

Business Forms in the
Isle of Man: Part 2

A Guide to Isle of Man
**Partnerships,
Trusts & LLC's**

This Brochure - Business Forms in the Isle of Man: Part 2, covers Partnerships, Trusts and LLCs and is intended to complement the brochure entitled Business Forms in the Isle of Man: Part 1, which covers the Companies Acts 1931-2004 and a third brochure covering the Companies Act 2006.

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Disclaimer

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BUSINESS FORMS IN THE ISLE OF MAN SECTION 2

Introduction

The Isle of Man Man is an island of 221 square miles located in the Irish Sea, equidistant between the northeast of Ireland, the southwest of Scotland, and the northwest of England. It has been a separate self-governing jurisdiction for over a thousand years, and is not and has never been a part of the United Kingdom.

Every country and jurisdiction has its distinct forms of business. The Isle of Man is no exception. The Isle of Man has been legally and politically distinct for over a thousand years, and in modern times has become one of the world's leading international financial services centres.

The Isle of Man is a 'Common Law' jurisdiction. The basis of Manx law is Manx customary law, derived from a combination of Gaelic Brehon law and Norse Udall law, both systems being influenced by English Common Law over the centuries. The Isle of Man closely follows English legal precedents and legislation.

Part of the success of the Isle of Man in this area is its professional services industry. The Judiciary of the Isle of Man enjoys the highest international reputation and its judgements carry great weight internationally. The accountancy profession is well established with major international firms represented.

The Institute of Chartered Secretaries and Administrators is represented, as are the Society of Trust and Estate Practitioners, the Institute of Directors and the Institute of Financial Services.

The Financial Services Industry is well regulated with the Financial Supervision Commission ("FSC") as regulator for deposit taking, investment business, services to collective investment schemes, corporate services, trust services and money transmission services. The Insurance & Pensions Authority regulates pensions and insurance business and the Gambling Supervision Commission regulates the gaming industry.

The Isle of Man is committed to fulfilling its international obligations in relation to combating criminal activity. As such it has implemented statutory measures, which are compliant with internationally accepted standards, in relation to the active combating of money laundering and other criminal activity and countering the financing of terrorism.

The Companies Registry is part of the Financial Supervision Commission and has responsibility for the registration of companies (and other business entities) and for the recording of information and maintenance of company registers. This information is made available to the public.

Guidance on a number of topics is made available by the Companies Registry at www.fsc.gov.im/companies/1931companypracticenotes.xml

THE GENERAL STRATEGY FOR LICENSING AND REGULATING CORPORATE AND TRUST SERVICES

Under the Financial Services Act 2008, "a person must not carry on, nor hold themselves out as carrying on, in or from the Island, a regulated activity in respect of which no licence is in force" unless that person falls within an exemption from the requirement to hold a licence.

Regulated activities and financial services licences

Financial services licences are designated by the class of regulated activity to which they refer. A summary of all the regulated activities can be found on the FSC's website at www.fsc.gov.im

A fiduciary business may hold a licence to carry on:

- Class 4 regulated activities – corporate services; and/or,
- Class 5 regulated activities – trust services.

The FSC's licensing policy

The FSC's General Licensing Policy sets out the criteria that applicants must satisfy to be successful in securing and retaining a financial services licence. The FSC requires that all licenceholders and key staff are fit and proper persons. The test of fitness and propriety is based on the key elements of integrity, competence and solvency.

Once licensed, Corporate and Trust Service Providers are required to conduct their business in accordance with the Financial Services Rule Book 2008.

TRUSTS

Definition of a Trust

A trust relies on the distinction between the legal ownership interest in property and the equitable interest in that property. The trustee is given the legal ownership interest, which enables him to deal with those assets as if they were his own property, subject to the terms of the trust. The beneficiaries have the equitable interest in the property which represents the rights to enjoy the benefit of the property subject to the terms of the trust. The beneficiaries can enforce the trust against the trustee and can, if necessary take legal action against the trustees.

For the purpose of this outline, however we may note that a trust may be:

- a. Express or Non-express;
- b. Private or Public;
- c. Bare.

The most commonly used form of trust in a financial services environment is an inter vivos discretionary trust. These are created by the express and intentional declaration of a settlor. This declaration is normally a written 'deed' also referred to as a trust instrument. Trusts can also be created by will on the death of the settlor.

