



ISLE OF MAN  
FINANCIAL SERVICES AUTHORITY

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*Lught-Reill Shirveishyn Argidoil Ellan Vannin*

# **ALTERNATIVE BANKING REGIME**

## **PROPOSAL TO CREATE THREE TYPES OF CLASS 1 LICENCE**

### **CONSULTATION PAPER**

Issue Date: 31 March 2016

Closing Date: 14 May 2016



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## CONSULTATION PAPER AND SUMMARY OF RESPONSES TO DISCUSSION PAPER

This document is issued by the Isle of Man Financial Services Authority, the regulatory body for the financial sector in the Isle of Man, to provide feedback on the [discussion paper](#) issued in January 2016 and to consult upon proposed draft legislation to take the project to its next stage.

The overall proposal is to create three separate Class 1 licence types for:

- (1) retail / non-restricted deposit-takers;
- (2) non-retail / restricted deposit takers; and
- (3) representative offices of foreign banks.

The proposal was initially suggested and consulted on by the Isle of Man Government's Department of Economic Development ('DED') in May 2015.

The purpose of this consultation is to obtain information, views and evidence in relation to the draft legislation that is necessary to put the proposal into effect. It will be of particular interest to existing holders of financial services licences that are authorised to undertake Class 1 regulated activity, as well as foreign banks interested in establishing a presence in the Isle of Man, and advisers to these categories.

The closing date for comments is **14 May 2016**.

Please send comments in writing and preferably by email to:

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If you have a query in relation to how this consultation has been carried out, please contact the Authority's Policy and Legal Division by email at [IOMFSAPOLAUTH@gov.im](mailto:IOMFSAPOLAUTH@gov.im) or by telephone on +44 (0) 1624 646000.



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## GLOSSARY OF TERMS

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<b>Term</b>	<b>Meaning in this document</b>
<b>AML</b>	Anti money laundering (and countering the financing of terrorism)
<b>Authority</b>	The Isle of Man Financial Services Authority
<b>Branch</b>	Branch in the Isle of Man of a bank/ deposit taker that is incorporated outside the Isle of Man
<b>DCS</b>	Depositors' Compensation Scheme <sup>1</sup>
<b>DED</b>	Isle of Man Government's Department of Economic Development
<b>FSA08</b>	The Financial Services Act 2008
<b>TCSP</b>	Trust and/or corporate service providers (or fiduciary service providers) – Class 4 and/or 5 licenceholders of the Authority

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<sup>1</sup> <http://www.iomfsa.im/lib/docs/iomfsa//depositorscompensationschemeregu.pdf> (as amended) - established under section 25 of the Financial Services Act 2008.



## 1. EXECUTIVE SUMMARY

### 1.1 Overview

This consultation follows the [discussion paper](#) that was issued for public consideration by the Authority in January 2016, which in turn reflected the proposals that were consulted on (with affected parties) by the Isle of Man Government's Department of Economic Development ('DED') in May 2015. DED referred to Government's wish to consider "*creating a non-retail banking regime for high net worth individuals (HNWIs) and corporate clients*" and "*to provide flexibility to emerging business models*", with particular reference to greater flexibility of ownership for non-retail banks, as well as a suggested third type of licence for representative offices of foreign banks.

DED received 10 responses to its consultation, the large majority of which supported the introduction of a non-retail deposit-taking regime to supplement the current retail deposit-taking licence. The representative office proposal also met with general approval. Some respondents suggested that non-retail banks might boost the Island's economy by providing a more diverse choice of banking services to businesses such as e-gaming and fiduciary services. The representative offices were seen by some as a possible stepping stone to a full licence.

The Authority's January 2016 discussion paper ([www.iomfsa.im/ConsultationDetail.gov?id=557](http://www.iomfsa.im/ConsultationDetail.gov?id=557)) received 12 responses, of which one related solely to an ancillary issue. The other 11 responses are summarised at 3.2 below and were generally supportive of the proposals.

### 1.2 What is the purpose of this Consultation Paper?

This consultation paper seeks views of all interested parties on the draft legislation that has been prepared following the Authority's January 2016 discussion paper.

The draft legislation comprises amendments to the Regulated Activities Order, Financial Services (Exemptions) Regulations, Financial Services (Fees) Order and Depositors' Compensation Regulations. In addition, draft licence conditions are proposed that will ultimately become rules in the Financial Services Rule Book in the medium term.



### 1.3 Who may be affected by this Consultation Paper?

The consultation will be of interest to: existing holders of Class 1 financial services licences; persons (including existing banks from other jurisdictions) that are interested in establishing an operation to serve only corporates and certain individuals (who meet very high entry criteria); existing banks interested in opening a representative office; and advisers to these categories.

## 2. CONSULTATION PROCESS

### 2.1 The Authority's regulatory objectives

The Authority's regulatory objectives are set out in section 2(2) of the FSA08 as —

- (a) securing an appropriate degree of protection for policyholders, members of retirement benefits schemes and the customers of persons carrying on a regulated activity;
- (b) the reduction of financial crime; and
- (c) the maintenance of confidence in the Island's financial services, insurance and pensions industries through effective regulation, thereby supporting the Island's economy and its development as an international financial centre.

Proposals in this consultation are mainly in respect of objectives (a) and (c).

The Authority is required to give consideration to certain factors when undertaking its role, in accordance with paragraph 3 of Schedule 1 to the FSA08. The factors that are most relevant to this proposal are as follows:

Factor	Information
the need to balance the regulatory objectives;	The proposals balance high levels of protection for retail customers of banks, with reduced protection for corporates and non-retail customers and provide new openings for prospective banking licenceholders.
the desirability of facilitating the development of the financial services, insurance and pensions industries;	The proposals aim to encourage new entrants to offer banking facilities in the Island. This may facilitate the development



Factor	Information
	of other financial services, by increasing the banking facilities available to those sectors.
the international character of the financial services, insurance and pensions industries and their markets and the desirability of maintaining the competitive position of the Island;	Through increasing certain banking facilities in the Island, the proposals could assist the development of business sectors that are important to the Island's economy such as e-gaming and fiduciary service providers.

