

Legal 500

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Isle Of Man

Litigation

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This country-specific Q&A provides an overview of litigation laws and regulations applicable in Isle of Man.

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Isle of Man: Litigation

1. What are the main methods of resolving disputes in your jurisdiction?

Trial by combat became obsolete in the Isle of Man by at least 1429. Today, the main methods are: negotiation; litigation before the Isle of Man High Court; and, increasingly, mediation. Arbitration exists but is relatively little used. The High Court has identified a need to update arbitration legislation.

2. What are the main procedural rules governing litigation in your jurisdiction?

The Rules of the High Court of Justice of the Isle of Man 2009 (RHCJ) (www.courts.im/rules-of-court/high-court-civil/) largely, but not completely, mirror the provisions of the CPR in England and Wales. The overriding objective in the Isle of Man is, likewise, to enable the High Court to deal with cases justly (Rule 1.2(1)). One difference is the absence of separate Pre-Action Protocols in the Isle of Man; but some of their content has been incorporated within the RHCJ. Rule 19(1) of the Advocates' Practice Rules 2001 requires advocates to ensure, in the public interest, that the proper and efficient administration of justice is achieved. Anomalously, the Companies (Winding-Up) Rules 1934 remain in force. Practice Directions have been issued on authorities and bundles (2020), nomination of a provisional liquidator (2023) and case summaries (2023).

3. What is the structure and organisation of local courts dealing with claims in your jurisdiction? What is the final court of appeal?

Within the Isle of Man High Court, claims are typically allocated to the First or Second Deemster, a Deputy High Bailiff, or a Deemster from the part-time Deemster Panel. They are heard in the Small Claims Procedure (for claims of up to £10,000 in value); Summary Procedure (for claims of £10,000-£100,000 in value); Ordinary Procedure (for claims of over £100,000); or Chancery Procedure (certain specific claims). An appeal against an interim or final judgment lies, generally as of right (but see § 17, below), to the Appeal Division, known as the Staff of Government Division. The Staff of Government Division comprises a full-time Judge of Appeal (from October 2022, Anthony Cross KC), and a Deemster. Appeals from

the Appeal Division may be made, with the leave of the Appeal Division or the Judicial Committee of the Privy Council (JCPC), to the JCPC. Civil appeals from the Isle of Man resulting in a reported decision by the JCPC are infrequent (9 in around 20 years, the last being in 2011).

4. How long does it typically take from commencing proceedings to get to trial in your jurisdiction?

This varies considerably, depending on the nature of the proceedings, and the progress of interlocutory proceedings, and any appeal(s). In a straightforward claim, approximately 6-9 months may be typical. The High Court responds very promptly to urgent interim applications, which are dealt with expeditiously.

5. Are hearings held in public and are documents filed at court available to the public in your jurisdiction? Are there any exceptions?

Hearings are generally held in public (Rule 9.2(1)). This is subject to exceptions (Rule 9.2(3)): if publicity would defeat the object of a hearing; matters relating to national security; if confidential information is involved, and publicity would damage confidentiality; where necessary to protect a minor or patient; if unjust to a respondent in a without notice hearing; in trust or estate matters; or if the court considers it necessary, in the interests of justice. There is extensive Manx case-law in this area, including a decision offering guidance on disclosure in 'tipping-off' cases: *P Limited & Q Limited v R Limited* (CHP 000/000, 24 November 2020) ([Isle of Man Judgments Online](http://www.judgments.im)). Judgments are typically published online (www.judgments.im). An application may be made to redact, where appropriate.

Certain documents filed at Court are available to non-parties (Rule 2.21(3)).

6. What, if any, are the relevant limitation periods in your jurisdiction?

Limitation is primarily governed by the Limitation Act 1984 (of Tynwald) (www.legislation.gov.im/cms/images/LEGISLATION/PRI

[NCIPAL/1984/1984-0018/LimitationAct1984_6.pdf](#).

Claims based on breach of contract and tort must be brought within 6 years of the date on which the cause of action accrued (sections 5 and 2); and for breach of fiduciary duty, within 6 years of the relevant act or omission, or 3 years from the date of knowledge, whichever is later (section 14(3)). Deadlines may be extended in cases of fraud, concealment or mistake (section 30). Claims for purely equitable relief may be barred by the equitable doctrine of *laches*. There is likewise extensive Manx case-law in this area.

