

Guidance Note - Limited Partnerships and Schemes

A Is the arrangement a collective investment scheme (“scheme”) under the Collective Investment Schemes Act 2008 (“CIS Act”)?

The definition of scheme under the CIS Act is a well established definition. It replicates (and replaces) the definition under the Financial Supervision Act 1988 and mirrors the definition of scheme in the UK and other Crown Dependencies. The Collective Investment Schemes (Definitions) Order 2008 sets out arrangements that are not a scheme. This also replicates matters that are not a scheme that were established under the Financial Supervision Act 1988.

The table below is intended to help limited partnerships and their advisers establish whether a limited partnership is a scheme under the CIS Act. The Financial Supervision Commission (“the Commission”) cannot give legal advice. Legal advice should be taken on individual circumstances, as appropriate.

Table A

CIS Act definition of scheme	Is a particular limited partnership a scheme?
1.(1) “Collective investment scheme” means arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming or being owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of those profits or income.	<p>A. Is the purpose of the arrangement to enable persons to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of those profits or income?</p> <ul style="list-style-type: none"> • If the answer is no – the arrangement is not a scheme. • If the answer is yes – continue to B.
1.(2) The arrangements must be such that the persons who participate (“participants”) do not have day to day control over the management of the property, whether or not they have the right to be consulted or to give directions.	<p>B. Do the participants have day to day control over the management of the property?</p> <ul style="list-style-type: none"> • If the answer is yes – the arrangement is not a scheme. • If the answer is no – continue to C.
1.(3) The arrangements must also have either or both of the following characteristics — (a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; (b) the property is managed as a whole by or on behalf of the governing body of the scheme.	<p>C. (a) Are the contributions of the participants and the profits or income pooled? (b) Is the property managed as a whole by or on behalf of the general partner?</p> <ul style="list-style-type: none"> • If the answer to (a) and (b) is no – the arrangement is not a scheme. • If the answer to (a) and/ or (b) is yes continue to D.
1.(5) The Commission may by order provide that arrangements do not amount to a collective investment scheme — (a) in prescribed circumstances; or	<p>D. Does the arrangement fall within any of the circumstances set out in the Collective Investment Schemes (Definitions) Order 2008?</p> <ul style="list-style-type: none"> • If the answer is yes – the arrangement is

CIS Act definition of scheme	Is a particular limited partnership a scheme?
(b) if the arrangements fall within a prescribed character of arrangement.	not a scheme. <ul style="list-style-type: none"> • If the answer is no the arrangement is a scheme. Continue to E. to establish whether the arrangement could constitute more than 1 scheme.
1.(4) If arrangements provide for pooling in relation to separate parts of the property, the arrangements are not to be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.	E. Are there different pooling arrangements in relation to separate parts of the property? <ul style="list-style-type: none"> • If the answer is no – the arrangement is a single scheme. • If yes are the participants entitled to exchange rights in one part for rights in another (without prohibitive or artificial barriers)? • If the answer is yes – the arrangement is a single scheme. • If the answer is no – the arrangement is a series of schemes.

B Is the scheme an exempt or exempt-type scheme or another type of scheme?

Schemes can fall into a number of different categories. The category of scheme affects:

- What the scheme is required to comply with;
- What type of functionaries the scheme must have and the licensing and regulatory requirements for those functionaries (e.g. functionaries to an exempt or exempt-type scheme can be exempt from licensing in some circumstances (see section C below). Also, if required to be licensed they are licensed under a different class of licence with less prescriptive requirements than functionaries to other scheme types).

Further details of types of scheme and licensing requirements can be found on the Commission's website – www.fsc.gov.im.

If a scheme is an Isle of Man scheme it can be:

- a scheme that is governed by regulations; or
- an exempt scheme which is not subject to additional regulation providing that it meets the criteria to be an exempt scheme.

In relation to schemes established in another jurisdiction, the schemes may be:

- an exempt-type scheme – this type of scheme must be subject to similar restrictions to an Isle of Man exempt scheme; or
- a scheme which does not meeting the criteria to be an exempt-type scheme.

