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ADMINISTRATION

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PART 8
ADMINISTRATION

8.1 Application

Except where otherwise provided, and so far as applicable, this Part applies to all licenceholders.

8.2 Change of name or address

A licenceholder must notify the Commission in writing, not less than 20 business days in advance, of a change in —

- (a) its name;
- (b) any business name under which it trades in the Island;
- (c) its principal place of business;
- (d) any permanent place of its business, normally open to the public, in the Island; or
- (e) its registered office.

8.3 Changes in capital structure

A licenceholder incorporated in the Island must not, without the consent of the Commission, take any step towards —

- (a) reducing, increasing or changing the nature of —
 - (i) its issued share capital; or
 - (ii) its loan capital; or
- (b) altering the rights or obligations of its shareholders or debenture holders.

8.4 Changes in ownership

- (1) A licenceholder must notify the Commission in writing of —
 - (a) any transfer of 5% or more of its voting shares; or
 - (b) any other transfer of its voting shares which has a material effect on the immediate or ultimate control of the licenceholder.
- (2) A notification under paragraph (1) must be made —
 - (a) where the shares are quoted on a recognised stock exchange, within 5 business days after the licenceholder becomes aware of the transfer;
 - (b) in all other cases, 20 business days before the transfer is registered.
- (3) A licenceholder must notify the Commission in writing not less than 20 business days in advance of —
 - (a) any change in the ownership structure between it and its ultimate parent company; or
 - (b) any material change in its ultimate ownership.

8.5 Acquisition etc. of business

- (1) A licenceholder must obtain the consent of the Commission prior to arranging —
- (a) a proposed merger of its business with another;
 - (b) a proposed takeover or acquisition by the licenceholder of another business;
 - (c) a proposed purchase by the licenceholder of the assets or liabilities of another business; or
 - (d) the proposed acquisition of a controlling interest, or any change in an existing controlling interest, in its business.
- (2) A request for consent under paragraph (1) must be received —
- (a) if practicable, not less than 20 business days before the event; or
 - (b) otherwise, as soon as practicable.

8.6 Subsidiaries etc.

A licenceholder incorporated in the Island must not, without the consent of the Commission, acquire or establish a subsidiary, branch or representative office in the Island or elsewhere.

8.7 Sale etc. of whole or part of business

A licenceholder must notify the Commission in writing 20 business days before selling or otherwise disposing of, or entering into any agreement to sell or dispose of, the whole or any part of its business.

8.8 Acquisition of shares of company

A licenceholder incorporated in the Island must not, without the consent of the Commission, subscribe for or acquire, or enter into a contract to subscribe for or acquire, 10% or more of the issued share capital of a company.

8.9 New appointments and departures from office

- (1) This rule applies to the following offices and positions —
- (a) Isle of Man resident officer;
 - (b) key person;
 - (c) compliance officer;
 - (d) money laundering reporting officer; and
 - (e) deputy money laundering reporting officer.
- (2) For licenceholders incorporated in the Island this rule also applies to the following positions –
- (a) controller;
 - (b) director; and
 - (c) where applicable, company secretary.

(3) A licenceholder must notify the Commission in writing at least 20 business days in advance of —

- (a) an appointment or intended appointment to any office or position to which this rule applies; and
- (b) the title and responsibilities of the office or position.

(4) A licenceholder must notify the Commission in writing of any departure or intended departure from an office or position to which this rule applies, giving reason for departure, within 10 business days of the giving of notice or other event giving rise to the departure.

(5) This rule applies to an internal appointment, a change of role within business or a promotion as well as to external appointments.

8.10 Staff disciplinary action

(1) A licenceholder must notify the Commission in writing within 10 business days of the discovery of an event which may lead to a final warning being given to, or other serious disciplinary action being taken against, any of employees.

(2) A notification under paragraph (1) must specify the event but need not disclose the name of the employee, unless they are key persons.

(3) A licenceholder must notify the Commission in writing, within 5 business days, of it giving any final warning to, or taking any other serious disciplinary action against, any of its key persons, supplying full details of the action including copies of any notices or written warnings given by the licenceholder to the employee.

(4) The licenceholder must provide the employee concerned with a copy of a notification under paragraph (3).

(5) For the purpose of this rule "serious disciplinary action" is to be interpreted in accordance with the licenceholder's internal human resources policy.

8.11 Disqualification as a director etc.

A licenceholder must notify the Commission in writing as soon as it becomes aware of any disqualification or any application for disqualification relating to the licenceholder or any of its key persons under —

- (a) section 208 or 259 of the Companies Act 1931;
- (b) section 31 of the Companies Act 1982;
- (c) section 26 of the Companies Act 1992; or
- (d) any equivalent provision having effect in the Island or in a country or territory outside the Island.

8.12 Service of notice etc.

(1) A licenceholder must notify the Commission in writing as soon as it becomes aware of any action specified in paragraph (2) against —

- (a) the licenceholder;

- (b) an associated company of the licenceholder; or
- (c) any person for or on behalf of whom the licenceholder carries on any regulated activity.
- (2) The actions referred to in paragraph (1) are —
 - (a) the service of any notice under section 24 of the Criminal Justice Act 1990;
 - (b) the service of any summons or issue of any warrant under section 21 or section 22 of the Criminal Justice Act 1991;
 - (c) the making of any order or the issue of any warrant under section 52 or section 53 of the Drug Trafficking Act 1996; or
 - (d) the making of any order or the issue of any warrant under section 15 or Schedule 7 of the Prevention of Terrorism Act 1990.