## 2.2 Responding to the Consultation Paper

The Authority considers open dialogue with stakeholders as essential in developing its proposals and greatly appreciates comments on the proposals in this document.

On the basis of the mainly supportive position of respondents to the [discussion paper](#), the purpose of this consultation is to seek views on the draft legislation that has been prepared to take forward the project.

Please note that your comments may not result in a change to the proposals.

The Authority wishes to encourage submission of views and confirms that **respondents will not be publicly identified**. However, please do not submit comments anonymously, as they will not be considered or included in the Consultation Response.

When responding, representative groups are asked to provide a summary of the people and organisations that they represent and the methodology used to gain members' input.

A list of representative groups to which this Consultation Paper has been sent is shown at Appendix A.



### 3. PROPOSAL

#### 3.1 Background

As mentioned in the January 2016 [discussion paper](#) the proposals aim to address a decline in traditional offshore banking by creating a 'non-retail' banking regime to sit alongside the existing retail deposit-takers. Existing banking services in the Island are not expected to reduce, but instead two additional categories of banking licence would be created. To achieve this, the existing Class 1 licence would be split into three separate sub-classes:

- Class 1(1) – Non-Restricted (including retail) deposit takers – those that may provide services to the full spectrum of customers. This class is likely to cover all current Class 1 licenceholders.
- Class 1(2) – Restricted (including non-retail) deposit takers – those that may only provide services to corporates and a very limited class of individuals. These may also be termed wholesale/ private/ merchant banks.
- Class 1(3) – Representative offices of foreign banks – an office (branch) of a foreign bank that wishes to have a presence in the Isle of Man for marketing and business development purposes, but which must not undertake any transactions.

#### 3.2 Discussion paper - feedback

The January 2016 [discussion paper](#) received responses from six banks, two law firms, one fiduciary service provider and three private individuals. No respondents opposed the proposals and comments received may be summarised as:

- We are very supportive of the proposals, which will support the long term development of the Island's economy and its role as an international finance centre. The proposals may also lead to increased competition between banks, but demand for the new licence types is difficult to quantify. It is noted that Class 1(2) licenceholders will not have the contingent risk of DCS exposure and need not be part of a banking group;
- The differences between Class 1(1) and 1(2) should be very clear, and well publicised, so as to prevent misunderstanding amongst their (potential) customers;
- £500,000 is a better threshold than £250,000 (for assets as described) of individual customers of Class 1(2) licenceholders, but maybe the figure should be higher still. It may be difficult to properly assess this level/ threshold and a standard form would be helpful. Also, an annual assessment of such individuals may be necessary.





- The availability of Class 1(2) licences should improve the competitiveness of the Isle of Man amongst its peer jurisdictions. There is a need for banks to service TCSP and e-gaming clients, but the factors hindering banking provision for these sectors should be investigated, notably the shortage of correspondent banking facilities;
- A Class 1(2) bank may have a more volatile deposit book and less liquidity. New deposit-takers should have evidence of being regulated to a comparable standard in other jurisdictions. Where a licenceholder is from a non-banking group, it is important that its parent/ group demonstrates the necessary competency;
- The depositors' compensation scheme is key for Class 1(1) customers, but not for Class 1(2) customers. Class 1(2)s must make clear that they do not offer DCS protection;
- It must be clear what activities and advertising a Class 1(3) may undertake. Class 1(3) banks may present reputational risks, especially if the banks are from countries with differing regulatory standards. The individual acting for the Class 1(3) should meet key person criteria. Class 1(3) licenceholders should be encouraged to transition to a full licence, maybe within a fixed period.

The queries are mostly addressed by the draft legislation that is described and contained later in this document. Other aspects – including Class 1(3) licences - will be addressed in the Licensing Policy (see 3.3.1).

In addition to the comments and queries above, there were various comments that indicated three areas where more clarity was required.

- Whether a Class 1(3), being a category of 'deposit taker', might be able to receive deposits in the Isle of Man, perhaps on an 'agency' type basis for its group.  
**A Class 1(3) licenceholder would not be able to undertake any deposit taking or other regulated activity transactions, other than administering its own office (eg paying utility bills and staff salaries).**
- Whether Class 1(1) licenceholders would also need to apply for Class 1(2) permissions to undertake corporate / wholesale business.  
**A Class 1(1) licenceholder would not need to apply for Class 1(2) authorisation, because the Class 1(1) authority covers all types of customer. Please note, however, that a Class 1(1) licenceholder will be a DCS member.**
- Whether corporate trustees may hold accounts with Class 1(2) licenceholders.  
**The term 'restricted depositor' under Class 1(2) encompasses any company, including e.g. a corporate trustee of a trust services provider ('TSP').**



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## 3.3 Proposed legislation and licence conditions

### 3.3.1 Introduction

The Authority has noted the comments received in response to the [discussion paper](#) and has prepared the following draft legislation, which it considers will achieve the initial aims outlined by DED last year and will address any issues that have been identified.