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

Whilst there are no separate Pre-Action Protocols in the Isle of Man, the parties' pre-action conduct is generally relevant: for example, where the court is exercising a discretion under statute or the RCHJ; and as to costs. The Isle of Man High Court has frequently referred to the new litigation culture introduced by the RHCJ in 2009 (modelled on the CPR).

8. How are proceedings commenced in your jurisdiction? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

Proceedings are commenced by the filing of a claim form and particulars of claim setting out the cause(s) of action and relief sought. Different court forms must be used for different types of claim.

After issue of the claim form by the court, service is necessary. Service is generally effected by the claimant. Rule 2.36 prescribes the circumstances in which service must be effected on the defendant's advocate. Rule 2.37(1) prescribes the circumstances in which the claim form must be served by a Coroner (the Isle of Man equivalent of a process server/bailiff). Separate rules apply in respect of service on minors and patients (Rule 2.28); service by alternative method (Rule 2.30) (commonly used during COVID-19); and service out of the jurisdiction (Rule 2.41).

9. How does the court determine whether it has jurisdiction over a claim in your jurisdiction?

Defendants acknowledging service must indicate whether they contest the jurisdiction. If so, they must apply to do so within 14 days (Rule 4.16(4)(a)).

If an issue arises as to whether the Isle of Man High Court has jurisdiction, it may order that jurisdiction be dealt with as a preliminary issue.

The Isle of Man High Court will typically assume jurisdiction in claims where the parties reside in the Isle of Man. It may order service out in certain categories of case (Rule 2.41 and *AK Investment CJSC v Kyrgyz* [2011] UKPC 7 (cited as *Fellowes International Holdings Limited v Kyrgyz Mobil Tel Limited and others* ([judgments.im](#)))). Interlocutory jurisdiction challenges are, unsurprisingly, frequent. There is likewise extensive Manx case-law in this area. However, the Isle of Man High Court also applies the well-known criteria in *Spiliada Maritime Corp. v Cansulex Limited* [1987] AC 460.

10. How does the court determine which law governs the claims in your jurisdiction?

Whilst Isle of Man law will typically apply in respect of Isle of Man claims, the Isle of Man High Court will generally (although not automatically, see *Treehouse Properties SL & others v Sodzawiczny*, 2DS 2022/14, 20 January 2023) ([Isle of Man Judgments Online](#)) give effect to a contractual choice of law clause providing otherwise. If determining the law of a foreign jurisdiction, the Isle of Man High Court may order relevant expert evidence.

11. In what circumstances, if any, can claims be disposed of without a full trial in your jurisdiction?

Examples include: default judgment (Rule 10.24); summary judgment (Rule 10.46); strike out (Rule 10.38); determination of a preliminary issue (Rule 7.2(2)(l)); and successful alternative dispute resolution. Claims before the Employment & Equality Tribunal may be conciliated by the highly regarded Manx Industrial Relations Service.

12. What, if any, are the main types of interim remedies available in your jurisdiction?

Some of the more common types, under Rule 7.16(1), include: an interim injunction; a freezing injunction; an asset disclosure order; a search order; a pre-claim disclosure order; a non-party disclosure order; and an interim payment order. Others include: a *Norwich Pharmacal* disclosure order (see *Secilpar S.L. v Burgundy Consultants Ltd* 2003-05 MLR 352) ([Isle of Man Judgments Online](#)); an order to appoint a receiver (section 42 of the High Court Act 1991) ([High Court Act 1991 \(gov.im\)](#)); an order for the appointment of a

provisional liquidator (section 178 of the Companies Act 1931 ([Companies Act 1931 \(gov.im\)](#)), and PD 01/2023); and interim relief, where proceedings have been or are to be commenced outside the Isle of Man (section 56B of the High Court Act 1991).

The Isle of Man High Court deals very promptly with urgent interim relief applications.

13. After a claim has been commenced, what written documents must (or can) the parties submit in your jurisdiction? What is the usual timetable?

Defendants must file a defence and any counterclaim within 14 days of service of the particulars of claim, or within 28 days, if an acknowledgment of service has been filed (Rule 6.26(1)(b)). The parties may agree an extension for up to 28 days, if they notify the court (Rule 6.27). The claimant may file a reply (and a defence to any counterclaim) within 14 days of the defence. In the Chancery Procedure, the claim form is the only pleading (Rule 5.19(b)).

