

Statutory Document No.



FINANCIAL SERVICES ACT [YEAR]

FINANCIAL SERVICES (EXEMPTION) REGULATIONS [YEAR]

Approved by Tynwald [date]

Coming into operation [date]

In exercise of the powers conferred on the Financial Supervision Commission by section [?] of the Financial Services Act [year], and of all other enabling powers, and after consultation with the Treasury, the following Regulations are hereby made:-

Citation and commencement

1. These Regulations may be cited as the Financial Services (Exemption) Regulations [year] and shall come into operation on [date].

Interpretation

2. In these Regulations -

“the Act” means the Financial Services Act [year];

“body corporate” includes a body corporate constituted under the law of the Isle of Man or under the law of a country or territory outside the Isle of Man;

“company” includes a body corporate whether constituted under the law of the Island or elsewhere and also any unincorporated body constituted under the law of a country or territory outside the Island, but without prejudice to the generality of that definition includes the following bodies –

- (a) a stiftung (foundation) established under the laws of Austria, Germany or Liechtenstein;
- (b) an anstalt established under the law of Liechtenstein;
- (c) a foundation established under the laws of Panama;
- (d) such other bodies established under the law of a country or territory

outside the Island as are specified in regulations under section ?? of the Act.

“the Commission” means the Financial Supervision Commission;

“licenceholder” means the holder of a licence issued under section [?] of the Act;

“the Order” means the Regulated Activities Order [year];

“specified person” means –

- (a) an advocate;
- (b) a registered legal practitioner within the meaning of the Legal Practitioners Registration Act 1986;
- (c) a member of the Institute of Chartered Accountants in England and Wales;
- (d) a member of the Institute of Chartered Accountants of Scotland;
- (e) a member of the Institute of Chartered Accountants in Ireland; or
- (f) a member of the Association of Chartered Certified Accountants.

Exemptions relating to Banking Business

3. *Officers*

Section [?] of the Act shall not apply in respect of any activity specified in paragraph 1 of Schedule 1 of the Order, if the individual in question is not an employee, director or other officer of a licenceholder authorised to undertake activities under paragraph 1 of Schedule 1 of the Order, but is an employee, director or other officer of a company (the service company) that is in the same group as the licenceholder and the activity is undertaken by him under the direction of and in the course of business of the licenceholder.

Exemptions relating to Investment Business

4. Section [?] of the Act shall not apply to the persons or classes of person specified below -

(1) *Liquidator or Receiver*

Any person carrying on an activity prescribed under paragraph 6 of Schedule 1 of the Order whilst acting in the capacity of -

- (a) liquidator or receiver of a company;
- (b) receiver, executor or administrator of any estate;
- (c) receiver for a patient under the Mental Health Act 1998^(a); or
- (d) receiver or trustee in bankruptcy.

^(a) 1998 c.3

(2) ***Mailing Services***

Any person carrying on an activity prescribed under paragraphs 6(2), 6(3), and 22(8) of Schedule 1 of the Order whilst providing mail room services only.

(3) ***Friendly Societies***

Any person who acts as a tied agent of a friendly society which is registered under the law of, or any part of, the United Kingdom, carrying on an activity prescribed under paragraph 6(2), 6(3), 6(3), 6(5) and 6(6) of Schedule 1 of the Order, but only where the tied agent –

- (a) does not in the course of his business receive clients' money; and
- (b) does not conduct investment business other than arranging deals for or giving advice to existing members of the friendly society or members of organisations associated with that friendly society (for example trade unions); and
- (c) does not deal in or give advice on any product which is not offered by the friendly society to which he is tied.

(4) ***Enduring Powers of Attorney***

Any person acting under an enduring power of attorney where –

- (a) that power has been registered; and
- (b) the attorney has entered into a discretionary management agreement with either -
 - (i) a person licensed under the Act; or
 - (ii) a person authorised under the Financial Services and Markets Act 2000 (of Parliament),

in respect of any activity prescribed under paragraph 6(2), 6(4) 6(5) and 53 of Schedule 1 of the Order conducted under the power.