Prospective new licenceholders may also wish to note:

- [Licensing Policy](#) – The Licensing Policy for Class 1(1) will mirror the existing policy for Class 1. For Classes 1(2) and 1(3) the Authority will amend the Licensing Policy to specify that applicants should meet certain criteria. In general the criteria for Class 1(2) will be more flexible than that for Class 1(1), as there will be no retail (non-restricted) clients. However, additions to the policy will include aspects such as:
  - *The primary activity of a group that seeks a Class 1(2) licence.*  
Part 2.3 of the policy will allow an Isle of Man incorporated company that is part of a non-banking group to be established and licensed and Appendix 2 Table B (Track Record) will be amended to reflect Class 1(2) applicants. The Authority would expect any such applicant to have a suitable financial resources, track record and relevant competency, but banking need not be primary activity of the group. Nevertheless, the ownership structure of an applicant must be transparent (per 2.2 and Appendix 2 Table A); and
  - The suitability of a bank that seeks a Class 1(3) licence, as well as the suitability of its proposed Main Representative. Class 1(3) licenceholders will be subject to periodic reviews, including consideration of whether transitioning to another class of licence would be appropriate. Parts 1, 3, 4, 5 and Appendix 3 of the policy are relevant.
- The [Financial Services Ombudsman Scheme](#) will apply to Class 1(1) and 1(2) licenceholders - in general this Scheme will continue to apply to customers that are individuals (or 'personal customers') but not to companies.
- Section 4(2) of the [Financial Services Act 2008](#) is relevant to foreign banks, which may not carry on business unless they are licensed by the Authority for Class 1 regulated activity<sup>2</sup>.
- Any resolution regime that is introduced will apply to both Class 1(1) and 1(2) banks.

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<sup>2</sup> The Financial Services Act says "a person is treated as carrying on a regulated activity ... from the Island if that person is ... a company incorporated outside the Island that is registered under the [Foreign Companies Act 2014](#)", which says that a foreign company that "may only carry on business from the Island (see section 5) under (a) the name by which it is registered under this Act; or (b) a business name under which it is registered under the [Registration of Business Names Act 1918](#)".



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## Draft legislation and licence conditions

Your comments are sought on the following draft legislation (see Appendix B) and draft licence conditions (see 3.3.6):

### 3.3.2 Regulated Activities (Amendment) (Class 1 – Deposit-Taking) Order 2016<sup>3</sup>

- The proposed changes to the Regulated Activities Order 2011 split the existing Class 1 regulated activity into three separate sub-classes, namely Class 1(1), Class 1(2) and Class 1(3). These classes are described in 3.1 above.

#### Question

Question 1: Do you consider the proposed changes to the Regulated Activities Order are appropriate? Please explain any comments.

### 3.3.3 Financial Services (Exemptions) (Amendment) (Class 1 – Deposit-Taking) Regulations 2016<sup>4</sup>;

- The changes to the Financial Services (Exemptions) Regulations 2011 are merely consequential and will replace 'Class 1' with sub-classes 1(1) and 1(2).

#### Question

Question 2: Do you consider the proposed changes to the Financial Services (Exemptions) Regulations are appropriate? Please explain any comments.

### 3.3.4 Financial Services (Fees) (Amendment) (Class 1 – Deposit-Taking) Order 2016<sup>5</sup>

- The changes to the Financial Services (Fees) Order 2016 will impose the same application and annual fee for Class 1(1) and Class 1(2). The Authority considers the same fee is appropriate for these two sub-classes due to the level of supervision and risk involved.

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<sup>3</sup> which amends SD 844/11: [Regulated Activities Order 2011 \(as amended\)](#)

<sup>4</sup> which amend SD 885/11: [Financial Services \(Exemptions\) Regulations 2011 \(as amended\)](#)

<sup>5</sup> which amends SD 2016/0098: Financial Services (Fees) Order 2016



- The Order also introduces an application fee of £3,000 and an annual fee of £2,500 for Class 1(3). This fee is based on those charged in Australia<sup>6</sup> (A\$ 5,500 p.a.) and Canada<sup>7</sup> (C\$ 2,500 p.a.) and also reflects the anticipated level of supervision and risk involved in this sub-class.

#### Question

Question 3: Do you consider the proposed fees and the changes to the Financial Services (Fees) Order are appropriate? Please explain any comments.

### 3.3.5 Depositors Compensation Scheme (Amendment) Regulations 2016<sup>8</sup>.

- The changes to the DCS Regulations 2010 will confine the application of the regulations to Class 1(1) because Class 1(2) banks will not be DCS participants.

#### Question

Question 4: Do you consider the proposed changes to the DCS Regulations are appropriate? Please explain any comments.

### 3.3.6 Financial Services Rule Book 2013<sup>9</sup> ('Rule Book') and licence conditions

Proposed changes to rules and proposed licence conditions are shown separately for each of Class 1(1), 1(2) and 1(3):

#### ***Class 1(1):***

All existing rules that currently apply to Class 1 will apply to Class 1(1) regulated activity in future and no additional rules, nor changes to rules, are anticipated for Class 1(1) as part of this consultation.

#### Question

Question 5: Do you agree with the proposed requirements for Class 1(1)? Please explain any comments.

<sup>6</sup> Australian [Guidelines on Being Authorised as a Representative Office of a Foreign Bank](#)

<sup>7</sup> Canadian [Foreign Bank Representative Offices Regulations](#)

<sup>8</sup> which amend SD 683/10: [Depositors' Compensation Scheme Regulations 2010 \(as amended\)](#)

<sup>9</sup> SD 372/2013: [Financial Services Rule Book 2013 \(as amended\)](#)



### **Class 1(2):**

It is proposed to modify<sup>10</sup> some rules in the Rule Book for Class 1(2) licenceholders and to impose some licence conditions. Existing rules will be modified where changes will be minor; licence conditions will be imposed where more significant rule changes are required but are not thought appropriate at this stage. The proposed changes are:

**Modifications:** The following rules will not apply to Class 1(2): Rules 2.26(1)(b), 2.26(4)(h), 2.29(1)(b), 6.17<sup>11</sup> and 7.21.

**Licence conditions:** The following licence conditions are proposed for Class 1(2) and are likely to become rules in the Rule Book in the medium term:

“*Restricted depositor*” has the meaning given in the Regulated Activities Order<sup>12</sup>. Other terms used in the licence conditions have the meanings given in the Rule Book.

#### **1(2)(A)      *Reference to lack of compensation scheme in licenceholder documentation and advertisements***

(1) A licenceholder must not suggest or imply by any means that deposits placed with it are protected by a deposit protection scheme.

(2) A statement, which must be in the form set out at (3), must be contained prominently within a licenceholder’s account opening documentation, account opening correspondence, on all bank statements, and in all advertisements.

