

# Financial Supervision Commission

## General Licensing Policy

June 2011



Financial Supervision Commission Barrantee Oaseiry's

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## Glossary

|   |  |
|---|--|
| <b>1931 Act company</b>                       | a company constituted under the <a href="#">Companies Act 1931</a>   |
| <b>2006 Act company</b>                       | a company constituted under the <a href="#">Companies Act 2006</a>   |
| <b>Anti Money Laundering Code</b>             | the <a href="#">Proceeds of Crime (Money Laundering) Code 2010</a>   |
| <b>Applicant</b>                              | the entity or individual applying for a licence to undertake one or more regulated activities. Unless the context precludes, the term “applicant” should be read as including “licenceholder”  |
| <b>CIS</b>                                    | Collective Investment Scheme   |
| <b>CISA 08</b>                                | the Collective Investment Schemes Act 2008   |
| <b>Class of activity</b>                      | <p>the various classes of regulated activity are set out in the Regulated Activities Order and are grouped into the following classes –</p> <ul style="list-style-type: none"><li>• Class 1 – Deposit Taking</li><li>• Class 2 – Investment Business</li><li>• Class 3 – Services to Collective Investment Schemes</li><li>• Class 4 – Corporate Services</li><li>• Class 5 – Trust Services</li><li>• Class 6 – E-Money</li><li>• Class 7 – Management or Administration Services</li><li>• Class 8 – Money Transmission Services</li></ul> |
| <b>CODA</b>                                   | <a href="#">Company Officers (Disqualification) Act 2009</a>   |
| <b>Controller</b>                             | “an individual who either alone or with any associate or associates is entitled to exercise or control the exercise of 15% or more of the voting power at any general meeting of the [applicant/ licenceholder] or of another body corporate of which it is a subsidiary” (see s. 48 of the FSA 2008 for full definition)  |
| <b>Corporate officer or corporate trustee</b> | a company whose business consists solely of acting either as a director or secretary or as a trustee (see the Rule Book for full definitions)  |
| <b>CSP</b>                                    | Corporate Service Provider   |
| <b>Excluded activities / exclusions</b>       | activities that fall outside the scope of the legislation and outside the remit of the FSC. Details of excluded activities are set out under each class in the Regulated Activities Order  |

|  |   |
|--|---|
| <b>Exempt persons / exemptions</b>                                       | individuals or companies that carry on regulated activity but have been exempted from the requirement to hold a licence. Details of exempted activities are set out under each class in the Financial Services (Exemption) Regulations  |
| <b>Financial Services (Exemption) Regulations/ Exemption Regulations</b> | this reference will always be read as the version of the <a href="#">Financial Services (Exemption) Regulations</a> which are in effect at that time  |
| <b>Financial Services (Fees) Order</b>                                   | this reference will always be read as the version of the <a href="#">Financial Services (Fees) Order</a> which is in effect at that time  |
| <b>FSA 2008</b>  | the <a href="#">Financial Services Act 2008</a>   |
| <b>FSC</b>   | the Financial Supervision Commission of the Isle of Man   |
| <b>IOM</b>   | the Isle of Man   |
| <b>Key person</b>  | an individual who has, or who appears to the FSC to have, significant powers and responsibility in relation to any regulated activity (see s.48 of the FSA 2008 for full definition)  |
| <b>MLRO</b>  | the Money Laundering Reporting Officer  |
| <b>Professional Officer</b>  | an individual licensed to carry on regulated activities falling within: <ul style="list-style-type: none"> <li>• Class 4 paragraph (6) acting as an officer of a company; and/or</li> <li>• Class 5 paragraph (2) acting as trustee (other than sole trustee) in relation to an express trust and/or (5) acting as a protector in relation to an express trust</li> </ul> |
| <b>Regulated activity</b>  | an activity which is a regulated activity in the Regulated Activities Order   |
| <b>Regulated Activities Order/ RAO</b>                                   | this reference will always be read as the version of the <a href="#">Regulated Activities Order</a> which is in effect at that time   |
| <b>IOM Resident Officer</b>  | a nominated individual who is an IOM resident director or a key person who has responsibility for overseeing the licenceholder's proper conduct (see Rule 8.21 of the Rule Book)  |
| <b>Rule</b>  | a particular rule contained in the Rule Book  |
| <b>Rule Book</b>   | the <a href="#">Financial Services Rule Book</a> made under the FSA 2008. This reference will always be read as the version of the Rule Book which is in effect at that time  |
| <b>Scheme</b>  | a Collective Investment Scheme  |

**TSP** Trust Service Provider

**UKFSA** the [UK Financial Services Authority](#)

**Vetting Forms** includes Personal Questionnaires, Role Change Notifications and Police Check Forms. Before completing these forms, applicants should refer to the FSC's Licensing Procedure and Vetting Guidance, which can be found on the FSC's website under "[Becoming a Regulated Entity](#)".

## Introduction

- (i) **General matters** - This licensing policy is guidance issued under s.6 of the FSA 2008.<sup>1</sup> It is intended to help those who conduct, or wish to conduct, regulated activities to understand the FSC's licensing process. It also applies to those seeking or already holding a financial services licence to undertake regulated activities. The FSC cannot provide legal advice. Licence applicants should seek appropriate legal advice on their particular circumstances.
- (ii) **Exemptions and exclusions from the licensing requirements** - Certain activities and persons can benefit from an exclusion or exemption from the regulatory regime.
- An exclusion means the activity is not a regulated activity.<sup>2</sup>
  - An exemption means the activity is a regulated activity which can be performed without a licence. Exemptions can be subject to conditions. If an exempt person undertakes regulated activities outside the exemption, or in contravention of conditions, the FSC's enforcement powers come into effect.<sup>3</sup>
- (iii) **Licensing requirement** - It is an offence to undertake a regulated activity by way of business without a licence or an applicable exemption<sup>4</sup>.
- (iv) **Application of the licensing policy** - The circumstances of each applicant will not be identical. The FSC examines all relevant matters and considers each application on its own merits. Having examined an application the FSC may decide to make more extensive enquiries to satisfy itself about particular risks or concerns.

Where an applicant demonstrates that the risks associated with its business can be addressed in a different way, the FSC may agree to modify the application of this policy for that applicant. In other cases, where there is a particular risk, the FSC may put additional conditions/directions and requirements on a licence to reflect the individual circumstances or it may refuse to issue a licence.

The FSC exercises its functions, so far as reasonably practicable, in line with its regulatory objectives<sup>5</sup>. This document is not exhaustive or binding on the FSC. The licensing regime requires the FSC to exercise discretion; how it does this will depend on the applicant's particular circumstances.

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<sup>1</sup> S.6 FSA 2008 (3) The FSC may publish guidance setting out the criteria that it will normally apply in assessing whether it is satisfied as required by subsection (1).

<sup>2</sup> The exclusions are set out under each class in the Regulated Activities Order.

<sup>3</sup> The exemptions are set out under each class in the Financial Services (Exemption) Regulations.

<sup>4</sup> section 4 of the FSA 2008

<sup>5</sup> section 2(2) of the FSA 2008

(a) securing the appropriate degree of protection for customers of persons carrying on a regulated activity;  
(b) the reduction of financial crime; and  
(c) supporting the Island's economy and its development as an international financial centre.

- (v) **The licence application process and review of decisions** - Licence applicants are required to submit a completed application form with all necessary supporting documentation, including a [business plan](#).

The FSC's current published service standard for processing an application, from receipt of a fully completed application to a hearing by the Commissioners, is 3 months. However this service standard can only be met if all the required information is provided when the form is submitted. The FSC is not responsible for delays arising from the submission of incomplete or inaccurate forms.

If the licence application process is not completed within 6 months, due to outstanding items from the applicant, then the FSC can require a new application, application fee and updated supporting documentation (e.g. refreshed business plan and financial information).

Once an application has been determined, the applicant has three months to fulfil any licensing conditions. If these conditions are not met within 3 months, the FSC may require a new application to be made. Where a new application is required the relevant application fee is also payable.