(5) ***"Post Office" Facility***

Any person holding bearer instruments of title in safe custody, carrying on an activity prescribed under paragraph 6(1), 6(2), 6(3), 6(4) and 6(5) of Schedule 1 of the Order, provided that the instruments are removed from the possession of that person by close of business on the business day following the receipt of the instrument.

(6) ***Certificates of Deposit***

Any person who carries on or holds himself out as carrying on an activity prescribed under paragraph 6(1), 6(2), 6(3), 6(4), 6(5) and 6(6) of Schedule 1 of the Order where the specified activities are limited solely to or connected with certificates of deposit.

(7) ***Group Pension Schemes***

Any person ("the first person") who carries on or holds himself out as carrying on an activity prescribed under paragraph 6(1), 6(2), 6(3), 6(4), 6(5) and 6(6) of Schedule 1 of the Order which is limited to –

- (a) the provision of investment services in relation to pension schemes;
- (b) the beneficiaries of which are employees or former employees (or the wife, husband, widow, widower, children or stepchildren under the age of eighteen of such an employee or former employee; and
- (c) whose benefit from the scheme emanates directly from the entitlement of an employee or former employee) of the first person or of another body corporate within the same group as the first person.

For the purposes of this paragraph, "a group" has the same meaning as paragraph 1 of Schedule 3 of the Order.

(8) ***Nominee Companies***

Nominee companies which are wholly owned subsidiaries of institutions licensed under section (?) of the Act to carry on an activity prescribed under paragraph 6(1), 6(2), 6(3) and 6(5) of the Order, but only if that licenceholder is permitted within the conditions attached to its licence to control clients' money or assets and provided that the following conditions are complied with -

- (a) the nominee company may only undertake activities prescribed under paragraph 6(1), 6(2), 6(3) and 6(5) of Schedule 1 of the Order solely on behalf of companies which are in the same group as the nominee company and which are licensed under the Act to undertake activities prescribed under paragraph 6(1), 6(2), 6(3), 6(4), 6(5) and 6(6) of Schedule 1 of the Order;
- (b) the nominee company shall comply with the provisions of the Financial Services Regulatory Code relating to Clients' Money and Investments;
- (c) the nominee company shall arrange for an annual audit report to be sent to the Commission which shall -
 - (i) state whether, in the auditor's opinion -
 - (A) the exempt person has maintained throughout the year systems adequate to enable it to comply with the Financial Services Regulatory Code relating to Clients' Money and Investments and was in compliance with those Codes at the balance sheet date; and

- (B) reconciliations of clients' money and clients' investments have been performed in accordance with those Codes; and
- (ii) where one or more of the requirements in respect of which a report is required under head (i) have not been met, the report shall include a statement specifying the relevant requirements and the extent to which they have not been met; or
- (iii) where the auditor is unable to form an opinion as to whether one or more of the requirements in respect of which a report is required under head (i) have been met, the report shall specify those requirements and give the reasons why the auditor has been unable to form an opinion.

For the purposes of this paragraph, a nominee company is one which operates nominee accounts for the holding of investments on behalf of the beneficial owners who are clients of the licensed institution.

(9) ***Officers***

Section [?] of the Act shall not apply in respect of any activity specified in paragraph 6 of Schedule 1 of the Order, if the individual in question is not an employee, director or other officer of a licenceholder authorised to undertake activities under paragraph 6 of Schedule 1 of the Order, but is an employee, director or other officer of a company (the service company) that is in the same group as the licenceholder and the activity is undertaken by him under the direction of and in the course of business of the licenceholder.

(10) ***Statutory Corporation***

Any statutory corporation, being a corporation or authority created by an enactment, an Act of Parliament or an Act of the Parliament of Northern Ireland, or any other corporation being a corporation to which functions in respect of the carrying on of an undertaking are entrusted by an enactment or such an Act or by an Order made under, or confirmed by, an enactment or such an Act who carries on or holds himself out as carrying on any specified activity as defined by paragraph 6(1), 6(2), 6(3), 6(4), 6(5) and 6(6) of Schedule 1 of the Order.

(11) ***Local Authority***

A local authority who carries on or holds himself out as carrying on any specified activity as defined by paragraphs 6(1), 6(2), 6(3), 6(4), 6(5) and 6(6) of Schedule 1 of the Order.