The difference between a private and public trust exists purely in relation to its purposes. For example, a charitable trust for a public charitable purpose is a public trust. Such trusts in the Isle of Man must be registered, must file annual audited accounts, and are subject to supervision by Her Majesty's Attorney-General in the Isle of Man. A public trust is always an express trust.

A 'bare' trust is where a trustee holds property on trust. The trustee has no power or discretion to do anything other than hold the property, and deliver it when requested to the beneficiary. A common example of a bare trust is a 'nominee' relationship.

The situs or "residence" of a trust will normally be that of the trustee, unless it can be shown that the management administration of the trust occurs elsewhere. As such, if the situs of administration is in the Isle of Man, the Manx courts are likely to have jurisdiction, irrespective of the proper law of the trust as set out in the trust instrument. It is however prudent to ensure that the trust instrument sets out the position of the trust and that this reflects the reality of the situation.

Legislation

"As noted, the law of trusts is derived from the rules of equity is concerned with recognition of that relationship, enforcing its provisions and providing remedies where there has been a breach of the relationship. Legislation has not been used to 'create' trust law, but to guide it and to check it when it threatened to evolve undesirable practices, or to clarify uncertainties.

The legislation that is applicable to trusts is as follows:

- (i) Trustee Act 1961;
- (ii) Variations of Trust Act 1961;
- (iii) Perpetuities and Accumulations Act 1968;
- (iv) Powers of Attorney Act 1971;
- (v) Powers of Attorney Act 1983;
- (vi) Trusts Act 1995;
- (vii) Purpose Trusts Act 1996;
- (viii) Trustee Act 2001.

Other legislation which is relevant to trusts is as follows:

- (i) Settled Land Act 1891;
- (ii) Settled Land Act 1983;
- (iii) Public Charities Act 1922;
- (iv) Charities Act 1962;
- (v) Charities Act 1986;
- (vi) Wills Act 1985.

The Trust Law of the Isle of Man is substantially similar to that of England. The Isle of Man is a signatory to the Hague Convention on the Recognition of Trusts.

PARTIES TO THE TRUST

The Settlor

Also commonly referred to as a 'Grantor', the settlor establishes the trust by transferring the trust property to the trustees to hold on the terms of the trust. At this point the settlor ceases to have a role in the trust.

The reality is that the settlor is unlikely to be entirely comfortable about divesting himself of any say over the property. Tools that can be used to give the trustees a good steer of what his wishes might be include:

- The terms of the trust instrument itself;
- A letter of wishes which gives guidance to the trustees (although is not binding on them);
- Reserving certain powers to himself in the trust instrument (discussed below);
- Appointing a protector.

The Trustee

A trustee is obliged to manage and dispose of trust property in accordance with the terms of the trust instrument. A trustee can either be an individual ("of sound mind and over the age of majority") or a company.

The initial appointment of trustees is likely to be made by decision of the settlor. The trust instrument should provide the means of replacing or appointing additional trustees. The courts have a power to intervene where the situation requires it. The Isle of Man generally requires that there are either two individual trustees or one corporate trustee. Those persons who are able to provide trust services are the following:

- Fiduciary service providers licensed by the Financial Supervision Commission to conduct trust services under Class 5. A list of these can be found at:

www.fsc.gov.im/fsc/licence/welcome.xml

- Manx advocates who can be found at:

www.iomlawsociety.co.im/advocates-members.asp

- Manx accountants who can be found at either:

www.icaew.com/ and click on 'Find a chartered accountant',
or,
www.accaglobal.com/iom

The Beneficiaries

Beneficiaries are those people for whose benefit the trust is created. They can either be named or described by reference to a class of persons in the trust instrument. Beneficiaries not only have the right to enforce the trust against the trustees, but may also enforce their equitable ownership interest against others as necessary.

Beneficiaries should not attempt to influence how the trust is administered – the administrative and management powers are vested in the trustees who have duty ensure that this is done in the best interests of the beneficiaries.

The settlor may be a beneficiary.

The Protector.

This role is not mandatory however protectors are being used more frequently. The role that they play is twofold:

- To provide guidance to the trustees in carrying out their duties;
- To provide comfort to the settlor that the trust is being administered in accordance with his wishes and intentions.

The role of protector can be undertaken by a professional in the course of his business or, can be filled by a person who is acquainted with the particular circumstances surrounding the trust. Certain powers can be reserved to the protector in the trust instrument (again, see below).

