

INTERNATIONAL PENSIONS DEVELOPMENTS - ISLE OF MAN

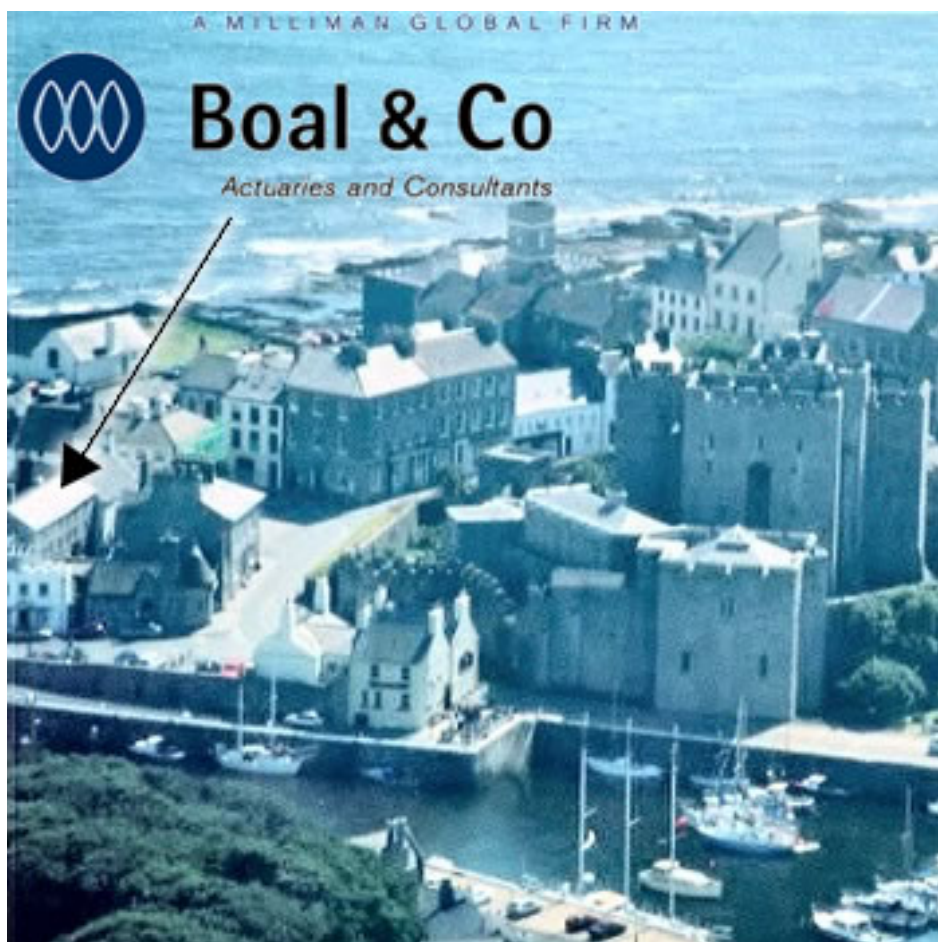


With the enactment of the Retirement Benefits Schemes (International Schemes) Regulations 2001, the Isle of Man has now implemented an extensive regulatory framework, consistent with its stated initiative to be a major jurisdiction for the establishment and management of international retirement plans.

The Isle of Man, situated in the centre of the British Isles (but not part of the United Kingdom) is an internally self-governing dependent territory of the British Crown. *Tynwald*, the Island's 1000-year old Parliament (the world's oldest continuous parliament), makes its own laws and oversees all internal administration, fiscal and social policies. Whilst external issues, such as foreign representation and defence, are administered on the Island's behalf by the U.K. Government, the Island has its own control over taxation policy and has long been a low tax area enjoying total independence from the UK on matters of direct taxation. There is low corporate and personal tax (a standard rate of 10%) and no capital gains or estate taxes. The Isle of Man enjoys a triple A plus rating from Standards & Poors and Moody's, evidencing the soundness of its fiscal policy. In short, the Island has developed into a flourishing modern-day international business centre, with a reputation for being a well-regulated and progressive jurisdiction.

The Island's Government has positively encouraged economic growth in recent years by creating an attractive tax regime for business and a suitable legislative and e-commerce framework for expansion. This has seen the Isle of Man pick up one award after another as a centre for international financial services, most particularly for its offshore life assurance industry.

The success of this policy – of low taxation in tandem with sound regulation – is well evidenced in key economic statistics. For example:



- GDP per head now exceeds that of the United Kingdom
- unemployment is a mere 0.7%
- inflation is also currently less than 1% pa
- top rate of local personal and company taxation is 18% and falling (a target top rate of 15% is due to be achieved in the near term).

Castletown, Isle of Man

Some 18% of the Island's working population is employed in the financial services industry, with international banking and insurance (both life and captive) the leading financial sectors.

