



## **FIDUCIARY SERVICES ACTS 2000 and 2005**

### **FIDUCIARY SERVICES (GENERAL REQUIREMENTS) REGULATORY CODE 2005**

*Approved by Tynwald on 13 July 2005*

*Coming into operation on 1st August 2005*

In exercise of the powers conferred on the Financial Supervision Commission by section 6 (1) of the Corporate Service Providers Act 2000<sup>(a)</sup>, and of all other enabling powers, and after consulting with such bodies as appear to be representative of the interests likely to be affected by it, the following Code is hereby made: -

#### **Citation, commencement, interpretation and application**

1. (1) This Code may be cited as the Fiduciary Services (General Requirements) Regulatory Code 2005 and shall come into operation on 1<sup>st</sup> August 2005.

(2) In this Code –

“the Act” means the Corporate Service Providers Act 2000 as amended by the Fiduciary Services Act 2005;

“advertisement” has the meaning given in section 27(1) of the Act;

“auditing standards” means the auditing standards approved by the Councils of the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland, the

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\* The Guidance Notes in this handbook do not form part of the statutory document.

<sup>(a)</sup> 2000 c.13

Institute of Chartered Accountants in Ireland, the Association of Chartered Certified Accountants, the Chartered Institute of Public Finance and Accountancy, and the Association of Authorised Public Accountants;

“auditor” has the meaning given in section 24(4) of the Act;

“body corporate” has the meaning given in section 27(1) of the Act;

“chief executive” has the meaning given in section 27(1) of the Act;

“client” means any person with whom a fiduciary agrees by way of business to provide services which are regulated activities;

“client company” means any company for which a CSP provides services which are regulated activities;

“clients’ money” and “trust money” have the meanings given in paragraphs 3 and 4 of the Fiduciary Services (Clients’ and Trust Money) Regulatory Code 2005<sup>(b)</sup>;

“company” has the meaning given in section 27(1) of the Act;

“Commission” means the Financial Supervision Commission;

“controller” has the meaning given in section 27(1) of the Act;

“corporate service provider” means a fiduciary who engages in any CSP regulated activity;

“CSP” means a corporate service provider;

“CSP licence” means a licence issued to a fiduciary who engages in any CSP regulated activity;

“CSP regulated activity” means any activity falling within any paragraph of Part 1 of Schedule 1 to the Act;

“director” has the meaning given in section 27(1) of the Act;

“fiduciary” has the meaning given in section 1(1) of the Act;

“fiduciary licence” has the meaning given in section 2 of the Act;

“group” has the meaning given in section 27(1) of the Act;

“going concern requirement” has the meaning given in paragraph 11(1) of this Code;

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<sup>(b)</sup> SD 470/05

“items subject to legal privilege” has the meaning given in section 13 of the Police Powers and Procedures Act 1998<sup>(c)</sup>;

“key persons” means –

- (a) in the case of a fiduciary who is a sole trader, the fiduciary himself;
- (b) in the case of a fiduciary which is a body corporate, any controller, chief executive, director, or manager;
- (c) in the case of a fiduciary which is a partnership, each of the partners ; and
- (d) in all cases, any person described in section 3(3)(ca), (cb) and (d) of the Act;

“manager” has the meaning given in section 27(1) of the Act;

“professional associate” means an individual to whom paragraph 12(1)(e) of Part 1 (*Exemptions: Corporate Service Providers*) of Schedule 2 to the Act applies;

“regulated activity” has the meaning given in section 1(2) of the Act;

“reporting accountant” means an auditor in respect of an unincorporated fiduciary (partnership);

“transitional arrangements” has the meaning given in article 3 of the Fiduciary Services Act 2005 (Appointed Day) Order 2005<sup>(d)</sup>;

“trust” has the meaning given in section 27(1) of the Act;

“trust corporation” has the meaning given in section 65A(b) of the Trustee Act 1961 as amended by section 2 of the Fiduciary Services Act 2005;

“trust service provider” means a fiduciary who engages in any TSP regulated activity;

“TSP” means a trust service provider;

“TSP licence” means a licence issued to a fiduciary who engages in any TSP regulated activity;

“TSP regulated activity” means any activity falling within any paragraph of Part 1A of Schedule 1 to the Act.

(3) Save as set out in sub-paragraph (5), and subject to sub-paragraphs (4), (6) and (7), this Code applies to all fiduciaries.

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<sup>(c)</sup> 1998 c.9

<sup>(d)</sup> SD 467/05

(4) This Code shall only apply to any TSP regulated activities undertaken by an applicant for a TSP licence, who is subject to the transitional arrangements, from 1 November 2005.

(5) Paragraphs 5(4), 7, 8, 9(2), 9(3), 9(5), 9(6), 10, 11, 12, 13(1), 13(2)(a) and (b), 13(5)(b), 13(9), 13(12), and 13(16) do not apply to a fiduciary to which paragraph 3(4)(b) or 3(4)(e) applies (Category 2 CSP licence and/or Category 2 TSP licence).

(6) Paragraph 17(2) and (3) does not apply to a fiduciary which is not the holder of a fiduciary licence.

(7) Any provision of this Code stated to apply to TSPs shall not apply to a fiduciary which is not a TSP.

(8) Any provision of this Code stated to apply to CSPs shall not apply to a fiduciary which is not a CSP.

### **Guidance Note**

*Although the financial resources requirements in paragraph 11, which apply to other sole traders, do not apply to Category 2 CSP and/or Category 2 TSP licenceholders, personal bankruptcy is considered relevant to their fitness and propriety and they are obliged to notify the Commission if they become subject to a bankruptcy order (see paragraph 13(13) below).*

*It should also be noted that this Code applies to all licensed CSPs but will not apply in respect of TSP regulated activity carried out by TSP licence applicants during the period in which all existing TSPs will be required to apply for a licence. (After that time it will be illegal to operate without a licence unless an application has been made or the activity is exempted and all licence applicants will be subject to the Code.) It should also be noted that an unlicensed fiduciary is not permitted to hold itself out as being licensed and paragraph 17(2) and (3) have therefore been disapplied.*

### **General**

2. (1) The objectives of this Code are to establish regulatory standards of conduct for fiduciaries by seeking to ensure that any fiduciary: -

- (a) knows its client;
- (b) acts with due skill, care and diligence in providing any service which it provides or holds itself out as willing to provide;
- (c) acts with high standards of integrity in its conduct as a fiduciary;
- (d) deals fairly with its clients in any transaction entered into or which it arranges to be entered into, on its client's behalf; and
- (e) if applicable, maintains adequate financial resources.

(2) This Code is not (except where expressly stated otherwise) intended to alter a fiduciary's obligations to any person under company or trust law and should be construed accordingly.

### Categories of licenceholder

3. (1) Under section 3(4A) of the Act, a fiduciary licence may be issued in respect of any class of regulated activity or any specific regulated activity.

(2) A fiduciary licence may be issued in respect of the following classes of regulated activities: -

(a) CSP regulated activity; and

(b) TSP regulated activity.

A licence issued in respect of either of these classes of business shall be designated a CSP licence or TSP licence respectively.

(3) A fiduciary may hold either or both class of licence.

(4) A CSP licence or TSP licence will be issued with reference to the category of business which the licenceholder is permitted to undertake. The relevant categories of business are as follows:

(a) **Category 1 CSP licence**

Subject to sub-paragraph (4)(b), a fiduciary which provides any CSP regulated activity, shall be required to hold a Category 1 CSP licence.

(b) **Category 2 CSP licence**

A fiduciary who does not undertake any CSP regulated activity other than acting as a director or alternate director of companies, shall be required to hold a Category 2 CSP licence. A Category 2 CSP licence is restricted to individuals and will not be issued to bodies corporate.

(c) **Trust Corporation licence**

A fiduciary which provides any TSP regulated activity and is also licensed to undertake the functions of a trust corporation, shall be required to hold a Trust Corporation licence.

(d) **Category 1 TSP licence**

Subject to sub-paragraph (4)(e), a fiduciary which provides any TSP regulated activity other than acting as a trust corporation, shall be required to hold a Category 1 TSP licence.

(e) **Category 2 TSP licence**

A fiduciary who does not undertake any TSP regulated activity other than acting as a co-trustee or protector, shall be required to hold a Category 2 TSP licence. A Category 2 TSP licence is restricted to individuals and will not be issued to bodies corporate.

