

FIND FLEXIBILITY FOR FAMILY OFFICE AND PRIVATE FUNDS

THE EXEMPT SCHEME

ISLE OF MAN – EXEMPT SCHEMES

The Isle of Man has a full suite of fund options. However, the exempt scheme is a fully flexible cost-effective vehicle that is subject to limited regulation in the Isle of Man and is suitable for family offices looking to structure their assets in a zero corporation tax, European financial centre and for all types of private funds. This fact sheet describes the key features of the exempt scheme. Details within this document are for guidance only – the original legislation should be consulted for legal purposes. For more general information on the Isle of Man as a fund domicile jurisdiction, see fact sheet: The Isle of Man - The Right Place for Fund Administration.

FLEXIBILITY OF LEGAL FORM

The Isle of Man offers a comprehensive range of vehicles for use as fund structures. 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.

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.

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

flexibility and the security of knowing that the arrangements are not a matter of public record.

EXEMPT SCHEME

- Subject to limited regulation
- No more than 49 investors
- Cannot be promoted to the public anywhere in the world

REGULATORY STATUS

Funds in the Isle of Man are generally subject to regulation commensurate with the category into which they fall. Regulatory requirements may include the need to appoint appropriately licensed functionaries (such as an administrator, custodian and/or auditor) and stipulations regarding the preparation and content of an offering document, investor certification obligations, minimum subscription levels, etc.

Exempt schemes are an exception to these requirements. If the criteria for exempt scheme status are met, the arrangements are subject to only limited regulation.

CRITERIA FOR EXEMPTION

There are two criteria for exempt scheme status: The first relates to the means of distribution; the second relates to the diversity of the investor base. In detail, the criteria is as follows:

- Interests in the exempt scheme may not be offered to the public or any section of it (i.e. the fund may only be offered on a private ‘friends and family’ basis) and a prohibition to this effect must be included in the constitutional documents of the fund; and;

- The exempt scheme must have fewer than 50 investors at all times.

As an exempt scheme grows, there may be good reasons why it would become appropriate to make arrangements for public offerings or to exceed the investor limit. In these circumstances it is a straightforward process to convert an exempt scheme into a higher category of scheme such as a Specialist Fund (see fact sheet: The Specialist Funds).

ADMINISTRATION REQUIREMENTS

Although there is no requirement for an exempt scheme to appoint a regulated fund administrator, the use of an Isle of Man fund structure will require an Isle of Man fiduciary services provider to deliver formation and ongoing compliance services. These are regulated activities in the Isle of Man and there are a wide range of service providers available.

If the use of a regulated fund administrator is regarded as necessary or appropriate, there are also a number of experienced fund administrators based on the Isle of Man, from global names to boutique providers. Overseas administrators may also be used in relation to an exempt scheme.

ASSET MANAGEMENT

As a lightly regulated vehicle, there are no restrictions on asset classes, trading strategies or leverage for an exempt scheme. Accordingly, the exempt scheme

Continued
overleaf

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is suitable for any type of investment fund from traditional and long-only equity funds to hedge fund strategies and from private equity to property investment.

An exempt scheme can obtain investment advice from any source.

The Isle of Man is unique among international finance centres in continuing to have the capacity to attract and accommodate real business operations. The Isle of Man Financial Services Authority (FSA) regularly reviews its licensing policy to ensure that it remains appropriate and flexible. The Island is keen to attract hedge fund management and related operations.

GOVERNANCE AND BOARD COMPOSITION

There are no prescriptive requirements regarding the composition of the board of directors of an exempt scheme.

NO REGULATORY PRE-APPROVALS OR FEES

There is no requirement for any pre-approval to be sought from the FSA or any other body to launch an exempt scheme. There are no initial or ongoing fees in the Isle of Man relating to the establishment or operation of an exempt scheme, although a modest annual corporate charge is payable in relation to the use of an Isle of Man corporate vehicle.

INVESTORS

Interests in an exempt scheme may not be offered to the public. Therefore investment may only be accepted on a private basis from "friends and family".

The fund cannot accept more than 49 investors and artificial arrangements for evading this limit are not effective.

NO MINIMUM SUBSCRIPTION

As a lightly regulated private vehicle, there is no prescribed regulatory minimum initial investment requirement for an exempt scheme.

TAXATION

The Isle of Man offers a tax neutral environment for fund 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.

Fees levied by suppliers based in the Isle of Man in respect of services to exempt schemes are subject to value added tax in the Isle of Man at the applicable rate.

PLACING DOCUMENTS

As a lightly regulated private vehicle, there are no prescriptive requirements in respect of offering documentation for an exempt scheme.

However, both the Companies Act 1931 and the Companies Act 2006 place similar obligations on the directors of a company issuing a prospectus to ensure that it contains all material information that intended recipients would reasonably expect to see in order to enable them to make an informed investment decision.

Even in the context of a private placement, it is prudent to ensure that there is a clear statement of the terms and conditions upon which investors may base their decision to invest. Accordingly, the preparation of a fairly detailed private placement memorandum is common.

FLEXIBLE CUSTODY ARRANGEMENTS

There are no prescriptive requirements for the appointment of a custodian in relation to an exempt scheme. The fund is free to implement whatever arrangements are appropriate for holding its assets, whether through the use of a third party, direct ownership or special purpose vehicles.

NO MANDATORY AUDIT

There are no mandatory requirements relating to the audit of the financial statements of an exempt scheme, although the Isle of Man does host offices of all the major accountancy and audit practices should an audit be regarded as appropriate.

CONTACT

For further details on Fund Managers and Administrators in the Isle of Man and other fund services, please refer to: www.iomfunds.com www.iomfsa.im

