2005. In 2006, the Isle of Man upgraded its ADSL broadband service to provide up to 2Mbps as standard and then in 2009 upgraded the service further to provide broadband download speeds of up to 8Mb/s and ADSL2+ download speeds of up to 16Mb/s.

In general, Isle of Man law will follow English law on technology-based issues. For example, Isle of Man law permits electronic transactions to be conducted according to the parties' wishes and places electronic commerce and paper-based commerce on the same legal footing.

Information and intellectual property is protected under Isle of Man law to the same degree as it is in the United Kingdom, the Isle of Man having either extended the United Kingdom legislative regime to apply to it (as it has in relation to patents, trademarks and registered design rights) or passed an Act of Tynwald mirroring the United Kingdom provisions (as it has in relation to copyright, database rights, data protection and unregistered design rights).

It is therefore not surprising that the two leading Isle of Man based internet and data communications service providers – Manx Telecom and Domicilium – have attracted a wide variety of clients, including leading businesses in e-gaming and sports betting along with businesses in various other e-business sectors, including e-finance, e-money and e-travel.

E-gaming in particular has attracted much attention in the international press and is undoubtedly set to continue to grow in the future. The Isle of Man government prides itself on being one of the most dynamic and reputable jurisdictions in the e-gaming sector and is listed on the United Kingdom's e-gaming "white list". Not surprisingly, the Isle of Man has sought to maintain an advantage over competing offshore jurisdictions by introducing legislation which encourages growth and rewards entrepreneurship, whilst at the same time seeking to protect players as well as its own reputation and credibility as a world class jurisdiction.

By increasing the awareness within the e-gaming industry of the unique attractions that the Isle of Man offers over its rival jurisdictions, the Isle of Man has been successful in attracting and retaining some of the industry's largest names.

For example, Isle of Man online gaming licence holders include:

- (i) Pokerstars – one of the world's largest casino operators with a global target market that runs the world's biggest weekly poker tournament;
- (ii) SBOBET.com (licensed in the Isle of Man as Celton Manx Limited) – one of the world's leading sports betting operators that has built a strong target market in Asia (winning Asian Operator of the Year during 2009 and 2010) and SBOBET is currently developing its European customer base with a wide range of services and the sponsorship of West Ham United and Cardiff City football clubs; and
- (iii) 188BET.com – another of the world's leading sports betting operators, which like SBOBET has an established customer base in Asia and is looking to develop an equivalent following in Europe. At the time of writing the list of sporting organisations with which 188BET has betting partnership agreements includes Chelsea, Liverpool, Aston Villa, Bolton Wanderers and Wigan Athletic and Everton.

Also, both Microgaming and Playtech, the leading providers of e-gaming casino software to operators, have their global headquarters in the Isle of Man.

The Isle of Man is aware of the fact that the best way to attract additional leading operators to the Isle of Man is to ensure that the incumbents are able to thrive and excel in their global and highly competitive markets from their Isle of Man base. Therefore, the Isle of Man is careful to ensure that the business, technology and regulatory requirements of its existing clients are considered before issuing new licences.

5.5 Film industry

CinemaNX Limited (backed by the Isle of Man Government), as well as having its own production capability, acts as an investor in film and television productions in co-operation with Isle of Man Film (part of the Isle of Man Government's Department of Economic Development). Isle of Man Film aims to raise the profile of the Isle of Man's film industry and actively markets the Isle of Man as a film location centre at major film industry events. Isle of Man Film is also instrumental in the promotion of training and development in all areas of film-making. Employment of Manx film workers and the use of ancillary Manx services is a vital factor in CinemaNX Limited's consideration of applications.

Having amassed a wealth of practical media experience Isle of Man Film acts as a facilitator in assisting with the logistics of production on the Isle of Man and can assist with organising film crew accommodation, transport, production supplies and studio facilities.

Recent notable productions that have been filmed on the Isle of Man include:

- (a) "The Shadow Line" a 7 part BBC drama starring Chiwetel Ejiofor, Christopher Eccleston, Sir Anthony Sher and Stephen Rea, written and directed by Hugo Blick;
- (b) "TT3D- Closer to The Edge", the highly acclaimed documentary on the Isle of Man TT races;
- (c) "Wild Target" starring Bill Nighy, Rupert Grint, Emily Blunt, Martin Freeman, Dame Eileen Atkins and Rupert Everett;
- (d) "Me and Orson Welles" starring Ben Chaplin, Claire Danes, Zac Efron, Eddie Marsan, Kelly Reilly, James Tupper and Christian McKay directed by Richard Linklater;
- (e) "The Disappearance of Alice Creed" starring Gemma Arterton, Eddie Marsan and Martin Compston;
- (f) "Heartless" written and directed by Philip Ridley, starring Jim Sturgess, Timothy Spall, Clemence Poesy, Eddie Marsan and Noel Clarke;
- (g) "Miss Potter" starring Renee Zellweger and Ewan McGregor;
- (h) "Stormbreaker" starring Alex Pettyfer, Damian Lewis, Ewan McGregor, Bill Nighy, Sophie Okonedo, Missi Pyle, Alicia Silverstone and Mickey Rourke;
- (i) "Big Nothing" starring David Schwimmer and Simon Pegg;

The two main elements in the Isle of Man's insurance sector are captive insurance and offshore life assurance.

- (j) "The Walker" starring Woody Harrelson, Kristin Scott Thomas, Lauren Bacall, Ned Beatty, Moritz Bleibtreu, Willem Dafoe and Lily Tomlin;
- (k) "Severance" starring Danny Dyer and Tim McInnerny; and
- (l) "The Libertine" starring Johnny Depp, Samantha Morton and John Malkovich;

taking the total number of productions located on the Isle of Man in the last 15 years or so to nearly 100.

Since 6 April 2005, the trading income of companies in the film and television production sector has been subject to a zero percent rate of tax (initially by virtue of a concession, but since April 2006 by virtue of the Isle of Man's standard zero rate regime).

5.6 Insurance

The insurance industry is rightly regarded as one of the cornerstones of the Isle of Man's finance sector and legislation has been enacted in relation to such matters as the carrying on of insurance business and the businesses of insurance intermediation and insurance management.

