



Guide to  
the Isle of Man  
Regulated Fund

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## PREFACE

The Isle of Man's low tax status, political and economic stability and proximity to the key markets of Europe make it a compelling and cost-effective alternative for the domicile of investment funds, particularly alternative investment funds. With a wide range of fund service providers and a sophisticated professional and banking infrastructure, the Island offers a solution for promoters of institutional-focused hedge funds. The Island prides itself on its "can-do" business environment and the close co-operation between public and private sectors has resulted in a flexible, well-regulated funds sector that meets the expectations of promoters and the concerns of key investors. This briefing note sets out the Island's proposition for the new Regulated Fund.

The Regulated Fund has been specifically created to meet the increasing appetite for regulation from both the fund community and investors, and demonstrates the ability of the island's regulator to move quickly to meet both the fund industry and market requirements. The Regulated Fund offers a structure with no prescriptive investor qualification requirements and no prohibitive minimum investment levels, with the aim of gaining recognition of equivalence in key quarters – such as the Irish Stock Exchange. Mandatory requirements include: an Isle of Man licensed manager with overall responsibility for the operation of the fund (although this does not preclude the appointment of a separate investment manager), an authorised custodian (not necessarily based in the Isle of Man), an Isle of Man auditor, pre-approval of documents by the regulator, and vetting of directors.

It is recognised that this Guide will not completely answer detailed questions which clients and their advisers may have. It is intended to provide a sketch of the subject matter covered. The Guide is, therefore, designed as a starting point for a more detailed and comprehensive discussion of the topic.

Appleby  
Douglas, Isle of Man  
May 2010

## **1. ISLE OF MAN – REGULATED FUND**

The Isle of Man has a full suite of fund options including the new Regulated Fund, available for use from 1st May 2010, which recognises the increasing appetite for regulation from fund promoters and investors alike. This fact sheet describes the key features of the Regulated Fund. Details within this document are for guidance only – the original legislation should be consulted for legal purposes.

## **2. FLEXIBILITY OF LEGAL FORM**

The Isle of Man offers a full range of vehicles for use as fund structures. Corporate vehicles can be established either as traditional companies or under the Island’s Companies Act 2006, which offers a stand-alone vehicle with minimal administrative requirements, flexible capital structure and limited disclosure requirements. Both types of company can be established as protected cell companies or ‘PCCs’.

Isle of Man limited partnerships offer tax transparency and a flexible legal framework. A limited partnership may return capital prior to the winding up of the partnership. Furthermore, in order to provide comfort to investors, the statute sets out a “white-list” of activities that will not result in limited partners being regarded as involved in the management of the partnership, thereby prejudicing their limited liability status.

The Isle of Man follows England and Wales in its trust law. As a fund vehicle, the unit trust arrangement offers huge flexibility.

## **3. SUITABLE FOR LISTING**

The Irish Stock Exchange has confirmed to the Financial Supervision Commission (“FSC”) that the Regulated Fund is suitable for listing on the Irish Stock Exchange without the imposition of a Euro 100,000 investment threshold criteria.

## **4. ESTABLISHMENT OF FUND AND REQUIREMENT FOR REGULATED MANAGER**

A Regulated Fund must appoint a fund manager that is licensed in the Isle of Man by the FSC. In order to establish a Regulated Fund, application must be made to the FSC by the proposed manager requesting permission to act. Permission is granted for the manager to act in relation to a specific Regulated Fund or Regulated Funds.

The manager, along with the governing body, is responsible for ensuring that the Regulated Fund is managed and operated in accordance with its constitutional and offering documents, and that it is compliant with the Collective Investment Schemes (Regulated Fund) Regulations 2010 (“Regulations”).

The manager is also responsible for ensuring that adequate and appropriate procedures and controls are implemented for operation of the Regulated Fund including corporate governance arrangements, complaints procedures, issue of contract notes and monitoring the Regulated Fund’s liquidity profile. The manager oversees promotion of the Regulated Fund by the promoter.

The manager must obtain the FSC’s approval to any material alterations to the fund structure or its constitutional or offering document.

## **5. GOVERNANCE AND BOARD COMPOSITION**

All members of the governing body of a Regulated Fund must complete and submit vetting forms to the FSC. With the exception of funds constituted as unit trusts, the governing body must include at least 1

natural person who is resident in the Isle of Man.