After pleadings close, parties typically exchange lists of disclosure documents; they file and serve witness statements (including any expert evidence), and skeleton arguments (with authorities); and, where possible, they will agree a paginated trial bundle. The timetable may vary significantly, and depends on the progress of interlocutory proceedings, but it may otherwise typically take up to approximately 6 months from close of pleadings to trial, although often longer.

14. What, if any, are the rules for disclosure of documents in your jurisdiction? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

A detailed framework for disclosure and inspection is prescribed by Rules 7.31-7.52. There is likewise extensive Manx case-law in this area. Recent case-law has emphasised the particular duty of advocates when disclosure is undertaken (eg. *DHSC v Ranson*, ORD 22/016, 11 October 2022 ([Isle of Man Judgments Online](#))) (in June 2023, a Tynwald committee appointed Richard Wright KC to undertake an independent review of the management of the *Ranson* case). Directions may be agreed by the parties or are ordered by the court. Lists of documents must include a signed disclosure statement.

Standard disclosure obliges a party to make a reasonable search for documents (Rule 7.36(1)) and to disclose only:

(a) documents on which he relies, (b) documents which adversely affect his own case or another party's case, or which (c) support another party's case (Rule 7.35).

A party's duty of disclosure is limited to documents which are or have been in his control (Rule 7.37(1)). This means that the document is or was in his physical possession; he has or has had a right to possession; or he has or has had a right to inspect or take copies (Rule 7.37(2)).

Grounds for objecting to disclosure include (Rule 7.33): that the document is no longer in the party's control; there is a right or duty to withhold disclosure (eg. on the basis of privilege or confidentiality); or the party considers that it would be disproportionate to the issues in the case; or public interest immunity (Rule 7.48).

15. How is witness evidence dealt with in your jurisdiction (and in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

Written evidence is generally by witness statement. Witness statements must comply with the procedural requirements of Schedules 8.1 and 8.2. Affidavits must be used in respect of certain applications, for example, a freezing injunction (Schedule 8.1, paragraph 1(4)). Witnesses who attend trial voluntarily (or via a witness summons issued under Rule 8.33) are cross-examined.

Cross-examination may be limited by the court (Rule 8.1(3)). The court may permit the maker of a hearsay statement to be cross-examined (Rule 8.26(1)). Cross-examination on previous statements in writing is permissible (section 12 of the Evidence Act 1871).

Depositions are also provided for (Rules 8.38-8.44 and Rule 12.52(8)).

16. Is expert evidence permitted in your jurisdiction? If so, how is it dealt with (and in particular, are experts appointed by the court or the parties, and what duties do they owe)?

Expert evidence is restricted to that reasonably required to resolve the proceedings (Rule 8.51). Leave is generally required to adduce expert evidence (Rule 8.54(1)). The expert is instructed by the party, not by the court. The form and procedural contents of an expert's report are prescribed by Rule 8.60.

Under Rule 8.53(2), the expert must: (a) assist the court

by providing objective, unbiased opinion on matters within his expertise, and not assume the role of an advocate; (b) consider all material facts, including those which might detract from his opinion; (c) make it clear when a question or issue falls outside his expertise, and when he is not able to reach a definite opinion (for example because he has insufficient information). If the expert changes his view on any material issue, he must communicate the change to all parties and, when appropriate, the court (Rule 8.53(3)). The expert's duty over-rides any obligation to the party instructing him (Rule 8.53(4)).

The court may direct evidence by a single joint expert (Rule 8.57).

17. Can final and interim decisions be appealed in your jurisdiction? If so, to which court(s) and within what timescale?

Final and interim decisions may be appealed, currently as of right, to the Appeal Division (Staff of Government Division). Appeals may generally be made without leave, save in respect of costs orders and consent orders (section 19(1) of the High Court Act 1991). Currently proposals are progressing which would envisage requiring leave in respect of certain appeals to the Appeal Division.

Unless otherwise prescribed, an appeal notice must be filed within 14 days (in respect of an interim decision) or 42 days (in respect of a final decision) (Rule 14.6(c)).

Appeals from the Appeal Division to the JCPC require leave (see § 3, above). Such applications must be filed within 56 days of the date of the order or of the order of the lower court refusing leave (Rule 11(2) of the Judicial Committee (Appellate Jurisdiction) Rules Order 2009).

18. What are the rules governing enforcement of foreign judgments in your jurisdiction?

The Isle of Man High Court will enforce a final money judgment of a superior court of those countries to which the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968 has been extended by order of the Isle of Man Council of Ministers (see Rules 12.69-12.71). Such countries include (*inter alia*) the UK, Jersey and Guernsey.