(3) The statement required by (2) is: ‘No deposit placed with [name of bank] has protection from a deposit compensation scheme’.

(4) During the process of opening each account for a customer, a licenceholder must obtain and retain the customer’s signed certification that they understand the implications of the statement in (3). This certification may be combined with the certification required by [condition 1(2)(B)]<sup>13</sup>.

#### **1(2)(B)      *Restricted depositors***

(1) Subject to (3), a licenceholder must not undertake business, whether deposit taking, lending or otherwise for persons who are not ‘restricted depositors’ as defined in the Regulated Activities Order 2011.

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<sup>10</sup> As permitted by section 18(2)(b) Financial Services Act 2008

<sup>11</sup> rule 6.17 will be replaced by a licence condition

<sup>12</sup> SD 884/11 – the definition of ‘restricted depositor’ will be added to the Regulated Activities Order as part of this project.

<sup>13</sup> See licence condition 1(2)(B)(4) for the format of the combined certification.



(2) If a customer is not a body corporate, during the process of opening each account, or providing any other service for a customer, a licenceholder must obtain and retain a signed certification that each customer is a restricted depositor. This certification must be in the form set out in (4), and may be combined with the certification required by [condition 1(2)(A)]<sup>14</sup>.

(3) Despite (1), if a customer was a restricted depositor at the time of placing a deposit, but subsequently ceases to be a restricted depositor, a licenceholder may continue to provide services to that customer for a period of 12 months following the date it became aware, or reasonably should have become aware, of that fact.

(4) The form of the Restricted Depositors' confirmation, which must be signed and dated by any individual depositor, is either (a)(i) or (b)(i) as appropriate:

(a) For any individual who is a *restricted depositor* (in his personal capacity and not as trustee or nominee):

- |  |
|--|
| i. I certify that I have a minimum of £500,000 net worth, excluding -<br>a) my home or any money raised through a loan secured on that property; and<br>b) any rights of mine under a contract of insurance; and<br>c) any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I, or my dependants, are or may be entitled; and |
|--|

- |  |
|--|
| ii. I understand that deposits placed with [name of class 1(2) deposit taker] do not benefit from a compensation scheme. |
|--|

(b) For any individual who is a *trustee* of a particular trust:

- |   |
|---|
| i. I certify that the assets of the trust are valued at a minimum of £500,000, excluding real property that is any person's principal place of residence; and |
|---|

- |  |
|--|
| ii. I understand that deposits placed with [name of class 1(2) deposit taker] do not benefit from a compensation scheme. |
|--|

<sup>14</sup> The combined certification (per licence conditions 1(2)(A) and 1(2)(B)) is shown in 1(2)(B)(4).



For the avoidance of doubt, in the case of deposits held jointly, each depositor must meet one of the above criteria in their own right.

*[Note that this condition will be supplemented with guidance to indicate that a corporate trustee is considered a company, not an individual.]*

**1(2)(C)      *Periodic verification***

A licenceholder must satisfy itself at least every three years that each of its customers that are not bodies corporate continue to be restricted depositors.

**1(2)(D)      *Advertising***

A licenceholder must not market its products or services by means of media directed to the general public.

*[Note that this condition may be supplemented with guidance to indicate the advertising permitted/ not permitted.]*

**Question**

Question 6: Do you agree with the proposed rule modifications and licence conditions for Class 1(2)? Please explain any comments.

***Class 1(3):***

The existing Rule Book will not be applied to Class 1(3) licenceholders. Instead, it is proposed to impose licence conditions on Class 1(3) licenceholders.

**Licence conditions:** The following licence conditions are proposed for Class 1(3). The licence conditions reflect the requirements applied to representative offices in other jurisdictions, principally Australia.

**1(3)(A)      *Permitted activities***

(1) A licenceholder's business must be confined to the conduct of liaison and research activities.

*[Note that this condition will be supplemented with guidance to indicate the permissible activities.]*



- (2) A licenceholder's activities and registered office in the Isle of Man must be separate from those of any other licenceholder.

**1(3)(B) Prohibition on deposit-taking and other transactions**

- (1) A licenceholder must not undertake any deposit-taking or activity related to the administration of banking business.

*[Note that this condition will be supplemented with guidance to indicate the prohibited activities.]*

- (2) A licenceholder must not undertake any financial transactions except those transactions that are necessary for and incidental to the maintenance of the office in the Isle of Man.

**1(3)(C) Advertising**

A licenceholder may only use its bank's name in conjunction with the description 'representative office' or Class 1(3) regulated activity.

*[Note that this condition may be supplemented with guidance to indicate the advertising permitted/ not permitted.]*

**1(3)(D) Compliance and co-operation**

- (1) A licenceholder must –
- (a) comply with all applicable regulatory requirements;
  - (b) immediately inform the Authority in writing of any breach or alleged breach of a regulatory requirement; and
  - (c) immediately inform the Authority in writing of any event which might reasonably be expected to result in the suspension or revocation of the licence.
- (2) A licenceholder must promptly provide the Authority with any information requested in relation to its operations.

**1(3)(E) Main Representative**

- (1) A Main Representative must –





- (a) be an employee of the licenceholder;
  - (b) be a key person<sup>15</sup>; and
  - (b) not be an employee or director of any other licenceholder.
- (2) A licenceholder must notify the Authority –
- (a) at least 20 business days in advance of the appointment or intended appointment of a Main Representative;
  - (b) within 10 business days of the departure or intended departure from office of the Main Representative, giving reasons for his departure;
  - (c) at least 20 business days in advance of a change to the address and contact numbers of the registered office in the Isle of Man, or of its intention to close the representative office;

**1(3)(F)      *Head Office monitoring***

(1) A licenceholder's Head Office must submit to the Authority annually a statement, as specified by the Authority, confirming that the licenceholder is complying with its licence conditions. This statement must be signed by the officer to whom the Main Representative reports in the licenceholder's Head Office.