The governing body of a Regulated Fund has responsibility for ensuring that the Regulated Fund complies with its regulatory requirements and, amongst other things, for ensuring that the fund's offering document is compliant with the Regulations and contains all material information. Along with the manager, the governing body is responsible for ensuring that the Regulated Fund is managed and operated in accordance with its constitutional documents and offering document, and that the obligations of the manager under the Regulations are discharged.

The governing body is required to sign and file a statement of responsibility in relation to the initial and any amended offering document.

## **6. FIDUCIARY CUSTODIAN/TRUSTEE**

A Regulated Fund must appoint a fiduciary custodian or trustee whose responsibilities include the implementation of appropriate procedures and controls to satisfy itself that the Regulated Fund is being managed and operated in accordance with its constitutional and offering documents. The fiduciary custodian or trustee is also responsible for custody of the Regulated Fund's assets.

The fiduciary custodian / trustee of a Regulated Fund must be a different person from the manager and either be an Isle of Man licenceholder or authorised to act as trustee or fiduciary custodian (as the case may be) of a collective investment scheme under the law of any country or territory.

Any sub-custodian appointed to the Regulated Fund must be an Isle of Man licenceholder or alternatively, licensed in another jurisdiction to provide custody services to this type of fund. The sub-custodian must not be the manager or a subsidiary of the manager.

## **7. PROMOTER**

A Regulated Fund must appoint a promoter who is responsible for promotion of the Regulated Fund and the suitability and accuracy of promotional materials and advertisements. The manager of a Regulated Fund can be the promoter or alternatively, the promoter may be someone who the governing body has assessed as suitable to act as such.

## **8. TARGET INVESTORS**

The investors of a Regulated Fund are not required to satisfy any specific entry criteria, unless imposed by the Regulated Fund itself.

## **9. NO MINIMUM SUBSCRIPTION**

There is no prescribed regulatory minimum investment amount. However, the governing body is required to determine a minimum investment amount,

## **10. ASSET MANAGEMENT**

A Regulated Fund must ensure it receives relevant advisory or discretionary management services and the governing body must ensure that any proposed asset manager/adviser is suitable to act as such. Where a regulated asset manager is not appointed, the manager must undertake certain asset management responsibilities.

## **11. TAXATION**

The Isle of Man offers a tax neutral environment for fund management operations. There are no capital taxes and the Island has a zero rate of corporate tax for most taxpayers. This means that a corporate fund vehicle will benefit from a zero rate of income tax, as will any fund management or administration business based in the Isle of Man.

The fees levied by fund managers based in the Isle of Man in respect of services to Regulated Funds are exempt from value added tax in the Isle of Man.

## **12. OFFERING DOCUMENT**

Every Regulated Fund must have an offering document. The governing body of the Regulated Fund must sign a statement in respect of the offering document in which it acknowledges that it is responsible for its contents. In addition, the manager is required to confirm that the offering document accurately sets out all material information to enable an informed investment decision to be made by investors.

The Regulations set out requirements regarding the information which must be contained in the constitutional documents and offering document of a Regulated Fund, which is consistent with market practice.

## **13. INVESTMENT RESTRICTIONS**

The governing body and asset manager are required to agree a policy for the spread of investment risk for the Regulated Fund, which takes into account the investment objectives of the Regulated Fund. This policy must be implemented within six months from launch.

The Regulations are designed for flexibility whilst following best practice, and although they do impose investment and borrowing restrictions, these may be derogated from provided the policy and any associated risks are clearly disclosed in the offering document.

## **14. ACCOUNTING AND AUDIT REQUIREMENTS**

A Regulated Fund is required to prepare annual financial statements in accordance with either international financial reporting standards, UK GAAP or US GAAP. The annual financial statements must be audited by a qualifying auditor.

In order for an auditor to be qualified to report on the financial statements of a Regulated Fund, the auditor must be a member of a relevant professional body of accountants, such as the Institute of Chartered Accountants in England & Wales, must have a permanent place of business in the Isle of Man and must maintain appropriate professional indemnity insurance to a level of at least £20M.

The audited financial statements of a Regulated Fund must be distributed to its investors within 6 months of the end of its financial year.

For more specific advice on Regulated Fund in the Isle of Man, we invite you to contact the following:

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