5.6.1 Insurance business

Insurance business carried on by any person in or from the Isle of Man or by an Isle of Man company outside the Isle of Man is governed principally by the Insurance Act 2008, and the Insurance Regulations 1986. (The Insurance Regulations 1986 were made under the Insurance Act 1986, most of which was repealed and replaced by the Insurance Act 2008, with effect from 1 December 2008. The Insurance Regulations 1986 are expected to be replaced in due course by regulations made under the Insurance Act 2008.) Broadly speaking, no person may carry on or hold himself out as carrying on an insurance business in or from the Isle of Man unless he is authorised (in the case of an Isle of Man company) or permitted (in the case of an insurer authorised under the laws of the United Kingdom or other overseas jurisdiction) to do so by the Supervisor, who is the Chief Executive Officer of the Insurance and Pensions Authority ("IPA") (see section 1.4.1 above), or is exempted from the requirement for authorisation or permission and no Isle of Man company may carry on an insurance business outside the Isle of Man unless authorised to do so by the Supervisor.

The two main elements in the Isle of Man's insurance industry are captive insurance and offshore life assurance. As at 31 December 2009, funds under management in the life sector amounted to £41.32 billion (an all-time high and up 12.6% from the 2008 year-end total of £36.70 billion) and in the non-life sector to £5.82 billion (of which the captive sector contributed the vast majority).

Captive insurers have become an integral part of the risk management strategy of many large companies and the Isle of Man is one of the most successful and established captive locations, attracting business from all over the world. Captives are usually managed by one of the registered insurance managers on

the Isle of Man, although some do have their own management. There were, as at 31 March 2010, 114 captives established on the Isle of Man. The appeal of the Isle of Man as a base for captive operations has been enhanced by, among other developments, the introduction of a statutory mechanism pursuant to which foreign captives may re-domicile to the Isle of Man without the need to comply with incorporation formalities which would otherwise apply, by the introduction of the protected cell company structure and the incorporated cell company structure (see section 2.1.6 above) for use in the captive insurance market and by provisions in the Insurance Act 2008 permitting the use of companies incorporated under the Companies Act 2006 (see section 2.1.3 above).

The Isle of Man has also been successful in attracting major international companies to establish life offices on the Isle of Man. As at 31 December 2010, there were 16 life companies authorised in the Isle of Man. Its life industry is arguably the best developed of any offshore centre and the industry is one of the Isle of Man's major employers. Originally marketing primarily to British expatriates, life companies now target business not only from British expatriates but also from locals of other nationalities around the world.

Life offices are subject to strict actuarial supervision. The Life Assurance (Compensation of Policyholders) Regulations 1991 provide protected policyholders, wherever they may reside, with compensation of up to 90% of their claims should an Isle of Man life office be unable to meet its liabilities to them.

The Isle of Man is also host to branch offices of the major United Kingdom general insurers which service the requirements of local residents and businesses alike.

As part of the Isle of Man's ongoing commitment to high standards of corporate governance, a corporate governance code, the Corporate Governance Code of Practice for Regulated Insurance Entities, came into effect on 1 October 2010. The Corporate Governance Code applies to authorised insurers, permit holders (except those authorised to carry on an insurance business in any Member State of the EU) and registered insurance managers. The Corporate Governance Code requires regulated entities to which it applies to have in place appropriate and effective systems of governance that provide for their sound and prudent management and imposes specific requirements in that regard.

5.6.2 Insurance intermediation

Insurance intermediaries that are involved in general business are subject to a different regulatory regime from that applicable to those involved in long-term business. An insurance intermediary who carries on business in or from the Isle of Man in relation to contracts of insurance (broadly speaking, general business) which do not constitute investments for the purposes of the Financial Services Act 2008 is required to be registered with the IPA pursuant to section 24 of the Insurance Act 2008. An insurance intermediary who carries on business in or from the Isle of Man in relation to contracts which are investments for the purposes of the Financial Services Act 2008 is required to be licensed pursuant to section 5 of the Financial Services Act 2008.

As at the end of August 2011, the Isle of Man had 52 companies listed on London's Alternative Investment Market ("AIM") – more than any other jurisdiction apart from the United Kingdom.

5.6.3 Insurance management

If management of an insurer authorised or permitted to carry on an insurance business in or from the Isle of Man is to be exercised solely by the directors and controllers of the insurer, it is usually a requirement (in addition to the requirement that staffing of the insurer is adequate and competent, having regard to the nature of the business being conducted) that at least two of the directors are resident on the Isle of Man. The requirement in relation to directors resident in the Isle of Man is, however, subject to relaxation where the insurer appoints an insurance manager who is registered with the IPA pursuant to the Insurance Act 2008 or who is exempt from the requirement for registration. As at 31 March 2010, there were 21 registered insurance managers on the Isle of Man.

5.6.4 Solvency II

Solvency II, the new capital and solvency regime for EU insurers and reinsurers, is due to come into effect in early 2013. Solvency II seeks to implement solvency requirements that better reflect the risks faced by insurers and reinsurers than do the various requirements currently imposed by EU member states and also to put in place a consistent supervisory system throughout the EU. While the Isle of Man is not a member state of the EU (see section 1.2.2 above), so that the Solvency II directive is not automatically applicable to it, it is widely thought that Solvency II marks the direction which global insurance regulatory standards are likely to take. While the Solvency II directive does make provision for jurisdictions outside the EU to apply for recognition that their regulatory systems are equivalent to Solvency II, the Isle of Man has not applied for Solvency II equivalence. The IPA is working with representative bodies in the insurance industry and with other government bodies on the Isle of Man to consider an appropriate position in relation to the introduction of Solvency II.

5.7 Listings

Isle of Man corporate vehicles have direct access to global capital markets and have established a successful track record of listing on recognised stock exchanges in London, Singapore, Frankfurt and Toronto. In addition, the Hong Kong Stock Exchange (HKSE) has recently approved the Isle of Man as an "acceptable overseas jurisdiction" thus paving the way for the flotation of Isle of Man companies in Hong Kong.

As at the end of August 2011, the Isle of Man had 52 companies listed on London's Alternative Investment Market ("AIM") – more than any other jurisdiction apart from the United Kingdom. These companies had a total collective market capitalisation of £3,172 million. There were in addition 12 Isle of Man companies on the main London Stock Exchange, worth a collective market capitalisation in excess of £3,456 million.

A wide variety of international businesses have used Isle of Man companies to access the capital markets in London and further afield including Indian property and infrastructure companies (such as Trinity Capital plc and Unitech Corporate Parks plc), oil and gas exploration and service companies (such as Exillon Energy plc and Lamprell plc), telecoms and IT companies (such as Norcon plc and IBS Group Holdings Limited) and cleantech companies (such as Trading Emissions plc and Clean Energy Brazil plc).

