



Guidance Note - Supplemental Licensing Policy Class 3 – Services to Collective Investment Schemes January 2017

Introduction

This policy document is additional to the general licensing policy and is directed at licence applicants who wish to provide services to collective investment schemes.

This specific licensing policy will take precedence over the general licensing policy where any details differ.

In general, the provision of services to collective investment schemes is covered under Class 3 of the Regulated Activities Order and it should not be necessary to give applicants additional permissions under other classes. In particular, it is not necessary to apply for investment business activities under Class 2 if the investment business services provided are only to schemes. However, sub-custodians do need to apply for a Class 2(5) permission as their services are not provided directly to the scheme.

Additionally, restricted permissions under Class 4 (corporate services) may be required to cover corporate services to schemes.

If services are also provided to closed ended investment companies, licence applicants may be required to apply for restricted permissions under Class 2 (investment business) and/or Class 4 (corporate services).

Functionaries of funds and their advisers are encouraged to meet with the Authority's authorisations team before submitting any licence application to discuss the application of the principles set out in this policy document and how they could apply in their particular circumstances, with a view to expediting the licensing process. It should also be borne in mind that not all fund functionary activities are licensable; for instance, intra-group arrangements, technology provision and certain consultancy services may not require a licence.

Segregated licences

The Authority expects that certain services to schemes will not be undertaken within the same legal entity and under the same licence. The separation of functions for schemes is an important component of investor protection.

In particular, functionaries who are acting as Trustee, Fiduciary Custodian and Custodian (under Class 3(3), (4) and/or (5)) will not be permitted to undertake any other services for collective investment schemes.

Fund Managers, Administrators, Asset Managers and Investment Advisers who are managed by another licenceholder

This section is relevant to applicants wishing to carry on activities falling within Class 3(1) Manager, Class 3(2) Administrator, Class 3(6) Asset Manager or Class 3(7) Investment Adviser who will be managed by a Class 3 (9) licenceholder.

When assessing the fitness and propriety of an application to become a managed licenceholder authorised to carry on regulated activities falling within paragraphs (1), (2), (6) or (7) of Class 3 of the Regulated Activities Order, the Authority will apply its usual licensing policy in respect of the managed business itself. In addition, the Authority will pay special attention to the arrangements under which the proposed Class 3(9) manager intends to carry out its management functions.

A licenceholder authorised to carry on activities falling within paragraphs (1), (2) (6) or (7) of Class 3 of the Regulated Activities Order may be managed by a Class 3(9) licenceholder who:

- a) is authorised to provide management and administration services to Class 3 (1), (2), (6) or (7) licenceholders as the case may be;
- b) has a track record in providing services to the type of scheme and investor profile for which the managed entity will act; and
- c) can demonstrate competence to act as manager of the managed entity (including the provision of adequate systems, controls and resources) to the Authority's satisfaction.

Provision of Management and Administration Services to non-licenceholders:

Services to a Fund Manager or Administrator located outside the Island

In line with the 2017 Guidance Note, "Undertaking outsourced functions on behalf of administrators or managers of foreign collective investment schemes" - a licenceholder wishing to undertake such activities should hold a Class 3(10) permission.

Asset Managers of Specialist Funds and funds of a similar nature to Specialist Funds

This part of the document is directed at certain alternative asset management operations which wish to provide services to Specialist Funds (including hedge funds) and funds of a similar nature to Specialist Funds (including schemes established in other jurisdictions ("specialist type funds")). Investors in specialist type funds are "specialist investors" and the regulatory and licensing regime is designed for this type of investor.

The Authority recognises that where asset managers are considering re-locating some or all of their operations to the Isle of Man they will require a streamlined process for licensing. This section outlines the factors that the Authority will take into account when considering such applications.

The Authority recognises that specialist investment activity may warrant a different style of regulatory oversight to conventional services to collective investment schemes, subject to certain conditions being met. This approach does not equate to a lowering of regulatory standards.

In particular, the criteria below will be used by the Authority when considering applications for a licence authorising the holder to carry on activities falling within paragraph (6) of Class 3 of the Regulated Activities Order:

- (a) in circumstances where the applicant only proposes to provide services in relation to specialist type funds and is either a member of a group of companies of which an associated member is regulated for activities of this nature, e.g. as an alternative asset management operation, in a jurisdiction that the Authority has approved for the purpose (an “acceptable jurisdiction”) or is under common control with an entity which is regulated for equivalent activities in an acceptable jurisdiction – such an applicant is referred to in this policy document as an “associated asset manager”; and
- (b) in circumstances where the applicant is not an associated asset manager but only proposes to provide services in relation to specialist type funds – such an applicant is referred to in this document as a “specialist asset manager”.