8.13 Criminal proceedings and convictions

(1) A licenceholder must notify the Commission in writing as soon as it becomes aware of the bringing of any criminal proceedings against, or the conviction of, —

- (a) the licenceholder or any associated company; or
- (b) any officer or employee of the licenceholder or any associated company,

for an offence to which this rule applies.

- (2) This rule applies to —
 - (a) an offence which is or, if committed in the Island, would be triable on information;
 - (b) an offence relating to a regulated activity or an activity which, if carried on in the Island, would be a regulated activity;
 - (c) an offence under the Companies Acts 1931 to 2004, the Companies Act 2006, or any legislation having similar effect in any country of territory outside the Isle of Man or any offence relating to the formation, management or administration of companies in any jurisdiction;
 - (d) an offence under the Purpose Trusts Act 1996 or any legislation having similar effect in any country or territory outside the Isle of Man or any offence relating to trusts in any jurisdiction;
 - (e) an offence relating to insolvency; or
 - (f) an offence involving fraud or dishonesty.

(3) Nothing in this rule requires a licenceholder to disclose any matter subject to legal professional privilege.

8.14 Surrender of licence

(1) Where a licenceholder intends voluntarily to surrender its licence, it must —

- (a) give to the Commission notice of its intention to do so; and
- (b) notify the Commission in writing of the arrangements it proposes to make to dispose of its business.

(2) A notice and notification under paragraph (1) must be given not less than 20 business days before the surrender of the licence.

8.15 Cessation of regulated activity

Where a licenceholder decides voluntarily to cease carrying on a particular class of regulated activity, it must, not less than 20 business days before that decision is implemented, —

- (a) notify the Commission in writing of the decision;
- (b) provide the Commission with an updated business plan, as referred to in rule 9.7; and
- (c) provide the Commission with details of arrangements for the safeguarding of depositors' and other clients' assets.

8.16 Bankruptcy, winding up, etc.

A licenceholder must notify the Commission in writing as soon as it becomes aware of any of the following (whether occurring in the Island or elsewhere) —

- (a) the commencement of proceedings for the winding up of the licenceholder;
- (b) the appointment of a receiver, liquidator, provisional liquidator, administrator or trustee in bankruptcy of the licenceholder;
- (c) the making of any composition or arrangement with creditors of the licenceholder;
- (d) where the licenceholder is a partnership or unincorporated association —
 - (i) an application to dissolve the partnership or association; or
 - (ii) the commencement of proceedings for the bankruptcy of a partner;
- (e) where the licenceholder is an individual, the commencement of proceedings for the bankruptcy of the licenceholder;
- (f) the appointment of an inspector by a statutory or other regulatory authority to investigate the affairs of the licenceholder.

8.17 Voluntary winding up

A licenceholder incorporated in the Island must notify the Commission in writing of the intention of its directors to make a declaration of solvency in accordance with section 218 of the Companies Act 1931 not less than 5 business days before the declaration is signed.

8.18 Legal proceedings — deposit takers

(1) This rule applies to licenceholders authorised to carry on regulated activities falling within Class 1.

(2) A licenceholder must notify the Commission in writing as soon as it becomes aware of any actual or intended legal proceedings taken by or against it where the amount claimed or disputed is likely to exceed —

(a) £500,000 sterling or its equivalent in another currency; or

(b) in the case of Isle of Man incorporated licenceholders, 5% of the licenceholder's *LECB*,

whichever is the lower.

(3) Nothing in this rule requires a licenceholder to disclose any matter subject to legal professional privilege.

8.19 Legal proceedings — investment, company and trust service providers

(1) This rule applies to licenceholders authorised to carry on regulated activities falling within Class 2, Class 3, Class 4 or Class 5.

(2) A licenceholder must notify the Commission in writing as soon as it becomes aware of any actual or intended legal proceedings taken by or against it where the amount claimed or disputed is likely to exceed —

(a) £10,000 sterling or its equivalent in another currency; or

(b) 10% of the licenceholder's allowable financial resources,

whichever is the lower.

(3) Nothing in this rule requires a licenceholder to disclose any matter subject to legal professional privilege.

8.20 Criminal proceedings against client — company and trust service providers

(1) This rule applies to licenceholders authorised to carry on regulated activities falling within Class 4 or Class 5.

(2) A licenceholder must notify the Commission in writing and, where possible, provide a brief summary of the case, as soon as it becomes aware of the bringing of any criminal proceedings against a client for, or the conviction of a client of, an offence which is or, if committed in the Island, would be triable on information.

(3) In this rule "client" means —

(a) in the case of a licenceholder authorised to carry on regulated activities falling within Class 4 —

(i) a company which is a client of the licenceholder;

(ii) any officer of such a company; or

(iii) the beneficial owner of such a company;

(b) in the case of a licenceholder authorised to carry on regulated activities falling within Class 5, the trustee or settlor of any trust for which it provides services.

8.21 Notification of default

- (1) This rule applies to licenceholders authorised to carry on regulated activities falling within Class 1
- (2) The deposit taker shall notify the Commission immediately if an event occurs that would constitute a default within the meaning of the [Banking Business (Compensation of Depositors) Regulations 1991], if the notification is otherwise than in writing the licenceholder must follow it up with a notification in writing.