The reasons why the Isle of Man has become a favourite offshore jurisdiction from which to list on the world's major capital markets include:

- (a) the Isle of Man is an "AAA" rated jurisdiction which was immediately "white-listed" by the Organisation for Economic Co-operation and Development in April 2009; in the words of the Minister of the United Kingdom Ministry of Justice, the Isle of Man "leads the way in terms of how small jurisdictions with financial services should operate";
- (b) there is no capital gains tax, stamp duty or withholding tax on the payment of dividends or interest;
- (c) the Isle of Man company will not pay any Isle of Man tax;
- (d) a closed-ended company is not subject to financial services regulation in the Isle of Man and there is no requirement to obtain pre-incorporation or pre-listing approval from any government agency;
- (e) shares in an Isle of Man company can be traded through CREST without the need for depositary receipts;
- (f) an Isle of Man company can have shares denominated, and can prepare accounts, in any currency;
- (g) there are no prescriptive content requirements for offering documents; such documents must simply contain all material information required to enable informed investment decisions to be made by recipients; and
- (h) investment banks, institutional investors and their advisers are comfortable dealing with Isle of Man companies.

In respect of companies incorporated under the Companies Act 2006 of the Isle of Man (which have become the vehicles of choice for international listings), further benefits include:

- the ability to buy-back shares and return capital to shareholders subject solely to a resolution of the directors and satisfaction of a statutory solvency test (unless provided otherwise in the company's constitutional documents);
- the right of directors to make distributions (including dividends) subject to satisfaction of a statutory solvency test, without the need for a formal members' resolution (unless provided otherwise in the company's constitutional documents); and
- the ability to give financial assistance without any statutory prohibition or restriction.

5.8 Mutual funds

5.8.1 Mandatory requirements

The following are the key factors to be borne in mind in relation to any proposal to carry on investment business including managing or administering mutual funds in the Isle of Man:-

- (a) As investment business is classified as a regulated activity for the purposes of the Financial Services Act 2008 (as amended) (the "FSA"), a person cannot engage in investment business in or from the Isle of Man (or hold themselves out as doing so) without a licence issued by the Financial Supervision Commission ("FSC") (see section 1.4.2 above). There are, however, various exemptions and exclusions from this general requirement.

The Isle of Man's Government and private sector have worked together for many years to develop a flexible regulatory framework that allows the fund industry to develop new products and encourages innovation.

- (b) A fund manager who wishes to carry on investment business in or from the Isle of Man must have a demonstrable track record in the promotion and management of mutual funds. There are, however, certain exemptions from this general requirement.
- (c) Licence holders conducting investment business are subject to certain minimum financial resources requirements and must comply with regulatory codes.
- (d) Specialist funds must have an administrator appropriately licensed in the Isle of Man to act as such or licensed in a jurisdiction acceptable to the FSC.
- (e) Qualifying funds must have a manager licensed in the Isle of Man by the FSC and a custodian licensed by the FSC in the Isle of Man or in a suitable jurisdiction.
- (f) The manager of a regulated fund is required to be licensed by the FSC with permission to act for that fund.
- (g) Authorised schemes must have a manager and a fiduciary custodian or a trustee, all of which must be bodies corporate which have a place of business in the Isle of Man and which must each be appropriately licensed by the FSC to act as such.
- (h) The acceptance of subscription monies from prospective investors is subject to international standard "know your customer" regulations.

5.8.2 Recent developments

The Isle of Man's Government and private sector have worked together for many years to develop a flexible regulatory framework that allows the industry to develop new products and encourages innovation. This constructive engagement between the Isle of Man's mutual fund industry and the Government has led, in recent years, to the introduction of reforms for the mutual fund industry that included such significant measures as:

- (a) VAT exemption for management fees in respect of key fund types; and
- (b) an overseas funds exemption enabling the removal from direct regulation of certain overseas funds that are administered or managed on the Isle of Man and regulated elsewhere.

It has also led, among other things, to the introduction of the specialist fund (see section 5.8.5 below) and qualifying fund (see section 5.8.5 below), both of which are suitable for use as hedge funds.

As at 30 June 2011, there were 467 funds registered with the FSC. The most numerous funds were exempt schemes (193 funds having a total value of \$6.147bn) and overseas funds (104 funds having a total value of \$8.53bn). The net asset value of the total number of funds under management as at 30 June 2011 stood at \$29.6bn.

The Isle of Man Funds Review Group (the "Group") was set up in September 2006 under the auspices of the Isle of Man Finance Steering Group. The terms of reference approved by the Treasury

were for the Group to review the Isle of Man's investment funds industry in the context of the international investment funds arena and to identify reforms and enhancements which will secure the future growth and development of the industry.

The Group and the FSC reviewed the Isle of Man's fund products in 2007, which led to the creation of two new fund types – the specialist fund and the qualifying fund. The specialist fund offers flexibility of strategy and asset allocation with a required US\$100,000 minimum initial subscription. The specialist fund offers a fund which can be quickly launched, involving no regulatory pre-approvals. The qualifying fund offers similar flexibility, with no specified minimum investment level.

The Group spearheaded the Collective Investment Schemes Act 2008 (the "CISA"), which provides a new modern, flexible framework for these funds. 2010 saw the introduction of the regulated fund (see section 5.8.5 below) and updated versions of the specialist fund and qualifying fund, which are now classified as registered funds. At the end of June 2011, there were 19 specialist funds (\$594m) and 13 qualifying funds (\$559.3m).

5.8.3 Establishing an Isle of Man investment manager and other functionaries

Fund and investment managers and other persons carrying on investment business in or from the Isle of Man (or holding themselves out as doing so) must generally be licensed by the FSC pursuant to the FSA as a result of carrying out a regulated activity (see section 1.4.2 above).

Authorised schemes must have a manager and a fiduciary custodian or a trustee, all of which must be bodies corporate which have a place of business in the Isle of Man and which must each be appropriately licensed by the FSC to act as such.

A regulated fund is required to have a manager licensed by the FSC with permission to act for the fund. Furthermore, a regulated fund must have a fiduciary custodian or trustee regulated in the Isle of Man, United Kingdom, Ireland, Luxembourg, Jersey or Guernsey or which is otherwise acceptable to the FSC.

A specialist fund is required to have an administrator licensed in the Isle of Man by the FSC or an administrator in a jurisdiction accepted by the FSC as applying appropriate standards of regulation to overseas administrators of this type of fund.

A qualifying fund is required to have a manager licensed in the Isle of Man by the FSC and a custodian licensed by the FSC in the Isle of Man or in a suitable jurisdiction.