(2) A licenceholder must notify the Authority in advance of any change in the arrangements for the Head Office's oversight of the licenceholder and confirm that the licenceholder's compliance with its licence conditions will not be disadvantaged by the proposed changes;

**1(3)(G)      *Reporting***

(1) A licenceholder must submit to the Authority annually a copy of its audited financial statements (in English), within four months of the accounting year end.

(2) A licenceholder must immediately notify the Authority of any significant developments adversely affecting its financial soundness and/or reputation globally.

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<sup>15</sup> As defined in section 48 Financial Services Act 2008



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**1(3)(H)      *Mergers and acquisitions etc***

A licenceholder must notify the Authority immediately of any joint venture, merger, takeover, or acquisition of 5% or more of the shares of -

- (a) another licenceholder; or
- (b) any entity in the Isle of Man.

**Question**

Question 7: Do you agree with the proposed licence conditions for Class 1(3)? Please explain any comments.

**3.3.7 Commencement of legislation**

Subject to comments, it is proposed to present the legislation to Tynwald for approval and to come into operation before the 2016 summer recess, so as to facilitate early introduction of this new regime.

**Question**

Question 8: Do you have any other comments about the proposed legislation and licence conditions? Please explain any comments.



## 4. IMPACT ASSESSMENT

As mentioned in the [discussion paper](#), the proposals are not expected to impose any regulatory or cost burden on existing licenceholders. The proposals are expected to be facilitative for new business.

### Question

Question 9: Do you believe there are any other positive or negative impacts? Please explain any comments.

### Questions

Question 10: Do you have any general comments about the proposed regime that you think have not been addressed by this consultation document and the previous documents issued by the Authority and DED on this topic?

Please provide full details/ explanation for any comments.

## 5. SUMMARY OF QUESTIONS

Paragraph	Question
3.3.2	Question 1: Do you consider the proposed changes to the Regulated Activities Order are appropriate? Please explain any comments.
3.3.3	Question 2: Do you consider the proposed changes to the Financial Services (Exemptions) Regulations are appropriate? Please explain any comments.
3.3.4	Question 3: Do you consider the proposed fees and the changes to the Financial Services (Fees) Order are appropriate? Please explain any comments.
3.3.5	Question 4: Do you consider the proposed changes to the DCS Regulations are appropriate? Please explain any comments.



Paragraph	Question
3.3.6 Class 1(1)	Question 5: Do you agree with the proposed requirements for Class 1(1)? Please explain any comments.
3.3.6 Class 1(2)	Question 6: Do you agree with the proposed rule modifications and licence conditions for Class 1(2)? Please explain any comments.
3.3.6 Class 1(3)	Question 7: Do you agree with the proposed licence conditions for Class 1(3)? Please explain any comments.
3.3.7	Question 8: Do you have any other comments about the proposed legislation and licence conditions? Please explain any comments.
4	Question 9: Do you believe there are any other positive or negative impacts? Please explain any comments.
4	Question 10: Do you have any general comments about the proposed regime that you think have not been addressed by this consultation document and the previous documents issued by the Authority and DED on this topic?  Please provide full details/ explanation for any comments.

## 6. NEXT STEPS

The Authority aims to publish a summary of the comments received, in a Consultation Response document, within three months of the closing of the formal consultation period.

The Consultation Response document will provide an analysis of the responses to the questions asked and information on themes that were not covered by the questions.

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## **APPENDIX A – LIST OF REPRESENTATIVE GROUPS TO WHOM THIS CONSULTATION PAPER HAS BEEN SENT**

- Alliance of Isle of Man Compliance Professionals
- Association of Chartered Certified Accountants
- Association of Corporate Service Providers
- Association of Pension Service Providers
- Chamber of Commerce
- Chartered Institute for Securities and Investment
- Financial Planning & Insurance Brokers Association
- Institute of Chartered Secretaries and Administrators
- Institute of Directors
- Institute of Financial Services
- IOM Funds Association
- Isle of Man Bankers Association
- Isle of Man Captives Association
- Isle of Man Law Society
- Isle of Man Society of Chartered Accountants
- Isle of Man Trade Union Council
- Manx Insurance Association
- Society of Trust and Estate Practitioners
- Wealth Management Association.

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## APPENDIX B – DRAFT LEGISLATION

In order to bring the new regime into operation, the Authority proposes that the following legislation will be required.

In each case the proposed amending legislation is shown at (a) followed by a Keeling Schedule at (b), which shows the relevant extracts of the legislation as it will be following the proposed amendments. In the Keeling Schedules, additions are underlined and deletions are crossed through.

**[1\(a\) REGULATED ACTIVITIES \(AMENDMENT\) \(CLASS 1 - DEPOSIT TAKING\) ORDER 2016](#)**

**1(b)** REGULATED ACTIVITIES ORDER (Keeling Schedule)

**[2\(a\) FINANCIAL SERVICES \(EXEMPTIONS\) \(AMENDMENT\) \(CLASS 1 - DEPOSIT-TAKING\) REGULATIONS 2016](#)**

**2(b)** FINANCIAL SERVICES (EXEMPTIONS) REGULATIONS (Keeling Schedule)

**[3\(a\) FINANCIAL SERVICES \(FEES\) \(AMENDMENT\) \(CLASS 1 – DEPOSIT-TAKING\) ORDER 2016](#)**

**3(b)** FINANCIAL SERVICES (FEES) ORDER (Keeling Schedule)

**[4\(a\) DEPOSITORS' COMPENSATION SCHEME \(AMENDMENT\) REGULATIONS 2016](#)**

**4(b)** DEPOSITORS' COMPENSATION SCHEME REGULATIONS (Keeling Schedule)

Draft licensing conditions are shown in paragraph 3.3.6 of this document.

**1(a)**

## **REGULATED ACTIVITIES (AMENDMENT) (CLASS 1 - DEPOSIT TAKING) ORDER 2016**

The Treasury makes this Order under section 3 of the Financial Services Act 2008, after carrying out the consultations required by section 44(7) of that Act.