A licenceholder must start its regulated activities within 6 months of the date on which a licence is issued unless the FSC has agreed otherwise in writing. A licenceholder must notify the FSC if it has not started regulated activities within 4 months of the licence date. Failure to commence business in a timely manner could indicate solvency or competence issues which can lead to suspension or revocation of the licence.

Further information on the licensing procedure, and how to seek a review of a licensing decision, is set out in FSC's Licensing Procedure on its website.

- (vi) **Extensions to licences** - Where a licenceholder wishes to extend its licence to cover new regulated business activities the FSC will require an application form to be submitted. The applicant will undergo the full licensing process. This applies where the new business activity falls within a different class of regulated activity and may apply if the new activity falls within the same class of regulated activity already held by the licenceholder. In this case, discretion will be exercised on the basis of the level of disparity between the current and proposed business activities.

- (vii) **Class 4 regulated activities** - The FSC expects applicants applying to carry on Class 4 regulated activities to offer a full range of services including company management and administration. The FSC will not licence a business that only offers sales of companies or provides premises for use as a registered office.

- (viii) **Class 5(4) regulated activities** - Class 5 licences do not automatically permit a licenceholder to act as a Trust Corporation (Class 5(4)). A Trust Corporation is able to undertake all the activities of a trust company plus functions reserved to a Trust Corporation. These functions include (but are not limited to):

- competence to undertake matters of probate;
- ability to act alone to give valid receipt for money arising under a trust;

- being named as attorney in an enduring power of attorney.

(ix) **Class 8 regulated activities** – Currently the Rule Book does not apply to class 8 regulated activities, other than those rules which are applied by a condition on the licenceholder’s licence. For further information please contact the Authorisations team.

(x) **Other relevant guidance and information**

- 1 [Training and Competence Framework](#)<sup>6</sup>
- 2 [Vetting guidance](#)<sup>6</sup>
- 3 [Business plan guidance](#)<sup>6</sup>
- 4 [Licensing procedure](#)<sup>6</sup>
- 5 [The FSC’s Supervisory Approach](#)<sup>7</sup>
- 6 [Guidance Note on Outsourcing / Delegation of Functions](#)<sup>7</sup>
- 7 [Supplemental licensing policy for Class 3 licenceholders](#)<sup>6</sup>
- 8 [Graduated Manager licensing procedure – Class 3 \(services to collective investment schemes\)](#)<sup>6</sup>
- 9 [Guidance note on exempt schemes and limited partnerships](#)<sup>6</sup>

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<sup>6</sup> Documents 1- 4 and 6- 8 can be found under the “Becoming a Regulated Entity” tab on the FSC’s website.

<sup>7</sup> Document 5 and 6 are in the handbook for each class of licence under the “Licenceholders” tab on the FSC’s website.

## **PART 1 - THE FSC'S "FIT AND PROPER" CRITERIA**

### **1.1 General**

1.1.1 Before granting a licence the FSC must be satisfied that the applicant is fit and proper to undertake the regulated activity. The "fit and proper" test is applied to the business as a whole and also to the individuals responsible for the management and control of the business (including owners) and key persons.

The fit and proper test is an initial test (at licensing) and a continuing test (in the ongoing conduct of the regulated activities). The FSC can take regulatory action including the suspension or revocation of a licence if a licenceholder does not continue to satisfy the fit and proper criteria.

It is for the applicant and relevant individuals to satisfy the FSC that they are fit and proper, rather than the FSC to prove that the applicant and relevant individuals are not fit and proper.

This document sets out the criteria the FSC normally applies when assessing whether a person is "fit and proper".

1.1.2 In assessing fitness and propriety the FSC considers:

- (a) the applicant's integrity, competence, financial standing, structure and organisation (both internally and from a Group perspective);
- (b) the integrity, competence and financial standing of the applicant's controllers, directors and key persons; and
- (c) the nature of the business the applicant proposes to carry on.

1.1.3 When considering licence applications, the FSC makes an assessment of the applicant's ability to comply with:

- the [FSA 2008](#);
- the [Rule Book](#);
- the Anti Money Laundering Code and any related FSC guidance; and
- where relevant, [CISA 08](#) and applicable regulations and orders under it.

1.1.4 An applicant's business should be structured and carried on in a fit and proper way. An applicant must demonstrate to the FSC that -

- its systems, controls and resources are adequate and appropriate for the regulated activities it wishes to conduct; and
- it has an honest and fair attitude in its dealings with clients and others.

1.1.5 Serious or repeated breaches of legislation or codes of conduct in the Island, or in another jurisdiction by an applicant, its directors, key persons or controllers, can evidence a lack of competence and/or integrity.

## 1.2 “Not fit and proper” directions and notices

1.2.1 The FSC can issue a “not fit and proper” direction where it has reasonable grounds to believe an individual proposed as a controller, director or key person is not fit and proper<sup>8</sup>. Where the FSC believes the conduct of a director, key person or controller means they are no longer fit and proper, it can issue a “not fit and proper” direction requiring they cease acting in that role<sup>9</sup>. The applicant/licenceholder must take reasonable care not to appoint or continue the appointment of an individual in contravention of a “not fit and proper” direction.

1.2.2 The FSC can issue a warning notice<sup>10</sup> where it believes that activities or circumstances are prejudicial to a relevant person’s fitness and propriety. A warning notice can (but need not) propose that the person take remedial action or request the person to propose remedial action.

1.2.3 Conduct which, on its own, is not sufficiently severe to demonstrate a lack of fitness and propriety can, cumulatively with other behaviour, lead to a warning notice or a not fit and proper direction. As such the FSC can take account of the cumulative effect of an individual or applicant’s conduct.

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<sup>8</sup> s.10(1) FSA 2008

<sup>9</sup> s.10(2) FSA 2008

<sup>10</sup> s.11 FSA 2008

## **PART II - STRUCTURE AND ORGANISATION OF THE APPLICANT**

### **2.1 New business start ups and track record**

2.1.1 When licensing a new business start-up, the FSC considers the likely potential risk to customers' interests, as well as any potential reputational risk to the IOM.

2.1.2 An applicant is expected to demonstrate a satisfactory track record in the regulated activity for which it seeks a licence. This can relate to the applicant in its own right (for example, where it is already licensed to carry on the same or similar regulated activities in another jurisdiction), or as part of a group that includes entities licensed to carry on that class of regulated activity.

2.1.3 The FSC can consider applications for a licence to carry on regulated activities within Classes 2 to 8 where the applicant has no track record, and is not part of a group with a track record, provided that the applicant's key persons have a proven track record at a senior level in a relevant licensed business. Such operations can have inherent risks and will be considered accordingly.

***The specific considerations for different Classes of regulated activities in respect of track record and new business start-ups are set out in [Appendix 2, Table B](#).***

2.1.4 A new start-up deposit taking business (Class 1) is not permitted because of the inherent risk to depositors.

2.1.5 An applicant should restrict its activities to the regulated activities which it is licensed to conduct and other wholly incidental activities. Where an applicant is permitted to conduct other non-regulated activities, the FSC will consider how it conducts that unregulated business, as any lack of integrity or competence in that regard can affect the conduct of the regulated activities.

### **2.2 Structure**

2.2.1 The ownership structure of an applicant should be as simple and transparent as possible. If an ownership structure is unduly complex and/or lacks transparency, the applicant must explain and justify the rationale for the structure.

***The specific considerations for different classes of regulated activities in respect of business structures are set out in [Appendix 2, Table A](#).***

2.2.2 The licence applicant's structure should enable the FSC to identify -

- the ultimate beneficial owners of the business;
- the individuals who exercise control over the appointment of the management team (directors and controllers);
- the management team; and
- key persons.

