

Isle of Man

Regulation

HEDGE FUNDS 2009

Hedge fund managers/advisors

Regulation

Authorization requirements and process

There is no specific class of license for hedge fund managers or advisors on the Isle of Man. On the basis that most hedge funds would be structured as, professional investor funds (PIFs), qualifying funds (QFs), specialist funds (SFs), or overseas funds, a manager would be required to have a Class 3 license. The activities of the advisor would determine the class of license applicable to the advisor but this would generally be a Class 3 license with certain sub-classes.

For all classes of license, the application process is the same. A formal written application, supported by a business plan and financial projections, has to be made to the Financial Supervision Commission. The application will be reviewed by Commission officers against the criteria of integrity, solvency and competency and a recommendation will be made to the Commissioners. It is the Commissioners who decide whether to grant a license.

Typical timescale to receive approval

The Financial Supervision Commission's current published service standard for processing an application, from receipt to a hearing by the Commissioners, is three months. This standard applies to an application with which there are no major difficulties concerning the applicant or people connected with the applicant.

Regulatory capital requirements

The regulatory capital requirements are dependent on the class and sub-classes of license applied for. Examples of the capital requirements for a Class 3 license are outlined below:

- Manager or administrator - minimum share capital of GBP 25,000 and minimum net tangible assets of GBP 75,000.

- Asset manager - minimum share capital of GBP 25,000 and minimum net tangible assets of GBP 75,000.
- Investment adviser - minimum share capital of GBP 25,000 and minimum net tangible assets of GBP 50,000.
- Promoter - minimum share capital of GBP 10,000 and minimum net tangible assets of GBP 10,000.

Significant restrictions on marketing to investors

As mentioned above, the most prevalent vehicles for hedge funds are PIFs, QFs, SFs, or overseas funds. These fund types can be marketed on the Isle of Man subject to certain conditions which encompass the type of investor the fund can be marketed to as well as disclosure of the applicable compensation arrangements. Professional investor funds and SFs also have minimum investment criteria.

A fund manager or advisor from outside the Isle of Man wishing to promote a hedge fund on the Isle of Man would be considered to be undertaking regulated activities through arranging deals in investments and would, therefore, be subject to the licensing process.

Hedge fund structures

Regulation

Authorization requirements

None of the prevalent fund types for hedge funds are subject to regulatory approval.

A PIF is not specifically required to have a manager. The day to day operation must, however, be carried out by either an Isle of Man-based manager or administrator (the approved person). The approved person has to advise the Financial Supervision Commission of the establishment of the PIF within 14 days of the PIF being established.

The Isle of Man manager or administrator of an overseas fund must be specifically licensed to provide management or administration services to overseas funds. The Isle of Man license holder must use a prescribed form to notify the FSC within 14 days of entering into a management or administration agreement with an overseas fund.

A qualifying fund is required to have an Isle of Man license holder as a manager. The manager must, within 10 working days of the launch of the

fund, certify and submit to the Financial Supervision Commission a notification using the standard format available.

A specialist fund is not required to have a manager but must have an administrator which is either an Isle of Man license holder or is licensed to act as an administrator to funds in an acceptable jurisdiction and whose license extends to administration services provided to funds of this type.

Restrictions on types of investments, concentration levels, and the manner in which hedge funds can invest and/or strategies

There are no regulatory restrictions in the Isle of Man on the investment and borrowing powers of PIFs, QFs, SFs, and overseas funds.

Rules regarding the publishing of the accounts and prospectuses

A PIF is required to produce an offering document which contains sufficient information for an informed investment decision to be made. There are no specific offering document regulations but the document does have to contain simple mandatory risk warnings and a description of the custody arrangements. The offering document has to be approved by the Isle of Man manager or administrator.

The overseas fund is exempt from Isle of Man regulation and legislation.

A qualifying fund is required to produce an offering document which includes all material information relevant to an informed judgment about the merits of participating in the fund. The offering document must contain prescribed information and risk warnings. The governing body of the fund is required to sign a Statement of Responsibility in respect of the offering document and submit this to the Financial Supervision Commission within 10 working days of launch date of the fund. Audited annual accounts must be produced.

A specialist fund is required to produce an offering document which includes all material information relevant to an informed judgment about the merits of participating in the fund. The offering document must also contain prescribed information and risk warnings. The governing body of the fund is required to sign a Statement of Responsibility in respect of the offering document and submit this to the Financial Supervision Commission within 10 working days of launch date of the fund. Audited annual accounts must be produced.

Time-scale of establishment of a hedge fund

In relation to qualifying funds, specialist funds, and PIFs, KPMG in the Isle of Man would expect the establishment of the fund to take place within a month. Overseas funds are funds which are constituted or incorporated outside of the Isle of Man and are simply managed or administered on the Island. The

timescale of establishment would, therefore, depend on the jurisdiction of domicile.

Investors

Regulation

Restrictions on which type of investors can invest in a hedge fund and/or the minimum/maximum number of investors in a hedge fund

Investors in a PIF must meet the definition of professional investor as set out in the PIF regulations. There is also a minimum initial subscription of USD 100,000.

Overseas funds are exempt from regulation on the Island and, therefore, there are no restrictions on the type of investors or investor numbers. There may, however, be restrictions in this regard in the fund's jurisdiction of domicile.

Qualifying funds are aimed at non-retail qualifying investors who must meet the definition of a qualifying investor.

Specialist funds are aimed at institutional and specialist investors and there is a minimum investment level of USD 100,000.

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.