

A large, abstract graphic of a network or sphere made of interconnected blue nodes and lines, positioned in the upper right background of the page.

Isle of Man

Regulation

FUNDS AND FUND MANAGEMENT 2009

2.1 Type of funds

Collective investment funds can be organized in the Isle of Man either as open-ended investment companies, closed-ended investment companies, limited liability companies, unit trusts, limited partnerships, or protected cell companies.

2.2 Laws

Funds which fall within the definition of collective investment schemes set out in the Collective Investment Schemes Act 2008 are governed by the Act and by regulations made under that Act. Funds, which fall outside the definition, are not regulated.

The Collective Investment Schemes Act 2008 provides for three categories of collective investment scheme:

- Authorized schemes, which are subject to a level of regulation which enables such schemes to be promoted in the Isle of Man, the Channel Islands, Ireland, and the United Kingdom. These schemes are also eligible for promotion in Japan and can benefit from fast track approval in Hong Kong and Australia. Authorized schemes may be constituted as open-ended investment companies or unit trusts.
- International schemes, which are subject to a different level of regulation than authorized schemes. Such schemes are designed to encourage the innovation and development of new collective investment scheme products whilst maintaining an appropriate level of investor protection. There are no restrictions on the legal form which an international scheme can take.
- Certain international schemes, having less than 50 members and which are prohibited from inviting the public to subscribe to the scheme are classified as exempt international schemes. Such schemes are regarded as private arrangements and they are not therefore subject to regulation and cannot be promoted to the public anywhere in the world.

The professional investor fund, qualifying fund, and specialist fund are particular forms of international schemes which are exempted from certain regulations applicable to international schemes. This makes them more appropriate vehicles for many scheme proposals including hedge and alternative investment fund strategies. They are only available to investors satisfying the prescribed criteria.

The professional investor fund is only available to investors whose net assets exceed USD 1 million or satisfy other restricted criteria. The minimum investment is USD 100,000.

The qualifying fund is only available to qualifying investors who are non-retail investors.

The specialist fund is only available to specialist investors who are generally institutional investors and high net worth individuals. The minimum investment is USD 100,000.

Overseas funds are another form of international scheme. Such schemes are not subject to any approval or regulation by the Isle of Man Financial Supervision Commission. The operator of such a scheme must, however, be specifically licensed to manage or administer this type of scheme.

2.3 Managers, trustees, and custodians

The requirement to have an appointed manager and/or custodian or trustee to the scheme will depend on the regulatory category of the scheme.

An authorized scheme must have a duly appointed manager and a trustee, which must be independent of each other, and each must hold the relevant class of license (or be specifically exempted from the requirement to hold such a license), be an incorporated body having a place of business in the Isle of Man and not be prohibited from acting as manager or trustee of an authorized scheme.

The requirements in relation to the various categories of international schemes vary. The manager and trustee of an international scheme (other than an exempt international scheme, professional investor fund, qualifying fund, specialist fund, or overseas fund), must each either hold the relevant class of license (or be specifically exempted from the requirement to hold such a class), or be authorized to act as manager or trustee in another jurisdiction. The manager and trustee must be different persons but they can be under common ownership.

Professional investor funds and overseas funds may either have a manager or a fund administrator. A manager can either be the holder of a relevant class of license or have delegated its administration to a third-party fund administrator; a fund administrator must hold the relevant class of license.

Qualifying funds must have an Isle of Man resident person on the governing body of the Fund. The manager of the fund must be an Isle of Man license holder and there is a requirement to have a regulated custodian and a regulated promoter. There is also the requirement to have an acceptable financial adviser for certain sales. The custodian and promoter can be Isle of Man based license holders or license holders in an acceptable jurisdiction.

Specialist funds must have an Isle of Man resident person on the governing body. The administrator of the fund must be an Isle of Man license holder or a license holder in an acceptable jurisdiction. If the administrator is not an Isle of Man license holder, the Isle of Man resident person on the governing body must be an Isle of Man fiduciary license holder and there are extra notification obligations.

Fees of managers, trustees, and custodians are not limited by law. They must however be calculated in accordance with the provisions of the principal constitutional document of the fund, which must specify the maximum charge.

2.4 Investment restrictions

The principal restrictions for authorized schemes are as follows:

- An authorized scheme may engage in hedging transactions intended primarily for efficient portfolio management but these are limited to 10 percent in value of fund assets. There are other detailed requirements relating to hedging transactions.
- A scheme which is not a money market fund may invest only in transferable securities.
- Authorized security schemes must invest at least 90 percent of their assets in approved securities and may keep any cash or near cash assets as are necessary for the efficient management of the scheme and the repurchase of units.
- Not more than 5 percent in value of the assets of an authorized security scheme may consist of units in collective investment schemes.
- The assets of an authorized security scheme may be invested in a collective investment scheme managed and operated by the same manager or a connected party only where the collective investment scheme is a geographically specialized or an economically specialized scheme and the scheme rules specifically approve such an investment.
- There are restrictions on subscribing for zero paid or partly paid shares, broadly restricting such investments to 5 percent of the assets of the fund.