Exemptions relating to Collective Investment Schemes

5. Section [?] of the Act shall not apply to the persons or classes of person specified below -

(1) ***Open-ended Investment Companies***

Any open-ended investment company which is a collective investment scheme within the meaning of section ?? of the Act and whose business is restricted to that activity.

(2) ***Nominee Companies***

Nominee companies which are wholly owned subsidiaries of institutions licensed to carry on activities pursuant to paragraph 22(1), 22(2), 22(3), 22(4), 22(6) 22(7), 22(8) and 22(9) of Schedule 1 of the Order but only insofar as the activity is prescribed under paragraph 6(1), 6(2), 6(3) or 6(5) of Schedule 1 of the Order and provided that the following conditions are complied with -

(a) the nominee company shall comply with the provisions of the Financial Services Regulatory Code relating to Clients' Money and Investments;

(b) the nominee company shall arrange for an annual audit report to be sent to the Commission which shall -

(i) state whether, in the auditor's opinion -

(A) the exempt person has maintained throughout the year systems adequate to enable it to comply with the Financial Services Regulatory Code relating to Clients' Money and Investments and was in compliance with those Codes at the balance sheet date; and

(B) reconciliations of clients' money and clients' investments have been performed in accordance with those Codes; and

(ii) where one or more of the requirements in respect of which a report is required under head (i) have not been met, the report shall include a statement specifying the relevant requirements and the extent to which they have not been met; or

(iii) where the auditor is unable to form an opinion as to whether one or more of the requirements in respect of which a report is required under head (i) have been met, the report shall specify those requirements and give the reasons why the auditor has been unable to form an opinion.

For the purposes of this paragraph, a nominee company is one which operates nominee accounts for the holding of investments on behalf of the beneficial owners who are clients of the licensed institution.

(3) ***Managers of Professional Investor Funds or Experienced Investor Funds***

Section [?] of the Act shall not apply to any person (“an exempt person”) who carries on activities pursuant to paragraph 22(1) of Schedule 1 of the Order in relation to a professional investor fund or an experienced investor fund provided that all of the regulated activities of the exempt person must be delegated to a fund administrator who may perform any function or activity on behalf of or in the name of the exempt person that the exempt person would normally undertake as the manager of a professional investor fund or an experienced investor fund and any activity which would not constitute a regulated activity under paragraph 22 of Schedule 1 of the Order may be conducted by the exempt person with the prior written approval of the fund administrator.

An exempt person may introduce subscribers to the professional investor fund or the experienced investor fund but only if, where the exempt person is a body corporate, a director of the fund administrator is a member of the board of the exempt person.

For the purposes of this paragraph –

“experienced investor fund” has the same meaning as given in

“professional investor fund” has the same meaning as given in

“fund administrator” means a person who provides administration services to professional investor funds or experienced investor funds and is licensed to carry on activities pursuant to paragraph 22(2) of Schedule 1 of the Order.

(4) ***Trustees and Custodians of Exempt International Schemes***

Section [?] of the Act shall not apply to any person who carries on activities pursuant to paragraph 22(3) and 22(4) of Schedule 1 of the Order in relation to any collective investment scheme which is exempted under section [??] of the Act.

(5) ***Management and Administration Services to Exempt International Schemes***

Section [?] of the Act shall not apply to any person who carries on activities pursuant to -

- (a) paragraph 22(1) of Schedule 1 of the Order in relation to no more than one exempt international collective investment scheme (an “exempt scheme manager”). Where there are a number of different entities within the same economic group, the exemption

will only be applicable to one entity within that group; or

- (b) paragraph 22(2) of Schedule 1 of the Order in relation to no more than one exempt international collective investment scheme (an "exempt scheme administrator") or no more than one exempt scheme manager; or
- (c) paragraph 22(8) or 22(9) of Schedule 1 of the Order in relation to no more than one exempt international collective investment scheme,

provided that the following conditions are complied with -

- (i) the nominee company shall comply with the provisions of the Financial Services Regulatory Code relating to Clients' Money and Investments; and
- (ii) the manager or administrator will notify the Commission of the establishment and winding up of exempt international collective investment schemes within one month of the event; and
- (iii) the manager or administrator will provide statistical information as required by the Commission on a quarterly basis.