**1. Title**

This Order is the Regulated Activities (Amendment) (Class 1 - Deposit Taking) Order 2016.

**2. Commencement**

If approved by Tynwald, this Order comes into operation on 1 July 2016.

**3. Insertion of Article 4A in the Regulated Activities Order 2011**

After Article 4 of the Regulated Activities Order 2011<sup>16</sup> insert —

**« 4A Consequential provision in relation to Class 1 – Deposit Taking**

For the avoidance of doubt, all licenceholders permitted to undertake Class 1 regulated activity on 30 June 2016, shall be licenceholders permitted to undertake Class 1(1) regulated activity after that date.».

**4. Amendments to Schedule 1 to the Regulated Activities Order 2011**

- (1) Schedule 1 to the Regulated Activities Order 2011 is amended as follows.
- (2) In Class 1, for the sub-heading “Regulated activity” and its underlying text, substitute —

**«Regulated activities**

- (1) Accepting deposits of money from any person, including persons that are not restricted depositors, where —
  - (a) the money received by way of deposit is lent to others; or
  - (b) any other activity of the person accepting the deposit is financed wholly, or to a material extent, out of the capital of or interest on the money received by way of deposit.
- (2) Accepting deposits of money solely from persons who are restricted depositors, where —
  - (a) the money received by way of deposit is lent to others; or
  - (b) any other activity of the person accepting the deposit is financed wholly, or to a material extent, out of the capital of or interest on the money received by way of deposit.

<sup>16</sup> SD 884/11

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- (3) Operating a representative office of a foreign bank.»

## 5. Amendments to Schedule 2 – Part 1 to the Regulated Activities Order 2011

- (1) Part 1 of Schedule 2 to the Regulated Activities Order 2011 is amended as follows.
- (2) At the appropriate place in the alphabetical list insert a new definition –
- «**restricted depositor**” means –
- (a) a body corporate;
  - (b) an individual (in his personal capacity and not as trustee or nominee) who certifies that he has a minimum of £500,000 net worth, excluding -
    - (i) his home or any money raised through a loan secured on that property; and
    - (ii) any rights under a contract of insurance; and
    - (iii) any benefits (in the form of pensions or otherwise) which are payable on the termination of his service or on his death or retirement and to which he, or his dependants, are or may be entitled; or
  - (c) an individual who is a trustee of a particular trust, who certifies that that the assets of that trust are valued at a minimum of £500,000, excluding real property that is any person’s principal place of residence;
- that -
- (i) certifies their confirmation of understanding that deposits placed with a class 1(2) deposit taker do not benefit from a compensation scheme; and
  - (ii) for the avoidance of doubt, in the case of deposits held jointly, each depositor must meet one of the above criteria in their own right;».

MADE \_\_\_\_\_ 2016



## 1(b) Regulated Activities Order – extracts following proposed amendments

### REGULATED ACTIVITIES ORDER 2011 (extracts)

New Article:

#### **4A Consequential provision in relation to Class 1 – Deposit Taking**

For the avoidance of doubt, all licenceholders permitted to undertake Class 1 regulated activity on 30 June 2016, shall be licenceholders permitted to undertake Class 1(1) regulated activity after that date.

Amendment to Schedule 1:

#### **CLASS 1 — DEPOSIT TAKING**

##### **Regulated activity**

~~Accepting deposits of money, where—~~

~~(a) the money received by way of deposit is lent to others; or~~

~~(b) any other activity of the person accepting the deposit is financed wholly, or to a material extent, out of the capital of or interest on the money received by way of deposit.~~

##### **Regulated activities**

- (1) Accepting deposits of money from any person, including persons that are not restricted depositors, where —
  - ~~(a) the money received by way of deposit is lent to others; or~~
  - ~~(b) any other activity of the person accepting the deposit is financed wholly, or to a material extent, out of the capital of or interest on the money received by way of deposit.~~
- (2) Accepting deposits of money solely from persons who are restricted depositors, where =
  - ~~(a) the money received by way of deposit is lent to others; or~~
  - ~~(b) any other activity of the person accepting the deposit is financed wholly, or to a material extent, out of the capital of or interest on the money received by way of deposit.~~
- (3) Operating a representative office of a foreign bank.

## Amendment to Schedule 2 – Part 1 to the Regulated Activities Order 2011:

**SCHEDULE 2**  
**INTERPRETATION**

**PART 1 – DEFINITIONS**

<i>Expression</i>	<i>Definition</i>
...	
registered legal practitioner	means a person who is entered in the register maintained under the Legal Practitioners Registration Act 1986;
<u>restricted depositor</u>	<p><u>means –</u></p> <p>(a) <u>a body corporate;</u></p> <p>(b) <u>an individual (in his personal capacity and not as trustee or nominee) who certifies that he has a minimum of £500,000 net worth, excluding -</u></p> <p style="padding-left: 20px;">(i) <u>his home or any money raised through a loan secured on that property; and</u></p> <p style="padding-left: 20px;">(ii) <u>any rights under a contract of insurance; and</u></p> <p style="padding-left: 20px;">(iii) <u>any benefits (in the form of pensions or otherwise) which are payable on the termination of his service or on his death or retirement and to which he, or his dependants, are or may be entitled; or</u></p> <p>(c) <u>an individual who is a trustee of a particular trust, who certifies that that the assets of that trust are valued at a minimum of £500,000, excluding real property that is any person’s principal place of residence;</u></p> <p><u>that -</u></p> <p style="padding-left: 20px;">(i) <u>certifies their confirmation of understanding that deposits placed with a class 1(2) deposit taker do not benefit from a compensation scheme; and</u></p> <p style="padding-left: 20px;">(ii) <u>for the avoidance of doubt, in the case of deposits held jointly, each depositor must meet one of the above criteria in their own right;».</u></p>
retirement benefits scheme	has the same meaning as in the Retirement Benefits Schemes Act 2000 regardless of any exceptions contained in the Retirement Benefits Schemes (Excepted Schemes) Regulations 2001 <sup>17</sup> ;
...	

