

What would happen to investors' investment if the fund manager/trustee/distributor goes bankrupt? What is the respective liquidation procedure? Under this situation, would there be any difference to investors' investment if investors hold the investment by nominee account, as compare with registration under investors' own name?

Investment funds are collective investment schemes, the roles of fund manager and trustee/custodian are different. The assets of a fund are managed by a fund manager, while trustee/custodian is responsible for holding custody of a fund's asset to ensure the asset is not misappropriated.

If the fund manager goes into liquidation or becomes bankrupt, the board of directors of the fund or the trustee has the authority to dismiss the fund manager and reappoint another one under notification to share/unitholders in accordance with the relevant requirements prescribed in the constitutive documents of the respective fund. If the fund is authorized by Securities and Futures Commission (SFC), it is required to notify the SFC immediately about the change of the fund manager, and the SFC will review and approve the appointment of the new fund manager. Alternatively, the fund may be liquidated in accordance with its constitutive documents and according to the governing law of the fund.

If the trustee or custodian becomes bankrupt, investors may get back the assets of the fund. Since a trustee or custodian has been entrusted with client assets, those client assets will normally under proper contractual terms and applicable winding-up laws be segregated from the entity's own assets and should not form the pool of assets available to creditors and shareholders. However, liquidation proceedings are usually time-consuming, and there may be a possibility that even client assets can be frozen pending the liquidation proceedings, and that clients may not be able to get their entrusted assets back until some time later when the liquidators are able to sort through the liquidation matters properly.

As for the insolvency of distributors, there is no impact on the operations of the funds. Since the fund's assets are kept by the trustee or custodian, distributors are only responsible for distributing the funds but have no access to the assets of the funds.

Fund units purchased by an investor can be registered directly in his own name or under the name of a nominee. A nominee account is an account in which investments are registered under the name of the nominee and the nominee so appointed will have full ownership of them. The clients of such nominee account will not have any direct contractual relationship with the fund manager or the trustee.

In general, a nominee will record and hold the investments of their clients in separate accounts. Under the terms and conditions of the nominee agreement, where applicable the nominee will act on the instructions of the clients to deposit into or withdraw the client's investments from the account; attend meetings or voting in respect of conversion, merger, consolidation, re-organization, re-capitalization, receivership, bankruptcy or insolvency proceedings or readjustment of a fund concerned, collect and receive dividends or other entitlements or other payments relating to the investments of the clients etc.

If a client holds the investments under his or her own name, the client is the registered holder of the investments. He/she will have full ownership of them and can give instructions directly to the fund manager for the delivery of shares, corporate actions, dividend entitlements, cash receipt relating to his or her investments. In case the trustee/custodian goes bankrupt, investors holding the investments in their own names have to contact directly the trustee/custodian for getting back the entrusted assets, which for investors holding the investments in nominee account, they should make the claim to the nominee. This may as a result requires longer processing time as the trustee/custodian has to identify the investors of the nominee account while handling the claim.

(Investment involves risk. Please refer to the offering document for further details including the risk factors.)

Hong Kong Investment Funds Association