An exempt scheme is not required to appoint either a trustee/custodian or a manager, although some find it convenient to do so. In the event that an exempt scheme appoints a manager in the Isle of Man, the manager may be carrying on investment business and thus require to be licensed accordingly by the FSC. However, where the manager is acting for only one exempt scheme, the manager will usually not require to be licensed purely as a result of such activity.

The manager or administrator (as appropriate) of an overseas scheme must be specifically licensed by the FSC to undertake the provision of management or administration services (as appropriate) to an overseas scheme.

The Collective Investment Schemes Act 2008 (“CISA”) provides for the regulation of collective investment schemes (or funds) in the Isle of Man.

All managers of Isle of Man funds, which are not exempt from the requirement to be licensed to conduct such regulated activity, must conduct their business in accordance with any conditions attaching to their licence and the Financial Services Rulebook 2009 (the “Rulebook”) issued by the FSC (see section 1.4.2 above). The close working relationship which has been built up over the years between the Isle of Man’s mutual funds industry and the FSC has helped in the development of a sophisticated regulatory regime that balances the demands of investor protection with the flexibility needed by the ever changing global fund industry. The FSC requires licence holders to comply with the Proceeds of Crime (Money Laundering) Code 2010 (see section 1.4.8 above) and to follow the guidance notes issued by it. The FSC considers the introduction and maintenance of adequate policies and procedures for the deterrence and prevention of money laundering as an important element of the continuing “fit and proper” test applicable to all licence holders.

5.8.4 Establishing a fund

The three principal forms of mutual funds which can be established in the Isle of Man are as follows.

Open-ended investment companies

Investment companies are probably the most popular vehicle for mutual funds in the Isle of Man, offering the important advantage of limited liability status which, for certain types of funds, can be extremely important. A key distinction is to be made between open-ended and closed-ended investment companies as the latter do not fall within the regulatory net for mutual funds (although Manx companies legislation is applicable).

Unit trusts (see also section 3.2.6 above)

The Isle of Man legal system, being derived from English common law, has long recognised the concept of a trust and in more recent times the unit trust has become a widely used form of collective investment vehicle. A unit trust is constituted by a trust deed which regulates the rights and obligations of the participants in the unit trust. Generally the trust deed will be between the trustee, who holds the assets on trust for the participants, and the manager, responsible for the management and general administration of the trust. The manager will normally have the ability to delegate investment management and other functions to specialist advisers. The terms of the trust deed usually allow participants to redeem their units at prices related to the value of the unit trust’s net assets.

Limited partnerships (see also section 2.2.3 above)

The laws of the Isle of Man concerning general and limited partnerships have historically been similar to those of England. A limited partnership is generally established by a partnership deed under which the participants (limited partners) contribute capital to the partnership for management by the general partner, but do not themselves take part in the day-to-day affairs of the partnership. For investors in certain jurisdictions, limited partnerships may offer significant taxation advantages over other forms of collective investment vehicle. The maximum number of partners allowed in a limited partnership is generally restricted to 20. This restriction does not, however, apply in the case of mutual funds established as limited partnerships. It is also worth

noting that a limited partner in a Manx limited partnership can usually withdraw some or all of his capital contribution during the life of the partnership without losing the benefit of his limited liability status. Furthermore, legislation is passed and as at the date of this publication is awaiting Royal Assent, which will allow limited partnerships in the Isle of Man to elect to register with separate legal personality which may be of particular importance to certain types of fund.

5.8.5 Supervision

The Collective Investment Schemes Act 2008 (“CISA”) provides for the regulation of collective investment schemes (or funds) in the Isle of Man. There are a number of different categories of fund which can be established in the Isle of Man which vary in terms of their regulatory status, and thus, the extent to which the FSC oversees their regulation on the Isle of Man. In fact, there are also a number of funds which are not subject to any regulation in the Isle of Man and are merely subject to regulation in their home jurisdiction.

The main categories of Isle of Man funds are as follows.

Authorised funds

These are the most highly regulated of all Isle of Man funds and are marketable to the general public in the Isle of Man. These funds are particularly suited to any investors who are seeking an investment in a fund which is subject to rigorous regulation in the Isle of Man. At present, only authorised securities schemes (of which government and other public securities funds are a particular type), money market funds, umbrella funds, warrant funds, property funds, futures and options funds, geared futures and options funds, funds of funds and feeder funds are eligible for authorisation under paragraph 2 of schedule 1 to the CISA.

Applications for authorisation must be made to the FSC by the governing body or manager and the trustee or fiduciary custodian in the fund acting jointly. Such application must be in the prescribed form and be accompanied by the prescribed fee. The FSC may only make an authorisation order in relation to a unit trust scheme established under and governed by the laws of the Isle of Man or an open-ended investment company incorporated under the Companies Acts 1931 to 2004 or such other description of scheme as is prescribed. Consequently, a scheme constituted under the law of another country or territory outside the Isle of Man is not eligible for authorisation. The process for obtaining an authorisation order from the FSC normally takes between one and two months but if this is not the case, the FSC is required, within six months of the application being received, to inform the applicant of its decision.

Authorised schemes must have a manager and a fiduciary custodian or a trustee, all of which must be bodies corporate which have a place of business in the Isle of Man and which must each be appropriately licensed by the FSC to act as such.

The Isle of Man is a “designated territory” for the purpose of United Kingdom financial services legislation. Accordingly, certain Isle of Man authorised funds may apply for recognition in the United Kingdom for the purpose of marketing that fund within the United Kingdom. Similar reciprocal arrangements apply in respect of Ireland, Jersey, Guernsey, Hong Kong and Australia.

A specialist fund can be a company, a protected cell company, a unit trust, or a limited liability partnership established in the Isle of Man.

Authorised funds benefit from compensation arrangements and are not suitable for use as hedge or other alternative investment funds. There is no minimum investment level prescribed in relation to an authorised scheme and there are no specific entrant criteria.

Regulated fund

A regulated fund, as the name suggests, is a fund which is established in the Isle of Man and which is regulated by the FSC aimed at retail investors. Regulated funds are subject to FSC pre approval and in order to become a regulated fund, prior notification must be given to the FSC with specified documentation and a specified fee.

There are no prescribed restrictions on the types of investors who are allowed to invest in a regulated fund but the governing body of a regulated fund will set the minimum investment level and entrance criteria of a regulated fund.

A regulated fund is required to have a manager licensed by the FSC with permission to act for the fund. Furthermore, a regulated fund must have a fiduciary custodian or trustee regulated in the Isle of Man, United Kingdom, Ireland, Luxembourg, Jersey or Guernsey or which is otherwise acceptable to the FSC. A regulated fund must also appoint a promoter who may be the manager or a person who the governing body has assessed as being suitable to act as the fund's promoter.