<sup>17</sup> Note that definition of ‘retirement benefits scheme’ includes amendment made by SD 2016/0099  
Isle of Man Financial Services Authority

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**2(a)**

## **FINANCIAL SERVICES (EXEMPTIONS) (AMENDMENT) (CLASS 1 - DEPOSIT-TAKING) REGULATIONS 2016**

The Isle of Man Financial Services Authority makes the following Regulations under section 44 of the Financial Services Act 2008, after carrying out the consultations required by section 44(5) of that Act.

### **1. Title**

These Regulations are the Financial Services (Exemptions) (Amendment) (Class 1 - Deposit-Taking) Regulations 2016.

### **2. Commencement**

If approved by Tynwald these Regulations come into operation on 1 July 2016.

### **3. Amendments to Schedule 1 to the Financial Services (Exemptions) Regulations 2011**

Schedule 1 to the Financial Services (Exemptions) Regulations 2011<sup>18</sup> is amended as follows.

In paragraph 8.3, for “Class 1” substitute –

«Class 1(1) or 1(2)».

In paragraph 8.3A, for “Class 1” substitute –

«Class 1(1) or 1(2)».

**MADE** \_\_\_\_\_ **2016**

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<sup>18</sup> SD 885/11

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## 2(b) FINANCIAL SERVICES (EXEMPTIONS) REGULATIONS – extracts following proposed amendments

Amendment to paragraph 8.3:

### CLASS 8 — MONEY TRANSMISSION SERVICES

...

*Activities of certain persons*

8.3 In relation to a regulated activity of Class 8, section 4 does not apply to a person where the person is—

- (a) licensed to carry on a regulated activity falling within ~~Class 1~~ Class 1(1) or 1(2); or
- (b) the Isle of Man Post Office; or
- (c) the National Savings and Investments (an executive agency of the Chancellor of the Exchequer of the United Kingdom); or
- (d) the Isle of Man Treasury, the Bank of England, the European Central Bank and the national central banks of EEA States other than the United Kingdom; or
- (e) Departments, Statutory Boards and local authorities.

Amendment to paragraph 8.3A:

*Activities of certain agents*

8.3A In relation to a service or activity falling within paragraph (2) of Class 8, section 4 does not apply to a person where the person is the agent of a person licensed to carry on a regulated activity falling within ~~Class 1~~ Class 1(1) or 1(2) (“the principal”), where that service or activity is conducted for that principal.

...

**3(a)**

## FINANCIAL SERVICES (FEES) (AMENDMENT) (CLASS 1 – DEPOSIT-TAKING) ORDER 2016

The Isle of Man Financial Services Authority makes the following Order under section 46 of the Financial Services Act 2008 after carrying out the consultations required by section 44(5) of that Act.

**1. Title**

This Order is the Financial Services (Fees) (Amendment) (Class 1 – Deposit-Taking) Order 2016.

**2. Commencement**

If approved by Tynwald, this Order comes into operation on 1 July 2016.

**3. Amendments to Financial Services (Fees) Order 2016**

(1) This Order amends the Financial Services (Fees) Order 2016<sup>19</sup> (“the Order”).

(2) In article 4(1) of the Order for “articles 5 to 9”, substitute «articles 5 to 9A».

(3) After article 9 of the Order insert –

**«9A Fees for Class 1 licenceholders**

(1) Where article 4A of the Regulated Activities Order 2011<sup>20</sup> applies, no application fee or annual fee is payable as a result of the application of that article.

(2) Where a licenceholder is licensed to carry on Class 1(1) regulated activity and applies to conduct Class 1(2) regulated activity, no application fee is payable.

(3) If the application in (2) is successful, the unexpired balance of the annual fee paid by the licenceholder shall be applied towards the first annual fee payable in respect of the new licence.

(4) In the Order, for Class 1, wherever it appears except in article 9A, substitute «Class 1(1) or Class 1(2)».

(5) In Table 1 in the Schedule to the Order, between the rows labelled 1A and 2, insert the following row –

«

1B	Class 1(3) – Operating a representative office of a foreign bank	£3,000	£2,500
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»

MADE \_\_\_\_\_ 2016

<sup>19</sup> SD 2016/0098

<sup>20</sup> SD 884/11

### 3(b) FINANCIAL SERVICES (FEES) ORDER 2016 – extracts following proposed amendments

Amendment to Article 4:

#### 4 Application fees and annual fees

(1) Subject to paragraphs (2) to (8) and to ~~articles 5 to 9~~ articles 5 to 9A in relation to a licence to carry on regulated activities of a description specified in column 2 of Table 1 in the Schedule (“Table 1”), the following fees are payable –

- (a) on initial application for the licence, the application fee specified in column 3 of Table 1;
- (b) on application for an amended licence to carry on regulated activities falling within any class where the applicant does not already hold a licence to carry on activities falling within that class, the application fee specified in column 3 of Table 1;
- (c) on application for an amended licence to carry on additional activities falling within any class where the applicant already holds a licence to carry on certain activities falling within that class, an application fee of £500; and
- (d) on every annual review date while the licence is in force, an annual fee of the amount specified in, or calculated in accordance with, column 4 of Table 1.

New Article 9A:

...

#### 9 Fees for licenceholders in liquidation

- (1) Where a licenceholder is in solvent liquidation at the annual review date, the relevant annual fee is payable in accordance with Table 1.
- (2) Where a licenceholder is in insolvent liquidation at the annual review date, the annual fee is £250.

#### 9A Fees for Class 1 licenceholders

- (1) Where article 4A of the Regulated Activities Order 2011<sup>21</sup> applies, no application fee or annual fee is payable as a result of the application of that article.
- (2) Where a licenceholder is licensed to carry on Class 1(1) regulated activity and applies to conduct Class 1(2) regulated activity, no application fee is payable.
- (3) If the application in (2) is successful, the unexpired balance of the annual fee paid by the licenceholder shall be applied towards the first annual fee payable in respect of the new licence.