- 2.2.3 An applicant must be publicly transparent about its ownership structure. See 2.4.2 for details of the minimum public disclosure for applicants/ licenceholders incorporated under the Companies Act 2006.
- 2.2.4 As the exercise of options over a company's shares can impact on the company's controlling interests, the FSC expects to be notified of any existing options and may wish to consider the terms of any such options.
- 2.2.5 ***The FSC will only licence corporate entities (with the exception of Professional Officers). However, when considering corporate applications, the Commission will not licence protected cell companies, incorporated cell companies, limited partnerships with separate legal personality or foundations.***

### **2.3 Applicants which are part of larger groups**

- 2.3.1 Where the applicant is part of a group the FSC reserves the right to ask for information about other group entities from the applicant and other regulators.
- 2.3.2 An IOM incorporated applicant wishing to carry on Class 1 activities (deposit taking) must be part of a larger group and must supply the FSC with a letter of comfort<sup>11</sup> from its parent, or immediate owner if appropriate. The FSC may require the letter of comfort to be renewed from time to time.
- 2.3.3 The letter of comfort should record the deposit taker's parent or immediate owner's acknowledgement that it bears a responsibility, over and above any statutory obligations, for the applicant's continuing financial viability. The terms of the letter of comfort must be acceptable to the FSC.
- 2.3.4 Where a deposit taker is a branch, written confirmation is required from the applicant's head office that it accepts full responsibility for branch liabilities.
- 2.3.5 An applicant for a licence to conduct any regulated activities in Classes 2 to 8 may be required to supply the FSC with a letter of comfort from its parent or immediate owner. The letter of comfort may need to be renewed periodically.

### **2.4 Applicants which are companies under the Companies Act 2006**

- 2.4.1 The FSC will not grant a Class 1 (deposit taking) licence to a company incorporated or registered under the Companies Act 2006<sup>12</sup>.

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<sup>11</sup> A letter of comfort is a written commitment from an applicant's parent to the Commission which acknowledges that the parent accepts responsibility for the applicant and its business. For Class 1 deposit takers a parental letter of comfort is a licensing prerequisite. A letter of comfort may be required for other classes of licence dependent on individual circumstances. In the course of day to day supervision, the Commission takes account of a wide range of local and international matters. The existence of a parental letter of comfort is not a substitute for other ongoing supervisory requirements and actions.

<sup>12</sup> This restriction is imposed principally because the FSC does not consider it appropriate for a deposit taker to be able to reduce its capital without more stringent safeguards being in place than those in the 2006 Companies Act.

2.4.2 The FSC may grant a licence to a 2006 Act company to conduct regulated activities within Classes 2 to 8. To ensure appropriate levels of public disclosure, such a licence will be subject to the following licence conditions:

“The licenceholder shall, at all times:

- i maintain in force elections under section 203 (filing of the register of members) and section 204 (filing of the register of directors) of the Companies Act 2006 (“the Act”) and shall comply with the requirements of the Act in respect of such elections;
- ii have only natural persons as directors;
- iii have at least two directors; and
- iv maintain up to date copies of the minutes of its Board meetings and members’ meetings either at the licenceholder’s business premises on the IOM or at the office of its registered agent.”

2.4.3 Auditor liability – if the auditor of a 2006 Act company licenceholder has capped liability it must not be capped below the level of PII cover needed to comply with the requirement at rule 5.2 (2)(c) of the Rule Book.

## **2.5 Professional Officers**

2.5.1 The FSC will only consider applications from individuals for a licence to act as a Professional Officer undertaking Class 4 (corporate services) and/or Class 5 (trust services) activities.

2.5.2 Part 9 of the Rule Book contains a separate section which contains the Rules which are applicable to Professional Officers.

## **2.6 Ownership by a trust<sup>13</sup>**

2.6.1 The FSC will not grant a licence for Class 1 (deposit taking) regulated activities where the applicant has a trust in its ownership structure.

2.6.2 The FSC may grant a licence to an applicant which has a trust in its ownership structure where -

- the regulated activities are within Classes 2 to 8 (but not Class 3(3)/(4) activities where the licenceholder will act for authorised/ full international schemes); and

the FSC can look through the trust and identify the persons who control and/or exercise significant influence over the applicant.

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<sup>13</sup> Please note, when the Isle of Man Foundations Bill is fully enacted, the Commission will update this section to allow for potential ownership by an Isle of Man Foundation. There are no plans to allow ownership by foundations other than Isle of Man Foundations.

- 2.6.3 In considering the application the FSC will examine the deed of trust or other document relating to the establishment and any other documents it considers relevant (e.g. the settlor's letter of wishes, deeds of appointment etc). In addition, the applicant must provide full details of the rationale and commercial reasons which justify the use of the trust in its ownership structure.
- 2.6.4 The applicant must satisfy the FSC that all "Influential Parties" to that trust meet the fit and proper criteria. "Influential Parties" are:
- the trustee(s); and
  - any person (in relation to the applicant, its administration or ownership) that the trustee(s) turn to for guidance, views or advice, or to whom they are obliged, instructed or requested to turn for advice or instructions, or on whose directions or instructions they are accustomed to act (other than a person advising purely in a professional capacity); and possibly,
  - the settlor, protector and beneficiaries of the trust, depending on their formal powers and/or level of influence over the trustees.

The Commission should be notified about any subsequent changes to the trust deed or other document relating to the trust's establishment and / or changes to the influential parties.

## **2.7 Branches**

- 2.7.1 The FSC will not grant a licence to a branch unless the relevant head office is licensed to conduct the relevant regulated activity or activities in another jurisdiction with licensing and regulatory standards equivalent to those of the IOM. In assessing the jurisdiction the FSC may contact the relevant regulatory authority and consider any published reports on the jurisdiction by the IMF and in particular assessments related to the supervision of relevant regulated activities and compliance with FATF standards. The FSC will also consider the quality of its relationship with the relevant regulatory authority, whether there is a memorandum of understanding in place between the regulators and that regulator's willingness and ability to supply necessary information to the FSC.
- 2.7.2 In the case of a branch which undertakes Class 1 (deposit taking) activities, the FSC will not grant a licence unless it is satisfied that:
- the regulator of the relevant head office (the "home regulator"), is prepared to exercise consolidated supervision with the FSC; and
  - this consolidated supervision includes consideration of capital adequacy.
- 2.7.3 The level of autonomy granted to a branch by its head or principal office will depend upon the approach and structure of the relevant group (for example, the individuals with effective powers over the branch's operation can be employed in the branch or in the head office). Whilst the FSC will apply the fit and proper test to branches at the same standard as other applicants, it can modify how the test is satisfied to reflect the particular circumstances of the case.

- 2.7.4 The FSC must be satisfied that individuals fulfilling key person positions are fit and proper and will vet head office personnel who have a direct responsibility for the branch or who will be overseeing the work of the branch as a key person.

Where a controller or key person's primary responsibilities relate to head office, the FSC may accept them as fit and proper without further vetting if they have been approved by the home regulator to act in their current capacity in both the head office and the branch.

- 2.7.5 A Class 6 (E-Money) licenceholder cannot be established as a branch.

## **2.8 Real presence**

- 2.8.1 It is a fundamental requirement that a licenceholder should not be a mere shell; an applicant must establish a real presence in the IOM. An applicant can demonstrate real presence by satisfying the FSC that the business' centre of activity will be in the IOM.

- 2.8.2 If the applicant is an IOM incorporated company, real presence should be demonstrated by the company's management and control being in the IOM.

- 2.8.3 A Professional Officer must be resident in the IOM and carrying on regulated business in or from the Island.

- 2.8.4 A branch of a company incorporated in another jurisdiction, must demonstrate real presence by registering as a foreign company that has established a place of business in the IOM<sup>14</sup>. The centre of the branch's regulated business should be in the IOM and there should be a sufficient degree of local management and control to ensure that there is accountability in the Island for the conduct of the regulated activities. There should be 2 IOM resident officers<sup>15</sup>.

- 2.8.5 The FSC expects all business records to be located in or be accessible from the IOM without recourse to third parties. (This is subject to any outsourcing, or branch, arrangements for which the FSC may give consent.) This includes minutes of directors' and shareholders' meetings of IOM incorporated entities.

- 2.8.6 An applicant is expected to have sufficient staff and adequate systems to undertake its proposed activities. The FSC will consider this on a case by case basis as the requirement will vary according to the scale and complexity of the proposed business.