For the purposes of this paragraph, the same economic group would include companies which have common management.

(6) ***Officers***

Section [?] of the Act shall not apply in respect of any activity specified in paragraph 22 of Schedule 1 of the Order, if the individual in question is not an employee, director or other officer of a licenceholder authorised to undertake activities under paragraph 22 of Schedule 1 of the Order, but is an employee, director or other officer of a company (the service company) that is in the same group as the licenceholder and the activity is undertaken by him under the direction of and in the course of business of the licenceholder.

(7) ***Liquidator or Receiver***

Any person carrying on an activity prescribed under paragraph 22 of Schedule 1 of the Order whilst acting in the capacity of liquidator or receiver of a company or limited partnership.

Exemptions relating to Fiduciary Services

6. Section [?] of the Act shall not apply to the classes of person specified below -

(1) ***Domestic services***

Section [?] of the Act shall not apply in respect of any activity pursuant to paragraph 24 of Schedule 1 of the Order which is undertaken in the

Island by a person who is resident in the Island if the company which is the subject of the activity –

- (a) is resident in the Island; and
- (b) has a permanent establishment in the Island; and
- (c) carries on as its sole or principal trade or business –
 - (i) the holding of assets which are beneficially owned by persons who are resident in the Island; or
 - (ii) the supply of any goods or services made in the Island; or
 - (iii) the manufacture in the Island of any goods.

For the purposes of this sub-paragraph –

“beneficially owned” includes ultimate ownership through a trust or company or a series of trusts or companies;

“company” does not include:-

- (i) an open-ended investment company; or
- (ii) except for the purposes of paragraphs 9, 11 and 13 of Schedule 1 of the Order and, except in relation to shares of a class defined as deferred shares for the purposes of section 119 of the Building Societies Act 1986 (of Parliament), a building society incorporated under the laws of, or any part of, the United Kingdom or the Island; or
- (iii) except for the purposes of paragraphs 9, 11 and 13 of Schedule 1 of the Order and any body incorporated under the law of the Island or of, or of any part of, the United Kingdom relating to building societies, industrial and provident societies or credit unions.

“permanent establishment” means a fixed place of business through which the business of the company is wholly or partly carried on;

“resident” means a resident in the Island for the purposes of income tax;

“supply” means all forms of supply.

(2) ***Wholly Incidental***

Section [?] of the Act shall not apply in respect of any regulated activity pursuant to paragraphs 22 and 31 of Schedule 1 of the Order which is undertaken in the Island -

- (a) where the activity is wholly incidental to the business which that person is permitted to carry on under the relevant Act by reason of registration or licence, the person is; or
- (b) the person for whom the activity is undertaken is -
 - (i) authorised under the Insurance Act 1986 to carry on insurance business; [c.4]
 - (ii) registered under the Insurance Intermediaries (General Business) Act 1996; [c. 7]
 - (iii) an insurance manager registered under section 27 of the Insurance Act 1986; [c.24]
 - (iv) a retirement benefits schemes administrator who is registered under section 36(1)(a) of the Retirements Benefits Schemes Act 2000; [c.14]
 - (v) a subsidiary of a company of a class specified in any of sub-paragraphs (i) to (iv).

(3) ***Nominee services***

Section [?] of the Act shall not apply -

- (a) where any person acts as or arranges for others to act as a nominee shareholder or nominee member of companies if the person is the holder of a Financial Services licence issued under section [?] of the Act which authorises activities under paragraphs 1, 6, 22 and 39 of Schedule 1 of the Order, and the activity is wholly incidental to the business which he is licensed to carry on under the Act.
- (b) where, as its sole activity, a company acts as a nominee shareholder, nominee member, director and/or secretary of a client company of the parent and the parent is the holder of a financial services licence issued under section [] of the Act which authorises activities under 24(5), 24(6) or 24(7) of Schedule 1 of the Order.
- (c) where, as its sole activity, a company acts as a trustee (other than as an authorised trust corporation for the purposes of section 65A of the Trustee Act 1961), protector and/or enforcer in relation to express trusts for which trust administration services are provided by a parent.