#### 10 Additional fees for management or administration of overseas schemes

- (1) Where a licenceholder .....[continued]

<sup>21</sup> SD 884/11

New line in Table 1 in the Schedule to the Order:

**SCHEDULE**

**FEES**

**TABLE 1**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
	<b>Description of regulated activity</b>	<b>Application fee</b>	<b>Annual fee</b>
1	<del>Class 1</del> <u>Class 1(1) or Class 1(2)</u> where the licenceholder has total deposits excluding Isle of Man inter-bank placings of – - up to but not including £1 billion - £1 billion to £5 billion - over £5 billion (taken from the deposit taking return for 31 March before the annual review date)	£9,850 £9,850 £9,850	£19,000 £22,500 £25,000
1A	<del>Class 1</del> <u>Class 1(1) or Class 1(2)</u> , where an Isle of Man incorporated Class 1 licenceholder, for whom the Authority is lead regulator, has a branch or deposit taking subsidiary outside the Island	Nil	£6,600 per branch and/or subsidiary
<u>1B</u>	<u>Class 1(3) – Operating a representative office of a foreign bank</u>	<u>£3,000</u>	<u>£2,500</u>
2	Class 2 (1) to (7) (stockbroker) where the licenceholder deals as a principal on its own account	£2,300	£19,800
...			

Additionally, “Class 1” is replaced by “Class 1(1) or Class 1(2)” wherever it appears in the Order, except in article 9A.

**4(a)**

## **DEPOSITORS' COMPENSATION SCHEME (AMENDMENT) REGULATIONS 2016**

The Treasury makes the following Regulations under section 25 of the Financial Services Act 2008.

**1. Title**

These Regulations are the Depositors' Compensation Scheme (Amendment) Regulations 2016.

**2. Commencement**

If approved by Tynwald, these Regulations come into operation on 1 July 2016.

**3. Amendments to Depositors' Compensation Scheme Regulations 2010**

These Regulations amend the Depositors' Compensation Scheme Regulations 2010<sup>22</sup> as follows.

In regulation 3(2), for the definition of "deposit taker", substitute —

«"deposit taker" means the holder of a licence under section 7 which permits Class 1(1) regulated activity;».

In regulation 6(7) omit "licensed under section 7".

In regulation 7(1) omit "licensed under section 7".

For regulation 8(3)(a) substitute —

«(a) the revocation or suspension of the participant's authorisation to conduct Class 1(1) regulated activity (within the meaning of the Regulated Activities Order 2011);».

For regulation 12(2)(c) substitute —

«(c) to persons authorised or registered under the Insurance Act 2008 or Retirement Benefits Schemes Act 2000, or licenceholders of the Isle of Man Financial Services Authority;».

In regulation 12(2)(d) for "deposit takers" substitute «banks».

In regulations 15(1)(c) and 21(3) for "Financial Supervision Commission" substitute «Isle of Man Financial Services Authority».

**MADE \_\_\_\_\_ 2016**

<sup>22</sup> SD 683/10



## 4(b) DEPOSITORS' COMPENSATION SCHEME REGULATIONS 2010 – extracts following proposed amendments

Amendment to regulation 3(2):

### 3 Interpretation

(1) The Scheme established by these Regulations is to be known for all purposes as the Depositors' Compensation Scheme and references to "the Scheme" are to be construed accordingly.

(2) In these Regulations –

“the Act” means the Financial Services Act 2008 and a reference to a numbered section (without more) is a reference to the section of the Act so numbered;

“compensation costs” has the meaning given by regulation 10;

“the compensation sum” has the meaning given by regulation 13;

“default” shall be construed in accordance with regulation 8;

“deposit taker” ~~has the same meaning as in the Financial Services Rule Book~~ means the holder of a licence under section 7 which permits Class 1(1) regulated activity;

Amendment to regulation 6(7):

### 6 Funding the Scheme

...

(7) In calculating a sum in accordance with paragraph (5), the Scheme Manager must exclude funds deposited by other deposit takers ~~licensed under section 7~~ but only if those funds originate from deposits in the hands of those other participants and are available to be taken into account in the calculation of the contribution to be levied from those participants.

Amendment to regulation 7(1):

### 7 Participants

(1) Every deposit taker ~~licensed under section 7~~ is a participant unless it is specified in the Schedule to these Regulations.

Amendment to regulation 8(3):

### 8 Default

...

(3) This paragraph applies to a participant which is a body corporate incorporated in the Island, on the happening of any of the following—

(a) ~~the revocation or suspension of the participant's authorisation to conduct class 1 regulated activity (within the meaning of the Regulated Activities Order 2009)~~ under its licence under section

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7 the revocation or suspension of the participant's authorisation to conduct Class 1(1) regulated activity (within the meaning of the Regulated Activities Order 2011);  
(b) the making of a winding up order against it;

...

Amendment to regulation 12(2):

## **12 Exceptions from entitlement to compensation**

...

(2) Compensation must not be paid —

(a) in respect of a default occurring before 23 October 2010, but subject to regulation 21(2);

(b) in respect of a deposit if (or to the extent that) it is used for the purposes of securing monies loaned by the defaulting participant under a separate transaction;

(ba) in respect of a deposit constituting a client account;

(c) ~~to persons licensed by the Financial Supervision Commission or the Insurance and Pensions Authority~~ to persons authorised or registered under the Insurance Act 2008 or Retirement Benefits Schemes Act 2000, or licenceholders of the Isle of Man Financial Services Authority;

(d) ~~to deposit takers~~ banks authorised, licensed or recognised in a country or territory outside the Island;

...

Additionally, in regulations 15(1)(c) and 21(3) "Financial Supervision Commission" is replaced by "Isle of Man Financial Services Authority".

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