It is anticipated that, as their business develops, associated asset managers and specialist asset managers may wish to establish more substantial operations providing services to a broader class of funds.

The Authority’s approach to applications by prospective associated asset managers and specialist asset managers is set out below.

“Associated Asset Managers”

The key features of the licensing process for a prospective associated asset manager are as follows:

- a) Streamlined process – the Authority aims to determine applications within 2 months of receipt of all required documentation and information.
- b) Applicant must be part of a group (or under common control) where an associated member is regulated in an acceptable jurisdiction for activities of this nature, e.g. as an alternative asset management operation.
- c) The competence element of an applicant’s “fit and proper” evaluation will be determined by reference to the relevant experience of the key persons, directors and controllers of the applicant. This is a category of business in which the Authority would

consider licensing start-up operations. It is not essential that the applicant or the relevant regulated entity should have a business track record of its own if this can be demonstrated by the officers and controllers individually.

- d) The applicant must be an Isle of Man incorporated company and must have at least one local resident director.

A successful applicant for an associated asset manager licence will be granted a Class 3(6) licence and may seek an exception from the following regulatory requirements (NB This should be discussed with the Authority before submitting a licence application):

- a) Whilst the associated asset manager will be required to ensure there are sufficient persons of appropriate seniority performing the regulated activities in the Isle of Man, they will not be subject to the normal prescriptive requirements as to the number and seniority of staff located in the Isle of Man. Arrangements will be considered on a case by case basis and may take into account the contribution of staff in an acceptable jurisdiction.
- b) The associated asset manager will either have a real presence on the Island (see paragraph (c)) or it will be established as a “managed” entity which is managed by an Isle of Man Class 3(9) licenceholder authorised to act for a Class 3(6) asset manager (see paragraph (d)).
- c) Where an associated asset manager is established with a real presence on the Isle of Man it must demonstrate that:
 - (i) physical management and control is on the Island;
 - (ii) at least one key person is resident on the Island. Other key persons may be based in an acceptable jurisdiction providing the applicant can demonstrate that effective oversight can be maintained.
- d) Where an associated asset manager is established as a “managed” entity, the associated asset manager must be managed by an Isle of Man Class 3(9) licenceholder who is authorised to act for a Class 3(6) asset manager and who:
 - (i) has a track record in providing services to specialist type funds; and
 - (ii) can demonstrate competence and experience to act as manager of the managed entity (including the provision of adequate systems, controls and resources) to the Authority’s satisfaction.

When assessing the fitness and propriety of a “managed asset manager” applicant, the Authority will pay special attention to the arrangements under which the proposed manager intends to carry out its management functions.

The managed entity will not be required to have separate key persons where this oversight is provided by the licenceholder managing the entity; however it should

have an Isle of Man resident director. All records relating to the managed operation should be located in the Isle of Man.

- e) The annual statutory audit and reporting requirements will apply to associated asset managers, but the associated asset manager will not be required to provide quarterly financial returns.
- f) The prescriptive financial resources requirements will not apply, but the associated asset manager must meet an ongoing solvency requirement.
- g) The associated asset manager may operate under the PII cover of a group or affiliated entity.

The licence of an associated asset manager will be subject to conditions as follows:

- a) The associated asset manager will only provide services in relation to Specialist Funds and funds of a similar nature to Specialist Funds.
- b) The associated asset manager will be prohibited from holding clients' monies or investments.
- c) Any outsourcing must be undertaken within the principles of the Authority's Guidance on Outsourcing / Delegations of Functions.
- d) The associated asset manager will be required to meet an ongoing solvency requirement.

“Specialist Asset Managers”

The key features of the licensing process for a prospective specialist asset manager are as follows:

- a) Streamlined process – the Authority aims to determine applications within 2 months of receipt of all required documentation and information;
- b) Applicants need not be part of a group or under common control with a regulated entity.
- c) Applicants are required to have real presence on the Island but are exempt from any prescriptive requirements as to the number and seniority of staff located in the Isle of Man.
- d) The “fit and proper” status of the applicant will be determined by reference to the relevant experience of the officers and controllers of the applicant. This is a category of business in which the Authority would consider licensing start-up operations. It is not essential that the applicant should have a business track record of its own if this can be demonstrated by the officers and controllers individually.

