



## Guidance Note – UK UCITS Outsourcing to an Isle of Man Functionary

January 2017

### Introduction

This document considers the existing regulatory requirements for a UK scheme which is subject to the Financial Conduct Authority (“FCA”) COLL Handbook and wishes to outsource functions to the Isle of Man. It is recommended that independent legal advice is taken in relation to how the regime applies to particular schemes. The Isle of Man regime for authorised schemes is equivalent to the UK regime and similar arrangements are possible for an Isle of Man functionary who wishes to delegate functions to a UK functionary.

Isle of Man Financial Services Authority (“IOMFSA”)

FCA Requirement in COLL Handbook December 2016		Does the Isle of Man Regime Meet Outsourcing Requirements?
<b>6.6.15R</b>	(1A) The directors of an ICVC have the power to retain the services of anyone to assist in the performance of their functions, subject to the duty of the ACD to comply with COLL 6.6.15A R.	YES The Isle of Man regulation includes prudential supervision and the Islands regulation of authorised schemes is recognised by the UK as equivalent to the UK regime.
<b>6.6.15A R</b>	(2) The authorised fund manager has the power to retain the services of any person to assist it in the performance of its functions, provided that: a) a mandate in relation to managing investments of the scheme property is not given to: iv) any other person operating from an establishment in a country other than the United Kingdom unless such person:	Before it can act, an Isle of Man functionary must hold the relevant class 3 regulatory permissions – <ul style="list-style-type: none"><li>• Class 3(10) “administration services to the manager or administrator of a collective investment scheme where that manager or administrator is located outside the island” and</li><li>• Class 3(1) management</li></ul>

	<p>A) Is authorised or registered in such country for the purpose of asset management; and</p> <p>B) Is subject to prudential supervision in such country; and in addition if that person is not an EEA firm, co-operation is ensured between the FCA and the overseas regulator of that person;</p> <p>b) the authorised fund manager ensures that at all times it can monitor effectively the relevant activities of any person so retained;</p> <p>c) the mandate permits the authorised fund manager to:</p> <p>i) give further relevant instructions to the person so retained, and</p> <p>ii) withdraw the mandate with immediate effect when this is in the interests of the unit holders;</p> <p>d) the mandate does not prevent effective supervision of the authorised fund manager and it must not prevent the authorised fund manager from acting, or the scheme from being managed in the best interests of the unit holders; and</p> <p>e) having regard to the nature of the functions to be carried out under the mandate, the person to whom the mandate is given must be qualified and capable of undertaking those functions.</p> <p>3) Subject to the provisions of the OEIC Regulations and COLL6.6.15R(1) and (1A) where services are retained under (2), the responsibility which the authorised fund manager had in respect of such services prior to that retention of services will remain unaffected.</p>	<ul style="list-style-type: none"> <li>• Class 3(2) administration or</li> <li>• Class 3(6) asset management if managing scheme investments forms part of the delegated functions.</li> </ul> <p>An existing memorandum of understanding is in place between the IOMFSA and the FCA.</p>
<p><b>COLL</b> <b>6.6.16</b> <b>Guidance</b></p>	<p>1) Directors of an ICVC, authorised fund managers and depositaries should also have regard to SYSC 8 (Outsourcing) SYSC 8.1.6 R states that a firm remains fully responsible for discharging all of its obligations under the regulatory system if it outsources crucial or important operational functions or any relevant services and activities.</p> <p>2) SUP 15.8.6 R (Delegation by UCITS management companies) requires an authorised fund manager of a UCITS scheme to</p>	<p>YES – There is nothing in the Isle of Man regulations that would prevent responsibility and monitoring by the UK manager.</p> <p>An existing memorandum of understanding is in place between the IOMFSA and the FCA.</p> <p>This guidance does not prevent outsourcing to Isle of Man functionaries</p>

	<p>inform the FCA where one of its duties is delegated to another person.</p> <p>3) For the purpose of COLL 6.6.15 R 2) (a) (iv) adequate co-operation will be ensured where the FCA has entered into a co-operation agreement of the kind referred to in article 102(3) of the UCITS Directive with the relevant overseas regulator.</p>	
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Outsourcing by the depository of a UK UCITS scheme to an Isle of Man Functionary – Before it can act, an Isle of Man functionary must hold the relevant regulatory permissions which cover the activities delegated.

FCA Requirement in COLL Handbook December 2016		Does the Isle of Man Regime Meet Outsourcing Requirements?
<b>6.6.15R</b>	<p>4) The depository of a scheme may delegate any function to any person save:</p> <p>a) The ICVC or any director of the ICVC or the authorised fund manager of a scheme, to assist the depository to perform:</p> <p>(i) Any function of oversight in respect of the scheme, its directors or the authorised fund manager as the case may be; or</p> <p>(ii) Any function of custody or control of the scheme property;</p> <p>b) An associate of the ICVC or of any of the directors of the ICVC or of the authorised fund manager of the scheme (as the case may be) to assist the depository to perform any function in (a)(i); or</p> <p>c) A nominee company or anyone else to assist it to perform the function of being a custodian of documents evidencing title to scheme property unless the arrangements with the custodian prohibit the custodian from releasing the documents into the possession of a third party without the consent of the depository.</p> <p>5) Where the depository retains services under (4):</p> <p>a) If it retains the services of a director of the ICVC, or an associate of such a director or its own associate, or the authorised fund manager of a scheme or</p>	<p>YES – Providing the IOM functionary is not a person referred to in (4)(a), (b) or (c) functions can be outsourced to it by the UK depository.</p>

	<p>that authorised fund manager's associate, then its liability for those services shall remain unaffected; and</p> <p>b) In any other case it will not be held responsible by virtue of the rules in COLL for any act or omission of the person so retained if it can show that:</p> <ul style="list-style-type: none"><li>i) It was reasonable for it to obtain assistance to perform the function in question;</li><li>ii) The person retained was and remained competent to provide assistance in the performance of the function in question; and</li><li>iii) It had taken reasonable care to ensure that the assistance in question was provided by the person retained in a competent manner</li></ul>	
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*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.*