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The Legal 500 Country Comparative Guides

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 commercial disputes?

The main methods of resolving commercial disputes today are litigation before the Isle of Man High Court and mediation or negotiation either directly or through their legal representatives. Arbitration does exist but it is not often used in the Isle of Man and the Court has recently identified a need to update arbitration legislation.

2. What are the main procedural rules governing commercial litigation?

The main procedural rules governing commercial litigation in the Isle of Man are the Rules of the High Court of Justice of the Isle of Man 2009 (the Rules) (www.courts.im/rules-of-court/high-court-civil/). Many of the Rules provisions are similar to the CPR in England and Wales including the overriding objective to deal with cases proportionately and justly. The Isle of Man does not have Pre-Action Protocols.

For insolvency matters the Companies (Winding-Up) Rules 1934, remain in force and govern the procedural elements of such matters.

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

In the Isle of Man commercial claims are allocated to different Divisions according to value and subject matter. Claims of between £10,000-£100,000 in value are heard in the Summary Procedure; Claims of over £100,000 are allocated to the Ordinary Procedure and certain prescribed claims are allocated to the Chancery Procedure.

Appeals against an interim or final judgment are made to the Staff of Government Division (SGD) which comprises a full-time Judge of Appeal and ordinarily a Deemster. This composition, however, is flexible depending upon which judge has sat in the lower court on the matter to

be appealed. Appeals from the SGD may be made, with the leave of the SGD or the Judicial Committee of the Privy Council (JCPC), to the JCPC. Civil appeals from the Isle of Man to the JCPC are not common although there was one reported decision this year (<https://www.judgments.im/content/J2946.htm>) which was the first reported civil decision for the Isle of Man since 2011.

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

The framework timetable is dictated by the Rules, but considerable discretion via case management powers is left to the court to fix the deadlines for each stage of the litigation process depending upon the complexity of the case. In practice the length of the proceedings will depend on the nature of the proceedings, whether any interlocutory proceedings are necessary and any appeal(s) lodged. For a straightforward claim, approximately 9-12 months may be typical but it will depend on the case. The High Court does schedule urgent interim applications quickly and deal with them as a matter of priority.

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

Hearings are ordinarily public as prescribed by the Rules. There are certain exceptions to this which are: 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. 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 upon application being made. Statements of case

are filed on a public register and can (in general) be searched and copied by members of the public.

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

The relevant limitation periods are set out in the Limitation Act 1984 (of Tynwald) (www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1984/1984-0018/LimitationAct1984_6.pdf).

Commercial claims based on breach of contract, tort or breach of trust must be brought within 6 years of the date on which the cause of action accrued; 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. Deadlines may be extended in cases of fraud, concealment or mistake. Claims for purely equitable relief may be barred by the equitable doctrine of laches.

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

There are no separate Pre-Action Protocols in the Isle of Man. However, the parties' pre-action conduct remains relevant. Pre-action conduct will be examined for example where the court is making an award as to costs and/or exercising a discretion under statute.

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

Commercial 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. The claim form is the first 'statement of case' which includes the name of the court in which the claimant wants the claim to be heard, the parties' names and addresses, a brief summary of the claim and description of the remedy sought. Once the claim form has been issued, the claimant must serve it on the defendant within four months.

Once the claim form has been issued by the court it needs to be served. Service must be effected on the defendant and/or the defendant's advocate if one is appointed and has been instructed to accept service. The claim form must be served by the Coroner which is

the Isle of Man equivalent of a process server. Specific rules apply in respect of service on minors and patients. There are also rules allowing for service by alternative method which can include email or over social media and is becoming increasingly common. For defendants that reside out of the jurisdiction of the Isle of Man an order allowing service out of the jurisdiction needs to be obtained by the court in advance of service.

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

Defendants acknowledging service must indicate whether or not the claim is admitted or contested in part or full. Alternatively, Defendants can also indicate whether they contest the jurisdiction of the Isle of Man High Court to hear the claim. If jurisdiction is contested, they must apply to do so within 14 days of service.

If jurisdiction is in dispute, the court will typically deal with this matter as a preliminary issue. Interlocutory jurisdiction disputes are relatively common and there is a wealth of Isle of Man case-law on conflict of law issues. The Isle of Man High Court also applies the well-known criteria in *Spiliada Maritime Corp. v Cansulex Limited* [1987] AC 460.

The Isle of Man High Court will often assume jurisdiction in claims where the parties reside in the Isle of Man. It may order service out in certain categories of case prescribed by the Rules.