### **Guidance Note**

*The responsibility for determining the suitability of the other co-trustee (where such co-trustee is not required to hold a TSP licence himself) will rest with the Category 2 TSP licenceholder himself.*

### **Know your client**

4. (1) A fiduciary shall be required to know its client and, subject to sub-paragraph (3), at all times be able to demonstrate its compliance with the Anti-Money Laundering Codes for the time being in force and any guidance issued by the Commission to its licenceholders in respect of those Codes.

(2) Without prejudice to the Anti-Money Laundering Code for the time being in force, a CSP must identify the beneficial owner of each of its client companies.

(3) Where a fiduciary is a part of a Group and the Group as a whole is subject to the guidance on those Codes issued by the Insurance and Pensions Authority, the fiduciary may follow that guidance in preference to the guidance issued by the Commission.

### **Guidance Note**

*The Anti-Money Laundering Code 1998 (SD531/98) was amended by the Anti-Money Laundering (Amendment) Code 2001 (SD556/01) (“AMLC”) to include CSP licenceholders within the definition of “regulated persons”. This allows CSP licenceholders to be treated as “eligible introducers” for the purpose of AMLC. The definition of “relevant business” in AMLC was also amended to include CSPs, whether licensed or unlicensed.*

*“Acting as a trustee in return for payment” is currently defined as “relevant business” for the purposes of AMLC. After the Fiduciary Services Act 2005 comes into operation, the definition of “regulated persons” will be amended to include TSP licenceholders (so that TSP licenceholders can be treated as “eligible introducers” for the purposes of AMLC) and the definition of “relevant business” will be amended to include any person who engages in any TSP regulated activity, whether licensed as a TSP or unlicensed.*

*The current guidance on the AMLC issued by the Financial Supervision Commission (“Money Laundering, Prevention and Countering the Financing of Terrorism Guidance Notes”) applies to all the Commission’s licenceholders and will also apply to TSP Licenceholders. The current guidance on the AMLC issued by the Insurance and Pensions Authority (“IPA”) to its licenceholders may differ in some of the detail from the Commission’s guidance for its licenceholders. It may therefore cause administrative inconvenience for a TSP licenceholder, which is a member of an insurance or pensions Group of Companies that is regulated by the IPA, to apply the Commission’s guidance where the rest of the Group is subject to the IPA’s guidance. In such circumstances, the procedures recommended by the IPA in respect of “know your customer” (KYC) may be followed.*

### **Client agreements/terms of business**

5. (1) A fiduciary shall inform each of its clients, existing or new, of the terms upon which the fiduciary provides its services.

(2) A fiduciary shall ensure that either a written client agreement has been entered into between itself and its client, or that the client has been notified of its terms of business relating to the services it provides. This shall be accomplished as soon as reasonably practicable after an agreement to provide services has been reached between the fiduciary and its client. A copy of the written client agreement signed by the client, or evidence of notification of the terms of business, shall be retained by the fiduciary.

(3) The written client agreement or the fiduciary's terms of business must include:

- (a) the fees to be charged and/or the basis of calculation of fees to be charged by the fiduciary, the method by which such fees are to be collected, and the method by which increases in fees are notified to the client;
- (b) the conditions for the termination of services by the fiduciary, including, if applicable, the provisions for the refund of any fees due to the client as a result of the termination of services; and
- (c) what arrangements there will be for payment to the client of any interest received on clients' money.

(4) Where a fiduciary acts as, provides, or arranges for others to provide, a nominee shareholder (whether as a registered shareholder or the bearer or custodian of a share warrant to bearer) for the beneficial owner of a client company, or otherwise holds the position of member of a company on behalf of another, the fiduciary shall ensure that in all such cases a written nominee agreement or such other trust instrument as may be appropriate exists, and shall retain a copy of such in its records.

#### **Guidance Note**

*One of the purposes of this Code is to ensure that a person licensed to engage in fiduciary regulated activity behaves with integrity. The principle behind establishing a clear agreement in terms of paragraph 5(3) is that a fiduciary is expected to be fair and transparent in its dealings with its clients and others. A fiduciary must, therefore, be able to demonstrate that its terms of business are clearly set out and clearly communicated to its clients.*

*With reference to existing clients, the fiduciary may already (prior to the date of the adoption of this Code) have: -*

- (i) entered into a written agreement with such clients which sets out its terms of business; or*
- (ii) notified such clients of its terms of business.*

*In both circumstances, the fiduciary should be able to demonstrate that its terms of business have been brought to the attention of its client and that paragraph 5(3) has been complied with.*

*The Commission recognises that as the business relationship progresses, the client with whom the fiduciary contracts may change. For example, in respect of CSP regulated activities, a CSP's client may initially be the person for whose benefit the client company is to be established, who in due course will be the beneficial owner of the client company. After the client company has been established, a CSP's client may be the beneficial owner or the client company itself.*

*In the case of a fiduciary engaging in the TSP regulated activity of providing “trust administration” only for a trust, the TSP’s client would be the trustee of the trust. If the fiduciary itself is asked to act as trustee of a trust, its client would initially be the settlor of the trust. However, once the trust is established, the trustee’s responsibilities and duties would be governed by the terms of the trust deed and the trust law of the relevant jurisdiction, and the requirement for a client agreement falls away. However, where a fiduciary is both the service provider and the trustee, it is considered best practice for the TSP to circulate its terms of business with the trust accounts to whoever is entitled to receive copies of those accounts in order to ensure that anyone with an interest in the accounts is aware of the terms on which the TSP is providing services.*

## **Key persons**

6. All key persons must be and remain “fit and proper” persons, as determined by the Commission.

### **Guidance Note**

*Guidance on the criteria applied by the Commission in determining the fitness and propriety of individuals and applicants is contained in the Commission’s Guidance Notes on Licensing Policy.*

*Key persons include managers and such other persons as appear to the Commission to have significant powers or responsibilities with respect to any regulated activity undertaken by the fiduciary. The Commission will consider, on a case-by-case basis, the fiduciary’s staffing structure and the responsibilities any particular individual carries in relation to the regulated activities. If the Commission determines that an individual, whether or not holding the title “manager”, has significant powers and responsibilities in the management of the fiduciary’s business, or in relation to the services it provides, the Commission will apply its “fit and proper” criteria accordingly.*

*The Commission considers that, in the case of a TSP, employees who act in a personal capacity as trustee, protector or enforcer of an express trust, and in the case of all fiduciaries, a “4-eyes” and a locum, appointed under paragraphs 7 and 8, are persons with significant powers or responsibilities in respect of a regulated activity. It should also be noted that, in the case of a CSP, section 3(3)(ca) of the Act specifies that officers of client companies must be fit and proper persons.*

*The Commission’s procedures in relation to vetting individuals and licence applicants, together with the relevant personal and banker’s questionnaire (PQ and BQ) forms are contained in the Commission’s Guidance Note on Applying for a Licence.*

## **Dual control (the “4-eyes” criterion)**

7. The business of all fiduciaries, shall be conducted by at least two individuals. Pursuant to section 3(3)(d) of the Act, the Commission construes these individuals to be key persons. The role of these individuals, who are jointly responsible for overseeing the proper conduct of the fiduciary’s business, is described as being the “4-eyes” of the business. Both individuals must be resident in the Island or, if that requirement cannot be met, the fiduciary must notify the Commission in writing that appropriate locum arrangements are in place under paragraph 8.

### **Guidance Note**

*The “4-eyes” criterion applies to the conduct of the fiduciary’s business as a whole and not to the personal obligations of either a CSP, in his capacity as a director of a client company, or a TSP, in his capacity as a trustee, protector or enforcer of a trust.*

*The Commission would normally expect at least one of the individuals named as part of the “4-eyes”, to be on the Island at any one time. Where the fiduciary is a larger organisation employing a number of individuals, provided the fiduciary can demonstrate that the responsibility for overseeing the business would be better achieved by more than two individuals, the Commission may consider it acceptable for the role of “4-eyes” to be shared by more than two of the fiduciary’s key persons.*

### **“Locum” principle**

8. If a fiduciary is unable to meet the requirements of paragraph 7, it must have appropriate locum arrangements in place to ensure that the regulated activities it provides to its clients can continue without interruption. Any such locum arrangements must be approved by the Commission. Pursuant to section 3(3)(d) of the Act, the Commission construes a locum to be a key person.

