

# REVIEW



## Inter-jurisdictional Bank Confidentiality



back home forward



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# REVIEW

## Introduction

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### Advocate Christopher M Brooks takes a look at ...

... a recent decision of the Isle of Man Court regarding banking confidentiality.

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## Inter-jurisdictional Bank Confidentiality

The Isle of Man High Court has recently handed down Judgment in the matter of *Danske Bank A/S v The Irish Revenue Commissioners* (27 November 2013). The Court was asked whether a bank faced with a foreign Court Order compelling it to disclose account details for a tax investigation should accept the Court Order and make disclosure or whether it would be acting in breach of duty to its customers if it did so. The Manx Court reaffirmed that only Orders made within the jurisdiction bound the Bank.

Until 2002, National Irish Bank had a branch in the Isle of Man. Thereafter, it closed its Manx operation but continued its business in Ireland. The bank records were no longer in the Isle of Man. In 2006, the Irish Revenue sought an Order in the Irish Courts for the disclosure of certain bank records including those held at the closed Isle of Man branch.

The Irish High Court (McKechnie J) refused to grant an Order for disclosure of the Manx records. McKechnie J said that:-

*“I would not deliberately offend the integrity of the Isle of Man or its judicial system by granting an Order which I knew they would strongly object to. To do so would be downright disrespectful to a Sovereign jurisdiction and would be the antithesis of showing due respect for the comity of Courts.”*

The Revenue appealed and on 25 January 2013 the appeal was allowed. The Supreme Court of Ireland indicated its willingness to make an Order for disclosure but deferred the making of the Order pending “a definitive ruling from the Courts of the Isle of Man as to whether compliance with the Order proposed to be made would be in breach of the laws of the Isle of Man”.

The Bank was required by the Irish Court to argue in favour of disclosure before the Manx Court and the Attorney General and Financial Supervision Commission were therefore joined in to represent the interests of customers. The Bank thus applied to the Isle of Man High Court for a declaration that it was not precluded by any obligations of confidentiality to former customers from complying with any Order made by the Irish Supreme Court.

Compulsion of law is a known exception to the general duty of confidentiality between banker and customer. The Bank argued that any Order made in Ireland would be binding upon the Bank in Ireland and the Bank would therefore have to comply with it. The Bank was bound by the Irish Order in just the same way as though the Order were made in the Isle of Man.

Rejecting this approach, the Court found that it was undesirable to create further non-statutory exceptions to the general principle of banker confidentiality and that the recognised exception of “compulsion

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of law” was to be interpreted narrowly such that only an Isle of Man Order would enable the Bank to make the disclosure required.

In doing so, His Honour Deemster Corlett clarified certain remarks in a number of recent Manx decisions (eg *Wine v Wine* (2007)) to the general effect that the Isle of Man is not a haven for those who seek to evade their responsibilities and that the Court would strive to assist foreign jurisdictions and regulatory authorities which sought its assistance and disclose information to them by emphasising that this was only so where there was a mechanism for assistance to be legitimately given.

It therefore appeared as though the declaration would not be granted but the Court recognised that in the special circumstances of the case and particularly the fact that the records were no longer on the Isle of Man, the Court was prepared to grant the declaration that the records could be disclosed without breach of duty in so far as the accounts were governed by Isle of Man law. It seems very likely to be the case that the banking relationship would have been governed by Manx law.

Finally, the Court considered whether in granting the declaration it was infringing the traditional rule which prevents Courts in one jurisdiction enforcing tax debts accruing in another. This is a principle found across the common law world. Although recently

doubted, Deemster Corlett reaffirmed the existence of that traditional rule but found that the granting of a declaration in this manner did not infringe it.

In this era of tax information exchange, it is well to remember that where information is required outside statutory agreements, Orders of foreign Courts will not normally bind banks in the Isle of Man to disclose information relevant to foreign tax investigations. If a foreign revenue requires such information then it will ordinarily require a Manx Order and that may be difficult to obtain owing to the refusal of the Courts to assist foreign revenues in the enforcement of their tax claims.

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