

# GET A NEW PERSPECTIVE ON FUND MANAGEMENT

## THE QUALIFYING FUND

The Isle of Man has a full suite of fund options, but the fund category of choice for distribution to non-retail investors, offering maximum flexibility on strategy and asset allocation, is the Qualifying Fund. This fact sheet describes the key features of the Qualifying Fund. Details within this document are for guidance only – the original legislation should be consulted for legal purposes.

### FLEXIBILITY OF LEGAL FORM

The Isle of Man offers a full 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. Both types of company can be established as protected cell companies or ("PCCs"). PCCs are ideal for use in both multiclass/single manager structures and in multi-manager offerings.

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.

### ASSET MANAGEMENT

There are no regulatory restrictions on asset classes, trading strategies or leverage for a Qualifying Fund. As a result, the Qualifying Fund 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. A Qualifying Fund can obtain investment advice from any appropriate source acceptable to the governing body and its Isle of Man licensed fund manager.

### QUALIFYING FUND

- Post event notifications to the FSA
- Isle of Man Manager
- Appointed custodian
- Flexibility on investment advisory /asset management requirements
- Investors must be 'qualifying investors'
- No prescribed minimum initial investment amount
- Normally sold through Independent Financial Advisers
  - Regulated Financial Adviser Distribution
  - Regulated Promoter controlled distribution through acceptable financial advisers

### REGULATED MANAGER

A Qualifying Fund must appoint a fund manager that is licensed by the Isle of Man Financial Services Authority or ("FSA"). In addition to performing its core administration requirements including transfer agency work, valuations, pricing and fund accounting services, the manager is responsible for ensuring that the Qualifying Fund continues to be managed in accordance with its constitutional documents and offering document.

The Isle of Man licensed manager also has a regulatory responsibility for ensuring that the target investor requirements (see overleaf) are met, for making certain periodic reports and declarations of compliance to the FSA and for notifying the FSA of certain material events in relation to the Qualifying Fund.

### GOVERNANCE AND GOVERNING BODY COMPOSITION

Except where the fund is constituted as a unit trust, an independent non-executive director must be appointed to the board of a Qualifying Fund. In addition, there is a requirement for an Isle of Man resident director, although this may be the same person as the independent non-executive.

The governing body of a Qualifying Fund has responsibility for ensuring that the fund complies with its regulatory requirements and, amongst other things, for ensuring that the fund's offering documents (see overleaf) are compliant and contain all material information. Along with the Isle of Man licensed manager, the governing body is responsible for ensuring that the fund is managed and operated in accordance with its constitutional documents and offering document.

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### CUSTODIAN

A Qualifying Fund must appoint a custodian who is entrusted with responsibility for custody of the assets of the fund.

The custodian of a Qualifying Fund must be a different person from the manager, and can either be an Isle of Man authorised person or be licensed to provide the custody services required in another jurisdiction. The governing body is required to ensure that each custodian is appropriately experienced in providing services to the class of assets for which it will provide services. The manager is required to approve the custodian's appointment.

### TARGET INVESTORS

The Qualifying Fund is not intended to be a vehicle for retail investment; it 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 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 promoter or manager, and persons whose expertise, experience and ability to appraise the merits of an investment in the fund is certified by an acceptable financial adviser.

### NO MINIMUM SUBSCRIPTION

There is no prescribed regulatory minimum initial investment requirement for a Qualifying Fund.

### PROMOTIONAL ARRANGEMENTS

It is of paramount importance that Qualifying Funds are promoted in a manner consistent with the nature of the fund and the target

investor requirements. There are two alternatives: either, a Qualifying Fund must appoint a promoter who is authorised to act as promoter in the Isle of Man or in another jurisdiction that the FSA regards as providing an acceptable level of regulation: in this case, the promoter can enter into terms of business with financial advisers whom the promoter deems to be suitable. Alternatively, the fund may dispense with the regulated promoter and effect distribution via regulated financial advisers who are both competent and permitted by their home regulator to advise on this type of fund.

### 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 Qualifying Fund can be launched quickly and without any risk of regulatory delays.

### FUND REGISTRATION

All Qualifying 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. Details of funds registered are available at [www.iomfsa.im](http://www.iomfsa.im)

### 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 fund management services to Qualifying Funds are exempt from value added tax in the Isle of Man.

### OFFERING DOCUMENT

Every Qualifying Fund is required to have an offering document. The governing body of the Qualifying Fund must sign a statement in respect of the offering document in which it acknowledges that it is responsible for its contents.

There are only a limited number of prescribed statements to be included in the offering document of a Qualifying Fund. By and large, the content of a Qualifying 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 to enable a prospective investor to make an informed investment decision.

The Qualifying Fund is also required to have an investor application form that contains certain prescribed statements including a certification by the investor (and by its acceptable financial adviser in certain circumstances) that it meets the target investor requirements (see above).

Continued overleaf

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### ACCOUNTING AND AUDIT REQUIREMENTS

A Qualifying Fund is required to prepare annual financial statements in accordance with generally accepted accounting principles and practice. 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 Qualifying 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 Qualifying 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 Administrators in the Isle of Man and other corporate services, please refer to:

[www.iomfunds.com](http://www.iomfunds.com)

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