

Taking security over shares in an Isle of Man Company

Cains' Banking and Finance team regularly acts for banks and other financial institutions as part of multi-jurisdictional lending transactions. The Isle of Man (the "**IoM**") is an increasingly popular jurisdiction of choice for asset holdings companies and consequently we regularly advise on taking security over shares and drafting the associated security documents.

In this guidance note we will provide a brief overview of the key steps/considerations for lenders when taking share security under IoM law.

Share charges

The most common form of security created over shares in an Isle of Man company is a share charge (fixed charge over shares). It is possible for legal mortgages to be given over such shares but in our experience Chargees tend to prefer acquiring equitable interests by way of share charge to avoid obligations which arise as a consequence of legal ownership.

First steps / due diligence

An important initial consideration for lenders when taking share security under an IoM law governed share charge ("**Lenders**") is to inspect the register of members of the company whose shares are being charged (the "**Company**") to confirm that the company granting the security (the "**Chargor**") is the legal owner of the shares which will be the subject matter of the shares charge (the "**Shares**").

Lenders should also ensure that they inspect the Chargor's charges register to ensure that the Shares do not already have security interests registered in favour of other third parties. Priority is determined in accordance with order of registration (subject to any intercreditor/subordination agreements between Lenders) meaning that if prior security was registered over the Shares then the Lender's security interest would be adversely affected.

Another necessary step for Lenders prior to taking security over Shares is to review the constitutional documents of the Company to ensure that there are no restrictions/provisions relating to:

1. the transfer of shares;
2. restrictions on the creation of security;
3. pre-emptive rights; or
4. first-ranking liens in favour of the Company.

Typically, Lenders would expect the Company to amend its articles of association if any of the abovementioned restrictions/provisions were relevant because they may have an adverse impact on enforcement.

It is also important that Lenders ascertain the location of the original share certificates in respect of the Shares (these may be located with a third party registered agent) and arrange for their delivery to the Lender.

Deliverables

Typically, we would expect the following documents to be included as deliverables under an IoM law governed share charge:

- the original share certificates in respect of the Shares;
- an executed stock transfer form made in favour of the Lender (signed, but undated);
- a notice from the Chargor to the Company notifying the Company that its shares are being charged in favour of the Lender;
- an acknowledgment from the Company to the Chargor and Lender acknowledging that its shares are being charged.

This is not an exhaustive list and some IoM law governed share charges may provide for an irrevocable proxy and power of attorney and/or executed and undated letters of resignation from the directors but these are not strictly necessary to perfect or enforce the security.

Registration

It is only necessary to register the particulars of the IoM law governed share charge against the Chargor, not against the Company. Only Chargors incorporated in the IoM need to register security in the IoM; foreign Chargors should make registrations in accordance with their own laws.

The Company which is the subject matter of a share charge doesn't need to make any filings.

The IoM has two separate company law regimes and different registration requirements for companies incorporated under each regime:

- for companies incorporated under the Companies Act 2006 a security filing in the prescribed form must be made within one month of the creation of the charge, this filing does not need to be accompanied by a copy of the original security document;
- for companies incorporated under the Companies Acts 1931 - 2004 a security filing must be made within one month of the creation of the charge and this filing must be accompanied by a copy of the security document.

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Enforcement

A key consideration in terms of enforcement is the governing law of the share charge. Lenders should note the landmark Isle of Man High Court case of *Re World Duty Free Company Limited* (14 December 2003) which ruled that only the Isle of Man High Court has the jurisdiction to rule upon the ownership of issued shares in companies incorporated in the IoM. This judgment indicated that in normal circumstances it will not recognise judgments given by foreign courts which purport to transfer ownership of shares in a company incorporated in the IoM from those persons named in the register of members. Only the Isle of Man High Court has the power to alter the register of members, and this judgment makes it clear that it will not do so upon the basis of a foreign judgment. The result of this is that enforcement of an IoM law governed share charge over shares in an IoM Company is more straightforward than enforcement of a foreign law equivalent.

Miscellaneous

No stamp duty is payable on the creation of security over the Shares or upon enforcement.

There is no requirement for a security document creating security over the Shares to be apostilled or notarised.

This guidance note is intended to provide a high-level overview of the IoM law position on taking security over shares; it should not be relied upon or construed as legal advice. Please do get in touch with a member of our [banking and finance](#) team if you have any queries.

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