#### **Guidance Note**

*Any person who acts as a locum for a fiduciary is considered by the Commission to fall within the definition of “key persons” and is therefore required to meet the Commission’s “fit and proper” test. The Commission considers a locum to be a person who has potentially significant powers or responsibilities with respect to any regulated activity undertaken by the fiduciary.*

*As such, it is unlikely that a person will be considered “fit and proper” to act as locum (on grounds of competence) unless the person is –*

- (a) a licensed fiduciary or an individual who has an acceptable track record as a director of a licensed fiduciary; or*
- (b) a fiduciary which has applied for a TSP licence or an individual who has an acceptable track record as a director of such an applicant, subject to the applicant subsequently being granted a licence.*

### **Compliance systems, procedures and returns**

9. (1) A fiduciary shall organise and control its internal affairs in a responsible manner and shall have in place documented controls, systems and procedures to enable it to comply with this Code and with the Fiduciary Services (Clients’ and Trust Money) Regulatory Code 2005. Such controls, systems and procedures should be appropriate to the level and scope of the fiduciary’s business. A fiduciary must be able to demonstrate to the Commission its compliance with this Code and with the Fiduciary Services (Clients’ and Trust Money) Regulatory Code 2005 by being able to produce relevant records relating to its business transactions, financial position, internal organisation and risk management systems. Such records must be kept for at least 6 years after the fiduciary ceases to hold a fiduciary licence.

(2) A CSP shall take reasonable steps to ensure that any company or partnership that it forms, sells, transfers or disposes of for a client, and each client company or partnership for which it undertakes any regulated activities, complies with such statutory and/or common law obligations as are applicable to the particular regulated activity being undertaken.

(3) A fiduciary shall ensure that its key persons and any other individuals, whether directly or indirectly employed by the fiduciary, who perform any regulated activities in the course of their employment and/or as part of their service contract or as part of a contract for services, carry out their duties in a diligent and proper manner in accordance with the systems, controls and procedures referred to in subparagraph (1) and are adequately trained to carry out their particular duties.

(4) A fiduciary shall be required to make an annual compliance return to the Commission in the form specified by the Commission as relevant to its class and category of licence. The information to be contained in and documents to be supplied with the relevant annual compliance return is set out in Schedule 1.

(5) In the case of a Trust Corporation or a Category 1 TSP and/or a Category 1 CSP licenceholder (unless it is a sole trader), the relevant annual compliance return must be made to a date no later than four months after the fiduciary's accounting year-end. A copy of the fiduciary's audited or independently verified annual financial statements in respect of the preceding financial period must be submitted with the return.

(6) In the case of a Category 1 CSP and/or a Category 1 TSP licenceholder which is a sole trader, the relevant annual compliance return must be made up to such date in each year as is agreed with the Commission and shall be submitted to the Commission within one month of that date.

(7) In the case of a Category 2 CSP and/or a Category 2 TSP licenceholder, the relevant annual compliance return must be made up to such date in each year as is agreed with the Commission and shall be submitted to the Commission within one month of that date.

### **Guidance Note**

*The Commission may wish to examine a fiduciary's systems, procedures, and controls in respect of the following:*

- *Client agreements or written terms of business in use.*
- *Compliance with the Anti-money Laundering Codes and guidance, including "Know your Customer", relevant staff training and records.*
- *The fiduciary's obligations under the Fiduciary Service (Clients' Money and Trust Money) Regulatory Code 2005 in respect of segregating clients' money and trust money from the fiduciary's own moneys and the ability to account for such moneys.*
- *Trust assets held by the fiduciary, the maintenance of accounting records relating to trust assets and, if appropriate, the preparation of trust accounts.*
- *In the case of a CSP, a record of all client companies for which it provides regulated activities, such records to include company name, jurisdiction of incorporation and incorporation number.*
- *In the case of a TSP, a record of all trusts of which the TSP is trustee, protector or enforcer or for which it provides any other TSP regulated activities.*
- *In respect of staff training and supervision, the fiduciary's commitment to and compliance with the Commission's policy on training and competence as set out in the licensing policy.*
- *Recording and taking appropriate action to deal with complaints.*
- *Any other systems and procedures relevant to the fiduciary's obligations under this Code.*

*If a CSP is unfamiliar with the relevant law applicable to a client company for which it provides any CSP regulated activity, it is its responsibility to obtain legal advice on the interpretation of its statutory obligations under any relevant law. Failure to comply with relevant laws may be considered by the Commission to be an indication of lack of competence and/or integrity. The Commission has issued “Guidance notes on the duties and responsibilities of directors under the laws of the Isle of Man” (see section 10.2), and there are also other publications available giving guidance with regard to the duties and responsibilities of directors.*

*The Commission expects a TSP to be familiar with the governing law of each trust to which it provides services and all other laws relevant to the service it provides and to maintain, in relation to each trust, records and documentation relevant to the service it provides. Any Court ruling in respect of breach of trust or failure to comply with relevant laws may be considered by the Commission to be an indication of lack of competence and/or integrity.*

*It is important that all the individuals who engage in any regulated activities on behalf of a fiduciary, whether as direct or indirect employees of the fiduciary, understand and comply with the fiduciary’s systems and procedures. How this may be achieved will depend on the size and complexity of the fiduciary business, and a central source of reference (for example, a procedures manual) may be the easiest means of accomplishing this.*

## **Provision of directors**

10. (1) Where a CSP engages in the regulated activity of providing directors for a client company, be they members of its own staff, professional associates, a company under its control acting as a director, or other persons outside the Island who contract to undertake directorships for a CSP, the CSP shall take reasonable steps to ensure that those persons, or, in the case of a director which is a body corporate, its directors: -

- (a) are suitable and competent for that office (for example, by the taking up of references, if appropriate); and
- (b) are able to confirm that they understand the duties and responsibilities of directors under all relevant laws.

(2) Where the CSP’s own staff or professional associates act as directors of client companies, the CSP shall take reasonable steps to ensure that those individuals effectively carry out their responsibilities and duties in respect of each of those client companies in a diligent and proper manner.

### **Guidance Note**

*With respect to the performance of the duties and responsibilities of the office of director, any one individual should not hold a greater number of directorships than he can competently undertake. In assessing the ability of an individual to fulfil his responsibilities as a director of a client company, the following factors should be taken into consideration:*

- (a) *the procedures and control systems which are in place;*

- (b) *the competence of support staff available to those acting as directors for a number of client companies; and*
- (c) *the complexity of the business and the level of activity of each of the client companies for which the individual acts as director, as this may have an effect on the scope and extent of commitment required from that individual to fulfil his responsibilities.*

*However, even in the case of an experienced and well-qualified individual with strong support and a predominantly passive profile of company activity, the Commission will look carefully at a figure in excess of 250 directorships.*

*The Commission would expect a figure much lower than 250 directorships if any of these factors was unfavourable (that is the director was inexperienced, the level of support was weak, the level of the activity of the companies in question was high or the nature of such activity was complex). The Commission would also expect a lower figure if the director was not working full time, or had other extensive commitments.*

*Exceptionally, with reference to the particular circumstances of a case, for example, where several directors have multiple overlapping directorships (that is, three or more persons hold office in each company administered by the CSP), the Commission might accept a higher figure if all of the factors above were favourable. However, even in the case of such an arrangement, the Commission would be mindful of the duties and responsibilities of those directors, which must be properly discharged, regardless of the circumstances.*

*In assessing the number of directorships which he may competently undertake, account should also be taken of the number of corporate directorships held by a company of which the individual is a director.*

*It is acknowledged that under certain laws, including the laws of the Isle of Man, the board of directors may be authorised to delegate their powers to a third party. If the CSP provides the directors for, or arranges for others to be directors of, a client company, the directors so provided should not abrogate their overall responsibility for the matters delegated. The directors should remain responsible for the exercise of the powers they delegate and should monitor the exercise of the delegated powers. This applies to the issuing of powers of attorney, and control of bank accounts, financial transactions and assets belonging to the client company. In all circumstances the board should keep the delegated powers within such restricted parameters as may be appropriate and ensure that the directors do not relinquish ultimate control over the company's affairs. Notwithstanding that the directors are not the authorised signatories or are not the only persons authorised to sign on the client company's bank account(s), ultimate control thereof would be expected to remain with the directors.*

*Directors should not allow others to unduly influence them in such a way as to undermine the exercise in good faith of their powers in the manner which is in the best interests of the client company. It should be noted that there is no such entity under the laws of the Isle of Man as a "nominee" director.*

*The Commission has issued “Guidance notes on the duties and responsibilities of directors under the laws of the Isle of Man”, and there are also other publications available that give guidance with regard to the duties and responsibilities of directors.*

*An employee or professional associate taking on the role of director of a client company will be a “key person”, and must be and remain a “fit and proper” person, in accordance with the Commission’s licensing policy.*

*A CSP should ensure that its key persons, who act as directors of client companies, are aware of the duties and obligations of the office of director under the laws of the client company’s jurisdiction of registration, and that they are aware that in performing the functions of such office, they have a personal responsibility. If necessary, legal advice should be sought.*

### **Financial resources, going concern and reporting requirements**

11. The following financial resources, going concern and reporting requirements apply to a fiduciary’s business as a whole.