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<sup>14</sup> Part XI of the Companies Act 1931 – "F Register"

<sup>15</sup> Rule 8.21 in the Rule Book

## **2.9 Managed businesses**

2.9.1 Although the FSC will not licence a business that is a mere shell without real presence, it may grant a licence to an applicant for certain classes of business which on its own does not fully meet the real presence test provided the applicant's business will be managed in the IOM by a Class 7/ Class 3(9) licenceholder (the "manager").

***See Appendix 4 for details of the licensing requirements and Appendix 2 Table A for the classes of regulated activity which can be managed.***

## **2.10 Overseas businesses**

2.10.1 An overseas office, branch or subsidiary which carries on regulated activities outside the Island ("overseas business") may impact on the fitness and propriety of an applicant. Therefore, where an applicant has already established an overseas business or wishes to do so in future, the applicant's level of control over the operation of the overseas business in terms of corporate governance and risk management will be relevant to its licence application and to the ongoing assessment of its fit and proper status.

2.10.2 A licenceholder must obtain the FSC's prior consent before establishing an overseas business<sup>16</sup>. The potential risks of the overseas business and any detrimental effect the overseas business may have on the IOM operation or the Island's reputation will be considered when assessing whether the applicant is and remains fit and proper.

2.10.3 In assessing the overseas business the FSC will consider:

- any published reports on the jurisdiction by the IMF and in particular assessments related to the supervision of relevant regulated activities and compliance with FATF standards;
- the nature of activity that the overseas business will undertake;
- whether the activity is regulated; and
- whether the activity would be a regulated activity in the Isle of Man.

2.10.4 Where the activity is regulated in the overseas jurisdiction the FSC will contact the relevant regulatory authority in that jurisdiction. The FSC will consider the quality of its relationship with the regulatory authority, whether there is a memorandum of understanding in place with that regulator and that regulator's willingness and ability to supply information to enable FSC to act as lead supervisor of the group.

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<sup>16</sup> Rule 7.8 of the Rule Book

## **2.11 Representative offices**

- 2.11.1 An office in the IOM that represents, or holds itself out as representing, an off-Island deposit taking business must hold a licence authorising it to carry on Class 1 regulated activities.<sup>17</sup>
- 2.11.2 In relation to an off-Island business undertaking regulated activities other than Class 1 deposit taking, please refer to the information in 2.7 - Branches.

## **2.12 Changes to ownership structure once a licence has been granted**

- 2.12.1 Changes to ownership structure should be notified to the FSC<sup>18</sup> as they can alter the FSC's assessment of the licenceholder as a fit and proper person.
- 2.12.2 **Options** – On an ongoing basis, a licenceholder must notify the FSC of any proposed pledge of, offer of options over or options granted in respect of its shares<sup>19</sup>.

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<sup>17</sup> s.7 FSA 2008

<sup>18</sup> Rules 7.4, 7.5 and 7.6 of the Rule Book

<sup>19</sup> Rule 7.7A of the Rule Book

## **PART III - INDIVIDUALS RESPONSIBLE FOR MANAGEMENT AND CONTROL**

### **3.1 Directors, controllers and key persons**

- 3.1.1 All individuals with responsibility for management and control of the business, and key persons within the business, must satisfy the FSC that they are fit and proper persons. The FSC's confirmation that it has no objection should be obtained before proceeding with a new key appointment or permitting an individual to acquire a significant interest in the business.
- 3.1.2 The compliance officer, MLRO, deputy MLRO, company secretary, and the IOM resident officers will always be treated as key persons. Other persons who have significant powers or responsibilities within the business will also be regarded as key persons (this will normally include the financial controller (or equivalent) and head of operations).
- In respect of Class 2 (investment business) regulated activities, all persons who provide financial advice will be considered key persons.
- In respect of Class 4 (corporate services) or Class 5 (trust services) regulated activities, all individuals who act as director (including as director of a corporate officer or corporate trustee), secretary of a client company or a trustee, protector or enforcer of a trust will be key persons<sup>20</sup>.
- When undertaking regulated activities in Classes 2 to 8, a person with unrestricted or "A" signatory powers over client accounts or client assets will always be treated as a key person.
- 3.1.3 The directors, controllers and key persons must be and remain fit and proper persons, irrespective of whether their functions are directly related to the business's regulated activity. In respect of management and control, "directors" includes anyone on whose instructions one or more directors are accustomed to act. An applicant (apart from Professional Officer) must have 2 or more directors: all directors must be natural persons.
- 3.1.4 Where one or more nominees hold shares in an applicant, the relevant nominee agreement evidencing the identity of the shares' beneficial owners must be disclosed to the FSC. The FSC will apply the fit and proper test to both the nominee shareholders and the beneficial owners of the shares.
- 3.1.5 Individuals must submit vetting forms and undergo vetting to enable the FSC to assess whether they are fit and proper. In addition, the FSC may invite the individual to attend a personal interview to clarify any issues arising and/or to form an opinion regarding an individual's competence and/or integrity<sup>21</sup>.

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<sup>20</sup> Acting as the registered agent of a 2006 Act company is a regulated activity in its own right (paragraph (5) of Class 4). Therefore, a registered agent would not need to be separately vetted in relation to this role.

<sup>21</sup> Please refer to "Becoming a Regulated Entity/Vetting Forms and Guidance" on the FSC's website.

## **3.2 Separation of roles**

3.2.1 To ensure that compliance control is separated from the day to day control of the business, unless the business is too small to make it practical to do so, the following roles should be undertaken by different individuals –

- managing director and company secretary;<sup>22</sup>
- compliance officer and IOM resident officers;<sup>23</sup> and
- compliance officer and operational roles.

3.2.2 The FSC would not expect a non-executive director of a licenceholder to hold any other office within that licenceholder.

3.2.3 Where a business employs people with a close relationship<sup>24</sup> as directors or key persons it should consider any practical issues and conflicts of interest which may arise and take steps to appropriately manage and mitigate any consequential risks.

## **3.3 Responsibilities**

3.3.1 Directors are expected to understand their statutory and common law duties and responsibilities and, if they are the IOM resident officers, their responsibilities for the day to day supervision of the licenceholder's activities. For IOM incorporated entities, two of the directors must be resident in the IOM.<sup>25</sup>

3.3.2 There must be 2 IOM resident officers who are competent professionals able to exercise real control over the business' day to day operations in the IOM. It is expected that the individuals will be either executive directors, employees of appropriate status or persons granted executive powers.

3.3.3 If a controller exercises influence over the day-to-day affairs of the applicant, they would also be expected to demonstrate competence in the same way as a director, IOM resident officer or key person.

## **3.4 Locums**

3.4.1 Where an applicant has a small number of internal staff it may be required to appoint a locum to ensure that regulated activities can be provided without interruption in the unexpected absence of key individuals<sup>26</sup>. The FSC's prior

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<sup>22</sup> A company secretary's functions include advising the Board in relation to good corporate governance.

<sup>23</sup> This ensures compliance control is separated from day to day control of the business.

<sup>24</sup> Close relationships will include spouses, partners and close family, and financial relationships.

<sup>25</sup> Rule 8.20 of the Rule Book.

<sup>26</sup> Rule 8.12 of the Rule Book

approval is required to locum arrangements on the basis that the locum will become, in effect, a key person of the licenceholder at the point where their services are required.

- 3.4.2 In view of the level of competence required to take control of another licenceholder's business, the locum must be a licenceholder. The locum must be licensed to undertake activities falling within the same class as the activities the applicant wishes to carry on.
- 3.4.3 In the case of an application for a Class 4 (corporate services) and/or Class 5 (trust services) licence, the FSC would consider approving as locum, an individual with an acceptable track record as a director of a licenceholder.
- 3.4.4 In exceptional circumstances, the FSC can accept a suitably qualified individual as locum, provided they can demonstrate that they are a fit and proper person, capable of standing in for the management of the licenceholder.