For the purposes of sub-paragraphs (b) and (c) –

“client company” means any company for which the parent by way of business provides services which are regulated activities;

“nominee company” means a company whose business consists solely of acting as a director, secretary and/or nominee holder of shares or nominee member of or in a client company and which is:

- (i) a subsidiary of a body corporate that is a holder of a Financial Services licence issued under section [?] of the Act which authorises activities under paragraph 24 of Schedule 1 of the Order; or
- (ii) wholly beneficially owned by a sole trader that is the holder of a Financial Services licence issued under section [?] of the Act which authorises activities under paragraph 24 of Schedule 1 of the Order.

“parent” means any of the holders of a Financial Services licence issued under section [?] of the Act which authorises activities under paragraphs 24 or 31 of the Order specified in paragraph (i) or (ii) of the definition of “nominee company”.

(4) **Officers**

Section [?] of the Act shall not apply in respect of any activity specified in –

- (a) paragraph 24 of Schedule 1 of the Order, if the individual in question is –
 - (i) an employee, director or other officer of the holder (“A”) of a relevant licence and the activity is undertaken by him in the course of that employment or as holder of that appointment or office; or
 - (ii) not an employee, director or other officer of A but is an employee, director or other officer of a company (the service company) that is in the same group as A and the activity is undertaken by him under the direction of and in the course of business of A; or
 - (iii) is not an employee, director or other officer of A but is an employee, director or other officer of a relevant licence and that contracts to provide personnel to A and the activity is undertaken by him under the direction of and in the course of business of A.
 - (iv) acting as a director or secretary of a company following the arrangement of his appointment as such by the holder of a relevant licence and pursuant to a contract (as a professional associate) with the holder of such a Financial Services licence which -

- (A) requires that the licenceholder is and remains satisfied that the individual is suitable and competent for the office he holds;
- (B) requires that the licenceholder is and remains satisfied that the individual understands the duties and responsibilities pertaining to the office he holds under the relevant laws;
- (C) requires that the holder of the relevant licence is satisfied that the individual is a fit and proper person (in accordance with section [?] of the Act and that he continues to satisfy the Commission that he is a fit and proper person (as required by section [?] of the Act);
- (D) provides that the contract shall be terminated if the individual fails to meet the requirements of sub-paragraphs (A) to (C); and
- (E) has not been terminated pursuant to sub-paragraph (D) or otherwise;

For the purposes of sub-paragraph (a), "relevant licence" means of a Financial Services licence issued under section [?] of the Act which authorises activities under paragraph 24 of the Order.

- (b) paragraph 31 of Schedule 1 of the Order, if the individual acting as a trustee is –
 - (i) an employee, director or other officer of the holder ("A") of a relevant licence and the activity is undertaken by him in the course of that employment or as holder of that appointment or office; or
 - (ii) not an employee, director or other officer of A but is an employee, director or other officer of a company that is in the same group as A and the activity is undertaken by him under the direction of and in the course of business of A; or
 - (iii) is not an employee, director or other officer of A but is an employee, director or other officer of a relevant licence that contracts to provide personnel to A and the activity is undertaken by him under the direction of and in the course of business of A.
 - (iv) an employee, a director or other officer of the holder of a relevant licence who, in the course of or as a result of his employment or as holder of that appointment or office, acts as a trustee in respect of an employee pension scheme or an employee share or debenture scheme, unless -

- (A) the employment or appointment is solely for the purpose of enabling the individual to act as such a trustee; or
- (B) in the case of a former employee, the appointment as trustee was made after his employment had ceased.

For the purposes of sub-paragraph (b), "relevant licence" means of a Financial Services licence issued under section [?] of the Act which authorises activities under paragraph 31 of the Order.

(5) ***De Minimis***

Section [?] of the Act shall not in respect of any activity specified in -

- (a) sub-paragraphs 24(5) and 24(6) of Schedule 1 of the Order, if the individual in question does not act as a director or alternate director in respect of more than 10 companies. For the purposes of determining the number of companies in respect of which an individual is a director, no account shall be taken of –
 - (i) a directorship of a company which falls within paragraph 6(1);
 - (ii) a directorship of a company which falls within paragraphs 1, 6, 22, 24 or 31 of Schedule 1 of the Order;
 - (iii) a directorship of a company which falls within sub-paragraph 6(2).