#### ***Going concern requirement***

(1) A fiduciary must meet the “going concern requirement”. This means that it must be able to meet its liabilities (taking into account contingent and prospective liabilities) as they fall due and be able to continue in operation as a fiduciary for the foreseeable future.

(2) A fiduciary which is a body corporate shall make a declaration as part of the annual compliance return required under paragraph 9(4) and (5) that it is not deemed unable to pay its debts under section 163 of the Companies Act 1931<sup>(e)</sup>.

(3) A fiduciary which is a partnership, shall make a declaration as part of its annual compliance return required under paragraph 9(4) and (5) that its business meets the going concern requirement as defined in sub-paragraph (1) and that it is not aware of any personal debts or personal liabilities (taking into account contingent and prospective liabilities) of the fiduciary or the partners of the fiduciary, which may in the foreseeable future prevent the business from meeting the going concern requirement.

(4) A fiduciary which is a sole trader shall make a declaration as part of its annual compliance return required under paragraph 9(4) and (6), that its business meets the going concern requirement as defined in sub-paragraph (1) and that it is not aware of any personal debts or personal liabilities (taking into account contingent and prospective liabilities) of the fiduciary, which may in the foreseeable future prevent the business from meeting the going concern requirement.

#### ***Liquidity requirement***

(5) A TSP which is a body corporate or partnership must –

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<sup>(e)</sup> Vol XIII p.235

- (a) ensure that its current assets exceed its current liabilities at all times, unless it can demonstrate to the satisfaction of the Commission that the particular financial circumstances of the business justify otherwise; and
- (b) submit to the Commission within one month of the end of the relevant quarter (31<sup>st</sup> March, 30<sup>th</sup> June, 30<sup>th</sup> September, 31<sup>st</sup> December), either–
  - (i) a declaration by the 4-eyes stating that, having made reasonable enquiry, they are satisfied that the current assets exceeded the current liabilities of the business at all times in the last quarter; or
  - (ii) a statement by the 4-eyes explaining, and giving details of, particular financial circumstances which, in their view, justify the requirement not being met; and
  - (iii) in either case, the 4-eyes must confirm that the business is able to demonstrate to the Commission, on request, its procedures for monitoring its liquidity position and that, having made reasonable enquiry, they are satisfied that the business is, and will remain, a going concern,

Provided that, if the TSPs accounting year does not end on any of the stated quarter-ends and it would be unreasonable in the circumstances of that TSP to require a declaration to be made with reference to those dates, the relevant quarters may be on such dates relating to the licenceholder's financial year as shall be as agreed in writing with the Commission.

Where the role of the 4-eyes is fulfilled by more than two individuals, the requirement in this sub-paragraph shall be considered satisfied if made by two of the 4-eyes.

#### ***Annual financial statements to be audited***

(6) A fiduciary, which is a body corporate, shall submit a copy of its audited annual financial statements to the Commission with the annual compliance return required under paragraph 9(4). The financial statements must be audited notwithstanding any election made by the fiduciary under section 12A of the Companies Act 1982<sup>(f)</sup> or under any regulations made pursuant to section 324B of the Companies Act 1931<sup>(g)</sup>.

(7) A fiduciary, which is a partnership, shall submit a copy of its annual financial statements and a reporting accountant's report, in the form set out in Schedule 2, to the Commission with the annual compliance return required under paragraph 9(4).

(8) A fiduciary to which sub-paragraphs (6) or (7) applies, shall not, without the prior written consent of the Commission, change its financial year-end from the date previously advised.

#### ***Matters on which auditor/reporting accountant required to report***

(9) Where, in the opinion of the auditor or reporting accountant (as applicable) of a fiduciary, one or more of the requirements of this paragraph have not been met, the report to the Commission shall include a statement specifying the requirements that have not been met together with an explanation. In addition, the fiduciary's auditor or reporting accountant shall consider any declaration made

<sup>(f)</sup> 1982 c.2, section 12A added by the Companies Act 1992

<sup>(g)</sup> section 324B added by Companies Act 1992

by or on behalf of the fiduciary under sub-paragraphs (2), (3) or (5) and shall confirm to the Commission that it is not aware of anything to indicate that any such declaration is or was unreasonable.

### **Guidance Note**

*Where a fiduciary, which is a body corporate or a partnership, holds both a TSP and a CSP licence, the financial resource requirements and the guidance below apply to the fiduciary's business as a whole.*

#### **“Going concern” requirement –**

*All fiduciaries are required to monitor their solvency and report to the Commission if they consider that they may not be able to meet the going concern test. “Solvency” is one of the principal criteria of fitness and propriety, as explained in the Commission's Licensing Policy. The Commission's Licensing Policy gives further guidance in respect of the application of the “Solvency” principle.*

*A fiduciary's business must be able to stand the normal business risks associated with market conditions as well as extraordinary risk. The Commission therefore assesses the financial soundness of a business in relation to the relevant financial resources requirements in paragraph 11 and also, as would be the case with any prudent business, expects a fiduciary to mitigate against the business's exposure to extraordinary risk by taking out adequate professional indemnity insurance (“PII”) (see paragraph 18). However, the Commission recognises that the nature and scope of a particular business affect the potential exposure to risk and will apply its assessment of the adequacy of a fiduciary's financial resources and PII cover accordingly.*

*A fiduciary should be able to demonstrate to the Commission that the business has sufficient financial resources and the Commission would therefore expect the directors or partners of a TSP, which is a body corporate or partnership, to maintain a level of capital appropriate to that business. There has never, however, been a specific capital requirement for a CSP, which is a body corporate or a partnership, and this remains unchanged. As a result, fiduciaries, which do not carry on TSP business, are not expected to meet the following guidance in respect of share capital or partners' capital.*

*In line with international regulatory standards, the Commission would generally consider issued and paid-up share capital or partners' capital of £25,000 to be the minimum capitalisation for most businesses but might, in appropriate circumstances, consider the capital requirement to be met by a combination of a minimum of £10,000 paid up capital, with reserves and/or subordinated loans making up the balance of the aggregate of £25,000.*

*A fiduciary, which is a sole trader, is also required to demonstrate to the Commission that the business is adequately financially resourced. A sole trader's personal assets and liabilities are not legally separate from his business's assets and liabilities and the Commission will therefore generally require a sole trader, who carries on only CSP business, to place £10,000 and a sole trader, who carries on TSP (or CSP and TSP) business, to place £25,000 (equivalent to the capital requirement for a body corporate or partnership TSP) in a segregated bank account, which must be maintained free of any charge or encumbrance or right of set-off.*

#### **“Liquidity” requirement –**

*Sub-paragraph (5) requires a TSP (body corporate or partnership) to make quarterly declarations regarding the business's liquidity.*

*The Commission would expect the board of directors of a TSP, which is a body corporate, or the partners of a TSP which is a partnership, to be able to demonstrate to the Commission that, by application of whichever recognised accounting tool they consider most appropriate to the financial management of their business (e.g. cash-flow forecasts, management accounts, acid test, net tangible assets calculation, risk-based analysis etc), they actively monitor the business's liquidity position at intervals that are appropriate to the nature and scope of the business. Current assets should at all times exceed current liabilities and if current assets have not at all times exceeded current liabilities, the Commission would expect to receive an explanation as to how the business is able to meet its liabilities as they fall due and remain a going concern, details of the business's particular financial circumstances and whether this is expected to be a temporary or permanent situation.*

*The majority of TSPs should have no difficulty in making their liquidity declaration in relation to the calendar quarter end of 31<sup>st</sup> March, 30<sup>th</sup> June, 30<sup>th</sup> September, 31<sup>st</sup> December. However, there may be particular circumstances, for example where management accounts are prepared by the TSP's auditor on a cycle relating to the due dates for VAT returns and the accounting periods do not coincide with any of the calendar quarters. The Commission may, if the circumstances justify, agree to quarterly declarations that relate to alternative quarter-ends (for example, 30<sup>th</sup> April, 31<sup>st</sup> July, 31<sup>st</sup> October, 31<sup>st</sup> January).*