## PART IV - INTEGRITY

### 4.1 Integrity

- 4.1.1 To a large extent, an applicant's integrity is a reflection of the individuals employed by or associated with the applicant. In assessing the integrity of an applicant or licenceholder and its directors, controllers and key persons, the FSC will consider whether any of their past actions or conduct indicate a lack of integrity. The FSC will consider all relevant circumstances, on a case-by-case basis. ***A list of matters the FSC may have regard to is set out at Appendix 3.***
- 4.1.2 As part of the vetting procedure, the directors, controllers and key persons of an applicant are required to disclose any spent convictions to the FSC<sup>27</sup>. The FSC will consider, on a case-by-case basis, whether a spent or previous conviction is relevant to its current assessment of whether an individual is fit and proper.
- 4.1.3 In cases where legal or disciplinary investigations or proceedings are in progress or pending it would not be appropriate for the FSC to prejudge the outcome (either for or against the applicant, its directors, controllers or key persons); therefore, the FSC may not be able to form a view of the fitness and propriety of the individual or organisation until the matter has been concluded. In such cases the FSC may consider it appropriate to defer making a decision on the licence application. Where this is the case, the FSC will keep the matter under regular review and seek to ensure that a decision is made as soon as possible.
- 4.1.4 Individuals responsible for the management and control of an applicant's business should ensure that, by their conduct and by providing appropriate supervision and training to others within the organisation, the applicant's business is conducted with integrity.
- 4.1.5 An applicant and all connected individuals should co-operate in an open and honest manner with the FSC and any other body which regulates them and should promptly inform the regulator(s) of anything relevant to the regulator's task. Failure to do so may be relevant to an assessment of a person's integrity.

This would include the failure to complete a form or supply information required from a licence applicant or licenceholder in an honest manner, or the omission of any relevant information. The provisions in s. 40 of the FSA 2008 in respect of false statements should be noted.

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<sup>27</sup> The Rehabilitation of Offenders Act (Exceptions) Order 2001 allows the FSC to take account of convictions which would otherwise be treated as spent under the Rehabilitation of Offenders Act 2001.

## PART V - COMPETENCE

### 5.1 Competence

- 5.1.1 An applicant must be competent to undertake the relevant regulated activities including, where appropriate, having detailed knowledge of the structure, purpose and risks of products associated with the activity.
- 5.1.2 An applicant's competence is demonstrated by individuals in the organisation holding relevant qualifications, having sufficient experience and being appropriately supervised and trained to competently fulfil their functions and regulatory responsibilities. The FSC must be able to identify, from the applicant's organisational structure, the individuals whose competence in their particular role and responsibilities is jointly indicative of the overall competence of the applicant. The role of controllers and their influence over the business is also taken into account.
- 5.1.3 Directors, key persons and, if relevant, controllers, who do not hold relevant academic and/or professional qualifications, must demonstrate they have accumulated sufficient appropriate knowledge of the regulated activities through relevant work experience, normally over a period of at least five years. For some activities there is an expectation that individuals will hold certain qualifications and competence cannot be demonstrated by experience alone.<sup>28</sup>
- The FSC will use its discretion in assessing competence and may direct that an individual should successfully complete a course of study or achieve a relevant qualification within a specified period of time.
- 5.1.4 The FSC's "[Training and Competence Framework](#)" provides guidance on the specific training and competence requirements and expectations for continuing professional development for particular regulated activities and roles/ functions within licenceholders<sup>29</sup>.
- 5.1.5 The proposed classes of regulated activities, size and type of business and jurisdictions in which services will be offered are relevant when assessing an applicant's competence. An applicant must be able to demonstrate the existence of adequate risk management systems and controls for the risks associated to its activities and jurisdictions in which it operates.<sup>30</sup>
- 5.1.6 Appropriate business resumption/ contingency arrangements evidence a business's competence to continue following unexpected event that disrupts its operations. A licenceholder must maintain business resumption/ contingency arrangements appropriate to the nature and size of its business.<sup>31</sup>

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<sup>28</sup> The specific considerations relevant to regulated activities falling within a particular class in respect of new business and track record, including the competence criteria, are set out in Appendix 2, Table B.

<sup>29</sup> Please refer to [www.fsc.gov.im](http://www.fsc.gov.im) under "Becoming a Regulated Entity/ Training and Competence

<sup>30</sup> See Rule 8.4 for further detail.

<sup>31</sup> Rule 8.11 of the Rule Book

## PART VI- FINANCIAL STANDING

### 6.1 Solvency

6.1.1 Solvency is more than meeting liabilities as they fall due; it includes maintaining sufficient financial resources to survive periods of market weakness and slack trading conditions. Control of the business' financial risks and proper care for customers' money and assets are also important considerations. The financial resources requirements for each class of regulated activity are set out in Part 2 (Financial Resources and Reporting) and Schedule 2.2 to the Rule Book.

6.1.2 Taking account of contingent and prospective liabilities, an applicant must be, and be likely to remain, a going concern. Confirmation of this must be provided by the directors and should be supported by the applicant's auditor or reporting accountant within the auditor's declaration in the licence application form.

If the applicant is part of a group the FSC may require parent company and/ or consolidated group accounts to be submitted.

6.1.3 To establish the applicant's track record of financial stability and the ability to meet the going concern requirement, where the applicant is an existing company the FSC will require a copy of the applicant's past 2 years' audited annual financial statements (if the accounts were not audited when prepared they should be accompanied by an auditors opinion). If less than 2 years have elapsed since the applicant's incorporation, it will be required to submit its annual financial statements for the relevant number of years.

6.1.4 In addition, the business plan<sup>32</sup> submitted by the applicant must include considered and realistic financial projections for the next 2 years (3 years for deposit takers) including clear explanation of the assumptions used. An applicant that is a new business start-up must demonstrate convincingly the financial viability of its proposals.

The FSC will require evidence that funds have been provided to meet the share capital requirement and financial resources requirement, for example evidence of funds being lodged to pay up share capital.

6.1.5 The FSC will consider the solvency of the directors, controllers and key persons of a corporate licence applicant and also Professional Officer applicants. A credit check will be undertaken on these individuals. If the individual is not resident in the IOM or UK a letter of good standing will be requested from the individual's bank. The areas the FSC will consider include whether that person has ever been declared bankrupt, is currently an undischarged bankrupt or has been subject to any money judgement, which has not been satisfied in full. Any money judgement obtained against an individual must be disclosed within the vetting forms. The FSC considers the possible impact of such circumstances on the individual's fit and proper status on a case-by-case basis.

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<sup>32</sup> When preparing a Business Plan applicants should refer to the FSC's [Business Plan Guidance](#) note

- 6.2.6 In addition, the FSC must be provided with copies of the audited annual financial statements for -
- (a) the licenceholder's parent (whatever the parent's legal form); and
  - (b) if the licenceholder is incorporated in the Isle of Man, for trading subsidiaries of the licenceholder.

## **6.2 Professional indemnity insurance cover**

- 6.2.1 As stated above, a licenceholder's business must be able to withstand the normal business risks associated with market conditions. A prudently run business should also be able to withstand extraordinary risks. Licenceholders must mitigate the business's exposure to extraordinary risk by taking out adequate professional indemnity insurance ("PII").
- 6.2.2 The Rule Book stipulates that PII cover should be appropriate to the nature and size of the business operation.<sup>33</sup>

## **6.3 Ongoing requirements**

- 6.3.1 There is an on-going requirement under the Financial Resources and Reporting Part (Part 2) of the Rule Book for a licenceholder (other than a professional officer) to submit audited annual financial statements. The requirement for licenceholders that are companies to be audited applies irrespective of whether they are obliged to be audited under the relevant Companies Act.
- 6.3.2 In addition, the FSC must be provided with copies of the audited annual financial statements for -
- (a) the licenceholder's parent<sup>34</sup> (whatever the parent's legal form); and
  - (b) if the licenceholder is incorporated in the Isle of Man, for trading subsidiaries of the licenceholder<sup>35</sup>.

## **6.4 Separation of client money and assets**

- 6.4.1 With the exception of Class 1 deposit taking, it is a fundamental principle that licenceholder money and assets are separated from client money and trust money and client assets<sup>36</sup>. Not all licenceholders will be permitted to hold client money, client trust money or client assets.

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<sup>33</sup> Rule 8.54 of the Rule Book.

<sup>34</sup> Rule of the Rule Book 2.11

<sup>35</sup> Rule of the Rule Book 2.15

<sup>36</sup> Please refer to the Part 3 Client Money and Trust Money and Part 4 Client Assets sections of the Rule Book.