Specialist fund

The specialist fund was introduced with effect from 1 November 2007. As a fairly new type of fund it has fast become one of the most popular types of fund aimed at institutional investors and high net-worth individuals. Specialist funds are not regulated in the Isle of Man but are classed as registered funds.

Investors in a specialist fund must satisfy certain criteria, have certified that they are sufficiently experienced to understand the risks associated with an investment in a specialist fund and must meet the minimum initial subscription level required per investor of US\$100,000 and must fall into one of the prescribed categories of investor.

In order to become registered as a specialist fund in the Isle of Man notification must be given to the FSC within 10 working days after its launch and, as such, no pre-approvals are required to be sought from the FSC. A specialist fund is required to include certain specified information in its offering document but, on the whole, there are few regulatory requirements in relation to the contents of the offering document of a specialist fund.

A specialist fund is required to have an administrator licensed in the Isle of Man by the FSC or an administrator in a jurisdiction accepted by the FSC as applying appropriate standards of regulation to overseas administrators of this type of fund. There is no necessity to have a fiduciary custodian, trustee or promoter.

A specialist fund can be a company, a protected cell company, a unit trust, or a limited liability partnership established in the Isle of Man. No structure established outside the Isle of Man can become a specialist fund in the Isle of Man.

Qualifying fund

The qualifying fund, which is aimed at non retail investors, was introduced with effect from 1 November 2007. It is a fund which is established and registered in the Isle of Man but is not regulated in the Isle of Man.

The qualifying fund may only be sold to investors who are classified as "qualifying investors", being persons or bodies whom in relation to a qualifying fund, have certified that they are sufficiently experienced to understand the risks associated with an investment in that fund and who fall into one of the prescribed categories of investor. Unlike with specialist funds, there is no minimum initial investment which qualifying investors are required to make, unless such requirement is determined by the manager and governing body of the qualifying fund.

Notification must only be given to the FSC within 10 working days after the launch of the qualifying fund and, as such, prior notifications need not be given, nor are any application fees payable.

A qualifying fund is required to have a manager licensed in the Isle of Man by the FSC and a custodian licensed by the FSC in the Isle of Man or in a suitable jurisdiction. A regulated promoter may be required in certain circumstances but no fiduciary custodian or trustee is required.

The offering document of a qualifying fund must contain certain information specified in regulations but, as is the case with the specialist fund, the amount of information which is required to be included in the offering document is minimal compared with other more heavily regulated categories of fund in the Isle of Man. However, as there is no minimum subscription level imposed on investors in a qualifying fund they are subject to slightly more regulation than specialist funds.

A qualifying fund can be constituted as a company, a protected cell company, a unit trust or a limited liability partnership established in the Isle of Man. No structure established outside the Isle of Man can become a qualifying fund in the Isle of Man.

Exempt schemes

This class of fund is considered to be a private arrangement which is not subject to the CISA or the regulations made thereunder. A fund is classified as an exempt scheme if it has less than fifty participants and its constitutional documents prohibit the making of an invitation, in any part of the world, to the public (or any section of it) to subscribe for or purchase units in the fund, and its constitutional documents do not imply that the fund is regulated under the CISA. Such exempt schemes have found considerable favour as private arrangements for institutional investors where regulation is not desired.

An exempt scheme is not required to appoint either a trustee/custodian or a manager, although some find it convenient to do so. If an exempt scheme appoints a manager in the Isle of Man, the manager may be carrying on investment business and thus require to be licensed accordingly by the FSC. However, where the manager is acting for only one exempt scheme, the manager will not require to be licensed purely as a result of such activity.

The Isle of Man is uniquely able to offer the administrative convenience of its own value added tax (“VAT”) office, providing expedited registration and grouping for real estate investment structures.

In order to qualify as an exempt scheme the fund must be a unit trust established under and governed by the laws of the Isle of Man, an open-ended investment company in the Isle of Man, a limited partnership registered in the Isle of Man or such other description of scheme as is prescribed.

Overseas schemes

Overseas schemes are schemes which are established outside the Isle of Man (not constituting an exempt scheme or recognised scheme) but which are administered or managed in the Isle of Man.

Although an overseas scheme is not subject to approval or regulation by the FSC, the manager or administrator (as appropriate) of an overseas scheme must be specifically licensed by the FSC to undertake the provision of management or administration services (as appropriate) to an overseas scheme. Furthermore, an overseas scheme is subject to the regulatory regime in the jurisdiction in which the overseas scheme is established.

The manager or administrator (as appropriate) of an overseas scheme must notify the FSC that it has engaged in the provision of such services within 10 business days of entering into an agreement to provide such services and of ceasing to provide such services.

Recognised schemes

A recognised scheme is a scheme which originates from outside the Isle of Man, and is authorised and managed in a country or territory outside the Isle of Man, but which may be promoted to the general public in the Isle of Man by virtue of being “recognised” by the FSC. At present certain schemes established in the designated territories (United Kingdom, Jersey, Guernsey and Ireland) may notify the FSC (with documentation and an application fee) seeking recognition. If no objection is received from the FSC within 2 months, recognition is automatic. Applications for recognition may also be made on an individual basis for schemes originating from countries other than designated territories, although the applicant and scheme will be subjected to detailed scrutiny. Applications for recognition from schemes which comply with internationally accepted standards (such as UCITS) will generally be processed by the FSC quicker than those which do not.

A recognised scheme is required to include certain specified information in its offering document (such offering document to be filed with the FSC together with any revisions of the same) but the FSC does not vouch for the financial soundness of the scheme or the correctness of any statements made or opinions expressed with regard to it but the FSC will not “recognise” a scheme unless it is satisfied that adequate protection is offered to participants.

The governing body of a recognised scheme is required to maintain, at an address in the Isle of Man, facilities where, inter alia, the instruments constituting the scheme and the most recent scheme particulars, reports and accounts may be inspected (and copies obtained). These schemes are not suitable for use as hedge funds.

5.8.6 Investment restrictions

Authorised funds

The Authorised Collective Investment Schemes Regulations 2010 set out significant investment restrictions for authorised funds and as a result, such funds are not presently suitable for use as hedge or other alternative investment funds.

Specialist funds and qualifying funds

There are no statutory investment restrictions applicable to specialist funds or qualifying funds, nor are there any regulations in place relating to hedging, gearing and borrowing in relation to such funds.