***Audited financial statements –***

*Audited accounts or, in the case of an unincorporated entity, accounts that have been independently verified by a reporting accountant, are important in the Commission's assessment of a fiduciary's financial soundness. These accounts must be made up to the same date in each calendar year, which will be the date advised to the Commission in the fiduciary's initial licence application and a fiduciary must obtain the Commission's prior consent before changing its accounting year end date.*

*It should be noted that the Isle of Man Society of Chartered Accountants and the Association of Chartered Certified Accountants in their joint "Statement of Recommended Accounting Practice" dated October 2003 recommend to their members that financial statements should be prepared "in accordance with the Isle of Man Companies Acts 1931 to 2004 (and relevant regulations for regulated entities) or with the company or other laws of the territory in which the concern is incorporated, registered or established". In addition financial statements "should normally be drawn up in such a manner so as to comply with Statements of Standard Accounting Practice, Financial Reporting Standards, Urgent Issue Task Force pronouncements, Statements of Recommended Practice ("SORPS") and any other statements of accounting practice issued by the relevant accountancy and industry bodies in the United Kingdom ("UK Accounting Standards")." However, the Statement recognises that it is increasingly common for other accounting standards, primarily International Financial Reporting Standards (and related pronouncements) to be used as a basis for the preparation of financial statements. [[www.icaew.co.uk/viewer/index.cfm/AUB/TB21\\_61241](http://www.icaew.co.uk/viewer/index.cfm/AUB/TB21_61241)]*

*Audited accounts must provide sufficient information to enable the Commission to form a judgement as to the financial soundness of the fiduciary's business and the Commission would normally expect a fiduciary's accounts to be audited in accordance with either IAS (International Audit Standards), UK GAAP or US GAAP (General Audit and Accounting Practice). The directors*

*should therefore provide a more detailed breakdown in the company's annual financial statements than the minimum required under the Companies Act 1982 by disclosing:*

- *In the balance sheet, the amounts of loans and advances due from, and guarantee commitments entered into on behalf of, shareholders and directors;*
- *In the profit and loss account,*
  - (a) total income/turnover for the year; and*
  - (b) cost of sales and other expenditure.*

*Although the total income/turnover and the total expenditure (including cost of sales and other expenditure) is required to be audited, the Commission would not expect the breakdown of those figures necessarily to be audited as well. Sub-paragraph (9) places an obligation on the auditor or reporting accountant to confirm to the Commission that, in its opinion, it was not unreasonable for the person(s) concerned to make the annual declaration required in respect of "going concern" and the quarterly declarations in respect of the liquidity requirement. The Commission would expect such confirmation to be submitted with the fiduciary's annual compliance return and, as an annual audit of the financial statements would include investigation that the business is a going concern, the auditor's/reporting accountant's confirmation would be expected to follow from the annual audit.*

*Furthermore, it should be noted that section 24 of the Corporate Service Providers Act 2000 places an obligation on the auditor/accountant of a fiduciary to report any breach of the Act, Regulatory Codes etc of which it becomes aware in the course of its work.*

12. (1) Subject to sub-paragraph (3), the annual compliance return of a fiduciary shall be accompanied by a written statement by the auditor or reporting accountant of the fiduciary stating whether, in its opinion:

- (a) the fiduciary has maintained throughout the financial year, systems adequate to have enabled it to comply with the Fiduciary Services (Clients' Money and Trust Money) Regulatory Code 2005 and that it was in compliance with that Code as at the balance sheet date; and
- (b) reconciliations of clients' money and trust money have been performed in accordance with the Fiduciary Services (Clients' Money and Trust Money) Regulatory Code 2005.

(2) Where, in the auditor's opinion, one or more of the requirements in respect of which the auditor is required to report under sub-paragraph (1) have not been met, the report shall include a statement specifying the relevant requirements and in what respect they have not been met.

(3) This paragraph shall not apply to a fiduciary that does not hold clients' money or trust money.

## **Matters to be notified to the Commission**

13. A fiduciary must notify the Commission of any relevant material change affecting its business, systems, key persons and financial resources, including but not limited to the following matters:

***Changes of directors or key persons***

(1) A fiduciary shall advise the Commission of any change or impending change in the persons acting as directors or key persons. This requirement applies to an internal appointment, a change of role within the business or a promotion as well as to the appointment of a new director or key person. It applies equally to resignations. The period of notice required by the Commission is -

- (a) in the case of a resignation from a key person position or of a key person being given notice by the fiduciary of termination of his key person position, within 7 days of the date on which the fiduciary receives notice from the individual or gives notice of termination to the individual; and
- (b) in the case of a proposed appointment of an individual to act as a key person in relation to the fiduciary's business, at least one month's notice in advance of the individual taking up such a key person position.

**Guidance Note**

*Although the definition of "key persons" includes a sole trader, this sub-paragraph does not apply to a sole trader because a "resignation" of a sole trader would constitute a surrender of a fiduciary licence (see sub-paragraphs (14) and (15)) and an "appointment" requires a licence application to be made.*

*The Commission's procedures in relation to vetting individuals and licence applicants, together with the relevant personal and banker's questionnaire (PQ and BQ) forms are contained in the Commission's Guidance Note on Applying for a Licence.*

*The appointment of key persons is subject to the Commission being satisfied that the individual is a fit and proper person. Guidance on the criteria applied by the Commission in determining the fitness and propriety of individuals and applicants is contained in the Commission's Guidance Notes on Licensing Policy. See also guidance under paragraph 6 (Key persons).*

***Change in the details of the Fiduciary***

(2) A fiduciary shall notify the Commission no later than one month after any change in the following: -

- (a) company name or business name;
- (b) registered office (if applicable); or
- (c) place of business.

***Legal Proceedings***

(3) A fiduciary shall notify the Commission:

- (a) Of any legal proceedings relevant to the fitness and propriety of the fiduciary immediately upon becoming aware of such proceedings, and provide a brief summary of the case. A fiduciary shall not be under an obligation under this sub-paragraph to disclose any items subject to legal privilege. This sub-paragraph shall apply to civil proceedings brought against a fiduciary in connection with the conduct of regulated activities by the fiduciary in any jurisdiction, where the amount claimed or disputed exceeds or is likely to exceed £10,000. The Commission may require further information as the case proceeds.
- (b) As soon as it becomes aware of the bringing against the fiduciary of any criminal proceedings triable on information.

Or

- (c) As soon as it becomes aware of the bringing of any criminal proceedings triable on information against a company that is a member of the group of companies of which the fiduciary is also a member, where such proceedings are relevant to the fitness and propriety of the fiduciary.

**Guidance note**

*In respect of group companies, see guidance under sub-paragraph (4).*

***Criminal Conviction***

(4) A fiduciary shall notify the Commission as soon as it becomes aware of the conviction of the fiduciary or any of its employees or professional associates or, in the case of a fiduciary which is part of a group of companies, any relevant conviction relating to a company or individual which is part of, or connected to, the group, for any offence relating to: -

- (a) investment business, banking or other financial services, building societies, credit unions, consumer credit, friendly societies, insurance and industrial and provident societies;
- (b) any offence under the Companies Acts 1931 to 2004 or any legislation having similar effect in any country or territory outside the Isle of Man or any offence relating to the formation, management or administration of companies in any jurisdiction;
- (c) any offence under the Purpose Trusts Act 1996 or any legislation having similar effect in any country or territory outside the Isle of Man or any offence relating to trusts in any jurisdiction;
- (d) insolvency; or
- (e) fraud or dishonesty.

**Guidance Note**

*Where a fiduciary is a member of a group of companies, legal action or criminal convictions against its parent or co-subsidiaries (sister companies) or, where the fiduciary is the parent, its subsidiaries, might have an impact on the fiduciary from a reputational point of view or might be indicative of a potential weakness in the fiduciary's own structure or operation, and therefore the Commission would wish to be informed of such occurrences.*

*However, in some cases where, for example, the party involved is a sister company in another jurisdiction, the connection might be so remote as to have little impact on the fiduciary's fitness and propriety. A fiduciary should therefore consider the requirement to notify the Commission under sub-paragraphs (3)(c) and (4) of legal proceedings or criminal conviction in respect of any company that is a member of the same group of companies as the fiduciary, in relation to their relevance to the fiduciary's operation.*

### ***Disqualification as a company director/secretary etc.***

(5) A fiduciary shall notify the Commission as soon as it becomes aware of any application for disqualification or any disqualification under section 259 of the Companies Act 1931, section 31 of the Companies Act 1982 or section 26 of the Companies Act 1992<sup>(h)</sup> or any provision having similar effect in any jurisdiction if made in respect of –

- (a) the fiduciary; or
- (b) any of its key persons.