Please note, under the licence conditions for Class 8 regulated activities payment accounts are also required to be separated.

## Key to Class 3 licensing requirements in tables A and B of Appendix 2

The tables in Appendix 2 apply to CIS in accordance with this Key. To use this Key:

1. Select the class or classes of CIS regulated activity being applied for;
2. Identify the types of scheme to which services will be provided and select the “highest letter” (A being the highest letter and E the lowest letter);
3. Use this letter to identify the licensing requirements in tables A and B.

| Regulated Activities for Collective Investment Schemes   | Type of Collective Investment Scheme |  |   |                 | Exempt/<br>exempt-<br>type<br>schemes <sup>39</sup> |
|--|--------------------------------------|--|---|-----------------|---|
|  | Authorised schemes                   | Full international schemes <sup>37</sup> | Other classes of international scheme <sup>38</sup> | Non IOM schemes |   |
| Class 3(1) - Manager   | <b>C</b>                             | <b>C</b>                                 | <b>C</b>  | <b>C</b>        |   |
| Class 3(2) - Administrator   |                                      |  | <b>C</b>  | <b>C</b>        |   |
| Class 3(3) Trustee   | <b>A</b>                             | <b>A</b>                                 | <b>C</b>  | <b>C</b>        |   |
| Class 3(4) - Fiduciary custodian   | <b>A</b>                             | <b>A</b>                                 | <b>C</b>  | <b>C</b>        |   |
| Class 3(5) - Custodian   |                                      |  | <b>C</b>  | <b>C</b>        |   |
| Class 3(6) - Asset manager   | <b>C</b>                             | <b>C</b>                                 | <b>C</b>  | <b>C</b>        |   |
| Class 3(7) - Investment adviser  | <b>C</b>                             | <b>C</b>                                 | <b>C</b>  | <b>C</b>        |   |
| Class 3(8) - Promoter (where regulated promoter required)  |                                      |  | <b>D</b>  | <b>D</b>        |   |
| Class 3(9) - Management or administration services to Class 3(1) and (2) licenceholders  | <b>B</b>                             | <b>B</b>                                 | <b>C</b>  | <b>C</b>        |   |
| Class 3(9) - Management or administration services to Class 3(6) and (7) licenceholders  | <b>C</b>                             | <b>C</b>                                 | <b>C</b>  | <b>C</b>        |   |
| Class 3(10) –Administration services to the manager or administrator of a scheme where that manager or administrator is located outside the Island |                                      |  | <b>C</b>  | <b>C</b>        |   |
| Class 3(11) – Manager, administrator, trustee, fiduciary custodian or custodian to a CIS which is an exempt scheme or exempt type scheme           |                                      |  |   |                 | <b>E</b>  |
| Class 3(12) – Administration services to a person exempt from licensing <sup>40</sup> in relation to an exempt scheme or an exempt type scheme     |                                      |  |   |                 | <b>E</b>  |
| Class 3(13) - Providing certain services <sup>41</sup> in relation to individually recognised scheme   |                                      |  |   | <b>F</b>        |   |

<sup>37</sup> Includes Regulated Funds and Full International Schemes

<sup>38</sup> Includes Specialist Funds, Qualifying Funds, Experienced Investor Funds and Professional Investor Funds

<sup>39</sup> Link to guidance note on exempt schemes and limited partnerships

<sup>40</sup> under section 4 of the Act by virtue of paragraph 3.2 of the Financial Services (Exemptions) Regulations

Table A - Ownership and Management Structures

|                |  | Permitted structures   | Ownership by trust<br>(subject to para. 2.6) | Can be a managed business   |
|----------------|--|--|--|---|
| <b>Class 1</b> | <b>Deposit taker</b>   | <p>Subsidiary company or branch<sup>42</sup> of a deposit taker licensed as part of a major deposit taking group in another jurisdiction that applies regulatory standards equivalent to those applied to deposit taking institutions in the IOM and the lead regulator is prepared to exercise consolidated supervision with the FSC.</p> <p>Overseas banks that wish to establish a presence through a branch<sup>42</sup> (rather than an IOM incorporated subsidiary) and accept retail deposits must be banks of the highest standing and enjoy a "Support Rating" of "1" from at least one credit rating agency that is recognised by the FSC.</p> | Not permitted                                | Yes, provided it is part of a deposit taking group whose lead regulator applies regulatory standards equivalent to those applied to deposit taking institutions in the IOM; and the lead regulator has no objection to the establishment of the managed business in the Island. |
| <b>Class 2</b> | <b>Financial Adviser</b><br><b>Investment Adviser to Retirement Benefits Schemes</b>               | Company or branch <sup>42</sup> of a company licensed in another jurisdiction to conduct relevant class of investment business   | May be permitted                             | No  |
| <b>Class 2</b> | <b>Discretionary Portfolio Manager</b><br><b>Custodian</b><br><b>Any Other Investment Business</b> | <p>Company or branch<sup>42</sup> of a company licensed in another jurisdiction to conduct relevant class of investment business</p> <p>Generally required to be part of larger Group</p>  | May be permitted                             | May be permitted in respect of certain activities only  |
| <b>Class 2</b> | <b>Stockbrokers</b>  | <p>Company</p> <p>Branch<sup>42</sup> of a stockbroker authorised by the UKFSA</p> <p>Branch of a company licensed in another jurisdiction to conduct relevant class of investment business</p>  | May be permitted                             | No  |

<sup>41</sup> As set out in Schedule 4 paragraph(2)(8) of the Collective Investment Schemes Act 2008

<sup>42</sup> In the case of a branch, subject to its meeting the FSC' "fit and proper" requirements, the licence would be issued to the legal entity in respect of its activities in or from the Isle of Man

|                      |   | <b>Permitted structures</b>   | <b>Ownership by trust<br/>(subject to para. 2.6)</b> | <b>Can be a managed business</b>  |
|----------------------|---|---|--|---|
|                      |   | Generally required to be part of larger Group   |  |   |
| <b>Class 3</b>       | <b>Collective Investment Schemes Licensing type A</b> | Subsidiary company or branch <sup>42</sup> of a deposit taker licensed in another jurisdiction.   | Not generally permitted                              | Yes, provided it is part of a deposit taking group whose lead regulator applies regulatory standards equivalent to those applied to deposit taking institutions in the IOM; and the lead regulator has no objection to the establishment of the managed business in the Island. |
| <b>Class 3</b>       | <b>Collective Investment Schemes Licensing type B</b> | Company or branch <sup>42</sup> of company licensed in another jurisdiction to conduct relevant regulated activities<br><br>Expectation is that this will be part of larger Group | May be permitted                                     | No  |
| <b>Class 3</b>       | <b>Collective Investment Schemes Licensing type C</b> | Company or branch <sup>42</sup> of company licensed in another jurisdiction to conduct relevant regulated activities<br><br>Generally required to be part of larger Group         | May be permitted                                     | May be permitted in respect of certain activities only  |
| <b>Class 3</b>       | <b>Collective Investment Schemes Licensing type D</b> | Company or branch <sup>42</sup> of company licensed in another jurisdiction to conduct relevant regulated activities in an acceptable jurisdiction.                               | May be permitted                                     | No  |
| <b>Class 3</b>       | <b>Collective Investment Schemes Licensing type E</b> | Company or branch <sup>42</sup> of CSP licensed in another jurisdiction   | May be permitted                                     | Yes   |
| <b>Class 3</b>       | <b>Collective Investment Schemes Licensing type F</b> | Company or branch <sup>42</sup> of an entity in another jurisdiction  | May be permitted                                     | Yes   |
| <b>Class 4</b>       | <b>Corporate services</b>                             | Company or branch <sup>42</sup> of CSP licensed in another jurisdiction   | May be permitted                                     | Yes   |
| <b>Class 4 and 5</b> | <b>Professional Officer</b>                           | Can only be an individual   | Not applicable                                       | Not applicable  |
| <b>Class 5</b>       | <b>Trust Corporation</b>                              | Company   | May be permitted                                     | No  |

|                |   | <b>Permitted structures</b>  | <b>Ownership by trust<br/>(subject to para. 2.6)</b>       | <b>Can be a managed business</b> |
|----------------|---|--|--|----------------------------------|
| <b>Class 5</b> | <b>Trust services</b>                                   | Company or branch <sup>42</sup> of TSP licensed in another jurisdiction                              | May be permitted   | Yes                              |
| <b>Class 6</b> | <b>E - Money</b>  | Company  | May be permitted   | No                               |
| <b>Class 7</b> | <b>Management and administration of a Licenceholder</b> | As per the type of business to which services are provided   | As per the type of business to which services are provided | No                               |
| <b>Class 8</b> | <b>Money Transmission Services</b>                      | Company or branch <sup>42</sup> of company in another jurisdiction which is regulated where relevant | May be permitted   | No                               |

