



C O R P O R A T E A N D T R U S T

Isle of Man Foundations

A Guide to Isle of Man Foundations

In November 2011 new legislation was passed on the Isle of Man known as the Foundations Act. The Act came into force on 1st January 2012.

A foundation is a legal concept more common in civil law jurisdictions and has never before been a legal entity within Manx law.

A foundation is an incorporated entity which may be described as a self-owning legal person. It is capable of holding assets and property; it can sue and be sued.

Being an incorporated entity, a foundation can enter transactions in its own name. It has no "owner" so the person who establishes the foundation cannot be liable for its debts.

Comparisons with Trusts and Companies

A foundation is often described as a combination of a trust and a company, and it does indeed have many of the characteristics of both.

A foundation is similar to a company in that it has limited liability.

A trust is a legal relationship between a settlor, a trustee and a beneficiary. A foundation is a separate legal person and has the facility to own and manage assets in its name and arrange funding.

Unlike trusts, foundations can exist in perpetuity.

A primary difference between a foundation and a limited company is that a foundation may not enter into commercial trading that is not identical to the foundation's objects. By holding a trading subsidiary it is possible to circumvent this.

Uses of a Foundation

An Isle of Man Foundation has a wide range of uses including:

- An alternative to a trust in civil law jurisdictions where trusts are not so readily recognisable
- Used by clients who might have considered a trust but wish for limited liability protection as with an incorporated company
- For use by charitable foundations
- As a wealth management or succession planning vehicle
- Holding depreciating assets – for example, business jets and superyachts
- To hold off-balance sheet structures or "orphaned" assets which have no obvious ownership structure

Foundation Parties and Terminology

Assets: In respect of a foundation this means:

Any asset, including money, investments and other property, dedicated to the foundation

Any capitalised income added to the assets so dedicated.

The money, investments and property from time to time representing those assets and capitalised income.

Beneficiary: A person or class of person who may be permitted to benefit from the objects of the foundation. However, they have no automatic legal right to the foundation's income.

Council: Similar to the board of directors of a company.

Dedicator: A person, other than the founder, who dedicates assets to the foundation.

Enforcer: A person who is the enforcer of the foundation; this is an option not a requirement.

Financial Statements: Written statements of the foundation.

Founder: A person who instructed the Class 4 licenceholder to apply for the establishment of the foundation - similar to a trust settlor.

Instrument: Similar to a company's memorandum of association and defines the purpose or objects for which the foundation has been established.

Objects: These define the purpose of the foundation and must be specific in what the foundation is trying to achieve. They can be for the benefit of a person, class of persons or be charitable.

Rules: See next page.

Registered Agent: Is the Class 4 licenceholder (such as Döhle Corporate Services) who is the registered agent of the foundation – every foundation must have a registered agent.

Foundation Rules

It is important that the foundation's rules are written in accordance with the founder's requirements and wishes.

The appointment of an enforcer is important if the founder wishes to have a high level of control over the day-to-day running of the foundation. The founder may, if he/she so chooses appoint himself/herself to be the enforcer.

The rules should make, but are not limited to, the following provisions:

- The powers of the founder
- The appointment of council members, the registered agent and the enforcer, and their roles
- Setting remuneration levels of council members, enforcers and registered agents
- Distribution of the foundation's assets
- The rights, if any, of the beneficiaries
- Procedure for winding up of the foundation and the distribution of any remaining assets

Foundation Documentation

The documents required for establishing a foundation are comparable to a company's memorandum and articles of association.

The first document is the foundation instrument, which is similar to the memorandum. It sets out the objects and members of the council. This is a public document and must be written in English.

The second document is the foundation rules, which is similar to the articles. This is a private document and does not have to be filed with the Companies Registry. It establishes the details concerning the running and management of the foundation. This may be written in a language other than English, but the foundation must provide a copy of an accurate English translation to the Registered Agent.

Döhle Services

As a Class 4 licenceholder Döhle Corporate Services can provide the following services to persons wishing to establish an Isle of Man Foundation:

- **Registered Agent:** Act as the Registered Agent in establishing the foundation
- **Council Members:** Provide members of the foundation's council
- **Structuring:** Provide a tax efficient structure tailored the client's needs
- **Enforcer:** Act as an enforcer when not required to be a council member
- **Other Services:** Provide full administration services, bookkeeping, financial statements, tax returns and maintain bank accounts



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