
Banking (Exemption) (Temporary Business Continuity Operations) Regulations 2006

Statutory Document No.290/06



BANKING ACT 1998

BANKING (EXEMPTION) (TEMPORARY BUSINESS CONTINUITY OPERATIONS) REGULATIONS 2006

Approved by Tynwald 22 June 2006

Coming into operation 26 June 2006

In exercise of the powers conferred on the Financial Supervision Commission by section 31 of the Banking Act 1998(a), 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 Banking (Exemption) (Temporary Business Continuity Operations) Regulations 2006 and shall come into operation on 26 June 2006.

Interpretation

2. In these Regulations:

"the Act" means the Banking Act 1998;

"the Agreement" means a binding contract between a person who wishes to register as an exempt person and the provider of the equipment;

"banking business" has the meaning given in section 1 of the Act;

"the equipment" means computer apparatus used to provide business continuity services, which is located in the Isle of Man at a facility operated by a person other than the exempt person;

"exempted activities" means transactions and activities which -

(a) are banking business performed in or from the Isle of Man by or on behalf of an exempt person;

(b) the exempt person is authorised by a relevant regulator to perform or have performed on its behalf;

(c) cannot be performed by the exempt person in or from the relevant jurisdiction due to the occurrence of a relevant event or are performed solely for the purposes of testing and maintenance; and

(d) are not unlawful under the law of the Isle of Man;

"exempt person" means a person who -

(a) is licensed, authorised or regulated by a relevant regulator at the relevant time to carry on banking business; and

(b) is registered with the Financial Supervision Commission as an exempt person under regulation 4;

"financial services regulator" means any authority or regulatory body which has functions and powers similar to those of the Financial Supervision 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 inter alia the arrangements for both mutual co-operation and exchange of information between the Financial Supervision Commission and another financial services regulator;

"relevant event" means an unplanned interruption to the operation of or accessibility to the computer apparatus of the exempt person in the relevant jurisdiction due to an event beyond the control of the exempt person occurring in the relevant jurisdiction 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 exempt person is licensed, authorised or regulated by a relevant regulator to carry on banking business;

"relevant regulator" means a financial services regulator which has entered into a Memorandum of Understanding with the Financial Supervision Commission under these Regulations;

"relevant time" means the duration of the exempted activities calculated in accordance with the provisions of regulations 7 and 8;

"required person" means any person who in or from the Isle of Man undertakes exempted activities on behalf of an exempt person;

"testing and maintenance" means exempted activities undertaken by or on behalf of an exempt person for the sole purpose of establishing or verifying the effectiveness of temporary business continuity arrangements.

Exemptions

3. Section 2(1) of the Act shall not apply to an exempt person or a required person in respect of exempted activities undertaken during the relevant time.

Application for registration as an exempt person

4. (1) A person seeking registration as an exempt person shall apply in writing to the Financial Supervision Commission within seven days of entering into the Agreement. The application shall include -

(a) the terms of the Agreement; and

(b) if the Commission so requires -

(i) a copy of the Agreement; and

(ii) any other documentation the Commission considers to be relevant to the application.

2) Subject to paragraph (3), the Financial Supervision Commission shall in relation to an application to be registered as an exempt person, register that person.

(3) The Financial Supervision Commission may refuse to register a person as an exempt person if -

(a) the relevant regulator does not confirm that the person is licensed, authorised or regulated by the relevant regulator; or

(b) the Agreement is not compliant with these Regulations.

Conditions

5. An exempt person shall -

(a) notify the Financial Supervision Commission in writing forthwith of -

- (i) the occurrence of a relevant event resulting in the operation of the equipment;
- (ii) the date when the use of the equipment on behalf of the exempt person terminates;
- (iii) any changes in the use or proposed use of the equipment on behalf of the exempt person; and
- (iv) any changes to the terms of the Agreement;

(b) not establish a permanent place of business on the Isle of Man for the purpose of operating the equipment;

(c) not carry on any banking business in or from the Isle of Man other than the exempted activities; and

(d) not hold itself out as carrying on any banking business in or from the Isle of Man other than the exempted activities.

Circumstances pertaining to withdrawal of an exemption

6. (1) The Financial Supervision Commission may withdraw an exemption by giving notice in writing to the exempt person if -

(a) the exempt person breaches a condition specified in regulation 5;

(b) the Financial Supervision Commission becomes aware that the exempt person is no longer licensed, authorised or regulated by the relevant regulator or is in breach of the regulatory requirements in the relevant jurisdiction;

(c) the exempt person is in breach of any regulatory requirement imposed by the Financial Supervision Commission under the Act;

(d) the exempt person carries on any banking business in or from the Isle of Man other than the exempted activities; or

(e) the exempt person holds itself out as carrying on banking business other than the exempted activities in or from the Isle of Man.

Duration of exemption in relevant circumstances

7. In relation to testing and maintenance, the relevant time shall commence on the date that the Financial Supervision Commission confirms registration of the exempt person and shall terminate when registration ceases or the Agreement terminates, whichever is the earlier.

8. (1) In relation to the carrying on of exempted activities following the occurrence of a relevant event -

(a) the relevant time shall commence on the date that the Financial Supervision Commission confirms receipt of written notification under regulation 5(a)(i) and, subject to sub-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) on receipt of a written application from an exempt person for an extension of the relevant time under sub-paragraph (a), the Financial Supervision Commission may grant an extension, or series of extensions, where it is satisfied that such an extension, or extensions, are warranted;

(c) in considering an application under sub-paragraph (b) the Financial Supervision Commission may request any information that it considers relevant;

(d) any extension or series of extensions granted under sub-paragraph (b) may be subject to such conditions as are, in the opinion of the Financial Supervision Commission, deemed necessary.

Revocation

9. The Banking (Exemption) (Temporary Business Continuity Operations) Regulations 2002(b) are hereby revoked.

Made: 17 May 2006

_____ Chairman

_____ Chief Executive

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

The Regulations allow a person to carry on banking business in the Isle of Man without having to hold a banking licence (issued under the Banking Act 1998), on a temporary basis where a natural disaster or other serious event in their home country disrupts their business operation. The exemption also applies to the provider of the computer equipment, which facilitates the business continuity arrangements, and to the persons who operate the equipment on behalf of the person whose business operation has been disrupted. The exemption applies to the testing and maintenance of the business continuity arrangements and for 30 days or 60 days after the occurrence of the disruptive event or for such longer period as may be agreed with the Financial Supervision Commission. (The shorter period applies where the person's home regulatory is unable to exercise regulatory control.)

In order to avail itself of the exemption, the person must enter into a contract with the provider of the computer service and must be registered with the Commission as exempted under these Regulations.

It is the responsibility of the exempt person to ensure that the temporary business continuity operation conducted in the Isle of Man complies with all relevant requirements in its home jurisdiction. The exempt person's home regulator and the Commission must also have entered into a memorandum of understanding that permit persons regulated in that jurisdiction to establish temporary business continuity arrangements in the Isle of Man.