Table B - Track Record

|                |  | Track Record/New Business Start-up  |
|----------------|--|---|
| <b>Class 1</b> | <b>Deposit taker</b>   | A new, start-up deposit taker would not be permitted.   |
| <b>Class 2</b> | <b>Financial Adviser<br/>Investment Adviser to<br/>Retirement Benefits<br/>Schemes</b> | New start-up firms permitted.<br>It is expected that any individual who advises customers about investment products will hold a relevant qualification <sup>43</sup> and have a proven track record (a minimum of 3 years experience). Such individuals will be Key Persons.  |
| <b>Class 2</b> | <b>Discretionary Portfolio<br/>Manager</b>   | New start-up businesses may be permitted.<br>Portfolio managers should preferably be part of a group that can demonstrate a proven track record in a business similar to the business the applicant proposes to conduct in the IOM. Applicants should normally be institutions of proven quality and it is expected that individuals who will act as the applicant's portfolio managers, directors, IOM resident officers and compliance officer will have a proven track record (relevant qualifications and experience <sup>43</sup> ).<br>A portfolio manager will be expected to hold a relevant qualification <sup>43</sup> . Back office and administration staff would be expected to have relevant experience. Whilst there is no specific qualification requirement for those overseeing back office and administration staff, relevant experience is expected and relevant qualifications can be appropriate.   |
| <b>Class 2</b> | <b>Custodian<br/><br/>Any Other Investment<br/>Business</b>                            | The FSC welcomes applicants which are part of a substantial group that can demonstrate a proven track record in an investment business similar to that which the applicant proposes to conduct in the IOM (usually a minimum of 5 years in a jurisdiction with equivalent regulatory standards or which is otherwise considered acceptable).<br>If the applicant is a new start-up business, the FSC will consider the application on its merits, taking into account all factors which it considers relevant, including the applicant's business plan, the track record and experience <sup>43</sup> of its key person. The same considerations will apply in respect of a licenceholder's proposed change in controller. The FSC may impose conditions on any licence granted until the applicant's business has established a satisfactory track record.<br>Applicants must have staff with relevant experience <sup>43,2</sup> , who are able to demonstrate that they have adequate skills and knowledge for their particular role and responsibilities. Relevant staff must demonstrate that they have adequate knowledge of the nature of the financial instruments and products with which they deal and of the nature and organisational structure of the markets on which those instruments and products are traded. This includes being aware of the nature of the risks involved. |
| <b>Class 2</b> | <b>Stockbrokers</b>  | The FSC would normally expect stockbrokers to be part of a group that can demonstrate a proven track record in stockbroking. A "proven track record" is deemed to be at least 5 years in a jurisdiction with regulatory standards deemed to be appropriate by the FSC.<br>A stockbroker will be expected to hold a relevant qualification <sup>43</sup> .   |

<sup>43</sup> See Training and Competence Framework

|                      |   | <b>Track Record/New Business Start-up</b>   |
|----------------------|---|---|
| <b>Class 3</b>       | <b>Collective Investment Schemes Licensing type A</b>       | <p>A subsidiary or a branch of a deposit taker licensed in another jurisdiction that applies regulatory standards equivalent to those applied to deposit taking institutions in the IOM.</p> <p>A new start-up deposit taker would not be permitted.</p>  |
| <b>Class 3</b>       | <b>Collective Investment Schemes Licensing type B and C</b> | <p>The FSC welcomes applicants which are part of a substantial group that can demonstrate a proven track record in an investment business similar to that which the applicant proposes to conduct in the IOM (usually a minimum of 5 years in a jurisdiction with equivalent regulatory standards to the IOM's or which is otherwise considered acceptable).</p> <p>If the applicant is a new start-up business, the FSC will consider the application on its merits, taking into account all factors which it considers to be relevant, including the applicant's business plan, the track record and experience<sup>43</sup> of its key persons and the types of funds it proposes to manage or administer, including the investors at whom the marketing will be aimed and the level of minimum subscriptions. The same considerations will apply in respect of a licenceholder's proposed change in controller. The FSC may impose conditions on any licence granted until the applicant's business has established a satisfactory track record.</p> <p>All applicants must have staff with relevant experience, who can demonstrate that they have adequate skills and knowledge for their particular role and responsibilities<sup>43</sup>. Relevant staff must demonstrate that they have adequate knowledge of the nature of the financial instruments and products with which they deal and of the nature and organisational structure of the markets on which those instruments and products are traded. This includes being aware of the nature of the risks involved.</p> <p>*If a Class 3(1) or Class 3(2) licenceholder is a managed business the FSC does not expect it to employ its own staff. The FSC would, however, look at the functions and services provided by the Group (if applicable) and by the Class 3(9) licenceholder to the entity as well as the competence of its directors and controllers. Please also refer to Appendix 4 which considers <a href="#">managed business</a> further.</p> |
| <b>Class 3</b>       | <b>Collective Investment Schemes Licensing type D</b>       | <p>New start-up firms permitted.</p> <p>Applicants should also have a proven track record (a minimum of 3 years experience).</p>  |
| <b>Class 3</b>       | <b>Collective Investment Schemes Licensing type E</b>       | <p>New start-up firms permitted provided the individuals establishing the business have a proven track record (3 to 5 years relevant senior level experience and, preferably, also holding relevant qualifications<sup>43</sup>).</p>   |
| <b>Class 3</b>       | <b>Collective Investment Schemes Licensing type F</b>       | <p>New start-up firms permitted.</p>  |
| <b>Class 4</b>       | <b>Corporate Services</b>                                   | <p>New start-up firms permitted provided the individuals establishing the business have a proven track record (3 to 5 years relevant senior level experience and, preferably, also holding relevant qualifications<sup>43</sup>).</p>   |
| <b>Class 4 and 5</b> | <b>Professional Officer</b>                                 | <p>The individual should have an appropriate level of experience (at least 5 years at senior level) and, preferably a relevant qualification<sup>42</sup>.</p>  |

|                   |   | <b>Track Record/New Business Start-up</b>  |
|-------------------|---|--|
| <b>Class 5</b>    | <b>Trust Services</b>                                   | New start-up firms permitted provided the individuals wishing to establish the business have a proven track record (holding relevant qualifications and/or 3 to 5 years relevant experience at a senior level).  |
| <b>Class 5(4)</b> | <b>Trust Corporation</b>                                | New/start-up firms may be permitted where the parties to the application have a proven track record of previous experience in a Trust Corporation for a minimum of 3 years.<br><br>A Trust Corporation should be a company of substance: it is expected that any application would include a minimum of three individuals meeting the requirements of Key Persons under the Training and Competence Framework. |
| <b>Class 6</b>    | <b>E-Money</b>  | New start-up firms permitted. Applicants should demonstrate a suitable track record.   |
| <b>Class 7</b>    | <b>Management and administration of a Licenceholder</b> | As per the type of business to which services are provided.  |
| <b>Class 8</b>    | <b>Money Transmission Services</b>                      | New start-up firms permitted. Applicants should demonstrate a suitable track record.   |

## APPENDIX 3

### Matters the FSC may have regard to in determining integrity

The following are examples of matters the FSC may have regard to in determining whether an individual or an organisation is fit and proper – the list is not exhaustive: -