### **Guidance Note**

*The statutory references in this sub-paragraph are to the disqualification of a person by the Court in respect of –*

- *a director who is found to be guilty of fraudulent trading (s. 259 of the Companies Act 1931);*
- *a director of an insolvent company that has gone into liquidation, whose conduct as a director makes him unfit to be involved in the management of companies (s.31 of the Companies Act 1982); and*
- *a person whose conduct as a director or secretary of a company; or a liquidator of a company; or a receiver or manager of a company's property; or in any way concerned in the promotion, formation or management of a company, makes him unfit to act in that capacity (s.26 of the Companies Act 1992).*

### ***Action by a regulator in another jurisdiction***

(6) If a fiduciary or its parent company becomes subject to any disciplinary action or is refused a licence or its licence has been suspended or revoked by a regulatory authority that regulates fiduciary, banking, investment or insurance business in another jurisdiction, it shall promptly notify the Commission.

### ***Service of notice***

(7) A fiduciary shall notify the Commission as soon as it becomes aware, of –

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<sup>(h)</sup> 1992 c.4

- (a) the service of any notice under section 24 of the Criminal Justice Act 1990<sup>(i)</sup>;
- (b) the service of any summons or issue of any warrant under section 21 or section 22 of the Criminal Justice Act 1991<sup>(i)</sup>;
- (c) the making of any order or the issue of any warrant under section 52 or section 53 of the Drug Trafficking Act 1996<sup>(k)</sup>; or
- (d) the making of any order or the issue of any warrant under section 15 or Schedule 7 of the Prevention of Terrorism Act 1990<sup>(l)</sup>

concerning the affairs of either the fiduciary or in respect of any regulated activity.

**Guidance Note**

*This would include any such notice served on or orders made in respect of a client company for which a CSP provides services or a trust of which a TSP is a trustee.*

***Criminal proceedings against a client company (CSP) or in relation to a trust (TSP)***

(8) A fiduciary shall notify the Commission and, where possible, provide a brief summary of the case, as soon as it becomes aware of the bringing of any criminal proceedings triable on information against, or the conviction on information of, in the case of a CSP, a client company, any officer of the client company or the beneficial owner of a client company and, in the case of a TSP, the trustee of any trust for which it provides services, in relation to any such proceedings relating to that person or trust in the Island or similar proceedings in any other jurisdiction.

***Staff Disciplinary Action***

(9) A fiduciary shall inform the Commission promptly by notice in writing of any serious disciplinary action it takes against any of its key persons. Full details of such action including copies of any notices or written warnings issued by the fiduciary to the relevant employee must be provided to the Commission. The fiduciary shall make available to the person concerned a copy of any such report.

**Guidance Note**

*For the purposes of this Code, “serious disciplinary action” includes circumstances where the fiduciary suspects, or has reasonable cause to believe, that the member of staff:*

- (i) *has committed an act which constitutes fraud, theft or other dishonesty; or*
- (ii) *has contravened any provision made by or under any enactment or any internal rule or regulation of the fiduciary designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice; or*
- (iii) *has engaged in any business practice appearing to be deceitful or oppressive or otherwise improper, or which casts doubt on his competence or soundness of judgement;*

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<sup>(i)</sup> 1990 c.1

<sup>(j)</sup> 1991 c.25

<sup>(k)</sup> 1996 c.3

<sup>(l)</sup> 1990 c.19

*and which has resulted in the giving of a written warning as to the future conduct of the member of staff, which may result in the termination or suspension of employment, or which resulted in the termination of employment initiated by the member of staff.*

### ***Investigation of member's conduct by a professional body***

(10) If a professional body of which a key person is a member enquires into that individual's professional conduct and/or terminates his membership or takes any disciplinary action against him or in any way censures his conduct, the fiduciary shall inform the Commission as soon as it becomes aware of such enquiry, termination of membership, disciplinary action or censure.

### **Guidance Note**

*The Commission takes account of membership of a professional body, in assessing an individual's competence and integrity. Therefore, where professional conduct is subject to enquiry whether or not resulting in disciplinary action, the Commission needs to be informed as such action may affect the individual's fitness and propriety.*

### ***Breakdown in administrative systems***

(11) A fiduciary shall notify the Commission of any serious or prolonged breakdown in its administrative systems as soon as it becomes aware that such breakdown could result in an inability to maintain proper records.

### ***Going Concern requirement***

(12) A fiduciary shall notify the Commission forthwith if, at any time, it is no longer able to meet the appropriate going concern requirement for its class and category of licence(s).

### ***Bankruptcy, winding up, appointment of a receiver etc in respect of the fiduciary business***

- (13) A fiduciary shall notify the Commission forthwith of any of the following occurrences -
- (a) the presentation of a petition for the winding up of the fiduciary;
  - (b) the appointment of a receiver, liquidator, provisional liquidator, administrator or trustee in bankruptcy to the fiduciary;
  - (c) the making of any composition or arrangement with creditors of the fiduciary;
  - (d) where the fiduciary is a partnership or unincorporated association, an application to dissolve the partnership or unincorporated association or the presentation of a petition for a bankruptcy order against a partner;
  - (e) where the fiduciary is an individual, the presentation of a petition for a bankruptcy order against the individual;
  - (f) if in respect of any licence authorising the fiduciary to carry on investment, banking, money lending, insurance, fiduciary business in the Isle of Man or any country or territory outside

the Isle of Man, an application for a licence has been refused or a licence has been revoked; or

- (g) the appointment of inspectors by a statutory or other regulatory authority to investigate the affairs of the fiduciary.

### ***Surrender of a fiduciary licence***

(14) A fiduciary that decides voluntarily to surrender its licence, shall give to the Commission at least one month's notice of its intention to do so and of the arrangements it proposes to make to dispose of its business. If, however, the circumstances requiring a fiduciary to cease business are such as to prevent notification within such period, notification should be given within a reasonable period of time.

#### **Guidance Note:**

*The Commission will not accept the surrender of a fiduciary licence until the fiduciary surrendering its licence has made satisfactory arrangements for its clients' affairs to be handed over properly to another fiduciary or wound up to the satisfaction of those clients and, in the case of a TSP, has made satisfactory arrangements in respect of any trust for which it undertakes any regulated activity.*

### ***Acquisition, Merger or Cessation of Business and Changes in Business Strategy***

(15) A fiduciary shall notify the Commission not less than one month in advance of a proposed merger of its business with another, a proposed takeover or acquisition by the fiduciary of another business; or the proposed acquisition of a controlling interest, or any change in an existing controlling interest, in its business.

(16) A fiduciary shall also notify the Commission not less than one month in advance of any proposed material change to the business plan previously notified to the Commission. If circumstances prevent notification within such period, then notification of any such change should be within a reasonable period of time.

#### **Guidance Note**

*As well as requiring notification of the matters specified including changes to the business structure of the fiduciary (sub-paragraph 16), there is a general requirement to notify the Commission of any relevant material change to the business (introduction to paragraph 13). Any significant changes to the business strategy described in the fiduciary's business plan should be notified to the Commission in advance, as the Commission may need to re-assess the fitness and propriety of the fiduciary in relation to the proposed change, for example, in respect of having sufficient resources to take on new business, appropriate PII cover, systems to cope with the potential new risks etc..*

*Examples of changes which the Commission might consider to be material include, the proposed acquisition of all or a substantial part of another fiduciary's client base or business; a change in marketing strategy, such as seeking business in new geographical areas and/or markets or offering new products.*

### **Resignation of a fiduciary**

14. (1) If a CSP wishes to resign from acting on behalf of a client company, it shall inform in writing the directors and shareholders of the client company concerned, and if different, the beneficial owner.

(2) Where a CSP discontinues its services to a client company for any reason, the CSP shall preserve the client company's records until such time as the records are handed over to a successor CSP, or such other person who is to provide those or similar services, and co-operate with the client and the successor CSP or that other person, to ensure a smooth transition.