10. How does the court determine what law will apply to the claims?

Whilst Isle of Man law will typically apply in respect of Isle of Man claims, the Isle of Man High Court will ordinarily although not always give effect to a contractual choice of law clause providing otherwise. In determining jurisdiction, the Court will consider the particular circumstances of the case and a range of relevant factors. If determining the law of a foreign jurisdiction, the Isle of Man High Court may order relevant expert evidence to assist with any foreign point of law.

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

Under the Rules claims can be disposed of without a trial in a number of different circumstances including the following:

- default judgment;

- summary judgment;
- strike out;
- determination of a preliminary issue; and
- successful alternative dispute resolution such as mediation.

The court has extensive powers of active case management, enabling it to strike out the whole or part of a statement of case which has no reasonable grounds or is likely to obstruct the just disposal of the proceedings. The court can also give summary judgment against a claimant or defendant where it determines that there is no real prospect of success and there is no other reason the case should go to trial.

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

There are a wide range of interim remedies available in the Isle of Man under the Rules and/or the common law including:

- interim injunctions;
- freezing injunctions;
- asset disclosure orders;
- search orders;
- pre-action disclosure orders;
- non-party disclosure orders;
- interim payment orders;
- Norwich Pharmacal disclosure relief (*Secilpar S.L. v Burgundy Consultants Ltd 2003-05 MLR 352*);
- the appointment of a receiver;
- the appointment of a provisional liquidator; and
- interim relief in aid of proceedings which have been or are to be commenced outside the Isle of Man.

The Isle of Man High Court deals very promptly with urgent interim relief applications and they are commonly sought and granted.

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

Once a claim has been commenced, a Defendant contesting the proceedings 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). The parties may agree an extension between themselves for up to 28 days and

notify the court of such extension. The claimant may file a reply and must file any defence to any counterclaim within 14 days of the defence being served. Different rules apply in the Chancery Procedure, where the claim form is ordinarily the only pleading unless otherwise ordered by the Court.

After pleadings are served, a timetable of directions to be completed for the matter to reach trial is agreed. These directions start with the parties exchanging lists of documents to be disclosed that are relevant to the proceedings. Next, witness statements are filed and served including any expert evidence required. Then skeleton arguments setting out legal submissions together with authorities are filed and served. A paginated trial bundle will be prepared preferably on an agreed basis. Working through these steps can take between 6-12 months from close of pleadings to trial depending upon the complexity of the matter.

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

The Rules set out steps for disclosure and inspection.

Under the Rules, standard disclosure requires a party to make a reasonable search for documents and to disclose only:

- documents on which he relies,
- documents which adversely affect his own case or another party's case, or which
- support another party's case.

The duty of disclosure is limited to documents which are or have been in their possession or control. This includes privileged documents. However, a party can withhold privileged documents from inspection by the other side; so even though the other side knows about the existence of those documents, it cannot view them.

The lists of documents setting out the relevant documents must include a statement of truth.

15. How is witness evidence dealt with in commercial litigation (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 ordinarily set out in a witness

statement. Witness statements must comply with the procedural requirements of the Rules. Sworn affidavits are required to be used in respect of certain applications, for example, a freezing injunction.

Witnesses who attend trial voluntarily (or via a witness summons issued) are subject to cross-examination unless otherwise agreed or ordered by the court. Cross-examination may be limited by the court. The court can allow the maker of a hearsay statement to be cross-examined. Depositions are also permitted.

16. Is expert evidence permitted and how is it dealt with? Is the expert appointed by the court or the parties and what duties do they owe?

Under the Rules expert evidence is restricted to that reasonably required to resolve the proceedings. The leave of the court is generally required to adduce expert evidence. The expert is appointed by the instructing party, not by the court. The form and contents of an expert's report are prescribed by the Rules. The expert must:

- a. assist the court by providing objective, unbiased opinion on matters within their expertise, and not assume the role of an advocate;
- b. consider all material facts, including those which might detract from their opinion;
- c. make it clear when a question or issue falls outside his expertise, and when they are not able to reach a definite opinion.

If the expert changes his view on any material issue, he must communicate the change to all parties and, when appropriate, the court. The expert's duty to the Court overrides any obligation to the party instructing him.

The court may direct evidence by a single joint expert.

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

Final and interim decisions may be appealed to the Staff of Government Division (SGD). Appeals to the SGD are ordinarily made without leave, save in respect of costs orders and consent orders.

An appeal notice must be filed within prescribed timescales under the Rules which is 42 days in relation to a final decision or 14 days in relation to an interlocutory decision.

Appeals from the SGD to the Judicial Committee of the Privy Council (JCPC) requires leave from the SGD or directly from the JCPC. An application for leave to the JCPC must be filed within 56 days of the order of the lower court refusing leave.

