LENDING IN THE ISLE OF MAN

Commercial lending (as opposed to deposit taking) is generally not a regulated activity in the Isle of Man, except where the lending is to an individual, when this may attract the requirement for registration under the Moneylenders Act 1991.

On the other hand, many lenders in the Isle of Man are regulated for other reasons (e.g., by virtue of taking deposits, conducting insurance or intermediary business).

SECURITY OVERVIEW

Secured lending is well established in the Isle of Man with security being taken in the form of a mortgage, charge or security assignment. Floating charges are common. Depending on the type of borrower and/or type of asset the subject of the security, filings may be necessary to ensure validity in insolvency and/or priority e.g. charge registrations under the Companies Acts 1931-2004 and the Companies Act 2006 and in terms of assets: land, ship and aircraft title registries.

Enforcement is still largely by way of self-help remedy through the appointment of a receiver or the exercise of contractual powers of sale. There are no statutory powers of sale (save through a coroner as explained below). Formal insolvency procedures such as schemes of arrangement and/or provisional liquidation may also be used for restructuring as alternatives to administration proceedings, which in themselves do not form part of Isle of Man insolvency law.
There is a well-established court system in the Island, which is experienced in lending and security arrangements, enforcement, cross-border and associated insolvency procedures.

**TITLE REGISTRATION**

There are two systems of property registration in the Isle of Man; title registered in the Deeds Registry known as **Unregistered Title** and title registered in the Land Registry known as **Registered Title**. Searching the Land Registry is a relatively quick and easy process whilst searching in the Deeds Registry can be more time consuming with only documents from 1980 onwards being digitalised.

**Unregistered Title**

For Unregistered Title, the original deed of conveyance and security are registered in the Deeds Registry with certified copies being sent to the purchaser and lender. On purchasing or securing a property of this type, there are often numerous deeds to be reviewed as the most recent deed in the title history (the **Abstract of Title**) may not evidence the vendor’s title. The purchaser must investigate each relevant deed and document on the title to confirm its validity, construction and legal effect. Pursuant to section 2 of the **Conveyancing Act 1985**, a period of at least 21 years’ commencing with a good root of title (which could be over 100 years ago) is the period for proof of title which the purchaser requires. Registration in the Deeds Registry of a vendor’s title to Unregistered land is not conclusive evidence of title.

**Registered Title**

Under the Registered Title system, the deed of conveyance is replaced with a **Land Registry Form of Transfer** which is lodged in the Land Registry with a map which identifies the land, though this map is not conclusive evidence of the boundaries. An updated **Office Copy** is then produced, which replaces the cumbersome Abstract of Title obtained with Unregistered Title. One flaw however is that currently it can take up to three months for the Land Registry to produce this updated Office Copy evidencing a lender’s charge. The Land Registry is working on improving this timeframe but it may take some time to reach full efficiency.

When purchasing a property with Registered Title, the purchaser and lender review the relevant Office Copy and investigations of title are more straightforward. This is because whilst historic deeds for Unregistered Title, as stated above, need to be reviewed, with Registered Title, the title is guaranteed by the Registry and so historic searching of deeds is not necessary. The Office Copy is conclusive evidence of title except for certain burdens incapable of registration which are addressed by the purchaser’s advocate separately.

**Compulsory Registration**

Compulsory registration of title with the Land Registry was brought into specified parishes in the Isle of Man on a phased basis commencing on 1 May 2002 and has been compulsory throughout the Isle of Man since 1 December 2009. The transfer of a property in the Isle of Man for consideration which consists of an Unregistered Title, must now be registered with the Land Registry by way of an **Application for First Registration**. It should be noted however, that compulsory registration does not relate to transfers for no consideration, such as land vested in a beneficiary under a will or land that is gifted.

Although Registered Titles are becoming more frequent, compulsory registration is still quite recent and the majority of land in the Isle of Man remains Unregistered Title.
SECURITY ON MANX LAND

In terms of specific security, a lender has three options:

1. Obtain a charge over Unregistered Title by way of a deed of conditional bond and security (sometimes known as a **Manx Mortgage**);

2. Obtain a charge over Registered Title by way of a legal charge under Schedule 7 of the Land Registration Act 1982 (the practical effect and mode of enforcement of both the deed of conditional bond and security and legal charge is largely the same); and/or

3. Obtain a debenture over all land (whether fixed charges and identified land or a floating charge), whether it is Registered Title or Unregistered Title. The debenture would be registered in the Deeds Registry first (as registration in the Deeds Registry is deemed notice to all) and then also against any specific Registered Titles currently in the ownership of the chargor.

On releasing this security, if Unregistered Title or a debenture, the lender will be expected to execute a deed of release or a receipt to cancel in order to release the deed of conditional bond and security or debenture. In the case of Registered Title, the lender will execute a Land Registry **Form to Discharge a Registered Charge**.

ENFORCEMENT

There are two options open to a lender for enforcing against real property in the Isle of Man. If the security permits the appointment of a receiver then this option can be exercised. If the security does not permit the appointment of a receiver or if the lender chooses not to exercise this power, then the lender can sue for the covenanted debt and a coroner (**Court Officer**) will be authorised by the Court to arrest and sell the land at public auction without reserve in accordance with statutory procedure.

Receivership

Receivership for holders of security in the Island is entirely a contractual matter. Receivers are appointed as agents of the company under a security instrument which will set out the procedure for the appointment, the receivers’ powers and how recoveries are to cascade. Once a receiver is appointed, the directors’ powers cease so far as the receiver is acting in respect of the asset or assets the subject of the security. The receiver usually executes documents for the company under power of attorney in the security document. Receivers can be appointed as receiver or as a receiver and manager (in the latter case with power to run the business of the company). The appointment of a receiver is also available under the **High Court Rules**, but generally as a remedy to protect and preserve assets rather than as a mode of enforcement; in such a case, he would derive his powers from the court and would not be an agent of the company but an officer of the court.

Coroner or Receiver?

Appointing a Receiver in respect of Manx land other than in respect of floating charges is a lesser used option because it is only relatively recently that this process has been considered as an alternative to sale by Coroner. Therefore there is very little case law or guidance. The reasons for its recent incorporation into land security interests are unclear. There are disadvantages, but none of them fatal.

Sale by a receiver does not ‘overreach’ any subsequent charges whilst sale by a Coroner does, by statute, overreach. Additionally, the Coroner not being the appointee of the lender but an officer of the Court, there can be no question of any improper motive or bad faith by the lender or opportunity for impugning the sale price achieved. A Coroner is under no obligation to achieve a fair price whereas a receiver has various duties, including to obtain the true market value, as laid down in case law. However the Coroner’s lack of agency obligations can cause difficulties for the lender if the sale price does not achieve the value of the debt owed.
We see both options being exercised and the Coroner route has certainly proved most common in the past. Use of receivers in relation to Manx land is becoming increasingly popular, particularly with lenders who are more familiar with the process from other jurisdictions.

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