- An authorized security scheme may not have more than 10 percent of the voting rights in any body corporate or more than 10 percent of the shares of a body corporate other than an open ended investment company or more than 10 percent of the units in a collective investment scheme or 10 percent of the securities issued by the same issuer, being neither securities issued by a government or other public securities.
- Not more than 5 percent in value of the assets of an authorized security scheme which was not a government or other public security fund shall consist of transferable securities issued by the same issuer. This is subject to certain exceptions.
- There are other detailed restrictions relating to government and other public sector funds, money market funds, feeder funds, and other specialized funds.

International schemes are, in general, not subject to specific investment restrictions. However, assets which cannot be readily liquidated or valued or which are outside the normal scope of exchange traded instruments would only usually be acceptable where the investors have been made aware of these facts in the offering document or other principal constitutional document.

2.5 Borrowing

Schemes are permitted to borrow subject to their principal constitutional document permitting such borrowings.

Restrictions on borrowings by Authorized Schemes are principally that such borrowings must not require more than 10 percent in value of the funds to be utilized for the purpose of repayment. The aggregate of borrowings must not exceed the value of property which will become part of the fund assets within one calendar month following the borrowing.

Borrowings by international schemes are not subject to restriction but are expected to be short-term arrangements to finance redemptions and to be not more than 25 percent of the value of the scheme. However, there are no restrictions placed on the borrowings of professional investor funds, qualifying funds, and specialist funds provided appropriate disclosure has been made to prospective investors.

2.6 Accounts and prospectus

Authorized Schemes must submit the scheme particulars document containing information about the scheme to the Financial Supervision Commission (FSC) for its approval as part of the authorization process. Authorized schemes must publish half-yearly and annual reports and accounts providing prescribed information; the annual accounts must be audited.

International schemes (other than exempt international schemes) must prepare a scheme particulars document. This must be provided to the FSC but not as part of any pre-authorization process. The document sets out details of accounting periods, reports, and accounts. Accounts must be audited.

2.7 Supervision

The supervisory authority in the Isle of Man is Isle of Man Government Financial Supervision Commission, PO Box 58, Finch Hill House, Bucks Road, Douglas, Isle of Man.

2.8 Fund ownership

There are no restrictions imposed in the Isle of Man on who may invest in funds other than investor criteria for professional investor funds, qualifying funds, and specialist funds.

2.9 Fund structure

Funds of funds and umbrella funds are permitted in the Isle of Man, as are hedge funds structures. There are no particular regulatory requirements in relation to hedge funds, which would normally be structured as qualifying or specialist funds.

Authorized schemes which are constituted as funds of funds are forbidden to invest in other funds of funds. No such restrictions apply in relation to the other categories of schemes. Not more than 20 percent in value of the property of an authorized fund of funds shall comprise of units in a single scheme or a U.K. scheme.

2.10 Stock exchange

Isle of Man funds do not have access to an Isle of Man stock exchange but many funds are listed on the United Kingdom, Ireland, or Luxembourg exchanges.

2.11 Bank secrecy

The Isle of Man has laws relating to all-crimes anti-money laundering and countering the financing of terrorism.

2.12 Fund set-up

The average time to set-up an Isle of Man authorized fund is approximately six weeks; with professional investor funds, qualifying funds, and specialist funds being established more quickly – typically two to four weeks, as there is no regulatory pre-approval process. The approximate cost, including professional fees, of setting up a fund is GBP 10,000 to GBP 15,000, depending on the complexity of the scheme, the nature of the offering document, etc.

2.13 Foreign funds

Funds which are established outside the Isle of Man but which may be marketed to the general public in the Isle of Man are called recognized schemes. Recognized schemes must be approved by the FSC, which requires that such schemes maintain an address in the Isle of Man where the funds principal constitutional documents may be inspected along with its half yearly and annual accounts, and details of sale and purchase prices, etc. The FSC must also be satisfied that the scheme can afford adequate protection to the participants. Persons wishing to promote such schemes in the Isle of Man must hold the relevant class of license or be exempt from holding such a license under Isle of Man law.

Schemes approved under corresponding legislation in the United Kingdom, Ireland, Jersey and Guernsey will, subject to the provision of information concerning the scheme, be recognized automatically. Other schemes seeking to be recognized would be subject to the same scrutiny as would funds organized under the laws of the Isle of Man.

There are no exchange controls which would prevent marketing by foreign funds.

2.14 Bearer shares

There are legal restrictions on the offering or issuing of bearer certificates.

Know your Customer Guidance Notes applicable to collective investment schemes state that bearer certificates “...may be particularly attractive as a vehicle for laundering money.”

2.15 Use of the internet

Know Your Customer Guidance Notes applicable to collective investment schemes advise that on-line live account opening is not considered appropriate although initial application forms could be completed on-line followed-up with appropriate identification and verification checks.

Otherwise, there are no restrictions on the use of the Internet, and it is a widely used method for product marketing and investor communication.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.