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

The Isle of Man High Court will enforce a final, conclusive money judgment of a superior court of those countries to which the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968 (the Enforcement Act) has been extended by order of the Isle of Man Council of Ministers. These countries are the UK, Jersey, Guernsey, Italy, Suriname, Israel, Italy or the Netherlands. The Enforcement Act does not apply to a decision in respect of taxes, a fine or a penalty.

Where an application cannot be made under the Enforcement Act, the judgment creditor must bring a claim for enforcement under the common law by commencing a debt action in the Isle of Man based on the foreign judgment.

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?

The Isle of Man High Court has a discretion as to whether costs are ordered and the amount of such costs payable. The general rule is that costs follow the event and the unsuccessful party is ordered to pay the costs of the successful party. However, the court may make a different order under its discretion. Factors relevant to the exercise of the discretion include:

- the conduct of the parties;
- whether a party has succeeded on part of his case;
- any payment into court or admissible offer to settle.

Costs are assessed either summarily or via detailed assessment and either on the standard or indemnity basis.

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

Under the Rules Isle of Man High Court can make a

group litigation order where there are or are likely to be a number of claims giving rise to collective issues. Class Actions are relatively rare in the Isle of Man.

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

The court needs to give permission for a party to be joined into the proceedings. An application must be made either by an existing party or by a party who wishes to become a party. A defendant who wishes to counterclaim against a non-party may apply for an order under the Rules adding that person as a defendant to the counterclaim.

The Rules also provide case management powers which include the power to consolidate proceedings or to try two or more claims at the same time or immediately after one another.

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

Third parties are allowed to fund litigation in the Isle of Man. There are no restrictions in relation to third party funders and the court does have the power to order payment of costs against a third party.

However, contingency fee arrangements are strictly not allowed in the Isle of Man.

Isle of Man case law has established that the identity of a funder and the basis of the funding can be ordered to be disclosed (*Tomlinson v Thane Investments Limited 2005-06 MLR N3*)

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction (and in particular, have the courts adopted remote hearings and have there been any procedural delays)?

During the Covid-19 pandemic the Isle of Man Courts and Tribunals facilitated remote hearings including telephone and video hearings where appropriate particularly to progress and set case management. Whilst some hearings were initially delayed procedurally during the pandemic the courts are now operating as normal and

cases are being progressed according to usual timescales.

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

The similarity between the Rules and the English CPR, allows the Isle of Man to benefit from English civil procedure case-law which will be treated by the Isle of Man court as highly persuasive in the absence of any specific Manx case law on the specific point of law. The benefit of the Enforcement Act allows an efficient mechanism for reciprocally enforcing final money judgments for those countries that it applies to. Generally, the Isle of Man courts are keen where appropriate to act in aid of foreign courts and proceedings on the principle of comity.

The Isle of Man is a fused profession and there are specialist Isle of Man advocates which deal routinely with all aspects of commercial litigation. The Isle of Man High Court is well-resourced and responsive particularly where urgent interim relief is required which forms the bread and butter of Isle of Man commercial litigation. The presence of robust appeals courts in the SGD and the JCPC also enhances the Isle of Man's highly regarded jurisdiction for litigating commercial disputes.

Whilst litigating in the Isle of Man can be costly, it is often no more costly than other jurisdictions and the increasing use on the Isle of Man of alternative dispute resolution forms such as mediation can assist to minimise costs.

25. What, in your opinion, is the most likely growth area for disputes for the next five years?

It is envisaged that regulatory or compliance-related disputes will continue to increase which has been a general trend over the past few years. Trust litigation, fraud/asset tracing and insolvency/restructuring litigation are also predicted to be growth areas during unsettled economic times.

26. What, in your opinion, will be the impact of technology on commercial litigation in the next five years?

It is predicted that there will be an increase in the use of e-disclosure in the Isle of Man which is currently only

usually used for heavy-weight commercial cases. It is hoped that the Isle of Man High Court will also endorse the use of e-bundles and electronic filing in due course which will assist with the administrative burden of dealing with litigation cases.

27. What, if any, will be the long -term impact of the COVID-19 pandemic on commercial litigation in your jurisdiction?

The COVID-19 pandemic necessitated changes to the way in which commercial litigation was conducted in the Isle of Man courts. Both parties to litigation and the judiciary needed to adapt to the use of remote hearings and it is expected that increased use of technology will continue in relation to conducting commercial litigation generally. In particular, the facilitation of witnesses giving evidence remotely via Teams is becoming increasingly more common.

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