Recent litigation has established that a protector has a fiduciary duty, like a trustee, to the beneficiaries, and not to the settlor. However, there is nothing to prevent the settlor from being appointed to the role of protector.

ELEMENTS OF A TRUST

Trusts are often created and constituted at different times. The trust is created when the trustees become bound in law to hold and dispose of the trust assets in accordance with the terms of the trust. The trust is constituted when the legal interest in the trust assets is lawfully transferred to the trustees.

There are "three certainties" that must be fulfilled for a trust to be created, or the trust will fail. These are certainty of intention, subject and objects.

Certainty of intention is a vital element of the creation of a trust. Whilst it is possible to reserve powers to either the settlor (or protector), case law indicates that the reservation of too much power can be taken as evidence that there was no intention to create a trust. If a trust is challenged in court, this can result in the trust property being deemed to have been the property of the settlor at all times which may have adverse tax consequences for the settlor or his estate. The Isle of Man does not have express reserved powers legislation.

Certainty of subject requires the property that is to be settled in the trust to be described with "certainty and particularity". If it proves impossible to identify the trust property the trust will fail.

Certainty of objects requires that the intended beneficiaries of the trust must be named, identified or described with sufficient certainty as to allow them to be determined and identified with certainty. Since the beneficiaries are able to enforce the trust against the trustees, it follows that if the trust is not enforceable against the trustees, the trust will again fail.

An exception to this rule is found in purpose trusts. These are created for a purpose which cannot enforce the trust. In this case, the law makes provision for the appointment of an **enforcer**, whose role is to enforce the trust against the trustees.

Perpetuity Period

As a general rule, trusts on the Isle of Man have a perpetuity period (or lifespan) of 150 years.

Purpose trusts have a perpetuity period of 80 years.

Accumulation Period

There is no statutory rule against accumulations in the Isle of Man and the trust property can be added to for the duration of the trust.

DUTIES OF A TRUSTEE

The Trustee Act 2001 imposes a statutory "duty of care" in certain circumstances. It requires a trustee to exercise:

Such care and skill as is reasonable in the circumstances, having regard in particular:

- (a) To any special knowledge or experience that he has or holds himself out as having; and,
- (b) If he acts as trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

Within that framework, the trustee has an absolute duty to the beneficiaries of the trust, to act fairly and impartially towards them at all times. It is an office of absolute faith.

The trustee must administer the trust assets strictly in conformity with the trust deed, statute and his fiduciary duty to the beneficiaries.

The duties of the trustee includes being ready to provide the beneficiaries a full and proper explanation of the dealings of the trust. There is no statutory provision covering the format that the trust accounts must take. Accounts need not be audited. However, where deemed appropriate or necessary, trustees can arrange for an audit which will be paid out of the trust assets.

THE ROLE OF THE COURT

The rights of a beneficiary will depend upon:

- a. The intention of the settlor of the trust;
- b. The type of interest/property conveyed to the trustee;
- c. The type of trust.

Where the beneficiaries lack the capacity to enforce the trust against the trustee for any one of a number of reasons, the Manx case of *Schmidt v Rosewood Trust Ltd* (2003) has confirmed that the right to an accounting should be regarded as one aspect of the inherent jurisdiction of the court. This ruling is the authority on this matter and has ensured that the trusts are enforceable against the trustees, regardless of the way in which the trust is worded.

The Court also has an inherent right to approve the retirement of a trustee just as it has the right to appoint a trustee. This ensures that there will not be a deadlock with the trustees.

A beneficiary has the right to seek injunctions and Court orders to compel a trustee to discharge his obligations, or otherwise to direct a trustee, or even to remove trustees and appoint new trustees.

Where a trustee has been in breach of trust, the Court will order the trustee to make restitution. The rule is that the trustee in breach of trust must restore to the trust what has been lost by the trust as a result of the breach.

TAXATION

Taxation is a dynamic area and the latest information can be obtained from the Income Tax Division on +44 (0)1624 685400, or by visiting the Division's website at www.gov.im/treasury/incometax

VARIATION AND TERMINATION OF TRUSTS

Unless specifically provided for in the trust deed, the deed as executed is binding and cannot be changed. It is possible to include a specific power of revocation in the trust instrument, thereby making the trust revocable.

The courts have an inherent jurisdiction to approve alterations of the terms of a trust.

The exercise of this jurisdiction is very limited and usually relates only to the management of the trust. There are also certain statutory powers given to the courts relating to the variation of trusts.