(3) If a TSP wishes to discontinue the provision of some or all its TSP regulated activities, it must take whatever steps are appropriate and necessary to facilitate the relevant transfer of that business and/or secure the appointment of a replacement trustee, enforcer or protector, or to a successor TSP or other person who is to provide those or similar services. The TSP would be expected to co-operate with the new trustee, protector or enforcer and/or successor TSP to ensure a smooth transition.

## **Complaints**

15. (1) A fiduciary shall ensure, in relation to any written complaints received relating to the conduct of its business as a fiduciary, other than those relating to the level of fees charged in accordance with the client agreement or terms of business, that: -

- (a) the complaint is logged;
- (b) where appropriate, further details are requested from the complainant in writing with supporting evidence;
- (c) the complaint is brought to the attention of a person, within the fiduciary, with appropriate authority to deal with complaints;
- (d) the complaint is investigated promptly and thoroughly; and
- (e) appropriate action is taken and such action noted.

(2) A fiduciary shall keep a register of complaints to which sub-paragraph (1) applies.

(3) The register of complaints may be in summary form provided that a full record of the complaint and action taken in relation to the complaint is kept elsewhere. The register shall contain the following information relating to each complaint -

- (a) the date when the complaint was made;
- (b) the date when the complaint was reported to the person with authority to deal with complaints;
- (c) details of the nature of the complaint including the name and address of complainant; and

- (d) how and when the complaint was investigated and what action was taken.

**Guidance Note**

*It is not the role of the Commission to interfere in commercial disputes between a fiduciary and its client. The purpose of maintaining a register of complaints is to provide one way for the Commission to satisfy itself that a fiduciary is dealing fairly with its clients and is performing all regulated activities competently. The Commission may seek an explanation from the fiduciary where the register of complaints indicates a possible failure to comply with the Fiduciary Services Acts 2000 – 2005 and any Codes made thereunder.*

*If a complaint is considered frivolous or is unsupported or unjustified, this should be noted in the register of complaints.*

**Avoidance of inappropriate conflicts of interest**

16. (1) A fiduciary shall use its best endeavours to avoid inappropriate conflicts of interest between itself and its client and between one client and another.

(2) Where such a conflict arises, the fiduciary shall promptly notify each of the clients concerned of this fact.

**Guidance Note**

*An example of an inappropriate conflict of interest which may arise might be where two or more client companies for which directors are provided by the CSP are bidding for the same significant contract, or compete in the same market. Unless all clients with conflicting interests in any matter agree to the CSP continuing its services to the other clients concerned, the CSP should discontinue its services to all the clients concerned.*

*Where a fiduciary arranges the purchase of services for or on behalf of a client company or trust and such purchase includes an arrangement for the sharing or rebating of commission, it should consider whether any income arising from the arrangement should be treated as its own or that of the client company or trust. The Commission would expect, if the fiduciary proposes to retain such shared or rebated commission, that the arrangement be appropriately disclosed.*

*This Code does not extend to matters of trust law in respect of conflicts of interest between beneficiaries of a trust of which a TSP is the trustee.*

**Advertising by a Fiduciary**

17. (1) In advertising its services, a fiduciary shall ensure that any advertisement that it publishes or causes to be published does not damage the good reputation of the Isle of Man. Advertisements shall contain a fair and accurate indication of the services that the fiduciary provides.

(2) A fiduciary shall identify the Regulator on all correspondence and advertisements as follows-

- (a) Subject to sub-paragraphs (c) and (d), for a fiduciary that is not licensed to conduct banking or investment business as well as fiduciary business, the reference to the class of regulated activity (CSP or TSP) it is licensed to undertake must take the following form -

“Licensed by the Isle of Man Financial Supervision Commission as a [Corporate] [Trust] [Corporate and Trust] Service Provider”

- (b) Subject to sub-paragraphs (c) and (d), for a fiduciary that is also licensed to conduct either banking or investment business or both, the reference to the class of regulated activity (CSP or TSP) it is licensed to undertake must also refer to that business in the following form -

“Licensed by the Isle of Man Financial Supervision Commission for [Banking], [Investment] and [Corporate] [Trust] [Corporate and Trust] Service Provider business.”

- (c) Where an advertisement in respect of CSP or TSP regulated activities is to be broadcast by a radio or television station, the abbreviated reference “Licensed by the Financial Supervision Commission as a [Corporate] [Trust] [Corporate and Trust] Service Provider” may be used.

- (d) No reference to the class of regulated activity (CSP or TSP) it is licensed to undertake is required where only the name of the fiduciary is being promoted (i.e. where no products or services are referred to).

(3) Any written advertisement issued by or on behalf of the fiduciary to advertise its fiduciary services must contain the name and address of the fiduciary which issued it or caused it to be issued.

#### **Guidance Note**

*Advertisements should not contain any reference to business practices which are illegal, and which imply circumvention of the law in the Isle of Man or in any relevant jurisdiction, or have any dubious implications which may be harmful to the reputation of the Isle of Man as a centre for high professional standards. A fiduciary should not promote its services in a manner that suggests that the provision of services will be on a “no questions asked” basis.*

*If in doubt as to whether the contents of an advertisement would be acceptable to the Commission, a fiduciary should request guidance from the Commission.*

#### **Professional indemnity insurance cover**

18. (a) Professional indemnity insurance cover appropriate to the nature and size of the fiduciary’s business must be maintained.
- (b) A fiduciary shall provide to the Commission with its annual compliance return, details of the arrangements in force together with evidence of the cover. Any claims in excess of £10,000 or changes to the arrangements previously notified to the Commission under this paragraph must be notified to the Commission as they arise.

**Guidance Note**

*(See also the third paragraph of the guidance in respect of financial resources under paragraph 11 above.)*

*The Commission may exercise its discretion as to what level of PII cover it considers to be adequate in any particular case, including any proposed lower cover or higher excess, but would generally expect a fiduciary to have the level of PII cover recommended below.*

*(a) In the case of a CSP, the Commission would expect professional indemnity insurance cover in respect of the aggregate of claims in the year to be 2.5 times the CSP's annual turnover or £250,000, whichever is the greater, and the CSP's liability in respect of such aggregated claims should not exceed 3% of its annual turnover.*

*(b) In the case of a TSP, the Commission would expect professional indemnity insurance cover in respect of the aggregate of claims in the year to be 2.5 times the TSP's annual turnover or £500,000, whichever is the greater, and the TSP's liability in respect of such aggregated claims should not exceed 3% of its annual turnover.*

*(c) Where a fiduciary is licensed to conduct both CSP and TSP business, the Commission would expect the business as a whole to meet the higher applicable requirement, which, subject to the fiduciary's turnover, would be the PII cover relevant to a TSP.*

*(d) A fiduciary must be able to demonstrate that it carries PII cover that is adequate but where PII cover is part of a Group policy, an undertaking from the parent with regard to the level of cover maintained may be acceptable.*

*(e) If the fiduciary is precluded from providing a copy policy document, a statement in the following (or materially similar) form will be acceptable to the Commission:*

*\*\* [BROKER LIMITED]*

*To: Isle of Man Financial Supervision Commission*

*We confirm that we act as brokers for the Professional Indemnity Insurance for \*[fiduciary] and that the following cover is in place.*

*Policy Period: Year [ ] to 200[ ]*

*Limit of Indemnity: Limit [per occurrence and] in annual aggregate exceeds, whichever is the greater of 2.5 times preceding year turnover or [£250,000 (CSP)] [£500,000 (TSP)] of \*[fiduciary] and the deductible is [ %] of the preceding year's turnover.*

*Description of insured risk:*

*Policy Number: [ ]*

*We confirm that these details are correct as at today 's date."*

## **Business resumption/contingency arrangements**

19. To safeguard its clients' interests at all times and to ensure that the business can continue or be reinstated on the occurrence of a disaster, a fiduciary must have in place adequate business resumption and contingency provisions.

### **Guidance Note**

*As planning for disaster recovery is accepted as a necessary contingency arrangement in most commercial operations, the majority of fiduciaries will, prior to the introduction of this Code, already have suitable business resumption plans in place.*

*The onus is on the fiduciary to ensure that its client's affairs are protected in all circumstances, and that the fiduciary is able to continue the management of its client companies or act in respect of services provided to trusts, within a reasonable time, following a disaster.*

*The Commission's assessment of compliance with this paragraph will be dealt with on a case by case basis because the Commission recognises that different business resumption and contingency arrangements may be appropriate to the particular circumstances of that business.*

*However, as a matter of best practice, the Commission would recommend the following:*

- (a) that with regard to information held on computer, regular back-ups are taken and held off-site; and*
- (b) that duplicate copies of paper documents, the information contained in which cannot be retrieved from any other source are also held off-site.*

## **Revocation**

20. The Corporate Service Providers (General Requirements) Regulatory Code 2000<sup>(m)</sup> and the Corporate Service Providers (General Requirements) (Amendment) Regulatory Code 2001<sup>(n)</sup> are hereby revoked.

