

Isle of Man

I. **Brief Introduction to the Legal System of the Isle of Man**

The Isle of Man is an internally self-governing Crown Dependency forming part of the British Isles. Generally speaking internal affairs are legislated by Tynwald, the Manx Parliament, with external affairs including defense and foreign affairs being legislated by the United Kingdom Parliament. By convention the United Kingdom Parliament does not legislate for the Isle of Man without the specific consent of the government of the Isle of Man. The Island is consequently not part of the United Kingdom. The nationality of the majority of the Island is British. Despite the Isle of Man referring to the UK Parliament for issues for foreign affairs the Isle of Man is not part of the European Union, but has a special relationship with the EU in that it is neither a member nor an associate member but it benefits from the free movement of goods and services in trade between European Economic Area members.

The Manx legal system is based on the principles of common law, like the legal systems of most Commonwealth countries. Manx criminal law was codified in the 19th century and is closely based on English law. In relation to contract, tort, family law, and social security, Manx law is very similar to English law. But in other respects Manx law has been developed to meet the Island's special circumstances, particularly with regard to direct taxation, company law and financial supervision. The Island's High Court judges are the two "Deemsters" (a term dating from Viking times), who have jurisdiction over all the criminal and civil matters that in England would fall under the High Court, County Court, and Crown Court. The Manx Appeal Court (the Staff of Government Division) consists of the Deemsters and the Judge of Appeal, a part-time position filled by an English QC. The final appeal is to the Judicial Committee of the Privy Council in London.

The Island's unique constitutional positioning and internal self-governing nature allows the Isle of Man to be an established low tax area with its own Income Tax and Customs and Excises divisions independent from the UK. This low tax status has sometimes, mistakenly, been regarded as a 'tax haven.' The Isle of Man is subject to stringent legislation and regulation (e.g. the Financial Services Act 2008) and the practice of licensed entities is closely overseen by the Financial Supervision Commission, (the "FSC"), an independent statutory body.

The FSC regulate and supervise all persons undertaking a regulated activity, including deposit-taking, investment business, services to collective investment schemes, fiduciary services, and money transmission services in or from the Isle of Man. The FSC is also responsible for the oversight of directors and persons responsible for the management,

administration or affairs of commercial entities. In doing so the FSC aim to secure an appropriate degree of protection for the customers of persons carrying on a regulated activity, reduce crime and support the Island's economy and its development as an international financial center.

As an offshore financial center, the Isle of Man has a developed regulatory infrastructure that facilitates its working relationship with other competent legal authorities. Its criminal legal legislation is well established as are the appropriate civil interim steps including freezing orders and search and seize remedies.

II. The Isle of Man's Anticorruption Laws

The Isle of Man has legislative provisions for bribery and anticorruption extending from the Criminal Code 1872 and the Criminal Justice Act 1990 to the Representation of People Act 1995 and the Corruption Act 2008. Section 323 of the Criminal Code 1872 establishes an offence of bribery of persons connected with the administration of justice. This applies to the bribery of, or the acceptance of a bribe by, "any magistrate, arbitrator, referee, registrar, or person connected with the administration of justice, or a jury, or any of the jurors". It also applies to "any gaoler, coroner, sumner, constable, or other officer, who shall directly or indirectly accept, or offer to accept any bribe, reward, present, or gratuity, to do anything contrary to the duty of his office, or for the forbearance of doing his duty, or for doing his duty, except in the ordinary and accustomed fee and charge."

In 1998, the United Kingdom ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. This ratification was extended to the Isle of Man in 2001. The scope of anti-bribery legislation was increased by the Corruption Act 2008 (Act of Tynwald). Under this Act, bribery offences encompass the bribery of all others, if committed in the Isle of Man, or bribery by an Isle of Man resident (include a body corporate) outside the Isle of Man. Bribery includes the instruction of an agent in committing the bribery. The Corruption Act 2008 also extends to the bribery of foreign public officials. A "foreign public official" for the purpose of the Act includes:

- (1) any person holding a legislative, executive, administrative, or judicial office of a country or territory outside the Island, whether appointed or elected;
- (2) any person exercising a function on behalf of a public body which exists in a country or territory outside the Island; or
- (3) any person who is an official of a public international organization or who is authorized by such an organization as its agent.

It is anticipated that the Bribery Act 2013 (Act of Tynwald) will come into force in the Isle of Man by the end of 2013. This new Act will replace the Corruption Act 2008, and the main difference being the introduction of a new corporate offence of failing to prevent bribery (similar to those found in the Act of Parliament of the same name). This offence is committed where a person associated with a relevant commercial organization commits a bribery offence intending to gain a business advantage and the organization cannot show it has adequate procedures in place to prevent the bribe. If convicted, the relevant person could face a maximum of two years' imprisonment. The effect is to place the burden on the organization concerned to demonstrate that it has suitable anti-corruption procedures in place. Bribery itself under the Bribery Act 2013 will carry a maximum of ten years' imprisonment, an increase of three years from that prescribed by the Corruption Act 2008.

Manx persons and corporate bodies will also, depending on the nature of their trade or business, be subject to foreign legislation, such as, for example, the UK Bribery Act. It applies to all persons and to all corporate bodies conducting business in or through the UK including "associated persons." Being "associated" is defined in the Act as providing services to that company. This could potentially therefore include not only employees, but also any subsidiaries, agents, intermediaries, or joint ventures (where control - either actual or ostensible - lies with the company). The UK Bribery Act therefore encompasses all British citizens (including Isle of Man residents) and all enterprises (which includes their associations as explained above) conducting business in or through the UK regardless of where the offence is committed.

III. **Assessment**

The OECD Working Party's Phase 3 Report on the United Kingdom¹ has commented positively on the Isle of Man's legislation on the bribery of foreign officials and reported that "only the Isle of Man [of all the UK crown dependencies and overseas territories] has an offence that applies specifically to foreign bribery."² The Phase 3 Report, however, highlighted that the Isle of Man lacked legislation which criminalizes a legal person's failure to prevent bribery. It is anticipated that the Bribery Act 2013, which is due to come into force this year, will deal with this concern.

¹ Phase 3 Report on Implementing the OERCD Anti-Bribery Convention in the United Kingdom, March 2012.

² *Id.* at 51.

Preparatory work has been undertaken by corporate bodies in the Isle of Man, in reviewing their procedures and ensuring that they are adequate for the purpose of combating bribery. The Bribery Act 2013, together with the protection afforded to whistleblowers by the Employment Act 2006, will no doubt strengthen the existing anti-bribery and anti-corruption framework even further.

From a local point of view, the Isle of Man is committed to and continues to be an active participant on the international stage in combating bribery.

The Isle of Man is included with the UK for the purpose of Transparency International's Corruption Perception Index and currently ranks in 17th place.

IV. Texts

- A. The Criminal Code 1872
www.legislation.gov.im

- B. The Criminal Justice Act 1990, particularly section 24 thereof
www.legislation.gov.im

- C. Representation of People Act 1995
www.legislation.gov.im

- D. The Corruption Act 2008
www.legislation.gov.im

- E. The Bribery Act 2013
http://www.legislation.gov.im/cms/images/phocadownload/Acts_of_Tynwald/Primary_2013/briberyact2013.pdf

- F. The Bribery Act 2010 (UK)
<http://www.legislation.gov.uk/ukpga/2010/23/contents>

- G. OECD Phase 3 Report on the Anti-Bribery Convention
<http://www.oecd.org/daf/anti-bribery/anti-briberyconvention/unitedkingdom-oecdanti-briberyconvention.htm>