Regulated fund

As the regulated fund is more heavily regulated by the FSC than specialist funds and qualifying funds, the FSC has policies in place in relation to, inter alia, risk spreading and risk management to be observed by regulated funds. Furthermore, there are regulations in place in relation to, inter alia, hedging, gearing and borrowing which relate to regulated funds.

5.8.7 Investor protection

Compensation will be paid to investors in authorised collective investments schemes should the manager or trustee/fiduciary custodian be unable, or be likely to be unable, to satisfy claims in respect of any description of civil liability incurred by them to an investor in connection with that business. Compensation is paid on a pro rata basis up to a maximum of £48,000 and the regulations provide for the levying of contributions to the compensation fund from managers and trustees/fiduciary custodians of authorised funds.

5.8.8 Taxes

Taxation in relation to funds is discussed in section 4.7 above.

5.9 Property investment

An increasing number of international property investors have chosen the Isle of Man as a jurisdiction which provides a first class business environment underpinned by excellent service levels and access to the primary commercial real estate markets in the UK and Europe.

Figures compiled by the real estate corporation CB Richard Ellis show that over 70% of investment activity in 2008-2010 in the London real estate market was by overseas investors. Such investors, a mixture of institutions and high net worth individuals, are attracted to the Isle of Man by its proximity to the UK and Europe, and its highly flexible investment vehicles.

In particular, the Isle of Man is uniquely able to offer the administrative convenience of its own value added tax (“VAT”) office, providing expedited registration and grouping for real estate investment structures.

Administrative integrity goes to good governance, which the Isle of Man recognises is an essential element of any offering it makes to the international market in respect of retirement benefits.

Other factors which produce an excellent environment for commercial and high end residential property investment include:

- the Isle of Man's favourable tax regime: a zero per cent tax rate for companies and no capital gains tax, inheritance tax, stamp duty (including on share transfers) or stamp duty land tax;
- the similarity of the underlying principles of the Isle of Man's law (including its flexible and modern company law) to English law enables advisors to property investors to be comfortable dealing with Isle of Man companies, trusts and partnerships;
- a dynamic and flexible regulatory regime for the establishment and operation of open-ended and closed-ended property funds;
- knowledgeable and expert professional advisers on the Isle of Man (lawyers, accountants and bankers) are able to service the needs of sophisticated investment entities and financial institutions; and
- the Isle of Man's first-class reputation as a well regulated international financial centre (reinforced by Moody's and Standard & Poor's "AAA" accreditation) within easy reach of London, the United Kingdom and Europe.

5.10 Retirement benefits

5.10.1 General

The Retirement Benefits Schemes Act 2000 (the "2000 Act") established an overarching framework for the governance of domestic and international retirement benefit plans. The supervision of the 2000 Act is overseen by the Insurance and Pensions Authority (the "IPA") which was originally established as the Insurance Authority in 1986 and became the IPA in January 1997 following the inclusion of retirement benefits under its supervisory remit.

In addition to the IPA, the regulation of domestic plans is complimented by the Department of Social Care (the "DSC") which has a discretionary power to modify and apply United Kingdom statutory provisions relating to retirement benefits. The DSC tends to exercise this power in respect of those provisions relating to the preservation, revaluation, disclosure, and transfer of retirement benefits as well as those that address contracting-out of the State Second Pension. Finally, the Assessor of Income Tax regulates the tax treatment of both domestic and international plans.

International plans may be either occupational or personal plans and are relevant to businesses or individuals whose focus is entirely outside of the Isle of Man. They provide employers and individuals who have a cross-jurisdictional footprint with an opportunity to rationalise retirement provision so that such benefits are provided from one jurisdiction with one regulatory regime and, if desired, one set of trustees, advisers and administrators. Additionally, the scope of "retirement benefits" under the 2000 Act is sufficiently flexible to deliver innovative benefits and the 2000 Act regime allows international plans to provide ancillary benefits alongside the retirement benefits that form the principal purpose of these plans.

Similarly, domestic plans may be either occupational or personal retirement benefit plans. As well as providing domestic plans for local businesses, the Isle of Man is also home to a number of providers that are able to offer, inter alia, qualifying recognised overseas pension schemes ("QROPS") and qualifying non-United Kingdom pension schemes ("QNUPS") that are compliant with the requirements of Her Majesty's Revenue & Customs ("HMRC").

5.10.2 The 2000 Act regime

Two key features of the 2000 Act regime are administrative integrity and flexibility. The latter is crucial for the development of a legislative structure that can operate on both a domestic and international level. It also enables international plans to provide bespoke benefit structures. In a market where retirement benefits are increasingly prized, a commitment to provide such benefits is a significant incentive for existing and potential employees. However, innovative and varied benefits mean employers can allocate resources in a cost effective manner to reflect employees' seniority as well as take account of the inevitable variations applicable to corporate and market strategies on a global scale.

Administrative integrity goes to good governance, which the Isle of Man recognises is an essential element of any offering it makes to the international market in respect of retirement benefits. In this regard, the 2000 Act regime introduced provisions conducive to good management and member protection. In particular, the new regime compares very favourably with the Organisation for Economic Co-operation and Development Guidelines for Pension Fund Governance. Crucially, however, the legislators have been wise enough not to seek to burden employers with overly prescriptive provisions. It is clear from the 2000 Act that, where appropriate, the IPA has been left adequate scope to take into account the specific circumstances of individual plans. Many employers are only too familiar with the problems of prescriptive legislation and how it can lead to unwanted consequences and increased costs.

5.10.3 The environment

Employers and individuals both require reassurance that the jurisdiction within which they establish a retirement benefit plan will not be subject to any catastrophic events that will disrupt the smooth administration of their plans. The Isle of Man's proximity to the United Kingdom and its legal, regulatory, tax and commercial environment all compliment the Isle of Man's offering in this regard. In particular, its tax regime provides a favourable tax treatment for both domestic and international plans and its status as a common law jurisdiction with political stability, investor protection, stable currency, a strong banking sector and sensible regulation are all key components of the Isle of Man's retirement benefit industry.

5.10.4 The way ahead

Ultimately, the provision and administration of domestic and international plans represents an established business sector that is continuing to evidence impressive growth within a coherent and well run regulatory and tax framework. Its development is partly due to the wider economic, political, and regulatory landscape noted above and partly due to the range of complimentary industry sectors that the Isle of Man has established including the life, group medical and captive

The Isle of Man's long maritime tradition and history has led to its emergence in recent decades as an international maritime centre.

insurance sectors and the specialist company and trust service providers the Isle of Man maintains. It offers a jurisdiction that has relevant levels of expertise and resource capable of delivering retirement benefit solutions for Isle of Man resident employers and individuals as well as for multi-national companies, temporary expatriates, and overseas retirees.