Table B

Exempt scheme requirements under Schedule 3 to the CIS Act	Is the limited partnership an exempt/ exempt-type scheme?
<p>1. (1) A scheme is an exempt scheme if—</p> <p>(a) it has less than 50 participants;</p>	<p>A. Does the scheme have fewer than 50 participants?</p> <ul style="list-style-type: none"> • If the answer is yes – continue to B. • If the scheme has 50 or more participants – it is not an exempt/ exempt-type scheme.
<p>(b) the documents constituting the scheme—</p> <p>(i) prohibit the making of an invitation in any part of the world to the public or any section of it¹ to become or offer to become participants in the scheme; and</p>	<p>B. Does the partnership agreement prohibit the making of an invitation in any part of the world to the public or any section of it to become or offer to become participants in the scheme?</p> <ul style="list-style-type: none"> • If the answer is yes – continue to C. • If the answer is no - it is not an exempt/ exempt-type scheme.
<p>(ii) do not imply that the scheme is regulated under this Act or otherwise</p>	<p>C. Does the partnership agreement in any way imply that the scheme is regulated under the CIS Act or otherwise?</p> <ul style="list-style-type: none"> • If the answer is no – continue to D. • If the answer is yes - it is not an exempt/ exempt-type scheme.
<p>(3) The exemption provided by subparagraph (1) does not apply to a scheme where units are held by participants as a result of an invitation in any part of the world to the public or any section of it by any person.</p>	<p>D. Are any partnership interests held as a result of an invitation in any part of the world to the public or any section of it?</p> <ul style="list-style-type: none"> • If the answer is no – continue to E. • If the answer is yes - it is not an exempt/ exempt-type scheme.
<p>(2) To comply with this subparagraph the scheme must be—</p> <p>(c) a limited partnership registered in the Island under Part II of the Partnership Act 1909 [VIII p.327];</p>	<p>E. Is the limited partnership –</p> <ul style="list-style-type: none"> • registered in the Island under Part II of the Partnership Act 1909? In this case the scheme is an exempt scheme, • established in jurisdiction other than the Isle of Man? In this case the scheme is an exempt-type scheme.

¹ (4) The following are not to be treated as invitations to the public or a section of the public—

(a) invitations issued to existing participants in a scheme inviting them to participate further in that scheme;

(b) invitations to persons whose ordinary business involves the acquisition and disposal of property of the same kind as the property, or a substantial part of the property, to which the scheme relates.

C When do functionaries of exempt and exempt-type schemes need to be licensed?

Functionaries (managers, administrators, trustees, fiduciary custodians or custodians) acting for exempt and exempt-type schemes are required to be licensed to conduct class 3(11²) regulated activities under the Regulated Activities Order 2009 (“RAO”), unless they fall under the exclusion or the exemption.

Exclusion under the RAO - A functionary is not conducting a regulated activity if it only acts for one exempt or exempt-type scheme **and** there is no-one in its economic group acting in the same capacity for an exempt or exempt-type scheme.

Exemption under the Financial Services (Exemption) Regulations 2009 (“Exemption Regulations”) - There is an exemption from licensing where the person only provides services to one exempt/ exempt-type scheme **and** it has an agreement with a Class 3(12) licenceholder³ which requires the exempt person to provide sufficient information about the scheme and itself to the Class 3(12) licenceholder to enable them to assess whether the exempt person is only acting for 1 scheme and whether the scheme meets the requirements to be an exempt/ exempt-type scheme.

D Regulatory requirements for a Class 4 licenceholder which wishes to also undertake Class 3(11) or Class 3(12) activities

In the majority of areas Class 3 and Class 4 licenceholders are subject to the same requirements under the Financial Services Rulebook 2009 (“the Rulebook”). If undertaking Class 3(11) or 3(12) regulated activity then all rules that apply to Class 3 (11) or (12) are relevant. Table D (overleaf) highlights key additional requirements which licenceholders must take account of in relation to Class 3(11) or (12) activities.