A party may otherwise file a claim, in the Isle of Man, on a final money judgment obtained in a foreign jurisdiction.

The Isle of Man High Court also deals with enforcement,

in the Isle of Man, of arbitral awards made in other jurisdictions.

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side in your jurisdiction?

The Isle of Man High Court has a discretion as to whether costs are payable by one party to another, and the amount of such costs (Rule 11.3(1)). The general rule is that the unsuccessful party is ordered to pay the costs of the successful party, but the court may make a different order (Rule 11.3(2)(a)-(b)). Factors relevant to the exercise of the discretion include the conduct of the parties; whether a party has succeeded on part of his case; and any payment into court or admissible offer to settle (Rule 11.3(5)). Costs are assessed either summarily or via detailed assessment and either on the standard or indemnity basis (Rule 11.4). Costs in respect of interim applications are generally ordered on a 'pay as you go' basis (*Irving v Carter*, ORD 2013/19, 7 December 2017) ([Isle of Man Judgments Online](#)). Costs in respect of interim injunctions and freezing injunctions are generally, although not always, reserved until trial.

20. What, if any, are the collective redress (e.g. class action) mechanisms in your jurisdiction?

The Isle of Man High Court can make a group litigation order (Rule 3.33(1)) where there are or are likely to be a number of claims giving rise to group issues.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings in your jurisdiction?

Permission is required to join a party (Rule 3.8(1)). An application must be made by an existing party or by a party who wishes to become a party (Rule 3.8(2)). A defendant who wishes to counterclaim against a non-party may apply for an order under Rule 6.49(1) adding that person as a defendant to the counterclaim. Rule 6.51 deals with other additional claims.

The Isle of Man High Court's case management powers include the power to consolidate proceedings (Rule 7.2(2)(g)) or to try 2 or more claims on the same occasion (Rule 7.2(2)(h)).

22. Are third parties allowed to fund litigation in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

Whilst litigation funding arrangements are permitted in practice, contingency fee arrangements are expressly prohibited in the Isle of Man (Rule 9 of the Advocates' Practice Rules 2001 ([5.1-Advocates-Practice-Rules-2001.pdf \(iomlawsociety.co.im\)](#))).

In *Tomlinson v Thane Investments Limited* 2005-06 MLR N3 ([Isle of Man Judgments Online](#)), the Isle of Man High Court held that it had jurisdiction to order disclosure of the identity of a funder, and the basis and conditions of the funding; and approved *dicta* that the court had power to order payment of costs against a third party funder.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction?

During the emergency phase of the pandemic, the Isle of Man High Court continued to function, albeit (from 2021) with greater use of remote hearings via Microsoft Teams. One lasting impact has been the practice to allow parties and their off-Island advisors to access certain Isle of Man hearings remotely. In addition, a variety of COVID-19-related disputes have reached the High Court, including challenges as to border restrictions and prisoner welfare, and the *Ranson* litigation in the Employment & Equality Tribunal and High Court.

24. What is the main advantage and the main disadvantage of litigating international commercial disputes in your jurisdiction?

For a compact jurisdiction (population approximately 85,000), the Isle of Man packs a surprising punch. Commercial disputes are handled by a sizeable, largely specialist commercial Bar. The Isle of Man High Court is well-resourced, administratively responsive, and generally highly regarded. Adoption in 2009 of High Court Rules largely mirroring the CPR has enabled the Island to benefit from English civil procedure case-law (which is generally considered persuasive), although Manx case-law precedent remains significant, and frequently distinctive. Unsuccessful parties at first instance may currently appeal without leave, although successful civil appeals have not been especially common in recent years.

25. What is the most likely growth area for commercial disputes in your jurisdiction for the next 5 years?

E-business-related disputes are likely to increase. However, practice areas which currently feature strongly in the Isle of Man, such as trust, corporate, insolvency and regulatory or compliance-related disputes, are also likely to remain buoyant.

26. What, if any, will be the impact of technology on commercial litigation in your jurisdiction in the next 5 years?

There is likely to be a marked increase in the use of e-disclosure (still in its relative infancy in the Isle of Man). The Isle of Man High Court may move towards even greater use of e-bundles, delivered via cloud-based platforms. With e-business now contributing approximately 30% of the Isle of Man's GDP, more technology-related disputes may well come before the High Court.

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