5.11 Space and satellite industry

The Isle of Man continues to be recognised as a centre of excellence for the provision of specialised financial and regulatory services to the global space and satellite industry. A positive and proactive regulatory environment is a key factor in the profitability and success of any business and the Isle of Man Government and the private sector has worked hard to establish the Isle of Man as an ideal location for the establishment and incorporation of space and satellite related businesses.

The Isle of Man was the first jurisdiction in the world to offer a zero tax rate for companies working in the space sector. As described in further detail in section 4.1 above, since 1 April 2006 all Isle of Man companies (with two limited exceptions) are now taxed at zero rate. Satellite and space companies can achieve significant savings using the Isle of Man's zero tax regime by structuring the operations of group holding companies or subsidiaries in the Isle of Man or by establishing R&D or manufacturing centres in the Isle of Man. The Isle of Man adopted the United Kingdom's Outer Space Act in 1990.

Many of the space and satellite industry's leading companies have established operations on the Isle of Man with many more actively investigating the opportunities offered by the Isle of Man. Inmarsat, Sea Launch, Telesat and Viasat have operational structures on the Isle of Man. SES, one of the world's largest satellite operators, has a manned office in the Isle of Man from which it runs its Isle of Man subsidiary, SES Satellite Leasing Limited. SES Satellite Leasing Limited is a procurement vehicle for satellites and has initiated 6 satellite programmes, representing over Euro 1.25 billion of capital expenditure.

The Isle of Man is also home to other less well-known, but equally impressive, enterprises in the space sector. For example, Genesys Consulting Limited won top prize in the prestigious European Satellite Navigation Competition 2006 for innovative applications of satellite navigation technology, and manufacturer CVI Technical Optics Ltd, made the laser optics that helped NASA's Phoenix Lander spot snow on Mars in 2008.

A report released in September 2010 by industry analyst, Ascend, placed the Isle of Man fifth in an assessment of the most likely nations to put the next person on the moon, ahead of the United Kingdom and all other European countries. Furthermore, in February 2011, the Isle of Man's role at the forefront of the space industry was endorsed by the publication of a report by the Futron Corporation entitled "Innovative strategies for space competitiveness: assessing the Spacelsle's policy and results". The report states that the "Isle of Man emerges as a leader that consistently punches above its weight".

Space interests on the Isle of Man are uniquely served in that the Isle of Man has chosen to outsource the commercial handling of much of its space activities to ManSat Limited (an Isle of Man company with offices in Houston, Texas and London). ManSat

has been tasked with establishing the Isle of Man as a centre of excellence through the creation of a blue chip space industry on the Isle of Man, attracting to the Isle of Man only the best in the industry.

Working closely with ManSat, Isle of Man satellite companies are able to access orbital positions and radio frequencies via the International Telecommunications Union (ITU) in Geneva. ManSat can make such filings with a speed and efficiency that many jurisdictions cannot match.

The cost of insurance is a significant issue in the space industry. Structuring through the Isle of Man can help minimise insurance costs by virtue of the absence any form of insurance premium tax and the provision of captive insurance services. Many of the global names in insurance provide captive management services on the Isle of Man, such as Willis, Aon and Marsh. With access to such insurance heavyweights, space and satellite companies can take advantage of the Isle of Man's captive insurance regime (which is not subject to European Union captive insurance rules) and avail of the many benefits associated with captives, such as reduced cost of coverage, direct access to re-insurers and improved cash flow.

Despite being worth approximately US\$300 billion per year, the space industry is relatively small in terms of decision makers and knowledge of the advantages of establishing or structuring in the Isle of Man is pervading through this industry relatively quickly. In October 2008, the International Institute of Space Commerce was established on the Isle of Man through a partnership between the International Space University (ISU) and the Manx Government. The Institute's mission is to become the leading think-tank in the study of the economics of space. The Institute is a not for profit foundation and has been located at the International Business School (IBS) on the Isle of Man to "capitalize on the Isle of Man's growing importance and position in the world's space industry".

Until recently, private space travel was the preserve of science fiction. However, what was once a dream is now a reality. It has been estimated that space tourism in the form of orbital and sub-orbital flights could generate more than US\$1 billion per year within the next 15 years. The Isle of Man is home to Excalibur Almaz Limited, a private sector joint venture between the Isle of Man, the United States, Russia and Japan to recommission aspects of the Russian Almaz (the Russian word for diamond) space programme. In 2011, two Soyuz space stations were moved to the Isle of Man to be re-fitted for future human space vacations.

5.12 Transportation

5.12.1 Merchant shipping

The Isle of Man's long maritime tradition and history has led to its emergence in recent decades as an international maritime centre. The first ship was registered on the Isle of Man Ship Register in 1786, but for 200 hundred years only locally operated vessels were registered. In more recent times, the development of an international shipping register was viewed by the Manx Government as a natural complement to the services provided by the finance sector and the existing shipping industry. The Government therefore implemented appropriate legislation and a number of international maritime conventions have been extended to the Isle of Man.

The Isle of Man has been able to offer tax planning opportunities, together with a first class service standard and a Ship Registry that is highly experienced in the more specialist issues relating to yacht registration.

The Isle of Man Ship Register is, in effect, a British register and the ships registered are British ships. Ships registered in the Isle of Man fly the British red ensign and are entitled to British consular services and the assistance of the Royal Navy. The register is not a flag of convenience and enforces high, though not excessive, regulatory standards.

The Isle of Man Ship Registry, a division of the Department of Economic Development, administers the register and is responsible for ensuring the compliance of Manx registered vessels to the required international standards. The Isle of Man Ship Registry has developed a global reputation for efficiency, pragmatism and facilitation. Charges for the registration, survey and certification of ships, and annual fees, are set at levels that are not intended to produce a profit.

The fleet of vessels registered on the Isle of Man Ship Register has passed the 500 ships mark and the total gross registered tonnage exceeds 12.7 million tonnes.

Growth in recent years has been driven primarily through the introduction of new clients from the Far East who have registered some of their prestigious new supertankers in the Isle of Man following targeted marketing in the region. In order to facilitate registration and related services to the Ship Registry's growing number of Japanese clients, the Ship Registry has entered into a Memorandum of Understanding (MOU) with Toko Maruraku Transportation Co. Ltd in Tokyo. The relationship allows Toko Maruraku Transportation Co. Ltd to nominate appointed agents to act on behalf of the Isle of Man Ship Registry who have the authority to both issue documents of the Isle of Man Ship Registry and verify receipt of signed documents.