In applying the regulatory requirements, Class 3(11) and (12) licenceholders can take account of the nature of the arrangements. For example:

- the level of sophistication of the fund management system in place would not be required to be as high or complex for a licenceholder who is only providing services to private limited partnerships which hold single property portfolios and have only small numbers of participants;
- when considering the application of the clients investments rules (rules 4.4 to 4.14) to particular schemes certain rules may not be relevant to particular circumstances – such as custodian requirements are not relevant where the assets are in the licenceholder’s safe keeping;
- Please also refer to the note in Section E.

² **Class 3(11)** - Acting as a manager, administrator, trustee, fiduciary custodian or custodian to a collective investment scheme which is an exempt/ exempt type scheme.

³ **Class 3(12)** - Providing administration services to a person who is exempt from licensing for Class 3(11) regulated activity by virtue of paragraph 3.2 of the Exemptions Regulations.

Table D

Rule	Requirement for Class 3(11)/ (12)
Rule 2.37 and Schedule 2.2	Financial Resources <i>Minimum Share Capital Requirement - £25,000</i> <i>Minimum Net Tangible Asset Requirement - £25,000</i>
Rule 2.42	Requirement to submit interim financial returns ⁴
Rule 3.24	Client money – Subscription and redemption accounts ⁶
Rule 4.2	Application – this explains how rules 4.3 to 4.14 are applied to schemes
Rule 4.3	Interpretation
Rules 4.4	Clients investments – Records of transactions
Rule 4.5	Records of safe-custody investments
Rule 4.6	Use of custodians
Rule 4.7	Registrable investments
Rule 4.8	Reconciliation of investments and title documents ⁶
Rule 4.9	Periodical statements ⁶
Rule 4.10	Borrowing from a client
Rule 4.11	Loans of investments
Rule 4.12	Investments etc. held as collateral
Rule 4.13	Safekeeping of clients' title documents
Rule 4.14	Safekeeping by other persons
Rule 6.51	Interests of scheme to be paramount
Rule 6.52	Observance of terms of scheme particulars
Rule 6.54	Participants to be treated fairly
Rule 6.55	Material interests
Rule 6.58	Requirement for written functionary agreement
Rule 6.59	Contract note etc ⁶
Rule 8.57	Pricing Errors
Rule 8.57A	Notification of suspension or liquidation of a scheme

E How does a Class 4 licenceholder get its licence extended to cover Class 3(11) and Class 3(12)?

Standard procedure - The standard procedure for an existing licenceholder who wishes to be licensed to undertake regulated activities in an additional Class is for it to complete a new licence application for the new Class of regulated activity. This would be progressed in line with standard licensing procedures.

⁴ See Potential Rule Modifications in Section E

Short form procedure - In limited circumstances, the Commission may extend an existing Class 4 licence to cover Class 3(11) or (12) without the need for a full licence application. The short form procedure is only appropriate in limited circumstances which meet the following criteria:

1. The applicant must hold unrestricted Class 4 permissions.
2. The applicant must be able to demonstrate that it has experience in providing services to the particular asset class, for example shipping or property related entities.
3. The applicant must be able to demonstrate that it has the appropriate skills and sufficient capacity for taking on exempt scheme business.
4. Each exempt scheme for which the licenceholder proposes to act at the time of the request must have no more than 10 investors and hold no more than 5 assets.

If a licenceholder wishes to extend their existing Class 4 licence to cover Class 3(11) or (12) and believes that it meets criteria 1 to 4 above, it should send a letter to its Relationship Manager accompanied by the “**Request by a Class 4 licenceholder to undertake Class 3(11) or (12) activities**” checklist and supporting materials. In assessing whether it is appropriate for the request to be progressed in under this procedure the Commission will take account of the applicant’s regulatory history.

Possible rule modifications and exceptions (if requested)

In relation to simple private arrangements which are dealt with under the short form procedure, the Commission may consider rule modifications in the following areas.

