

FIND A WORLD CLASS INVESTMENT VEHICLE SOLUTION

THE SPECIALIST FUND

THE FUND STRUCTURE FOR ALTERNATIVE INVESTMENT

The Isle of Man ("IOM") prides itself on creating the right business environment with pragmatic regulation, providing the capacity to grow and offering a financially compelling alternative to more expensive locations. As part of this complete solution, the Island has a full suite of fund vehicles with the fund category of choice for institutional alternative investment being the Specialist Fund. This fact sheet describes the key features of the Specialist Fund and answers important questions on the vehicle and how it may be used.

Details within this document are for guidance only – the original legislation should be consulted for legal purposes.

HOW FLEXIBLE ARE THE FUND VEHICLES YOU OFFER?

Companies can be established under the more traditional Companies Act 1931 or the more flexible 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'. PCCs are ideal for use in both multi-class/single manager structures and in multi-manager offerings.

If corporate structures are not suitable, 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 "whitelist" 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.

As a fund vehicle, the unit trust arrangement offers huge flexibility. Manx trust law is similar to that of England and Wales.

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- Post event notifications to the Financial Services Authority
- Administrator in IOM or acceptable jurisdiction
- No formal requirements for a custodian
- Flexibility on investment advisory /asset management requirements
- Investors must be "specialist investors minimum investment of USD100,000"
- Normally sold through Financial Advisers or direct to institutional investors
- Potential for exempt manager

ARE THERE RESTRICTIONS IN ASSET CATEGORIES?

Pragmatism reigns with no regulatory restrictions on asset classes, trading strategies or leverage for a Specialist Fund. This means that the Specialist Fund is suitable for any type of alternative investment fund. However, in the interests of investor protection it is a requirement that a Specialist Fund must receive (either directly or indirectly) investment advice or management services from an appropriate entity that is acceptable to the fund's governing body.

An asset manager or investment advisor may be established in the Isle of Man to act for the Specialist Fund and, subject to certain conditions, may be exempt from licensing.

DO I NEED A REGULATED ADMINISTRATOR?

A Specialist Fund will need to appoint a regulated fund administrator to perform its core administration requirements, valuations, pricing and fund accounting services. Whilst already a low cost jurisdiction we recognise the need for flexibility, therefore, whilst this role may be fulfilled by an Isle of Man based service provider, it is not a mandatory requirement. However, the appointed administrator must be based in a jurisdiction that the Financial Services Authority ("FSA") regards as providing an acceptable level of regulation and mutual assistance arrangements.

The administrator has regulatory responsibilities for ensuring that the target investor requirements for a Specialist Fund (see overleaf) are met, making certain periodic reports and declarations of compliance to the FSA and notifying the FSA of certain material events in relation to the fund.

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WHAT ARE THE RESPONSIBILITIES OF THE GOVERNING BODY?

The governing body of a Specialist Fund has responsibility for ensuring the Specialist Fund complies with its regulatory requirements and, amongst other things, for ensuring that the fund's offering document (see below) is compliant and contains all material information. It is also required to make certain that the fund is managed and operated in accordance with its constitutional documents and offering document. An independent non-executive director must be appointed to the governing body of a Specialist Fund (with the exception of funds constituted of unit trusts).

It is important to note that where an overseas administrator has been appointed, there is a requirement to appoint an Isle of Man resident director who is either licensed as a fiduciary or working for a licensed fiduciary services provider. The Isle of Man resident director is required to monitor compliance by the overseas administrator with the Specialist Fund requirements. Where the fund is constituted as a unit trust and appoints an overseas administrator, the governing body must be licensed by the FSA.

WHICH INVESTORS IS THE SPECIALIST FUND SUITABLE FOR?

The Specialist Fund is aimed at institutional and non-retail 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.

IS THERE A MINIMUM SUBSCRIPTION?

Yes. There is a minimum initial investment requirement of at least US\$100,000 (or its foreign currency equivalent). The administrator is required to ensure that compliance with the minimum investment threshold is met.

FUND REGISTRATION

All Specialist Funds are required to register with the FSA. When registering the fund, the FSA does not review fund documentation but relies upon a statement of compliance provided by the fund's governing body. Following registration, details of the fund's registration will be available at www.iomfsa.im

NO REGULATORY PRE-APPROVALS

There is no requirement for any pre-approval to be sought from the FSA or any other body. This means that a Specialist Fund can be launched quickly and without any risk of regulatory delays.

WHAT IS THE TAXATION POSITION?

To ensure our offering is financially compelling, the Isle of Man offers a tax neutral environment for fund operations. Simply put, there are no capital taxes and a zero rate of corporate tax for fund companies. 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. To further improve our offering the fees levied by fund administrators and investment

managers based in the Isle of Man in respect of fund management services to Specialist Funds are exempt from value added tax in the Isle of Man. More of the investment returns stay with the investors.

DO YOU NEED AN OFFERING DOCUMENT?

Yes – every Specialist Fund is required to have an offering document. The governing body of the Specialist Fund must sign a statement in respect of the offering document in which it acknowledges that it is responsible for its contents. However, there are only a limited number of prescribed statements to be included and, by and large, the content of a Specialist Fund's offering document is a matter for its governing body, subject to an overriding requirement that the offering document should accurately set out all material information necessary to enable a prospective investor to make an informed investment decision. The Specialist Fund is also required to have an investor application form that contains certain prescribed statements, including a certification by the investor that it meets the target investor requirements.

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HOW FLEXIBLE ARE CUSTODY ARRANGEMENTS?

There are no prescriptive requirements for the appointment of a custodian in relation to a Specialist Fund. The fund is free to appoint various custodians or prime brokers as it sees fit and may appoint different parties to act in relation to different types or groups of assets. However, the arrangements for the custody of the assets of the Specialist Fund must be described in the offer document.

WHAT ARE THE ACCOUNTING AND AUDIT REQUIREMENTS?

A Specialist 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 an appropriate auditor. In order for an auditor to be able to report on the financial statements of a Specialist Fund, the auditor must: be independent of the fund; be a member of a relevant professional body of accountants; have a permanent place of business in the Isle of Man; and maintain appropriate professional indemnity insurance to a level of at least £20M. The audited financial statements of a Specialist Fund must be distributed to its investors within not more than 6 months of the end of its financial year.

CONTACT

For further details on Isle of Man administrators and other fund services providers, please refer to:

www.iomfunds.com

www.iomfsa.im