In the life assurance sector, the 16 international life companies operating from the Island write total new business premiums in excess of \$6,500 million. Pensions business – particularly with customers in the Far East and Middle East (where several of the Island's leading life companies have large locally authorised establishments) - constitutes the majority of regular premium new business written by the Island's life industry, giving the Isle of Man an already significant presence – and credibility - in the international pensions arena.

The Manx government has sought to build upon this position by establishing a statutory governance platform for self-administered pension schemes – both domestic and international – operating from the Isle of Man. The new regulatory platform comes under the supervision of the former government Insurance Authority, duly renamed and expanded to become the Insurance & Pensions Authority (“IPA”).

The Retirement Benefits Schemes Act 2000 takes effect for international schemes (covering non-resident members) and domestic schemes through regulations which, whilst separate, ensure that both domestic and international structures benefit from an appropriate regulatory framework. Core member protection issues remain uniform, regardless of whether a scheme is domestic or international in design; this is entirely consistent with the “level playing field” approach which lies at the heart of the Island's approach to legislation (and relationship with the OECD). Consistent with the expansionist marketing objectives, the International regulations precede the domestic regulations (which are due to be published shortly before taking effect in April 2003).

The International Schemes Regulations 2001 apply to all new and existing schemes where scheme members are not resident for tax purposes on the Isle of Man. Previously such schemes would have sought approval under Article 50B of the Income Tax Act 1970. With the IPA now assuming primary responsibility for the authorisation of schemes, separate tax approval for an international scheme will generally no longer be required (although the Trustees can still elect to apply for tax approval as a separate process if desired).

The Regulations:

- introduce rules requiring the registration of authorised international schemes, bringing them under the regulatory powers of the IPA
- specify how schemes must be administered, and introduce a formal licensing and registration process for scheme Administrators
- introduce a requirement for filing of an annual report (in specified format) and audited accounts, statement of investment principles, contributions payment schedule, and the latest actuarial valuation report (if applicable)
- introduce a requirement for an independent trustee, with at least one trustee to be independent of the employer (and this independent trustee to be a signatory on all scheme bank accounts).
- define minimum qualification standards for professional advisers (investment manager, actuary and auditor) to schemes, and require written automatic statements upon the resignation or removal or any such advisers

- restrict - to very tightly defined exceptions (e.g. non-vested contributions, liens, etc) – the payment of scheme funds to the employer and connected persons
- impose a maximum limit of 5% on employer-related investments (i.e. self-investment), where all members are not also scheme Trustees.
- require full records of trustee meetings to be maintained in the Isle of Man
- require that specified books and records be maintained at the (Isle of Man) place of business of the administrator
- define and codify transfer rights and obligations in relation to accrued benefits
- require vesting of members' rights after a maximum of two years' continuous pensionable service
- introduce a public register of authorised schemes

As can be deduced from just this short summary, the new regulatory regime is both weighty and comprehensive; one measure of the former is that the Act and the International Regulations alone run to more than 100 pages! As such, the new framework is on a par with that applicable in the United Kingdom, with the added proviso that it applies in such a way as to give the same standards of protection to “international” and “domestic” Isle of Man schemes.

The International Regulations came into force on 1 January 2002 for any new schemes established after that date, and will take effect by no later than 1 June 2002 for pre-existing schemes (there are no other grand-fathering provisions). Schemes constituted as exempt insurance contracts (i.e. written by Isle of Man life assurance companies) and trust-based schemes whose assets comprise solely such insurance contracts are exempt: firstly on the basis that insurance companies are separately regulated by the IPA; secondly, on the grounds that very extensive statutory policyholder arrangements already apply; and thirdly because Manx insurance companies are subject to an independent Financial Ombudsman Scheme.

On the marketing side, a number of plus points can be identified.

Firstly, the Regulations do not restrict the design of schemes in design matters such as maximum or minimum contributions, the format in which benefits may be taken (pension or lump sum), or the timing of retirement, instead leaving this to be tailored to meet the individual employment and jurisdictional requirements of international employers, wherever in the world they may be.

Secondly, in line with OECD commitments, the Isle of Man Government has made public its moves to negotiate bilateral taxation agreements and mutual recognition treaties, as part of its international taxation strategy. Such developments can be expected to provide a boost to the international pensions initiative, particularly given the comprehensive new pensions framework.

Furthermore, the introduction of “protected cell company” legislation is anticipated to follow in the Isle of Man during 2002. As such, the availability of protected cells within life, captive and retirement benefits structures will only assist the merits of the Isle of Man as a domicile for initiatives such as international benefits pooling.

As is to be expected, other international financial centres have looked with some interest, and some competitive concern, at the new Isle of Man regime. For example, in the Channel Islands, the Guernsey Financial Services Commission has now published (in February 2002) a consultation paper on the regulation of occupational and personal pension provision. The manner of regulation proposed for Guernsey is considerably lighter than that in the Isle of Man, with international schemes *exempt* from the new regime.

The lines are clearly being drawn, and it seems the Isle of Man's position is very clearly delineated by a full regulatory regime, with consistency of treatment and standards across domestic and international schemes.

Let the battle begin!

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