For the purposes of this sub-paragraph, "director" has the same meaning as in sub-paragraph 24(5) of Schedule 1 of the Order.

- (b) paragraph 31 of Schedule 1 of the Order, in respect of a regulated activity undertaken by an individual who is a specified person (within the meaning of paragraph 6(5)) if that individual does not undertake regulated activities in respect of more than 10 trusts. For the purposes of determining the number of trusts in respect of which an individual undertakes a regulated activity, no account shall be taken of any trust in respect of which a regulated activity would be the subject of an exemption under any paragraph of this Schedule if that activity were undertaken by that individual.

(6) ***Employee Pension Scheme or Employee Share Scheme***

Section [?] of the Act shall not apply –

- (a) in respect of an employee, a director or other officer of the holder of a Financial Services licence issued under section [?] of the Act which authorises activities under paragraphs 24 or 31 of the Order who, in the course of or as a result of his employment or as holder of that appointment or office, acts as a trustee in respect of an employee pension scheme; or an employee share or debenture scheme unless the employment or appointment is solely for the purpose of enabling the individual to act as such a trustee.

- (b) to a former employee or former director or other former officer of the holder of a Financial Services licence issued under section [?] of the Act which authorises activities under paragraphs 24 or 31 of the Order who, in the course of or as a result of his employment or as holder of that appointment or office, acts as a trustee in respect of an employee pension scheme; or an employee share or debenture scheme, unless -
 - (i) the employment or appointment is solely for the purpose of enabling the individual to act as such a trustee; or
 - (ii) in the case of a former employee the appointment as trustee was made after his employment had ceased.

(7) ***Miscellaneous services***

Section [?] of the Act shall not apply in respect of any activity specified in paragraphs 24 and 31 of Schedule 1 of the Order when acting as -

- (a) an official receiver;
- (b) the liquidator or provisional liquidator of a company;
- (c) a receiver appointed in respect of any of the assets of a company;
- (d) a trustee in bankruptcy appointed under section 7(1) of the Bankruptcy Code 1892; [VI p.312]
- (e) the trustee of a composition or scheme of arrangement if appointed or approved by the High Court;
- (f) an Official Trustee appointed under section 53 of the Bankruptcy Code 1892;
- (g) a guardian of a minor –
 - (i) appointed under the Guardianship of Infants Act 1953; or [XVIII p.180]
 - (ii) appointed, or treated as if appointed, under the Children and Young Persons Act 2001; or [c.20]
- (h) a receiver of a patient appointed, or treated as if appointed, under Part 7 of the Mental Health Act 1998, [c.3]

and the regulated activity is wholly incidental to the business or office of such person.

(8) ***Private trust companies***

Section [?] of the Act shall not apply in respect of the activity specified in paragraph 31 of Schedule 1 of the Order when the activity is undertaken by a company –

- (a) the sole purpose of which is to provide services in respect of a specific trust or trusts; and
- (b) that does not otherwise undertake or, directly or indirectly, hold itself out to the public as undertaking, any specified activity falling within paragraph 31 of Schedule 1 of the Order; and
- (c) the administration of the trust or trusts is carried out by a holder of a financial services licence,

unless the relevant holder of the financial services licence which permits the specified activities detailed in paragraph 62 of Schedule 1 of the Order has given written notice to the Commission of the name of the company.

For the purposes of sub-paragraph (b) but without prejudice to the generality of that sub-paragraph, a company shall be treated as holding itself out to the public if it undertakes any specified activity in response to introductions from third parties (not being licenceholders permitted to undertake the specified activities detailed in paragraph 31) who hold themselves out to the public (whether inside or outside the Island) as –

- (a) undertaking any regulated activity falling within paragraph 31 of Schedule 1 of the Order; or
- (b) arranging for any such regulated activity to be undertaken by others.

(9) ***Personal representatives***

Section [??] of the Act shall not apply in respect of any activity specified in paragraph 31 of Schedule 1 of the Order undertaken by an individual when acting in the capacity of –

- (a) a personal representative in respect of the estate of a deceased person if the activity is wholly incidental to the winding up of the estate; or
- (b) a trustee for the sole purpose of facilitating the winding-up of such an estate; or
- (c) a trustee for sale for the sole purpose of realising the property of a deceased person for the purpose of facilitating the winding up of the estate.