The Isle of Man Ship Registry appears consistently in the highest tier of the white list published in the annual report of the Paris Memorandum on Port State Control. The white, grey and black lists featured in the report evidence the performance of flag states whose ships have been inspected in European ports. As the name suggests, the white list represents quality flags with a consistently low detention record.

Manx registered vessels often benefit from favourable treatment with national port authorities. The Isle of Man has been admitted into the United States Coast Guard's Qualship 21 Scheme which recognises quality shipping in the 21st Century by analysing the safety performance of ships visiting U.S ports. The Isle of Man is included in the Qualship 21 list, along with only 15 other countries, out of the possible 130 states operating international registers. This is an external benchmark which is very difficult to achieve, but which shows the quality of the ships registered in the Isle of Man.

For the first time, in 2010 the Isle of Man was the subject of an International Maritime Organisation ("IMO") voluntary member state audit. The week long process involved a team of auditors from the IMO visiting the Isle of Man to perform an in depth review of its obligations in respect of its port state, coastal state and flag state activities. The audit is voluntary at present, but it is widely accepted that it will become mandatory very soon and provide IMO with an established framework to approve states to operate an international ship register. A very positive report was issued by the IMO, which indicates areas for improvement, but also contains positive statements about some of the best practices in the Isle of Man and the quality of the fleet.

Shipping as an industry is well represented on the Isle of Man. A number of international ship managers have set up offices which have grown to become significant operations. The industry is serviced by experienced local professionals in the banking, legal, accountancy and insurance professions.

Substantial fiscal benefits arise from setting up a shipping company in the Isle of Man. All Isle of Man companies (with two limited exceptions) are taxed at zero rate on their income in the Isle of Man. The Isle of Man Government also offers various start-up incentives (see section 1.5.1 above) and taxation concessions.

5.12.2 Yachts

Although the registration of private yachts of any size has been possible in the Isle of Man for many years, in January 2003 the Isle of Man adopted a large yacht code which allows commercial yachts of over 24 metres to be registered. The introduction of the Commercial Yacht Register was in response to strong interest from the industry. The Isle of Man has been able to offer tax planning opportunities, together with a first class service standard and a Ship Registry that is highly experienced in the more specialist issues relating to yacht registration. There are many companies in the Isle of Man working in the yacht industry, including a number which offer commercial yacht management facilities.

The success of the Commercial Yacht Register has been immediate, with the fleet exceeding the 100 vessel mark as at June 2011 (together with over 300 registered pleasure yachts). The Isle of Man is regarded internationally as a significant jurisdiction for super-yacht registration, finance and ownership structures, with many of the world's best known super-yachts registered on the Commercial Yacht Register and/or owned by Isle of Man companies or limited partnerships.

The Isle of Man Government's Department of Economic Development is responsible for promoting business development on the Isle of Man.

6 ADDITIONAL INFORMATION

6.1 Other Information Sources

The Isle of Man Government's Department of Economic Development is responsible for promoting business development on the Isle of Man. Its website provides information on specific business sectors, including many free publications. There is a Financial Services Division within the Department which supplies free publications on the financial services sector, including a regular Economic Review newsletter.

Further publications regarding the economy of the Isle of Man are available, again free of charge, from the Economic Affairs Division of the Treasury. There is also a quarterly economic report freely available online from the website of the Council of Ministers.

The author Mark Solly has written numerous books on the Isle of Man, in relation to taxation in particular. These are published by Parallel Books.

The Isle of Man Government's informative website can be accessed at www.gov.im, with access to all departments and their publications, annual reports, legislation and many miscellaneous publications.

Cains is the exclusive member firm for the Isle of Man of Lex Mundi, the world's leading association of independent law firms and commands a prominent position in the provision of global offshore legal services.

6.2 Important Isle of Man Contacts

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Economic Information

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Financial Supervision Commission

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Immigration/Passports

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Isle of Man Film

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Gambling Supervision Commission

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Shipping

Isle of Man Ship Registry
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Space & Satellites

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Work Permits

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Employment Services
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CAINS ADVOCATES LIMITED

The Firm

Cains is a leading international law practice incorporated in the Isle of Man where we have practised law for over one hundred years. Our qualified staff include English barristers and solicitors, as well as lawyers qualified in various other jurisdictions, in addition to Manx advocates.

Cains is the exclusive member firm for the Isle of Man of Lex Mundi, the world's leading association of independent law firms, and commands a prominent position in the provision of global offshore legal services. Our reputation has been built through the sustained provision of a high quality work product at response times expected by the global market. Our success also reflects a dedicated investment in our staff, their training and an IT infrastructure which enables us to ensure that our clients' needs are met efficiently and as cost effectively as possible.

We offer specialist legal services to our international and domestic clients, providing Isle of Man and other legal advice, and regularly coordinate the provision of advice and the management of multijurisdictional transactions. Our international clients include major banks and financial institutions, multi-national enterprises including major airlines and ship-owners, in addition to other public and private companies from a wide cross-section of industry and commerce. We also act for a select number of private individuals.

We specialise in banking, capital markets, financial services, insolvency, securitisation, asset financing, captive insurance, international equity offerings and listings, mutual funds, venture capital, commercial and private trusts and commercial and trust litigation.

In addition to the provision of legal services, our in-house fiduciary service provider, Cains Fiduciaries Limited, is licensed by the Isle of Man Financial Supervision Commission as an administrator of special purpose vehicles and trusts, offering our clients an efficient and competitive service. Corporate services are provided by both the Isle of Man and Singapore offices, with trust services being provided by the Isle of Man office. A full range of accountancy services is also available via Cains Accounting Services Limited.

Offices outside the Isle of Man

We have established operational offices in the City of London and in Singapore, to facilitate the provision of Isle of Man and other offshore legal advice and solutions to the London and Asian markets.

The future

Our firm and lawyers are fully committed to the future development of the Isle of Man and to continuing to provide our clients with the high quality Isle of Man and other legal services to which they have become accustomed.

Our lawyers maintain close links with the Isle of Man government and its various organs in a consultative and advisory capacity, and as such, our interest, in common with the government, is to develop and maintain the Isle of Man's reputation as a leading financial centre.

If you would like more information on us, our services and the Isle of Man, please visit our website at www.cains.com.

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.

This guide is believed to be accurate on the basis of materials available at 1 August 2011, with selected additions up to the date of publication.

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