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<sup>(m)</sup> SD703/00

<sup>(n)</sup> SD812/01

**[PART 1 - ANNUAL COMPLIANCE RETURN FOR A TRUST CORPORATION, A  
CATEGORY 1 CSP AND TSP LICENCEHOLDER  
\[CLICK HERE TO ACCESS FORM\]](#)**

The annual compliance return applicable to a Trust Corporation, a Category 1 CSP and TSP licenceholder shall be in such form as the Commission may from time to time require and shall contain the following information and be accompanied by the following documents.

**A. Information required**

1. Fiduciary's name, address(es) and contact details.
2. Locum arrangements, if applicable.
3. Regulated activities undertaken / offered to clients.
4. Statistical information relating to numbers of client companies, partnerships and trusts for which the fiduciary undertakes any regulated activity.
5. Particulars relating to "key persons" and their responsibilities.
6. Statistical information relating to numbers of complaints logged.

**B. Documentation which forms part of the return**

1. **Accounts**

Financial statements covering the most recent accounting reference period, which must be audited, in the case of a corporate fiduciary, or independently verified by a reporting accountant, in the case of a sole trader or partnership fiduciary.

2. **Professional indemnity insurance policy**

A copy of the most recent Professional Indemnity Insurance Policy taken out by the fiduciary or, if precluded by the terms of the policy from providing such a copy, a statement by the fiduciary's insurance broker in respect of the cover provided.

3. **Management and staff structure**

A copy of the fiduciary's management and staffing structure chart that identifies "key persons" and their responsibilities.

4. **Going concern declaration**

A signed declaration in compliance with paragraph 11(6).

5. **Declaration of compliance**

A declaration that, during the past twelve months, the business of the fiduciary has been conducted in accordance with the Regulatory Codes made under section 6 of the Act; any licence conditions imposed by the Commission; and any recommendations or directions issued by the Commission; and that the Commission has been notified of all relevant matters which the Regulatory Codes require to be notified.

**[PART 2 - ANNUAL COMPLIANCE RETURN FOR A CATEGORY 2 CSP AND TSP  
LICENCEHOLDER  
\[CLICK HERE TO ACCESS FORM\]](#)**

The annual compliance return applicable to a Category 2 CSP and TSP licenceholder shall be in such form as the Commission may from time to time require and shall contain the following information and be accompanied by the following documents.

**A. Information required**

1. Fiduciary's name, address(es) and contact details.
2. Regulated activities undertaken / offered to clients.
3. Statistical information relating to numbers of client companies and trusts for which the fiduciary undertakes any Category 2 regulated activity.
4. Statistical information relating to number of complaints logged.

**B. Documentation which forms part of the return**

**1. Professional indemnity insurance policy**

A copy of the most recent Professional Indemnity Insurance Policy taken out by the fiduciary or, if precluded by the terms of the policy from providing such a copy, a statement by the fiduciary's insurance broker in respect of the cover provided.

**2. Declaration of compliance**

A declaration that, during the past twelve months, the business of the fiduciary has been conducted in accordance with the Regulatory Codes made under section 6 of the Act; any licence conditions imposed by the Commission; and any recommendations or directions issued by the Commission; and that the Commission has been notified of all relevant matters which the Regulatory Codes require to be notified.

Paragraph 11(7)

SCHEDULE 2

ANNUAL FINANCIAL STATEMENTS FOR  
A PARTNERSHIP

**<PARTNERSHIP>**

**YEAR ENDED <DATE>**

**ACCOUNTANT'S REPORT ON THE UNAUDITED ACCOUNTS OF <PARTNERSHIP>**

As described on page..... You [Partners] have approved the accounts for the year ended....., set out on pages...to..... In accordance with your instructions I/we have prepared these unaudited accounts from the accounting records and information and explanations supplied to me/us.

[An explanatory statement or paragraph should be included if appropriate].

<REPORTING ACCOUNTANT>

Address

<Date>

<PARTNERSHIP>

**PROFIT AND LOSS ACCOUNT**

**YEAR ENDED <DATE>**

	Note	Year		Prior year	
		£	£	£	£
<u>INCOME</u>					
			x		x
Fee income receivable			x		x
Interest and dividends receivable			x		x
Other revenue			<u>x</u>		<u>x</u>
<b>Total Turnover</b>			x		x
<u>EXPENSES</u>					
Profit related bonuses			x		x
Other expenditure (itemised)			<u>x</u>		<u>x</u>
<b>Total Expenses</b>			<u>(x)</u>		<u>(x)</u>
<b>Profit/(loss) on ordinary activities</b>			<u><u>x</u></u>		<u><u>x</u></u>

**<PARTNERSHIP>**

**BALANCE SHEET**

**AS AT <YEAR END>**

	Note	Year		Prior year	
		£	£	£	£
<b>FIXED ASSETS</b>					
Intangible Assets					
Tangible Assets					
-Property					
-Other tangible fixed assets					
Investments - listed and unlisted fixed asset investments					
<b>TOTAL FIXED ASSETS</b>			<b>A</b>		<b>A</b>
<b>CURRENT ASSETS</b>					
Stock					
Work in progress					
Debtors and Prepayments					
Investments					
Cash at bank and in hand					
<b>TOTAL CURRENT ASSETS</b>			<b>B</b>		<b>B</b>
<b>CURRENT LIABILITIES</b>					
Creditors and accruals					
Secured liabilities					
<b>CURRENT LIABILITIES</b>			<b>(C)</b>		<b>(C)</b>
<b>NET CURRENT ASSETS/(LIABILITIES)</b>			<u><b>B-(C)=D</b></u>		<u><b>B-(C)=D</b></u>
<b>TOTAL ASSETS LESS CURRENT LIABILITIES</b>			<b>A+D=E</b>		<b>A+D=E</b>
<b>CREDITORS DUE AFTER MORE THAN ONE YEAR</b>					
Other creditors					
Secured liabilities			<b>(F)</b>		<b>(F)</b>
<b>TOTAL ASSETS LESS TOTAL LIABILITIES</b>			<u><b>E-(F)=G</b></u>		<u><b>E-(F)=G</b></u>
<b>CAPITAL</b>					
Partners' capital accounts:			<b>H</b>		<b>H</b>
Partners' current accounts:			<u><b>I</b></u>		<u><b>I</b></u>
			<u><b>H+I=J(=G)</b></u>		<u><b>H+I=J(=G)</b></u>
.....			.....		.....
<Name>, Partner			<Name>, Partner		<Name>, Partner

Date

Made this 13<sup>th</sup> day of July 2005

W L B Stott Commissioner

J R Aspden Chief Executive

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EXPLANATORY NOTE

*(This note is not part of the Regulatory Code)*

This Regulatory Code is made by the Financial Supervision Commission for the purpose of setting out its general requirements for the conduct of business by a fiduciary service provider, which is licensed under the Fiduciary Services Acts 2000 – 2005. The Regulatory Code will apply to all CSPs with effect from 1 August 2005, but makes no material changes to the current rules that apply to them. The Regulatory Code will not apply in relation to the TSP business of TSP licence applicants to whom the transitional provisions apply, until the close of the period for applications to be made for a licence by existing TSPs (1 August to 31 October 2005). Thereafter, all transitional applicants will be subject to the Code.

The Regulatory Code provides for two classes of licence, corporate service provider (“CSP”) and trust service provider (“TSP”). A fiduciary may hold either or both classes of licence. Each class is sub-divided into: Category 1 CSP licence; Category 2 CSP licence; Trust Corporation licence; Category 1 TSP licence and Category 2 TSP licence. The categories refer to the particular regulated activities a fiduciary is licensed to provide.

The Regulatory Code sets out the Commission’s requirements (depending on class and category of licence held) relating to anti money laundering and “know your client”, client agreements and terms of business, key persons, dual control of the business and the “locum” principle, compliance systems and procedures, the provision of directors, financial resources, matters to be notified to the Commission including the annual compliance return and financial reporting, handling of complaints, the avoidance of conflicts of interest, advertising, professional indemnity insurance cover, resignation and business resumption/contingency arrangements.