The court will pay a great deal of attention, when considering a proposed variation, as to whether the variation will remain consistent with the original intentions of the settlor.

FORCED HEIRSHIP

Some jurisdictions are subject to 'forced heirship' provisions, whereby the assets of a deceased person must be divided as prescribed by law. This can create a conflict where the assets have been settled on a trust. The Trusts Act 1995 resolves this conflict by stating that foreign 'forced heirship' provisions shall have no effect in regard to a trust in the Isle of Man. Settlers from jurisdictions with forced heirship provisions would be advised that they heed professional advice to ensure that they are seen to have relinquished control over the trust assets.

LIMITED LIABILITY COMPANIES ("LLCS")

Characteristics

An Isle of Man LLC is governed by the Limited Liability Companies Act 1996.

The documents which govern the LLC are the articles of organisation, which are registered at the Companies Registry and appear on the public record, and the operating agreement, which is a private document covering the internal regulation and control of the LLC. Once satisfied that the appropriate documentation has been received, the Companies Registry will issue a certificate of organisation which is proof of registration.

The articles of organisation must include the following:

- **The name of the LLC.** Every LLC name must be approved by the Companies Registry. The use of certain names is prohibited or subject to restrictions, for example where the name is too like that of an existing company, the name implies that a licensable activity is undertaken or there is a suggestion of pre-eminence. Guidance on choosing a company or business name is available from the Companies Registry at www.fsc.gov.im/companies/companynames

In those circumstances where the activity undertaken justifies it, the Companies Registry may approve the use of a restricted name.

The Companies Registry has the power, in certain circumstances, to direct a company to change its name:

- **Members.** The names and addresses of the members;
- **Registered Agent.** The name and address of the Registered Agent, who must be qualified to act as Registered Agent as set out under the Limited Liability Companies (Registered Agents' Qualifications) Regulations 2003;
- **Capital Contribution.** The total amount of the capital contribution made by the members;
- The right of the members, if any, to admit additional members;
- The right of a member to receive out of the property of the LLC repayment of all or a part of his capital contribution;
- **Appointment of a Manager.** Whether the members are permitted to appoint a manager.

LLCs do not have directors and the members of the LLC can manage its affairs. However, it is permissible to appoint one or more managers to manage the LLC in accordance with the terms of the operating agreement.

The liability of the members is limited to the amount of their capital contribution as set out in the articles of organisation.

Membership is not transferable or assignable.

There is no statutory requirement for any formal meetings of members, nor is there any requirement for the preparation of annual financial statements, although the Act does require that "the accounting records shall be sufficient to show and explain the company's transactions".

Charges on the assets of the LLC must be registered, as is the case with a company. Where appropriate, any amendments to the Articles of Organisation must be filed at the Companies Registry.

An annual return must be made to the Companies Registry, setting out the details of the members and any manager. Any changes that are made to the LLC during the year must be notified to the Companies Registry on the appropriate form.

Uses of an Isle of Man LLC - As a simple form of business entity

In many cases, conventional companies are complex and costly to administer. The requirement for the separation of

ownership (shareholders) from management (directors), the need for annual general meetings, etc. are inappropriate for a small holding company, or a small trading business. The LLC can offer an alternative.

A list of Service Providers licensed by the Financial Supervision Commission together with the services they are licensed to provide can be found at: www.fsc.gov.im/fsc/licence/welcome.xml

PARTNERSHIPS

Legislation

The law relating to partnerships is contained in the Partnership Act 1909. This provides for two types of Partnership:

- a. General Partnership;
- b. Limited Partnership.

Definition of Partnership

"Partnership is the relationship which subsists between persons carrying on a business in common with a view to profit".

A company incorporated under the Companies Acts or any other Act of Tynwald is not a partnership within the terms of the Partnership Act

Any association of more than twenty persons formed for the purpose of carrying on any business in common with a view to gain or profit must be registered under the Companies Acts and may not be a partnership under the Partnership Act 1909, but this is modified by excluding from this prohibition:

- a. Firms of advocates (Manx lawyers), all of whose partners are advocates;
- b. Firms of accountants, all of whose partners belong to recognised bodies;
- c. Firms of stockbrokers in a Stock Exchange, all of whose partners are members of that Stock Exchange;
- d. Any other firms specified by the Isle of Man Treasury by regulation.

Regulated Collective Investment Schemes have been excluded from this prohibition, as have partnerships for the ownership, management or charter of ships and aircraft.