(10) ***Corporate or Trust administration for a licenceholder***

Section [??] of the Act shall not apply in respect of any activity specified in paragraphs 24 and 31 of Schedule 1 of the Order which consists of the provision of corporate or trust administration services, if the person for whom the activity is undertaken is the holder of a Financial Services

licence in respect of activities falling within paragraphs 24 and 31 of Schedule 1 of the Order and the licence authorises the relevant activity.

(11) ***Testamentary trusts***

Paragraph 31 of Schedule 1 of the Order shall not apply in respect of a specified activity if –

- (a) the activity is undertaken by a specified person in respect of a testamentary trust; and
- (b) the trust is created by or arises out of the terms of the will of the testator; and
- (c) the will is governed by the law of the Island; and
- (d) the testator was resident or domiciled in the Island on the date of his death; and
- (e) the activity is ancillary to a professional activity undertaken by the specified person in his professional capacity.

Paragraph 31 of Schedule 1 of the Order shall not apply in respect of a specified activity if the activity is undertaken by a specified person in respect of an *inter vivos* trust to which this paragraph applies.

This paragraph applies to a trust if –

- (a) the funds of the trust consist only of funds settled or provided –
 - (i) by one or more settlors when the trust is created;
 - (ii) under the terms of the wills of the settlors;
 - (iii) under the terms of a will of a spouse of a settlor;and any income or gain arising from those funds; and
- (b) the conditions set out in sub-paragraph (3) are satisfied.

The conditions referred to in sub-paragraph (2) are that –

- (a) the settlors are resident or domiciled in the Island when the trust is created; and
- (b) the will or wills are governed by the law of the Island; and
- (c) each settlor is resident or domiciled in the Island on the date of his or her death; and
- (d) the activity is ancillary to a professional activity undertaken by the specified person in a professional capacity.

(12) ***Small “domestic” trusts***

Paragraph 31 shall not apply in respect of a specified activity undertaken by an individual who is a specified person if –

- (a) at the time the activity is undertaken, the gross assets of the trust do not exceed £5,000; and
- (b) no funds have been settled or provided to the trust other than those settled or provided by the settlors when the trust is created; and
- (c) the settlors are resident or domiciled in the Island when the trust is created.

(13) ***Statutory Corporation – Trust Services***

Any statutory corporation, being a corporation or authority created by an enactment, an Act of Parliament or an Act of the Parliament of Northern Ireland, or any other corporation being a corporation to which functions in respect of the carrying on of an undertaking are entrusted by an enactment or such an Act or by an Order made under, or confirmed by, an enactment or such an Act who carries on or holds himself out as carrying on any specified activity as defined by paragraph 31.

Exemptions relating to Temporary Business Continuity Operations

7. Section [?] of the Act shall not apply to an exempt person or a required person if the conditions specified in sub-paragraph 1 below are complied with throughout the relevant time, provided that the exempt status of an exempt person may be terminated at any time by the issue of a notice in writing by the Commission which states that the exemption is no longer applicable to such person. An “exempt person” means any person who -
- (a) enters into a contractual arrangement with a third party such that upon the happening of a relevant event that person will perform, or cause to be performed, exempted operations in or from the Isle of Man utilising the equipment provided by the third party; and
 - (b) is authorised at the relevant time to carry on activities specified by paragraphs 1, 6, 22, 24, 31 or 39 of the Order by a relevant regulator.

For the purposes of this paragraph -

“equipment” means computer apparatus situate on the Isle of Man dedicated exclusively to the provision of business continuity services and located at a facility operated by a person other than the exempt person;

“exempted operations” means the performance by or on behalf of an exempt person of operations, transactions and activities in or from the Isle of Man which -

- (a) the exempt person is authorised by the relevant regulator to perform or have performed on its behalf; and
- (b) cannot be performed by the exempt person in or from the relevant jurisdiction due to a relevant event or are performed outside the relevant jurisdiction solely for the purposes of testing and maintenance;
- (c) do not result in the exempt person holding itself out as carrying on business in or from the Isle of Man; and
- (d) are not unlawful under the law of the Isle of Man;

