

NEW EXEMPTIONS FOR FUND MANAGERS

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As of the first of November 2017, Isle of Man law allows for the establishment of a person to act as exempt manager, exempt asset manager or exempt investment adviser to or more Isle of Man specialist funds without having to be regulated by the Isle of Man Financial Services Authority (IOMFSA). This briefing below has been created to help you understand the potential opportunities arising from this new exemption.

WHO DOES THIS CHANGE AFFECT?

These changes may primarily affect start-up fund managers, family offices and multi-family offices. However, they may also be relevant to "onshore" fund managers who are looking to establish parallel operations outside of the European Union.

This briefing focusses on the structuring of specialist funds which are only suitable for specialist investors and require a minimum initial investment of at least US\$100,000. Acting as manager, asset manager or investment adviser to a specialist fund is typically a regulated activity in the Isle of Man and is licensed by the Isle of Man Financial Services Authority. However, Isle of Man law now allows for the establishment of a person to act as exempt manager, exempt asset manager and/or exempt investment adviser without having to be regulated by the IOMFSA.

EXEMPTION FOR MANAGERS, ASSET MANAGERS AND INVESTMENT ADVISERS

An Isle of Man company can be established to act as exempt manager, exempt asset manager or exempt investment adviser to one or more Isle of Man specialist funds. Management fees chargeable by exempt persons in respect of services to specialist funds are exempt from value added tax in the Isle of Man.

An Isle of Man administrator will need to be appointed to provide services to the exempt person and the specialist fund. The administrator will need to be regulated by the IOMFSA and will need to hold Class 3(2) and Class 3(9) permissions, together with relevant Class 4 permissions. The administrator will be responsible for the following matters, among other things:

- acting as administrator to the specialist fund;
- notifying the IOMFSA at least 20 business days prior to the commencement of services to the exempt person and confirming, as part of that notification, that it has considered and determined adequate and appropriate the exempt person's systems and controls;
- providing administration services to the exempt person, including maintenance of the exempt person's records, including in relation to their compliance with anti-money laundering and countering the financing of terrorism legislation; and
- notifying the IOMFSA of any matter relating to the exempt person which may have a material impact on the specialist fund.

A director of the administrator (who must be an individual) must also be a director of the exempt person.

SPECIALIST FUND REQUIREMENTS

The specialist fund has been specifically created to meet the demands of the alternative investment community and their institutional investors.

- **Asset management:** There are no regulatory restrictions on the types of investments that a specialist fund can make and no restrictions on the trading strategies that can be employed by its asset manager or investment adviser. There are no regulatory limits on the borrowings or leverage that a specialist fund may undertake. A specialist fund must receive (either directly or indirectly) investment advice or asset management services from an entity that the specialist fund's governing board considers is suitable to undertake such function. In assessing this, the regulatory status of that person must be taken into account. As noted above, an exempt person can be established in the Isle of Man to provide management, asset management and/or investment advisory services to the specialist fund.
- **Regulated administrator:** A specialist fund must appoint a regulated fund administrator to perform its core administration requirements, including transfer agency work, valuations, pricing and fund accounting services. The administrator must be an Isle of Man regulated administrator in order to be able to appoint an exempt person to provide management, asset management and/or investment advisory services to the specialist fund.

- **Governance and board composition:** A specialist fund must have at least one non-executive director on the board who is independent of any promoter of the specialist fund.
- **Regulatory pre-approvals:** There is typically no requirement for any pre-approval to be sought from the Authority or any other body, nor are Isle of Man licensed administrators required to obtain any specific approval or consent to act in relation to any particular specialist fund. This means that a specialist fund can be launched quickly and without any risk of regulatory delays. The exception to this rule is where the specialist fund is to be established as a closed-ended investment company, in which case the consent of the IOMFSA is required.
- **Target investors / minimum subscription:** A specialist fund must have a minimum initial investment requirement of at least US\$100,000, which is policed by the administrator. The specialist fund is not intended to be a vehicle for retail investment. It is designed to facilitate the establishment and operation of sophisticated alternative investment funds and, accordingly, is aimed squarely at institutional and high-net-worth investors. Prospective investors must certify that they are sufficiently experienced to understand the risks associated with an investment in the specialist fund in question and must fall into one of the categories of permitted investor. Broadly speaking, these cover institutional investors, affiliates of the fund's promoters and managers and individuals with a net worth in excess of US\$1M.
- **Offering document:** Every specialist fund is required to have an offering document. The board of directors of the specialist fund must all sign a statement in respect of the offering document in which they acknowledge that they are responsible for the contents of the offering document and for ensuring that it is updated as appropriate. There are only a limited number of prescribed statements to be included in the offering document of a specialist fund. By and large the content of a specialist fund's offering document is a matter for its board of directors, subject to an overriding requirement that the offering document should accurately set out all material information to enable a prospective investor to make an informed investment decision.
- **Application Form:** The specialist fund is also required to have an investor application form that contains certain prescribed statements including a certification by the investor that he meets the target investor requirements (see above).
- **Flexible custody arrangements:** There are no prescriptive requirements for the appointment of a custodian to a specialist fund, although the arrangements for custody of the assets must be disclosed in the offering document.
- **Accounting and audit requirements:** A specialist fund must prepare annual financial statements in accordance with international accounting standards, which must be audited by a qualifying auditor (broadly, a member of a relevant professional body of accountants, such as the Institute of Chartered Accountants in England & Wales, with a permanent place of business in the Isle of Man, with appropriate professional indemnity insurance to a level of at least £20M). Audited financial statements must be distributed to investors within six months of the end of its financial year.

- **Fund registration:** All specialist funds are required to register with the Authority. When registering the fund, the Authority does not review fund documentation but relies upon a statement of compliance provided by the fund's governing body. Following registration, details of registration will be available at <http://www.iomfsa.im/>.

WHY CHOOSE THE ISLE OF MAN?

The Isle of Man offers a full range of vehicles for use as fund structures, including open-ended investment companies, closed-ended investment companies, protected cell companies, limited partnerships and unit trusts.

As a British Crown Dependency, Isle of Man has a stable and reliable legal system. The Isle of Man is an internationally recognised leading business centre known for its innovation, business-friendly climate and positive engagement with international standards of regulation, compliance and transparency. The Isle of Man's agile and pro-business government, low tax regime and compliance with international standards of regulation and transparency provide a secure and competitive choice as a domicile for funds and managers.

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