In determining whether a partnership does or does not exist, the following rules are applied:

- a. Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof;
- b. The sharing of gross returns does not itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.

- c. The receipt by a person of a share of the profits of a business in prima facie evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business; and in particular:
- (i) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such;
 - (ii) A contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such;
 - (iii) A person being the widow or child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such;
 - (iv) The advance of money by way of a loan to a person engaged, or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not itself make the lender a partner with the person or persons carrying on the business or liable as such; provided that the contract is in writing, and signed by or on behalf of all the parties thereto;
 - (v) A person receiving, by way of annuity or otherwise, a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as such.

GENERAL PARTNERSHIP

Partnership Property

A partnership is not a legal person in its own right, as is a company. As such therefore, assets of a partnership are owned in the joint names of all partners, or, where this is inconvenient, the assets will be owned in the name of a trustee who will hold the assets in trust for the partners.

Assets acquired for the partnership must be held and applied exclusively for the partnership and in accordance with the partnership agreement.

The assets of a partnership are owned jointly by the partners. Thus, a judgement for debt against an individual partner cannot be enforced against partnership property, although the interests of an individual partner in that property can be charged.

The interests of the partners in the partnership assets, and the rights and duties of the partners are governed by the partnership agreement, if there is one, which may be express or implied. In the absence of any agreement to the contrary the following rules apply in relation to the partnership property:

- a. All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards all losses;
- b. The partnership (or "firm", as it is sometimes styled) must indemnify every partner in respect of all payments and liabilities made and incurred by him on behalf of the firm;
- c. Any individual partner who makes capital available to a partnership in excess of the capital required from him or her is entitled to have the excess treated as a loan, with interest payable to him at 5 per cent. Interest is not payable on the capital that is required from partners under the partnership agreement.

If a partner assigns his partnership interests, the assignee is not entitled to exercise the rights of a partner, other than to receive such profits or, on termination of the partnership, to receive such capital distributed by the partnerships as is distributable to the assignor.

Relations of Partners to Persons dealing with the Partnership

Every partner is an agent of the partnership for the purpose of the business of the partnership, and an act or instrument relating to the business and executed in the name of the partnership by a partner is binding on the partnership.

An admission or representation made by a partner concerning the partnership affairs and in the ordinary course of business is evidence against the partnership.

Where notice is given to an active partner, such notice also operates as notice to the partnership (except where that partner is party to fraud against the partnership).

Where notice is given by a partnership that a restriction has been placed on the power of one or more partners to bind the partnership, persons having received such notice cannot bind the partnership to acts done in contravention of such restriction.

Where an action of a partner in the course of business of the partnership gives rise to loss or injury to another person, not being a partner, the partnership is liable to the same extent as the partner concerned. If a partner misappropriates the assets of a third party which are in the custody of the partnership, the partnership is liable to make good the loss. In respect of the liability of a partnership in this context, each partner is jointly and severally liable, i.e. each partner has full individual liability as well as liability jointly with his partners for the liabilities of the partnership.

If a partner, being a trustee, improperly uses the property of the trust in the partnership, the liability of such partner for breach of trust is confined to himself. The other partners are not liable. But any other partner who has received notice of the breach of trust may become individually liable. Trust property in the possession of the partnership can be reserved for the trust.

Every partner in a partnership is liable jointly with the other partners for all debts incurred while he is a partner. After his retirement or death, he or his estate continues to be liable.

Where a partner pledges the credit of the partnership for a purpose apparently not connected with the business of the partnership, the partnership is not bound by that partner's action.

Any person who, not being a partner in a partnership, holds himself out as a partner in that partnership shall be liable, as if he were a partner in that partnership, in respect of any liabilities incurred thereby. But where the name of a partnership contains the name of an individual, the continued use of that individual's name after his death does not make his estate liable.

A person admitted to an existing partnership as a new partner does not become liable to the creditors of the partnership prior to his admission.

A continuing guarantee given by a partnership to a third party, in the absence of an agreement to the contrary, automatically terminates on a change in the constitution of the partnership. An incoming partner cannot be bound by the commitments entered into by the previous partners.