- e) The applicant must be an Isle of Man incorporated company and must have at least one local resident director.

At least one key person is resident on the Island. Other key persons may be based in an acceptable jurisdiction providing the applicant can demonstrate that effective oversight can be maintained.

A successful applicant for a specialist asset manager licence will be granted a licence authorising the holder to carry on activities falling within paragraph (6) of Class 3 of the Regulated Activities Order.

The licence of a specialist asset manager will be subject to the condition that they only provide services in relation to specialist type funds.

Promoters and Regulated Financial Advisers

Promoters of Funds where a Regulated Promoter is required

A licence authorising the holder to carry on activities falling with paragraph (8) of Class 3 of the Regulated Activities Order will allow a promoter to act for funds that statutorily require the appointment of a regulated promoter. As such they:

- will be allowed to prepare or distribute, or cause the preparation or distribution of an offering document or associated marketing material for a fund that requires the appointment of a regulated promoter (such as a Qualifying Fund);
- will not be permitted to control clients' money or assets.

Section 3 of the CIS Act 2008 and Rules 6.13 and 6.14 of the Financial Services Rule Book, which deal with advertising, are particularly relevant to the activities of promoters.

In particular, promoters will be required to ensure that they do not issue, or allow the issue of, misleading advertisements on behalf of the fund and that any advertising done in other jurisdictions is in accordance with the law and regulations in that jurisdiction.

Regulated Financial Advisers

A qualifying fund or Q-type EIF can operate without a regulated promoter where –

- the Manager accepts some additional responsibilities; and
- Regulated Financial Advisers advise all (h) investors or potential investors (whose expertise, experience and knowledge to adequately appraise the investment is required to be certified by a financial adviser) on the suitability of investing in the fund.

Custody Services

Applicants should be able to demonstrate that they can meet the requirements of the general licensing policy in relation to the adequacy of their financial resources, track record, competence, experience and systems to undertake custody of the types of schemes and scheme assets for which they seek to act as custodian.

An applicant for a licence to act as a trustee or fiduciary custodian (under Class 3(3) or (4)) to authorised and full international schemes (including Regulated Funds) will normally be an entity which is ultimately owned by a deposit taking group already offering similar services through other group entities. This policy ensures that licenceholders undertaking such custody work have the group support necessary for this role.

Glossary of Terms used in this Licensing Policy

CIS Act 2008	means the Collective Investment Schemes Act 2008
Experienced Investor Fund (or EIF)	has the same meaning as in the Collective Investment Schemes (Experienced Investor Fund) Regulations 2010 (“the EIF Regulations”)
(h) investor	means an investor as defined in Schedule 1 paragraph 1(h) of the EIF Regulations and Schedule 1 paragraph (h) of the Qualifying Fund Regulations respectively
The Authority	means Isle of Man Financial Services Authority
Non-Isle of Man Scheme	means a collective investment scheme which is not established using an Isle of Man structure (company, trust or limited partnership)
Key Person	means an individual who has, or who appears to the Authority to have, significant powers and responsibility in relation to any regulated activity (see Financial Services Act 2008 s. 48 for full definition)
Promoter	has the same meaning as in the Collective Investment Schemes Act 2008
Qualifying Fund (or QF)	has the same meaning as in Collective Investment Schemes (Qualifying Fund) Regulations 2010 (“the QF Regulations”)
Regulated activity	means an activity specified in the Regulated Activities Order (as amended 2016)
Regulated Activities Order	means the Regulated Activities Order 2011 (as amended 2013 and 2016)
Scheme	has the same meaning as in the Collective Investment Schemes Act 2008
Specialist Fund (or SF)	has the same meaning as in the Collective Investment Scheme (Specialist Fund) Regulations 2010 (“the SF Regulations”)

Status of Guidance: The Isle of Man Financial Services Authority issues guidance for various purposes, including to illustrate best practice, to assist licenceholders to comply with legislation and to provide examples or illustrations. Guidance is, by its nature, not law, however it is persuasive. Where a person follows guidance this would tend to indicate compliance with the legislative provisions, and vice versa.