- a conviction by a court, including a civil or military court, in the Island or in another jurisdiction, including a conviction that is “spent”<sup>44</sup>;
- any failure to comply with a direction or order of a court in the Island or in another jurisdiction;
- any criticism or adverse comment about the individual or organisation made by a court, tribunal or enquiry, in the Island or elsewhere, in the context of proceedings before it, including where the individual or organisation was called or attended voluntarily as a witness;
- a refusal by a regulator, whether in the Island or elsewhere, to licence the applicant to carry on the relevant regulated activity, or any activity similar to the relevant regulated activity;
- in respect of a controller, director or key person, a refusal of a personal application for approval by a regulator, whether in the Island or elsewhere, on the grounds that the individual was not considered a fit and proper person to act as a controller, director or key person of a deposit taking business, investment business, provider of services to collective investment schemes, money transmission services or corporate or trust service provider;
- information received from law enforcement or other supervisory agencies under “gateways” equivalent to those established under section 31 of the FSA 2008;
- a disqualification order or undertaking in relation to section 4 CODA (unfit persons), section 5 CODA (unfit officers of insolvent companies), a disqualification order in terms of section 9 CODA (participation in fraudulent trading) or any equivalent legislation in any jurisdiction;
- expulsion from membership, a disciplinary finding against or any similar form of censure of an individual by his professional body;
- an adverse personal reference from a previous employer or professional body;
- disciplinary action taken by a previous employer or professional body; or
- failure to disclose to the FSC any matters relevant to the application, including giving incomplete or untruthful answers to the questions in the vetting forms.

This list is illustrative only and the FSC will also consider any other relevant matter in addition, or alternatively, to the matters listed.

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<sup>44</sup> By virtue of the Rehabilitation of Offenders Act (Exceptions) Order 2001, spent convictions must be disclosed to the FSC. Parking or speeding offences, in connection with the use or ownership of a motor vehicle, which were tried in a court of summary jurisdiction, are not, however, considered relevant and do not need to be disclosed.

## APPENDIX 4

### Managed business

- 1 The FSC will not licence a business that is a mere shell without real presence. It can however grant a licence to an applicant which on its own does not fully meet the real presence test where the applicant's business will instead be managed in the IOM by a Class 7 / Class 3(9) licenceholder (the "manager"). **See Appendix 2, Table A for details of which classes of regulated activity can be managed.**
- 2 When assessing whether a managed applicant is fit and proper, the FSC will apply its usual licensing policy to the managed business and in addition, will pay special attention to the arrangements under which the proposed manager will carry out its management functions. These arrangements will need to be set out in a formal agreement between the two parties and the FSC will wish to consider the terms of such an agreement in connection with the application.
- 3 When considering a proposed managed business, the FSC will need to be satisfied that it can exercise sufficient regulatory control over the managed licenceholder. The FSC will look at the functions and services provided by the managed entity's Group (if applicable) and by the manager to the entity as well as the competence of the managed entities directors and controllers.
- 4 The FSC will expect the managed entity's Board to have a skill set, experience and track record appropriate to the regulated activity undertaken. Since directors of the managed entity can include directors of the manager providing management or administrative services to them, the FSC will expect that appropriate arrangements are in place with regard to:
  - management of conflicts of interest between the managed business, the manager, the role of directors acting for both entities and any fund(s) being managed;
  - reporting by the manager to the managed entity about services provided;
  - maintenance of adequate corporate governance and risk management arrangements by the managed entity; and
  - monitoring/oversight by the managed entity of the services provided by the manager.

The FSC may require an independent non-executive director to be appointed to the Board of a managed entity.
- 5 Although the managed business will rely on the proper exercise of the functions by the manager, the managed operation will ultimately remain accountable to the FSC for the regulated activities it undertakes. Whilst the manager may provide the staff and premises for the managed business, major operational decisions must be made by the directors of the managed business. Any regulated activity **not** delegated to the manager/administrator of the managed entity should be undertaken in or from the IOM.
- 6 All records relating to the managed operation must be in the IOM. This includes minutes of directors' and shareholders' meetings (see 2.7.5 above).

- 7 An applicant who wishes to provide management or administration services to another licenceholder
- (a) must:
- be authorised to carry on Class 7 or Class 3(9) regulated activities;
  - have a track record in the relevant regulated activity; and
  - demonstrate its competence and experience to act as manager of the managed entity (including adequate systems, controls and resources, and where appropriate segregation from its main business); and
- (b) would normally be authorised to carry on regulated activities falling within the relevant class. (In some circumstances, where the manager can clearly demonstrate competence of staff and systems, it may be allowed to provide Class 7/ 3(9) services to an entity even though the respective permissions are not an exact match).
- 8 Not all management and administration services provided to licenceholders amount to managed arrangements (e.g. outsourcing arrangements). The FSC is primarily seeking to regulate management or administration **of** licenceholders under Class 7 and Class 3(9).

The FSC takes into account the following indicators when deciding whether “management” or “administration” **of** a licenceholder is taking place:

- the whole or substantially the whole of the regulated activity of the licenceholder is operated or arranged by the manager/administrator;
- all or nearly all of the staff who carry out the services are supplied, directly or indirectly, by the manager/administrator (possibly with one or two staff retained by the managed licenceholder for sales purposes or as a quality check).
- all or nearly all of the staff who carry out the services (if not supplied by the manager/administrator) are under the management or direction of the manager/administrator.
- at least half of the entities Board is made up of persons nominated or provided by the manager.

In practice, licenceholder to licenceholder agreements for “management” will typically include elements of “administration” in which case the Class 7 or Class 3(9) licence will refer to “management and administration”.

## 9 **Group arrangements**

Licenceholders will not normally be regarded as managed or administered where the licenceholder being managed and the provider of management or administration services are in the same group. However, in some circumstances one group company may be providing management or administration services to another group company.

There are many of situations where two group companies have common staff or where there is one employment company to which all staff are contracted.

Generally, these situations would not be regarded as “management” or “administration”.

The FSC will look at the totality of the arrangements when deciding whether “management” or “administration” of another group company is taking place. Some factors to consider include:

- the group is headquartered outside the Island; or
- the licenceholder being managed or administered is a branch or subsidiary of a group company, which has its main operations outside the Island and conducts similar regulated activities outside the Island.

## Appendix 5

# The licensing structure under the Financial Services Act 2008

|  |     |  | Do the FSC's powers under the FSA 2008 apply? | Does the Rule Book apply? | Does the Anti Money Laundering Code apply? |
|--|-----|--|---|---------------------------|--|
| 1. Is the activity done by way of business?<br>If yes go to 2.                   | No  | Not a regulated activity   | No  | No                        | Depends on activity                        |
| 2. Is the activity listed in the RAO?<br>If yes go to 3.                         | No  | Not a regulated activity   | No  | No                        | Depends on activity                        |
| 3. Is the activity excluded in the RAO?<br>If no go to 4.                        | Yes | Not a regulated activity   | No  | No                        | Yes <sup>45</sup>                          |
| 4. Is the activity exempted in the Exemption Regulations?<br>If no go to 5.      | Yes | A regulated activity but exempted from holding a licence (is a "permitted person" S35(1) FSA 2008) | Yes   | No <sup>46</sup>          | Yes  |
| 5. Is the person currently undertaking the regulated activity?<br>If no go to 6. | Yes | Should be a licenceholder <sup>47</sup> (a "permitted person" S35(1) FSA 2008)                     | Yes   | Yes                       | Yes  |
| 6. Has the person ceased to hold a licence to undertake the regulated activity?  | Yes | Former licenceholder <sup>48</sup> (a "permitted person" S35(1) FSA 2008)                          | Yes   | No                        | Yes <sup>49</sup>                          |

This outline is for illustrative purposes only and is not a substitute for examining the legislation. It does not constitute legal advice as to the meaning of the legislation.

<sup>45</sup> Schedule 1 to the Code sets aside exclusions

<sup>46</sup> unless done by a licenceholder or required as part of the exemption

<sup>47</sup> If a person undertakes a regulated activity without an exemption or a licence they are committing an offence under the FSA 2008

<sup>48</sup> If the person undertakes a regulated activity without an exemption or a licence they are committing an offence under the FSA 2008

<sup>49</sup> For example retention of records