Relations of Partners to One Another

The rights and duties of the partners in the partnership are determined in a partnership agreement. In the absence of such an agreement, whether express or implied, there are certain rules that are applied in relation to the partnership property. Other rules are:

- a. Every partner may take part in the management of the partnership business;
- b. No partner may be paid a salary or remuneration;
- c. All partners must agree before any new partner is introduced;
- d. Day to day business decisions may be made by a majority of partners, but any fundamental change to the nature of the partnership business requires unanimous agreement of the partners;
- e. The records of the partnership are to be kept at the principal place of business, and every partner may have access to them and copy them.

The rights and duties of partners may be varied by the consent of all the partners, and such consent may be express or implied.

A partner can be expelled only by the unanimous agreement of all other partners. A simple majority is insufficient, unless such arrangement has been expressly agreed by all the partners.

Where no fixed term has been agreed upon for the duration of the partnership, any partner may, by giving proper notice, terminate the partnership. If the partnership agreement is in writing, the notice must also be in writing.

Where a partnership entered into for a fixed term continues after the expiration date, and without any new express agreement, the previous arrangements will continue.

Accounting Information - Conflicts of Interest

Partners must render true accounts and full information on everything affecting the partnership to any other partner or his legal representative.

Every partner must account to the partnership for any benefit or profits made by him from any transaction concerning the partnership, its assets or connections.

If a partner without the consent of the other partners, carries on another competing business of the same character, he must account to any pay over to the partnership all profits made from such other business.

Taxation of Partnerships

For the purpose of Manx income tax a partnership is not a taxable entity and so is not assessable in its own right in respect of the partnership's annual profits or gains. However, each partner is liable to pay income tax on their share of partnership profits. A non-resident partner is only liable to Manx income tax on income derived from Manx sources.

Further information may be found on the Income Tax Division's website, www.gov.im/treasury/incometax/ in particular Practice Note 145/07.

Dissolution and Winding Up

Upon the dissolution of a partnership, the authority of each partner to bind the firm, and the other rights and obligations of the partners, continues, but only so far as is necessary to wind up the affairs of the partnership and to distribute the assets.

The partnership ceases from the date of dissolution. However, where a third party deals with a partnership after a change in its constitution (i.e. the dissolution of the old partnership and the creation of a new partnership) he is entitled to treat all apparent members of the old partnership as continuing to be members of the new partnership until he has had notice of the change.

Voluntary Dissolution

A partnership is dissolved:

- a. On the expiration of the fixed term for the partnership, if there be such a fixed term;
- b. If the partnership is entered into for a specific "adventure", upon the conclusion of that "adventure";
- c. By a partner giving notice to his fellow partners of his intention to dissolve the partnership;
- d. On the death of a partner;
- e. On the bankruptcy of a partner;
- f. At the option of the partners, if a partner gives a charge to a third party on his share of the partnership property in relation to his private debts;
- g. If it becomes illegal for the business of the partnership to be carried on.

Involuntary Dissolution

On application by a partner, the court may decree a dissolution of the partnership where:

- a. A partner is of unsound mind;
- b. A partner is, for any other reason, incapable of performing his part of the partnership contract;
- c. The conduct of a partner (other than the applicant partner) has been prejudicial to the business of the partnership;
- d. A partner (other than the applicant partner) persistently is in breach of the partnership agreement or otherwise makes the partnership impracticable;
- e. The business of the partnership can only be run at a loss;
- f. The court is, in the circumstances, of the opinion that it is just and equitable for the partnership to be dissolved.

Dissolution - General

After the dissolution, the authority of a partner continues but only in so far as it is necessary to wind up the affairs of the partnership and to complete unfinished transactions. A bankrupt partner has no authority.

On the dissolution of a partnership, every partner is entitled to have the partnership property firstly to be used to pay off the liabilities of the partnership, and thereafter to be distributed to the partners in accordance with the rights of the partners. In this context, a partner may, after the dissolution of the partnership, apply to the court to wind-up the business and affairs of the partnership.

Where one partner has paid a premium to another partner on entering the partnership for a fixed term, and the partnership is prematurely dissolved otherwise than by the death of a partner, the court may order the repayment of all or part of the premium.

Where a partnership contract is rescinded on the grounds of the fraud or misrepresentation of one of the partners, the injured partner has certain rights as against the partnership property and the partner guilty of such fraud or misrepresentation.

Where a partnership has been dissolved as the result of the retiral or death of a partner, and the remaining partners have carried on business in a new partnership without settling accounts with the retired partner, or his estate, the outgoing partner, or his estate, is entitled to share in any post-dissolution profits, or to interest, on the amount of capital attributable to him and used in the partnership.