“financial services regulator” means any authority or regulatory body which has functions and powers similar to those of the Commission, in relation to the regulation of any business or activity in, or connected with, the financial services industry;

“Memorandum of Understanding” means an agreement setting out, without limitation, the arrangements for both mutual co-operation and exchange of information between financial services regulators;

“relevant event” means an unplanned interruption to the operation of or accessibility to the computer apparatus of the exempt person due to an event beyond the control of the exempt person occurring in the jurisdiction in or from which the exempt person carries on business caused by -

- (a) fire, hurricane, tidal wave, tornado, flood, volcanic eruption, act of God or any other kind of natural disaster; or
- (b) act of war or terrorism (excluding social upheaval due to political factors or governmental action); or
- (c) criminal damage;

“relevant jurisdiction” means the jurisdiction in which the relevant regulator is situate;

“relevant regulator” means a financial services regulator which has entered into a Memorandum of Understanding with the Commission which explicitly specifies the types of business to which these Regulations shall apply;

“relevant time” means the duration of any exemption calculated in accordance with the provisions of paragraph 7(2);

“required person” means any person who undertakes activities in relation to the operation of equipment on behalf of an exempt person for the purposes of an exempted operation, or for the purpose of testing and maintenance;

“testing and maintenance” means exempt operations undertaken by or on behalf of an exempt person for the sole purpose of establishing and/or verifying the effectiveness of temporary business continuity arrangements.

(1) ***Conditions***

- (a) the exempt person is regulated at the relevant time by the relevant regulator and complies at all times with the regulatory requirements in the relevant jurisdiction;

- (b) the Commission has not been informed by the relevant regulator that the exempt person has ceased to be authorised in the relevant jurisdiction;
- (c) the exempt person complies with any requirement that may be issued from time to time by the Commission and / or the relevant regulator;
- (d) apart from the operation of the equipment in accordance with these Regulations, the exempt person shall not carry on, or hold itself out as carrying on, any investment business in or from the Isle of Man (save in accordance with any applicable Isle of Man licence);
- (e) the exempt person shall notify the Commission in writing:
 - (i) within seven days of entering into a binding agreement for the provision of temporary business continuity arrangements, of the terms of such agreement and shall, if requested to do so, provide to the Commission a copy of the agreement and any other documentation which the Commission may require; and
 - (ii) forthwith on the occurrence of:
 - A. a relevant event resulting in the operation of the equipment; or
 - B. any changes in the use or proposed use of the equipment; or
 - C. the terms of the agreement; or
 - D. the termination of the use of the equipment.
- (f) the exempt person must not establish a permanent place of business on the Isle of Man for the purpose of operating the equipment, and must not engage in any other activities that would require it to hold an investment business licence;
- (g) the Commission may inspect and investigate physical and electronic records relating to the performance of exempted operations by the exempt person in or from the Isle of Man.

(2) ***Duration of the exemption***

In relation to testing and maintenance, the relevant time shall commence on the date that the Commission confirms receipt of written notification of entering into a binding agreement for the provision of the temporary business continuity arrangements under which the testing and maintenance will take place and shall terminate when the temporary business continuity arrangements formally cease.

In relation to exempted operations following a relevant event -

- (a) the relevant time shall commence on the date that the Commission confirms receipt of written notification of the occurrence of the relevant event and, subject to paragraph (b), shall not exceed 30 days where the relevant regulator is unable to continue to exercise its regulatory functions and 60 days in all other events;
- (b) following a written application from an exempt person the Commission may grant an extension, or series of extensions, to the relevant time where it is satisfied that such an extension, or extensions, are warranted;
 - (i) in considering an application the Commission may request all information that it considers relevant;
 - (ii) any extension or series of extensions granted may be subject to such conditions as are in the opinion of the Commission deemed necessary.

On the expiry the relevant time, or if any of the conditions in subparagraph (1) cease to be met, the exemption will immediately terminate and Section ?? of the Act shall apply.

Made this [?] day of [month] [year].

Chairman

J R Aspden

Chief Executive

EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations detail those activities which constitute regulated activities under the Financial Services Act [year] but which have been exempted from the requirement to hold a licence; such exemption may be subject to conditions.