

### **...Firewall Asset Protection For Pensions**

At Optimus we take immense pride in providing retirement solutions that are relevant, user-friendly and high-value in all the markets we service. In the UK and, to some extent western Europe, the quality of the Isle of Man's regulatory system and consumer protection capabilities is well-known.

It seems that the further you travel, as we have done recently to Turkey and South Africa, the more scrutiny is placed on jurisdictional integrity. Thankfully there is no shortage of information to demonstrate the quality of the of the Isle of Man as a jurisdiction with its financial strength, a regulator and regulatory system held in global high esteem and an enviable pedigree in global financial services.

This is impressive and welcome to the people we meet but, invariably, they want a deeper dive into how well-protected, legally, their pension assets are.

Our international pensions are structured as trusts and therein is the crux of the matter because trusts are not always well-understood to a far-flung audience. In many countries with a civil law system they aren't even recognised.

This is where 'firewall' legislation comes in, providing an essential legal asset protection mechanism for pension (and other trust) assets. We spoke to Catherine Gilmartin, Private Client Solicitor at Isle of Man law firm Long & Humphrey to get the expert's view.

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#### **What is firewall legislation?**

Firewall legislation exists to protect Isle of Man trust structures from the impact of conflicting foreign laws. Trusts can, in theory, be subject to attack from a foreign court on the basis that the trust in some way denies, or conflicts with, the rights of an aggrieved party arising under foreign law. This is a particular risk where that foreign jurisdiction does not recognise trusts. Firewall legislation was introduced in the Isle of Man in the Trusts Act 1995 and strengthened and by the Trusts (Amendment) Act 2015.

#### **How does the legislation work?**

Isle of Man firewall legislation provides protection in several ways. Any questions regarding the administration of a Manx trust including the trustees' powers and duties will be decided under Manx law without deferring to the law of any foreign jurisdiction connected with the trust. An Isle of Man Trust cannot be void, voidable or liable to be set aside where foreign law or a foreign court does not acknowledge trusts. The 2015 Act extends this protection to cover the Trustees, the Beneficiaries, the Protector of a Trust and its Settlor so that the capacity of such persons will not be grounds to challenge a trust even if the foreign legal jurisdiction does not recognise trusts. The 2015 Act provides that no such person will be subject to a liability, obligation or be deprived of a right, claim or interest by reason of the law of the foreign jurisdiction that does not recognise trusts. No judgement or order of a court outside the Isle of Man is to be recognised or enforced if this is inconsistent with the 1995 Act or the High Court of the Isle of Man.

In conversation...

### ***Is it bulletproof?***

No firewall legislation anywhere in the world can provide an absolute guarantee of protection for a trust that becomes subject to a legal challenge. One example of circumstances in which a Manx Trust might be subject to a challenge is where assets have been placed on trust with a view to defrauding creditors. Another instance might be where the trust's assets are located in the foreign jurisdiction where the claimant has initiated proceedings. These types of cases by their nature are more difficult to determine as they typically involve complex questions on the conflict of international law.

***"Any foreign person challenging a Manx Trust will have to have their claim determined by Manx law before the Courts of the Isle of Man"***

### ***How does the legislation benefit Isle of Man trusts and trustees?***

It clarifies the law for Isle of Man trustees if they are presented with a foreign legal challenge and, in doing so, significantly eases the administration of trusts. Any foreign person challenging a Manx Trust will have to have their claim determined by Manx law before the Courts of the Isle of Man, including the settlement of property into the trust and any issues arising from the rights, duties and powers of the trustees.

### ***How is the firewall legislation most commonly applied?***

Every trust structure is different. There could be that every structure is different and there could be any number of disputes where a foreign law conflicts with the Isle of Man law. However, examples of the legislation working in practice might be disputes that involve Manx trusts where there are issues of forced heirship rules or matrimonial orders. The Manx Court will generally uphold the integrity of the Manx Trust and reject the foreign judgment or foreign order in so far as it conflicts with the law of the Isle of Man.

If you want to continue the conversation about International Pensions, why not contact Tim Shallcross and he'd be happy to chat further.

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If you want to continue the conversation about Firewall legislation or any other legal matters arising in and around the Isle of Man why not contact Catherine and she'd be happy to chat further