On the dissolution of a partnership, any partner may give public notice and may require the other partners to concur for such purposes.

The Partnership Act 1909 imposes no specific duties on the partners after the dissolution of the partnership, but there is an implied obligation to wind-up the affairs of the partnership in accordance with the procedures and the rights of partners set out in the Act.

In a dissolution of a partnership, the following rules, subject to any agreement, apply:

- a. Losses shall be paid first out of profits, second out of capital, lastly by the partners individually in the proportion in which they were entitled to share profits.
- b. Assets shall be applied:
 - (i) In paying the debts and liabilities of the partnership;
 - (ii) In paying to each partner rateably what is due to him for advances, as opposed to capital;
 - (iii) In paying to each partner rateably what is due to him in respect of capital;
 - (iv) In paying the ultimate residue among the partners in the proportions in which profits were divisible.

LIMITED PARTNERSHIPS

General

The following provisions apply additionally to limited partnerships which are also governed by the Partnership Act 1909.

A limited partnership may not have more than twenty members, unless it falls within the exempted categories as previously noted.

It must consist of one or more "General Partners" with unlimited liability, and one or more "Limited Partners". A limited partner shall, at the time of entering the partnership, contribute a defined amount of capital or property, and his liability for the debts of the partnership is limited to that amount. A limited partner may not draw out or receive back, directly or indirectly, his contribution during the continuance of the partnership. A corporation may be a limited partner.

A limited partnership must be registered, and in default thereof, every limited partner shall be deemed a general partner with unlimited liability.

Notwithstanding the registration requirements, a limited partnership does not constitute a legal person in Manx law.

Limited partners may not take part in management, unless, following an Statutory Order made by the Manx Government, they are permitted to do so.

The Financial Supervision Commission is also the registrar of limited partnerships, and is required to keep appropriate records.

The following information must be supplied to the Companies Registry when registering a Limited Partnership:

- a. The name of the partnership;
- b. The general nature of the business;
- c. The principal place of business;
- d. The full name of each of the partners;
- e. The term, if any, for which the partnership is entered into, and the date of commencement;
- f. A statement that the partnership is limited, and the description of every limited partner as such;
- g. In respect of prescribed classes of limited partnership only, the sum contributed by each limited partner, and whether paid in cash or how otherwise.

Upon registration, the Financial Supervision Commission shall issue a certificate of registration.

During the continuance of a limited partnership, any change made in the particulars provided on establishment must be notified to the Financial Supervision Commission within a month.

A certificate of registration or a copy of or extract from any statement registered shall, if certified a true copy by the Financial Supervision Commission, be received in evidence in all legal proceedings.

Any person may inspect the statement filed by the Financial Supervision Commission for a small fee. Any person may require a certificate of registration or a copy of or extract from any registered statement certified by the Financial Supervision Commission for a prescribed fee.

Public Notices

The following notices must be advertised in two newspapers published in the Isle of Man:

- a. Notice of any change whereby a general partner becomes a limited partner;
- b. Notice of any assignment by a limited partner of his share in the limited partnership to any other person.

Modification of General Law of Partnership

The following modifications apply:

- a. A limited partner shall not be dissolved by the death or bankruptcy of a limited partner, and the lunacy of a limited partner shall not be grounds for a court dissolution, unless this is the only means of realising the lunatic's share of the assets;
- b. After a dissolution, the affairs of a limited partnership will be wound up by the general partners;
- c. Applications to the court to wind up a limited partnership shall be by petition under the Companies Acts;
- d. Subject to any agreement expressed or implied between the partners:
 - (i) Any difference arising as to ordinary partnership business may be decided by a majority of general partners;
 - (ii) A limited partner may assign his share in the partnership to a third party, and the assignee shall then become the limited partner in place of the assignor;
 - (iii) The other partners may not dissolve the partnership by virtue of a limited partner charging his share of the partnership for his separate debt;
 - (iv) A person may be introduced as a partner without the consent of the existing limited partners;
 - (v) A limited partner shall not be entitled to dissolve the partnership by notice.

The Isle of Man is a land of possibility where people and business will find the right environment in which to reach their full potential

Isle of Man Finance

The Treasury

Douglas

Isle of Man IM1 1PG

British Isles

Telephone: +44 (0) 1624 686400

Facsimile: +44 (0) 1624 686454

Email: enquiries.fs@gov.im

www.isleofmanfinance.gov.im

