



REQUIREMENT FOR A SUBSTANTIAL AND GENUINE CONNECTION WITH THE ISLE OF MAN

Introduction

1. In order for an institution to be registered as a charity in the Isle of Man, section 10 of the Charities Registration and Regulation Act 2019 ("the 2019 Act") provides that it must have a substantial and genuine connection with the Island. The requirement to have such a connection is a continuing one which applies to all registered charities. Section 15(1)(c) imposes an obligation on the Attorney General to remove a charity from the register if he or she considers that it no longer has the required connection.

Origin and purpose of the requirement

2. The requirement that a registered charity have a substantial and genuine connection with the Island was first provided in the Charities Registration Act 1989.

3. During the passage of the 1989 Act through the legislature, the following statements were made as to the purpose of the requirement:

"This is intended to deal with the situation which often arises in which a company is established in the Island and, apart from having a registered office in the Island, has no other connection. The directors, secretary and all of its business may be outside of the Island. It would leave a substantial lacuna if an institution was to be treated as having a substantial and genuine connection with the Island merely because it was established in the Island." – Mrs Delaney as mover of the Bill during the consideration of clauses in the House of Keys on 7 February 1989.

"To prevent the Island being used by people who have no connection with the Island and who have no intention of operating a charity here but simply to use it as a post office box for some activity which we do not wish to be associated with." – The Attorney General as mover of the Bill during the consideration of clauses in the Legislative Council on 14 March 1989.

4. The requirement has been retained unchanged in the 2019 Act.

What is meant by "a substantial and genuine connection"?

5. The term "a substantial and genuine connection" has not been defined in either the 1989 or the 2019 Act, and neither have the Manx Courts had the occasion to interpret it. Some assistance as to its meaning is provided by the following statement in section 10(5) of the 2019 Act, which also appeared in the 1989 Act:

- A charity is not to be treated as having a substantial and genuine connection with the Island by reason only of the fact that the charity is a Manx institution.

6. "A Manx institution" is defined in section 3 of the 2019 Act as being one which is:-

- (a) constituted under the law of the Island;
- (b) resident in the Island;
- (c) administered in the Island; or

(d) registered under the Foreign Companies Act 2014.

7. In the absence of any further legislative or judicial guidance, the Attorney General has agreed to publish the details of the factors that he takes into account when considering whether a particular institution can be said to have both a substantial and genuine connection with the Island. In some cases, one factor alone may be sufficient to evidence the necessary connection, whereas in others it may be the combined weight of a number of factors.

8. Examples of circumstances which may evidence a substantial connection:

- The body of trustees is established in the Island, all decisions concerning the operation of the charity are made here and the charity is administered here;
- Funds being raised in the Island – if this is the only connection, the annual amount must be more than a token sum, taking account of the charity's overall finances;
- Objectives being delivered in the Island – if this is the only connection, where this is through monetary payments only, the annual amount must be more than a token sum, taking account of the charity's overall finances.

9. Examples of circumstances which may evidence a genuine connection will include:

- Funds being raised (and/or spent) in the Island;
- Objectives being delivered in the Island;
- The body of charity trustees is established here;
- The Settlor is resident in the Island.

10. The following are examples of cases where the substantial and genuine connection test would be considered to be evidenced:-

- A company is incorporated in the Island with the charitable purpose of providing relief to impoverished elderly persons in the north of the Island through the provision of sheltered housing; the directors are resident in the Island and it raises the majority, or all, of its funds here;
- A group of people resident in the Island form an unincorporated association with the purpose of raising funds here to support orphans in west Africa; all the charity trustees are resident in the Island, the meetings of the charity trustees and of the association are all held here and the charity is administered here;
- A person resident in the Isle of Man leaves money in his will to fund cancer research and the trustees of the will trust are resident in the Island;
- An English charity established for the purpose of providing advice and support to individuals suffering from a particular health condition carries out activities on the Island, including delivering benefit to sufferers and raising funds, with the assistance of an active group of local volunteers;

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- A trust is established in the Isle of Man by a person resident outside of the Island, with the charitable objectives of advancing the education of children worldwide; the trustees are resident in the Island, all decisions concerning the trust are made here and it is administered here.

11. The following are examples of cases where the substantial and genuine connection test would have been considered to be evidenced at the time of registration but not any longer:-

- A trust registered as a charity in the Island which had been established under the will of person resident here to fund the provision of stand pipes in villages in India, with two relatives of the testator named as the trustees, one of whom resided on the Island and carried on the administration of the trust here but then moved away and the trustees decided not to appoint anyone on the Island to carry out those roles;
- A Scottish charity established for the purpose of providing assistance to children anywhere in the British Isles suffering from a particular rare health condition which had registered in the Island following the identification of children here who were potential beneficiaries but, over time, the number of children eligible for support reduced to zero and the group of local volunteers ceased its activities.

12. The examples given in paragraphs 8 to 11 are not intended to be exhaustive and there may be other circumstances which the Attorney General takes into account when considering whether the connection is evidenced with regard to a particular institution. Each case will be considered on its own facts, regard always being had to the purpose for which the requirement has been imposed.