Rule 3.24 (Client money – Subscription and redemption accounts) - Where the exempt scheme has its own bank account, the Commission may make an exception from the requirement for separate subscription and redemption accounts.

Rule 2.42 (Requirement to submit interim financial returns) - Where the only Class 3 activities relate to a small number of private schemes with no more than 10 individual investors, the Commission may make an exception from the the requirement to submit interim financial returns.

Rule 4.8 (Reconciliation of investments and title documents) - Where the only Class 3(11) or (12) activities relate to a small number of private schemes with no more than 10 individual investors, the Commission may allow the required reconciliations to be done on an annual as opposed to a twice yearly basis.

Rule 4.9 (Periodical statements) – The Commission may modify the requirement for 6 monthly periodical statements where the asset(s) are in one class (such as property) and are not actively traded.

Rule 6.60 (Contract note etc) – The Commission may modify the contract note requirements where the investors investment into the scheme is of a non cash asset (such as a property) and the schemes asset(s) are in one class and are not actively traded.

It is for the licenceholder to ask for any modifications and it must justify why it believes a modification/ exception is appropriate. The Commission will consider any request for a rule modification on the basis of the information provided to it.

Request by a Class 4 licenceholder to undertake Class 3(11) or (12) regulated activities

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Licenceholder name			
Licence number			
Contact			
Class of licence applied for	Class 3(11) Class 3(12) <i>(delete as appropriate)</i>		
The following items and details must accompany this application		Details attached?	
Details of the type of exempt or exempt-type scheme that the licenceholder wishes to act for, including:	<ul style="list-style-type: none"> • Sample constitutional documents – these should make it clear that the entity cannot make an invitation to the public or any section of it to become a participant participants in the arrangements and must not imply that the entity will be regulated; • The type of asset class (e.g. property) that the scheme(s) will hold. 	Yes/No	
		Yes/No	
Names of any exempt schemes for which the licenceholder acts		Yes/No	
Does each scheme have no more than 10 investors and no more than 5 assets?		Yes/No	
Details of the licenceholder's experience in looking after entities holding the type of asset that the scheme will hold and the staff who will be involved. (NB If the arrangements will result in a new Key Person, Vetting Forms must be submitted for that person.)		Yes/No	
Details of how the Financial Resources requirements are met (Minimum Share Capital Requirement - £25,000 and Minimum Net Tangible Asset Requirement - £25,000).		Yes/No	
A copy of the licenceholder's standard written agreement with such a scheme which sets out the terms on which services are to be provided to the scheme (as required by rule 6.58).		Yes/No	

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For Class 3(12) activities, please submit a copy of the agreement with the Exempt Person required by the Financial Services (Exemption) Regulations 2009.			
Details of policies and procedures for dealing with exempt and exempt-type schemes which are in line with relevant requirements and include –	<ul style="list-style-type: none"> • Policies covering the relevant requirements: <ul style="list-style-type: none"> - Interests of scheme to be paramount (rule 6.51) - Observance of scheme particulars (rule 6.52 – the scheme should to be run in accordance with its documentation) - Participants to be treated fairly (rule 6.54) - Material Interests (rule 6.55) • Procedures covering the relevant requirements: <ul style="list-style-type: none"> - Submission of interim returns^o - Clients money (where relevant in accordance with rule 3.24^o) - Clients investments (in accordance with relevant parts of rules 4.2 to 4.14^o); - Contract notes (rule 6.59^o) - Pricing errors (in accordance with rule 8.57); - Suspension and liquidation of schemes (in accordance with rule 8.57A); 	Yes/No	
		Yes/No	
Any modifications sought (please also attach the rationale for seeking those modifications)		Yes/No	

^o In the circumstances detailed in section E of the Guidance Note “Limited Partnership and Exempt Schemes” the Commission may consider modifying the application of this rule for a particular licenceholder. If you wish the FSC to consider this please give your rationale in the box above.

